

Introduction

The OEB's legislative authority with respect to the applications seeking approval for the construction of hydrocarbon pipelines (usually natural gas pipelines) is set out in Sections 90, 91 and 96(1) of the *Ontario Energy Board Act, 1998* (OEB Act).

Section 90(1) states that:

- 90(1)** No person shall construct a hydrocarbon line without first obtaining from the Board an order granting leave to construct the hydrocarbon line if,
- (a) the proposed hydrocarbon line is more than 20 kilometres in length;
 - (b) the proposed hydrocarbon line is projected to cost more than the amount prescribed by the regulations;
 - (c) any part of the proposed hydrocarbon line,
 - (i) uses pipe that has a nominal pipe size of 12 inches or more, and
 - (ii) has an operating pressure of 2,000 kilopascals or more; or
 - (d) criteria prescribed by the regulations are met.

Section 91 states that:

91 Any person may, before constructing a hydrocarbon line to which section 90 does not apply or a station, apply to the Board for an order granting leave to construct the hydrocarbon line or station.

Section 96(1) states that:

96(1) If, after considering an application under section 90, 91 or 92 the Board is of the opinion that the construction, expansion or reinforcement of the proposed work is in the public interest, it shall make an order granting leave to carry out the work.

The OEB also has authority over the form of agreements that have been or will be offered to landowners affected by the pipeline project under section 97 of the OEB Act.

When determining whether a project is in the public interest, the OEB typically examines the need for the project, project alternatives, project cost and economics, environmental impacts, land matters, and Indigenous consultation. The standard issues list below is intended to capture all of the issues that are within the scope of a typical hydrocarbon pipeline leave to construct application under section 90 or 91 of the OEB Act.

Section 90 and 91 Leave to Construct Issues List

1.0: Need for the Project

- 1.1:** Has the applicant demonstrated that the project is needed? What factors are driving the need? (e.g., new customer demand, increased system capacity requirement, reliability of service, need for pipeline relocation, operational risks, integrity issues) Has sufficient evidence demonstrating need been provided (e.g., customer or volumetric forecast, system capacity analysis, engineering reports)?
- 1.2:** Has the applicant demonstrated how the project fits within any relevant growth plans for the area, the applicant's Utility System Plan (including any Asset Management Plan)? – e.g., what are the dependencies between the proposed project and previously approved LTC projects or in the case of a large project, between the proposed project and future phases of the project?¹

2.0: Project Alternatives

- 2.1:** Has the applicant demonstrated that the identified need is best addressed by the proposed project, having adequately considered all viable alternatives (e.g., other pipeline, non-pipeline and hybrid solutions including integrated resource planning alternatives)?
- 2.2:** Has the applicant compared the alternatives using appropriate metrics including costs, benefits, risks, economic feasibility (Profitability Index, Net Present Value), timing, reliability, safety, land use requirements, permitting requirements, environmental impacts, and impacts on (amongst others) Indigenous peoples and their rights, municipalities and landowners?

3.0: Project Cost and Economics

- 3.1:** Has the applicant provided sufficient information to demonstrate that the estimates of the project costs are reasonable? How do the costs of the project compare with recent similar projects, where applicable?
- 3.2:** Has the applicant adequately identified and described any risks associated with the proposed project? Is the proposed contingency budget appropriate and consistent with these identified risks?
- 3.3:** Has the applicant demonstrated that the project's economics meet the OEB's economic tests using the methodology outlined in EBO 188 or EBO 134, as applicable? Where a contribution in aid of construction is required, is the amount of the contribution reasonable and consistent with OEB policies?

¹ If it is not possible to seek approval for all phases of the project at the same time, the applicant must provide a detailed rationale supporting its request that the OEB approve only one or more phases of the overall project in advance of the remainder of the project.

3.4: If an OEB-approved surcharge like the System Expansion Surcharge or Temporary Connection Charge² (i.e., charges designed to raise additional revenue for expansion projects that are not otherwise economically viable) is requested, has the applicant demonstrated that the project is eligible for a surcharge and that the requested duration of the surcharge is appropriate?

3.5: If an OEB-approved allocation factor like the Hourly Allocation Factor (HAF)³ (i.e., a method of allocating the cost of project capacity to customers for feasibility purposes) is requested, has the applicant demonstrated that the project is eligible for such an allocation factor and that the proposed amount of the allocation factor is reasonable and consistent with OEB policies?

4.0: Environmental Impacts

4.1: Has the applicant filed an Environmental Report that meets the requirements of the OEB's Environmental Guidelines⁴ and appropriately identified the environmental impacts associated with construction of the project and adequately described how it intends to mitigate and manage these impacts?

5.0: Route Map and Form of Landowner Agreements

5.1: Has the applicant demonstrated that any proposed forms of landowner agreements under section 97 of the OEB Act are appropriate?

5.2: Does the route map provided pursuant to section 94 of the OEB Act show the general location of the proposed work and the municipalities, highways, railways, utility lines and navigable waters through, under, over, upon or across which the proposed work is to pass?

6.0: Indigenous Consultation

6.1: To the extent that the project triggers the Constitutional duty to consult, has the proponent followed the Indigenous consultation requirements from the Environmental Guidelines? Has the duty to consult and, to the extent required, accommodate, been met sufficiently to allow the OEB to approve the application?

7.0: Conditions of Approval

7.1: The OEB's standard conditions of approval are attached as Schedule 1. If the OEB approves the proposed project, what additional or revised conditions, if any, are appropriate?

² EB-2020-0094 Decision and Order on Enbridge Gas Inc.'s application for a System Expansion Surcharge or Temporary Connection Charge and an Hourly Allocation Factor

³ Ibid.

⁴ Ontario Energy Board Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario, 7th Edition, 2016

Schedule 1:
Application under Section 90(1) or Section 91 of the OEB Act
STANDARD CONDITIONS OF APPROVAL

1. [The Applicant] shall construct the facilities and restore the land in accordance with the OEB's Decision and Order in [insert OEB File No.] and these Conditions of Approval.
2. (a) Authorization for leave to construct shall terminate 12 months after the decision is issued unless construction has commenced prior to that date.
(b) [The Applicant] shall give the OEB notice in writing:
 - i. of the commencement of construction, at least 10 days prior to the date construction commences
 - ii. of the planned in-service date, at least 10 days prior to the date the facilities go into service
 - iii. of the date on which construction was completed, no later than 10 days following the completion of construction
 - iv. of the in-service date, no later than 10 days after the facilities go into service
3. [The Applicant] shall obtain all necessary approvals, permits, licences, certificates, agreements and rights required to construct, operate and maintain the Project.
4. [The Applicant] shall implement all the recommendations of the Environmental Report filed in the proceeding, and all the recommendations and directives identified by the Ontario Pipeline Coordinating Committee review.
5. [The Applicant] shall advise the OEB of any proposed change to OEB-approved construction or restoration procedures. Except in an emergency, [the Applicant] shall not make any such change without prior notice to and written approval of the OEB. In the event of an emergency, the OEB shall be informed immediately after the fact.
6. Concurrent with the final monitoring report referred to in Condition 7(b), [the Applicant] shall file a Post Construction Financial Report, which shall provide a variance analysis of project cost, schedule and scope compared to the estimates filed in this proceeding, including the extent to which the project contingency was utilized. [The Applicant] shall also file a copy of the Post Construction Financial Report in the proceeding where the actual capital costs of the project are proposed to be included in rate base or any proceeding where [the Applicant] proposes to start collecting revenues associated with the Project, whichever is earlier.

7. Both during and after construction, [the Applicant] shall monitor the impacts of construction, and shall file with the OEB one electronic (searchable PDF) version of each of the following reports:
 - a) A post construction report, within three months of the in-service date, which shall:
 - i. provide a certification, by a senior executive of the company, of [the Applicant's] adherence to Condition 1
 - ii. describe any impacts and outstanding concerns identified during construction
 - iii. describe the actions taken or planned to be taken to prevent or mitigate any identified impacts of construction
 - iv. include a log of all complaints received by [the Applicant], including the date/time the complaint was received, a description of the complaint, any actions taken to address the complaint, the rationale for taking such actions
 - v. provide a certification, by a senior executive of the company, that the company has obtained all other approvals, permits, licenses, and certificates required to construct, operate, and maintain the proposed project
 - b) A final monitoring report, no later than fifteen months after the in-service date, or, where the deadline falls between December 1 and May 31, the following June 1, which shall:
 - i. provide a certification, by a senior executive of the company, of [the Applicant's] adherence to Condition 4
 - ii. describe the condition of any rehabilitated land
 - iii. describe the effectiveness of any actions taken to prevent or mitigate any identified impacts of construction
 - iv. include the results of analyses and monitoring programs and any recommendations arising therefrom
 - v. include a log of all complaints received by [the Applicant], including the date/time the complaint was received; a description of the complaint; any actions taken to address the complaint; and the rationale for taking such actions
8. [The Applicant] shall designate one of their employees as project manager who will be the point of contact for these conditions, and shall provide the employee's name and contact information to the OEB and to all affected landowners, and shall clearly post the project manager's contact information in a prominent place at the construction site.