Proposed changes to Ontario's leave to construct requirements

February 03, 2021

On January 28, 2021, the Ministry of Energy, Northern Development and Mines (the Ministry) posted two proposals to reduce the regulatory burden associated with obtaining leave to construct under the *Ontario Energy Board Act, 1998* (the OEB Act).

Increasing the threshold for L2C hydrocarbon pipelines

In the first proposal (ERO number 019-3041), the Ministry is proposing to increase the cost threshold requiring leave to construct approvals for a hydrocarbon pipeline under Section 90 of the OEB Act from $2 million to $10 million.

If approved, the E.B.O. 188 principles[1] would instead apply to new pipelines ranging from over $2 to under $10 million.

This proposal would not alter other regulatory requirements that may be applicable to new hydrocarbon pipelines, including the obligation to seek appropriate authorizations from Ontario ministries, authorities and municipalities. Such other permits and approvals would still apply.

However, if approved, the proposal may impact how the Crown consults with Indigenous communities for projects that cost more than $2 million but less than $10 million and not otherwise triggering a leave to construct approval. The Ministry indicates that it intends to consult with Indigenous communities about this proposed regulatory change.

See here for more information about the proposal. The proposal is open for comments for 90 days, closing on April 29, 2021.

New exemptions for L2C electricity transmission projects

In the second proposal (ERO number 019-3038), the Ministry is proposing to exempt the following electricity transmission projects from an obligation to obtain leave to construct under Section 92 of the OEB Act:

- Projects funded by transmission-connected commercial and industrial load customers such as mines, auto manufacturers and data centers;
- Projects funded by transmission-connected generator customers;
- Projects funded by transmission-connected load or generator customers that are operating as storage facilities; and
- Projects funded by distribution-connected commercial & industrial load customers and generators, including storage facilities.

The proposed exemptions will add to those existing under Ontario Regulation 161/99, which currently excuse all distribution assets and transmission lines 2km or less from the obligation to obtain leave to construct.

The proposal intends that the exemption to leave to construct approval will not apply to the following:

- Transmission connection projects that would trigger a material upgrade in the broader network system, as the costs associated with network facility investments are typically recovered from all electricity ratepayers in Ontario.
- Transmission connection projects where the transmission customer is a Local Distribution Company (LDC) and the project cost (including any capital contribution) is being funded by the LDC through its rate base.
- Transmission connection projects that are funded jointly by both commercial and industrial load or generator customers and transmitters or LDCs. These applications would not be exempt as they may involve complex issues of cost responsibility and may result in a cost impact to ratepayers.

The purpose of this proposal is to reduce regulatory burden and the cost to business associated with obtaining leave to construct approvals when the proposed project will not have a substantial ratepayer impact.

Similar to the changes to Section 90 of the OEB Act, the proposal will not affect other regulatory requirements that may be applicable to new transmission projects, including system and connection impact assessments as well as all necessary environmental approvals.

In regards to landowner agreements, transmitters currently adopt best practices. However, in the event the transmitter and landowners do not reach agreement related to the land, the OEB would continue to administer the expropriation of the land under Section 99 of the OEB Act.

See here for more information about the proposal. The proposal is open for comments for 90 days, closing April 29, 2021.

[1] Read the final report online

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