



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Office of Climate Change Initiatives

TO:	Mayor and Members Planning Committee
COMMITTEE DATE:	April 16, 2024
SUBJECT/REPORT NO:	Bill 165, <i>Keeping Energy Costs Down Act, 2024</i> (PED24052) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Lynda Lukasik
SUBMITTED BY:	Lynda Lukasik Director, Office of Climate Change Initiatives Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

- (a) That Council adopt the submissions and recommendations, as attached in Appendix “A” to Report PED24052, regarding the *Keeping Energy Costs Down Act, 2024*, a bill proposing amendments to the *Ontario Energy Board Act, 1998*;
- (b) That the Director of the Office of Climate Change Initiatives and the City Solicitor be authorized to make the submissions and recommendations regarding these proposed amendments to the *Ontario Energy Board Act, 1998*, as attached in Appendix “A” to Report PED24052.

EXECUTIVE SUMMARY

On December 21, 2023, the Ontario Energy Board issued a Phase 1 Decision and Order regarding Enbridge Gas Incorporated’s application for 2024 rates (‘The 2023 Rebasing Proceedings’). On February 14, 2024 Hamilton City Council adopted the motion *Support for the Decision of the Ontario Energy Board to End the Gas Pipeline Subsidy*, whereby Council confirmed its support for the decision of the Ontario Energy Board to establish a revenue horizon of zero years for new residential connections to the natural gas distribution system. On February 22, 2024, the Government of Ontario introduced Bill 165, *Keeping Energy Costs Down Act, 2024*, and posted a notice on the

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

Environmental Registry of Ontario website (ERO 019-8307) initiating a 45-day public comment period ending on April 7, 2024. If passed, the proposed legislation would result in a series of notable changes to the *Ontario Energy Board Act, 1998*. In the Environmental Registry posting, the Province states that the purpose of its proposed legislative changes is to:

- Ensure fair and informed hearings at the Ontario Energy Board;
- Ensure Government sets energy policy, not the regulator;
- Protect future homebuyers and promote affordable housing;
- Maintain customer choice with respect to energy options for homes and businesses; and,
- Support the Government's mandate to rebuild Ontario's economy as we keep costs down for people and businesses and build the homes our growing province needs.

One proposed change provides the Province with time-limited authority to prescribe the 'revenue horizons'. Revenue horizons are the time period over which gas utilities are permitted to recoup the upfront cost of new connections to the natural gas distribution system through charges to ratepayers. These revenue horizons would be set through regulations made under the *Ontario Energy Board Act*, and the Province would have the authority to prescribe them until January 1, 2029.

The proposed legislation would also enable the Province to require the Ontario Energy Board to hold 'generic' hearings to address one or more issues that affect multiple regulated entities. Authorities conferred on the Province would include:

- How and when the generic hearing should be conducted;
- The ability to transfer an issue from an on-going proceeding to a generic hearing, and;
- The ability to require a generic hearing on issues already decided by the Ontario Energy Board as long as at least two years have passed since the Ontario Energy Board decision was made.

Finally, proposed changes would authorize the Minister of Energy to issue directives respecting any Board orders made between February 22, 2024 and December 31, 2024 where the Board refuses to grant leave to construct a proposed natural gas transmission or dual-purpose transmission and distribution line, or grants it subject to specified conditions. The Minister can require that the Board rescind orders of this nature and hold a new hearing. Further, a new ss 96.2(1) of the *Ontario Energy Board Act* would enable the Minister to issue directives that would require the Board to accept that it is in the public interest for natural gas consumers identified by the Minister to bear the full cost of the distribution line in question.

The Minister can also direct the Board to not require an entity that will be connected to or served by a line to contribute to its construction.

The Minister of Energy has indicated that if the proposed legislation is passed, the Government will immediately reverse the Ontario Energy Board's December 21st decision referenced below, to reduce the revenue horizon to zero.

Staff recommends that the City of Hamilton provide comments to the Province opposing all of these proposed changes to the *Ontario Energy Board Act*. Detailed staff comments on the proposed legislation are provided in Appendix "A" to Report PED24052.

Alternatives for Consideration – See Page 7

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: Not applicable

Staffing: Not applicable.

Legal: Bill 165 completed First Reading on February 22, 2024 and was debated at Second Reading from February 26 to 28. On February 28 the Bill was ordered referred to the Standing Committee on the Interior. Legal staff will continue to monitor the status and progression of Bill 165 before the Legislature.

HISTORICAL BACKGROUND

On December 21, 2023, the Ontario Energy Board issued a Phase 1 Decision and Order regarding Enbridge Gas Incorporated's application for 2024 rates ('The 2023 Rebasing Proceedings'). The hearing lasted just over a year and a total of 33 parties secured intervenor status in the process. In its decision, the Ontario Energy Board noted that the intersection of the energy transition and the approvals being sought by Enbridge Gas Incorporated were a major focus of the hearing.

The Ontario Energy Board decision resulted in a number of key findings, including the Board's decision to reduce Enbridge's current 40 year revenue horizon down to zero, requiring that small volume customer connections – which are estimated to cost ~\$4,400 per dwelling - be paid for up front starting January 1, 2025. The Ontario Energy Board justified this decision based on its concern that, as more customers transition away from methane gas to low/no carbon energy alternatives, there is a growing risk of stranded assets and an associated financial impact on new and current Enbridge customers. The Board also recognized that its decision would encourage

more developers and home buyers to consider transitioning to low/no carbon options like heat pumps for home space and water heating – a good outcome given established government commitments to transition to low carbon alternatives over time in order to address the climate crisis.

The Ontario Energy Board set out other requirements to further address its concerns about natural gas infrastructure and the growing risk of stranded assets by also requiring that Enbridge take steps to prioritize maintenance and repair of existing assets over replacement with long-lived assets, and to ‘prune’ the system wherever possible to avoid asset replacement.

On February 14, 2024 Hamilton City Council adopted the motion *Support for the Decision of the Ontario Energy Board to End the Gas Pipeline Subsidy*, whereby Council confirmed its support for the decision of the Ontario Energy Board to establish a revenue horizon of zero years for new residential connections to the natural gas distribution system. The motion also requires that that the Ontario Government be formally notified that the City of Hamilton requests that the decision of the Ontario Energy Board stand. A copy of the motion is attached as Appendix “B” to Report PED24052.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

The Ontario Energy Board and Ontario Energy Board Act

The Ontario Energy Board functions as Ontario’s independent regulator of the electricity and natural gas sectors. The Board has a stated mission to ‘deliver public value through prudent regulation and independent adjudicative decision-making which contributes to Ontario’s economic, social and environmental development’.

Section 2 of the *Ontario Energy Board Act* requires that the Ontario Energy Board ‘in carrying out its responsibilities under this or any other Act in relation to gas, shall be guided by’ objectives including: facilitating competition in the sale of gas to users; informing consumers and protecting their interests with respect to prices and the reliability and quality of gas service; facilitating rational expansion of transmission and distribution systems; facilitating rational development and safe operation of gas storage; promoting energy conservation and energy efficiency in accordance with the policies of the Government of Ontario, including having regard to the consumer’s economic circumstances; facilitating the maintenance of a financially viable gas industry for the transmission, distribution and storage of gas and; promoting communication within the gas industry.

Hamilton's Climate Action Strategy

In March of 2019, Hamilton City Council unanimously declared a climate emergency. Coming out of that declaration was a commitment to work with the broader community to create a community roadmap to net zero, now known as Hamilton's Climate Action Strategy. Hamilton's Climate Action Strategy, and the climate mitigation and adaptation plans found within it, was adopted in August 2022 (Report CM22016/ PED22058(a)/ HCS22030(a)) and it is the City's roadmap to drastically cutting carbon emissions and achieving net zero by 2050, or sooner, as is now being urged.

The Community Energy and Emissions Plan is the mitigation plan found within Hamilton's Climate Action Strategy. This plan includes a core commitment to 'transform our buildings' by conserving energy and transitioning existing and new buildings away from using fossil fuels like methane gas for home heating and cooling. This commitment is crucial to the effective realization of net zero by 2050 as buildings represent the third largest source of greenhouse gas emissions in Hamilton.

The Plan calls for all homes to be retrofitted to achieve a 50% energy savings, followed by switching homes to heat pumps for space and water heating, all before the year 2050 and, ideally, sooner than that. To this end, the City of Hamilton launched the Better Homes Hamilton home energy retrofit pilot project which is designed to encourage and support homeowners to transition away from fossil fuel powered home heating and cooling systems and to instead choose low carbon air or ground source heat pump systems.

RELEVANT CONSULTATION

Staff from Legal Services were consulted in the drafting of this report, recommendations and appendices.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

Detailed staff comments on the proposed *Bill 165, Keeping Energy Costs Down Act, 2024* are attached in Appendix "A" to Report PED24052.

Authorization to Prescribe Revenue Horizons

If passed, this change authorizes the Province to prescribe the 'revenue horizons' over which gas utilities are permitted to recoup the upfront cost of new connections to the natural gas distribution system. While the authorization is for a time-limited period, it empowers the Province to intervene in areas historically under the purview of the Ontario Energy Board as the independent energy regulator.

The proposal authorizing the Province to prescribe revenue horizons for residential connections to the natural gas distribution system is contrary to Council's position on this matter. The Province states that the affordability of new housing units in Ontario will be significantly impacted by a zero revenue horizon and that their plan protects homebuyers. Further, the Minister stated in a press release on December 22, 2023 that requiring natural gas connection costs to be paid up front rather than amortized over 40 years 'could lead to tens of thousands of dollars being added to the cost of building new homes', without clarifying that this is the extreme scenario for infrastructure costs associated with connecting new homes built in remote rural areas where infrastructure must be run over longer distances. Further, by asserting that a zero revenue horizon impacts on housing affordability, the Province fails to recognize the financial implications for residential ratepayers from the risk of stranded fossil fuel infrastructure that will continue to increase as the energy transition progresses. Finally, while stating that it is protecting customer choice where energy options are concerned, the Province fails to recognize the benefit that a zero revenue horizon brings by introducing more choice to developers and home buyers at the construction phase when home energy options are being considered. A zero revenue horizon facilitates transition to low/no carbon home heating and cooling systems by effectively levelling the playing field when it comes to selecting home energy systems at the home construction phase. All of these challenges underscore the bigger picture need for the Province to develop a natural gas transition policy for Ontario.

Authorization to Initiate Generic Hearings & Revisit Past Ontario Energy Board Decisions

The proposed legislative changes authorize the Province to require the Ontario Energy Board to call generic hearings, to pull issues from a hearing that is already underway for consideration in a generic hearing instead, and to require a generic hearing on issues already decided by the Ontario Energy Board as long as at least two years have passed since the decision in question was made.

Staff does not support these proposed changes to when and how Ontario Energy Board hearings are initiated. The Ontario Energy Board's mandate is to serve as Ontario's independent energy regulator and, given this, the processes that guide hearings, the nature and focus of hearings and revisiting of past hearing decisions should not be modified to enable Provincial influence over these proceedings. This erodes the intent and purpose of independent expert bodies like the Ontario Energy Board and compromises the Board's ability to fulfil its mission to 'deliver public value through prudent regulation and independent adjudicative decision-making which contributes to Ontario's economic, social and environmental development'.

Authorization to Undo Leave to Construct Refusals & Conditions

The proposed changes authorize the Minister to undo an Ontario Energy Board decision to refuse a leave to construct order or to remove any conditions that the Ontario Energy Board has placed on a leave to construct order related to natural gas transmission and distribution lines. The changes also authorize the Province to determine what is in the public interest regarding which customers should bear the full cost of transmission and distribution lines, and to issue directives specifying which customers are not required to pay a surcharge or contribution in aid of construction for certain natural gas distribution and transmission lines.

Staff does not support the proposal to authorize the Province to undo leave to construct refusals or remove conditions added to leave to construct orders. Staff also does not support authorizing the Province to determine what constitutes the public interest where determinations regarding which customers should bear costs or be exempted from bearing costs where the construction of natural gas transmission and distribution lines are concerned. Again, for reasons set out in the section immediately above, these proposed changes erode the intent and purpose of independent bodies like the Ontario Energy Board, and, in this instance, may lead to decisions that go against the stated mission and mandate of the Board.

ALTERNATIVES FOR CONSIDERATION

Council may direct Staff to submit reversed comments to the Province in support of Bill 165. Staff do not recommend this option as Council passed a motion on February 14, 2024 supporting the December 21, 2023, Ontario Energy Board decision and calling on the provincial government to uphold the zero energy revenue horizon for new natural gas connection costs.

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” to Report PED24052 – City of Hamilton comments on *Bill 165, Keeping the Energy Costs Down Act, 2024*

Appendix “B” to Report PED24052 – Council Motion – Support for the Decision of the Ontario Energy Board to End the Gas Pipeline Subsidy