

**City of Hamilton Comments on
Bill 165, Keeping Energy Costs Down Act, 2024**

Specific changes proposed to the Ontario Energy Board Act (“OEBA”):

Summary of Proposed Change	Comments
<p>Sections 4.4 and 4.4.1 of the OEBA already require the Board to establish processes for obtaining consumer and electricity industry stakeholder input. The proposed changes would expand these rules to apply in the gas context and allow for regulations specifying a list of persons the Board must contemplate in establishing processes.</p>	<p>These changes include authorizing the Province to dictate the list of persons the Board must consider in establishing processes and, in so doing, erodes the independent role of the OEB.</p> <p>As an alternative, the City of Hamilton suggests that the changes to the Act establish the Board as the entity that determines the persons it must contemplate when establishing processes for obtaining stakeholder input.</p>
<p>New s.28.8 authorizes the Minister of Energy to issue directives, approved by the Lieutenant Governor in Council, requiring the Ontario Energy Board (OEB) to hold a generic hearing to determine any matter respecting natural gas or electricity over which it has jurisdiction.</p> <p>If approved, a directive could specify:</p> <ul style="list-style-type: none"> • timelines for conducting the hearing, • procedural requirements for the hearing, • matters the Board must consider in conduct of the hearing and its decision, and • other matters considered appropriate by the Minister. <p>The Minister could also transfer an issue from an ongoing proceeding to a generic hearing or require a generic hearing on issues already decided by the OEB, provided that at least two</p>	<p>This change authorizes the Province to require the Board to hold hearings on issues for which focused hearings are already underway or issues for which a Board decision had already been made.</p> <p>These changes add further to the transfer of authorities to the Province, further --- affecting the independent role of the OEB on these matters. While the Province states that these changes are meant to ensure that hearings engage all key stakeholders, there are other means by which the OEB itself could achieve these outcomes (see above). Further, the ability to direct that past decisions be reheard may create uncertainty as to status of these decisions and of the independent role of the OEB.</p> <p>As an alternative, the City of Hamilton suggests that any provisions to accommodate generic hearings and a broader engagement of potentially interested parties be accomplished by authorizing the OEB to determine when such an approach to a hearing would be most appropriate.</p>

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<p>years have passed since the order was made.</p> <p>Where a directive is issued on a matter that is subject of an ongoing proceeding, the Board shall not make any order in the ongoing proceeding with respect to the matter [s. 28.8(6)]</p> <p>The Minister’s directives and the Board’s actions to implement them are not subject to any duty of procedural fairness, including any requirement to provide notice, reasons, or an opportunity to make submissions [s. 28.8(7)].</p> <p>Directives prevail in the event of a conflict with the Statutory Powers Procedure Act, rules of the Board under s. 25.1, or an order of the Board [s. 28.8(9)]</p> <p>A definition of ‘generic hearings’ is added to s.3 of the Act to indicate they are hearings held under section 19(4) of the OEBA to determine one or more matters common to multiple regulated persons or entities.</p> <p>S.19 of the Act is amended to specify that the Board has authority to hold generic hearings under subsection 19 (4).</p>	<p>These additional changes included in s 28.8(6), 28,8(7) and 28.8(9) serve to further empower the Province to influence the outcomes of OEB proceedings and to do so in a manner that usurps the OEB’s ability to issue an order, to do so without procedural fairness, and to ensure that Provincial directives prevail in a generic hearing process.</p>
<p>A new section 36.0.1 provides authority for regulations to be made under the OEBA to specify the number of years of the revenue horizon or to require the</p>	<p>This change authorizes the Province to prescribe the ‘revenue horizons’ over which gas utilities are permitted to amortize the cost of new connections to the natural gas distribution system. While</p>

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<p>Board to hold a hearing to determine revenue horizons. “Revenue horizon” means the number of years of presumed revenue that is used for the purposes of section 36 in determining:</p> <ul style="list-style-type: none"> a) the economic feasibility of, <ul style="list-style-type: none"> (i) a new consumer connection to the natural gas distribution system, or (ii) an increase in the capacity of the natural gas distribution system, and <p>the amount, if any, of a contribution in aid of construction required from a consumer in relation to a connection or increase described in clause (a).</p> <p>The Bill provides that this entire section 36.0.1 is to be repealed on the earlier of January 1, 2029 and a day to be named by proclamation of the Lieutenant Governor.</p>	<p>the authorization is for a time-limited period, it empowers the Province to intervene in areas historically under the purview of the OEB as the independent energy regulator. The change contributes to a problematic blurring of the roles of the OEB and the Province where energy matters are concerned.</p> <p>The Province, through the Minister of Energy, has already indicated its intent to immediately reinstate the 40 year revenue horizon for new residential connections to the system.</p> <p>As these changes are contrary to Council’s position on the OEB decision, these changes are not supported as proposed.</p>
<p>Section 91 repealed and replaced resulting in addition of 91(2) (2): For greater certainty, a person who has obtained an exemption from the requirements of subsection 90 (1) may make an application under subsection (1) of this section in respect of the exempt hydrocarbon line.</p>	<p>This change is made to clarify that a person who has been exempted from s 90 (1) requirements, is still able to apply to the OEB for a leave to construct order for the exempted hydrocarbon line.</p>
<p>Section 95 already allows the Board to exempt persons from the leave to construct requirements in section 90 and 92 in special circumstances. Amendments to this section would require the Board to make an order exempting persons from these requirements if the Board is satisfied the circumstances set out in the regulations have been met.</p>	<p>This change from an OEB ability to an OEB requirement again detracts from the independent role of the Board.</p> <p>The City of Hamilton does not support this change due to its potential to impact on the independent role of the OEB.</p>
<p>A new section 96.2 authorizes the Minister, subject to the Lieutenant Governor in Council’s approval, to issue</p>	<p>This change authorizes the Minister to undo an OEB decision to refuse a leave to construct order or to remove any</p>

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<p>directives providing that if a proposed natural gas transmission or dual-purpose transmission and distribution line specified by the directive is the subject of an application under section 90 of the Act for the Board’s leave to construct the line, the Board is subject to certain requirements in making its determination, set out in subsection 96.2 (1). A directive may apply with respect to an application that is already before the Board.</p> <p>The new section also provides authority for the Minister, subject to the Lieutenant Governor in Council’s approval, to issue a directive respecting any order made by the Board between February 22, 2024 and December 31, 2024 in which 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. Such a directive may require the Board to rescind the order and hold a new hearing, taking into account the requirements set out in subsection 96.2 (1).</p> <p>96.2 (1) The Minister may issue, and the Board shall implement, directives that have been approved by the Lieutenant Governor in Council providing that if the construction of a proposed natural gas transmission or dual-purpose transmission and distribution line specified by the directive is the subject of an application under section 90,</p> <p>(a) the Board shall accept that it is in the public interest for such natural gas consumers as are specified in the directive to bear the full cost of the line; and</p>	<p>conditions that the OEB has placed on a leave to construct order related to natural gas transmission and distribution lines.</p> <p>The change also authorizes 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.</p> <p>These changes authorize the Province to direct the OEB to impose measures that could compromise the Board’s mission and mandate as the independent regulator of Ontario’s electricity and gas systems. Further, these changes could lead to the politicization of the decision making process of the OEB when this entity is meant to function independently of government in order to achieve its mandate to ensure the best interests of Ontarians are served where the regulation of our electricity and gas systems are concerned.</p> <p>The City of Hamilton does not support any changes to the OEBA that compromise the ability of the Board to uphold its established mission to ‘deliver public value through prudent regulation and independent adjudicative decision-making which contributes to Ontario’s economic, social and environmental development’.</p>

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(b) the Board may not require a contribution in aid of construction or surcharge to be paid by a natural gas consumer who will be connected to or served by the line.	