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Bill 165

(Chapter 10 of the Statutes of Ontario, 2024)

An Act to amend the Ontario Energy Board Act, 1998 respecting certain Board proceedings and related matters

The Hon. T. Smith
Minister of Energy

1st Reading	February 22, 2024
2nd Reading	February 28, 2024
3rd Reading	May 15, 2024
Royal Assent	May 16, 2024



EXPLANATORY NOTE

*This Explanatory Note was written as a reader's aid to Bill 165 and does not form part of the law.
Bill 165 has been enacted as Chapter 10 of the Statutes of Ontario, 2024.*

The Bill makes various amendments to the *Ontario Energy Board Act, 1998*.

A new section 28.8 authorizes the Minister, subject to the Lieutenant Governor in Council's approval, to issue directives requiring the Ontario Energy Board (Board) to hold a generic hearing to determine any matter respecting natural gas or electricity over which it has jurisdiction that the directives specify. The directives may address various matters respecting the hearing, including setting out timelines and procedural requirements. A directive may apply with respect to a matter that is the subject of an ongoing proceeding before the Board, but may not apply with respect to a matter that was determined by a final order of the Board if fewer than two years have elapsed since the order was made. The section provides for the rules that apply if an ongoing proceeding is affected by a directive. A definition of "generic hearing" is added to section 3 of the Act, and section 19 of the Act is amended to specify that the Board has authority to hold generic hearings under subsection 19 (4).

A new section 36.0.1 provides for the setting of a revenue horizon by regulations made under the Act. "Revenue horizon" is defined as the number of years of presumed revenue that is used in determining specified matters relating to the natural gas distribution system. The revenue horizon is used for the purposes of section 36 of the Act (respecting Board orders relating to the transmission, distribution and storage of gas). The new section also provides authority for regulations to be made that require the Board to hold a hearing to determine revenue horizons, and governing the hearings. A revenue horizon determined by the Board applies instead of one specified by the regulations. The Bill provides that section 36.0.1 is to be repealed on the earlier of January 1, 2029 and a day to be named by proclamation of the Lieutenant Governor.

A new section 96.2 authorizes the Minister, subject to the Lieutenant Governor in Council's approval, to issue 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. 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).

For each of the new sections, the Bill provides that the exercise of powers under the sections are not subject to any duties of procedural fairness that would otherwise apply under the *Statutory Powers Procedure Act* or otherwise in law.

In addition to adding the new sections, the Bill re-enacts sections 4.4 and 4.4.1 of the Act, which require the Board to establish one or more processes for obtaining stakeholder input and providing for the representation of consumer and other interests, respectively. The re-enacted sections are expanded to apply to the gas context, as well as to provide authority for the making of regulations to specify or add to the list of persons whom the Board must contemplate in establishing processes. Related regulation-making powers are set out.

Finally, the Bill amends section 95 of the Act. Currently, section 95 provides that the Board may make orders in special circumstances exempting persons from the leave to construct requirements in sections 90 and 92 of the Act. Section 95 is amended to additionally require the Board to make an order exempting persons from these requirements if the Board is satisfied that the circumstances prescribed by the regulations have been met. Related regulation-making powers are set out.

**An Act to amend the Ontario Energy Board Act, 1998
respecting certain Board proceedings and related matters**

Preamble

The Government of Ontario:

Is working to keep costs down, make life more affordable for Ontario workers and their families and grow the economy.

Is committed to building at least 1.5 million homes by 2031 in order to keep the dream of homeownership alive.

Is powering Ontario's economic growth with a diverse energy mix that will provide reliable, affordable energy for households and businesses for decades to come.

Supports good decision-making by the Ontario Energy Board that is informed by broad consumer and stakeholder input and that supports the priorities of the people of Ontario, including keeping energy costs down.

Therefore, His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1 Section 3 of the *Ontario Energy Board Act, 1998* is amended by adding the following definition:

“generic hearing” means a hearing held under subsection 19 (4) to determine one or more matters pertaining to multiple persons or entities whose activities are regulated by the Board under this Act; (“audience générique”)

2 Sections 4.4 and 4.4.1 of the Act are repealed and the following substituted:**Processes, stakeholder input****Electricity industry**

4.4 (1) The Board shall establish one or more processes by which electricity consumers, distributors, generators, transmitters, any other persons who have an interest in the electricity industry and any other persons who may be prescribed by the regulations may provide advice and recommendations for consideration by the Board.

Gas industry

(2) The Board shall establish one or more processes by which gas consumers, gas distributors, gas transmitters, storage companies, any other persons who have an interest in the gas industry and any other persons who may be prescribed by the regulations may provide advice and recommendations for consideration by the Board.

Specified persons

(3) If the regulations so provide,

- (a) a process under subsection (1) shall include such electricity consumers, distributors, generators, transmitters, other persons who have an interest in the electricity industry or prescribed persons as the regulations specify;
- (b) a process under subsection (2) shall include such gas consumers, gas distributors, gas transmitters, storage companies, other persons who have an interest in the gas industry or prescribed persons as the regulations specify.

Processes, representation of consumer and other interests

4.4.1 (1) The Board shall establish one or more processes by which the interests of electricity consumers, gas consumers and any other persons who may be prescribed by the regulations may be represented in proceedings before the Board, through advocacy and through any other modes of representation provided for by the Board.

Specified persons

(2) If the regulations so provide, a process under subsection (1) shall include such electricity consumers, gas consumers or prescribed persons as the regulations specify.

3 (1) **Subsection 19 (4) of the Act is amended by striking out “under section 28 or otherwise” and substituting “under section 28 or 28.8 or otherwise under this or any other Act”.**

(2) Section 19 of the Act is amended by adding the following subsection:

Same

(4.1) Subsection (4) includes the determination of matters at a generic hearing.

4 The Act is amended by adding the following section:**Directives, requirement to hold generic hearing (natural gas, electricity)**

28.8 (1) In this section,

“ongoing proceeding” means, in respect of a proceeding before the Board, a proceeding in which the Board has not yet made a final order.

Same

(2) The Minister may issue, and the Board shall implement, directives that have been approved by the Lieutenant Governor in Council requiring the Board to hold a generic hearing to determine any matter respecting natural gas or electricity over which it has jurisdiction that the directives specify.

Same

(3) A directive issued under subsection (2) may specify,

- (a) timelines for conducting the hearing;
- (b) the manner in which the hearing may or must be conducted;
- (c) matters, information or documents, including documents written or issued by the Government or by a minister or ministry of the Crown, that the Board must consider in conducting the hearing and making its determination; and
- (d) any other matter respecting the hearing or its conduct that the Minister considers appropriate.

Exception

(4) Subsection (2) does not apply with respect to a matter if, at the time the directive would be issued, fewer than two years have elapsed since the matter was determined by a final order of the Board, regardless of whether the order was appealed.

Application to ongoing proceedings

(5) Subsection (2) may apply with respect to a matter that is the subject of an ongoing proceeding before the Board.

Same, effect

(6) If a directive is issued respecting a matter that is the subject of an ongoing proceeding before the Board,

- (a) the Board shall not make any order in the ongoing proceeding with respect to the matter, and shall sever the matter from the ongoing proceeding to the extent possible; and
- (b) except as provided under clause (a), the ongoing proceeding shall continue to the extent possible.

Procedural fairness does not apply

(7) Neither the issuance or approval of a directive under this section nor any action taken by the Board to implement or comply with it is subject to any duty of procedural fairness, including any requirement to provide notice, reasons or an opportunity to make submissions.

Same

(8) Subsection (7) applies despite the *Statutory Powers Procedure Act* and any other law.

Conflict

(9) In the event of a conflict between a directive under this section and the *Statutory Powers Procedure Act*, the rules made by the Board under section 25.1 of that Act or an order of the Board or other instrument or document made or issued under this Act, the directive prevails to the extent of the conflict.

Publication

(10) A directive issued under this section shall be published in *The Ontario Gazette*.

Not a regulation

(11) For greater certainty, Part III (Regulations) of the *Legislation Act, 2006* does not apply to directives issued under this section.

5 (1) The Act is amended by adding the following section:**Revenue horizon (natural gas)**

36.0.1 (1) In this section,

“consumer” means a person who uses natural gas in Ontario for the person’s own consumption; (“consommateur”)

“natural gas distribution system” means a system for distributing natural gas in Ontario by hydrocarbon line, as defined in Part VI, and includes any structures, equipment or other things used for that purpose; (“réseau de distribution de gaz naturel”)

“revenue horizon” means the number of years of presumed revenue that is used for the purposes of section 36 in determining,

- (a) the economic feasibility of,
 - (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
- (b) 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). (“horizon de revenu”)

Mandated revenue horizon

(2) The revenue horizon for the purposes of section 36 shall be the number of years specified by the regulations, except as otherwise provided by this section.

Board may be required to make determination

(3) If the regulations so provide, the Board shall hold a hearing to determine revenue horizons for the purposes of section 36, in accordance with the regulations.

Same

- (4) Regulations made for the purposes of subsection (3) may provide for,
- (a) timelines for conducting the hearing;
 - (b) the manner in which the hearing may or must be conducted, including requiring that it be conducted as a generic hearing;
 - (c) matters, information or documents, including documents written or issued by the Government or by a minister or ministry of the Crown, that the Board must consider in conducting the hearing and making its determination; and
 - (d) any other matter respecting the hearing or its conduct that the Lieutenant Governor in Council considers appropriate.

Board determination prevails

(5) If the Board determines a revenue horizon for a period under subsection (3), that revenue horizon applies for the period instead of the revenue horizon specified by the regulations.

Board to implement

(6) The Board shall take such steps under this Act as are necessary to implement the revenue horizon set out in subsection (2) or, if applicable, determined under subsection (3).

Limitation

(7) The Board shall not make any determinations respecting revenue horizons for the purposes of section 36, except as provided by regulations made for the purposes of subsection (3).

Same

(8) The Minister shall not issue a directive under section 28.8 respecting the determination of revenue horizons for the purposes of section 36.

Procedural fairness does not apply

(9) No action taken by the Board to implement or comply with a regulation made under this section is subject to any duty of procedural fairness, including any requirement to provide notice, reasons or an opportunity to make submissions, despite the *Statutory Powers Procedure Act* or any other law.

Same

(10) For greater certainty, nothing about the making of a regulation under this section, or the circumstances in which it is made, shall be interpreted as imposing a duty of procedural fairness on the exercise of a regulation-making authority.

Conflict

(11) In the event of a conflict between a regulation made under this section and the *Statutory Powers Procedure Act*, the rules made by the Board under section 25.1 of that Act or an order of the Board or other instrument or document made or issued under this Act, the regulation prevails to the extent of the conflict.

Same

(12) Subsection (11) does not apply with respect to an order of the Board made before December 21, 2023.

Regulations

(13) The Lieutenant Governor in Council may make regulations for the purposes of this section,

- (a) specifying numbers of years for the purposes of subsection (2), including, for greater certainty, specifying different numbers with respect to different classes of consumers;
- (b) requiring and governing a hearing under subsection (3).

(2) Section 36.0.1 of the Act, as enacted by subsection (1), is repealed.

6 Section 91 of the Act is repealed and the following substituted:

Application for leave to construct hydrocarbon line or station

91 (1) Any person may, before constructing a hydrocarbon line to which subsection 90 (1) does not apply or a station, apply to the Board for an order granting leave to construct the hydrocarbon line or station.

Applies to exempted hydrocarbon lines

(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.

7 Section 95 of the Act is repealed and the following substituted:

Exemption, subs. 90 (1) or 92 (1)

95 (1) The Board may, if in its opinion special circumstances of a particular case so require, make an order exempting any person from the requirements of subsection 90 (1) or 92 (1) without a hearing.

Same, prescribed circumstances

(2) The Board shall, with or without a hearing, make an order exempting a person from the requirements of subsection 90 (1) or 92 (1) if the Board is satisfied that the circumstances prescribed by the regulations have been met.

8 (1) The Act is amended by adding the following section:

Directives, applications re certain natural gas lines

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,

- (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
- (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.

Same

(2) A directive issued under subsection (1) may specify one or more proposed natural gas transmission or dual-purpose transmission and distribution lines or classes of lines.

Ongoing applications

(3) If it so provides, a directive issued under subsection (1) applies with respect to an application made but not finally determined before the day the directive is issued.

Directives re certain Board orders

(4) If, during the period referred to in subsection (5), the Board makes an order refusing to grant leave to construct a proposed natural gas transmission or dual-purpose transmission and distribution line or an order granting leave to construct such a line subject to a condition that a contribution in aid of construction by natural gas consumers is required, the Minister may issue, and the Board shall implement, a directive that has been approved by the Lieutenant Governor in Council,

- (a) requiring the Board to rescind the order and hold a new hearing of the application, in the manner specified in the directive; and
- (b) providing that clauses (1) (a) and (b) apply with respect to the new hearing.

Limitation

(5) Subsection (4) applies with respect to orders made on or after February 22, 2024 and before January 1, 2025.

Procedural fairness does not apply

(6) Neither the issuance or approval of a directive under this section nor any action taken by the Board to implement or comply with it is subject to any duty of procedural fairness, including any requirement to provide notice, reasons or an opportunity to make submissions.

Same

(7) Subsection (6) applies despite the *Statutory Powers Procedure Act* and any other law.

Conflict

(8) In the event of a conflict between a directive under this section and the *Statutory Powers Procedure Act*, the rules made by the Board under section 25.1 of that Act or an order of the Board or other instrument or document made or issued under this Act, the directive prevails to the extent of the conflict.

Publication

(9) A directive issued under this section shall be published in *The Ontario Gazette*.

Not a regulation

(10) For greater certainty, Part III (Regulations) of the *Legislation Act, 2006* does not apply to directives issued under this section.

(2) Subsections 96.2 (4) and (5), as enacted by subsection (1), are repealed.

9 Clause 98 (2) (b) of the Act is amended by striking out “the requirements of section 90” and substituting “the requirements of subsection 90 (1)”.

10 (1) Subsection 127 (1) of the Act is amended by adding the following clauses:

(j.12) governing processes under section 4.4, including,

(i) prescribing other persons for the purposes of subsection 4.4 (1) or (2), and

(ii) requiring that specified persons be included in a process for the purposes of subsection 4.4 (3);

(j.12.1) governing processes under section 4.4.1, including,

(i) prescribing other persons for the purposes of subsection 4.4.1 (1), and

(ii) requiring that specified persons be included in a process for the purposes of subsection 4.4.1 (2);

(2) Subsection 127 (1) of the Act is amended by adding the following clauses:

(j.16.1) governing exemptions ordered by the Board under subsection 95 (2);

(j.16.2) establishing and governing procedural requirements that apply to determinations of the Board under subsection 95 (2);

Commencement

11 (1) Except as otherwise provided by this section, this Act comes into force on the day it receives Royal Assent.

(2) Subsection 5 (2) comes into force on January 1, 2029 or an earlier day to be named by proclamation of the Lieutenant Governor.

(3) Subsection 5 (1), sections 6 and 7, subsection 8 (2), section 9 and subsection 10 (2) come into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

12 The short title of this Act is the *Keeping Energy Costs Down Act, 2024*.