

# Guidelines for Gas Expansion in Ontario

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***The document is intended as a high level and plain language summary and is not intended to replace the legislation, regulations and other instruments that are referenced throughout. Any action taking should be based on a review of the relevant legal instrument(s) and appropriate legal advice.***

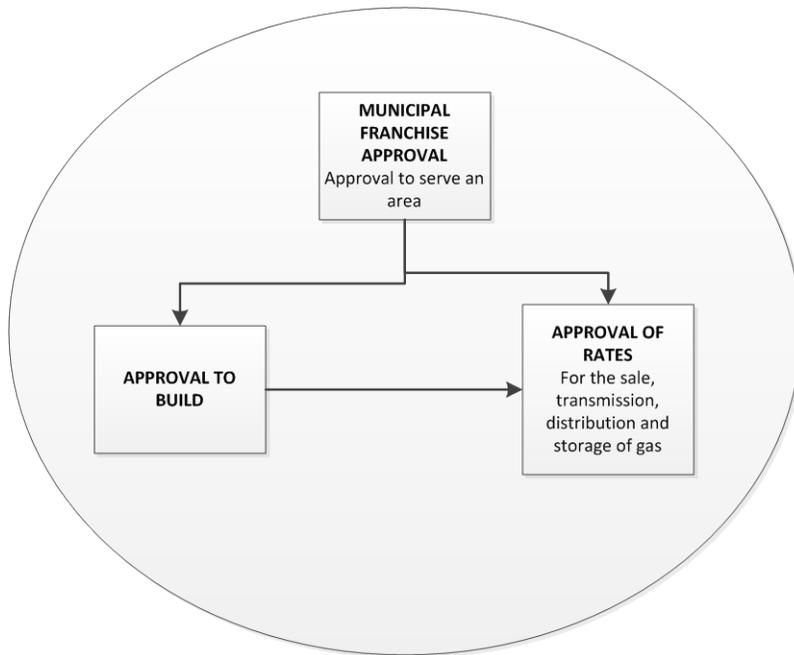
## SUMMARY

The Ontario Energy Board (OEB) is an independent and impartial public agency. We make decisions that serve the public interest. Our goal is to promote a financially viable and efficient energy sector that provides you with reliable energy services at a reasonable cost. The OEB is governed by a number of statutes including the *Ontario Energy Board Act, 1998* (OEB Act). In carrying out our mandate we have a number of objectives including protecting consumers' interests and ensuring the viability of Ontario's natural gas and electricity sectors. To achieve this balance we must ensure that the rules and regulations are applied fairly and consistently.

With respect to natural gas, the OEB has a broad mandate which includes approving natural gas rates; issuing gas marketer licenses, approving the construction, expansion or reinforcement of pipelines, approving the designation of gas storage facilities, reviewing applications for well drilling and providing reports and recommendations to the Ministers of Natural Resources and of Energy. Furthermore, the OEB approves municipal franchise agreements and applications for certificates of public convenience and necessity for construction of works to supply gas.

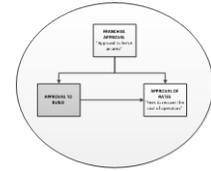
These Guidelines are intended to act as a reference for companies that are interested in distributing natural gas in the province of Ontario. They are divided into three sections:

1. **Municipal Franchise Approval** - Securing the approval to serve an area of the Province
2. **Leave to Construct** - Securing approval to construct facilities that meet certain size and cost criteria
3. **Rate Setting** - Securing approval to charge customers for regulated services



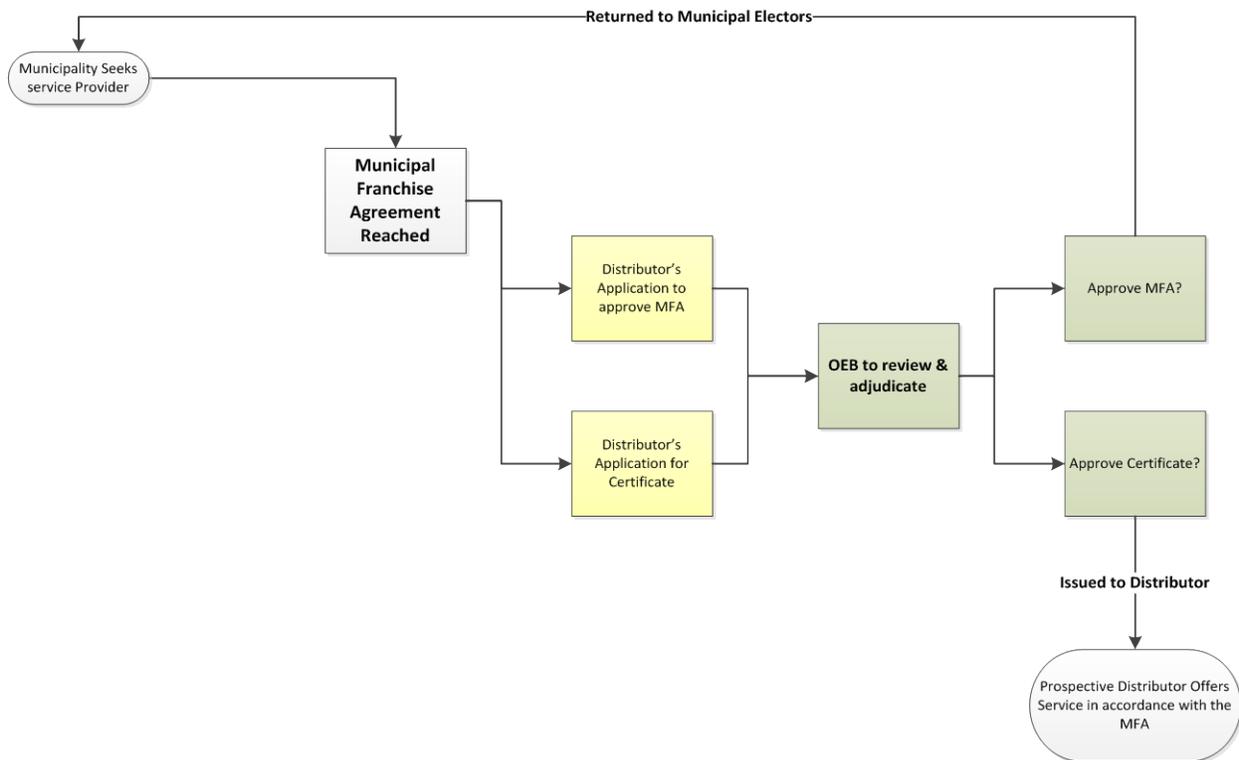
The provisions of the *Municipal Franchises Act* and the *OEB Act* give the OEB the authority to approve municipal franchise agreements (MFA), to issue certificates of public convenience and necessity (Certificate) for the construction of works to supply gas and to set the rates consumers pay for the distribution and transmission of natural gas. Section 36 of the *OEB Act* states that no person may sell gas or charge for the distribution, storage or transmission of natural gas in Ontario, without the approval of the OEB. However, section 36 does not apply to the sale, transmission, distribution or storage of gas by a distributor who distributes less than 3,000,000 cubic metres of gas annually.

The following is a summary of some of the instruments and related documents that provide the framework for the regulation of natural gas distribution in Ontario.



## 1. MUNICIPAL FRANCHISE APPROVAL

Municipal franchises are governed by the *Municipal Franchises Act*. The requirements for acquiring a franchise include securing a MFA with the municipality that you are intending to serve, approval of that MFA from the OEB and a Certificate from the OEB. Descriptions of the process for obtaining an MFA (and approval) and a Certificate are summarized below.



### Municipal Franchise Agreement

The MFA is an agreement between a municipality that wants to have a gas distribution system installed within its boundaries and a natural gas distributor that wants to provide that service. The MFA must be submitted to the OEB for approval under section 9 of the *Municipal Franchises Act*. To standardize the format and content of MFA's the OEB, with input from municipal leaders, developed the Franchise Handbook and a Model Franchise Agreement. The purpose of the Model Franchise Agreement is to provide a template to guide natural gas distributors and municipalities as to the terms and conditions the OEB generally finds reasonable under the *Municipal Franchises Act*. The Model Franchise Agreement and Franchise Handbook can be found on our website.



## **Certificate of Public Convenience and Necessity**

Under section 8(2) of the *Municipal Franchises Act*, prior to constructing works to supply gas, a gas distributor must apply to the OEB for a Certificate. If the OEB approves the application it will issue a Certificate to the gas distributor. The exact area within a municipality where a gas distributor is permitted to construct gas works is defined by the OEB's Certificate .

Typically the gas distributor will submit to the OEB a signed MFA for approval and an application for a Certificate at the same time.

The role of the OEB is to adjudicate on the application. The OEB's hearing process starts with a notice to the public and interested parties inviting them to participate in the hearing or to write a letter with any comments. Once the OEB considers all of the evidence before it, including providing for questions on that evidence and any written submissions, the OEB makes a determination as to whether or not to approve the MFA and issue a Certificate.

It is important to note that while a MFA may, by contract, give a gas distributor the right to construct gas works and to supply gas within municipal boundaries the MFA does not, in and of itself, grant exclusive rights to the gas distributor. The OEB may authorise multiple gas distributors to operate within a single municipal boundary. A Certificate must be granted by the OEB before any works can be constructed or natural gas supplied, even if a signed MFA exists.

With OEB approval two gas distributors could potentially operate within the boundaries of the same municipality, although they would not serve the same customers. For example, gas distributor A could have a pipeline bordering on the west side of a municipality and it could construct gas works to serve consumers on the western side of the municipality while a different gas distributor B could have a pipeline and associated works that serve consumers on the eastern side.

## **2. LEAVE TO CONSTRUCT**

Construction of a hydrocarbon distribution line that meets any of the following criteria requires that the gas distributor apply for a leave to construct and secure approval from the OEB (OEB Act section 90):

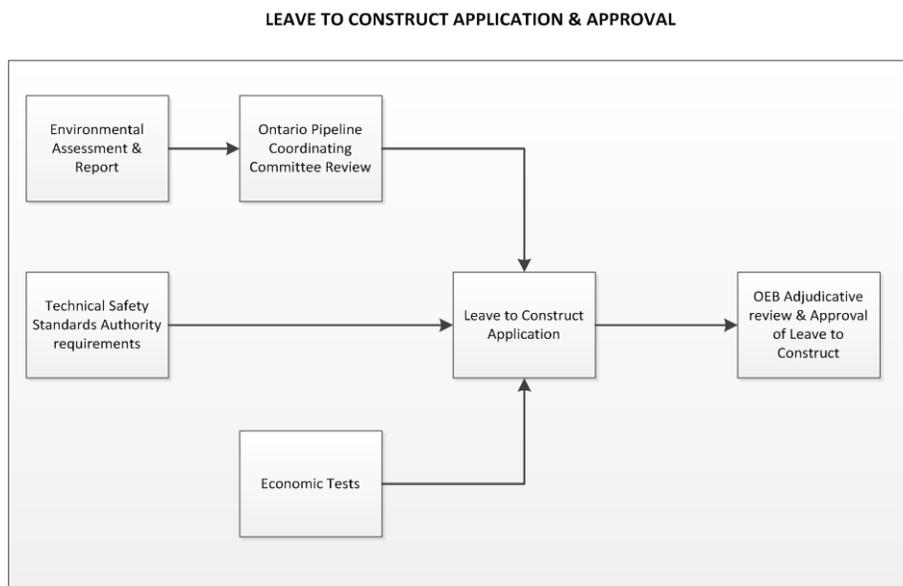
- the diameter of pipe is 12 inches or greater
- an operating pressure of an amount equal to greater than 2,000 kilopascals
- the cost of project is greater than or equal to \$2,000,000
- the length of pipe required exceeds 20 km



A number of supporting filings are required. They include:

- a) Environmental Assessment and Report (ER)
- b) Review by the Ontario Pipeline Coordinating Committee
- c) Any required approvals and permits from the Technical Safety Standards Authority
- d) A map of the proposed pipeline and the form of any landowner agreements
- e) Economic Considerations
  - i. EBO 188 - for gas distributors that currently have a customer base in Ontario
  - ii. EBO 134 – economic test

The OEB will adjudicate the application either through written or oral hearing .



**(a) Environmental Report**

Gas distributors must complete an environmental assessment and submit an ER to the OEB. The term “environment” includes natural, social, economic, cultural and built components.

The OEB developed the *Environmental Guidelines for Locating, Constructing and Operating Hydrocarbon Pipelines in the Province of Ontario* (Guidelines) and updates it periodically. The Guidelines should be considered by a gas distributor in preparing the Environmental Report.

**(b) Ontario Pipeline Coordinating Committee (OPCC)**

The OPCC provides a single point of contact to identify provincial environmental concerns related to natural gas distribution, transmission and storage proposals and raises those concerns with project



applicants. The OPCC is made up of government ministries and agencies that have a role in reviewing natural gas distribution, transmission and storage facility projects. The OPCC reviews environmental assessment and routing reports prepared by the applicants before they apply to the OEB to have projects approved with a view to minimizing any negative environmental impacts that could arise from these projects by. The mandate of the committee and the steps of its review are set out in the Guidelines.

### **(c) Technical Safety Standards Authority**

The Technical Safety Standards Authority (TSSA) is the technical authority that has quality and safety accountability for the construction and maintenance of pressurized systems such as natural gas distribution. They operate under the authority granted to them under *Technical Safety Standard Act, 2000*, and Ontario Regulation 210/01 (Oil and Gas Pipeline Systems)<sup>1</sup>. The TSSA is an independent agency, and is not affiliated with the OEB. If the OEB approves a leave to construct application it is generally conditional upon the distributor’s compliance with all applicable regulatory requirements including those related to safety and integrity under the TSSA mandate and legislation.

### **(d) Land Matters**

Under the OEB Act (section 94) an applicant that has applied for leave to construct a pipeline must file a map showing the general location of the proposed work which includes the municipalities, highways, railways, utility lines and navigable waters that the pipeline will go through, over, under, upon or across.

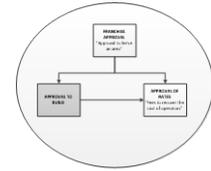
An applicant is also required to file with the OEB a copy of all forms of land agreement that it has or will offer to each owner of land that will be affected by the proposed route. The OEB must approve the form(s) of agreement (OEB Act section 97).

In addition to the right to construct the facilities, a leave to construct approval granted by the OEB entitles the applicant and holder of that leave to other rights under the OEB Act, including the right to:

- enter on the land to conduct surveys and examinations that are necessary to prepare the site for the work provided that any damages resulting from entry on the land are agreed upon or determined under the *Expropriations Act* (OEB Act section 98);
- seek an expropriation order from the OEB for land related to the proposed work in the absence of an agreement with the owner(s) of such land (OEB Act section 99).

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<sup>1</sup> Schedule G - TSSA 2000 - Ont Regulation 210-01 Oil and Gas Pipeline Systems



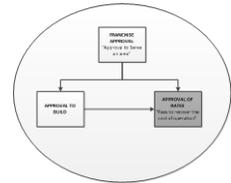
### (e) Economic Considerations for Gas Expansion-

Two OEB issued documents, EBO 188 and EBO 134, should be considered by a gas distributor when planning to expand access to gas or to establish new natural gas systems. The first document is for distribution pipelines whereas the second one is for transmission pipelines. These documents describe some of the financial thresholds that these natural gas expansion plans need to meet. The OEB's role here is to facilitate rational natural gas expansion; and ensure that there is no undue cross-subsidization between existing and new customers.

The description of how the requirements in these documents are met forms part of the evidence filed in a leave to construct application to the OEB. . The OEB wishes to ensure that the expansion of a gas distributor's system does not lead to undue rate increases for existing customers.

EBO 188 describes the economic test that should be used to evaluate a proposed expansion of a gas distributor's distribution system to ensure that these undue increases do not occur. The key principle behind the test is that total portfolio of expansion projects should not lead to a rise in the rates of existing customers over the long term. This allows a distributor to propose an expansion portfolio that blends projects with customers that are less costly to serve with those that are more costly. The OEB also sets a limit as to how unprofitable a single project can be. In cases where a project is below the feasibility threshold, the distributor may ask the new customers to pay to offset the additional costs.

EBO 134- directs all gas distributors to use Discounted Cash Flow (DCF) method as a minimum test in assessing the feasibility of expansion projects.



### 3. Rate Setting

One of the key mechanisms that the OEB has to protect consumers is regulating the rates that gas distributors charge (OEB Act section 36). The test that the OEB applies to the rates that the gas distributor applies for must be just and reasonable.

As the energy regulator, the OEB sets the rates that gas distributors are allowed to charge their customers for:

- gas supply (unless the consumer purchases directly from a retailer)
- transportation and delivery
- storage

*The Minimum Filing Requirements for Natural Gas Distribution cost of Service Applications (EB-2005-0494)* provide a standard by which the distributor applications for cost of service rates must be developed and filed. Applications will not be considered complete and will not be processed until the minimum filing requirements are met.

Delivery and storage rates are adjusted annually based on a Board-approved method. Gas supply related costs are adjusted every three months based on the OEB's Quarterly Rate Adjustment Mechanism (last updated in EB-2008-0106).