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# DECISION AND ORDER

## EB-2024-0084

## ENBRIDGE GAS INC.

**Application for an Order granting an exemption from  
leave to construct for the Prince Edward County (Cherry  
Valley) Community Expansion Project**

**BEFORE:**     **Robert Dodds**  
Presiding Commissioner

**Fred Cass**  
Commissioner

**David Sword**  
Commissioner

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**May 15, 2025**

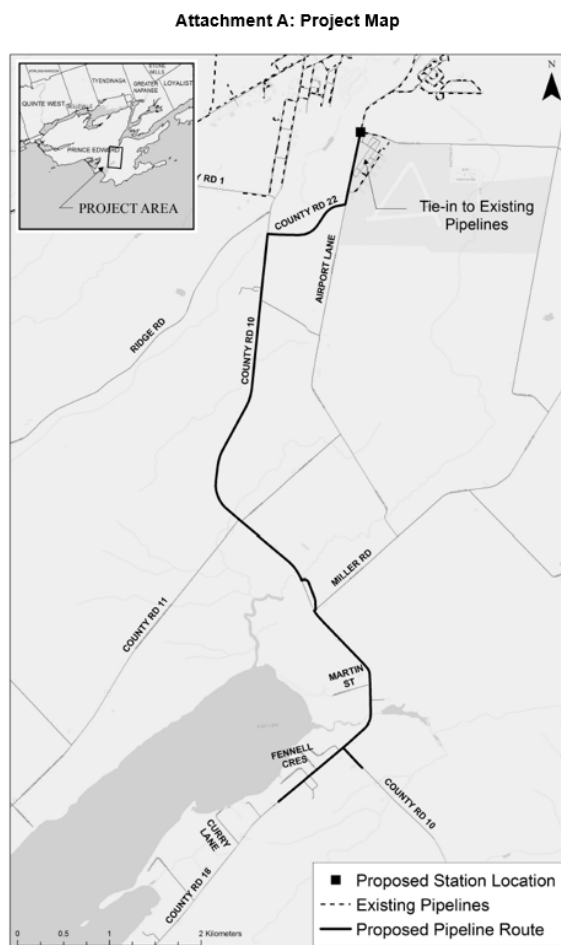
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# 1 OVERVIEW

On August 14, 2024, Enbridge Gas Inc. (Enbridge Gas) applied to the Ontario Energy Board under section 95(2) of the *Ontario Energy Board Act, 1998* (OEB Act) for an order granting an exemption from the requirement to obtain leave to construct a hydrocarbon line to serve approximately 110 customers in the community of Cherry Valley in the County of Prince Edward (Project).

The general location of the Project is shown on the map below:



For the reasons set out below, the OEB grants an order under section 95(2) of the OEB Act, exempting Enbridge Gas from the requirement to obtain leave to construct the Project, subject to the conditions attached as Schedule A to this Decision and Order.

## 2 APPLICATION SUMMARY AND PROCESS

### 2.1 APPLICATION SUMMARY

The Project includes the construction of approximately 8 kilometres (km) of Nominal Pipe Size (NPS) 4-inch polyethylene (PE) natural gas pipeline, approximately 1.5 km of NPS 2-inch PE natural gas pipeline and approximately 50 metres of NPS 2-inch steel natural gas pipeline. The total estimated Project cost is \$6.85 million (\$5.78 million total pipeline costs and \$1.07 million total ancillary costs).

Section 90(1) of the OEB Act requires that any person planning to construct a hydrocarbon line first obtain an order of the OEB granting leave to construct such line. Section 3.0.1(1) of O. Reg. 328/03 authorizes the OEB to make an order under subsection 95 (2) of the OEB Act exempting a person from the requirement to obtain leave from the OEB under subsection 90(1) if:

- a) Leave is required only by virtue of clause 90(1)(b) of the OEB Act
- b) The proposed hydrocarbon line is projected to cost more than the amount specified (\$2 million) in section 3 for the purposes of that clause but not more than \$10 million
- c) The OEB makes a determination that the Crown's duty to consult, if it applies in respect of the application, has been adequately discharged

Enbridge Gas submitted that the Project should be exempt from the requirement to obtain leave to construct as the following aspects meet the exemption criteria:

- The Project is less than 20 km in length and uses pipe sizes less than 12 inches and has an operating pressure of less than 2,000 kilopascals. As a result, Enbridge Gas states that leave is only required for the Project because of clause 90(1)(b) of the OEB Act.
- The Project cost is \$6.9 million, which is less than the \$10 million prescribed in the regulation.
- Enbridge Gas was delegated the procedural aspects of Indigenous consultation by the Ministry of Energy and Mines (Ministry) and has carried out engagement and continues to carry out engagement with the identified Indigenous communities.

In this application, the central issue for the OEB to consider is whether the Crown's duty to consult has been discharged.

## 2.2 Process

The OEB issued a Notice of Hearing on September 12, 2024, to the following Indigenous communities identified in the Delegation Letter that was issued by the Ministry on December 29, 2022:

- Alderville First Nation
- Beausoleil First Nation
- Curve Lake First Nation
- Chippewas of Georgina Island
- Chippewas of Rama First Nation
- Hiawatha First Nation
- Huron-Wendat Nation
- Kawartha Nishnawbe First Nation
- Mississaugas of Scugog Island First Nation
- Mohawks of the Bay of Quinte

The Notice of Hearing provided the opportunity to the notified communities to become an intervenor, provide comments or ask to follow the hearing as a monitor by October 26, 2024. None of the communities sought to become intervenors or otherwise participate in the proceeding.

The OEB issued Procedural Order No. 1 on December 4, 2024 which set the dates for the filing of interrogatories from OEB staff, interrogatory responses from Enbridge Gas and an updated Indigenous Consultation Report by Enbridge Gas.

The OEB issued Procedural Order No. 2 on March 14, 2025, which set the dates for the filing of a written submission from OEB staff and a reply submission from Enbridge Gas.

OEB staff and Enbridge Gas filed all documents in accordance with the dates established in the procedural orders.

## 3 DECISION

### 3.1 Exemption Request

On December 29, 2022, the Ministry delegated the procedural aspects of the Crown's duty to consult to Enbridge Gas and identified 10 indigenous communities to be consulted. As noted earlier, the central issue for the OEB to consider in this application is whether the Crown's duty to consult has been discharged.

Pursuant to the OEB's Environmental Guidelines, Enbridge Gas filed an Indigenous Consultation Report with its application describing the consultation activities it had undertaken and a description of what, if any, accommodation is proposed with respect to the Project.<sup>1</sup> As required by Procedural Order No.1, Enbridge Gas filed an updated Indigenous Consultation Report on December 18, 2024 describing consultation activities carried out after the application was filed.<sup>2</sup>

Enbridge Gas stated that it developed a consultation program to receive input from interested and potentially affected parties including Indigenous communities<sup>3</sup> and that it offers capacity funding to assist Indigenous communities to meaningfully participate in engagement activities such as timely reviews of technical documents and participation in field work associated with the proposed Project. Enbridge Gas provided the ten potentially impacted indigenous communities with the following information:

- A detailed description of the nature and initial scope of the Project.
- Maps of the Project location.
- Letter containing information on the Virtual Open House.
- Environmental Report, providing information about the potential effects of the Project on the Environment.
- Notice of Project Change, providing information about the route reducing potential cumulative effects, interference and safety hazards with operation and maintenance of the pipeline in the future.
- The OEB's Notice of Hearing, providing information on how to participate in this application.

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<sup>1</sup> Application and Evidence, Exhibit H, Tab 1, Schedule 1

<sup>2</sup> Enbridge Gas Response to OEB Staff 8 d) and 8 e)

<sup>3</sup> Application and Evidence, Exhibit F, Tab 1, Schedule 1, page 1, paragraph 1

The Environmental Report was circulated to indigenous communities on May 10, 2023.<sup>4</sup> Enbridge Gas requested community feedback, including any suggestions or proposals on mitigating, avoiding or accommodating any potential impacts the Project may have on Aboriginal or treaty rights.<sup>5</sup>

On March 24, 2025, Enbridge Gas filed an updated application, with the Letter of Opinion it received from the Ministry. The Letter of Opinion stated that the Ministry completed its review of Enbridge Gas's Indigenous Consultation Report for the Project and had reached out to the indigenous communities identified about concerns raised and/or proposed mitigation and that the procedural aspects of the consultation undertaken by Enbridge Gas for the project were satisfactory.

OEB staff submitted that the requested exemption order should be granted as this application satisfies the exemption requirements provided for in section 3.0.1(1) of O.Reg. 328/03. OEB stated that there is no evidence on the record that identified outstanding concerns regarding Project specific impacts to Aboriginal or treaty rights. OEB staff also noted that none of the ten potentially impacted Indigenous communities intervened in this application to raise concerns about the Project. OEB staff further noted that the Ministry confirmed its opinion that the procedural aspects of Enbridge Gas's consultation efforts were appropriate.

In its reply submission, Enbridge Gas stated it is not aware of any outstanding concerns from Indigenous communities at this time and that it is committed to maintaining ongoing engagement with the communities throughout the life of the Project to ensure any potential impacts on Aboriginal or treaty rights are addressed, as appropriate.

## Findings

The OEB is satisfied that Enbridge Gas followed the OEB's Environmental Guidelines with respect to Indigenous Consultation and finds that the duty to consult has been adequately discharged.

This finding is supported by the evidence on the record of the proceeding, as well as the Ministry's Letter of Opinion, dated March 24, 2025, stating that it is satisfied that Enbridge Gas's efforts to date are satisfactory to discharge the Crown's Duty to Consult with respect to the Project.

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<sup>4</sup> Application and Evidence, Exhibit F, Tab 1, Schedule 1, page 3, paragraph 8

<sup>5</sup> Application and Evidence, Exhibit H, Tab 1, Schedule 1, Attachment 7

The OEB expects that Enbridge Gas will continue its consultation activities with all affected Indigenous communities throughout the life of the Project.

### **3.2 Conditions of Approval**

Section 23 of the OEB Act permits the OEB, when making an order, to impose conditions as it considers appropriate. In its submission, OEB staff advocated for six conditions to be imposed as part of the approval of this exemption application. In its reply, Enbridge Gas advised that it is prepared to adhere to the conditions proposed by OEB staff.

### **Findings**

The OEB grants an order under section 95(2) of the OEB Act, exempting Enbridge Gas from the requirement to obtain leave to construct the Project, subject to the conditions attached as Schedule A to this Decision and Order.

## **4 ORDER**

### **THE ONTARIO ENERGY BOARD ORDERS THAT:**

1. Enbridge Gas Inc. is granted an exemption under section 95(2) of the OEB Act from the requirement to obtain leave to construct under section 90(1) of the OEB Act, to construct the Project in the community of Cherry Valley in the County of Prince Edward as described in its application, subject to the Conditions of Approval attached as Schedule A to this Decision and Order.

**DATED** at Toronto May 15, 2025

**ONTARIO ENERGY BOARD**

Ritchie Murray  
Acting Registrar



**SCHEDULE A**  
**DECISION AND ORDER**  
**ENBRIDGE GAS INC.**  
**CONDITIONS OF APPROVAL**  
**EB-2024-0084**  
**MAY 15, 2025**

**Application under Section 95(2) of the OEB Act  
CONDITIONS OF APPROVAL**

1. Enbridge Gas shall construct the facilities and restore the land in accordance with its application and the evidence filed in EB-2024-0084 and these Conditions of Approval.
2. Unless otherwise ordered by the OEB, exemption from the requirement to obtain leave to construct shall terminate 12 months from the date of the OEB's approval of the exemption application, unless construction has commenced prior to that date.
3. Enbridge Gas shall give the OEB notice in writing:
  - i. of the commencement of construction, at least 10 days prior to the date construction commences
  - ii. of the full project in-service date, no later than 10 days after all the facilities go into service.
4. Enbridge Gas shall obtain all necessary approvals, permits, licences, certificates, agreements and rights required to construct, operate and maintain the Project.
5. Enbridge Gas shall implement all the recommendations of the Environmental Report filed in the proceeding.
6. Enbridge Gas shall designate one of their employees as project manager who will be the point of contact for these conditions, and shall provide the employee's name and contact information to the OEB and to all affected landowners, and shall clearly post the project manager's contact information in a prominent place at the construction site.