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BY EMAIL

April 1, 2025

Ms. Nancy Marconi
Registrar
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4
Registrar@oeb.ca

Dear Ms. Marconi:

**Re: Ontario Energy Board (OEB) Staff Submission
Enbridge Gas Inc. – Prince Edward County (Cherry Valley) Community
Expansion Project – Application for Exemption from Leave-to-Construct
(LTC) Requirement
OEB File Number: EB-2024-0084**

Please find attached OEB staff's submission in the above referenced proceeding, pursuant to Procedural Order No. 2.

Yours truly,

Natalya Plummer
Advisor, Natural Gas Applications

Encl.

c: EGIRegulatoryProceedings@enbridge.com
Henry Ren, Senior Legal Counsel, henry.ren@enbridge.com



ONTARIO ENERGY BOARD

OEB Staff Submission

Enbridge Gas Inc.

**Prince Edward County (Cherry Valley) Community
Expansion Project – Application for Exemption from
Leave-to-Construct (LTC) Requirement**

EB-2024-0084

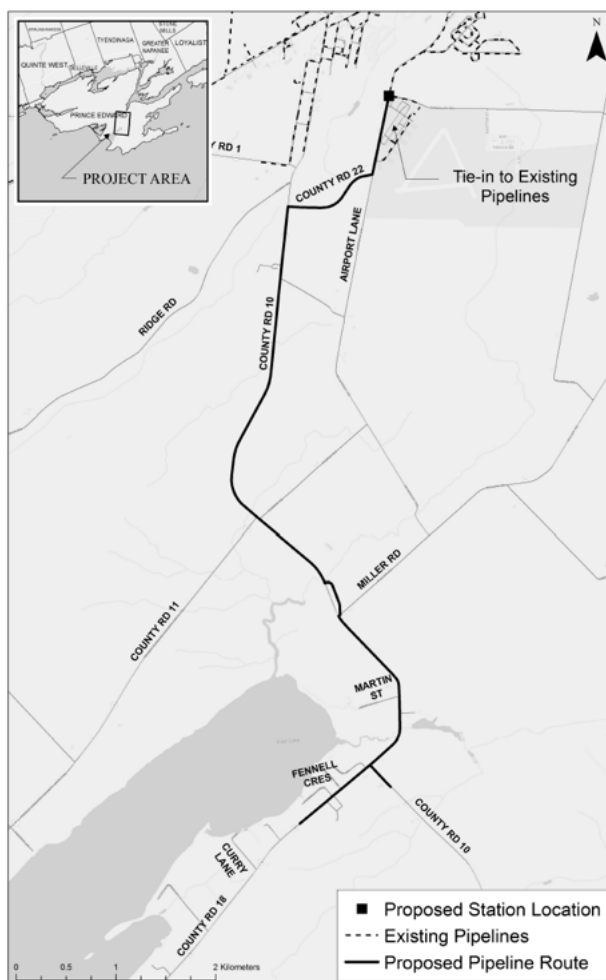
April 1, 2025

INTRODUCTION

On August 14, 2024 Enbridge Gas Inc (Enbridge Gas) applied pursuant to section 95(2) of the *Ontario Energy Board Act, 1998* (OEB Act) for an order exempting it from the requirement to obtain leave to construct for a natural gas pipeline project to serve the community of Cherry Valley in Prince Edward County (Project). The Project consists of 8 kilometres (km) of Nominal Pipe Size (NPS) 4-inch polyethylene (PE) natural gas pipeline, 1.5 km of NPS 2-inch PE natural gas pipeline and approximately 50 metres of NPS 2-inch steel natural gas pipeline. The Project is expected to cost \$6.9 million and serve approximately 110 customers in the community.

General location of the Project is shown in the map below.

Attachment A: Project Map



The Project was approved to receive funding assistance under Phase 2 of the Government of Ontario's [Natural Gas Expansion Program](#).

OEB staff submits 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.

Exemption from Leave to Construct Requirement

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; and
- 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.

OEB staff notes that, in this case, leave is only required because the cost of the Project is more than \$2 million. Moreover, the estimated cost of the Project is well below the \$10 million maximum amount for which exemptions are available. As a result, the central issue for the OEB to consider is whether the Crown's duty to consult has been adequately discharged.

Duty to Consult

The duty to consult, and where appropriate, accommodate, is a duty that stems from the Honour of the Crown and the Constitutional recognition of Aboriginal and treaty rights in section 35 of the *Constitution Act, 1982*. The scope and content of the duty continues to evolve within Canadian jurisprudence. Broadly, the duty is triggered in instances where (1) the Crown has knowledge of a potential Aboriginal claim or right, (2) the Crown contemplates conduct, (3) there is the potential that the contemplated conduct may adversely impact the Aboriginal claim or right. Canadian courts have also confirmed that regulatory boards and tribunals may be delegated procedural aspects of the duty, including making determinations as whether the duty has been met.

In order to ensure that the OEB has all the information it requires to make a determination on the duty to consult, the OEB has developed a process to ensure that all relevant concerns and evidence can be placed before it through the hearing process. This process is set out in the Environmental Guidelines, and also through the procedural steps established by the OEB in this proceeding. The process includes:

- Early (i.e. pre-application) identification of potentially impacted Indigenous communities by the Ministry of Energy and Electrification and a delegation of the procedural aspects of the duty to consult to the applicant.

- The requirement that the applicant engage with potentially impacted Indigenous nations or communities and prepare and file an Indigenous Consultation Report that describes the consultation activities that were undertaken, provides copies of all communications and a summary of any rights-based concerns raised by Indigenous communities, and describes any accommodations that are proposed.
- Once the application is filed, the OEB provides notice to all potentially impacted Indigenous nations or communities, including a statement that “[t]he OEB will also assess whether the duty to consult with Indigenous nation or communities potentially affected by the proposed pipeline has been discharged with respect to the application.”
- The OEB allows the application to be thoroughly tested through the interrogatory process, including any questions with respect to the duty to consult as it relates to the project.
- The OEB may permit OEB staff and intervenors to file evidence that is relevant to the application, including evidence related to the duty to consult.
- The OEB may allow OEB staff, intervenors and the applicant to file written submissions with the OEB.

HEARING PROCESS

On December 29, 2022, by way of a Delegation Letter, the Ministry of Energy identified ten Indigenous nations or communities that Enbridge Gas should consult as they may be potentially impacted by the Project:

- 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

Each potentially impacted nation or community was served a notice of hearing on September 12, 2024. 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.

The OEB received no requests for participation in the hearing by any of the notified communities.

The OEB issued Procedural Order No. 1 on December 4, 2024.

Enbridge Gas filed an Indigenous Consultation Report (ICR) and consultation log with its application describing and documenting the Indigenous consultation it has conducted for the Project. In order to assist the OEB in making a determination on whether the Crown's duty to consult has been sufficiently discharged with respect to the Project, Enbridge Gas was directed in Procedural Order No.1 to file an updated ICR and correspondence from the Ministry of Energy and Electrification on Enbridge Gas's consultation activities.

Enbridge Gas provided an updated ICR on December 18, 2024, as was required by Procedural Order No. 1. Procedural Order No.1 also set the schedule for written discovery on Enbridge Gas's evidence. OEB staff filed interrogatories on January 10, 2025 and Enbridge Gas filed interrogatory responses on January 17, 2025, each in accordance with the dates set in Procedural Order No. 1.

In its interrogatories, amongst other things, OEB staff requested that Enbridge Gas describe its plans for continuing engagement with Indigenous communities.

In its interrogatory response, Enbridge Gas stated that it will continue to engage Indigenous communities and will utilize various channels of communication such as site tours, emails, virtual meetings and in person meetings.¹

On March 14, 2025 the OEB Issued Procedural Order No. 2 which set the dates for the filing of an OEB staff submission by April 1, 2025 and a written reply submission by Enbridge Gas on April 15, 2025.

On March 21, 2025, the Ministry of Energy and Electrification issued a Letter of Opinion (Sufficiency Letter) that states that it is of the opinion that "the procedural aspects of consultation undertaken by Enbridge to-date for the purposes of the application for the exemption to Ontario Energy Board's Leave to Construct for the Project were appropriate."

OEB Staff Submission

OEB staff submits that no specific impacts to Aboriginal or treaty rights have been identified, and that the duty to consult has been discharged to allow the OEB to approve the exemption application.

The evidence filed by Enbridge Gas indicates that it provided the ten potentially impacted Indigenous nations or communities with the following information:

- A detailed description of the nature and initial scope of the Project.
- Maps of the Project location.

¹ Enbridge Gas Response to OEB Staff 1-c), January 17, 2025

- 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.

Enbridge Gas further requested feedback from each of the ten Indigenous nations or communities, including any suggestions or proposals on mitigating, avoiding or accommodating any potential impacts the Project may have on Aboriginal or treaty rights. Enbridge Gas also offered capacity funding to the ten communities. Enbridge Gas further committed to "...continue to engage throughout the life of the Project to ensure any impacts on Aboriginal or treaty rights are addressed as appropriate."²

There is no evidence on the record that identifies outstanding concerns regarding Project specific impacts to Aboriginal or treaty rights. OEB staff further notes that none of the ten potentially impacted Indigenous nations or communities have intervened in this application to raise concerns about the Project and OEB staff also notes that the Ministry of Energy and Electrification confirmed its opinion that the procedural aspects of Enbridge Gas's consultation efforts were appropriate. As a result, OEB staff submits that the exemption application should be granted – subject to certain Conditions of Approval set out below.

Conditions of Approval

Regarding the conditions of approval Enbridge Gas stated in its EB-2024-0084 application:

"Should the OEB grant the LTC exemption sought for the Project and decide to impose one or more of the standard conditions (with appropriate modifications for a LTC exemption order) in doing so, Enbridge Gas is prepared to adhere to such condition(s)."

Enbridge Gas did not recommend specific conditions of approval with its application. OEB staff has attached to this submission the conditions of approval previously approved by the OEB. OEB staff submits that the OEB should approve the Project with the proposed Conditions of Approval³ attached as Schedule A to this submission subject to any comments Enbridge Gas may have on the proposed conditions for the Project, in its reply submission.

~All of which is respectfully submitted~

² Exhibit H, Tab 1, Schedule 1, paragraph 15, page 5

³ These conditions have been approved in EB-2025-0250, Ontario Line – Overlea Station Relocation Project – Application for Exemption from Leave-to-Construct Requirement

Schedule A
Conditions of Approval
EB-2024-0084
April 1, 2025

Enbridge Gas Inc.
EB-2024-0084

Proposed 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.