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BY EMAIL

May 5, 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. – Tweed Community Expansion Project – Application for
Exemption from Leave-to-Construct (LTC) Requirement
OEB File Number: EB-2024-0303**

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

Yours truly,

Catherine Nguyen
Advisor, Natural Gas Applications

Encl.

c: EGIRegulatoryProceedings@enbridge.com
Tania Persad, Applicant's Counsel, tania.persad@enbridge.com



ONTARIO ENERGY BOARD

OEB Staff Submission

Enbridge Gas Inc.

**Tweed Community Expansion Project – Application
for Exemption from Leave-to-Construct (LTC)
Requirement**

EB-2024-0303

May 5, 2025

INTRODUCTION

Enbridge Gas Inc. (Enbridge Gas) applied to the Ontario Energy Board (OEB) on November 29, 2024, under subsection 95(2) of the *Ontario Energy Board Act, 1998* (OEB Act) for an order exempting Enbridge Gas from the requirement to obtain leave to construct natural gas pipelines and facilities in the Municipality of Tweed in the County of Hastings (Project).

The Project is expected to cost \$4.4 million and serve approximately 41 customers in the Municipality of Tweed. The Project was approved to receive funding assistance under Phase 2 of the Government of Ontario's [Natural Gas Expansion Program](#).

The proposed project consists of 5.3 kilometres (km) of Nominal Pipe Size (NPS) 2-inch polyethylene (PE) natural gas pipeline. A general location of the Project is shown in the map below.¹



¹ Exhibit A, Tab 2, Schedule 1, Attachment 1, page 1 of 1

Exemption from Leave to Construct Requirement

Enbridge Gas relies on section 3.0.1(1) of O. Reg. 328/03, for its application. This provision authorizes the OEB to make an order under subsection 95 (2) of the OEB Act that exempts a person from the requirement to obtain leave from the OEB under subsection 90 (1). The exemption shall be granted 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 application, leave is only required because the cost of the Project is more than \$2 million. However, the estimated cost of the Project is below the \$10 million maximum amount for which an exemption is 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 OEB's *Environmental Guidelines for Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario* (Environmental Guidelines)², 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

² OEB Environmental Guidelines, pages 16-18 Chapter 3.2 Indigenous Consultation

communities by the Ministry of Energy and Electrification - now the Ministry of Energy and Mines (collectively, the Ministry) 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 communities and prepare and file an Indigenous Consultation Report (ICR) 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 provision of notice by the OEB to all potentially impacted Indigenous 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 thorough testing of the application through the OEB interrogatory process, including any questions with respect to the duty to consult as it relates to the project.
- The opportunity, as permitted by the OEB, for OEB staff and impacted Indigenous communities who choose to intervene in the proceeding to file evidence that is relevant to the application, including evidence related to the duty to consult.
- The opportunity, as permitted by the OEB, for OEB staff, impacted Indigenous communities who choose to intervene in the proceeding and the applicant to file written submissions with the OEB.

OEB staff submits that, based on the current evidentiary record of the proceeding, the Crown’s duty to consult has been adequately discharged and the OEB should grant an order under subsection 95(2) of the OEB Act exempting Enbridge Gas from the requirement to obtain leave to construct for the Project. OEB staff proposes conditions of approval (see Schedule A) should the OEB approve Enbridge Gas’s exemption application.

HEARING PROCESS

On February 9, 2024, by way of a Delegation Letter, the Ministry identified ten Indigenous communities that Enbridge Gas should consult:

- 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 Delegation Letter specifies roles and responsibilities it delegated to Enbridge Gas as well as roles and responsibilities assumed by the Crown and scope and content of consultation record.

The OEB served each potentially impacted community a Notice of Hearing on January 8, 2025. The Notice of Hearing provided each potentially impacted Indigenous community until February 24, 2025 (47 calendar days) to become an intervenor, comment or ask to follow the hearing as a monitor.

No Indigenous community sought intervenor status or chose to file a letter of comment or to monitor the proceeding.

On March 6, 2025, the OEB issued Procedural Order No. 1 setting out a schedule for written discovery on Enbridge Gas's evidence. Procedural Order No. 1 also directed Enbridge Gas to file an updated ICR and correspondence from the Ministry on Enbridge Gas's consultation activities.

Enbridge Gas provided an updated ICR on March 19, 2025. OEB staff filed interrogatories on April 1, 2025 and Enbridge Gas filed interrogatory responses on April 10, 2025.

On April 21, 2025 the OEB issued Procedural Order No. 2 setting the dates for the filing of an OEB staff submission by May 5, 2025 and a written reply submission from Enbridge Gas by May 20, 2025.

INDIGENOUS CONSULTATION

Evidentiary Record

As required by the Environmental Guidelines, Enbridge Gas prepared the ICR describing and documenting the Indigenous consultation it has been conducting. The updated ICR was filed on March 19, 2025.³ The ICR is part of Enbridge Gas's evidence in support of the Project. The evidentiary record also includes information Enbridge Gas filed in response to OEB staff's interrogatories.

As of the date of filing this submission, a letter of opinion from the Ministry on the sufficiency of consultation has not been filed by Enbridge Gas.

Information Enbridge Gas Provided to Consulted Indigenous Communities

The evidence filed by Enbridge Gas indicates that at the outset of consultation, beginning February 2024, it provided the following information to the ten Indigenous communities⁴:

- Notice of Upcoming Project and Notice of Study Commencement
- A detailed description of the nature and initial scope of the Project
- Maps of the Project location
- Information on how to participate in the In-Person and Virtual Information Sessions
- The Environmental Report, providing information about the potential effects of the Project on the environment and related mitigation measures
- Information on the Stage 2 Archaeological Assessment (AA) fieldwork
- The OEB's Notice of Hearing, providing information on how to participate in this proceeding

All ten Indigenous communities were given an opportunity to review and comment on the Environmental Report.⁵ Correspondence related to the review of the Environmental Report is included in the ICR.⁶

In addition to this initial information, Enbridge Gas continued to provide information in response to the questions/concerns raised by the Indigenous communities during the process of consultation.

OEB staff asked Enbridge Gas to describe its plans for continuing engagement with the

³ Exhibit H, Tab 1, Schedule 1, Attachment 9 Updated ICR Summary Table as of March 6, 2025; Exhibit H, Tab 1, Schedule 1, Attachment 10 Updated ICR Log as of March 6, 2025

⁴ Exhibit H, Tab 1, Schedule 1, Attachment 9

⁵ Exhibit H, Tab 1, Schedule 1, Attachment 10

⁶ Ibid.

Indigenous communities, the channels of communication it will use and the information it will provide regarding project construction, operation or other aspects of the project. In its response, Enbridge Gas stated that it plans to continue engagement by providing project updates and responding to any follow-up questions from Indigenous communities through in-person or virtual meetings, emails and site tours.⁷ Enbridge Gas stated that project updates typically include information about construction progress and information provided during ongoing operations would vary depending on the circumstances, including the nature of any planned operational activities.⁸

Capacity Funding

Enbridge Gas offered capacity funding to each Indigenous community identified as potentially impacted by the Project to support timely activities such as technical review of project documents and engagement in meaningful consultation.⁹

In response to interrogatories, Enbridge Gas stated that it has provided capacity funding to the Mississaugas of Scugog Island First Nation and Alderville First Nation. Enbridge Gas also stated that Huron Wendat Nation requested capacity funding at an April 3, 2025 meeting and Enbridge Gas agreed to make arrangements to provide the funding.¹⁰ Enbridge Gas may wish to confirm if it has since provided capacity funding to Huron Wendat Nation with its reply submission.

Enbridge Gas stated that no concerns have been raised regarding the capacity funding that has been offered in relation to the Project.¹¹

Concerns Raised and Enbridge Gas's Response and Commitments

The below outlines the concerns raised during Enbridge Gas's consultation process with the impacted Indigenous communities, as documented in the ICR and Enbridge Gas's interrogatory responses.

Curve Lake First Nation

Through the pre-hearing consultation, Curve Lake First Nation provided Enbridge Gas comments on the Environmental Report. Curve Lake First Nation expressed an opportunity for Enbridge Gas to recognize the Treaty Territory where the Project is located and distinguish between Rights holders and Indigenous communities interested in the Project. They recommended that if issues cannot be resolved, there should be a plan to accommodate the Nation for any impacts on their rights. Curve Lake First Nation

⁷ Exhibit I.STAFF-1c)

⁸ Ibid.

⁹ Exhibit H, Tab 1, Schedule 1, Attachment 9

¹⁰ Exhibit I.OEB STAFF-2a)

¹¹ Exhibit I.OEB STAFF-2b)

also raised concerns regarding certain environmental issues including the watercourse crossings, disturbance to wetlands and archaeology and requested a tree inventory.

In Enbridge Gas's responses to Curve Lake First Nation's comments, Enbridge Gas advised that there were no anticipated in-water works for the Project and committed to notifying and discussing alternative crossing methods with Curve Lake First Nation if a trenchless method of water course crossing cannot be performed.¹² Enbridge Gas explained that no adverse interactions are expected to occur with wetlands and no tree removals are anticipated for the Project and committed to sharing the tree inventory should any trees be removed.¹³ Enbridge Gas advised that the pipeline is planned to be installed within previously disturbed road allowance and restoration activities will return the area to pre-construction state or better and committed to inviting Curve Lake First Nation to attend the post-construction monitoring site visits at 3 and 15-months post energization.¹⁴

On March 27, 2025, Enbridge Gas had an in-person meeting with Curve Lake First Nation, where they expressed that they were satisfied with Enbridge Gas's responses to its comments on the Environmental Report.¹⁵ Curve Lake First Nation also expressed interest in a larger radius when completing the archaeological assessment and requested the known locations of archaeological sites registered with the Ministry of Citizenship and Multiculturalism. Enbridge Gas advised they would take the request back to its environmental team. Enbridge Gas may wish to confirm if it has since responded to Curve Lake First Nation on its request with its reply submission. Curve Lake First Nation also requested a copy of the Stage 2 AA report which Enbridge Gas provided on April 3, 2025.

Enbridge Gas stated that it is not aware of any outstanding concerns from Curve Lake First Nation.¹⁶

Huron Wendat Nation

Through the pre-hearing consultation, Huron Wendat Nation advised that they would like to participate in the Stage 2 AA work and Enbridge Gas contacted Huron Wendat Nation to provide the opportunity to participate.¹⁷ Huron Wendat Nation did not have field liaisons available for the scheduled dates and expressed that more notice is needed. Enbridge Gas advised that they would provide any findings when they become

¹² Exhibit H, Tab 1, Schedule 1, Attachment 9, pp. 4-5

¹³ Ibid.

¹⁴ Exhibit I.OEB STAFF-3

¹⁵ Exhibit I.OEB STAFF-1a)

¹⁶ Ibid.

¹⁷ Exhibit H, Tab 1, Schedule 1, Attachment 9, p. 8

available.¹⁸

On March 31, 2025, Huron Wendat Nation emailed Enbridge Gas about the timing of the Stage 2 AA and requested the Stage 2 AA prior to the Environmental Report and/or prior to the application being approved.¹⁹ On April 3, 2025 at an in-person meeting with Huron Wendat Nation, Enbridge Gas provided an explanation of the typical timing of the Stage 2 AA and provided the Stage 2 AA report for the Project to Huron Wendat Nation.²⁰

¹⁸ Exhibit H, Tab 1, Schedule 1, Attachment 10, pp. 36-37

¹⁹ Exhibit I.OEB STAFF-3

²⁰ Ibid.

OEB STAFF SUBMISSION

OEB staff notes that:

- Enbridge Gas initiated consultation with the Indigenous communities identified as potentially impacted by the Project in February 2024
- Enbridge Gas will continue to engage with the Indigenous communities throughout the life of the Project to ensure any impacts on Aboriginal or treaty rights and interests are addressed
- Enbridge Gas has offered capacity funding to each of the Indigenous communities to support their participation in the consultation related to the Project
- Enbridge Gas made commitments to certain accommodations in response to concerns raised by Indigenous communities

Considering the above observations and the current evidentiary record, OEB staff submits that, to the extent that the duty to consult has been triggered by the Project, the duty to consult has been discharged sufficiently to allow the OEB to approve the exemption to the requirement to seek leave to construct the Project. This submission is made under the assumption that: i) Enbridge Gas will fulfil its commitments to accommodation activities; and ii) Enbridge Gas will continue to engage with the ten Indigenous communities throughout the life of the Project.

OEB staff notes that 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 communities have intervened in this proceeding to raise further concerns about the Project.

As noted earlier, as of the filing of this OEB staff submission, Enbridge Gas has not filed the Ministry's Letter of Opinion. If any new information arises as a result of a further filing by Enbridge Gas related to the duty to consult, OEB staff may seek to re-open the record for further examination and/or comment.

OEB staff has attached in Schedule A proposed Conditions of Approval which include all the conditions that OEB staff proposed in its submission in Enbridge Gas's Cherry Valley leave to construct exemption application.²¹ OEB staff notes that in its interrogatory responses, Enbridge Gas proposed that the OEB approve the same conditions of approval proposed by OEB staff for Cherry Valley for this application.²² OEB staff submits that the OEB should approve the application with

²¹ EB-2024-0084. The OEB has not, as of the date of this submission, issued its decision in respect of the Cherry Valley exemption application.

²² Exhibit I.OEB Staff-5

the proposed Conditions of Approval, attached as Schedule A to this submission.

~All of which is respectfully submitted~

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

Enbridge Gas Inc.
EB-2024-0303

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-2024-0303 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.