



Ontario
Energy
Board

Commission
de l'énergie
de l'Ontario

DECISION AND ORDER

EB-2024-0249

ENBRIDGE GAS INC.

**Application for an Order granting an exemption from
leave to construct for Boblo Island Community
Expansion Project**

BEFORE: Robert Dodds
Presiding Commissioner

Fred Cass
Commissioner

David Sword
Commissioner

May 14, 2026

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1 OVERVIEW

On August 9, 2024, Enbridge Gas Inc. (Enbridge Gas) applied to the Ontario Energy Board (OEB) 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 community of Boblo Island in the Town of Amherstburg (Project).

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



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

2 APPLICATION SUMMARY AND PROCESS

2.1 Application Summary

The Project consists of 170 metres of Nominal Pipe Size (NPS) 4 polyethylene (PE) natural gas distribution pipeline; approximately 600 metres of NPS 4 steel natural gas distribution pipeline; and approximately 2.3 kilometres of NPS 2 PE natural gas distribution pipeline. Most of the pipelines are in road allowances requiring Enbridge Gas to acquire approvals from the Town of Amherstburg and the County of Essex. The total estimated Project cost is \$5.2 million and the Project will serve approximately 347 customers in the community.

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 (\$2 million) specified in section 3 of O Reg. 328/03 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.

Enbridge Gas submitted that the Project should be exempt from the requirement to obtain leave to construct as the following aspects of the Project 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 under subsection 90(1)(b) of the OEB Act.
- The Project cost is \$5.2 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 11, 2024, to the following potentially impacted Indigenous communities identified in the Delegation Letter that was issued by the Ministry on December 8, 2022:

- Aamjiwnaang First Nation
- Bkejwanong (Walpole Island First Nation)
- Caldwell First Nation
- Chippewas of Kettle and Stony Point First Nation
- Chippewas of the Thames First Nation
- Oneida Nation of the Thames

The Delegation Letter also specified roles and responsibilities that the Ministry delegated to Enbridge Gas as well as roles and responsibilities assumed by the Crown and the scope and content of the consultation record.¹

The Notice of Hearing provided each potentially impacted Indigenous community until October 26, 2024 (45 calendar days) to become an intervenor, comment or ask to follow the hearing as a monitor.

Caldwell First Nation requested intervenor status in the proceeding. Chippewas of the Thames First Nation filed a letter of comment. No other Indigenous communities sought intervenor status or chose to file a letter of comment or to monitor the proceeding.

On December 4, 2024, the OEB issued Procedural Order No. 1 which granted intervenor status and cost award eligibility to Caldwell First Nation. Procedural Order No. 1 also sets the schedule for written discovery on Enbridge Gas's evidence.

¹ Exhibit H, Tab 1, Schedule 1, Attachment 2-Delegation Letter, December 8, 2022, Appendix: Procedural Consultation

Caldwell First Nation and OEB staff filed interrogatories on December 18, 2024.

On January 31, 2025, Enbridge Gas filed: (i) written responses to the interrogatories of Caldwell First Nation and OEB staff and; (ii) a written response to the letter of comment filed by Chippewas of the Thames First Nation.

On April 1, 2025, the OEB issued Procedural Order No. 2, which asked Enbridge Gas to file additional information on the status of the Walpole Island First Nation land claim and the consultation with Walpole Island First Nation related to the land claim. Enbridge Gas' response is discussed on pages 10 and 11 of this Decision.

On April 28, 2025, OEB staff and Caldwell First Nation filed submissions. Enbridge Gas filed a reply submission on May 8, 2025.

According to the Indigenous consultation framework² set in the OEB's [Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario](#) (Environmental Guidelines), Enbridge Gas is required to file with the OEB a letter of opinion from the Ministry regarding the adequacy of the Indigenous consultation undertaken by Enbridge Gas. Because the letter of opinion was not filed after the last procedural step was completed, the OEB placed the proceeding in abeyance on July 11, 2025, in accordance with the OEB's [Protocol for Adjusting Adjudicative Timelines](#). The OEB stated it would take this application out of abeyance following receipt of the Ministry's letter of opinion.

On April 10, 2026, Enbridge Gas filed an updated application, with the letter of opinion it received from the Ministry. Accordingly, the OEB took this application out of abeyance on April 10, 2026. This filing marked the close of record for this proceeding.

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

3 DECISION

3.1 Indigenous Consultation Process Overview

On December 8, 2022, the Ministry delegated the procedural aspects of the Crown's duty to consult to Enbridge Gas and identified six 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.³

Enbridge Gas stated that it developed a consultation program to receive input from interested and potentially affected parties including Indigenous communities⁴ 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. Prior to filing the Application Enbridge Gas provided the following information to the potentially impacted Indigenous communities:

- Notice of Study Commencement (February 2023)
- A detailed description of the nature and initial scope of the Project
- Maps of the Project location
- Information on the In-Person and Virtual Information Sessions (February and March 2023)
- Environmental Report (June 2023)
- 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

Enbridge Gas continued to consult and engage the Indigenous communities in parallel with the OEB's application hearing process.

³ Application and Evidence, Exhibit H, Tab 1, Schedule 1

⁴ Application and Evidence, Exhibit F, Tab 1, Schedule 1, page 1, paragraph 1

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.⁵ Enbridge Gas has provided capacity funding to Caldwell First Nation, Chippewas of Kettle and Stony Point First Nation, and Chippewas of the Thames First Nation. Aamjiwnaang First Nation and Walpole Island First Nation provided quotes for capacity funding which were agreed to by Enbridge Gas. Enbridge Gas is awaiting the invoices from Aamjiwnaang First Nation and Walpole Island First Nation and will provide the capacity funding upon receipt of the invoices.⁶

The Environmental Report was circulated to Indigenous communities in June 2023.⁷ 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.⁸

All six Indigenous communities were given the opportunity to review and comment on the draft and final Environmental Report.⁹

Correspondence related to the review of the draft Environmental Report is included in the Indigenous Consultation Report.¹⁰ In addition to environmental impacts, Enbridge Gas's considerations of the potential social impacts of the Project on the Indigenous communities are outlined in the Environmental Report.¹¹

3.2 Summary of Issues and Concerns and Enbridge Gas's Responses During Consultation

This section outlines the issues, concerns, and accommodations raised by each of the six Indigenous communities consulted by Enbridge Gas.

At a high level, concerns about the mitigation of environmental impacts of the Project, impacts on the Detroit River crossing, and the interaction of the Project with the Walpole Island First Nation land claim were the most common and most emphasized concerns.

⁵ Exhibit H, Tab 1, Schedule 1, Attachment 7: Indigenous Consultation Report: Summary Tables (as of December 10, 2024)

⁶ Enbridge Gas Response to interrogatory). STAFF-3, page 1-2

⁷ Application and Evidence, Exhibit F, Tab 1, Schedule 1, page 3, paragraph 8

⁸ Application and Evidence, Exhibit H, Tab 1, Schedule 1, Attachment 7

⁹ Exhibit F, Tab 1, Schedule 1, Attachment 1 Environmental Report section 5.2. Table 5.1

¹⁰ Exhibit F, Tab 1, Schedule 1, Attachment 1 Environmental Report, Appendix B.7

¹¹ Exhibit F, Tab 1, Schedule 1, Attachment 1 Environmental Report, section 3.5.7

Enbridge Gas has committed and agreed to undertake, or has already undertaken, certain actions (i.e., accommodation) in response to the concerns Indigenous communities raised through consultation.¹²

Aamjiwnaang First Nation

In response to Aamjiwnaang First Nation's comments, Enbridge Gas explained that it has planned mitigation measures in relation to soil resources, vegetation, species at risk and watercourse crossings. Enbridge Gas committed to offering Aamjiwnaang First Nation the opportunity to participate in Stage 2 archaeological fieldwork and noted that a representative from Enbridge Gas Supply Chain Management had met with Aamjiwnaang First Nation to discuss opportunities on Enbridge Gas projects. Enbridge Gas also said it will share the results of the archaeological assessment with Aamjiwnaang First Nation. Enbridge Gas responded to concerns about the impacts of Horizontal Directional Drilling for the Detroit River crossing and advised that the downstream waterway is not at risk of contamination by leaked natural gas during the drilling.¹³

Chippewas of Kettle and Stony Point First Nation

Chippewas of Kettle and Stony Point First Nation expressed concerns and commented on the Project impact on species at risk, archeology, watercourses and groundwater, wildlife, aquatic species, the subsurface environment, air quality and atmospheric environment, and cumulative effects.¹⁴ Enbridge Gas described planned mitigation measures in response to these concerns.

Enbridge Gas has committed to making available to Chippewas of Kettle and Stony Point First Nation information that would be related to construction of the Project but that is not available at the time of consultation.¹⁵

¹² Enbridge Gas Response to interrogatory Exhibit I.OEB STAFF- 4 pages 1-4

¹³ Exhibit H, Tab 1, Schedule 1, Attachment 7 (updated December 18, 2024), in line-item attachments 1.18 and 1.24.

¹⁴ Additional concerns identified in the Letter of Comment by Chippewas of the Thames First Nation are outlined in a separate section of this decision and order.

¹⁵ Exhibit H, Tab 1, Schedule 1, Attachment 7 (updated December 18, 2024), in line-item attachment 3.25.

Caldwell First Nation

Caldwell First Nation expressed, during the consultation and echoed in their submissions, concerns with the Project's impacts on species at risk, watercourses and groundwater, wildlife, aquatic species, the subsurface environment, air quality and atmospheric environment, cumulative effects, and protection of archaeological heritage.

Enbridge Gas emphasized its commitment to ongoing consultation and agreed to share information on significant shifts in the Project construction schedule, the Horizontal Directional Drilling Sediment Control Plan, tree removal plans prior to tree removal, information regarding large wildlife encounters and incidents, species at risk encounters, the identification of nests during construction activities, the discovery of archaeological resources during construction, reportable spills, and monitoring reports.¹⁶

Walpole Island First Nation

In response to Walpole Island First Nation's questions and comments, Enbridge Gas communicated additional information about the Project, environmental assessment and the planned mitigation measures to address Walpole Island First Nation's concerns including: species at risk sightings, nesting period for Bald Eagles, nest sweeps, overwintering turtles and turtle eggs, clean equipment protocol, rare vegetation species, Horizontal Directional Drilling operation, and site remediation. Enbridge Gas agreed to consult with Walpole Island First Nation should there be a need to perform work during the Bald Eagle avoidance window.

Enbridge Gas is also committed to providing Walpole Island First Nation with the opportunity to monitor the fieldwork should the Ministry of Environment Conservation and Parks identify a need for additional fieldwork. Enbridge Gas offered Walpole Island First Nation the opportunity to participate in the Stage 2 archaeological assessment and committed to providing the final Stage 2 archaeological assessment report.

Enbridge Gas committed to updating the Cultural Heritage Screening Checklist to indicate the presence of a Canadian Heritage River in response to Walpole Island First Nation's comment and based on previous consultation with Walpole Island First Nation. Enbridge Gas said it would replace any trees that need to be removed during pipeline construction at a ratio of 3:1 for the Project.

¹⁶ Exhibit H, Tab 1, Schedule 1, Attachment 7 (updated December 18, 2024), in line-item attachment 2.70

Enbridge Gas also offered to discuss further ways to enhance or create new wildlife habitats or improve riparian areas.¹⁷

Chippewas of the Thames First Nation

Chippewas of the Thames First Nation communicated their concerns to Enbridge Gas during the consultation process and reiterated them in a Letter of Comment filed with the OEB.¹⁸

Enbridge Gas's responses and commitments to address Chippewas of the Thames First Nation's concerns and requests are summarized in section 3.2 of this Decision and Order.

Oneida Nation of the Thames

Enbridge Gas's evidence is that Oneida Nation of the Thames has not expressed any concerns related to the Project.¹⁹

Land Claim by Walpole Island First Nation

Enbridge Gas discussed concerns related to Walpole Island First Nation's land claim with Walpole Island First Nation, Aamjiwnaang First Nation, Chippewas of Kettle and Stony Point First Nation, Caldwell First Nation, and Chippewas of the Thames First Nation.

Walpole Island First Nation commented that Boblo Island is part of its land claim and noted that the Project is of "significant interest to the Walpole Island First Nation community."²⁰

Enbridge Gas's position is that there is no need to delay the Project until the resolution of the land claim. Enbridge Gas also noted that it has kept the Ministry aware of its conversations with Walpole Island First Nation with respect to the land claim.

¹⁷ Exhibit H, Tab 1, Schedule 1, Attachment 7 (updated December 18, 2024), in line-item attachment 6.33

¹⁸ Chippewas of the Thames First Nation, Letter of Comment, January 31, 2025

¹⁹ Exhibit H, Tab 1, Schedule 1 Attachment 7: Indigenous Consultation Report: Summary Table (as of December 10, 2024) and Enbridge Gas response to OEB staff interrogatory I-STAFF.2

²⁰ Exhibit H, Tab 1, Schedule 1 Attachment 6: Indigenous Consultation Report: Summary (as of December 10, 2024), page 7

On April 1, 2025, in Procedural Order No. 2,²¹ the OEB asked Enbridge Gas for additional information to update and clarify the record on the issue of Walpole Island First Nation's land claim, including:

- 1) Information on the status of the land claim and the consultation with Walpole Island First Nation related to the land claim.
- 2) A complete Consultation Log, including the timeline and content of any consultation with the Walpole Island First Nation on the land claim.
- 3) Copies of written communication (i.e., emails, memos) documenting the consultation between Enbridge Gas and Walpole Island First Nation regarding the land claim.

On April 11, 2025, Enbridge Gas responded to the OEB's questions. Enbridge Gas stated that according to the online status report by the Government of Canada's Crown-Indigenous Relations and Northern Affairs Canada Specific Claims Branch, a file on a Walpole Island First Nation claim regarding Boblo (Bois Blanc) Island was closed as of November 19, 2019. In addition, a Walpole Island First Nation action against the federal and provincial Crown claiming unextinguished aboriginal title before the Ontario Superior Court of Justice (Court File No. 00CV-189329) was placed in abeyance by consent in 2019. Enbridge Gas stated that "...While the Crown-Indigenous Relations and Northern Affairs Canada website identifies "Walpole Island" as one of the negotiation tables in Ontario, no further detail is provided."²²

In response to the OEB's questions Enbridge Gas also explained that a medium level of consultation with Walpole Island First Nation is indicated by the Ministry in the Delegation Letter and that the Ministry's direction was informed by Walpole Island First Nation's land claim, including Walpole Island First Nation's assertion of rights. Also, Enbridge Gas noted that, during consultation, it did not receive Ministry directions to elevate the level of consultation with Walpole Island First Nation.

Enbridge Gas emphasized that it consulted with Walpole Island First Nation throughout the process and that "...Walpole Island First Nation provided two sets of comments on the Project's Environmental Report and Enbridge Gas replied in detail to these comments and, in some instances, made additional commitments in response to those

²¹ OEB Procedural Order No. 2, April 1, 2025, page 3

²² Enbridge Gas response to OEB's Questions, April 11, 2025, page 1

comments.²³ In addition, Enbridge Gas kept Walpole Island First Nation informed of the further opportunities to provide feedback, including advising of the OEB process and the options for participation in the proceeding.”²⁴

Enbridge Gas stated it continued to provide monthly project updates to Walpole Island First Nation since the filing of the updated ICR on December 18, 2024. Enbridge Gas referred to the evidence which includes records of all communication and documentation related to the Walpole Island First Nation land claim.²⁵

3.3 Letters and Submissions Before the OEB

Letter of Comment: Chippewas of the Thames First Nation

Chippewas of the Thames First Nation’s concerns, expressed in the Letter of Comment and in consultation processes, include mainly vegetation removal, wildlife surveys monitoring, species at risk and the methodology of Horizontal Directional Drilling for the Detroit River crossing, monitoring further archaeological assessments, providing the draft Environmental Protection Plan, and lack of economic participation opportunities.

Enbridge Gas stated that it is committed to engaging further with Chippewas of the Thames First Nation should additional archaeological assessments be required. Enbridge Gas is committed to offer Chippewas of the Thames First Nation an opportunity to participate in any targeted wildlife and vegetation surveys. Enbridge Gas agreed to notify Chippewas of the Thames First Nation within six hours of a Horizontal Directional Drilling frac-out (i.e., inadvertent release of drilling fluid) and that the requirement would be included in the Environmental Protection Plan.

Enbridge Gas also agreed to work with Chippewas of the Thames First Nation to include the on-site environmental monitors and arrange site visits once the site restoration has been completed.²⁶

Chippewas of the Thames First Nation voiced its concern about the willingness of Enbridge Gas to provide a copy of a complete Environmental Protection Plan in advance of finalizing and implementing it during construction. Enbridge Gas responded

²³ Enbridge Gas response to OEB staff interrogatory Exhibit I.OEB STAFF-4

²⁴ Enbridge Gas response to the OEB Additional Information Request, April 11, 2025, page 2

²⁵ Exhibit H, Tab 1, Schedule 1, Attachment 7 (updated December 18, 2024). Communication related to the Walpole Island First Nation’s land claim and asserted rights can be found at line-items 6.1, 6.7, 6.10, and line-item attachment 6.23.

²⁶ Exhibit H, Tab 1, Schedule 1, Attachment 7 (updated December 18, 2024), in line-items 4.20 and 4.35

that it would share with Chippewas of the Thames First Nation "...the complete Environmental Protection Plan once it is finalized, before construction commences."²⁷ Enbridge Gas said it is committed to offering opportunities to Chippewas of the Thames First Nation to participate in targeted wildlife and vegetation surveys, notify within six hours of a Horizontal Directional Drilling frac-out.²⁸

Chippewas of the Thames First Nation also indicated its concern with lack of economic participation in Enbridge Gas's projects including the Boblo Island Expansion Project. Chippewas of Thames First Nation stated that "...To date, EGI [Enbridge Gas] has not offered equity opportunities in rate-regulated assets to Rights Holding First Nations in southwestern Ontario."²⁹ Chippewas of the Thames First Nation continued: "...EGI owns and operates assets, including pipelines and gas storage infrastructure, throughout Chippewas of the Thames First Nation's Traditional and Treaty territory. Chippewas of the Thames First Nation does not financially benefit from and did not consent to these assets. The Ontario government is not adequately capturing the cumulative impacts of such infrastructure on Chippewas of the Thames First Nation's inherent and constitutionally protected rights."³⁰

Enbridge Gas responded that it is exploring opportunities and options for equity participation in Enbridge Gas projects within Ontario. Enbridge Gas pointed to:

"...regulatory and financial barriers that exist for equity sharing on OEB-regulated Enbridge Gas assets, such as financing costs, profitability, a potential need to transfer assets to a new entity, OEB approvals including a Certificate of Public Convenience and Necessity, franchise agreement, rate order, and regulatory obligations pursuant to OEB rules and Technical Standards and Safety Authority requirements."³¹

²⁷ Enbridge Gas Inc. Reply Submission, May 8, 2025, page 5, paragraph 13

²⁸ Enbridge Gas Inc. Response to Chippewas of the Thames Letter of Comment, January 31, 2025, page 2

²⁹ Chippewas of the Thames First Nation Letter of Comment, October 28, 2024, page 2

³⁰ Chippewas of the Thames First Nation Letter of Comment, October 28, 2024, page 2

³¹ Enbridge Gas response to Chippewas of the Thames First Nation Letter of Comment, January 31, 2025, page 2

Caldwell First Nation Submissions

Caldwell First Nation stated several concerns in their submissions.³² Caldwell First Nation noted specific environmental interests related to impact assessment, mitigation and monitoring and reporting that should be addressed by Enbridge Gas and stated that the OEB should impose conditions of approval to ensure that the environmental concerns are addressed by Enbridge Gas. These conditions are addressed in section 3.3 of this Decision and Order.

Caldwell First Nation argued that Indigenous economic inclusion is lacking, that commitments by Enbridge Gas for Indigenous economic inclusion are not sufficient, and that the OEB should be more active in its support of equity participation.³³

Caldwell First Nation submitted that Enbridge Gas should improve the effectiveness of Indigenous consultation and engagement and provide operational, time-related and financial capacity to review and engage with Project-related documentation. Caldwell First Nation requested that "... the OEB expressly note in its decision and make it a condition of approval in this proceeding that EGI enhance its consultation practices...".³⁴

Caldwell First Nation requested that the OEB revise its *Natural Gas Facilities Handbook* and develop standard conditions of approval specific to exemption applications under section 95 of the OEB Act.³⁵

Enbridge Gas responded to this concern by reiterating the timing, scope and nature of information shared during consultation (including the review of the Environmental Report), and noting the steps in the OEB hearing process and opportunities given to the potentially impacted Indigenous communities engage in consultation.³⁶

Caldwell First Nation submitted that the application is premature considering "...ongoing uncertainty ...in light of CFN's unresolved assertion of Aboriginal title and its potential impacts on CFN's Aboriginal rights and traditional use of Boblo Island".³⁷

³² Submissions of Caldwell First Nation, April 28, 2025, page , paragraph 1

³³ Submissions of Caldwell First Nation, April 28, 2025 page 19-20, paragraphs 69-75

³⁴ Submissions of Caldwell First Nation, April 28, 2025, page 7, paragraph 18

³⁵ Submissions of Caldwell First Nation, April 28, 2025, pages 9-10, paragraph 21

³⁶ Enbridge Gas Inc. Reply Submission, May 8, 2025, pages 3-5 paragraphs 7-12

³⁷ Submissions of Caldwell First Nation, April 28, 2025, page 8, paragraph 23

Caldwell First Nation further stated that “...CFN made clear to the Applicant that the exercise of its rights in the Project area, including Boblo Island and surrounding waters, requires express permission of CFN through its members and Chief and Council.”³⁸

Enbridge Gas expressed its disagreement with the position of Caldwell First Nation. Enbridge Gas stated its view that “...Development is not frozen in circumstances where rights are claimed but not yet proven”. Enbridge Gas “...acknowledges that consultation is necessary to the extent there is a potential impact on a claimed right, consent is not legally required.”³⁹ Enbridge Gas referenced *Haida Nation v. British Columbia, 2004 SCC 73* at paras. 27 and 48, and *Coldwater First Nation v. Canada (Attorney General), 2020 FCA 34* at para. 194 to support its position.

OEB Staff Submission

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 staff stated that considering the current evidentiary record, 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 Project.

The OEB staff submission was 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 six Indigenous communities throughout the life of the Project.

OEB staff submitted that the OEB should approve the Project with the proposed Conditions of Approval.

³⁸ Submissions of Caldwell First Nation, April 28, 2025, page 14, paragraph 43

³⁹ Enbridge Gas Inc. Reply Submission, May 8, 2025, page 7, paragraph 19.

OEB staff noted that:

- Enbridge Gas consultation was initiated in 2022 when the Project proposal was first developed
- Enbridge Gas is committed to continue the engagement with the communities after the approval of the Project and throughout the lifetime of the Project
- Enbridge Gas has offered and provided, or will provide, capacity funding to the communities to support their participation in the consultation related to the Project
- Enbridge Gas expressed commitment to implement site-specific mitigation measures recommended by Stantec in the Environmental Report and proposed by consulted Indigenous communities
- Enbridge Gas is committed to making the finalized Environmental Protection Plan available to the communities prior to the start of construction and providing the communities' representatives with opportunities to participate in surveys and observe and monitor construction
- Enbridge Gas has agreed to provide copies of interim and final environmental monitoring reports to the communities upon request

Letter of Opinion: Ministry of Energy and Mines

The Letter of Opinion from the Ministry, dated April 9, 2026, stated that the Ministry completed its review of Enbridge Gas's Indigenous Consultation Report and the information provided by Enbridge Gas to the Ministry and the evidence on the record filed with the OEB. The Ministry also communicated with the Indigenous communities to acquire direct information from the communities about the consultation process. The Ministry's opinion is also based on the notification provided by Enbridge Gas, the information provided to the communities, and the sufficiency time for communities to consider and raise rights-based concerns. The Ministry noted that Enbridge Gas held meetings with communities, made capacity funding available and provided opportunities to participate in fieldwork.

The Ministry noted that it communicated with the Indigenous communities to learn directly from the communities about potential impacts to Aboriginal and/or treaty rights and concerns communities raised, the mitigation proposed by Enbridge Gas, and the community's satisfaction with the consultation process and outcomes.

The Ministry acknowledged that it considered concerns raised by communities in respect of the Walpole Island First Nation federal land claim where Walpole Island First Nation asserts Aboriginal title to Boblo Island and a claim before the Ontario courts

where the community asserts Aboriginal title to the bed of the Detroit River, including portions under which the proposed natural gas line would run. The Ministry did not offer any further statements on this matter.

In the Ministry's opinion, the procedural aspects of the consultation undertaken by Enbridge Gas for the project were satisfactory.⁴⁰

Findings

Pursuant to section 3.0.1(1) of O Reg 328/03, the OEB shall, on application, exempt a project from the requirement to obtain leave to construct if: (a) leave is only required under section 90(1)(b) of the OEB Act (pertaining to cost); (b) the cost of the proposed hydrocarbon line is between \$2 million and \$10 million; and (c) the OEB makes a determination that the Crown's duty to consult, if applicable, has been adequately discharged.

The total cost of the Boblo Island expansion project is approximately \$5.2 million and the OEB finds that the duty to consult has been adequately discharged; therefore, the exemption criteria have been satisfied. Accordingly, the OEB grants an order under section 95(2) of the OEB Act, exempting Enbridge Gas from the requirement to obtain leave to construct for the Project, subject to the conditions attached as Schedule A to this Decision and Order.

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 evidence on the record of this proceeding, as well as the Ministry's Letter of Opinion, dated April 9, 2026, stating that it is satisfied that the procedural aspects of the Crown's duty to consult delegated to and undertaken by Enbridge Gas for the Project in relation to its application are satisfactory,

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

⁴⁰ Exhibit H, Tab 1, Schedule 1, Attachment 4, Ministry of Energy and Mines, Letter of Opinion – Boblo Island Community Expansion Project, dated April 9, 2026

3.4 Conditions of Approval

Section 23 of the OEB Act permits the OEB, when making an order, to impose conditions as it considers appropriate. OEB staff and Caldwell First Nation each proposed certain conditions of approval.

Conditions Proposed by OEB Staff

In its submission, OEB staff advocated for conditions to be imposed as part of the approval of this exemption application. In addition to the OEB standard conditions of approval, OEB Staff proposed that during and after construction, Enbridge Gas Inc. shall monitor the impacts of construction, and shall file with the OEB one electronic (searchable PDF) version of each of the following reports: (a) A post construction report, within three months of the full project in-service date; and (b) A final monitoring report, no later than fifteen months after the full project in service date, or, where the deadline falls between December 1 and May 31, the following June 1.⁴¹

In its reply, Enbridge Gas advised that it is prepared to adhere to the conditions proposed by OEB staff.⁴²

Conditions Proposed by Caldwell First Nation

Caldwell First Nation proposed a number of conditions related to environmental impacts, mitigation, monitoring and reporting.

Caldwell First Nation is concerned about impacts, mitigation, monitoring and reporting on the Project's potential impacts on i) aquatic habitats⁴³ ii) vegetation⁴⁴ iii) species of interest and species at risk⁴⁵ and iv) participation in preparation, review and implementation of Environmental Protection Plan⁴⁶. Related to each area of concern, Caldwell First Nation proposed that the OEB impose specific sets of conditions of approval.

⁴¹ OEB Staff Submissions, April 28, 2025, pages 13-14 and Schedule A Proposed Conditions of Approval

⁴² Enbridge Gas Reply Submission, May 8, 2025, paragraph 38, page 15

⁴³ Submissions of Caldwell First Nation, April 28, 2025, pages 14-15, paragraph 52

⁴⁴ Submissions of Caldwell First Nation, April 28, 2025 page 16, paragraph 57

⁴⁵ Submissions of Caldwell First Nation, April 28, 2025 page 18, paragraph 65

⁴⁶ Submissions of Caldwell First Nation, April 28, 2025 page 19, paragraph 68

Caldwell First Nation expressed an interest in receiving post-construction monitoring reports from Enbridge Gas.⁴⁷ Enbridge Gas has committed to share post construction monitoring reports with Caldwell First Nation if the OEB imposes a condition that the post-construction reports be filed.⁴⁸

Enbridge Gas responded that none of the conditions proposed by Caldwell First Nation are needed because the conditions of approval proposed by OEB staff and agreed upon by Enbridge Gas cover and address Caldwell First Nation's requested conditions.⁴⁹

Enbridge Gas noted that the requests in the conditions proposed by Caldwell First Nation are subject to Enbridge Gas's commitments on the record and requirements of Provincial and Federal permitting entities or are addressed in the Environmental Report which is part of the Application and evidence. Enbridge Gas stated on the record it would implement the Environmental Report recommendations for mitigation, monitoring and reporting which include Caldwell First Nation's requested conditions.

Enbridge Gas submitted that standard conditions 1, 4 and 5, as reproduced in Schedule A of this Decision and Order, cover the conditions proposed by Caldwell First Nation. Enbridge Gas also submitted that Caldwell First Nation's proposed condition of filing interim and final post-construction monitoring reports is covered by condition 6 as proposed by OEB staff and accepted by Enbridge Gas.

Findings on Conditions of Approval

The OEB approves this exemption application subject to the conditions of approval proposed by OEB staff and accepted by Enbridge Gas.

The Environmental Report, Enbridge Gas's commitments, and the requirements of other permitting authorities collectively provide a comprehensive framework that captures the substance of the additional conditions sought by Caldwell First Nation, such that they are not needed.

⁴⁷ Appendix D of the OEB's Natural Gas Facilities Handbook lists the OEB's Standard Leave to Construct Conditions of Approval. One of the standard conditions is the requirement to file with the OEB a post construction report within three months of the full project in-service date and a final monitoring report no later than fifteen months after the full project in-service date.

⁴⁸ Enbridge Gas response to interrogatory I.CFN-7 h)

⁴⁹ Enbridge Gas Reply Submission, May 8, 2025, pages 8-15, paragraphs 21-36 D. Caldwell First Nation – Proposed Conditions

The OEB is satisfied that standard conditions 1, 4 and 5 ensure that Enbridge Gas will construct and operate the Project in accordance with the Environmental Report and all applicable mitigation and monitoring requirements. Condition 6 ensures that post-construction monitoring reports will be filed with the OEB and therefore made available to Caldwell First Nation.

Enbridge Gas has committed on the record to implement all Environmental Report recommendations⁵⁰, which include measures directly responsive to Caldwell First Nation's concerns.

In light of these factors, the OEB concludes that imposing additional project-specific conditions is not necessary.

While the OEB is not adopting additional conditions proposed by Caldwell First Nation, the OEB emphasizes that the concerns raised are substantively addressed through the existing conditions, the Environmental Report, and Enbridge Gas's commitments.

The OEB expects Enbridge Gas to continue to engage with Caldwell First Nation in the remaining phases of the Project.

⁵⁰ Enbridge Gas Reply Submission, May 8, 2025, page 9, paragraph 23 D. Caldwell First Nation – Proposed Conditions

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 Boblo Island, Town of Amherstburg, County of Essex, as described in its application, subject to the Conditions of Approval attached as Schedule A to this Decision and Order.
2. Caldwell First Nation shall file with the OEB and forward to Enbridge Gas Inc. their cost claim in accordance with the OEB's Practice Direction on Cost Awards on or before May 25, 2026.
3. Enbridge Gas Inc. shall file with the OEB and forward to Caldwell First Nation any objections to Caldwell First Nation's claimed intervenor costs on or before June 1, 2026.
4. If Enbridge Gas Inc. objects to any Caldwell First Nation costs, Caldwell First Nation shall file with the OEB and forward to Enbridge Gas Inc. their response, if any, to the objections to cost claims on or before June 11, 2026.
5. Enbridge Gas Inc. shall pay the OEB's costs incidental to this proceeding upon receipt of the OEB's invoice.

DATED at Toronto May 14, 2026

ONTARIO ENERGY BOARD

Ritchie Murray
Registrar

SCHEDULE A
DECISION AND ORDER
ENBRIDGE GAS INC.
EB-2024-0249
MAY 14, 2026

ENBRIDGE GAS INC.

EB-2024-0249

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-2024-0249 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, licenses, certificates, agreements, and the rights required to construct, operate and maintain the Project.
5. Enbridge Gas shall implement the recommendations of the Environmental Report filed in the proceeding.
6. Both during and after construction, Enbridge Gas Inc. shall monitor the impacts of construction, and shall file with the OEB one electronic (searchable PDF) version of each of the following reports:
 - (a) A post construction report, within three months of the full project in-service date, which shall:
 - i. provide a certification, by a senior executive of the company, of Enbridge Gas Inc.'s adherence to Condition 1
 - ii. describe any impacts and outstanding concerns identified during construction
 - iii. describe the actions taken or planned to be taken to prevent or mitigate any identified impacts of construction

- iv. include a log of all complaints received by Enbridge Gas Inc., including the date/time the complaint was received, a description of the complaint, any actions taken to address the complaint, the rationale for taking such actions
 - v. provide a certification, by a senior executive of the company, that the company has obtained all other approvals, permits, licenses, and certificates required to construct, operate, and maintain the proposed project
- (b) A final monitoring report, no later than fifteen months after the full project in- service date, or, where the deadline falls between December 1 and May 31, the following June 1, which shall:
 - i. provide a certification, by a senior executive of the company, of Enbridge Gas Inc.'s adherence to Condition 5
 - ii. describe the condition of any rehabilitated land
 - iii. describe the effectiveness of any actions taken to prevent or mitigate any identified impacts of construction
 - iv. include the results of analyses and monitoring programs and any recommendations arising therefrom
 - v. include a log of all complaints received by Enbridge Gas Inc., including the date/time the complaint was received; a description of the complaint; any actions taken to address the complaint; and the rationale for taking such actions
- 7. 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 employees' 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.