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DECISION AND ORDER

EB-2025-0301

ENBRIDGE GAS INC.

**Application for an Order granting an exemption from leave
to construct for Port Colborne Reinforcement Project**

BEFORE: David Sword
Presiding Commissioner

June 30, 2026

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1 OVERVIEW

Enbridge Gas Inc. (Enbridge Gas) applied to the Ontario Energy Board (OEB) on November 7, 2025, 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 City of Port Colborne, Regional Municipality of Niagara (Project).

The proposed Project consists of approximately 2.65 kilometres (km) of Nominal Pipe Size (NPS) 6-inch steel (ST) extra high pressure (XHP) natural gas distribution pipeline. The pipeline will travel approximately 2.65 km along Snider Road and will tie into the existing NPS 8 ST XHP Enbridge Gas system at the 3rd Concession Road.

The general location of the Project is shown on the map below¹:

Port Colborne Reinforcement



¹ Enbridge Gas Inc. Application, Exhibit A, Tab 2, Schedule 1, Attachment 1, page 1 of 1.

The Project is expected to cost \$9.1 million and serve an industrial customer in the City of Port Colborne, Regional Municipality of Niagara.

For the reasons set out below, the OEB grants 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

Section 90(1) of the OEB Act provides that no person shall construct a hydrocarbon line without first obtaining an OEB order granting leave to construct the line if:

- (a) the proposed hydrocarbon line is more than 20 kilometres in length;
- (b) the proposed hydrocarbon line is projected to cost more than the amount prescribed by the regulations;
- (c) any part of the proposed hydrocarbon line,
 - (i) uses pipe that has a nominal pipe size of 12 inches or more, and
 - (ii) has an operating pressure of 2,000 kilopascals or more; or
- (d) criteria prescribed by the regulations are met.

Section 3.01(1) of Ontario Regulation 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 to construct from the OEB under section 90(1) of the OEB Act 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.

Enbridge Gas submitted that the Project should be exempt from the requirement to obtain leave to construct under section 95(2) of the OEB Act as the following aspects of the Project meet the exemption criteria:

- The Project is less than 20 km in length, 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 \$9.1 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 (MEM) and has carried out (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 had been adequately discharged.

2.2 OEB Hearing Process

The OEB issued a Notice of Hearing on December 2, 2025, to each of the following potentially impacted Indigenous communities identified in the Delegation Letter issued by MEM dated April 4, 2025:

- Haudenosaunee Confederacy Chiefs Council (HCCC)
- Six Nations of the Grand River (Elected Council) (Six Nations)
- Mississaugas of the Credit First Nation (MCFN)

On December 8, 2025, Six Nations requested intervenor status and on December 12, 2025, requested to be approved for cost award eligibility in the proceeding.

On January 9, 2026, the OEB issued Procedural Order No. 1 which granted intervenor status and cost award eligibility to Six Nations. Procedural Order No. 1 set out a schedule for written discovery on Enbridge Gas' application and for written submissions by OEB staff, Six Nations and Enbridge Gas.

On January 28, 2026, in Procedural Order No. 2, the OEB approved a time extension request by Six Nations and set an extended procedural schedule. In accordance with the schedule, OEB staff and Six Nations filed interrogatories to Enbridge Gas on February 17, 2026, and Enbridge Gas filed responses on March 2, 2026.

In its cover letter to its interrogatory responses, dated March 2, 2026, Enbridge Gas requested confidential treatment for certain information pursuant to the *OEB's Practice Direction on Confidential Filings* (Practice Direction). Specifically, Enbridge Gas requested confidential treatment for information pertaining to fees and funding associated with Indigenous engagement. Enbridge Gas described this information as "presumptively confidential". This information is located in Enbridge Gas' response to OEB staff interrogatory I.STAFF.1, Attachment 1, line item attachment 1.7. No parties filed submissions in response to the confidentiality request. The OEB hereby grants the request for confidential treatment of information pertaining to fees and funding associated with Indigenous engagement set out in I. STAFF-1, Attachment 1, line item attachment 1.7. This information falls within the categories of information the OEB considers presumptively confidential, and there were no objections from any party.

On March 10, 2026, Six Nations requested leave of the OEB to file evidence which included the proposed evidence at issue, a (then) unsworn affidavit with attached exhibits. The sworn affidavit was later filed on March 18, 2026. On March 12, 2026, the OEB issued Procedural Order No. 3 suspending further procedural deadlines in order to address Six Nations' request to file evidence. On March 26, 2026, the OEB issued its Decision on Intervenor Evidence and Procedural Order No. 4, granting leave for Six Nations to file their requested evidence and setting out further procedural steps. In accordance with the procedural schedule, OEB staff filed interrogatories for Six Nations on April 7, 2026. Six Nations filed responses on April 22, 2026.

On April 22, 2026 Invest Ontario filed a letter of comment with the OEB regarding the Project.

On April 24, 2026, OEB staff filed a request that the proceeding be placed in abeyance to allow for the MEM's Letter of Opinion expressing its view on the adequacy of Indigenous consultation to be placed on the record. On April 28, 2026 by way of Procedural Order No. 5, the OEB denied OEB staff's request for abeyance and extended the procedural schedule. On April 29, 2026, Enbridge Gas filed a letter with the OEB commenting on interrogatory responses of Six Nations and expressing disagreement with OEB staff's abeyance recommendation.

As set in the procedural schedule, OEB staff's and Six Nations' submissions were filed on May 6, 2026. Enbridge Gas filed reply submissions on May 19, 2026.

On May 22, 2026, Enbridge Gas filed an updated application, with the Letter of Opinion it received from the MEM. This filing marked the close of record for this proceeding.

3 DECISION

3.1 Indigenous Consultation Process Overview

MEM issued a Delegation Letter dated April 4, 2025, delegating to Enbridge Gas the procedural aspects of the Crown's duty to consult and identifying three Indigenous communities to be consulted.

MEM's Delegation Letter stated that its preliminary assessment determined that a moderate level of consultation, at minimum, was appropriate for Enbridge Gas' consultation with each of the identified Indigenous communities. The Delegation Letter also noted that Enbridge Gas should inform MEM and seek updated guidance if, during the consultation, information becomes available suggesting that project impacts will be significant enough to warrant a deeper level of consultation.

Pursuant to the OEB's *Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Projects and Facilities in Ontario* (Environmental Guidelines), Enbridge Gas filed an Indigenous Consultation Report (ICR) 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.² Enbridge Gas provided the ICR with its evidence to the OEB and to MEM on November 7, 2025 (the date of filing this application). The November 7, 2025, ICR covers consultation activities from April 22, 2025 to October 23, 2025.

Enbridge Gas filed updates to the ICR as of February 24, 2026 in response to OEB staff interrogatories.³ The ICR includes copies of emails and other communication with the Indigenous communities and MEM.

In the application, Enbridge Gas described its Indigenous Engagement Program and stated that it strives to achieve meaningful relationships with Indigenous communities by providing timely exchanges of information, understanding and addressing Indigenous project-specific concerns, and ensuring ongoing dialogue regarding its projects, including potential impacts and benefits.⁴

² Enbridge Gas Inc. Application, Exhibit H, Tab 1, Schedule 1, Attachment 5, Indigenous Consultation Report, Summary Tables, pages 1-3 and Attachment 6, Indigenous Consultation Report, pages 1-145.

³ Enbridge Gas Inc. Response to interrogatory I.STAFF-1, Attachment 1, Updated ICR, pages 1-236.

⁴ Enbridge Gas Inc. Application and Evidence Exhibit H, Tab 1, Schedule 1, paragraphs 6-8, pages 2-3.

The application indicates that, starting on April 22, 2025, Enbridge Gas provided the following information to MCFN, Six Nations, and HCCC through the Haudenosaunee Development Institute (HDI):

- Initial notice of the Project, April 22, 2025
- Notice of Upcoming Project including Map of the Project Location, April 25, 2025
- Notification Letter and Notice of Study Commencement, May 8, 2025
- Virtual Information Sessions letters (sessions were held from May 26, 2025, to June 9, 2025)
- Invitation to field verification surveys, May 2025
- Capacity funding offer, June 2025
- Notice of Preferred Route, July 2025
- Environmental Report, initially in draft form for comment in September 2025

Copies of all the information noted above were included in Enbridge Gas' application evidence.

All three Indigenous communities were given the opportunity to review and comment on the draft Environmental Report.⁵ The final Environmental Report is included in Enbridge Gas' application and evidence.⁶

The Environmental Report included a Stage 1 Archaeological Assessment (AA). In response to staff interrogatories, Enbridge Gas provided further information about the Stage 1 AA, explaining that the three potentially affected Indigenous communities were invited to attend a field verification survey in support of the Stage 1 AA, and Six Nations participated in the field work. The Stage 1 AA was subsequently prepared and was part of the draft Environmental Report provided to all three Indigenous communities for comment in September 2025. Enbridge Gas received no comments on Stage 1 AA.⁷

⁵ Enbridge Gas Inc. Application and Evidence, Exhibit F, Tab 1, Schedule 1, paragraph 9, pages 3-4. Enbridge Gas Inc. Application and Evidence, Exhibit H, Tab 1, Schedule 1, Attachment 5: Indigenous Consultation Report Summary Tables, pages 1-3.

⁶ Enbridge Gas Inc. Application and Evidence, Exhibit F, Tab 1, Schedule 1, Attachment 1: Port Colborne Reinforcement Project Environmental Report, pages 1-482

⁷ Enbridge Gas Inc. response to interrogatory I-STAFF.1 g) page 9 of 10.

Enbridge Gas further stated that Indigenous communities would be offered the opportunity to participate in the Stage 2 AA field studies and would be informed of the results, and input would be considered in the identification of any appropriate mitigation measures if required as a result of archaeological surveys.

In its application, Enbridge Gas stated that it would continue to actively engage with all identified Indigenous communities in meaningful ongoing dialogue concerning the Project and endeavor to meet with each Indigenous community, provided they are willing, to exchange information and respond to inquiries in a timely manner. Enbridge Gas also stated that it will hear and address concerns as is feasible and seek information on the exercise of, and potential impacts to, Aboriginal or treaty rights, traditional use in the Project area and how any potential Project-related impacts can be mitigated.⁸

In its application, Enbridge Gas stated that it offered capacity funding to Indigenous communities to assist them to meaningfully participate in engagement activities. In response to OEB staff interrogatories, Enbridge Gas noted that it offered funding to MCFN, Six Nations, and HDI. According to the ICR, the Capacity Funding Agreements were executed with MCFN and Six Nations. Enbridge Gas filed the form of capacity funding letter that was executed in favor of each of MCFN and Six Nations with interrogatory responses.⁹

Enbridge Gas and Indigenous communities' consultation was via email and by virtual or in person meetings. Enbridge Gas met virtually or in person at least once with each of the three communities.¹⁰

3.2 Summary of Issues and Concerns – ICR

A summary of concerns and issues raised by each of the three Indigenous communities and Enbridge Gas' actions and commitments to address/accommodate these concerns are outlined below. This summary is based on the information in ICR and Enbridge Gas' responses to interrogatories including the updated ICR.

Haudenosaunee Development Institute (HDI)

⁸ Enbridge Gas Inc. Application, Exhibit H, Tab 1, Schedule 1, paragraph 9, page 3 of 4.

⁹ Enbridge Gas Inc. response to interrogatories I.STAFF-1, h) page 9 of 10, and Attachment 3: Form of Capacity Funding Letter, pages 1-2.

¹⁰ Enbridge Gas Inc. response to interrogatories I.STAFF-1, d); Table 1: In-person and Virtual Meetings, pages 5-7 of 10.

At the outset of the consultation, in May 2025, Enbridge Gas invited HDI to participate in field verification surveys scheduled for May 29, 2025. After further correspondence, HDI indicated to Enbridge Gas that proceeding with the field verification surveys would infringe and impair upon treaty rights and HDI did not consent to it. HDI suggested that the Haudenosaunee Inherent Rights Team would visit the site to ensure that no further work was undertaken.¹¹ Subsequently, on June 3, 2025, HDI stated that it had serious concerns that the Project will impair and infringe upon established section 35 rights and interests.¹²

Enbridge Gas' response to staff interrogatories, which includes a summary of issues and concerns raised by Indigenous communities updated as of February 24, 2026, states that since June 3, 2025, Enbridge Gas has provided significant details about the Project, through the Environmental Report and otherwise, and HDI has not raised these concerns again or provided additional information in this regard.¹³ Enbridge Gas stated that "[w]hile HDI has not recently identified any specific outstanding concerns, Enbridge Gas will continue to work with HDI to develop a standard archaeological monitoring agreement and plans to extend the invite to HDI to participate in subsequent archaeological work."¹⁴

Enbridge Gas' response to staff interrogatories also stated that Enbridge Gas discussed with HDI capacity funding mechanisms, and that Enbridge Gas plans to continue to engage with HDI to finalize a form of a monitoring agreement and any acceptable capacity funding arrangements that may be requested by HDI.¹⁵ Enbridge Gas explained it has specified to HDI that the standard monitoring agreement would be separate and apart from capacity funding related to the review of reports and Project information.¹⁶

¹¹ Enbridge Gas Inc. response to interrogatory I-STAFF.1 Attachment 1: Updated ICR, item 1.8, page 4 of 236.

¹² Enbridge Gas Inc. response to interrogatory I-STAFF.1 Attachment 1: Updated ICR, item 1.10, page 4 of 236.

¹³ Enbridge Gas Inc. response to interrogatory I-STAFF.1, Attachment 2: ICR Summary Tables, page 1 of 6.

¹⁴ Enbridge Gas Inc. response to interrogatory I-STAFF.1, Attachment 2: ICR Summary Tables, page 2 of 6.

¹⁵ Enbridge Gas Inc. response to interrogatories I.STAFF-1, f) page 8 of 10

¹⁶ Enbridge Gas Inc. response to interrogatory I-STAFF.1, Attachment 2, ICR Summary Tables, page 1 of 6.

Six Nations of the Grand River (Six Nations)

The updated ICR provided by Enbridge Gas indicates that Six Nations initially advised that portions of the proposed routes suggested substantive impacts to Aboriginal and treaty rights, specifically harvesting rights. It states that Six Nations explained they would require an environmental impact statement and an arborist report for the preferred route, noting that they required a search of culturally significant animals and plants, and stressing the importance of collecting baseline data. Also, Six Nations asked about how Indigenous perspectives are incorporated into the route selection process, and asked about cumulative effects and nocturnal bird surveys.¹⁷

The updated ICR states that Enbridge Gas clarified the steps it would take to ensure a thorough and inclusive environmental assessment process, explained the route selection process, and advised that the Environmental Report would include environmental impacts and would recommend any additional studies that may be required. Enbridge Gas also confirmed that the list of plants and animals of importance to Six Nations would be included in the assessment, and that it conducts post-construction vegetation monitoring.

The updated ICR goes on to describe two meetings held on October 9, 2025 and November 25, 2025, as well as further email correspondence. It describes Six Nations raising concerns including related to the process with respect to environmental studies and obtaining baseline data, and also with respect to the engagement process itself, including that field monitors cannot consult on behalf of Six Nations. The updated ICR states that at the meeting on October 9, 2025, Enbridge Gas noted that recent changes it had made to its engagement team would make for a more predictable process.

In the updated ICR, Enbridge Gas stated that at a meeting held on October 9, 2025 with MEM, Enbridge Gas and Six Nations, Six Nations raised process improvements it would like to see in relation to obtaining base-line data, environmental studies and consultation. Also, the updated ICR states that at this meeting, Six Nations communicated to the others its expectations around responding to issues identified by Six Nations regarding the Project, and raised challenges with the field monitoring process. Enbridge Gas stated that since this meeting, Six Nations and Enbridge Gas have corresponded on the foregoing so that Enbridge Gas can better understand Six Nations' concerns.

¹⁷ Enbridge Gas Inc. response to interrogatory I-STAFF.1 Attachment 2: ICR Summary Tables, page 4 of 6.

The updated ICR states that at the October 9, 2025 meeting, Six Nations stated that although their initial stance was that they preferred an environmental impact statement, they acknowledged that the environmental assessment process being undertaken for the Project may suffice provided that the steps discussed at the meeting were taken. Also, at the meeting, an archeological assessment was discussed and Enbridge Gas noted that Six Nations would continue to be invited to archeology field studies. In addition, Six Nations' concerns regarding restoration of the Project area and soil contamination were also discussed.

As Six Nations is an intervenor in this proceeding, the position of Six Nations will be summarized in more detail in subsequent sections of this Decision and Order.

Mississaugas of the Credit First Nation (MCFN)

MCFN reviewed the Environmental Report and provided comments by way of a letter to Enbridge Gas. MCFN expressed agreement with the preferred route chosen from an archeological perspective, and indicated that if the first preferred route could not be selected, then the first alternative identified in the Environmental Report would be MCFN's preferred choice.

MCFN's other comments and questions were regarding construction methodology, removal of invasive species, tree removal, Horizontal Directional Drilling (HDD) method near watercourses, soil quality, how the project accounts for impacts of climate change, alteration or relocation of significant natural features, leak detection and mitigation, and cumulative contribution to environmental effects.¹⁸ On December 3, 2025, Enbridge Gas provided a response to MCFN's comments, and MCFN subsequently advised Enbridge Gas they had no further questions or comments at that time.¹⁹

3.3 Six Nations' Intervenor Evidence and Concerns

On March 18, 2026, Six Nations filed an affidavit with attachments sworn by Peter Graham, Consultation Supervisor of the Six Nations of the Grand River. The affidavit indicates that it provides further evidence regarding consultation meetings between Enbridge and Six Nations regarding the Project. The affidavit covers consultation

¹⁸ Enbridge Gas Inc. response to interrogatory I-STAFF.1 Attachment 1: Updated ICR, item 2.26, pages 15-16 of 236. See also response to interrogatory I-STAFF.1, Attachment 2: ICR Summary Tables, page 2 of 6.

¹⁹ Enbridge Gas Inc. response to interrogatory I-STAFF.1 Attachment 1: Updated ICR, item 2.30, page 17 of 236

between Enbridge Gas and Six Nations starting with first notification by Enbridge Gas on April 22, 2025, until November 25, 2025.²⁰

The affidavit indicates that Enbridge Gas first notified Six Nations of the Project by email on April 22, 2025, and that Six Nations responded the next day stating that the Project had substantive impacts to Aboriginal and treaty rights, particularly harvesting rights. The affidavit goes on to describe the initial meeting between Six Nations and Enbridge Gas on June 10, 2025, stating that Six Nations expressed a need for on-the-ground environmental studies for each of the proposed routes. The affidavit indicates that Enbridge Gas chose the preferred route before the June 10, 2025 meeting and appeared to have done so without regard to environmental factors and before environmental studies were concluded, and also without considering Six Nations' perspective. The affidavit also states that Enbridge took the position at this meeting that an environmental impact statement was not required.

The affidavit goes on to describe further concerns about Enbridge Gas' consultation process including Enbridge Gas representing that it did not have notes of the June meeting and producing them later in response to interrogatories in the OEB proceeding; delivering an environmental report with a lack of baseline data; and being largely unresponsive to Six Nations' concerns at a subsequent meeting on October 9, 2025.

The concerns of Six Nations regarding the Project as outlined in the affidavit include lack of baseline data in Enbridge Gas' route selection methodology, cumulative impacts of the Port Colborne Project, and the adequacy of the Environmental Report. Also, the affidavit states that the fact that the Project is proposed to be on an existing road allowance does not ameliorate Six Nations' concerns such as regarding disturbance of potential burial areas, and the wrong of the past construction of the road allowance itself which Enbridge Gas would profit from.

The affidavit also states that Enbridge Gas took the position that there would be no forthcoming responses to the concerns raised by Six Nations in their June 2025 meeting because it was a verbal meeting and the concerns were not received in writing. Six Nations stated they explained to Enbridge Gas they are primarily oral people and that a requirement for them to voice their concerns in writing after it was done orally, was inappropriate.²¹

In its March 18, 2026 response to Six Nations' request for leave to file evidence, Enbridge Gas disputed several aspects of Six Nations' affidavit. Among other things,

²⁰ Six Nations of the Grand River, Evidence, March 18, 2026.

²¹ Six Nations of the Grand River, Evidence, March 18, 2026, paragraphs 38-39, pages 10-11 of 29.

Enbridge Gas submitted that Six Nations was provided multiple opportunities to participate in the environmental assessment process and that the preferred route had not been finalized at the time of the June 10, 2025 meeting, the purpose of which was to seek feedback and identify any concerns that could inform the routing analysis.²²

Subsequently, in correspondence of March 23, 2026, Six Nations stated that Enbridge Gas' March 18, 2026 correspondence mischaracterized their affidavit evidence and was replete with inaccuracies, providing examples of concerns.²³

In response to OEB staff interrogatories on the intervenor evidence (i.e., the affidavit), Six Nations stated that they met with Enbridge Gas on April 21, 2026 and that no progress had been made following the meeting on November 25, 2025. Six Nations maintained that their concerns remained unaddressed by Enbridge Gas. Also, Six Nations stated that in their June 2025 meeting, Enbridge Gas said it would review Metrolinx's vegetation guide to determine where its policies in this area could be improved, but in their April 21, 2026 meeting, said it had not reviewed the guide. In addition, Six Nations referred to "financial accommodation" and stated that in their April 21, 2026 meeting, Enbridge Gas refused to discuss it in good faith and took the position that none is owed.²⁴

On April 29, 2026, Enbridge Gas filed comments in response to Six Nations' responses to OEB Staff interrogatories. Enbridge stated that the consultation has been adequate to discharge the duty to consult. It stated that it believed the April 21, 2026 meeting to be constructive and productive, and that it has made significant efforts to explain and answer questions with respect to project assessments and studies. Also, Enbridge Gas stated that it clearly explained why, in its view, financial accommodation is not warranted for the project, and that it offered capacity funding which Six Nations accepted.²⁵

3.4 OEB Staff Submission – May 6, 2026

In a submission dated May 6, 2026, OEB staff submitted that 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. Staff submitted that the scope and content of the duty

²² Enbridge Gas Inc. Reply to Six Nations of the Grand River (SNGR) Request for Leave to File Evidence, March 18, 2026.

²³ Six Nations of the Grand River (SNGR) response to Enbridge's Letter, dated March 23, 2026.

²⁴ Six Nations Responses to OEB Staff Interrogatories 1 and 2, April 22, 2026.

²⁵ Enbridge Gas Inc. correspondence, Comments on Interrogatory Responses of Six Nations and OEB Staff Abeyance Recommendation, April 29, 2026, page 1 of 2.

continues to evolve within Canadian jurisprudence, and that 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. Staff submitted further 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 as been met.

OEB staff described the process set out in the Environmental Guidelines for Indigenous consultation and observed that Enbridge Gas had generally followed the Environmental Guidelines and had provided an update to the ICR up to February 24, 2026. OEB staff submitted that the updates reflect that Enbridge Gas' consultation has been taking place and has been ongoing since April 2025. OEB Staff noted that Enbridge Gas shared the Environmental Report for the Project with the Indigenous communities in September 2025.²⁶ Also, the updated ICR notes that Six Nations and HDI still have outstanding concerns and that Enbridge Gas has committed to continue consultation on the outstanding issues raised by Six Nations and HDI. OEB staff submitted that Enbridge Gas and Six Nations disagree regarding the productivity of the consultation. OEB staff noted that Six Nations believes their concerns have not been addressed by Enbridge Gas while Enbridge Gas believes it has sufficiently discharged the duty to consult.²⁷ OEB staff submitted that further time may be needed for consultation.

OEB staff stated that, if the OEB determines that Crown's duty to consult has been adequately discharged and the OEB grants an order under subsection 95(2) of the OEB Act the exemption should be granted subject to OEB staff proposed conditions of approval.

3.5 Submissions by Six Nations - May 6, 2026

Six Nations filed submissions on May 6, 2026 which reiterated concerns with the consultation process, progress and outcomes, relying on the affidavit evidence previously filed.²⁸ Six Nations maintained that:

²⁶ Enbridge Gas Inc. Application, Exhibit F, Tab 1, Schedule 1, page 3 of 6, paragraph 9.

²⁷ OEB Staff Submissions, May 6, 2026, page 9 of 10.

²⁸ Written Submissions of the Intervenor, Six Nations of the Grand River, May 6, 2026.

- Enbridge Gas refused to conduct on-the ground environmental surveys (baseline studies) which were, in Six Nations' view, a prerequisite for Six Nations to comment on the proposed route due to the importance of preserving the natural environment within Six Nations' treaty territory, which is essential to the exercise of Six Nations' members' Aboriginal and treaty rights, especially, in this case, harvesting rights and the economic rights that flow from them.
- Enbridge Gas did not consult with the Six Nations when selecting the preliminary preferred route among the alternatives, and chose the route based on engineering considerations and without regard for environmental impacts.
- Enbridge Gas followed only basic regulatory requirements without considering Six Nations' requirements, specifically an environmental impact statement.
- Enbridge Gas refused to discuss financial accommodation, or any accommodation.
- Enbridge Gas did not engage in good faith and constructive negotiations and discussions with Six Nations. Examples given by Six Nations included the ones already described above in relation to the affidavit evidence. Also, Six Nations submitted that Enbridge Gas attempted to consult with Six Nations through Six Nations' appointed field monitors despite being aware that only Six Nations's consultation and Accommodation Process team was permitted to do so. In addition, Six Nations submitted that Enbridge Gas commenced its application to the OEB without telling Six Nations, two weeks before another scheduled meeting between the parties where a new consultation process was to be discussed.

Six Nations submitted that the OEB cannot approve the application unless the duty to consult has been discharged, relying on the Supreme Court of Canada decisions²⁹ as well as the OEB Act at section 95(2) and the applicable regulatory provision, and the OEB's Environmental Guidelines.

Six Nations submitted further that in this case, a medium to high level of consultation is owed to Six Nations. Relying on the Supreme Court of Canada's decision in *Haida Nation v. British Columbia (Minister of Forests) (Haida)*,³⁰ Six Nations submitted that one of the factors determining where on the spectrum the duty lies is the strength of the Indigenous community's claim to its territory and rights, and where a strong claim exists,

²⁹ *Chippewas of the Thames First Nation v. Enbridge Pipelines Inc.*, 2017 SCC 41; *Chippewas of the Thames, Clyde River (Hamlet) v. Petroleum Geo-Services Inc. [Clyde River]*, 2017 SCC 40.

³⁰ *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73.

the duty requires significant participation by the Indigenous community. Also, Six Nations submitted that the content of the duty is informed by the applicable treaties.

Six Nations submitted that the Project is located in Nanfan treaty territory, which guarantees Six Nations members harvesting rights, as well as the right to pursue their economic livelihood through natural resources in its territory. Relying on the Supreme Court of Canada's decision in *Chippewas of the Thames, Clyde River (Hamlet) v. Petroleum Geo-Services Inc. (Clyde River)*, Six Nations submitted that the Supreme Court of Canada has required deep consultation where treaties guarantee harvesting and economic rights and a project significantly threatens those rights.

Six Nations submitted that the Project represents a significant and disruptive incursion on Six Nations' land and would significantly impact Six Nations' rights and territory with no benefit to Six Nations and pose environmental risks. Six Nations further submitted that consultation on the medium-to-high end is required due to significant cumulative effects of the Project that must be considered in context with other historical uses of Six Nations' land, including the other pipelines in Six Nations territory placed without permission or consultation that Enbridge has profited from.

Six Nations submitted that Enbridge was and is required to meaningfully consider Six Nations' concerns and attempt to minimize adverse impacts on Six Nations' rights, and did not do so, and its consultation failures have set back the parties' long-term relationship beyond the Project.

Also, Six Nations submitted that Enbridge has refused to discuss financial accommodation or any accommodation. Six Nations submitted that it is now increasingly acknowledged across natural resource sectors that financial accommodation is appropriate and required where a resource is being extracted from or runs across Indigenous territory, and Enbridge itself has provided financial accommodation for other projects. Six Nations submitted that in 2026, financial accommodation is now understood as a necessary part of the overall duty to consult and accommodate.

Six Nations requested that the OEB dismiss Enbridge's application and require it to engage in further consultation, including negotiations on accommodation, with Six Nations.³¹

³¹ Written Submissions of the Intervenor, Six Nations of the Grand River, May 6, 2026, Part IV-Order Requested, page 23 of 23, paragraph 74.

3.6 Reply Submissions by Enbridge Gas – May 19, 2026

Enbridge Gas filed written reply submissions on May 19, 2026. Enbridge Gas submitted that the duty to consult in respect of the Project has been adequately discharged through the consultation carried out by Enbridge Gas and the regulatory process itself.

Enbridge Gas submitted that its submission is grounded in the evidentiary record and the limited scope and nature of the Project, stating that it involves constructing 2.65 kilometres of nominal pipe size 6-inch steel distribution pipeline within an existing, disturbed municipal right-of-way with appropriate mitigation measures and shaped by Indigenous community input to ensure negligible residual impacts.

Enbridge Gas highlighted the economic importance of the Project to supply natural gas to the proposed Asahi Kasei Battery Canada facility in Port Colborne, stating that the Project is expected to deliver significant economic benefits including the expectation of the creation of more than 300 new direct jobs as well as benefits for the surrounding region. Enbridge Gas noted that Investment Ontario (through a letter of comment in this proceeding) has advised that further delays for the Project would have significant and detrimental financial and implementation impact.

While acknowledging that the sole issue for the OEB's determination is whether the Crown's duty to consult has been adequately discharged, Enbridge Gas stated that it is imperative that the OEB take notice of the need and government support for the Project in accordance with section 2 of the OEB Act which requires the OEB to be guided by objectives including facilitating rational expansion of transmission and distribution systems and the maintenance of a financially viable gas industry, as well as section 9 of MEM's Directive to the OEB dated June 11, 2025 (Directive), pursuant to the Government of Ontario's Integrated Energy Plan, which states that the OEB shall consider the government's Natural Gas Policy statement to ensure that the OEB "appropriately considers the future role of natural gas in Ontario's economy."

Enbridge Gas submitted that the OEB has consistently assessed the adequacy of Indigenous consultation by examining whether affected Indigenous communities were provided with timely and sufficient information and had a meaningful opportunity to raise concerns related to potential impacts on Aboriginal or treaty rights, and whether any such concerns were considered in a manner proportionate to the nature and location of the project. Enbridge Gas further submitted that it has met or exceeded each of these requirements.

Enbridge Gas submitted that meaningful consultation requires good faith engagement by both the proponent and affected Indigenous communities. Enbridge Gas submitted that for itself, this includes providing timely notice and sufficient Project information and consulting with Indigenous communities regarding potential impacts, and for Indigenous communities, this includes identifying concerns early and with reasonable specificity. Enbridge Gas submitted that for the Project, that it consulted with three Indigenous communities and to the extent concerns were raised, they were addressed through further information-sharing, dialogue and considerations for the Project's design. Enbridge Gas stated that to its knowledge, no Project-specific concerns from Indigenous communities remain outstanding other than those articulated by Six Nations.

Enbridge Gas noted that the outstanding concerns of Six Nations relate to scope and timing of environmental studies, asserted cumulative effects, generalized impacts on harvesting and absence of financial accommodation. Enbridge Gas submitted that while Six Nations asserts that the Project may affect Aboriginal or treaty rights, Six Nations' concerns are expressed at a general level, and in any event, Enbridge Gas has appropriately addressed all of the concerns.

Enbridge Gas submitted that the consultation record does not indicate that Aboriginal or treaty rights, including harvesting rights, are exercised within the Project footprint, nor do Six Nations' submissions identify such practices occurring in that location or explain how the Project would practically interfere with the exercise of any Aboriginal or treaty rights. Enbridge Gas attributed this to the limited potential for rights impacts arising from the Project as proposed.

Enbridge Gas submitted further that even if there is the potential for the practice of Aboriginal or treaty rights in the area, any impact would be negligible given the nature of the Project and planned mitigation measures. Furthermore, Enbridge Gas submitted that it responded to Six Nations' concerns through information-sharing, explanation of regulatory requirements, commitments regarding Project design, and the incorporation of appropriate avoidance and mitigation measures, and the duty to consult does not require all concerns be resolved to the satisfaction of Indigenous communities where the concerns have been meaningfully considered and addressed through a proportionate consultation process.

Enbridge Gas submitted that no additional studies or financial accommodation are required as there are no demonstrated Project specific impacts on Aboriginal or treaty rights on the record following meaningful consultation. Enbridge Gas also submitted that while Six Nations has been critical of specific interactions between Enbridge Gas and Six Nations, the question is whether the consultation as a whole is reasonable.

Enbridge Gas submitted that it implemented an expansive consultation program involving Project notification to the three Indigenous communities identified by MEM as being potentially impacted; sharing information, including the Environmental Report; inviting the communities to share comments and information, including about any Indigenous rights that could be impacted; and responding to any expressed concerns and explaining how they would be addressed through mitigation or otherwise, moving forward. Enbridge Gas also submitted that the OEB process for the application provided all three Indigenous communities a further opportunity to share comments and concerns about the Project and gain an understanding of how concerns would be addressed.

Regarding Six Nations' position that Enbridge Gas consultation was a "box-checking exercise", Enbridge Gas submitted that its consultation was comprehensive, ongoing, iterative, and responsive and included emails, virtual meetings, in-person meetings and site visits. Enbridge Gas submitted that it has met—and in key respects exceeded—the requirements for consultation imposed by the OEB and MEM, including, for instance, its iterative enhanced Project Description process which involves the issuance of preliminary natural heritage and cultural resource documentation while inviting Indigenous communities to provide input and share Indigenous traditional knowledge to inform routing and assessment. Enbridge Gas stated that Indigenous community input was received and incorporated into additional studies related to vegetation communities, breeding birds, and bats, and the resulting updates to the Project Description were re-shared with communities. Also, Enbridge Gas noted that Indigenous communities were invited to participate in fieldwork and monitoring.

Enbridge Gas reiterated its position that the April 21, 2026 meeting with Six Nations was constructive and productive, noting that Enbridge Gas and Stantec Consulting Ltd., a company retained to undertake a route evaluation and environmental and socio-economic impact study, provided a further overview of the project and presented on mitigation measures to be implemented including wildlife monitoring, nest sweeps, daily surveys, and turtle-specific mitigation such as fencing. Enbridge Gas stated that at this meeting, Six Nations reiterated the position that Six Nations should be financially accommodated and did not identify further Project-specific concerns.

Enbridge Gas submitted that considering the Project's scope and scale, there is no basis to assume that accommodation is required. Nonetheless, Enbridge Gas submitted that it took Six Nations' concerns seriously and did not rule out any form of accommodation at the outset of consultation, but rather it was only when it gained a full understanding of Six Nations' concerns that it explained how the issues Six Nations were concerned about were accounted for and addressed through various mitigation measures and studies that Enbridge Gas has undertaken or committed to implement.

Regarding Six Nations' submissions of broader cumulative effects and impacts associated with Enbridge Gas' wider operations, Enbridge Gas stated that the duty to consult and accommodate is confined to prospective, project-specific adverse impacts flowing from the Crown decision under consideration.

Enbridge Gas also submitted that it disagrees with OEB staff's submission that further time may be needed for consultation and submitted that it remains committed to continuing to engage with Six Nations and other Indigenous communities throughout the lifecycle of the Project and providing updates on construction and restoration phases.

3.7 Letter of Opinion: Ministry of Energy and Mines, May 22, 2026

The Letter of Opinion from MEM, dated May 22, 2026, stated that further to the Environmental Guidelines, MEM has completed its review of the consultation with Indigenous communities undertaken by Enbridge Gas for the Project.³²

The Letter of Opinion stated that MEM reviewed the information provided by Enbridge Gas to MEM and the materials filed with the OEB in respect of the application. Also, MEM communicated directly with Indigenous communities to further understand any potential impacts to established or asserted Aboriginal and/or treaty rights, and community feedback about satisfaction with Enbridge's responses to concerns or proposed mitigation where appropriate. The Letter of Opinion concluded that in Ministry's opinion the procedural aspects of consultation delegated to and undertaken by Enbridge Gas for the Project are satisfactory.³³

MEM noted that it expects that Enbridge Gas will continue its consultation and engagement activities with Indigenous communities throughout the life of the Project. MEM also expects that Enbridge Gas will notify it if any rights-based concerns or issues are raised by communities during its consultation or engagement with communities.

³² Enbridge Gas Inc. Updated Application, Exhibit H 1, Tab 1, Schedule 1, Attachment 3, Ministry of Energy and Mines, Letter of Opinion, dated May 22, 2026.

³³ Enbridge Gas Inc. Updated Application, Exhibit H 1, Tab 1, Schedule 1, Attachment 3, Ministry of Energy and Mines, Letter of Opinion, dated May 22, 2026 page 2 of 2.

3.8 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.

Leave is only required under section 90(1)(b) of the OEB Act, the total estimated cost of the Project is approximately \$9.1 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 primary issue before the OEB is whether the Crown's duty to consult, has been adequately discharged with respect to the proposed project to bring natural gas service to an industrial customer (Asahi Kasei Battery Canada) in the city of Port Colborne, Ontario.

The OEB finds that the Crown's duty to consult has been adequately discharged.

This determination was made based upon the entire record of this proceeding including the following:

- The application filed by Enbridge Gas, including the record of consultation activities in the Indigenous Consultation Report (ICR) for the three Indigenous communities identified by MEM as being potentially affected by the Project.
- Responses to interrogatories filed by the parties including updates to the ICR filed by Enbridge Gas.
- The evidence and submissions of Six Nations.
- The submissions of OEB staff.
- The submissions of Enbridge Gas.
- The Letter of Opinion from MEM dated May 22, 2026.

The OEB recognizes and has carefully considered the concerns expressed by Six Nations, an intervenor in this proceeding, regarding approval of the Project. The concerns have been reviewed in detail and are addressed in this decision with specific consideration of the matters referenced in the Six Nations' May 6, 2026, submission.

The OEB has also reviewed and considered the comments and input provided by Haudenosaunee Confederacy Chiefs Council (HCCC) through the Haudenosaunee Development Institute, and the Mississaugas of the Credit First Nation, through the consultation process. While neither community sought intervenor status, their views as recorded in the ICR have been considered and are addressed in this decision.

Reasons for the decision:

The Supreme Court of Canada summarized the duty to consult (and where required, accommodate) in *Clyde River*:

The duty to consult is triggered when the Crown has actual or constructive knowledge of a potential Aboriginal claim or Aboriginal or treaty rights that might be adversely affected by Crown conduct (*Haida*, at para. 35; *Carrier Sekani*, at para. 31). Crown conduct which would trigger the duty is not restricted to the exercise by or on behalf of the Crown of statutory powers or of the royal prerogative, nor is it limited to decisions that have an immediate impact on lands and resources. The concern is for adverse impacts, however made, upon Aboriginal and treaty rights and, indeed, a goal of consultation is to identify, minimize and address adverse impacts where possible (*Carrier Sekani*, at paras. 45-46).³⁴

In this case, the duty to consult is triggered. Below, the OEB first addresses the issue raised by Six Nations regarding the degree of consultation required, and then addresses whether the duty to consult was adequately discharged.

Depth of Consultation Issue Raised by Six Nations

In its Delegation Letter, MEM stated that it had determined that the level of consultation required for the Project is moderate.³⁵ Six Nations argued before the OEB that a medium to high level of consultation is required, submitting that this is due to Six Nations' rights under the Nanfan Treaty and the significant impacts of the Project on those rights.³⁶

³⁴ *Clyde River*, 2017 SCC 40 at para 25.

³⁵ Enbridge Gas Inc., updated application filed May 22, 2026, Exhibit H, Tab 1, Schedule 1, Attachment 2.

³⁶ Six Nations submission filed May 6, 2026, Pages 17-19 of 23, paragraphs 56-60.

As a general matter, the scope of the consultation required depends on the strength of the Aboriginal claim, and the seriousness of the potential impact on the right.³⁷ The OEB agrees with MEM's assessment that the depth of consultation required in this case is moderate. While the OEB acknowledges and has carefully considered Six Nations' submissions, in the OEB's view, the seriousness of any potential impacts on Aboriginal or treaty rights is not at a level of significance that would require a higher than moderate level of consultation.

The Project involves the construction of a 2.65 km, 6-inch pipeline primarily within an existing municipal right-of-way. The proposed pipeline will connect to an existing pipeline at the intersection of 3rd Concession Road and Snider Road in the City of Port Colborne. From there, it will run directly along the Snider Road municipal right-of-way to the new industrial customer's site, just off Snider Road. A new customer station will be constructed at the customer's location.

The OEB places importance on the location of the Project being in an existing right-of-way.

- The Project's footprint is narrow and confined to a previously disturbed corridor.³⁸
- The route selected makes use of an existing municipal right-of-way, consistent with the OEB's Environmental Guidelines objective of minimizing environmental impacts and new disturbance.³⁹
- The selection of the most direct and least intrusive route reflects an effort to avoid impacts where feasible.

These factors inform the seriousness of potential impacts on rights, and therefore the level of consultation required, which MEM determined as moderate. The OEB agrees with this assessment, and as such it does not support a finding that deep consultation at the higher end of the spectrum is required, as requested by Six Nations.

³⁷ *Chippewas of the Thames First Nation v. Enbridge Pipelines Inc.*, 2017 SCC 41 at para 38; *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73 at paras 39 and 43-45.

³⁸ Enbridge Gas Inc., updated application filed May 22, 2026, Route Map, Exhibit A, Tab 2, Attachment 1.

³⁹ Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Projects and Facilities in Ontario, 8th Edition 2023, Chapter 2: General Planning Process and Principles, Planning Process in Selecting Preferred Route or Site, page 14 of 67, item d).

However, the OEB also notes that its process has provided Six Nations with significant opportunities for what could be considered “deep” consultation. As required by the OEB’s Environmental Guidelines and MEM’s Letter of Direction, Enbridge Gas commenced the procedural elements of consultation in April 2025, long before the application was filed with the OEB. Enbridge Gas was required to prepare the ICR, which was filed with the application. Direct notice of the OEB’s proceeding, and an opportunity to intervene, was provided to all potentially impacted Indigenous communities. Six Nations chose to intervene and was permitted to ask questions of Enbridge Gas, file their own evidence, and make final submissions to the decision maker (i.e. the OEB). Six Nations has been granted eligibility for an award of costs to fund their participation, and additional capacity funding was provided directly by Enbridge. Further, the OEB is providing detailed reasons for its findings. In the OEB’s view, the level of consultation in this proceeding has been significant, and meets or exceeds the requirements established by the courts.

Assessment of the Consultation Process

The OEB finds that the consultation activities undertaken by Enbridge Gas were consistent with the OEB Environmental Guidelines and have been demonstrated in a structured and good-faith consultation record.

The record demonstrates that Enbridge Gas:

- Provided early notice (April 22, 2025)⁴⁰ and continuous information thereafter.
- Circulated key materials, including:
 - The Project Description Report and mapping⁴¹
 - Notice of Preferred Route (July 30, 2025)⁴²
 - Draft Environmental Report requesting comments (September 10, 2025)⁴³

⁴⁰ Enbridge Gas Inc., Updated Application, May 22, 2026, Exhibit H, Tab 1, Schedule 1, Attachment 6, Indigenous Consultation Report, page 1 of 145, Item 1.0, attachment 1.0; page 7 of 145, Item 2.0, attachment 2.0; page 12 of 145, Item 3.0, attachment 3.0.

⁴¹ Enbridge Gas Inc., Updated Application, May 22, 2026, Exhibit H, Tab 1, Schedule 1, Attachment 6, Indigenous Consultation Report, page 4 of 145, Item 1.9, attachment 1.9; page 11 of 145, Item 2.14, attachment 2.14; page 17 of 145, Item 3.15, attachment 3.15. Project Description Report is included in Appendix B.10 of the Environmental Report, Exhibit F, Tab 1, Schedule 1, Attachment 1, page 311 of 482.

⁴² Enbridge Gas Inc., Updated Application, May 22, 2026, Exhibit H, Tab 1, Schedule 1, Attachment 6, Indigenous Consultation Report, page 5 of 145, Item 1.13, attachment 1.13; page 11 of 145, Item 2.18, attachment 2.18; page 20 of 145, Item 3.21, attachment 3.21

- Stage 1 Archaeological Assessment as part of the draft Environmental Report⁴⁴
 - Offered capacity funding (accepted by Six Nations and the Mississaugas of the Credit First Nation).⁴⁵
 - Held meetings, both virtual and in-person, and maintained ongoing correspondence.⁴⁶
 - Provided opportunities to review and comment on the draft Environmental Report.⁴⁷

The OEB further notes that consultation was ongoing and extended over many months, continuing into 2026.

Consideration of Six Nations' Concerns

Six Nations intervened directly in the OEB proceeding considering this Project.

The OEB has carefully considered the evidence, Enbridge Gas's consultation record, the submissions of Six Nations, including the affidavit evidence and subsequent submissions.

The OEB finds the issues raised by Six Nations regarding the Project were adequately addressed.

The main issues addressed by Six Nations, as expressed in their final submission filed May 6, 2026, are addressed below:

⁴³ Enbridge Gas Inc., Updated Application, May 22, 2026, Exhibit H, Tab 1, Schedule 1, Attachment 6, Indigenous Consultation Report, page 6 of 145, Item 1.17, attachment 1.17; page 12 of 145, Item 2.19, attachment 2.19; page 20 of 145, Item 3.24, attachment 3.24

⁴⁴ Enbridge Gas Inc. response to interrogatory I-STAFF.1 g) Application and Evidence. See also the Stage 1 AA in the Final Environmental Report, Enbridge Gas Inc., Updated Application, May 22, 2026, Exhibit F, Tab 1, Schedule 1, Attachment 1, page 349 of 482.

⁴⁵ Enbridge Gas Inc. response to I.STAFF-1 h) page 9 of 10 and Attachment 3.

⁴⁶ Enbridge Gas Inc. response to I.STAFF-1 d) page 4; Attachment 1: Updated Indigenous Consultation Report as of February 24, 2026, with documentation, pages 1-236 and Attachment 2: ICR Summary Table, pages 1-6.

⁴⁷ Enbridge Gas Inc., Updated Application, May 22, 2026, Exhibit H, Tab 1, Schedule 1, Attachment 5, Indigenous Consultation Report: Summary Tables, page 1 of 3; page 2 of 3, page 3 of 3.

1) Failure to conduct on-the-ground baselines studies before route selection:

Six Nations submit that Enbridge Gas was required to complete baseline environmental studies for all potential routes prior to identifying a preferred route.

The OEB respectfully disagrees for the following reasons:

- The OEB's Environmental Guidelines do not require full baseline studies on all alternatives prior to preliminary route selection. They contemplate a process whereby:
 - Preliminary screening identifies feasible routes.
 - Further study refines and confirms the preferred routing alignment.
- The evidence shows that Enbridge Gas:
 - Shared the preliminary environmental information early in the process.
 - Invited participation in field verification surveys (May 2025).
 - Conducted additional field investigations and studies following initial engagement which included opportunities for participation from the three Indigenous communities identified as being potentially affected by the Project.

The selection of a preferred route at an early stage is not determinative or final, but rather part of a planning process subject to refinement. Importantly, the evidentiary record demonstrates that:

- Six Nations was invited to inform the process prior to finalization.
- The Environmental Report and subsequent studies incorporated further analysis and mitigation.⁴⁸

The OEB acknowledges that Six Nations called for a more comprehensive examination of all potential routes for providing natural gas services to the industrial customer.⁴⁹

The OEB finds that the approach taken by Enbridge Gas is consistent with regulatory and municipal right-of-way best practices and the approach does not constitute a failure to consult. Municipal rights-of-way provide a shared, existing footprint for infrastructure, allowing utilities to deliver essential services without disturbing new land.

⁴⁸ Enbridge Gas Inc. response to interrogatories, I.SNGR-1, 6d, pages 10-11 of 16. Application and Evidence.

⁴⁹ Six Nations submission filed May 6, 2028, pages 6-7 of 23, paragraphs 17 and 19.

The OEB notes that preserving the natural environment is a central priority for Six Nations⁵⁰ and observes that Enbridge Gas's proposed use of the existing Snider Road municipal right-of-way would appear to satisfy this objective.

2) Selection of the Preferred Route without input from Six Nations:

Six Nations expressed the view that the Preferred Route was selected without sufficient consideration for their concerns.

The OEB is satisfied that:

- Input was appropriately sought and opportunities for comment were provided.
- The process did not by any means exclude Six Nations, even if it did not align with Six Nations' preferred sequencing.

Six Nations asserted that the preferred route was selected without their input and primarily was based upon Enbridge Gas's engineering requirements.

The OEB acknowledges that Six Nations sought a greater role to provide input to the route selection process.

However, the evidence demonstrates that:

- Consultation began prior to final route determination.
- Enbridge Gas:
 - Circulated route information in April-May 2025⁵¹
 - Held a meeting with Six Nations in June 2025 to solicit concerns that could inform routing.⁵²
- The final route reflects:
 - Environmental considerations.
 - Use of a disturbed municipal corridor, minimizing incremental impacts.

The OEB further acknowledges that consultation plays a role in enhancing the route selection process, including by ensuring that any rights-related or environmental concerns that are raised are taken into consideration.

⁵⁰ Affidavit of Peter Graham dated March 18, 2026, page 3 of 29, paragraph 9.

⁵¹ Enbridge Gas Inc., Updated Application, May 22, 2026, Exhibit F, Tab 1, Schedule 1, Attachment 1: Port Colborne Reinforcement Project Environmental Report, 2.3 Communication Methods, pages 23-24 of 482.

⁵² Ibid at 2.5.1 Indigenous Input, page 27 of 482.

At the same time, the OEB notes that final accountability for evaluating routing alternatives, balancing environmental, technical, economic and construction considerations and selecting the preferred route rests with the applicant, Enbridge Gas. While input from potentially affected Indigenous communities is an important component of that process, it does not displace the applicant's obligation to determine a route that is feasible, safe, environmentally preferred and consistent with regulatory requirements.

3) Reliance solely on Baseline Regulatory Requirements:

Six Nations submitted that Enbridge Gas adhered to only the minimum regulatory requirements and did not conduct a full environmental impact statement in accordance with Six Nations' requirements.⁵³

The OEB finds that Enbridge Gas appropriately adhered to the regulatory requirements.

In their submissions, Six Nations placed significant emphasis on their concern that baseline environmental data was required for each of the proposed alternative routes as a prerequisite to substantive consultation. Six Nations stressed that the need for such a study was on environmental grounds and the importance of preserving the natural environment on Six Nations treaty territory.⁵⁴

The OEB recognizes the importance of potentially affected Indigenous communities' perspectives in environmental assessments.

However, the OEB notes:

- The Project followed the OEB Environmental Guidelines, which establish a comprehensive framework.
- The Environmental Report included:
 - A natural heritage assessment.
 - An archaeological assessment.
 - Mitigation measures and monitoring commitments.
- Enbridge Gas was responsive to concerns raised by Six Nations, as outlined in its submissions and in the ICR.⁵⁵

⁵³ Six Nations submission filed May 6, 2026, page 20 of 23, paragraphs 62-63. See also copy of Six Nations Consultation and Accommodation Policy, Enbridge Gas Inc. Updated Application, May 22, 2026, Exhibit H, Schedule 1, Attachment 6, line item attachment 3.28.

⁵⁴ Six Nations submission filed May 6, 2026, page 6 of 23, paragraphs 16-17.

⁵⁵ Enbridge Gas Inc. Reply Submissions, May 19, 2026, pages 10-11 of 18, paragraphs 28-30, and Appendix A pages 1-6; Indigenous Consultation Report, Updated to Feb 24, 2026, Exhibit I.STAFF-1, Attachment 1. See also Attachment 2: Indigenous Consultation Report Summary Tables, pages 4-5 of 6.

- It committed to including species of cultural importance identified by Six Nations.
- It undertook additional studies (vegetation, birds, bats) in response to Six Nations' input.
- It provided for post-construction monitoring.

The OEB further notes that:

- Consultation requires consideration of concerns, not necessarily adoption of all requested processes.⁵⁶
- The record indicates that the concerns raised by Six Nations influenced the study scope and mitigation measures, even though a full environmental impact statement was not undertaken.

The OEB finds that the reasons why Enbridge Gas focused on the Snider Road municipal right-of-way route were well explained, despite not being to the satisfaction of Six Nations.

4) Refusal to Provide Accommodation (including Financial Accommodation):

Six Nations expressed concern that Enbridge Gas refused to discuss accommodation, including financial accommodation.

The OEB finds the absence of financial accommodation, in these circumstances, does not indicate a failure to discharge the duty to consult.

Enbridge Gas submitted that it explained its position that financial accommodation is not warranted for this Project because anticipated impacts will be avoided or mitigated through the measures proposed for the Project.⁵⁷

The OEB notes that the duty to consult is context-dependent and linked to the demonstrated adverse impacts on asserted or established rights.⁵⁸ The OEB notes that in this proceeding, the Project is limited in scale and located in a disturbed municipal right-of-way corridor. The record does not demonstrate specific, project-level impacts on harvesting or other rights within the Project footprint.

⁵⁶ See *Chippewas of the Thames First Nation v. Enbridge Pipelines Inc.*, 2017 SCC 41, at paras 46-50.

⁵⁷ Enbridge Gas Inc. Reply Submission filed May 19, 2026, page 14 of 26, paragraph 39.

⁵⁸ See *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73 at para 39.

Moreover, the duty to consult does not require financial compensation.⁵⁹ A goal of consultation is to identify, minimize and address adverse impacts where possible.⁶⁰ However, the duty to consult does not guarantee any particular form of compensation, or indeed any particular outcome at all.

5) Lack of Good Faith Engagement:

Six Nations raised concerns regarding the way that Enbridge Gas engaged with them in a variety of respects including:

- Handling of meeting records.
- Communication practices.
- Responsiveness to concerns.
- Filing of the application with the OEB without Six Nations' knowledge.

The OEB acknowledges the concerns expressed by Six Nations in this regard. Nonetheless, the OEB finds that Enbridge Gas has adequately discharged the duty to consult in its engagement with Six Nations.

The record of consultation shows:

- Sustained engagement over an extended period.
- Multiple meetings and correspondence.
- Ongoing opportunities for input.
- Continued engagement post-application.
- Efforts to clarify process and respond to concerns.

The OEB notes that communication between Six Nations and Enbridge Gas appeared and continues to appear to be respectful and cordial, despite disagreements over how the communications unfolded in certain respects.

The OEB finds that the consultation, when viewed in its entirety, was conducted in good faith.

⁵⁹ *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73 at paras 43-50.

⁶⁰ *Clyde River*, 2017 SCC 40 at para 25.

6) Municipal Right-of-way and historical concerns including cumulative impacts:

Six Nations expressed concern that use of a municipal right-of-way did not alleviate the impacts of the Project, including historical grievances Six Nations has with Enbridge Gas activities in the overall area.⁶¹

The OEB acknowledges this concern, but notes that the duty to consult is not meant to address historic wrongs, as the duty is confined to the adverse impacts of the current government conduct or decision.⁶² As stated previously in this Decision and Order, the record does not demonstrate specific, project-level impacts on harvesting or other rights within the Project footprint.

Also, the OEB notes further that the use of an existing utility corridor (municipal right-of-way) is a recognized method of minimizing incremental environmental and land disturbance. It is consistent with the Environmental Guidelines' emphasis on the least intrusive routing.

Consideration of consultation with the Haudenosaunee Confederacy Chiefs Council, represented by the Haudenosaunee Development Institute

The Haudenosaunee Development Institute did not intervene in this Proceeding, however there is a record of its comments and input as provided in the ICR by Enbridge Gas.

The Haudenosaunee Development Institute raised concerns grounded primarily in the protection of Haudenosaunee treaty and Aboriginal rights. It indicated that the Project has the potential to infringe or impair their Section 35 rights and emphasized the consultation must meaningfully address these rights impacts rather than following procedural steps.

A key issue identified by the Haudenosaunee Development Institute was the absence of a monitoring agreement prior to the commencement of fieldwork, including environmental and archaeological activities. It objected to these activities proceeding without such an agreement in place and maintained that it could not provide consent or support for the project under those conditions.

⁶¹ Affidavit of Peter Graham, March 18, 2026, Page 10 of 29, paragraph 35

⁶² *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, 2010 SCC 43 (CanLII) at paras 45-49; *Chippewas of the Thames First Nation v. Enbridge Pipelines Inc.*, 2017 SCC 41 at para 41.

In addition, Haudenosaunee Development Institute expressed concerns regarding the adequacy of the structure of the consultation process, indicating that engagement to date had been, in its view, insufficient.

Its concerns also extend to potential impacts on culturally significant lands, ecological features and archaeological matters, all of which it views through the lens of rights protection.

The Haudenosaunee Development Institute maintains these issues remain unresolved, including the need for monitoring agreements, further engagement, and clearer accommodation of rights impacts.

Assessment of Haudenosaunee Development Institute concerns:

Consultation process and engagement:

The record indicates that Enbridge Gas carried out multiple forms of engagement with the Haudenosaunee Development Institute, including notices, provision of project materials, invitations to participate in field work, and the offer of capacity funding.

Enbridge Gas has demonstrated a continued willingness to engage, including responding to correspondence, offering opportunities for participation, and committing to ongoing consultation throughout the Project lifecycle.

The evidentiary record indicates that:

- The Haudenosaunee Development Institute was identified and notified early in the process.
- There were meaningful opportunities to participate, including meetings, correspondence, and invitations to provide input at key stages.
- Enbridge Gas shared relevant information in a timely manner to support informed engagement.
- Enbridge Gas considered and responded to concerns raised, and where appropriate, adapted measures in response.

The OEB notes that the Haudenosaunee Development Institute requested that engagement be conducted in accordance with its formalized protocols and recognition of governance structures over the area where the Project takes place.

The OEB finds, when viewed as a whole, the consultation was conducted in a manner that was in good faith and proportionate to the potential for adverse impacts on asserted or established rights. Further, the evidence does not show impacts to Aboriginal or treaty rights. In such circumstances, the absence of a formalized consultation agreement or protocol does not, in and of itself, establish a failure to discharge the duty to consult.

Monitoring Agreements and Fieldwork:

A key issue raised by Haudenosaunee Development Institute relates to the absence of a monitoring agreement prior to the start of environmental and archaeological fieldwork. It objected to field activities without such an agreement and maintained that is a necessary component of respecting their rights.

The OEB notes that Enbridge Gas offered opportunities for Indigenous community participation in field activities, proposed monitoring and field liaison arrangements, and offered capacity funding to support such involvement.

These measures demonstrate that Enbridge Gas recognized the importance of Indigenous community participation in monitoring activities and took steps to facilitate their involvement.

The OEB finds that a lack of a finalized monitoring agreement does not amount to a failure of consultation.

The duty to consult is a process and proportionate to the Project's impacts. It does not require that such an agreement be concluded before consultation can be found to be adequate.

Potential Impacts on Aboriginal and Treaty Rights:

Haudenosaunee Development Institute raised concerns that the Project may infringe on Haudenosaunee Section 35 treaty rights, including impacts on lands, cultural resources, and the exercise of traditional practices.

Enbridge Gas responded to these concerns by providing project information, inclusion of Indigenous input into the environmental assessment process, committed to mitigation measures where appropriate, and ongoing consultation throughout. Enbridge Gas also offered capacity funding. The OEB notes that the project is limited in scale and located within an existing, disturbed municipal right-of-way, thereby minimizing incremental impacts on the land.

The OEB however, acknowledges that Haudenosaunee Development Institute's concerns remain unresolved, and that it does not support the Project.

The duty to consult does not require that all issues be resolved or that agreements be reached.

The question before the OEB is whether the consultation process with the Haudenosaunee Development Institute was adequate, and whether the project will result in material impacts to Aboriginal or treaty rights.

Based upon the record, the OEB finds that Haudenosaunee Development Institute was provided with meaningful opportunities to participate, and that its concerns were heard and considered with a reasonable and good faith consultation process. Further, the OEB has no evidence of the impacts of this project to Aboriginal or treaty rights.

As such, the OEB finds that the duty to consult with the Haudenosaunee Development Institute has been met.

Consideration of Consultation with the Mississaugas of the Credit First Nation (MCFN)

The Mississaugas of the Credit First Nation did not intervene in this Proceeding, but there is a record of their comments and input in the ICR filed by Enbridge Gas.

The Mississaugas of the Credit First Nation participated in the consultation process focusing on ensuring engagement and opportunity for involvement throughout the process.

They participated in meetings, reviewed project materials, and expressed interest in contributing to the assessment of environmental and archeological impacts. The Mississaugas of the Credit First Nation also requested to be involved in fieldwork through mechanisms such as Field Liaison Representative participation and sought ongoing updates on project milestones and findings.

To support this involvement, capacity funding arrangements were established, enabling the community to participate effectively in the review and consultation process. While the Mississaugas of the Credit First Nation did identify general considerations related to environmental protection and treaty rights, these concerns were addressed through engagement activities and agreements.

As documented, the Mississaugas of the Credit First Nation did not have outstanding concerns, supported the route selected as being the least environmentally impacted, and expressed a willingness to engage constructively, if communication, participation opportunities, and responsiveness by Enbridge Gas was maintained.

The evidence demonstrates that the Mississaugas of the Credit First Nation were engaged early and throughout the project including through:

- Circulation of project notices, reports and study materials.
- Participation in meetings and information sessions.
- Opportunities to review and comment on Environmental Report and technical studies.
- Invitations to participate in field investigations and site visits.

Enbridge Gas established capacity funding arrangements and offered mechanisms for continued participation, which supported the Mississaugas of the Credit First Nation's ability to engage meaningfully in the process.

As such, the OEB finds that the duty to consult with the Mississaugas of the Credit First Nation has been met.

The Ministry of Energy's (MEM) Letter of Opinion:

The OEB is informed by MEM's Letter of Opinion, which concludes that "[t]he procedural aspects of the consultation delegated to and undertaken by Enbridge for the Project are satisfactory."⁶³

The OEB notes that the Ministry undertook its own independent review, including direct engagement with the three Indigenous communities in reaching this conclusion.

While certainly not the final determinant, this opinion supports the OEB's findings that the Crown's obligations have been fulfilled.

Conclusion:

Based on the record before it, the OEB finds that the duty to consult has been adequately discharged.

Potential impacts on Aboriginal and treaty rights, as well as cultural and environmental features, have been appropriately considered and addressed.

⁶³ Enbridge Gas Inc., updated application filed May 22, 2026, Exhibit H, Tab 1, Schedule 1, Attachment 3.

The Project has been developed in accordance with the OEB's Environmental Guidelines and established regulatory practices and has received a favourable Letter of Opinion from the Ministry of Energy and Mines.

As such, the OEB determines that the criteria established through section 3.0.1(1) of O Reg 328/03, are satisfied and approves the application, subject to the conditions set out in this Decision.

3.9 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 proposed certain conditions of approval.

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.

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, as described in its application, subject to the Conditions of Approval attached as Schedule A to this Decision and Order.
2. Six Nations of the Grand River 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 **July 14, 2026**.
3. Enbridge Gas Inc. shall file with the OEB and forward to Six Nations of the Grand River any objections to Six Nations of the Grand River claimed intervenor costs on or before **July 21, 2026**.
4. If Enbridge Gas Inc. objects to any Six Nations of the Grand River costs, Six Nations of the Grand River shall file with the OEB and forward to Enbridge Gas Inc. their response, if any, to the objections to cost claims on or before **July 31, 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 June 30, 2026

ONTARIO ENERGY BOARD

Ann Zeng
Deputy Registrar, Adjudicative Projects
Acting under delegated authority of the Registrar

SCHEDULE A
DECISION AND ORDER
ENBRIDGE GAS INC.
EB-2025-0301
JUNE 30, 2026

Enbridge Gas Inc.

EB-2025-0301

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-2025-0301 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.