Ontario Energy Board | Commission de l'énergie de l'Ontario

BY EMAIL

August 18, 2026

Mr. Ritchie Murray
Registrar
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4
Registrar@oeb.ca

Dear Mr. Murray:

**Re: Ontario Energy Board (OEB) Staff Submission**
**Enbridge Gas Inc. – Merrickville-Wolford Community Expansion Project**
**Application for Exemption from Leave-to-Construct (LTC) Requirement**
**OEB File Number: EB-2025-0323**

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

Yours truly,

Arturo Lau
Digitally signed by Arturo Lau
Date: 2026.08.18 13:58:25 -04'00'

Arturo Lau
Senior Advisor, Natural Gas Applications

Encl.

c: All Parties

# ONTARIO ENERGY BOARD

## OEB Staff Submission

## Enbridge Gas Inc.

## Merrickville-Wolford Community Expansion Project – Application for Exemption from Leave-to-Construct (LTC) Requirement

**EB-2025-0323**

**August 18, 2026**

# INTRODUCTION

Enbridge Gas Inc. (Enbridge Gas) applied to the Ontario Energy Board (OEB) on December 12, 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 (Project) in the Village of Merrickville-Wolford, in the United Counties of Leeds and Grenville, Ontario.

The Project is expected to cost $3.4 million and serve approximately 55 customers in the Village of Merrickville-Wolford. The Project was approved to receive funding assistance under Phase 2 of the Government of Ontario's Natural Gas Expansion Program.

The proposed project consists of approximately 2 kilometres (km) of Nominal Pipe Size (NPS) 2 and 4 polyethylene (PE) natural gas pipeline. A general location of the Project is shown in the map below[1].




[1] Application, Exhibit A, Tab 2, Schedule 1, Attachment 1, page 1 of 1

**Exemption from Leave to Construct Requirement**

Enbridge Gas relies on section 3.0.1(1) of O. Reg. 328/03, for its application. This provision requires the OEB to make an order under subsection 95 (2) of the OEB Act that exempts a person from the requirement to obtain leave from the OEB under subsection 90 (1). The exemption shall be granted if:

a) leave is required only by virtue of clause 90 (1) (b) of the OEB Act;

b) the proposed hydrocarbon line is projected to cost more than the amount specified ($2 million) in section 3 for the purposes of that clause but not more than $10 million; and

c) the OEB makes a determination that the Crown's duty to consult, if it applies in respect of the application, has been adequately discharged.

OEB staff notes that in this application, leave is only required because the cost of the Project is more than $2 million. The estimated cost of the Project is below the $10 million maximum amount for which an exemption is available.

As a result, the central issue for the OEB to consider is whether the Crown's duty to consult has been adequately discharged.

## DUTY TO CONSULT & THE OEB'S PROCESS

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. The scope and content of the duty continues to evolve within Canadian jurisprudence. In general, the duty arises when the Crown has knowledge, real or constructive, of the potential existence of an Aboriginal or treaty right, as guaranteed by s.35(1) of the *Constitution Act,* 1982, and contemplates conduct that might adversely affect it.[2]

In order to ensure that the OEB has the information it requires to make a determination on the duty to consult, the OEB has developed a process to ensure that all relevant concerns and evidence can be placed before it through the hearing process. This process is set out in the OEB's *Environmental Guidelines for Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario* (Environmental

[2] Haida Nation v. British Columbia (Minister of Forests), 2004 SCC 73 (CanLII), [2004] 3 SCR 511, at paras. 32 and 35

Guidelines)[3], and also through the procedural steps established by the OEB in this proceeding. The process includes:

- Early (i.e. pre-application) identification of potentially impacted Indigenous communities by the Ministry of Energy and Mines (the Ministry) and delegation of the procedural aspects of the duty to consult to the applicant.
- The requirement that the applicant engage with potentially impacted Indigenous communities and prepare and file an Indigenous Consultation Report (ICR) that describes the consultation activities that were undertaken, provides copies of all communications and a summary of any rights-based concerns raised by Indigenous communities, and describes any accommodations that are proposed.
- The provision of notice by the OEB to potentially impacted Indigenous communities once the application is filed, including a statement that "[t]he OEB will also assess whether the duty to consult with Indigenous nations or communities potentially affected by the proposed pipeline has been discharged with respect to the application."
- The testing of the application through the OEB interrogatory process, including any questions with respect to the duty to consult as they relate to the project.
- The opportunity, as permitted by the OEB, for OEB staff, intervenors (including any Indigenous communities that choose to intervene) and the applicant to file written submissions with the OEB.
- The opportunity, as permitted by the OEB, for OEB staff and intervenors (including any Indigenous communities that choose to intervene) to file evidence that is relevant to the application, including evidence related to the duty to consult.

## HEARING PROCESS

On April 14, 2023, by way of a Delegation Letter, the Ministry[4] delegated the procedural aspects of the Crown's duty to consult in relation to the Project to Enbridge Gas and identified Algonquins of Ontario (AOO) as the potentially impacted Indigenous community that Enbridge Gas should consult. The Delegation Letter specifies roles and responsibilities delegated to Enbridge Gas as well as roles and responsibilities assumed by the Crown and the scope and content of consultation record. The Delegation letter indicates that consultation is owed at the moderate range of the spectrum for the AOO.[5]

[3] OEB Environmental Guidelines, pages 16-18 Chapter 3.2 Indigenous Consultation
[4] Formerly Ministry of Energy
[5] Application, Exhibit H, Tab 1, Schedule 1, Attachment 2- Delegation Letter, April 14, 2023, Appendix: Roles and Responsibilities of the Proponent and the Crown Related to the Duty to Consult with Indigenous Communities

Enbridge Gas included two additional Indigenous communities in the consultation: Algonquins of Pikwakanagan First Nation (AOPFN) and Mohawk Council of Akwesasne (MCA).

The OEB served the potentially impacted community listed in the Delegation Letter, the AOO, with a Notice of Hearing on January 22, 2026. The Notice of Hearing provided the AOO until February 16, 2026 (45 calendar days) to become an intervenor, comment or ask to follow the hearing as a monitor.

The OEB did not receive any requests for intervenor status in the proceeding. However, on March 5, 2026, the AOO filed a letter of comment regarding the Project and on March 31, 2026, Enbridge Gas filed a response to the AOO's letter of comment.

On March 3, 2026, the OEB issued Procedural Order No. 1 which set out a schedule for written discovery on Enbridge Gas's evidence and directed Enbridge Gas to file an updated ICR and any correspondence to Enbridge Gas from the Ministry regarding Enbridge Gas's consultation activities.

In accordance with Procedural Order No. 1, Enbridge Gas filed an updated ICR on March 10, 2026. OEB staff filed interrogatories on March 17, 2026, and Enbridge Gas filed interrogatory responses on March 31, 2026.

On April 8, 2026, OEB staff filed a letter, requesting that the Application be placed into abeyance until the Ministry's Letter of Opinion expressing its view on the adequacy of Indigenous consultation for the Project is filed.

On April 14, 2026, the OEB issued a letter placing the Application into abeyance until the earlier of May 29, 2026, or when the Ministry's Letter of Option is filed to the OEB. On April 28, 2026, the OEB issued a letter extending the abeyance until May 27, 2026.

On July 24, 2026, Enbridge Gas filed the Ministry's Letter of Opinion.

On July 27, 2026, the OEB issued Procedural Order No. 2, taking the proceeding out of abeyance and establishing a schedule for OEB staff submissions and reply submission from Enbridge Gas.

## CONSULTATION UNDERTAKEN BY ENBRIDGE GAS

### Evidentiary Record

As required by the Environmental Guidelines, Enbridge Gas prepared the ICR describing and documenting the Indigenous consultation it has undertaken. During the course of this proceeding, Enbridge Gas has provided updates to the ICR in response

to the OEB's procedural orders.[6] The ICR is part of Enbridge Gas's evidence in support of the Project.

**Information Enbridge Gas Provided to Consulted Indigenous Communities**

The evidence filed by Enbridge Gas indicates that it has provided the following information to the AOO as well as the AOPFN and MCA:[7]

- The Notification Letter providing an overview of the proposed Project, a list of potential authorizations required, and contact information for the Ministry.
- Maps of the Project location
- Open house and virtual open house information (to AOO and MCA) and virtual Open house slides (to AOPFN), which contained information on the environmental process for the Project.
- Environmental Report (ER), providing information about the potential effects of the Project on the environment and related mitigation measures.

**Capacity Funding**

Enbridge Gas offered capacity funding to AOO, AOPFN and MCA to support timely activities such as technical review of project documents and engagement in meaningful consultation.[8] Enbridge Gas stated that no Indigenous community has indicated they will required capacity funding.[9]

Enbridge Gas may wish to confirm in its reply submission if the capacity funding for Indigenous communities has been accepted and provided, and if so, include a description of the activities supported by the capacity funding that was provided.

Enbridge Gas stated no concerns from Indigenous communities have been raised regarding the capacity funding that has been offered in relation to the Project.[10]

**Issues and Concerns Raised and Accommodation**

Details of Enbridge Gas's Indigenous consultation activities with Indigenous communities were provided in updates to the ICR and in response to OEB staff interrogatories. A summary of the issues and concerns raised by the AOO and Enbridge Gas's response is provided below.

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[6] Updated Application dated March 10, 2026, Exhibit H-1-1, Attachment 7. Exhibit H-1-1, Attachment 8 and EGI IRRs
[7] Application, Exhibit H, Attachment 7
[8] Application, Exhibit H, Tab 1, Schedule 1, Attachment 7
[9] Interrogatory Responses, March 31, 2026, Exhibit I.STAFF-2 a
[10] Exhibit I.OEB STAFF-2

Enbridge Gas has not indicated any issues or concerns raised by AOPFN and MCA.

Algonquins of Ontario (AOO)

On March 5, 2026, AOO submitted comments raising concerns based on a review of the Environmental Report, including that fisheries surveys should be conducted in the spring months for proper assessment; that consideration of cumulative impacts would strengthen the assessment; that the report does not include a clearly defined fisheries focused response plan in the event of a drilling fluid release; and that the report does not address potential impacts on benthic communities.

On March 31, 2026, Enbridge Gas, along with its response to interrogatories, responded to AOO's comments. In summary, Enbridge Gas responded that drilling activities are planned for fall 2026, outside fish spawning and early life stage periods. Enbridge Gas stated that a project specific Inadvertent Contingency Release Plan will be implemented to address any inadvertent releases during drilling operations, incorporating specific mitigation for fish and fish habitat. Also, Enbridge Gas stated that specific mitigation measures for horizontal directional drilling will be followed to minimize impacts to benthic communities and aquatic habitat.

**Ministry's Letter of Opinion**

On July 24, 2026, Enbridge Gas updated its application to include the Ministry's Letter of Opinion. The Letter of Opinion, dated July 23, 2026, stated that Ministry's view is that the procedural aspects of the Crown's duty to consult delegated to and undertaken by Enbridge Gas for the Project are satisfactory.

## OEB STAFF SUBMISSIONS

OEB staff notes that:

- Enbridge Gas generally followed the current protocol for Indigenous consultation set out in the Environmental Guidelines.
- Enbridge Gas initiated consultation with the Indigenous community identified in the Delegation Letter, namely the AOO, in June 2023. Enbridge Gas also initiated consultation with MCA in June 2023, and AOPFN in November 2025.
- Enbridge Gas has committed to continuing to engage throughout the life of the Project to ensure any impacts on Aboriginal or treaty rights and interests are addressed, as appropriate.
- Enbridge Gas has offered capacity funding to each of the Indigenous communities to support their participation in the consultation related to the Project.

Considering the above observations and the current evidentiary record, OEB staff submits that the duty to consult has been discharged sufficiently to allow the OEB to approve the exemption to the requirement to seek leave to construct the Project. This submission is made under the assumption that Enbridge Gas will continue to engage throughout the life of the Project and will fulfill its commitments to accommodation activities, if any.

OEB staff notes that AOO filed a letter to the OEB providing feedback on the Application. OEB staff submits that Enbridge Gas has addressed the concerns raised by AOO, including the need to conduct assessments in spring, indicating that this is not required, as the construction is planned for fall and the proposed timing aligns with consultation with Parks Canada.[11]

OEB staff submits that, based on the available evidence, Enbridge Gas's consultation, to date, is generally consistent with the requirements outlined by the Ministry's Duty to Consult Delegation Letter.[12] This is also supported by the Ministry's Letter of Opinion, stating the procedural aspects of the Crown's duty to consult delegated and undertaken by Enbridge Gas to date are satisfactory.[13]

-All of which is respectfully submitted-

[11] Interrogatory Responses, March 31, 2026, Exhibit I.STAFF-4a
[12] Application, Exhibit H, Tab 1, Schedule 1, Attachment 2
[13] Application, Exhibit H, Tab 1, Schedule 1, Attachment 9