



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

**BY EMAIL AND WEB POSTING**

**September 24, 2024**

**TO: All Natural Gas Distributors  
Indigenous Communities and Organizations**

**RE: Filing Requirements and Performance Standard for Leave to  
Construct Exemption Applications for Certain Hydrocarbon Line  
Projects  
Ontario Energy Board File No.: EB-2024-0233**

---

The Ontario Energy Board (OEB) is today releasing new Filing Requirements applicable to applications for exemption from leave to construct contemplated in sections 90(2) and 95(2) of the *Ontario Energy Board Act, 1998* (OEB Act).

### **Background**

Earlier this year, sections 90 and 95 of the OEB Act were amended to make provision for new exemptions from the requirement to obtain leave to construct for certain hydrocarbon line projects. Following a public consultation process,<sup>1</sup> [Ontario Regulation 328/03 \(General\)](#) made under the OEB Act was amended on June 27, 2024, to provide details regarding exemption applications for the following types of projects:

1. The relocation or reconstruction of a hydrocarbon line that is needed to facilitate a priority transit project under the *Building Transit Faster Act, 2020* or a project by a road authority under the *Public Service Works on Highways Act* where certain conditions relating to additional land use rights and cost responsibility are met

---

<sup>1</sup> Postings were made to the Environmental Registry of Ontario seeking feedback on proposed regulations setting out conditions for exemption from leave to construct if the duty to consult is met. See the postings made on [April 11, 2024](#) and [April 17, 2024](#). The postings were also published on the Regulatory Registry.

2. The construction of a hydrocarbon line that is projected to cost between \$2 million and \$10 million

As set out in Ontario Regulation 328/01, the central issue to be determined by the OEB for both application types is whether the Crown's duty to consult, if it applies in respect of the application, has been adequately discharged.

### **New Filing Requirements**

The Filing Requirements issued today are made in response to the regulatory amendments and largely represent a subset of the filing requirements for leave to construct applications found in the OEB's [Natural Gas Facilities Handbook](#), which have been adapted to fit the new exemption applications. The OEB expects to update the Natural Gas Facilities Handbook to incorporate these Filing Requirements in due course.

With respect to the duty to consult, the OEB's current requirements for Indigenous consultation are set out in the [Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario](#). In February 2024, the OEB invited comment on proposed revisions to the Indigenous consultation provisions of the *Environmental Guidelines* from over 140 Indigenous communities and organizations, natural gas utilities and intervenors in natural gas leave to construct proceedings. The OEB expects that changes to the *Environmental Guidelines* resulting from this separate [consultation](#)<sup>2</sup> will, as applicable, also result in changes in these Filing Requirements.<sup>3</sup>

Based on experience gained through consideration of some initial exemption applications, the OEB will consider whether any amendments to these Filing Requirements are warranted. At that time, the OEB will also establish appropriate performance standards for these applications. In the meantime, the OEB will work towards a 30-day decision writing time from the close of record of the proceeding.

---

<sup>2</sup> EB-2024-0079

<sup>3</sup> This September 24, 2024 letter has been addressed to Indigenous communities as identified in the OEB's [letter](#) inviting comments on proposed revisions to the Indigenous consultation provisions of the *Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Projects and Facilities in Ontario*, dated February 7, 2024.

Any questions related to the new Filing Requirements should be directed to [Registrar@oeb.ca](mailto:Registrar@oeb.ca). The OEB's toll-free number is 1-888-632-6273.

Yours truly,

Nancy Marconi  
Registrar

Attachments:

## Filing Requirements for Leave to Construct Exemption Applications for hydrocarbon line projects that cost between \$2 million and \$10 Million

An application for exemption from the requirement to obtain leave to construct for a project where the projected cost is between \$2 million and \$10 million should include, at a minimum, the information described below, as applicable to the project.

### Exhibit A: Index and Overview

1. Provide the contact information (name, title, mailing address, telephone number and email address) of the applicant's primary representative and any legal representative.
2. Provide an index (table of contents) of the various exhibits, tabs, schedules, attachments, and appendices.
3. Provide an overview of the proposed project and the approval(s) that are being requested. Refer to applicable legislation, e.g., *Ontario Energy Board Act, 1998* (OEB Act). As part of the overview, provide the purpose of the proposed project, and how it meets the requirements of section 3.0.1 of Ontario Regulation 328/03, the proposed construction start date and the proposed in-service date.
4. Provide confirmation that the applicant has the required franchise agreements and certificates and reference these agreements and certificates.<sup>1</sup>
5. Provide a map of the proposed facilities. The map must be in black and white, uncluttered, have large readable font; it must contain at least one landmark (city/town, major street, lake, railway line, etc.), a legend (that uses symbols, dashed lines and hashes rather than colours), a north arrow, and features mentioned in the application (pipelines, stations, start and end points, existing pipelines, etc.).

### Exhibit B: Project Need

Information on Project Need is not required.

### Exhibit C: Alternatives

Information on Alternatives is not required.

### Exhibit D: Description of Project Facilities

Provide an overview of the proposed project in terms of location, start and end points, pipe size, length, diameter, pressure, etc.

---

<sup>1</sup> Franchise agreements and certificates are not required for hydrocarbons other than natural gas.

## **Exhibit E: Project Cost**

1. Provide an itemized table showing the estimated project capital costs including the following:
  - a. Pipeline material costs
  - b. Pipeline labour and construction costs
  - c. Pipeline consulting and professional service costs
  - d. Pipeline contingency
  - e. Sub-total pipeline costs
  - f. Station material costs
  - g. Station labour and construction costs
  - h. Station consulting and professional service costs
  - i. Station contingency
  - j. Sub-total station costs
  - k. Pre-spend or developmental costs
  - l. Interest during construction
  - m. Direct overheads
  - n. Indirect overheads
  - o. Total project cost
2. Refer to the estimation standard that was used (e.g., American Association of Cost Engineers).
3. Provide information on how the level of contingency was established.

## **Exhibit F: Environmental Impacts**

Applicants are required to prepare and file an Environmental Report with the OEB addressing the environmental impacts of the project that are relevant to established or asserted Aboriginal or Treaty rights of Indigenous communities identified by the Ministry of Energy and Electrification as being potentially impacted by the project. Applicants should refer to the OEB's [\*Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario\*](#) (Environmental Guidelines) to inform the preparation of an Environmental Report. The Environmental Guidelines provide greater detail on how to identify, manage and document environmental impacts which may adversely affect the rights of Indigenous communities. These Filing Requirements outline the key evidence an applicant should file to demonstrate that it has provided potentially affected Indigenous communities with information on the environmental impacts of the project with respect to their established or asserted Aboriginal or Treaty rights, including the following:

1. potential environmental effects of the project (e.g., effects on ecologically sensitive areas, water bodies, wetlands, forests, or the habitat of species at risk and habitat corridors); information on the severity, geographic scope and likely duration of project impacts may also be included;

2. assessment of potential impacts on social, cultural heritage, and archaeological resources; and,
3. environmental impact mitigation measures and opportunities for Indigenous communities to provide feedback on any suggested measures.

In addition, the Environmental Report should include any other information that is relevant to consultation, such as measures that were contemplated or implemented in response to rights-based concerns raised by Indigenous communities.

### **Exhibit G: Route Map and Landowner Agreements**

Information on Route Map and Landowner Agreements is not required.

### **Exhibit H: Indigenous Consultation<sup>2</sup>**

1. Provide a copy of the applicant's Indigenous Consultation Report, including copies of communication and a description of the status of all consultation efforts to the date of filing the application.
2. Provide the following documentation from the Ministry of Energy and Electrification:<sup>3</sup>
  - a. A letter stating that the duty to consult is not triggered by the project, or
  - b. A delegation letter, memorandum of understanding or other express delegation instrument and, if available at the time of application, a letter from the Ministry of Energy and Electrification that expresses its view on the adequacy of Indigenous consultation.

### **Exhibit I: Conditions of Approval**

Section 23 of the OEB Act permits the OEB to approve an application, subject to any conditions that it considers to be necessary.

---

<sup>2</sup> Refer to Chapter 3 of the OEB's Environmental Guidelines. Additional information on consulting Indigenous communities can be found on the "Environmental assessments: consulting Indigenous communities" [webpage](#)

<sup>3</sup> If any of this documentation cannot be filed with the application, then it is expected to be filed before the record of the proceeding is closed.

## **Filing Requirements for Leave to Construct Exemption Applications for relocation or reconstruction hydrocarbon line projects**

An application for an exemption from the requirement to obtain leave to construct for a relocation or reconstruction hydrocarbon line project should include, at a minimum, the information described in this section as applicable to the project.

### **Exhibit A: Index and Overview**

1. Provide the contact information (name, title, mailing address, telephone number and email address) of the applicant's primary representative and any legal representative.
2. Provide an index (table of contents) of the various exhibits, tabs, schedules, attachments, and appendices.
3. Provide an overview of the proposed project and the approval(s) that are being requested. Refer to applicable legislation (e.g., OEB Act, *Municipal Franchises Act*).
4. Provide confirmation that the applicant has the required franchise agreements and certificates and reference these agreements and certificates<sup>1</sup>
5. Provide a map of the proposed facilities. The map must be in black and white, uncluttered, have large readable font; it must contain at least one landmark (city/town, major street, lake, railway line, etc.), a legend (that uses symbols, dashed lines and hashes rather than colours), a north arrow, and features mentioned in the application (pipelines, stations, start and end points, existing pipelines, etc.).

### **Exhibit B: Project Need**

Information on Project Need is not required.

### **Exhibit C: Alternatives**

Information on Alternatives is not required.

### **Exhibit D: Description of Project Facilities**

1. Provide an overview of the proposed project in terms of location, start and end points, and diameter.
2. Provide evidence that includes information on the diameter of the existing pipeline that is being relocated and the new pipeline that is being reconstructed, to demonstrate that the diameter of the pipeline has not increased.

---

<sup>1</sup> Franchise agreements and certificates are not required for hydrocarbons other than natural gas.

## **Exhibit E: Project Cost**

1. Provide the total estimated project capital costs.
2. Provide evidence to demonstrate that the relocation or reconstruction is to be undertaken pursuant to an agreement between the applicant and the priority transit project proponent or the road authority that specifies that the cost of the relocation or reconstruction will be paid for wholly or partly by the priority transit project proponent or the road authority.

## **Exhibit F: Environmental Impacts**

Applicants are required to prepare and file an Environmental Report with the OEB addressing the environmental impacts of the project that are relevant to established or asserted Aboriginal or Treaty rights of Indigenous communities identified by the Ministry of Energy and Electrification as being potentially impacted by the project. Applicants should refer to the OEB's [\*Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario\*](#) (Environmental Guidelines) to inform the preparation of an Environmental Report. The Environmental Guidelines provide greater detail on how to identify, manage and document environmental impacts which may adversely affect the rights of Indigenous communities. These Filing Requirements outline the key evidence an applicant should file to demonstrate that it has provided potentially affected Indigenous communities with information on the environmental impacts of the project with respect to their established or asserted Aboriginal or Treaty rights, including the following:

1. potential environmental effects of the project (e.g., effects on ecologically sensitive areas, water bodies, wetlands, forests, or the habitat of species at risk and habitat corridors); information on the severity, geographic scope and likely duration of project impacts may also be included;
2. assessment of potential impacts on social, cultural heritage, and archaeological resources; and,
3. environmental impact mitigation measures and opportunities for Indigenous communities to provide feedback on any suggested measures.

In addition, the Environmental Report should include any other information that is relevant to consultation, such as measures that were contemplated or implemented in response to rights-based concerns raised by Indigenous communities.

## **Exhibit G: Land Information**

Provide evidence that demonstrates that any additional land required (i.e., all required permanent easements or temporary easements) for the relocation or reconstruction is under the control of the priority transit project proponent or the road authority (i.e., ownership, land rights, or authority to use additional land).



## **Exhibit H: Indigenous Consultation<sup>2</sup>**

1. Provide a copy of the applicant's Indigenous Consultation Report, including copies of communication and a description of the status of all consultation efforts to the date of filing the application.
2. Provide the following documentation from the Ministry of Energy and Electrification:<sup>3</sup>
  - a. A letter stating that the duty to consult is not triggered by the project, or
  - b. A delegation letter, memorandum of understanding or other express delegation instrument and, if available at the time of application, a letter from the Ministry of Energy and Electrification that expresses its view on the adequacy of Indigenous consultation.

## **Exhibit I: Conditions of Approval**

Section 23 of the OEB Act permits the OEB to approve an application, subject to any conditions that it considers to be necessary.

---

<sup>2</sup> Refer to Chapter 3 of the OEB's Environmental Guidelines. Additional information on consulting Indigenous communities can be found on the "Environmental assessments: consulting Indigenous communities" [webpage](#)

<sup>3</sup> If any of this documentation cannot be filed with the application, then it is expected to be filed before the record of the proceeding is closed