

ENBRIDGE GAS DISTRIBUTION INC. RESPONSE TO
BOARD STAFF INTERROGATORY #47

INTERROGATORY

Issue: D-4

Has there been adequate consultation with any affected First Nations or Metis communities?

REF: EB-2012-0451, Exhibit F, Tab 1, Schedule 1, Pages 1-4, Aboriginal Peoples Consultation

Preamble:

The pre-filed evidence indicates that Dillon Consulting Limited conducted consultation with First Nations, Métis, and related agencies in a manner consistent with the Ontario Energy Board's "*Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario*" (Sixth Edition, 2011).

Questions:

Please provide a status update on consultations with First Nations or Metis communities with regard to the following points:

- a) Provide relevant information gathered from or about the Aboriginal groups as to their treaty rights, any filed and outstanding claims or litigation concerning their treaty rights, treaty land entitlement or aboriginal title or rights, which may potentially be impacted by the project.
- b) Identify any specific issues or concerns that have been raised by First Nations or Metis communities in respect of the project and, where applicable, how those issues or concerns will be mitigated or accommodated.
- c) Explain whether any of the concerns raised by First Nations or Metis communities with respect to the applied-for project have been discussed with any government department or agencies, and if so, identify when contacts were made and who was contacted.
- d) Provide details of any know Crown involvement in consultations with First Nations or Metis communities in respect of the applied-for project.

Witness: C. Mills

RESPONSE

- a) Information about treaty rights and claims that may potentially be impacted by the Project was obtained directly from interested First Nations and Métis communities. Please refer to the Environmental Report at Exhibit B, Tab 2, Schedule 1, Attachment 1 in Section 5.2.1 (page 111), Section 5.8 (pages 140 to 145) and Appendix A3.b (pages 368 to 372), A11.b (pages 437 to 442) and A14.c (pages 495 to 497) for information relating to First Nations and Métis communities. Also, please refer to the GTA Project: Post-Environmental Report Outreach Activities – Comment Response Table at Exhibit B, Tab 2, Schedule 1, Attachment 5 (pages 76 to 84). Attached to this exhibit, please find the letters addressed to the Ontario Energy Board from the Mississaugas of the New Credit First Nation (dated May 6, 2013), and the letter from the Six Nations of the Grand River (dated March 14, 2013).

Information on location, related treaty information, claims (specific, comprehensive, and special) and litigation for Aboriginal communities in a 100 km radius around the project location was provided by Aboriginal Affairs and Northern Development Canada. Please refer to the Environmental Report at the above noted Exhibit in Section 5.2.1 (pages 111 to 112), and Appendix A.14c (p. 489).

- b) Please refer to response provided to question a). While no reserves along or adjacent to the route were identified, the Project is located within traditional lands and treaty areas. Concerns identified by First Nations included potential impacts to the environment including water, land, and wildlife, including endangered species, as well as archaeological resources. Potential impacts, proposed mitigation measures and net effects related to these components are provided in the Environmental Report in Section 6.0 (pages 163 to 196). Specific issues and concerns, along with mitigation measures and net effects for First Nations are provided in Section 6.3.7 and 6.3.8 (pages 193 to 194) of the Environmental Report. Consultation with First Nations and Métis communities is ongoing and mitigation options would be informed by the results of the First Nations engagement.

The letter to the OEB from the Six Nations of the Grand River (dated April 24th, 2013) states that this group withdrew from the proceeding.

- c) Government department and agencies on the project contact list were sent the Environmental Report on October 23, 2012, which contains concerns raised by First Nations or Metis communities with respect to the applied-for project as referenced in b) above.
- d) Enbridge and Dillon are not aware of any Crown involvement with First Nations and Métis communities with respect to the Project.

Witness: C. Mills



March 14, 2013

The Board
Ontario Energy Board
P.O. Box 2310
27th Floor, 2300 Yonge Street
Toronto ON M4P 1E4

Dear Kirsten Walli:

RE: Requests for Intervener Status by the Six Nations Elected Council

Enclosed please find two original signed copies of the above which I am required to send to you on behalf of Six Nations Elected Council.

Yours truly,

A handwritten signature in blue ink, which appears to read "Lonny Bomberry", is written over the typed name below.

Lonny C. Bomberry, Director
Lands and Resources
Six Nations of the Grand River



RE: ONTARIO ENERGY BOARD FILE NO: EB-2012-0451

**RE: LEAVE TO CONSTRUCT APPLICATION: GREATER TORONTO
AREA PROJECT BY ENBRIDGE GAS DISTRIBUTION INC.**

RE: REQUESTS FOR INTERVENER STATUS

Introduction

- 1) I am the Director of Lands and Resources for the Six Nations Council and as such, am writing on behalf of the Six Nations Council. The Six Nations Council is the elected government of the Six Nations of the Grand River pursuant to the provisions of the Indian Act (Canada). The Lands and Resources Department of the Six Nations Council is the department of the council responsible for acting as the consultation resource and co-ordination unit of the council.
- 2) Although I am the responsible director of the Lands and Resources Department overseeing consultation activities of the Six Nations Council, I was not served by the applicant with the notice required attachments.
- 3) This application at this time is a surprise to the Six Nations Council, given the lack of proper prior communication from the applicant.
- 4) The Six Nations Council has not yet been able to obtain, review and consider the "copies of the application and the pre-filed evidence in support of the application" from the Ontario Energy Board's offices or the Applicant's offices and website.

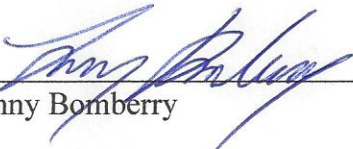
Six Nations Council Request for Intervener Status

- 5) The Six Nations Council requests Intervener Status in this Ontario Energy Board proceeding and further requests an award of costs in order to be able to participate in this proceeding in a meaningful way.
- 6) In particular, Six Nations Council would like to retain qualified, experienced legal counsel to represent it in this proceeding. It is presently canvassing potentially available representation.
- 7) Briefly, the Six Nations Council seeks Intervener Status for reasons which include the following:
 - (1) The proposed natural gas pipelines are to be located in areas subject to the Nanfan Treaty of 1701, the treaty areas of the Six Nations of the Grand River are subject of ongoing litigation against both the Ontario and Federal Crowns.
 - (2) The Six Nations treaty rights are protected under section 35 of the Constitution Act, 1982.
 - (3) The Six Nations, the Six Nations Council, and the Lands and Resources Department of the Six Nations Council have not been properly consulted concerning the subject matter and details for the application.
 - (4) There were no meetings with the applicant regarding the GTA Area Project. These meetings would have been held to attempt to accomplish accommodation for the breach of our 1701 Nanfan Treaty rights.
 - (5) Neither the applicant nor the Ontario Crown has properly consulted with the Six Nations or accommodated in any way the Six Nations' hunting, gathering, resources and economic rights protected by the Nanfan Treaty and likely impacted by the proposed electrical generating facilities. Notification by letter is not considered consultation with Six Nations.
 - (6) Similarly, neither the applicant nor the Ontario Crown has properly consulted with the Six Nations concerning the likely negative impacts on the Six Nations Treaty Rights which will be caused by the proposed new pipelines and there has been no accommodation to date on such impacts.

- (7) Such further grounds as legal counsel for the Six Nations Council may advise once retained in connection with this proceeding.
- 8) Six Nations is asking the Ontario Energy Board to not grant Leave to Construct Natural Gas Pipelines and Regulation Facilities Expansion by Enbridge Gas Distribution Inc. until consultation and accommodation discussions are complete with the Six Nations Elected Council.
- 9) All of which is respectfully submitted for the Six Nations Council.

Dated March 14, 2013

SIX NATIONS COUNCIL
By its Director of Lands and Resources


Lonny Bomberry

Six Nations Lands & Resources
2498 Chiefswood Road,
P. O. Box 5000
Ohsweken, ON, N0A 1H0
Tel: 519-753-0665
Fax: 519-753-3449
Email: lonnybomberry@sixnations.ca

TO: The Board
Ontario Energy Board
P. O. Box 2319
27th Floor
2300 Yonge Street
Toronto, ON
M4P 1E4

Attention: Kirsten Walli – Board Secretary

Email: boardsec@ontarioenergyboard.ca

The Applicant
Regulatory Affairs
Enbridge Gas Distribution Inc.

500 Consumers Road
Toronto, ON
M2J 1P8

Tel: 416-495-5499

May 6, 2013

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto ON M4P 1E4
Attn: Ms. Kirsten Walli
Board Secretary
Tel: 1-888-632-6273 (toll free)
Fax: 416-440-7656
E-mail: BoardSec@ontarioenergyboard.ca

Dear Sir/Madam,

Please accept this letter of intervention from the Mississaugas of the New Credit First Nation (MNCFN) for the EB-2012-0451 – Greater Toronto (“GTA”) Project.

The letter includes the following required information:

- the application file number;
- your contact information (name, address, telephone number, fax number, and email address);
- a description of how you are, or may be, affected by the outcome of this proceeding;
- the nature and scope of your intended participation;
- if you represent a group, include a description of the group and its membership; and
- whether you intend to seek an award of costs and the grounds for your eligibility.

Application File Number

RE: Enbridge Gas Distribution Inc. (“Enbridge”)
EB-2012-0451 – Greater Toronto Area (“GTA”) Project
Ontario Energy Board (the “Board”) Notice of Application

Contact Information

Chris Ashkewe, Director of Economic Development
Mississaugas of the New Credit First Nation
2789 Mississauga Road, RR 6
Hagersville, ON, N0A 1H0
Canada
Phone: (905) 768-1133, x241
Fax: (905) 768-1225
Email: Chris.Ashkewe@newcreditfirstnation.com

Description of how community will be affected the outcome of this proceeding

The Mississaugas of the New Credit First Nation (MNCFN) wishes to protect our lands and waters, our livelihoods and way of life, and our rights from the damage that will be caused if Enbridge proceeds with construction of the Greater Toronto Area Pipeline Project (the GTA Project).

The construction of the proposed GTA Project and related activities may destroy or harm Culturally Sensitive Sites and environmentally sensitive areas in our traditional territory. Such activities will likely have a significant negative impact on our aboriginal and treaty rights. Adequate consultation with the MNCFN has not happened. Enbridge and the Crown have not yet allowed us to fully understand the potential impacts on our territories and rights and have not fulfilled the constitutional duty of meaningful consultation and accommodation. We seek to start consultation that includes an agreement with Enbridge. We wish to protect our land and water from the damage that may be caused by the proposed GTA project through site investigation work, site preparation work, construction and refurbishment, pipeline operations, spills, accidents and malfunctions and pipeline decommissioning. The proposed pipeline crosses our traditional territory.

Consultation must always be with the intent of substantially addressing the concerns of the affected aboriginal parties. Addressing such concerns means accommodation. This cannot occur if we are unable to know and understand all of the impacts and their implications to our territory, rights, interests, culture and way of life.

Nature and Scope of Intended Participation

An understanding of the above is impossible without the necessary expertise (technical, environmental, scientific, engineering and legal), and without the necessary gathering of information from our own elders and other land users about the location, nature and extent of our uses of, values in and connections to the land – all of which much be gathered and analysed in a methodologically sound manner. MNCFN requires funding to retain such expertise and to conduct such studies and internal consultation. Without any of this, no party – neither MNCFN, nor Enbridge, nor the Ontario Energy Board -- will be able to participate or make decisions in an informed way. The duty to consult and accommodate MNCFN will not have been met. This cannot be Enbridge's, or the Crown's, intent.

MNCFN expects Enbridge and the Crown to honour their obligations to consult and accommodate our communities with respect to our Aboriginal rights and interests. In order to best protect our lands, water and Aboriginal rights and interests, MNCFN expects to be involved in jointly planning and approving any pipeline site investigations, site preparation, refurbishment, additions, construction, re-construction, operation and decommissioning. MNCFN also insists on being involved in environmental site assessments across our traditional territory so that we can understand existing environmental impacts on these lands and our rights and interests and better predict future environmental impacts.

MNCFN is also concerned with potential spills, accidents and malfunctions.

MNCFN is not in a position to provide comment on the technical aspects and potential commercial, environmental and socio-economic impacts of the proposed Enbridge project works,

because MNCFN does not have the resources required to retain consultants to provide expert comment. MNCFN is not in a position to provide comment on the nature and location of culturally sensitive sites across the vast range of the proposed pipeline project works because MNCFN does not have the resources to undertake methodologically supportable traditional land use studies and mapping, archaeological studies or environmental site assessments of existing Enbridge pipeline infrastructure to begin to verify site characteristics and locations and begin to assess potential impacts.

The Ontario Energy Board should not issue approvals for work that could destroy or damage such sites. Sites of interest to us may include, but are not limited to:

- places of worship or other sacred purpose;
- burial grounds;
- traditional teaching or meeting places;
- ceremonial lands;
- pictographs and petroglyphs;
- trap lines and areas;
- hunting or fishing grounds;
- wildlife migration routes;
- travel or trade routes; and
- waterways.

The MNCFN strongly object to Enbridge receiving approvals for projects in our traditional territory until MNCFN has:

- the resources required to retain our own consultants to provide expert advice and comment on technical aspects and potential environmental impacts that may affect our rights and interests;
- the resources required to undertake traditional land use studies and mapping and archaeological assessments that include experts and information from our members with knowledge and experience in areas to be affected;
- the time and capacity to determine where there is a need to apply for certain culturally sensitive sites to be made off limits to exploration so that these sites are not destroyed or harmed;
- the time and capacity to determine appropriate mitigation or avoidance strategies for areas where there may be impacts that affect our rights and interests; and
- participated in meaningful consultation with Enbridge and the Crown, and where necessary, received appropriate accommodation. The MNCFN is actively exercising its constitutional and treaty rights with respect to the duty to consult and accommodate for projects throughout our traditional territory with proponents such as the City of Toronto, Durham Region, Peel Region, York Region, Niagara Region, Ontario Power Generation, Enbridge, Imperial Oil, Samsung, 2015 Pan American Games, Ministry of Transportation, Ontario Power Authority, Hydro One Networks, Waterfront Toronto, and Mississauga Waterfront. All proponents that require Crown decisions for their projects to advance in our territory must consult with our First Nation and provide necessary accommodation.

The MNCFN has been very active in reviewing and commenting on the new Provincial Policy Statement (PPS) to ensure that Ontario and its municipalities take “the duty to consult and

accommodate First Nations” seriously. We expect that the new PPS will only reaffirm and advance this responsibility.

Description of the Group and its membership

The Mississaugas of the New Credit First Nation (MNCFN) is located on 6,100 acres of land in southwestern Ontario in the regional Municipality of Haldimand-Norfolk, approximately 100km southwest of downtown Toronto. www.newcreditfirstnation.com

The MNCFN traditional territories extend from the London area and the Thames River up to the dividing ridge of the Grand River near Shelburne to the Gananoque River watershed. These territories have been recognized in three contemporary land claim agreements in the GTA signed in 1997 and 2010. We currently use the lands, waters and watershed ecosystems within our traditional territory for a variety of livelihood, harvesting, ecosystem protection and enhancement, ceremonial and spiritual purposes.

In Canada, the Crown is obligated to consult and accommodate First Nations communities where there are potential impacts on First Nation rights and interests.

Intent to Seek Award of Costs

The MNCFN do intend to seek an award of costs. According to the eligibility criteria in section 3 of the Board’s Practice Direction on Cost Awards, we are eligible to apply for cost award because we have an interest in land that is affected by the process.

If you have any questions regarding the above, please contact me at (905) 768-1133 or by email at: Chris.Ashkewe@newcreditfirstnation.com.

Sincerely,

Chris Ashkewe, Director of Economic Development
Mississaugas of the New Credit First Nation

ENBRIDGE GAS DISTRIBUTION INC. RESPONSE TO
ENERGY PROBE RESEARCH FOUNDATION INTERROGATORY #85

INTERROGATORY

Issue 04 Has there been adequate consultation with any affected First Nations or Metis communities?

Ref: EB-2012-0451 Exhibit B, Tab 2, Schedule 1, Attachment 5, Pages 11-16

- a) In the event artifacts are discovered during the project, please confirm it is Enbridge's intent to limit notification to First Nation and Metis communities that have expressed an interest during the course of the project.
- b) Page 2 of the letter to First Nations and Metis Groups states that requests to inform some communities of the results of the Stage 2 Archaeological Assessment work were received and therefore a summary of the assessments will be circulated once complete. Please confirm the parties that will receive the results of the Stage 2 Archaeological Assessment work.
- c) Please discuss Enbridge's plans to follow-up with First Nation and Metis communities that have not been successfully contacted.

RESPONSE

- a) Please reference the response to Energy Probe Research Foundation Interrogatory # 64 part (c) found at Exhibit I.D1.EGD.EP.64.
- b) Please reference the response to Energy Probe Research Foundation Interrogatory # 64 part (d) found at Exhibit I.D1.EGD.EP.64.
- c) Please reference the response to Energy Probe Research Foundation Interrogatory # 67 (g) found at Exhibit I.D1.EGD.EP.67.

Witness: C. Mills
 L. Dumond