



BATCHEWANA FIRST NATION OF OJIBWAYS

RANKIN RESERVE 15D
GOULAIS BAY RESERVE 15A
OBADJIWAN RESERVE 15E
WHITEFISH ISLAND 15

Administration Office 236 Frontenac Street
Rankin Reserve 15D
Batchewana First Nation, Ontario P6A 6Z1
Ph. (705) 759-0914 / C&C Fax (705) 759-8213
www.batchewana.ca

May 18, 2017

Ms. Kristen Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Dear Ms. Walli

Re: EB-2015-0179 Application for Intervenor Status by Batchewana First Nation

Please accept this letter as application for Intervenor Status pursuant to Rule 22.05 of the Ontario Energy Board's *Rules of Practice and Procedure* by Batchewana First Nation.

About Batchewana First Nation

Batchewana First Nation is an Indian Band pursuant to the *Indian Act* and party to the *Robinson-Huron Treaty* of 1850. The Treaty description of lands set aside for Batchewana First Nation's use is as follows:

FIFTEENTH – For Nebenaigoching and his Band, a tract of land extending from Wanabekineyunnung west of Gros Cap to the boundary of the lands ceded by the Chiefs of Lake Superior, and inland ten miles throughout the whole distance, including Batchewanaung Bay; and also the small island at Sault Ste. Marie used by them as a fishing station.

Historically, Prince Township was part of Batchewana First Nation's traditional territory. This includes historic and present land use and exercise of rights and interests. Additionally, following the expropriation of Whitefish Island, certain Batchewana families were relocated to Gros Cap, now within Prince Township.

Batchewana First Nation continues to make active use of the Gros Cap area including traditional activities such as fishing and hunting, gathering and harvesting and ceremonies. Batchewana First Nation maintains a commercial fishery that uses the waters of Lake Superior adjacent to Gros Cap and stretching all along the shoreline of Lake Superior to the boundary of Pukaskwa National Park. The inherent right to fish, hunt and make use of the lands throughout the traditional territory remains a part of the way of life for Batchewana First Nation.



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These rights and interests trigger the Crown's Duty to Consult and the expectation that the Batchewana First nation will be a full participant in the development of any project that can impact its Treaty rights and interests. Batchewana First Nation also suggests that Union Gas has a responsibility to comply with the requirements for engagement and accommodation in any proposed project that will impact the Treaty rights and interests of Batchewana First Nation.

Batchewana's Intended Participation

Batchewana First Nation intends to participate to identify its expectations of the consultation process. As a minimum, Batchewana First Nation expects consultation requirements as set out in the Ontario Energy Board's *Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario* (the "Guidelines") to be met. Batchewana First Nation is of the opinion that consultation by the Crown and Union Gas thus far has been deficient.

The *Guidelines* have been in effect for less than one (1) year. Batchewana First Nation takes the position they should be rigorously followed to ensure good precedence and to affirm the Ontario Energy Board's commitment to reconciliation. Batchewana First Nation's concerns regarding adequate consultation go beyond the Prince Township expansion and are applicable to all community expansion proposals in the application by Union Gas and to all other applications for community expansion of natural gas by any proponents. Batchewana First Nation intends to ensure the *Guidelines* are sufficient in law and effectively implemented.

Batchewana First Nation has not been notified by the Crown of Union Gas' proposed project, nor has Batchewana First Nation been advised of which procedural aspects of the Crown's duty to consult have been delegated by the Ministry of Energy to Union Gas.

Batchewana First Nation notes Interrogatory #17 wherein staff of OEB asks Union Gas what has been completed in terms of consultation a required by the *Guidelines*. Batchewana First Nation has valuable first hand information regarding this question and would like to provide the Ontario Energy Board its perspective as to what has been completed and its expectations of consultation for the subject project being carried out within its traditional territory.

Archeological studies conducted on behalf of Batchewana First Nation, as well as its own work evidenced in a Traditional Knowledge Assessment shows that there are cultural sites within the project area as described by Union Gas.



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Batchewana First Nation is directly effected Union Gas' application for expansion of natural gas services into Prince Township and maintains significant interest in the lands along the proposed distribution pipeline route and within the proposed project area. This includes culturally significant sites and the exercise of Treaty rights and interests along the proposed pipeline.

Union Gas' Failure to Adequately Consult

Batchewana First Nation acknowledges that there have been attempts by Union Gas to meet and exchange information. However, those attempts have been clouded within the context of other outstanding matters between the parties.

Batchewana First Nation contends that Union Gas has failed to meet its obligation to engage and accommodate. Despite the acknowledgement by Union Gas that they forwarded documents to Batchewana First Nation, our participation has been informed by public notices, our own research, review of the Ontario Energy Board website and informal conversations with representatives from Union Gas. We are certain that documents have not been received by Batchewana Chief and Council.

Ontario's approach to environmental approvals includes guidelines for First Nation participation. These guidelines reference consultation plans. No consultation plan has been received by Batchewana First Nation regarding the subject Union Gas project proposal.

One technical document that has been referenced in the application is the Environmental Protection Plan (EPP). Batchewana First Nation admits that it does not have the internal capacity to review this document. To be able to meaningfully participate, Batchewana First Nation would have expected Union Gas to have engaged the First Nation by providing it with the resources to ensure adequate capacity to review the EPP and to share the findings of that review with its members.

Further documentation of interest to Batchewana First Nation includes all environmental assessment documentation and Union Gas' emergency management plan including spill response and control measures. Batchewana First Nation expects to be engaged on these documents given the impact that a spill event could have on its traditional territory and commercial fishery.

Before any decision can be made on permitting construction of the proposed pipeline project it will require Union Gas to meaningfully engage Batchewana First Nation and to have Batchewana First Nation demonstrate to the Ontario Energy Board that this has been completed.



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Lateness of Application

Union Gas last engaged formally with Batchewana First Nation on April 5th, 2017. At that time Union Gas representatives met with Batchewana's Chief and Council. Since the April 5th, 2017 meeting Union Gas has not formally engaged Batchewana.

To date, Batchewana First Nation has not received any consultation plan. Nor has Batchewana received Union Gas' Environmental Protection Plan ("EPP") for review and comment, despite being advised by Union Gas in its initial notification letter that it would circulate the EPP to Batchewana.

The Canadian Propane Association also submitted a late request for intervenor status, dated April 27th, 2017. The Ontario Energy Board in a letter dated May 2nd, 2017, approved the Canadian Propane Association's request for intervenor status despite it being past the April 13th, 2017 deadline set by OEB Procedural Order No. 6.

It has been determined by Batchewana First Nation that it would best meet their specific interests in the land along the trajectory of the proposed pipeline and within the project area to intervene in this application given the circumstances surrounding inadequate consultation.

Award of Costs

Batchewana First Nation seeks an award of costs for its intervention in these proceedings pursuant to Section 3.03 of the OEB's Practice Direction on Cost Awards. Batchewana is a party that primarily represents an interest or policy perspective relevant to the Board's mandate and to these proceedings. Specifically, Batchewana has an interest in the land affected by this process but is not a person as defined within the *Practice Direction on Cost Awards*.

Authorized Representatives

Batchewana First Nation requests copies of written evidence and all correspondence related to this matter be directed to:

Batchewana First Nation:

Chief Dean Sayers
236 Frontenac Street
Batchewana First Nation, ON
P6A 6Z1
Email: chiefdeansayers@batchewana.ca
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Aboriginal Business Network:

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Conclusion

It is the position of Batchewana First Nation that Union Gas has not met the threshold for consultation. Batchewana First Nation is unaware of which procedural aspect of the Crown's duty to consult have been delegated by the Ministry of Energy to Union Gas. In its application, Union Gas does not include any Letter of Delegation, Memorandum of Understanding or other express delegation from the Ministry as to what procedural aspects of the Crown's duty to consult it must engage in. Further, Batchewana has not been engaged by the Ministry of Energy on this project.

Union Gas' failure to adequately consult with Batchewana First Nation will compromise the Ontario Energy Board's ability to render a decision on the construction of the Prince Township gas line extension as participation of Batchewana First Nation is an essential element to compliance with the Guidelines.

Yours very truly

Chief Dean Sayers

cc: Sandra Kenny, BFN, councilsecretary@batchewana.ca
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