



Dave Janisse
Technical Manager
Leave to Construct Applications
Regulatory Affairs

tel 519-436-5442
EGIRegulatoryProceedings@enbridge.com

Enbridge Gas Inc.
50 Keil Drive
Chatham, Ontario N7M 5M1
Canada

January 21, 2022

VIA EMAIL and RESS

Nancy Marconi
Acting Registrar
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Dear Nancy Marconi:

**Re: Enbridge Gas Inc. (Enbridge Gas)
Ontario Energy Board (OEB) File: EB-2021-0205
Greenstone Pipeline Project – Reply Submission**

Consistent with the OEB's Procedural Order No. 2, enclosed please find the reply submission of Enbridge Gas in the above noted proceeding.

The above noted submission has been filed electronically through the OEB's RESS.

Please contact the undersigned if you have any questions.

Yours truly,

(Original Signed)

Dave Janisse
Technical Manager, Leave to Construct Applications

Cc: T. Persad (Legal counsel, Enbridge Gas)
Z. Cronjacki (OEB Staff)
Intervenors (EB-2021-0205)

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Schedule B; and in particular section 90(1) and section 97 thereof;

AND IN THE MATTER OF an application by Enbridge Gas Inc. for an order granting leave to construct natural gas pipelines in the Municipality of Greenstone.

ENBRIDGE GAS INC.

REPLY SUBMISSION

OEB File No. EB-2021-0205

January 21, 2022

TABLE OF CONTENTS

INTRODUCTION.....	3
NEED FOR THE PROJECT	4
PROJECT ALTERNATIVES.....	5
PROJECT COST AND ECONOMICS	6
ENVIRONMENTAL IMPACTS.....	10
LANDOWNER IMPACTS	12
INDIGENOUS CONSULTATION.....	13
CONDITIONS OF APPROVAL.....	17
CONCLUSION	20

INTRODUCTION

1. Pursuant to Procedural Order No. 2 issued by the Ontario Energy Board (“OEB”) on December 17, 2021, Enbridge Gas Inc. (“Enbridge Gas” or the “Company”) makes these submissions in reply to the submissions filed by OEB staff, Pollution Probe, Environmental Defence Research Foundation (“Environmental Defence”), and Minodahmun Development LP (“MDLP”) in this proceeding. As stated in MDLP’s submission:

“MDLP is a 100% First Nation owned partnership created by Animbiggogg Zaagi’igan Anishinaabek (AZA), Aroland First Nation (AFN) and Ginoogaming First Nation (GFN) (collectively – MDLP First Nation members) to maximize First Nation participation in development projects.”¹

2. Pursuant to section 90(1) of the *Ontario Energy Board Act*, 1998, S.O. 1998, c. 15, Schedule B (the “Act”), Enbridge Gas is seeking an order granting leave to construct approximately 13 km of nominal pipe size (“NPS”) 6-inch extra-high pressure (“XHP”) steel (“ST”) natural gas main within the Municipality of Greenstone, Ontario. Enbridge Gas is also seeking approval, pursuant to section 97 of the Act, of the form of temporary land use agreement and easement agreement to be used for the Greenstone Pipeline Project (“Project”).
3. In order to meet the required in-service date of March 1, 2023, Enbridge Gas expects to commence construction of the Project in March 2022, subject to OEB approval.
4. The Project is supported by OEB staff, who stated in their respective submissions:

“OEB staff has no concerns with the Project and supports the OEB granting leave to construct approval to Enbridge Gas,

¹ MDLP Submission, p. 1

subject to certain Conditions of Approval contained in Appendix A of this submission.”²

5. Environmental Defence stated that it “is not asking the OEB to reject this application.”³ While intervenors made submissions about concerns with some aspects of the Project, no intervenor made submissions against the OEB’s approval of the application altogether.
6. Through the balance of this submission, Enbridge Gas summarizes and responds to the specific submissions of OEB staff and intervenors.

NEED FOR THE PROJECT

7. The Project is required to provide natural gas distribution service to the Greenstone Mine Project. The Greenstone Mine Project is an open pit gold mine located near the Town of Geraldton, Ontario, owned and operated by Greenstone Gold Mines LP (“GGM”). Existing gas infrastructure in the immediate vicinity is not able to support the incremental demand requested by GGM, resulting in the need for new facilities.
8. Enbridge Gas and GGM executed a Northern Gas Distribution Contract (“Contract”) on February 22, 2021, with service scheduled to commence by March 1, 2023.⁴
9. Based on the evidence filed by Enbridge Gas, OEB staff submitted that there is a need for the Project.⁵ No intervenors refuted the basic need for the Project.

² OEB Staff Submission, p. 2

³ Environmental Defence Submission, p. 1

⁴ Exhibit B, Tab 1, Schedule 1, Attachment 1

⁵ OEB Staff Submission, p. 4

PROJECT ALTERNATIVES

10. The Project alternatives considered consisted of several pipeline routing options which are summarized in evidence⁶ and discussed in greater detail in the Environmental Report (“ER”).⁷

11. As outlined in Exhibit C, Tab 1, Schedule 1, Enbridge Gas has complied with the guidance provided in the OEB’s *Integrated Resource Planning Framework for Enbridge Gas* (“IRP Framework”). Specifically, Enbridge Gas applied the Binary Screening Criteria and determined that the need underpinning the Project does not warrant further IRP consideration, as it meets the definition of a customer-specific build defined in the IRP Framework:

Customer-Specific Builds – *If an identified system need has been underpinned by a specific customer’s (or group of customers’) clear request for a facility project and either the choice to pay a Contribution in Aid of Construction or to contract for long-term firm services delivered by such facilities, then an IRP evaluation is not required.*⁸

12. OEB staff supports Enbridge Gas’s proposed Project as the best alternative to meet the needs of GGM.⁹ Pollution Probe submitted that Enbridge Gas has not met the need to properly assess DSM alternatives set out by the OEB in its January 2021 EB-2020-0192 Decision, which called for a more rigorous IRP assessment at the preliminary stage of project development.¹⁰ Environmental Defence submitted that “*although customer-specific builds do not require the standard full IRP evaluation, the OEB has not relieved Enbridge of all obligations to consider IRP in these instances. Rather, the OEB stated in the*

⁶ Exhibit C, Tab 1, Schedule 1, p. 2-3

⁷ Exhibit F, Tab 1, Schedule 1, Attachment 1, section 2.0

⁸ EB-2020-0091, Decision and Order, July 22, 2021, Appendix A

⁹ OEB Staff Submission, p. 5

¹⁰ Pollution Probe Submission, p. 7

IRP Framework decision that it “encourages Enbridge Gas to discuss DSM opportunities with customers to potentially reduce the size of the build.” In this case, no such discussion was held between Enbridge and Greenstone Gold.”¹¹

MDLP submitted that Enbridge Gas should make best efforts to assist GGM to apply reasonable DSM options.¹²

13. As outlined in the response at Exhibit I.STAFF.3, Enbridge Gas is not aware of any DSM opportunity that could reliably or economically reduce the scope of the Project and considering that Project design was finalized in 2020 based on the customer’s defined needs, the Company did not propose any incremental DSM programming to GGM as an alternative to the Project. However, Enbridge Gas has made GGM aware of its existing DSM programming and has advised that upon becoming a customer of the Company it will have access to leverage the same.

14. It is important to note that the IRP Framework was issued on July 22, 2021, approximately five months after Enbridge Gas executed a contract with GGM and several years after the preliminary stages of project development commenced.

PROJECT COST AND ECONOMICS

15. The total cost of the Project is estimated to be \$25.8 million, less Contribution in Aid of Construction (“CIAC”) of \$20.3 million, for a net project cost of \$5.5 million as set out in Table 1 in Exhibit D, Tab 1, Schedule 1. An economic analysis of the Project has been completed in accordance with the OEB’s recommendations in its E.B.O. 188 *Report of the Board on Natural Gas System Expansion* (“E.B.O. 188”), and the results of the analysis confirm that the

¹¹ Environmental Defence Submission, p. 2

¹² MDLP Submission, p. 5

Project is economically justified and will not result in additional costs borne by existing ratepayers.¹³

16. OEB staff has no concerns regarding Project cost and economics.¹⁴ No intervenor disputed the reasonability of the Project cost, however, Pollution Probe submitted that it is unclear why the cost of the Project increased since 2020, referencing the cost of the Project as outlined in Enbridge Gas's 2021-2025 Asset Management Plan, filed in 2020.¹⁵ Enbridge Gas explained this variance in its response to one of Pollution Probe's interrogatories at Exhibit I.PP.3:

"The costs referenced in the 2021-2025 Asset Management Plan are direct capital costs and do not include Indirect Overheads or Company Loadings & Interest During Construction. The remaining variances in costs are attributed to refinements to the Project cost estimate as the Project design and development progressed. As Project design and development advances, additional information is obtained on Project cost inputs such as site-specific conditions, installation methods, land requirements, permitting requirements, labour and material pricing, etc. which lead to a more accurate cost estimate."

17. Pollution Probe incorrectly submitted that portions of the Project cost will be paid for by other ratepayers but does not provide any support or basis for this conclusion.¹⁶ Contrary to Pollution Probe's submission, \$20.3 million will be paid by GGM as a CIAC¹⁷, and the remaining Project costs, incremental Project expenses, and the impact of the CCA tax shield arising from the Project are recovered through the incremental customer revenue earned by Enbridge Gas from the Project.¹⁸

18. Pollution Probe and Environmental Defence made submissions on matters of cost recovery in the event of various uncertain future scenarios. These include

¹³ Exhibit D, Tab 1, Schedules 1 - 4

¹⁴ OEB Staff Submission, p. 7

¹⁵ Pollution Probe Submission, p. 3

¹⁶ *ibid*

¹⁷ Exhibit D, Tab 1, Schedule 1

¹⁸ Exhibit I.STAFF.4

the potential cost recovery impacts of a reduction in the pipeline amortization period in the future and the potential cost recovery impacts of GGM defaulting on its Contract.¹⁹ As outlined in Enbridge Gas's responses to interrogatories, these matters of cost recovery would be subject to many variables, including enforcement of the robust cost recovery mechanisms set out in the Contract, the rate-setting mechanisms in place at the time, and the context of any future Enbridge Gas application to the OEB to recover such amounts.²⁰

19. Environmental Defence requested that Enbridge Gas confirm in its Reply Submission that it will secure firm guarantees from GGM's parent companies.²¹ In its response to interrogatories, Enbridge Gas explained that the terms of the Contract allow Enbridge Gas to require GGM to provide financial assurances acceptable to the Company at any point after June 1, 2022, when Enbridge Gas will be committing to the majority of the capital expenditures for the Project. Enbridge Gas does not anticipate any issues in acquiring adequate financial assurances, including parental guarantees, in accordance with the Contract and standard Enbridge Gas practices.²²

20. MDLP submits, "in future Enbridge Gas proceedings before the OEB... that Enbridge Gas transparently provide information on [project costs related to consulting with First Nations]."²³ In Enbridge Gas's view, this request is very broad and is outside of the scope of this proceeding. MDLP cites the recent Elexicon Energy rates proceeding for its proposition that the OEB accepted similar cost issues as within the scope of reviewing costs in a proceeding. Enbridge Gas notes that while the OEB accepted these issues in the Elexicon proceeding, it does not appear that such costs were actually produced or examined in that proceeding. Accordingly, MDLP cannot attribute to the OEB

¹⁹ Pollution Probe Submission, p. 4; Environmental Defence Submission, p. 2

²⁰ Exhibit I.PP.6, Exhibit I.ED.3

²¹ Environmental Defence Submission, p. 2

²² Exhibit I.ED.3h)

²³ MDLP Submission, p. 5-6

any particular views on the specific production of such costs. In any event, as Enbridge Gas noted in its responses to interrogatories regarding MDLP's specific request for such Project cost information, this information is commercially sensitive²⁴ and not appropriate for public disclosure, particularly considering that MDLP was in an active negotiation for an accommodation agreement with Enbridge Gas at the time of submitting their interrogatory. In Enbridge Gas's view, this information is not necessary for the OEB to make a decision on the Application.

21. Finally, Pollution Probe makes submissions regarding the scope of the Project cost under review by the OEB in this proceeding. Specifically, Pollution Probe states that the OEB's review of the reasonableness of Project costs should be limited only to the pipeline components of the Project which require leave to construct approval under Section 90(1) of the Act, namely, the ~13 km of NPS 6 XHP ST pipeline.²⁵ Enbridge Gas does not agree with this submission.
22. While the Company is seeking leave to construct approval pursuant to section 90 (1) of the Act of the ~13 km of NPS 6 XHP ST pipeline, there are other proposed facilities necessary to meet the Project need, which are appropriately included as part of the Project.²⁶ The OEB's general assessment of economic feasibility is not limited only to components of the Project that strictly require leave to construct approval, particularly in a case like this where the ancillary facilities are a necessary adjunct to the pipeline facilities and have been included in the economic feasibility assessment. Furthermore, Enbridge Gas is not seeking cost recovery approval in this proceeding. Enbridge Gas will file with the OEB actual capital cost information for the Project at the time that it seeks to place the Project facilities into service.

²⁴ Exhibit I.MDLP.2a) to c)

²⁵ Pollution Probe Submission, p. 4-5

²⁶ Exhibit C, Tab 1, Schedule 1, Table 1

ENVIRONMENTAL IMPACTS

23. In accordance with the OEB's *Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario, 7th Edition, 2016* ("Guidelines"), Enbridge Gas has worked with Stantec Consulting Ltd. ("Stantec") to conduct a comprehensive environmental and socio-economic impact study, the details of which are documented in an extensive ER.²⁷ The ER identifies the environmental impacts associated with the construction of the Project and describes how the Company intends to mitigate and manage these impacts.

24. When Enbridge Gas responded to interrogatories, there was one outstanding matter being discussed with the Ministry of Environment, Conservation and Parks ("MECP") regarding the assessment of the environmental impact of a closed municipal landfill within the vicinity of the Project. Correspondence outlining the Company's response to the MECP's question was filed in Enbridge Gas's interrogatory response²⁸, and the Company has since received confirmation from the MECP that they are satisfied with the response provided. As of the time of this Reply Submission, all issues and questions identified by OPCC members have been resolved.

25. OEB staff submitted that Enbridge Gas has completed the ER in accordance with the OEB Environmental Guidelines. OEB staff has no concerns with the environmental aspects of the Project, given that Enbridge Gas is committed to implementing the mitigation measures set out in the ER and to completing the Environmental Protection Plan prior to the start of construction.²⁹ Environmental Defence did not make a submission with respect to environmental impacts of the Project. MDLP's submissions are discussed within the Indigenous Consultation section of this Reply Submission.

²⁷ Exhibit F, Tab 1, Schedule 1, Attachment 1

²⁸ Exhibit I.STAFF.5, Attachment 1, p. 97-99

²⁹ OEB Staff Submission, p. 9

26. Pollution Probe provides a relatively lengthy commentary on the importance of the process and content of the OEB's Guidelines.³⁰ Within this commentary, Pollution Probe asserts there are "gaps" in the review of environmental and socio-economic impacts related to the proposed Project. First, Pollution Probe states that the Ontario Pipeline Coordination Committee ("OPCC") process "is not functioning effectively or in alignment with similar standards and outcomes for environmental assessment processes" due in part to the lack of positive confirmation of approval from every individual OPCC member.³¹ Enbridge Gas notes that nowhere within the Guidelines is there a requirement for positive confirmation by OPCC members. Enbridge Gas has correctly applied the Guidelines with respect to the OPCC review process and has produced extensive evidence outlining all correspondence the Company has had with OPCC members throughout their review of the Project.³²

27. Pollution Probe also makes reference to outstanding permits and approvals for the Project and states that this "could pose a serious challenge if there is urgency for Enbridge to start construction."³³ Enbridge Gas reiterates that it is not anticipating any permitting or approval delays that would affect construction of the Project.³⁴ Further, the existence of outstanding permits and approvals is a common occurrence at the time of OEB approval of leave to construct applications and it is a standard condition of approval that permits, licences, certificates, agreements and rights required to construct, operate and maintain the Project are obtained.³⁵

28. Finally, Pollution Probe makes a statement that the Project "traverses several sections of wetland that were documented in the Environmental Report to be

³⁰ Pollution Probe Submission, p. 7-10

³¹ Pollution Probe Submission, p. 8-9

³² Exhibit F, Tab 1, Schedule 1, Attachment 2 and Exhibit I.STAFF.5, Attachment 1

³³ Pollution Probe Submission, p. 9

³⁴ Exhibit I.STAFF.10c)

³⁵ Application under Section 90(1) of the OEB Act, Standard Conditions of Approval, Condition #3

sensitive from an ecological and water recharge perspective.”³⁶ Pollution Probe does not provide a reference supporting this statement. The Company would like to clarify that the Project does not in fact directly traverse wetlands and that the preferred route for the Project was specifically selected to avoid impacts to wetland areas by remaining within road allowances.³⁷

LANDOWNER IMPACTS

29. On the issue of landowner impacts, Enbridge Gas explained that the Project follows existing public road allowance for the majority of the Project. In its response at Exhibit I.STAFF.8, Enbridge Gas explained that all land requirements for construction of the proposed Project are temporary easement, with the exception of lands owned by GGM and, potentially, the Canadian North Railway Company. Enbridge Gas has since confirmed that it will require a permit to cross the unused railway, and that a permanent easement on lands owned by the Canadian North Railway Company will not be required. Temporary working areas may be required along the pipeline route where road allowance is too narrow or confined to facilitate construction of the Project.³⁸

30. Enbridge Gas has requested approval of the form of temporary land use agreement³⁹ and easement agreement⁴⁰ that will be provided to landowners as required. The filed form of agreements have not been previously approved by the OEB, but a comparison version of each agreement to the ones previously approved by the OEB were provided.⁴¹ Enbridge Gas noted that amendments to these agreements are minor and of a “housekeeping” nature.⁴²

³⁶ Pollution Probe Submission, p. 7

³⁷ Exhibit F, Tab 1, Schedule 1, Attachment 1, section 2.4

³⁸ Exhibit G, Tab 1, Schedule 1

³⁹ Exhibit G, Tab 1, Schedule 1, Attachment 1

⁴⁰ Exhibit G, Tab 1, Schedule 1, Attachment 2

⁴¹ Exhibit G, Tab 1, Schedule 1, Attachments 3 and 4

⁴² Exhibit I.STAFF.9

31. OEB staff submitted that the OEB should approve the proposed forms of easement and temporary land use agreement as both contain only minor modifications to the forms previously approved by the OEB.⁴³ No intervenor made submissions with respect to landowner impacts of the Project nor the temporary land use agreement or easement agreement submitted by Enbridge Gas.

INDIGENOUS CONSULTATION

32. Enbridge Gas has been delegated the procedural aspects of consultation with impacted Indigenous groups by the Ministry of Energy (“MOE”). In accordance with the Guidelines, an Indigenous Consultation Report outlining consultation activities Enbridge Gas has conducted has been prepared and provided to the MOE and filed with the OEB.⁴⁴ While Enbridge Gas has not yet received a letter from the MOE confirming sufficiency of Indigenous consultation activities on the Project, the Company expects to receive it in Q1 of 2022.⁴⁵

33. OEB staff submitted that Enbridge Gas appears to have made efforts to engage with affected Indigenous groups and no concerns that could materially affect the Project have been raised through its consultation to date.⁴⁶ Pollution Probe and Environmental Defence made no submissions with respect to Indigenous consultation for the Project.

34. OEB staff also submitted that since the MOE has not yet issued a Sufficiency Letter, the OEB should include a condition of approval that Enbridge Gas receives and files this letter with the OEB.⁴⁷ Enbridge Gas will file the Sufficiency Letter with the OEB once received. As discussed below, the

⁴³ OEB Staff Submission, p. 10

⁴⁴ Exhibit H, Tab 1, Schedule 1, Attachment 6 and 7; Exhibit I.STAFF.5 Attachment 2

⁴⁵ Exhibit I.STAFF.11d)

⁴⁶ OEB Staff Submission, p. 12

⁴⁷ OEB Staff Submission, p. 12

Company is willing to accept receipt of a Sufficiency Letter as a condition of approval for this Application.

35. MDLP submitted that Enbridge Gas incorrectly stated in its response to interrogatories that no specific issues have been raised by Indigenous communities since its September 10, 2021 filing of the leave to construct application.⁴⁸ Respectfully, MDLP has taken Enbridge Gas's statement in response to Exhibit I.STAFF.11 out of context as the remainder of the response explains that Enbridge Gas has responded to several requests for further information as detailed in its Indigenous Consultation Log. Enbridge Gas maintains that it has been able to provide a reasonable and sufficient response to any Project-specific comments that MDLP or the MDLP First Nation members have made to date. Stated another way, MDLP has not raised and Enbridge Gas is not otherwise aware of any potential impacts the Project may have on Aboriginal rights that Enbridge Gas has not addressed through its proposed mitigation measures and commitments on the Project and its engagement with MDLP and the MDLP First Nation members. Enbridge Gas notes in this regard that the Project consists of an underground 6-inch gas pipeline that is proposed to be located in pre-existing road allowance and is not located on or in close proximity to reserve lands.

36. Enbridge Gas agrees with MDLP's statement that both it and Enbridge Gas have made significant efforts to engage with each other to determine appropriate accommodations for an agreement between the parties and that MDLP has been an active participant in this proceeding.⁴⁹ Enbridge Gas continues to negotiate in good faith with MDLP to reach an agreement; however, Enbridge Gas does not agree with MDLP's characterization that the proposed agreement is required to resolve any outstanding issues or that the MOE should not issue a Sufficiency Letter until such an agreement is

⁴⁸ MDLP Submission, p. 2

⁴⁹ MDLP Submission, p. 3

reached.⁵⁰ While Enbridge Gas remains hopeful that an agreement can be reached with MDLP, it is important to note that Indigenous groups do not have a veto over final Crown decisions, nor is there a duty to agree.⁵¹ Further, the process of consultation does not provide any guarantee that the specific accommodation sought by an Indigenous group will be warranted or possible. Like consultation, accommodation does not guarantee outcomes. It is an ongoing give and take.⁵²

37. In specific response to the outstanding issues outlined in MDLP's submission, Enbridge Gas submits the following:

- it is committed to working with MDLP and the MDLP First Nation members' businesses, where qualified ("MDLP Businesses"), to maximize Indigenous community participation on construction of the Project. Enbridge Gas will require its contractor on the Project to follow Enbridge Gas's Socio-Economic Requirements of Contractors ("SERC") and SERC process, which is a process that is used to ensure inclusion of local Indigenous businesses where possible and where qualified. Enbridge Gas's contractor on the Project will be required to seek proposals from MDLP Businesses for all applicable services that are not self-performed by the contractor. Enbridge Gas will require the contractor to treat competitively priced proposals from qualified MDLP Businesses as preferred and award the work accordingly where the same can be agreed to on mutually acceptable terms between the contractor and the subcontractor;

⁵⁰ MDLP Submission, p. 3

⁵¹ *Haida v. British Columbia (Minister of Forests)*, 2004 SCC 73 at paras. 48 and 49; *Mikisew Cree First Nation v. Canada*, 2005 SCC 69, at para. 66; *Beckman v. Little Salmon/Carmacks First Nation*, [2010] 3 S.C.R. 103 at para. 14; *Chippewas of the Thames v. Enbridge Pipelines Inc.*, 2017 SCC 41 at para. 59, *Ktunaxa Nation v. British Columbia*, 2017 SCC 54 at para. 80 and *Coldwater Indian Band et al. v. Attorney General of Canada, Trans Mountain Pipeline ULC et al.*, 2020 FCA 34 at para. 119 (*Coldwater*).

⁵² *Coldwater* at para. 58.

- it is committed to incorporating Indigenous Traditional Knowledge (“ITK”) collected by MDLP First Nation members and provided to Enbridge Gas in the Company’s EPP for the Project;
- it is committed to facilitating environmental monitoring by the MDLP First Nation members by providing reasonable funding for one monitor from each First Nation member to participate in environmental monitoring during construction of the Project;
- it is committed to continuing to engage with MDLP First Nation members throughout the lifecycle of the Project by sharing information, addressing concerns, as appropriate, and providing opportunities to review and comment on any subsequent environment Crown approvals that may be required in relation to the Project, within a specified timeframe;
- it is committed to facilitating such continued Project lifecycle engagement through specific representatives or as agreed to by the parties, given the scale and scope of the Project; and
- it is committed to working with MDLP and GGM to facilitate economic reconciliation opportunities associated with the Project, where possible, and as outlined above. Enbridge Gas submits that the Project is needed to provide natural gas service to the Greenstone Gold Mine, operated by GGM. MDLP stated that MDLP First Nation members will receive certain benefits from the long-term relationship agreement entered into with GGM.⁵³ This implies that Enbridge Gas proceeding with the Project in a timely manner to meet the gas service requirements of GGM for the Greenstone Gold Mine is also in the interest of the MDLP First Nation members.

38. Enbridge Gas submits that it has meaningfully engaged Indigenous groups potentially affected by the Project, as identified by the MOE, including the MDLP First Nation members, to ensure any potential impacts the Project may

⁵³ MDLP Submission, p. 1

have on Aboriginal rights can be avoided or mitigated. Given the commitments made by Enbridge Gas in this proceeding and through its engagement with Indigenous groups, MDLP's participation in this regulatory process and the conditions, which may be added to any OEB approval of the Project, Enbridge Gas submits that the MOE should find the duty to consult to have been satisfied in the circumstances.

CONDITIONS OF APPROVAL

39. OEB staff submitted that the OEB consider two amendments to the Standard Conditions of Approval for leave to construct applications: (i) modifying condition 2(a)(i) as proposed by Enbridge Gas and (ii) adding a condition making a leave to construct conditional on Enbridge Gas receiving and filing with the OEB a Sufficiency Letter from the Ministry of Energy.⁵⁴

40. Enbridge Gas hereby confirms its intention to satisfy the conditions as described by OEB staff in its submission and will comply with the final conditions of approval established by the OEB.

41. In addition to the standard conditions of approval, Pollution Probe submitted that the OEB provide a condition of approval that Enbridge Gas file an Environmental Protection Plan ("EPP") in advance of Project construction. Pollution Probe also submitted that the OEB should encourage EPPs to be filed as part of a complete application for future leave to construct projects.⁵⁵

42. The purpose of an EPP is to document and incorporate recommended mitigation measures contained in the ER and those mitigation measures obtained from agency consultation, including those identified during Indigenous consultation, for the environmental issues associated with the proposed works. These mitigation measures will be communicated to the construction contractor

⁵⁴ OEB Staff Submission, p. 12

⁵⁵ Pollution Probe Submission, p. 8

prior to the commencement of construction of the Project.⁵⁶ Enbridge Gas does not create or file EPPs at the time of filing a leave to construct application with the OEB as the EPP is likely to require updates prior to construction to ensure all identified mitigation measures developed from consultations have been incorporated. As noted in the response at Exhibit I.PP.9, many of the environmental concerns addressed within an EPP are also addressed within the ER for the Project. Recommended mitigation measures for potential effects have been developed in the ER to address environmental and socio-economic features found along the preferred route and a summary of potential effects and recommended mitigation measures and protective measures can be found in Table 5.1 of the ER.

43. OEB staff noted in their submission the Standard Conditions of Approval for leave to construct ensure that the environmental impacts of the Project are addressed, mitigated, and monitored.⁵⁷ For this reason, and those outlined above, Enbridge Gas does not feel that a new condition of approval regarding the EPP is necessary.

44. In addition to the standard conditions of approval, MDLP submitted that the OEB provide a series of additional conditions of approval⁵⁸, summarized below:

- 1) That Enbridge Gas execute a legally binding accommodation agreement with MDLP and their members;
- 2) That the MOE issue a Sufficiency Letter for the Project;
- 3) That Enbridge Gas file a post-construction report for the Project which shall describe any outstanding concerns raised by Indigenous groups during construction;
- 4) That Enbridge Gas file a final monitoring report for the Project which shall describe the effectiveness of any actions taken to prevent or

⁵⁶ Exhibit F, Tab 1, Schedule 1, p. 3

⁵⁷ OEB Staff Submission, p. 9

⁵⁸ MDLP Submission, p. 6

mitigate or compensate any impacts of construction on asserted or known Aboriginal treaty rights and interests; and

- 5) That Enbridge Gas file a report identifying DSM program offerings available to and discussed with GGM.

45. MDLP's proposed condition 1 and 2 deal exclusively with the adequacy of Indigenous consultation for the Project. As indicated above, Enbridge Gas accepts the proposed condition by OEB staff related to receipt of a Sufficiency Letter from the MOE. The Company disagrees with MDLP's proposed condition 1 on the basis that the sufficiency of Indigenous consultation is a matter for the MOE to determine which in Enbridge Gas's view, in the circumstances of the Project, does not involve a requirement to execute a legally binding accommodation agreement.

46. Enbridge Gas notes that MDLP's proposed conditions 3 and 4 are already covered under the standard conditions of approval. Condition 8a)ii) and 8a)iii) proposed by OEB staff require the Company to issue a post-construction report for the Project which describe impacts and outstanding concerns identified during construction and the actions to be taken to address the identified impacts. Condition 8b)iii) proposed by OEB staff requires the Company to issue a final monitoring report describing the effectiveness of actions taken to address the identified impacts of construction.

47. Finally, Enbridge Gas submits that MDLP's proposed condition 5 is not necessary. Enbridge Gas has already confirmed that it has had discussions with GGM regarding DSM program offerings.⁵⁹ Reporting of Enbridge Gas's actions with respect to its DSM program are sufficiently addressed within its annual DSM reports and clearance and disposition proceedings. The Company notes that the DSM Framework and Plan application is currently before the

⁵⁹ Exhibit I.STAFF.3

OEB⁶⁰ which, inter-alia, deals with issues of reporting on DSM programs. A requirement to report on customer-specific DSM program activities as a condition of approval for leave to construct is unprecedented and unnecessary.

CONCLUSION

48. Considering the evidence as summarized above and the support for the Project from OEB staff, the OEB should conclude that the Project is needed and, subject to the conditions of approval proposed by OEB staff, should issue an order granting leave to construct the Project and approving the form of temporary land use agreement and easement agreement for use in the Project.

⁶⁰ EB-2021-0002