

EB-2021-0078 – Enbridge Gas Inc. – 2022 Storage Enhancement Project

ONTARIO ENERGY BOARD

IN THE MATTER OF the Ontario Energy Board Act, 1998, S.O. 1998, c.15,
Schedule B; and in particular sections 40(1), 38(1), and 91 thereof;

AND IN THE MATTER OF an application by Enbridge Gas Inc. for an order or
orders to vary the maximum operating pressure of certain gas storage pools
and for a favourable report to the Ministry of Northern Development, Mines,
Natural Resources and Forestry to support a licence to drill a gas storage well
and for an order or orders granting leave to construct a related gathering
pipeline

SUBMISSION

OF

CHIPPEWAS OF KETTLE AND STONY POINT FIRST NATION WITH SOUTHWIND DEVELOPMENT CORPORATION

February 18, 2022

Background

1. The Chippewas of Kettle and Stony Point First Nation (CKSPFN) with Southwind Development Corporation (Southwind) requested intervenor status in the above noted proceeding on February 9, 2022.
2. Enbridge filed a response to the above noted request on February 11, 2022. In its response, Enbridge stated, “Enbridge Gas has concerns with this very late request by CKSPFN to intervene in the proceeding”. Enbridge Gas further explained that their primary concern is that an extension of the procedural schedule to allow for this additional submission may place the project timeline in jeopardy.
3. CKSPFN and Southwind met with Enbridge on February 11, 2022, to discuss the project. During that meeting, Enbridge expressed a commitment to the recommendations of the Truth and Reconciliation Commission (TRC), specifically TRC Recommendation #92 which states:

We call upon the corporate sector in Canada to adopt the United Nations Declaration on the Rights of Indigenous Peoples as a reconciliation framework and to apply its principles, norms, and standards to corporate policy and core operational activities involving Indigenous peoples and their lands and resources. This would include, but not be limited to, the following:

- i. Commit to meaningful consultation, building respectful relationships, and obtaining the **free, prior, and informed consent of Indigenous peoples before proceeding with economic development projects.**

- ii. Ensure that Aboriginal peoples have equitable access to jobs, training, and education opportunities in the corporate sector, and that Aboriginal communities gain long-term sustainable benefits from economic development projects.
 - iii. Provide education for management and staff on the history of Aboriginal peoples, including the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations. This will require skills based training in intercultural competency, conflict resolution, human rights, and anti-racism
4. Enbridge’s concern about CKSPFN intervention “very late in the proceeding” is in direct conflict with the above. A project should not proceed until the impacted Indigenous peoples provide consent. CKSPFN with Southwind have yet to sign a capacity funding agreement with Enbridge, have yet to review the project documents in detail, and have yet to provide consent on the proposed project.
5. On February 15, 2022, CKSPFN with Southwind had a meeting with the Ministry of Energy regarding Enbridge’s 2022 Storage Enhancement Project. At that time, CKSPFN with Southwind expressed that the procedural aspects of the Duty to Consult have not been adequately discharged by Enbridge to date. We will continue to update the Ministry of Energy regarding our progress with Enbridge as they prepare to issue their letter of opinion (Sufficiency Letter) on the adequacy of Indigenous Consultation.
6. In respect for the Board’s time, we submit the following as our submission as an Intervenor.

Environmental Concerns

7. Enbridge’s application states, *"Based on a preliminary review of background information and available aerial imagery, there is potential for Amphibian Breeding Habitat (Woodland) to occur in the wooded area in the Payne Storage Pool DSA Study Area."*¹

Concern: Enbridge does not recommend amphibian breeding surveys. As such, work could proceed without amphibian breeding surveys, which may result in impacts on sensitive species important to CKSPFN.

It is unclear what work will be done to ensure that impacts on amphibians and their breeding habitat are adequately mitigated and given the sensitive nature of amphibians to contaminants, this must be addressed. Amphibian call surveys should be completed to confirm if this breeding habitat occurs. A series of surveys should occur after sunset in the spring months following an acceptable protocol, which should be approved by CKSPFN. An example protocol is the Marsh Monitoring Program protocol, where three surveys must occur when night-time air temperature is greater than 5°C, 10°C, and 17°C, respectively. Any potential or confirmed habitat should be mapped in relation to the proposed project, and this mapping should be provided to CKSPFN.

8. In the Cumulative Effects Assessment (Section 5), Enbridge states, *"To make assumptions about the magnitude and probability of effects, an approximate 100 m boundary around the proposed Project locations was used for the cumulative effects assessment. The 100 m boundary has been found, through previous experience with pipeline construction, to be appropriate for the most encountered net effects."*²

¹ EGI_APPL_20211027.PDF, page 110

² EGI_APPL_20211027.PDF, Section 5.2 – Study Boundaries

Concern: Enbridge's proposed spatial boundaries do not adequately cover system-level cumulative effects

Cumulative effects are defined in the present report as "Cumulative effects include the temporal and spatial accumulations of change that occur within an area or system due to past, present, and future activities." This statement indicates that cumulative effects would be considered for the general area and associated ecosystems, which should include the landscape-level dynamics that reliant species and waters are part of. A 100 m threshold does not address ecosystem or landscape-level processes and is unlikely to lead to an adequate assessment of cumulative effects on the lands and waters that are connected to the project area. This threshold should be revised to match landscape-level dynamics and should be justified in an evidence-based manner such as citing peer-reviewed literature on the subject. Basing this threshold on "previous experience with pipeline construction" does not allow CKSPFN to adequately assess the validity of this threshold in terms of protecting lands, waters, and living relatives.

9. In the Cumulative Effects Assessment (Section 5), Enbridge states, *"two time periods were selected for evaluation: 2021/2022 and 2027. The year 2022 was selected to represent the construction period, and the year 2027 was selected to represent the operation and maintenance period. Forecasting beyond 2027 increases the uncertainty in predicting whether projects will proceed, and the effects associated with these projects."*

Concern: Baseline effects have not been assessed. This Cumulative Effects Assessment is not adequate.

While we appreciate that forecasting of future impacts has been attempted, this approach does not seem to adequately address the impacts that have occurred to date. Without establishing a baseline of landscape-level natural gas sector impacts to date, it is nearly impossible to accurately determine how this project may further impact the lands, waters, and living species relatives that CKSPFN has lived in relationship with since long prior to colonial times. Establishing a spatio-temporal baseline of Enbridge's project's impacts is something that the company should carry out as a larger exercise that would allow for a more accurate assessment of current and future project cumulative impacts.

10. With events like the recent Ministry of Environment, Conservation, and Parks Minister's order to pause protections for black ash (*Fraxinus nigra*) for two years, CKSPFN is concerned about project impacts to at-risk species relatives. CKSPFN must be involved in more detailed environmental report review that includes the assessment of potential impacts on wildlife and plant relatives that CKSPFN sees as being at-risk. This should include involvement in the design of any mitigation and offsetting measures that are undertaken for impacted relatives. Capacity funding to support CKSPFN in performing this review and potentially in fielding environmental monitors must be a priority.

Requested Accommodations

11. In the OEB's Decision and Order in EB-2012-0451, the Board stated, "To the extent that the duty to consult issues identified fall within the Board's jurisdiction, it is the Board's responsibility to ensure appropriate consultation has taken place."³
12. CKSPFN with Southwind submits that the OEB set a precedent in their January 30, 2014 Decision and Order⁴ regarding Enbridge Gas Distribution Inc.'s GTA Reinforcement Project, OEB File No. 2012-0451. Per this

³ Decision and Order – EB-2012-0451, page 56

⁴ <https://www.rds.oeb.ca/CMWebDrawer/Record?q=CaseNumber=EB-2012-0451&sortBy=recRegisteredOn-&pageSize=400>

precedent, CKSPFN submits the following be included as conditions for approval of the 2022 Storage Enhancement Project:

- a) For each work site for the Enbridge Gas 2022 Storage Enhancement Project, provide CKSPFN/Southwind with the following information prior to construction:
 - (i) exact location and size of site;
 - (ii) plans to protect the environment and sensitive watershed including Enbridge Gas' environmental protection plans; and
 - (iii) the contamination characteristics, dewatering details, and water treatment and discharge plans for the site.
- b) Permit Monitors selected by CKSPFN/Southwind to actively participate in Enbridge Gas' environmental and archaeological assessment and monitoring work at any work site that has high archaeological potential or has significant environmental concerns, as determined jointly by CKSPFN/Southwind and Enbridge Gas, both parties acting reasonably.
- c) Provide reasonable financial resources to the CKSPFN/Southwind to hire and administer the Monitors and to hire consultants to review the construction permits, environmental protection plans and approvals required by Enbridge, to the extent necessary to protect CKSPFN/Southwind Indigenous rights, title and interests.
- d) Ensure that Enbridge Gas has adequate insurance and/or funds available for any cleanup, compensation and restoration in the event of accidents and malfunctions on CKSPFN's traditional territory resulting from the project.
- e) Ensure Enbridge commits to consultation throughout the construction phase of the project and that Enbridge will follow up with CKSPFN with Southwind regarding action items established during the February 11, 2022 meeting.

13. If the Board directs Enbridge to provide the accommodation requested above, CKSPFN with Southwind would consider **for this specific file** that the procedural aspects of the Duty to Consult will be appropriately discharged by Enbridge.

14. CKSPFN with Southwind appreciates confirmation from the OEB in Procedural Order No. 2 that CKSPFN with Southwind is eligible to apply for an award of costs under the Practice Direction.