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**Enbridge Gas Inc.**  
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Canada

## **VIA EMAIL and RESS**

February 25, 2022

Nancy Marconi  
Registrar  
Ontario Energy Board  
2300 Yonge Street, Suite 2700  
Toronto, Ontario, M4P 1E4

Dear Nancy Marconi:

**Re: Enbridge Gas Inc. (Enbridge Gas)  
Ontario Energy Board (OEB) File No. EB-2021-0078  
2022 Storage Enhancement Project – Reply Submission**

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In accordance with Procedural Order No. 2, enclosed please find the reply submission of Enbridge Gas in the above noted proceeding.

This reply submission has been filed electronically through the OEB's RESS.

If you have any questions, please contact the undersigned.

Sincerely,

**Dave Janisse**

Digitally signed by Dave Janisse

Date: 2022.02.25 14:41:07  
-05'00'

Dave Janisse  
Technical Manager, Leave to Construct Applications

**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.

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**ENBRIDGE GAS INC.**

**REPLY SUBMISSION**

**OEB File No. EB-2021-0078**

February 25, 2022

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## INTRODUCTION

1. Pursuant to Procedural Order No. 1 issued by the Ontario Energy Board (“OEB”) on December 13, 2021, Enbridge Gas Inc. (“Enbridge Gas” or the “Company”) makes these submissions in reply to the submissions filed by OEB staff, the Ministry of Northern Development, Mines, Natural Resources and Forestry (“MNDMNRF”), and the Chippewas of Kettle and Stony Point First Nation with Southwind Development Corporation (“CKSPFN”) in this proceeding.
2. Enbridge Gas is seeking approval from the OEB to conduct the activities described below as part of its 2022 Storage Enhancement Project (“Project”), specifically:
  - 1) pursuant to section 38(1) of the *Ontario Energy Board Act*, 1998, S.O. 1998, c. 15, Schedule B (the “Act”), leave to vary/increase the maximum operating pressure (“MOP”) of the Dow Moore Storage Pool and the Payne Storage Pool;<sup>1</sup>
  - 2) pursuant to section 40(1) of the Act, a favourable report to the MNDMNRF for drilling an injection/withdrawal well in the Kimball-Colinville Storage Pool; and
  - 3) pursuant to section 91 of the Act, leave to construct approximately 85 meters of new NPS 10 steel gathering pipeline connecting the above injection/withdrawal well.
3. The Dow Moore Storage Pool, the Payne Storage Pool, and the Kimball-Colinville Storage Pool are part of Enbridge Gas’s storage operations and are

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<sup>1</sup> Current and Proposed Storage Pool MOP:

Pool	Current Gradient	Proposed Gradient
Dow Moore	15.83 kPa/m (0.70 psi/ft)	16.51 kPa/m (0.73 psi/ft)
Payne	16.51 kPa/m (0.73 psi/ft)	17.19 kPa/m (0.76 psi/ft)

located in the geographic Township of Moore, in the Township of St. Clair, in the County of Lambton, Ontario. These storage pools are considered designated storage areas pursuant to section 36.1 of the Act.

4. The Project is required in order to increase storage capacity and deliverability to be sold within Enbridge Gas's unregulated storage portfolio.
5. With the necessary approvals of the OEB and the MNDMNRF, Enbridge Gas expects to construct the Project between April and September of 2022. To meet the proposed Project construction timelines, Enbridge Gas respectfully requests approval of this application as soon as possible, and not later than March 24, 2022.<sup>2</sup>
6. The Project is supported by both OEB staff and the MNDMNRF, who stated in their respective submissions:

"OEB staff supports Enbridge Gas's application and request for a favourable report to the Minister subject to the conditions that OEB staff has proposed..."<sup>3</sup>

and

"MNDMNRF has no objection to the approval of the Application, subject to the OEB Staff's proposed conditions of approval."<sup>4</sup>

7. Through the balance of this submission, Enbridge Gas summarizes the submissions of OEB staff and MNDMNRF supporting the Project, responds to the specific submissions of CKSPFN and confirms its acceptance of OEB staff's proposed conditions of licence and proposed conditions of approval.

## **SUBMISSIONS SUPPORTING THE PROJECT**

8. Overall, the submissions of OEB staff and MNDMNRF are supportive of the Project.

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<sup>2</sup> Exhibit A, Tab 2, Schedule 1, p. 4; Exhibit I.STAFF.5

<sup>3</sup> OEB Staff Submission, p. 1.

<sup>4</sup> MNDMNRF Submission, p. 3.

9. On the issue of Project need, Enbridge Gas explained that the Project will enable the Company to meet the growing market demand for incremental storage space and deliverability.<sup>5</sup> OEB staff agrees that based on the evidence provided by Enbridge Gas there is demand for incremental storage capacity and therefore the Project is needed.<sup>6</sup> MNDMNR and CKSPFN made no submissions regarding the Project need.
10. On the issue of Project alternatives, Enbridge Gas explained that since underground storage reefs are finite containers with defined boundaries, the only way to physically increase the storage capacity of the reefs is to increase the MOP, allowing more gas to be stored in the reef. Enbridge Gas is unaware of any alternative to increase the capacity (volume) in the reef. Enbridge Gas is also unaware of an alternative to drilling a new injection/withdrawal well to physically increase deliverability from the reef.<sup>7</sup> Neither OEB staff nor intervenors questioned this evidence.
11. On the issue of Project costs, Enbridge Gas explained that the Project will be funded entirely by the Company's shareholder as an unregulated storage asset forming part of the Company's unregulated storage operations, and thus benefiting the unregulated business. All costs associated with the Project will be captured in unregulated accounts and Enbridge Gas's ratepayers will not incur any rate impacts as a result of the Project.<sup>8</sup> OEB staff submitted that it is appropriate that the Project costs be funded by Enbridge Gas's shareholders as the benefits will also accrue to the account of the shareholders.<sup>9</sup> MNDMNR and CKSPFN made no submissions regarding Project cost.
12. On the issue of environmental impacts, in accordance with the OEB's *Environmental Guidelines for the Location, Construction and Operation of*

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<sup>5</sup> Exhibit B, Tab 1, Schedule 1, p. 1.

<sup>6</sup> OEB Staff Submission, p. 3.

<sup>7</sup> Exhibit C, Tab 1, Schedule 1, p. 1

<sup>8</sup> Exhibit D, Tab 1, Schedule 1, p. 1.

<sup>9</sup> OEB Staff Submission, p. 4.

*Hydrocarbon Pipelines and Facilities in Ontario, 7th Edition, 2016* ("Guidelines"), Enbridge Gas has worked with Stantec Consulting Ltd. to conduct a comprehensive environmental and socio-economic impact study, the details of which are documented in an extensive Environmental Report ("ER"). 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.<sup>10</sup> OEB staff submitted that it has no concerns with the environmental aspects of the Project, given that Enbridge Gas is committed to implementing the proposed mitigation measures.<sup>11</sup> MNMNR made no submissions regarding environmental matters. CKSPFN made several submissions regarding environmental matters which are discussed below.

13. On the issue of landowner matters, Enbridge Gas explained that the land use requirements for the Project consist of construction of gravel pads, temporary work space and access lanes, located on both privately-owned and Company-owned lands.<sup>12</sup> In the case of the injection/withdrawal well and the associated pipeline, the Company explained that it owns the property on which the well will be drilled and that the lands are leased to a local farmer who has been notified of, and has expressed no concerns regarding the Project.<sup>13</sup> In the case of the MOP increases at Dow Moore and Payne Storage Pools, the Company explained that third-party landowners have been notified of the Project and that no concerns about the Project have been raised by these landowners to date.<sup>14</sup> OEB staff submitted that Enbridge Gas is appropriately managing land related matters and that OEB staff has no issues or concerns with land matters related to the Project.<sup>15</sup> MNMNR and CKSPFN made no submissions regarding landowner matters.

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<sup>10</sup> Exhibit F, Tab 1, Schedule 1

<sup>11</sup> OEB Staff Submission, p. 6

<sup>12</sup> Exhibit G, Tab 1, Schedule 1, p. 1.

<sup>13</sup> Exhibit G, Tab 1, Schedule 1, p. 3; Exhibit I.STAFF.11 a).

<sup>14</sup> Exhibit I.STAFF.11 b).

<sup>15</sup> OEB Staff Submission, p. 5.

14. On the issue of Indigenous consultation, Enbridge Gas explained that the Company 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.<sup>16</sup> Enbridge Gas has not yet received a letter from the MOE confirming sufficiency of Indigenous consultation activities on the Project (“Sufficiency Letter”). OEB staff submitted that Enbridge Gas appears to have made efforts to engage with affected Indigenous communities and no concerns that could materially affect the Project have been raised through its consultation to date.<sup>17</sup> MNDMNR made no submissions regarding Indigenous consultation for the Project. CKSPFN made several submissions regarding Indigenous consultation which are discussed below.

## **RESPONSE TO CKSPFN SUBMISSIONS**

15. CKSPFN made several submissions related to environmental matters and Indigenous consultation for the Project. These submissions, along with Enbridge Gas’s response to these submissions, are summarized below.

16. First, CKSPFN submits that the Project should not proceed until the impacted Indigenous peoples provide consent and that CKSPFN has yet to sign a capacity funding agreement with Enbridge Gas and has yet to review Project documents in detail.<sup>18</sup> As outlined in the Indigenous Consultation Report (“ICR”), Enbridge Gas sent the ER for the Project to CKSPFN for review on August 26, 2021, and on several occasions, offered capacity funding for activities such as the review of the ER and appointment of environmental and archaeological monitors for the Project.<sup>19</sup> On February 24, 2022, Enbridge Gas

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<sup>16</sup> Exhibit H, Tab 1, Schedule 1, Attachments 5 and 6; Exhibit I.STAFF.10 Attachment 1

<sup>17</sup> OEB Staff Submission, p. 7.

<sup>18</sup> CKSPFN Submission, p. 2.

<sup>19</sup> See for example, Exhibit I.STAFF.10 Attachment 1, p. 2 – 3, description of the telephone meeting between Enbridge Gas and CKSPFN on September 20, 2021.



extended an additional offer of capacity funding to CKSPFN for review of the Project ER and archaeological assessment. Enbridge Gas does not agree that consent for the Project is legally required by Indigenous groups before it can proceed, though a goal of the Company's engagement activities is to seek to achieve it. While Enbridge Gas has and will continue to engage with CKSPFN on the Project, it is important to note that Indigenous groups do not have a veto over final Crown decisions, nor is there a duty to agree.<sup>20</sup> Further, as stipulated in the case law, 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.<sup>21</sup> That said, Enbridge Gas has extended another offer for capacity funding to CKSPFN to attempt to address this concern, consistent with its practice for projects of this nature.

17. CKSPFN expresses several concerns related to environmental matters for the Project. First, CKSPFN states that Enbridge Gas has not recommended amphibian breeding surveys, which may result in impacts on sensitive species important to CKSPFN.<sup>22</sup> Amphibian breeding habitat was identified as *potentially* occurring in the wooded area at the Dow Moore DSA. As the Project activities avoid direct interaction with this area, no field investigations were undertaken. Potential indirect impacts of sensory disturbance and spills will be mitigated through measures as outlined in Table 4.1 of the Environmental Report.<sup>23</sup>

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<sup>20</sup> *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*).

<sup>21</sup> *Coldwater* at para. 58.

<sup>22</sup> CKSPFN Submission, p. 2.

<sup>23</sup> Exhibit F, Tab 1, Schedule 1, Attachment 1, p. 42.

18. CKSPFN submits that Enbridge Gas's proposed spatial boundaries for the Cumulative Effects Assessment detailed in section 5 of the ER do not adequately cover system-level cumulative effects. Specifically, CKSPFN is concerned that the 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.<sup>24</sup> CKSPFN also submits that the Cumulative Effects Assessment has not appropriately established a baseline of landscape-level natural gas sector impacts such that CKSPFN can determine how the Project impacts the lands, waters, and living species.<sup>25</sup> The Cumulative Effects Assessment and the associated study area was delineated in accordance with Section 4.3.14 of the Guidelines. The 100m boundary is considered appropriate for the limited residual Project effects (i.e., those that remain after mitigation) that are anticipated to be interactive with other concurrent, unrelated projects. The methodologies used to conduct the Cumulative Effects Assessment are the same as those used in other Enbridge Gas projects approved by the OEB.<sup>26</sup>
19. Enbridge Gas is committed to engaging with CKSPFN regarding cumulative effects to better understand how CKSPFN's Aboriginal or treaty rights may be impacted by Enbridge Gas's ongoing development and operations in the Project area, how the Project may further contribute to this impact and what may be done to avoid, offset or minimize the impact.

## **CONDITIONS OF APPROVAL**

20. In its submissions, OEB staff supports the application subject to certain conditions of approval with respect to the approval to vary/increase the MOP of the pools, the recommendation to the MNMNR for the well license, and

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<sup>24</sup> CKSPFN Submission, p. 3.

<sup>25</sup> *ibid.*

<sup>26</sup> For example, the London Line Replacement Project (EB-2020-0192)

the approval of leave to construct.<sup>27</sup> Appendix A and Appendix B of OEB staff's submission provides proposed draft conditions of licence for the well drilling license and proposed draft conditions of approval for leave to construct, respectively. The proposed conditions of license and conditions of approval are similar to those approved by the OEB in Enbridge Gas's 2021/22 Storage Enhancement Project. OEB staff also made specific submissions on some of the proposed conditions, including a proposed condition of approval to vary/increase the MOP of the pools, which are outlined below.

21. OEB staff submitted that, as a condition of approval to vary/increase the MOP of the pools, the OEB should require that Enbridge Gas comply with the relevant requirements of the Canadian Standards Association Standard Z341 ("CSA Z341") to the satisfaction of the MNDMNRF.<sup>28</sup> The MNDMNRF supports this condition of approval.<sup>29</sup> OEB staff also submitted that the OEB should consider the following condition as part of its approval to vary/increase the MOP of the pools:

*Enbridge Gas Inc. shall not operate:*

- (a) the Dow Moore natural gas storage pool above an operating pressure representing a pressure gradient of 16.51 kPa/m (0.73 psi/ft) of depth and*
- (b) the Payne storage pool to a maximum pressure gradient of 17.19 kPa/m (0.76 psi/ft) of depth without leave of the OEB.*

22. OEB staff submitted that, since the MOE has not yet issued a Sufficiency Letter for the Project, the OEB should consider the following condition of its approval for leave to construct:<sup>30</sup>

#### Appendix B – Leave to Construct – Condition 3

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<sup>27</sup> OEB Staff Submission, p. 1.

<sup>28</sup> OEB Staff Submission, p. 8.

<sup>29</sup> MNDMNRF Submission, p. 3.

<sup>30</sup> OEB Staff Submission, p. 7.

*Authorization for leave to construct is subject to Enbridge Gas filing with the OEB a letter from the Ministry of Energy confirming that Enbridge Gas has satisfied the procedural aspects of the Crown's duty to consult with respect to the proposed Project.*

23. 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 and conditions of license established and recommended by the OEB, respectively.

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

- 1) For each work site for the Project, Enbridge Gas must provide to CKSPFN the location and size of the site, the Company's plans to protect the environment and sensitive watershed, including environmental protection plans, and the contamination characteristics, dewatering details, and water treatment and discharge plans for the site.
- 2) Enbridge Gas must permit environmental monitors selected by CKSPFN to actively participate in the Company's environmental and archaeological assessment and to monitor any work conducted at work sites for the Project that have high archaeological potential or significant environmental concerns.
- 3) Enbridge Gas must provide financial resources to CKSPFN to hire and administer the environmental monitors and to hire consultants to review construction permits, environmental protection plans, and other approvals required by Enbridge Gas.
- 4) Enbridge Gas must have adequate insurance and/or funds available for any cleanup, compensation, and restoration in the event of accidents

and malfunctions resulting from Project activities to CKSPFN's traditional territory.

- 5) Enbridge Gas must commit to consultation with CKSPFN throughout the construction phase of the Project, including a follow-up regarding action items established between Enbridge Gas and CKSPFN during a February 11, 2022 meeting.

25. CKSPFN submits that these conditions were accepted by the OEB in its EB-2012-0451 Decision and Order, which sets a precedent for the OEB to include these proposed conditions in the approvals for the Project.<sup>31</sup> With respect, Enbridge Gas does not agree with this comparison. The GTA Reinforcement Project was one of the Company's largest projects in its history. It consisted of 27 km of NPS 42 pipeline and 23 km of NPS 36 pipeline in addition to construction of a large station. The estimated cost of the GTA Reinforcement Project exceeded \$685 million. The current Project before the OEB consists of 85 m of NPS 10 pipeline to be installed on agricultural land owned by Enbridge Gas and well work on a small footprint on Enbridge Gas and private land. Due to the nature of the Project and the commitments discussed below, Enbridge Gas does not believe that the OEB's Decision and Order on the GTA Reinforcement Project is a relevant precedent for this Project, or that the conditions of approval proposed by CKSPFN are necessary given the scale and scope of the Project.

26. In specific response to the conditions sought by CKSPFN, Enbridge Gas states the following:

- 1) Enbridge Gas agrees to continue to engage with potentially impacted Indigenous groups, including CKSPFN, beyond the OEB proceeding<sup>32</sup>

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<sup>31</sup> CKSPFN Submission, p. 3.

<sup>32</sup> Exhibit H, Tab 1, Schedule 1, p. 3 – 4.

and has no objections to providing the requested information about the Project work sites, to the extent applicable to the Project.

- 2) As mentioned above, Enbridge Gas has offered capacity funding to CKSPFN for review of the ER and archaeological assessments and to train monitors for future Enbridge Gas projects. Enbridge Gas had invited monitors from CKSPFN to participate in the archaeological assessments, however, they did not participate. As outlined in evidence, the Project does not have any areas of high archaeological potential nor are there significant environmental concerns.<sup>33</sup> Enbridge Gas notes that due to the nature of the Project, a project-specific environmental protection plan will not be created. The environmental protection measures to be employed for the Project are summarized within Table 4.1 of the ER.<sup>34</sup> Enbridge Gas agrees to work with CKSPFN to ensure appropriate mitigation measures are in place to avoid or mitigate any potential impacts the Project may have on CKSPFN's rights and interest.
- 3) Enbridge Gas agrees to provide some funding to CKSPFN to train monitors who can participate in future Enbridge Gas projects, as appropriate.
- 4) Enbridge Gas confirms that it has adequate insurance and funding available for any cleanup, compensation, and restoration in the event of accidents and malfunctions resulting from the Project activities.
- 5) Finally, Enbridge Gas commits to continuing to consult with CKSPFN throughout the construction phase of the Project. Although the action items arising from the February 11, 2022 meeting with CKSPFN are not specific to the Project, Enbridge Gas agrees to further explore the interests raised, which generally relate to other Enbridge Gas projects and operations and potential economic opportunities.

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<sup>33</sup> Exhibit F, Tab 1, Schedule 1, p. 2, Exhibit F, Tab 1, Schedule 1, Attachment 1, p. 55, Exhibit I.STAFF.8

<sup>34</sup> Exhibit F, Tab 1, Schedule 1, Attachment 1, p. 36 – 47.

## **CONCLUSION**

27. Considering the Enbridge Gas evidence as summarized above, the support for the Project from both OEB staff and the MNDMNRF, and Enbridge Gas's commitment to continue to engage with CKSPFN in relation to the Project, the OEB should conclude that the Project is needed and issue an order granting leave to construct the gathering pipeline, issue an order granting approval to increase the MOP of the Dow Moore and Payne storage pools, and issue a report to the MNDMNRF recommending approval of the requested well drilling licence subject to the conditions of approval and conditions of license proposed by OEB staff, as applicable.