



DECISION AND ORDER

EB-2021-0078

ENBRIDGE GAS INC.

2022 Storage Enhancement Project

BEFORE: Robert Dodds
Presiding Commissioner

Anthony Zlahtic
Commissioner

David Sword
Commissioner

April 7, 2022



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1 OVERVIEW

This is the Decision and Order (Decision) of the Ontario Energy Board (OEB) regarding an application filed by Enbridge Gas Inc. (Enbridge Gas) on October 27, 2021 seeking approval for its 2022 Storage Enhancement Project (Project).

The Project is part of the second phase of a larger project to increase deliverability and storage capacity of Enbridge Gas's storage facilities to meet growing market demand for incremental storage space. Enbridge Gas plans to sell this additional storage space at market-based prices to meet the requirements of its unregulated storage service customers. As the revenues for selling this incremental storage space will accrue to Enbridge Gas's shareholders, the costs of the Project will be paid for by Enbridge Gas's shareholders.

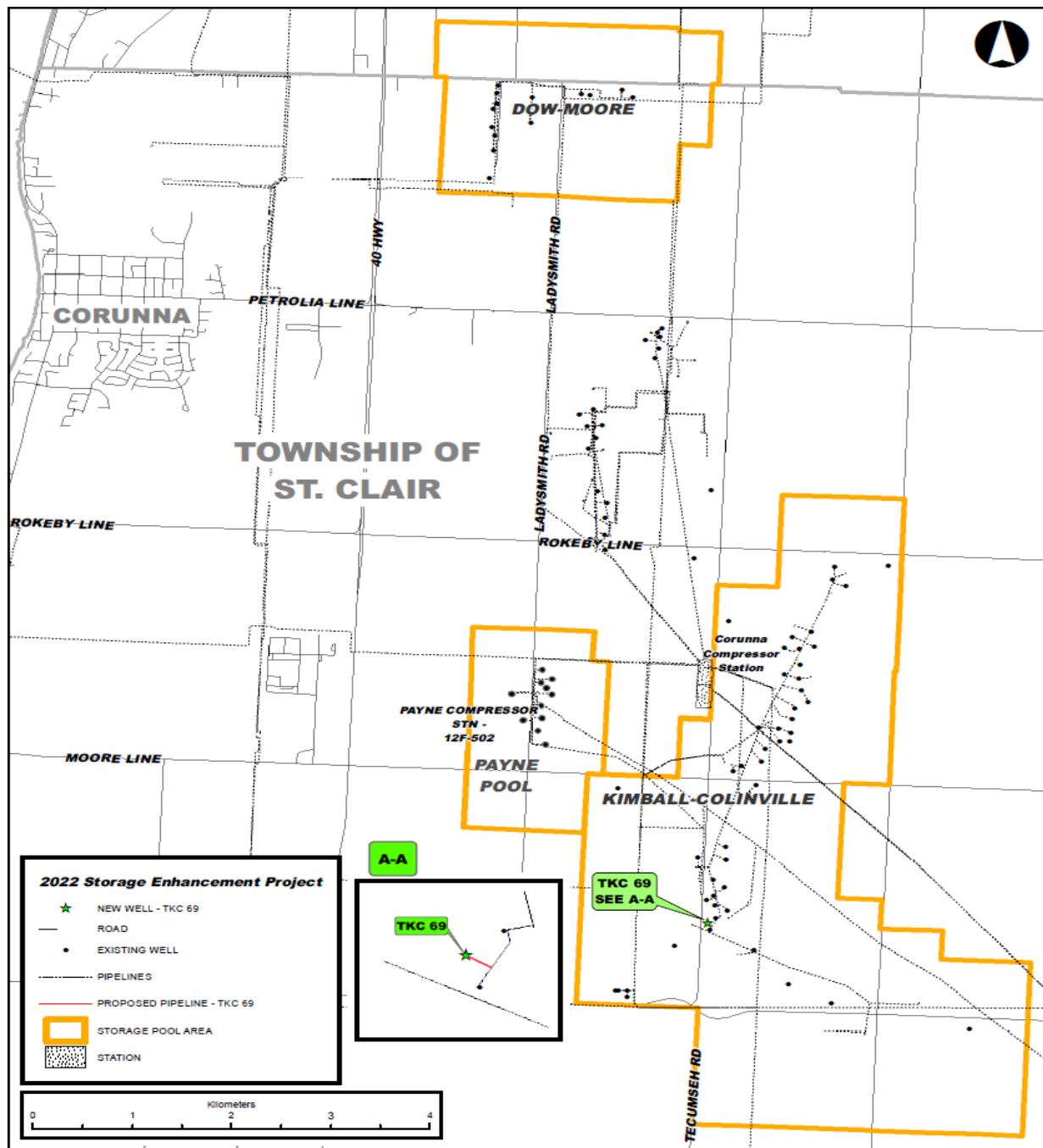
Enbridge Gas has applied to the OEB for the following:

- (1) Leave to vary and/or increase the maximum operating pressure (MOP) of the Dow Moore and Payne storage pools (Pools) under section 38(1) of the *Ontario Energy Board Act, 1998* (OEB Act)
- (2) Leave to construct a new pipeline (Proposed Pipeline) to connect a new storage well being constructed as part of the Project to an existing gathering pipeline, under section 91 of the OEB Act
- (3) A favourable report from the OEB to the Minister of Natural Resources¹ (Minister) supporting the well licence application made by Enbridge Gas to the Ministry of Northern Development, Mines, Natural Resources and Forestry (Natural Resources) to drill injection/withdrawal well TKC 69 in the Kimball-Colinville storage pool, under section 40(1) of the OEB Act.

¹ Minister of Northern Development, Mines, Natural Resources and Forestry

1.1 MAP OF PROJECT

The general location of the Project is presented on the map below.



The OEB approves Enbridge Gas's application to increase the MOP of the Dow Moore storage pool to a maximum pressure gradient of 16.51 kPa/m (0.73 psi/ft) and the Payne storage pool to a maximum pressure gradient of 17.19 kPa/m (0.76 psi/ft).

The OEB grants Enbridge Gas leave to construct a new pipeline (Proposed Pipeline) to connect a new storage well being constructed as part of the Project to an existing gathering pipeline, under section 91 of the OEB Act, subject to the Conditions of Approval (see Appendix A), based on the following findings:

- The Proposed Pipeline is in the public interest
- The OEB accepts Enbridge Gas's position that the capital costs for the Proposed Pipeline will have no direct impact on its customers as the cost will be borne by its shareholders
- Enbridge Gas has appropriately managed land related matters and that there are no outstanding issues to address
- Enbridge Gas has followed the requirements of the OEB's Environmental Guidelines²
- Enbridge Gas has satisfied the delegated procedural aspects of the Crown's duty to consult with the Indigenous communities

The OEB is issuing a favourable report (Report) to the Minister of Natural Resources supporting the well licence application. The Report is attached as Schedule 1 to this Decision and Order.

² Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines in Ontario (7th edition), 2016

2 THE PROCESS AND STRUCTURE OF THE DECISION

2.1 The Process

The OEB issued a Notice of Hearing on November 16, 2021. Natural Resources and Mr. Bryan Arnold applied for intervenor status. On December 8, 2021, Enbridge Gas stated that it does not object to either intervention request but noted some concerns with Mr. Arnold's intervention request.

On December 13, 2021, the OEB issued Procedural Order No. 1 approving Natural Resources as an intervenor. The OEB requested that Mr. Arnold provide further information regarding his intervention request by December 15, 2021. No further information was filed by Mr. Arnold and the OEB did not grant him intervenor status.

The OEB set out dates for the filing of interrogatories and submissions by Natural Resources and OEB staff. Natural Resources and OEB staff filed written interrogatories on December 17, 2021. Enbridge Gas filed interrogatory responses on January 17, 2022. Natural Resources and OEB staff filed submissions on January 28, 2022 and January 31, 2022, respectively.

On February 9, 2022, the Chippewas of Kettle and Stony Point First Nation with Southwind Development Corporation (CKSPFN with Southwind), a wholly owned economic development Corporation of CKSPFN, filed a late request for intervenor status and cost eligibility in this proceeding.

The OEB issued Procedural Order No. 2 on February 11, 2022, in which it granted intervenor status to CKSPFN with Southwind and determined that CKSPFN with Southwind is eligible to apply for an award of costs under the OEB's *Practice Direction on Cost Awards*. The OEB made provision for CKSPFN with Southwind to file a submission and adjusted the deadline for Enbridge Gas's reply submission.

CKSPFN with Southwind filed its submission on February 18, 2022 and Enbridge Gas filed its reply submission on February 25, 2022.

On April 4, 2022, Enbridge Gas updated the evidence by filing a Letter of Opinion³ issued to Enbridge Gas by the Ministry of Energy.

³ In the Letter of Opinion dated April 1, 2022, the Ministry of Energy confirmed that procedural aspects of Indigenous consultation undertaken by Enbridge Gas are satisfactory. More discussion related to the Letter of Opinion may be found in section 3.1.5 - Indigenous Consultation.

2.2 Structure of the Decision

This is a Decision on an application for a multi-part Project. The Decision is organized as follows:

Part A of the Decision addresses issues that are common to all components of the Project:

- Need for the Project
- Costs and potential impact on Enbridge Gas's customers
- Land matters
- Environmental matters
- Indigenous consultation

Part B of the Decision addresses issues that are specific to the request to increase the operating pressure of the Pools.

Part C of the Decision addresses issues specific to the leave to construct application.

Schedule 1 contains the OEB's Report to the Minister concerning matters that pertain to the well drilling licence application.

3 DECISION

3.1 PART A: FINDINGS ON ISSUES COMMON TO ALL COMPONENTS OF THE PROJECT

Part A of the Decision outlines the evidence and submissions by the parties and the OEB's findings on issues common to all components of the Project.

3.1.2 Need

Enbridge Gas stated that the Project is needed to increase the deliverability and storage capacity of the Pools to meet growing market demand for incremental storage space. The additional storage capacity created by the Project will be sold to third parties as part of Enbridge Gas's unregulated storage portfolio.

In response to OEB staff interrogatories, Enbridge Gas commented that in the current storage year, it is fully contracted and that demand for unregulated storage services in the most recently held open season exceeded contracts awarded by a factor of three.⁴

OEB staff submitted that there is demand for unregulated storage and therefore the Project is needed.

Findings

The OEB finds that Enbridge Gas has established the need for the Project based on its existing regulated and unregulated storage being fully needed/contracted and that there will be continued demand for unregulated storage when offered to the market.

3.1.2 Costs and Potential Impact on Enbridge Gas's Customers

Enbridge Gas stated that the entire Project will form part of Enbridge Gas's unregulated storage operations and that all costs associated with the Project will be captured in the unregulated accounts. As a result, no costs of the Project will be charged to the regulated utility accounts.

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.

OEB staff noted that in the decision on Enbridge Gas's 2021/22 Storage Enhancement Project, the OEB directed Enbridge Gas as part of its next rebasing application to

⁴ Exhibit I, Staff 1(a)

address the allocation of all costs between its rate regulated and unregulated storage business and that this should include, without limitation, consideration of lost and unaccounted-for-gas.⁵ OEB staff submitted that this issue is also relevant to this Project, and given the OEB's direction in the 2021/22 Storage Enhancement decision, this matter will be dealt with by Enbridge Gas in its 2024 rebasing application.

Findings

The OEB accepts Enbridge Gas's position that the capital costs for the Project will have no direct impact on its customers as the cost will be borne by its shareholders.

The OEB agrees with OEB staff's position that the issue of cost allocation between Enbridge Gas's rate regulated and unregulated storage business is relevant to this Project. The OEB directs Enbridge Gas, as part of its 2024 rebasing application, to provide a study that includes an appropriate level of analysis addressing the allocation of all costs between its rate regulated and unregulated storage business and that includes, without limitation, consideration of lost and unaccounted-for gas. To confirm this requirement, the OEB orders Enbridge Gas to comply with this requirement as set out in the Order portion of this Decision.

3.1.3 Land Matters

Enbridge Gas stated that the Project requires the construction of gravel pads, temporary work areas and access lanes.

Enbridge Gas stated that parties directly impacted by the Project include a tenant farmer (with respect to the well and Proposed Pipeline construction) and third-party landowners (with respect to the Pools).

Enbridge stated that no easement or temporary land use agreement is required for work associated with the construction of the Proposed Pipeline as it is the owner of the land.

In response to interrogatories, Enbridge Gas stated that no concerns about the Project have been expressed by landowners. Enbridge Gas also stated that there have not been any negotiations for temporary working rights to date with third-party landowners as all project work will be completed in compliance with the rights in the existing Gas Storage Lease Agreements held by Enbridge Gas.⁶

⁵ EB-2020-0256 Decision and Order, p.4

⁶ Exhibit I, Staff 11

OEB staff submitted that Enbridge Gas is appropriately managing land related matters and in OEB staff's view there are no issues or concerns with land matters related to the Project.

Findings

The OEB finds that Enbridge Gas has appropriately managed land related matters and that there are no outstanding issues to address.

3.1.4 Environmental Matters

Enbridge Gas retained Stantec Consulting Ltd. (Stantec) to complete an environmental assessment of the Project and prepare an Environmental Report (ER), in accordance with the OEB's Environmental Guidelines.

The ER states that with the implementation of the recommendations, ongoing communication and consultation, environmental and supplementary studies and adherence to permit, regulatory and legislative requirements, potential adverse residual environmental and socio-economic impacts of the Project are not anticipated to be significant.

The ER was provided to the Ontario Pipeline Coordinating Committee (OPCC) and other agencies. Enbridge Gas received and responded to comments from the Ministry of Government and Consumer Services, the Ministry of Transportation, and the Ministry of Heritage, Sport, Tourism and Culture Industries (MHSTCI).

Enbridge Gas noted that there are three properties that will be disturbed by the proposed project activities that require an Archaeological Assessment (AA): the work area for well TKC 69, and two properties located within the Payne storage pool. In responses to interrogatories, Enbridge Gas stated that a Stage 1 and 2 AA was completed on the work area for well TKC 69 and it had received a clearance letter from the MHSTCI on October 4, 2021.

Since the submission of its application, an AA was completed on one of the properties in the Payne storage pool and no archaeological resources were identified. The AA on the second property within the Payne storage pool is expected to be completed in January 2022. Enbridge Gas expects to receive clearance letters for the remaining AA reports by the end of the first quarter of 2022.

OEB staff proposed conditions for the well licence that include a condition requiring Enbridge Gas to obtain, prior to commencement of construction of the proposed well, all necessary approvals, permits, licences, certificates, agreements and rights required to

construct, operate and maintain the proposed well. OEB staff submitted that this will ensure that AA approval is obtained prior to commencement of construction. Enbridge Gas did not object to this condition.⁷

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. OEB staff further submitted that Enbridge Gas's compliance with the conditions proposed for the well drilling licence and the leave to construct will ensure that impacts of well drilling and pipeline construction are mitigated and monitored.

Natural Resources submitted that it has no objection to the approval of the application, subject to OEB staff's proposed conditions. Natural Resources further submitted that it interprets that outstanding items that will or may be required including from MHSTCI and the Ministry of Energy, are addressed by OEB staff's proposed conditions.

CKSPFN with Southwind expressed certain environmental concerns in its submission:

- As Enbridge Gas does not recommend amphibian breeding surveys, work could proceed without amphibian breeding surveys, which may result in impacts on sensitive species important to CKSPFN
- Enbridge Gas's proposed spatial boundaries of approximately 100 metres around the proposed Project locations do not adequately cover system-level cumulative effects
- Baseline effects have not been assessed, and the Enbridge Gas Cumulative Effects Assessment is not adequate

CKSPFN with Southwind submitted that it must be involved in more detailed environmental report review that includes the assessment of potential impacts on wildlife and plant relatives that it sees as being at-risk. This should include involvement in the design of any mitigation and offsetting measures that are undertaken for impacted relatives. CKSPFN with Southwind further submitted that capacity funding to support in performing this review and potentially in fielding environmental monitors must be a priority.

CKSPFN with Southwind requested the inclusion of certain additional conditions for approval of the Project. CKSPFN with Southwind argued that these conditions were

⁷ Exhibit I, Staff 12

accepted by the OEB in its decision on the GTA Reinforcement Project⁸ which sets a precedent for the OEB to include these proposed conditions in its approval for the Project. The proposed conditions are as follows:

- a) For each work site for the Project, provide CKSPFN with 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 with Southwind to actively participate in Enbridge Gas's 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 with Southwind and Enbridge Gas, both parties acting reasonably.
- c) Provide reasonable financial resources to CKSPFN with Southwind to hire and administer the Monitors and to hire consultants to review the construction permits, environmental protection plans and approvals required by Enbridge Gas, to the extent necessary to protect CKSPFN with 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 Gas commits to consultation throughout the construction phase of the Project and that Enbridge Gas will follow up with CKSPFN with Southwind regarding action items established during the February 11, 2022 meeting.

Enbridge Gas responded to the submissions of CKSPFN with Southwind as follows:

- Amphibian breeding habitat was identified as *potentially* occurring in the wooded area at the Dow Moore Designated Storage Area. As the Project activities avoid

⁸ EB-2012-0451 OEB Decision and Order

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 ER.⁹

- The Cumulative Effects Assessment and the associated study area was delineated in accordance with Section 4.3.14 of the Environmental 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.¹⁰

Enbridge Gas stated that it 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.

Enbridge Gas argued that the OEB's Decision on the GTA Reinforcement Project is not a relevant precedent for this Project. Enbridge Gas submitted that the GTA Reinforcement Project is one of Enbridge Gas's largest projects consisting of the construction of 27 km of NPS 42 pipeline and 23 km of NPS 36 pipeline and a large station at an estimated cost that exceeded \$685 million whereas the Project 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.

With respect to the conditions of approval proposed by CKSPFN with Southwind, Enbridge Gas did not agree that they should be included in the OEB-approved conditions of approval, but responded to each of CKSPFN with Southwind's proposed conditions as follows:

- 1) Enbridge Gas agrees to continue to engage with potentially impacted Indigenous groups, including CKSPFN, beyond the OEB proceeding and has no objections to providing the requested information about the Project work sites, to the extent applicable to the Project.
- 2) Enbridge Gas states that it has offered capacity funding to CKSPFN for review of the ER and archaeological assessments and to train monitors for future Enbridge

⁹ Exhibit F, Tab 1, Schedule 1, Attachment 1, p. 42.

¹⁰ For example, the London Line Replacement Project (EB-2020-0192)

Gas projects. Enbridge Gas also states that it had invited monitors from CKSPFN to participate in the archaeological assessments, however, they did not participate. 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. 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) Enbridge Gas commits to continuing to consult with CKSPFN throughout the construction phase of the Project. Enbridge states that although the action items arising from the February 11, 2022 meeting with CKSPFN are not specific to the Project, it agrees to further explore the interests raised, which generally relate to other Enbridge Gas projects and operations and potential economic opportunities.

Findings

The OEB finds that Enbridge Gas has followed the requirements of the OEB's Environmental Guidelines. The OEB notes Enbridge Gas's commitment to implement the mitigation measures recommended by Stantec. The OEB has recommended conditions for the well licence and for the leave to construct which Enbridge Gas has agreed to. The OEB is satisfied that with implementation of these mitigation measures and conditions for aspects of the Project, environmental related matters will be adequately addressed.

The OEB finds CKSPFN with Southwind's proposed additional conditions do not need to be included in the conditions of approval. The OEB notes that CKSPFN with Soundwind did not provide an evidentiary basis on which to include conditions as proposed. Further, the OEB agrees with Enbridge Gas's submission that the:

- Project activities avoid the area identified as a potential amphibian breeding ground and no direct interaction will occur in the area in question. The OEB is satisfied that any potential indirect impacts will be mitigated by the measures outlined in the ER.

- The GTA Reinforcement Project of 27 km of NPS 42 pipeline and 23 km of NPS 36 pipeline and a large station is not a relevant precedent for this Project given its considerably smaller size and scope of 85 metres of NPS 10 pipeline installed on agricultural land owned by Enbridge Gas and well work on a small footprint on Enbridge Gas and private land.

The OEB also notes that Enbridge Gas has proposed many activities for mutual collaboration with CKSPFN and Southwind and expects that they will be honoured as stated in Enbridge Gas's submission.¹¹

3.1.5 Indigenous Consultation

In accordance with the OEB's Environmental Guidelines, Enbridge Gas contacted the Ministry of Energy on March 18, 2021 in respect of the Crown's duty to consult related to the Project. By a letter dated April 13, 2021 (Delegation Letter), the Ministry of Energy delegated the procedural aspects of the Crown's Duty to Consult for the Project to Enbridge Gas. In the Delegation Letter, the Ministry of Energy identified five Indigenous communities with which Enbridge Gas should consult in relation to the Project:

- Aamjiwnaang First Nation
- Bkejwanong (Walpole Island First Nation)
- Chippewas of the Thames First Nation
- Chippewas of Kettle and Stony Point
- Oneida Nation of the Thames

Each of these five Indigenous communities and the Metis Nation of Ontario were served the Notice of Hearing for the Project, in accordance with the OEB's Letter of Direction.

On April 4, 2022, Enbridge Gas filed a Letter of Opinion it received from the Ministry of Energy on April 1, 2022. The Letter of Opinion states that "based on the information provided and through contacting the potentially impacted Indigenous communities directly, [the Ministry] is of the opinion that the procedural aspects of consultation undertaken by Enbridge Gas Inc. to date for the purposes of Enbridge Gas's 2022 Storage Enhancement Project is satisfactory."

OEB staff's submission suggested that the OEB approve the application conditional on receiving the Ministry of Energy's Letter of Opinion. However, the Letter of Opinion has now been filed, and such a condition is therefore unnecessary. OEB staff identified no other concerns. CKSPFN with Southwind submitted that a project should not proceed

¹¹ Enbridge Gas submission, para 26.

until the impacted Indigenous peoples provide consent. CKSPFN with Southwind stated that it has yet to sign a capacity funding agreement with Enbridge Gas, has yet to review the project documents in detail, and has yet to provide consent on the proposed Project.

CKSPFN with Southwind also submitted that if the OEB directs Enbridge Gas to provide the accommodation requested with respect to its environmental concerns, it would consider that the procedural aspects of the duty to consult will be appropriately discharged by Enbridge Gas for the Project.

In its reply submission, Enbridge Gas submitted that as outlined in the Indigenous Consultation Report, 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.¹² Enbridge Gas stated that on February 24, 2022, it extended an additional offer of capacity funding to CKSPFN for review of the Project, ER and archaeological assessment.

As discussed in the preceding section of this Decision, Enbridge Gas confirmed in its reply submission its intention to satisfy the conditions proposed in OEB staff's submissions and stated that it will comply with the final conditions of approval and conditions of licence established and recommended by the OEB, respectively. Enbridge Gas did not agree that the conditions proposed by CKSPFN with Southwind should be included, but Enbridge Gas responded to each of the accommodations requested by CKSPFN with Southwind, and that response included (among other matters) Enbridge Gas's agreement to continue its engagement with potentially impacted Indigenous groups, including CKSPFN, beyond this proceeding and throughout the construction phase of the project; 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; and to provide some funding to CKSPFN to train monitors who can participate in future Enbridge Gas projects, as appropriate.

Enbridge Gas submitted that it does not agree that consent for the Project is legally required by Indigenous groups before it can proceed, though a goal of its engagement activities is to seek to achieve it. Enbridge Gas stated that while it has and will continue to engage with CKSPFN on the Project, it is important to note that Indigenous groups do

¹² 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.

not have a veto over final Crown decisions, nor is there a duty to agree.¹³ Enbridge Gas submitted that, as stipulated in 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.¹⁴ Enbridge Gas reiterated that it has extended another offer for capacity funding to CKSPFN to attempt to address this concern, consistent with its practice for projects of this nature.

Findings

The OEB finds that Enbridge Gas has satisfied the delegated procedural aspects of the Crown's duty to consult for the Project. The OEB notes that Enbridge Gas's evidence demonstrates that considerable effort has been made to consult with the five Indigenous communities identified by the Ministry of Energy to satisfy these requirements.

Enbridge Gas filed a Letter of Opinion from the Ministry of Energy with the OEB on April 4, 2022 after the close of the record in this proceeding. In the letter, the Ministry of Energy confirmed its satisfaction with the procedural aspects of the consultation undertaken by Enbridge Gas.

The OEB agrees with Enbridge Gas that consent is not required by CKSPFN prior to proceeding with the Project for the reasons cited. As noted in Section 3.1.4 above, the record demonstrates that Enbridge Gas did consult with CKSPFN on a timely and good faith basis. The OEB encourages Enbridge Gas to continue to consult with Indigenous communities throughout the construction and life of the Project.

3.2 PART B: DECISION ON THE REQUEST TO INCREASE THE MAXIMUM OPERATING PRESSURE OF THE POOLS

Part B of the Decision addresses the evidence, positions of the parties and OEB's findings on Enbridge Gas request to increase maximum operating pressure of the Pools.

3.2.1 Request to increase the maximum operating pressure of the Pools

¹³ *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).

¹⁴ *Coldwater* at para. 58.

Enbridge Gas seeks leave to vary the conditions of approval of a previous OEB decision which set a limit on the pressure gradient of the Dow Moore storage pool to 15.81 kPa/m (0.7 psi/ ft).¹⁵ Enbridge Gas proposes to increase the MOP of this storage pool to a maximum pressure gradient of 16.51 kPa/m (0.73 psi/ft). Enbridge Gas also seeks OEB approval to increase the MOP of the Payne storage pool to a maximum pressure gradient of 17.19 kPa/m (0.76 psi/ft).

In response to interrogatories, Enbridge Gas stated that the Pools were chosen based on their geological similarity to other Enbridge Gas pools that have undergone a pressure increase and have been operated successfully at an elevated pressure gradient of 16.5 kPa/m (0.73 psi/ft) or 17.2 kPa/m (0.76 psi/ft) for many years.

OEB staff submitted that the OEB should consider including the following condition as part of its approval:

Enbridge Gas Inc. shall not operate:

- (a) the Dow Moore 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.

OEB staff also noted that the OEB typically requires, as a condition of approval, that the applicant comply with the relevant requirements of Canadian Standards Association Standard Z341 (CSA Z341) to the satisfaction of the Natural Resources. Enbridge Gas confirmed, in its responses, that it does not have any objection to the OEB imposing such a condition.¹⁶ OEB staff submitted that it remains appropriate that, as a condition of approval, the OEB should require Enbridge Gas to comply with the relevant requirements of CSA Z341 to the satisfaction of Natural Resources.

Natural Resources submitted that it understands that Enbridge Gas confirms, as stated in its responses to interrogatories, that it will comply with the *Oil, Gas and Salt Resources Act*; O.Reg. 245/97; the Provincial Standards; and CSA Z341.1-14 - "Storage of Hydrocarbons in Underground Formations" to the satisfaction of Natural Resources.

¹⁵ E.B.O. 147, E.B.L.O. 224 Decision with Reasons, Appendix II.

¹⁶ Exhibit I, Staff 6(c)

Findings

The OEB approves Enbridge Gas's application to increase the MOP of the Dow Moore storage pool to a maximum pressure gradient of 16.51 kPa/m (0.73 psi/ft) and the Payne storage pool to a maximum pressure gradient of 17.19 kPa/m (0.76 psi/ft). The increased pressures are within the limits prescribed by the CSA Z341 standard.

The OEB expects that Enbridge Gas will comply with applicable requirements of the *Oil, Gas and Salt Resources Act*, O.Reg. 245/97, the Provincial Standards, and CSA Z341.1-14 to the operation of the Pools to the satisfaction of the Natural Resources.

3.3 PART C: DECISION ON THE LEAVE TO CONSTRUCT APPLICATION

Part C of the Decision addresses the evidence, positions of the parties and findings on issues that relate specifically to Enbridge Gas's leave to construct application.

3.3.1 Leave to Construct Application

Enbridge Gas has applied for leave to construct approximately 85 metres of NPS 10-inch steel pipeline to connect the TKC 69 well to the existing Kimball-Colinville gathering pipeline.

Enbridge Gas stated that the Proposed Pipeline is to be installed in the most direct and shortest route that allows a 90-degree connection from well TKC 69 to the gathering line. Construction of the Proposed Pipeline is expected to take place upon completion of drilling operations in the Summer and Fall of 2022 and will not cause any disruption of service to the Kimball-Colinville storage pool. The planned in-service date is September 30, 2022.

Enbridge Gas stated that all design, installation and testing of the Proposed Pipeline will be in accordance with the requirements of Ontario Regulation 210/01 – *Oil and Gas Pipeline Systems* (Regulation) under the *Technical Standards and Safety Act, 2000*. The design will also meet the requirements of CSA Standard Z662 for Oil and Gas Pipeline Systems in accordance with the Code Adoption Document under the Regulation.

OEB staff supported Enbridge Gas's application for leave to construct, subject to proposed conditions of approval that are similar to those approved by OEB in Enbridge Gas's 2021/22 Storage Enhancement decision. Enbridge Gas stated that it has no

concerns with the conditions of approval proposed by OEB staff at this time.¹⁷ Natural Resources submitted that it does not oppose the approval of the application, subject to the inclusion of conditions proposed by OEB staff.¹⁸

Findings

The OEB finds that the Proposed Pipeline is in the public interest and grants Enbridge Gas leave to construct the Proposed Pipeline, subject to Enbridge Gas satisfying the conditions of approval in this Decision.

In making its determination, the OEB considered the market need for the storage enhancement; the absence of any capital cost impact on Enbridge Gas regulated customers; land related matters; environmental matters; pipeline design specifications; and its Indigenous consultation.

¹⁷ Exhibit I, Staff 13

¹⁸ Natural Resources submission, p.2

4 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Enbridge Gas Inc. (Enbridge Gas) may increase the maximum operating pressure of the Dow Moore storage pool to a maximum pressure gradient of 16.51 kPa/m (0.73 psi/ft).
2. Enbridge Gas may increase the maximum operating pressure of the Payne storage pool to a maximum pressure gradient of 17.19 kPa/m (0.76 psi/ft).
3. Enbridge Gas shall not operate:
 - a) the Dow Moore storage pool above an operating pressure representing a pressure gradient of 16.51 kPa/m (0.73 psi/ft) and
 - b) the Payne storage pool above an operating pressure representing a pressure gradient of 17.19 kPa/m (0.76 psi/ft) without leave of the OEB.
4. Enbridge Gas shall continue to adhere to the applicable requirements of CSA Z341 to the satisfaction of the Ministry of Northern Development, Mines, Natural Resources and Forestry.
5. Enbridge Gas, as part of its 2024 rebasing application, shall provide a study that includes an appropriate level of analysis addressing the allocation of all costs between its rate regulated and unregulated storage business and that includes without limitation, consideration of lost and unaccounted-for gas.
6. Enbridge Gas is granted leave to construct the pipeline as proposed in Enbridge Gas's application, pursuant to subsection 91 of the Act, subject to the Conditions of Approval set forth in Appendix A to this Order.
7. The Chippewas of Kettle and Stony Point First Nation with Southwind Development Corporation (CKSPFN with Southwind) shall file with the OEB and forward to Enbridge Gas its cost claim in accordance with the OEB's *Practice Direction on Cost Awards* on or before **April 14, 2022**.
8. Enbridge Gas shall file with the OEB and forward to intervenors any objections to the claimed costs of CKSPFN with Southwind on or before **April 21, 2022**.
9. If Enbridge Gas objects to CKSPFN with Southwind costs, CKSPFN with Southwind shall file with the OEB and forward to Enbridge Gas its responses, if any, to the objections to cost claims on or before **April 28, 2022**.

10. Enbridge Gas shall pay the OEB's costs incidental to this proceeding upon receipt of the OEB's invoice.

DATED at Toronto April 7, 2022

ONTARIO ENERGY BOARD

Nancy Marconi
Registrar

Appendix A
to the EB-2021-0078
Order
Leave to Construct
Conditions of Approval
April 7, 2022

Application under Section 91 of the OEB Act

Enbridge Gas Inc. EB-2021-0078

CONDITIONS OF APPROVAL

1. Enbridge Gas Inc. (Enbridge Gas) shall construct the facilities and restore the land in accordance with the OEB's Decision and Order in EB-2021-0078 and these Conditions of Approval.
2. (a) Authorization for leave to construct shall terminate 12 months after the decision is issued, unless construction has commenced prior to that date.

(b) Enbridge Gas shall give the OEB notice in writing:
 - i. of the commencement of construction, at least 10 days prior to the date construction commences
 - ii. of the planned in-service date, at least 10 days prior to the date the facilities go into service
 - iii. of the date on which construction was completed, no later than 10 days following the completion of construction
 - iv. of the in-service date, no later than 10 days after the facilities go into service
3. Prior to the commencement of construction of the Proposed Pipeline, Enbridge Gas shall obtain all necessary approvals, permits, licences, certificates, agreements and rights required to construct, operate and maintain the Proposed Pipeline.
4. Enbridge Gas shall implement all the recommendations of the Environmental Report filed in the proceeding, and all the recommendations and directives identified by the Ontario Pipeline Coordinating Committee review.
5. Enbridge Gas shall advise the OEB of any proposed change to OEB-approved construction or restoration procedures. Except in an emergency, Enbridge Gas shall not make any such change without prior notice to and written approval of the OEB. In the event of an emergency, the OEB shall be informed immediately after the fact.
6. Both during and after construction, Enbridge Gas shall monitor the impacts of construction, and shall file with the OEB one electronic (searchable PDF) version of each of the following reports:
 - (a) A post construction report, within three months of the in-service date, which shall:

- i. provide a certification, by a senior executive of the company, of Enbridge Gas's adherence to Condition 1
 - ii. describe any impacts and outstanding concerns identified during construction
 - iii. describe the actions taken or planned to be taken to prevent or mitigate any identified impacts of construction
 - iv. include a log of all complaints received by Enbridge Gas, including the date/time the complaint was received, a description of the complaint, any actions taken to address the complaint, the rationale for taking such actions
 - v. provide a certification, by a senior executive of the company, that the company has obtained all other approvals, permits, licenses, and certificates required to construct, operate, and maintain the proposed project
- (b) A final monitoring report, no later than fifteen months after the in-service date, or, where the deadline falls between December 1 and May 31, the following June 1, which shall:
- i. provide a certification, by a senior executive of the company, of Enbridge Gas's adherence to Condition 4
 - ii. describe the condition of any rehabilitated land
 - iii. describe the effectiveness of any actions taken to prevent or mitigate any identified impacts of construction
 - iv. include the results of analyses and monitoring programs and any recommendations arising therefrom
 - v. include a log of all complaints received by Enbridge Gas, including the date/time the complaint was received; a description of the complaint; any actions taken to address the complaint; and the rationale for taking such actions
7. Enbridge Gas shall designate one of their employees as project manager who will be the point of contact for these conditions, and shall provide the employee's name and contact information to the OEB and to all affected landowners, and shall clearly post the project manager's contact information in a prominent place at the construction site.

SCHEDULE 1

**REPORT TO THE MINISTER OF NORTHERN DEVELOPMENT, MINES,
NATURAL RESOURCES AND FORESTRY ON WELL LICENCE APPLICATION**

ENBRIDGE GAS INC.

EB-2021-0078

APRIL 7, 2022



Ontario
Energy
Board | Commission
de l'énergie
de l'Ontario

EB-2021-0078

**REPORT OF THE ONTARIO ENERGY BOARD
TO THE MINISTER OF NORTHERN DEVELOPMENT, MINES, NATURAL
RESOURCES AND FORESTRY
APPLICATION BY ENBRIDGE GAS INC. FOR A LICENCE TO DRILL A WELL
IN THE KIMBALL-COLINVILLE STORAGE POOL**

Before: Robert Dodds, Presiding Commissioner

Anthony Zlahtic, Commissioner

David Sword, Commissioner

Date: April 7, 2022

1. INTRODUCTION AND SUMMARY

Enbridge Gas Inc. (Enbridge Gas) applied to the Minister of Northern Development, Mines, Natural Resources and Forestry (Minister) for a licence to drill well TKC 69 (Proposed Well) in the Kimball-Colinville storage pool in St. Clair Township in the County of Lambton. Enbridge Gas seeks a favourable report (Report) from the OEB to the Minister to support its well drilling licence application. On October 22, 2021, the Minister referred the application to the OEB pursuant to section 40(1) of the *Ontario Energy Board Act, 1998* (OEB Act).

The Proposed Well is part of Enbridge Gas's 2022 Storage Enhancement Project (Project). The operation of the Project would allow Enbridge Gas to enhance the deliverability and working capacity of the Pools. In order to construct and operate the Project, Enbridge Gas requested and was granted the following OEB's approvals¹⁹: i) to increase the maximum operating pressure of the Pools pursuant to section 38(1) of the OEB Act, and ii) to construct a new pipeline (Proposed Pipeline) to connect the new storage well to an existing gathering pipeline, under section 91 of the OEB Act. Those approvals are set out in the OEB's Decision of today's date, to which this Report is Schedule 1.

The OEB reviewed the referred well licence application and held a written hearing. The Ministry of Northern Development, Mines, Natural Resources and Forestry (Natural Resources) was a registered intervenor and filed submissions in the proceeding.

Pursuant to section 40(1) of the OEB Act, the OEB issues this Report recommending that the Minister grant Enbridge Gas a licence to drill the Proposed Well in the Kimball-Colinville storage pool.

The OEB's recommendation includes the conditions of licence in Attachment A to this Report.

2 ISSUES CONSIDERED

When reviewing and reporting to the Minister on a natural gas storage well drilling licence application, the OEB considers the following issues:

- a) Need
- b) Costs and potential impact on Enbridge Gas's customers
- c) Landowner matters
- d) Environmental matters

¹⁹ OEB Decision and Order, EB-2021-0078

- e) Indigenous consultation
- f) Regulatory and legal requirements regarding storage wells
- g) Well licence conditions

The OEB notes that all the issues listed above, with the exception of issues f) and g) which relate solely to the well licence application, were addressed in Part A of the Decision, as these issues are common to all components of the Project.

The OEB's conclusions, with respect to each of the issues a) to e) are set out below:

- a) The OEB finds that Enbridge Gas has established the need for the Project based on its existing regulated and unregulated storage being fully needed/contracted and that there will be continued demand for unregulated storage when offered to the market.
- b) . The OEB accepts Enbridge Gas's position that the capital costs for the Project will have no direct impact on its customers as the cost will be borne by its shareholders.
- c) The OEB finds that Enbridge Gas has appropriately managed land related matters and that there are no outstanding issues to address.
- d) Enbridge Gas has followed the requirements of the OEB's Environmental Guidelines.
- e) The OEB finds that Enbridge Gas has adequately consulted with the Indigenous communities identified by the Ministry of Energy and has satisfied the delegated procedural aspects of the Crown's duty to consult for the Project. The OEB notes that Enbridge Gas's evidence demonstrates considerable effort has been made to consult with the five Indigenous communities identified by the Ministry of Energy to satisfy these requirements. A letter of opinion from the Ministry of Energy was filed by Enbridge Gas with the OEB on April 4, 2022. This letter confirmed Ministry of Energy's satisfaction with the procedural aspects of consultation undertaken by Enbridge Gas for the "2022 Storage Enhancement Project".

In this Report, the OEB addresses in detail the issues that relate solely to the well licence application – those include adherence to legal and regulatory requirements relating to storage wells; and conditions of licence.

2.1 Regulatory and Legal Requirements for a Licence to Drill and Operate a Storage Well

In Ontario, Natural Resources is the provincial authority that oversees the geological, engineering, operational, technical and safety aspects of drilling, operation and modification works of storage wells in accordance with requirements of Canadian Standards Authority (CSA) Standard Z341 “Storage of Hydrocarbons in Underground Formations” (CSA Z341) and the Gas and Salt Resources of Ontario, Provincial Operating Standards (the Provincial Standards).

Natural Resources was an active participant in the proceeding, filing interrogatories and making submissions.

The drilling work is expected to take place from April to August 2022 when there will be no injection or withdrawal operations in the Kimball-Colinville storage pool to avoid disruption to service from the pool, and when the reservoir pressure is less than 3,500 kPa to allow the well to be safely drilled.

Enbridge Gas stated that it has provided Natural Resources with the following reports on the Pools for its review: (i) “What If” Analysis and Operability Issues report; (ii) A Neighbouring Assessment for each pool; and (iii) Engineering studies confirming that the proposed operating pressure increase does not exceed the maximum safe operating pressure for the Pools.

Natural Resources submitted that it has reviewed Enbridge Gas’s application, OEB staff’s interrogatories (including the proposed conditions) and Enbridge Gas’s response to interrogatories. Natural Resources submitted that it is satisfied that the application is complete and that Enbridge Gas has offered a complete response to all interrogatories.²⁰

2.2 Conditions of Licence

OEB staff proposed licence conditions with respect to the well licence that were similar to those approved by the OEB in Enbridge Gas’s 2021/22 Storage Enhancement decision.²¹ Enbridge Gas accepted all of the proposed conditions.²²

OEB staff submitted that a favourable OEB Report, under subsection 40(1) of the Act, should be provided to the Minister, along with recommended licence conditions. Natural

²⁰ Natural Resources submission, p.2

²¹ EB-2020-0256 Decision and Order, Schedule 3

²² Exhibit I, Staff 12

Resources submitted that it has no objection to the approval of Enbridge Gas's application subject to the conditions proposed by OEB staff.²³

3 RECOMMENDATION

The OEB recommends that the Minister grant to Enbridge Gas a licence to drill the Proposed Well in the Kimball-Colinville storage pool, subject to the conditions attached as Attachment A to this Report.

This recommendation shall expire twelve months from the date of this Report.

DATED at Toronto, April 7, 2022

ONTARIO ENERGY BOARD

Nancy Marconi
Registrar

²³ Natural Resources submission, p.2

Attachment A

To the EB-2021-0078

**REPORT OF THE OEB TO THE MINISTER
APPLICATION BY ENBRIDGE GAS INC. TO DRILL A WELL
IN THE KIMBALL-COLINVILLE STORAGE POOL**

Recommended Conditions of Licence

April 7, 2022

Application under Section 40 of the OEB Act

Enbridge Gas Inc.

EB-2021-0078

RECOMMENDED CONDITIONS OF LICENCE

1. Enbridge Gas Inc. (Enbridge Gas) shall rely on the evidence filed with the OEB in the EB-2021-0078 proceeding and comply with applicable laws, regulations and codes pertaining to the construction of the Proposed Well.
2. The authority granted under this licence to Enbridge Gas is not transferable to another party without leave of the OEB. For the purpose of this condition another party is any party except Enbridge Gas.
3. Enbridge Gas shall construct the facilities and restore the land in accordance with its application and evidence given to the OEB, except as modified by this licence and these Conditions.
4. Enbridge Gas shall implement all the recommendations of the Environmental Report filed in the proceeding.
5. Prior to commencement of construction of the Proposed Well, Enbridge Gas shall obtain all necessary approvals, permits, licences, certificates, agreements and rights required to construct, operate and maintain the Proposed Well.
6. Enbridge Gas shall ensure that the movement of equipment is carried out in compliance with all procedures filed with the OEB, and as follows:
 - a) Enbridge Gas shall make reasonable efforts to keep the affected landowner(s) as well as adjacent landowners and their respective tenant farmers, or their designated representatives, informed of its plans and construction activities.
 - b) The installation of facilities and construction shall be coordinated to minimize disruption of agricultural land and agricultural activities.
7. Enbridge Gas shall, subject to the recommendation by an independent tile contractor and subject to the landowner's approval, construct upstream and downstream drainage headers adjacent to the drilling area and access roads that cross existing systematic drainage tiles, prior to the delivery of heavy equipment, so that continual drainage will be maintained.

8. Both during and after construction, Enbridge Gas shall monitor the impacts of construction, and shall file with the OEB one electronic (searchable PDF) version of each of the following reports:
- a) A Post Construction Report, within three months of the in-service date, which shall:
 - i. Provide a certification, by a senior executive of the company, of Enbridge Gas's adherence to Condition 1
 - ii. Describe any impacts and outstanding concerns identified during construction
 - iii. Describe the actions taken or planned to be taken to prevent or mitigate any identified impacts of construction
 - iv. Include a log of all complaints received by Enbridge Gas, including the date/time the complaint was received, a description of the complaint, any actions taken to address the complaint, the rationale for taking such actions
 - v. Provide a certification, by a senior executive of the company, that the company has obtained all other approvals, permits, licences, and certificates required to construct, operate, and maintain the proposed project
 - b) A Final Monitoring Report, no later than fifteen months after the in-service date, or, where the deadline falls between December 1 and May 31, the following June 1, which shall:
 - i. Provide a certification, by a senior executive of the company, of Enbridge Gas's adherence to Condition 1
 - ii. Describe the condition of any rehabilitated land
 - iii. Describe the effectiveness of any actions taken to prevent or mitigate any identified impacts during construction
 - iv. Include the results of analyses and monitoring programs and any recommendations arising therefrom
 - v. Include a log of all complaints received by Enbridge Gas, including the date/time the complaint was received, a description of the complaint, any actions taken to address the complaint, the rationale for taking such actions

9. For the purposes of these conditions, Enbridge Gas shall conform:

a) With CSA Z341.1-18 "Storage of Hydrocarbons in Underground Formations" to the satisfaction of the Ministry of Northern Development, Mines, Natural Resources and Forestry (Natural Resources)

b) With the requirements for wells as specified in the Oil, Gas and Salt Resources Act, its Regulation 245/97, and the Provincial Operating Standards v.2 to the satisfaction of the Natural Resources

10. Enbridge Gas shall designate one of its employees as project manager who will be responsible for the fulfillment of these conditions, shall provide the employee's name and contact information to Natural Resources, the OEB and to all the affected landowners, and shall clearly post the project manager's contact information in a prominent place at the construction site.