



November 8, 2022

VIA RESS

Ontario Energy Board
P.O. Box 2319,
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4
Attention: Registrar

Dear Ms. Marconi,

**Re: Enbridge Gas Inc. (“EGI”)
Panhandle Regional Expansion Project Application
Board File Number: EB-2022-0157**

In response to Enbridge Gas Inc.’s (**EGI’s**) letter dated November 4, 2022 (**November 4 Letter**), Three Fires Group Inc. (**Three Fires**) maintains its position that EGI should be required to answer the supplementary questions set out in Three Fires’ letter dated November 1, 2022 (**November 1 Letter**).

In summary, the Board should require EGI to deliver answers to the supplementary questions because:

1. The questions could help to resolve gaps and potential contradictions in the record that EGI’s most recent evidence has created;
2. The questions relate to the instructions and circumstances surrounding EGI’s retainer of its environmental expert and are therefore very significant to many of the central issues the Board will address in this proceeding;
3. EGI has used its November 4 Letter as an opportunity to provide partial answers to the supplementary questions, while still maintaining its position of general refusal. This has only served to create more uncertainty as to the nature of EGI’s evidence, which can only be resolved by requiring EGI to clarify its position by way of answers to Three Fires’ supplementary questions.
4. Absent such clarification, Three Fires will be placed in the unfortunate position in its final submissions of requesting that the Board draw a series of adverse inferences with respect to many aspects of the environmental expert’s retainer and activities, including in relation to EGI’s duty to consult.

Three Fires' Questions Seek to Resolve Contradictions and/or Gaps in EGI's Evidence

Three Fires' supplementary questions have attempted to resolve the uncertainty concerning the instructions and information EGI provided to its environmental experts. EGI's evidence to date has been incomplete and potentially contradictory.

EGI testified at the technical conference that their instructions to their environmental experts were to follow the OEB's environmental guidelines and the section pertaining to cumulative effects. EGI was uncertain whether they had included those instructions in a request for proposals, but it undertook to provide any such retainer letter or RFP equivalent if any such documents existed.¹

EGI's Request for Quotation (**RFQ**), which it produced as part of its undertaking responses, does not directly corroborate the evidence from the technical conference.² In particular, the RFQ contains no direct reference to the OEB's environmental guidelines. However, it does contain reference to a large number of documents and requirements that EGI failed to reference at the technical conference. These general inconsistencies as between EGI's technical conference testimony and its written responses to undertakings create uncertainty if not complete contradiction in EGI's current evidence, which EGI by virtue of its current position refuses to clarify or reconcile.

Three Fires' supplementary questions are entirely directed towards resolving the uncertainty that EGI's incomplete and potentially contradictory evidence has produced. EGI should not be permitted to invoke the late timing of the questions as a reason for its refusal, when it is EGI's slow, partial and potentially contradictory disclosure that has created the delay in resolving the questions at issue.

The Omissions that Three Fires Is Attempting to Address Are Significant

EGI's November 4 Letter minimizes the importance of its environmental report to these proceedings. The report from its environmental expert is one of the central pillars for EGI's contention that no significant cumulative effects are anticipated from the project. Obtaining a full understanding of the instructions its expert received, the information with which it was provided, and the general parameters in which it produced the report are all essential towards assessing the report's strengths, its weaknesses, and its ultimate value to the Board.

EGI is mistaken in its description of Three Fires' questions as "concerned only with Indigenous engagement". In fact, the questions expressly address the potential contradictions between EGI's evidence at the technical conference and in its more recent undertaking responses on matters such as:

- the full picture of AECOM's instructions at the time of its retainer;³
- the instructions and information that EGI provided to AECOM on matters relevant to the report;⁴

¹ Transcript pages 120-121.

² See EGI's response at Exhibit JT1.11.

³ Question 1.

⁴ Question 2.

- whether AECOM complied with the expectations that EGI set out in its initial retainer documents on the nature of Indigenous engagement and related documents specifically required (but not yet produced) by EGI.⁵

In any event, whether AECOM was instructed to (and actually did) consider the knowledge and views of Indigenous communities should be a significant part of any evaluation of the quality of its report. Among other reasons, this information is an essential aspect of any determination as to whether EGI (and its representatives) have satisfied their duty to consult.

EGI's November 4 Letter Has Increased the Need for Clarification

EGI's most recent November 4 Letter has introduced further uncertainty to these issues, underscoring the need for EGI to provide full answers in accordance with normal evidentiary processes.

The letter states that EGI declines to respond to Three Fires' supplementary questions, but then proceeds to provide extensive information in relation to many of the questions. The information that EGI provides could easily form the core if not the bulk of a normal undertaking response to at least some of Three Fires' questions.

It is therefore unclear why EGI has provided the information while maintaining its position of refusal. If anything, the partial answers that EGI provides only serve to create more uncertainty in the proceeding, since it is unclear whether EGI intends the information as evidence or how the information should be treated in future submissions.

Absent an order from the Board requiring EGI to provide formal and complete answers to the questions, Three Fires expects that its final submissions will include a request for the Board to draw a series of adverse inferences from EGI's refusal to provide full details concerning its retainer of AECOM and the resulting expert report. It is likely that these requests will be in relation to the orientation and integrity of the report itself, as well as with respect to AECOM's role in engaging with Indigenous communities, including with respect to the significant question of whether EGI has satisfied its duty to consult.

Three Fires therefore reiterates its request that the Board require EGI's responses to the questions set out in the November 1 Letter as part of the record of the proceeding.

Sincerely,

Nicholas Daube

c. Dave Janisse, EGI
Tania Persad, EGI
Charles Keizer, Torys, LLP

⁵ Question 3 and 4.

Philip Lee, Three Fires
Chief Mary Duckworth, Caldwell First Nation
Don Richardson, Three Fires
Larry Sault, Caldwell First Nation