



January 17, 2025

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 Distribution Inc. ("EGI")
Application for exemption from leave to construct natural gas pipeline and
associated facilities in the Town of Amherstburg
Board File No.: EB-2024-0249**

We are counsel to Caldwell First Nation ("CFN") in the above-noted proceeding. Pursuant to Procedural Order No. 1, please find attached the written interrogatories of CFN to EGI in the above-noted proceeding.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel Vollmer".

DT Vollmer

- c. All parties.
Chief Nikki van Oirschot, CFN
John Wladarski, Northwind Business Development Inc., CFN

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Sched. B, as amended; and in particular subsection 95(2) thereof;

AND IN THE MATTER OF an application by Enbridge Gas Inc. (“**EGI**”) for an order granting an exemption from the requirement to obtain leave to construct natural gas distribution pipelines and ancillary facilities that make up a Community Expansion Project to serve the community of Boblo Island in the Town of Amherstburg (the “**Project**”).

EB-2024-0249

INTERROGATORIES

OF

CALDWELL FIRST NATION

(“CFN”)

January 17, 2025

Question: H-CFN-1.

Reference:

- Exhibit H, Tab 1, Schedule 1, para 6.

Preamble: EGI describes its Indigenous consultation process as well as its related communications with the Ontario Government. It states that its engagement was based on OEB guidelines as well as Enbridge's Indigenous Peoples Policy ("**IPP**").

a) Please place Enbridge's *Indigenous Reconciliation Action Plan* ("**IRAP**") on the record in this proceeding.

b) Please provide specific details describing how EGI has applied the principles, policies and commitments set out in the IRAP and IPP in the context of its engagement and consultations with CFN beyond what is as already set out in the Application. Specifically, please provide specific comment on how the following items from the IPP and IRAP apply in the context of the current Application:

- IPP:
 - EGI's recognition of the importance of the United Nations Declaration on the Rights of Indigenous Peoples ("**UNDRIP**") in the context of existing Canadian law;
 - Recognizing the legal and constitutional rights possessed by Indigenous Peoples in Canada and the importance of the relationship between Indigenous Peoples and their traditional lands and resources;
 - EGI's stated principle to "engage early and sincerely through processes that aim to achieve the support and agreement of Indigenous nations and governments for our projects and operations that may occur on their traditional lands"
 - EGI's stated principle that it seeks "the input and knowledge of Indigenous groups to identify and develop appropriate measures to avoid and/or mitigate the impacts of our projects and operations that may occur on their traditional lands."
 - EGI's statement that it will "provide ongoing leadership and resources to ensure the effective implementation of the above principles, including the development of implementation strategies and specific action plans..."
 - EGI's stated corporate principle of aligning the company's interests with those of Indigenous communities through meaningful, direct Indigenous economic activity in projects corresponding to community capacity and needs, where possible.
- IRAP:

- Pillar 2 concerning community engagement and relationships
 - Pillar 3 concerning economic inclusion and partnerships
 - Pillar 5 and in particular its objectives relating to sustainability
 - Pillar 6 concerning governance and leadership
- c) Please produce any additional internal or public documents that set out any EGI policies applicable to EGI's interactions with CFN for the purposes of the matters at issue in this Application.
- d) Did EGI engage with or attempt to engage with CFN historians, local elders and/or knowledge keepers for the purposes of this Application or the matters this Application addresses?
- e) Does EGI recognize CFN's assertion of continuing title to, jurisdiction over, and rights to occupy and use the water, land, and subsurface areas set out Exhibit A, Tab 2, Schedule 1, Attachment 1. Please provide particulars of EGI's position.
- f) Please provide details regarding EGI's commitment to increase Indigenous representation in the workforce and supplier community in relation to the Project and how CFN may benefit from this commitment.

Question: H-CFN-2.

- Reference:
- Exhibit H, Tab 1, Schedule 1, Attachment 2
 - Exhibit H, Tab 1, Schedule 1, Attachment 6, p. 3
 - Exhibit H, Tab 1, Schedule 1, Attachment 7, p. 26-27

Preamble: The Ministry of Energy (the “**Ministry**”) notes that should information become available throughout the consultation process to suggest that the Project’s impacts will be significant enough to warrant a deeper level of consultation, EGI must inform the Ministry so that updated guidance can be provided.

EGI acknowledged that CFN maintains that aboriginal title to Boblo Island was never surrendered and continues to exist today and the CFN anticipates filing a specific claim in the Boblo Island and project area.

- a) Does EGI agree that asserting unceded title, land, water, and subsurface rights increases the level of consultation required of project proponents beyond the moderate range in accordance with Canadian constitutional requirements and related jurisprudence regarding the duty to consult? If no, please explain why not and provide the basis of EGI’s opinion that a higher level of consultation is not required.
- b) Please provide EGI’s understanding of CFN’s assertion of land, water, and subsurface rights in relation to Boblo Island and the Project area.
- c) Did EGI contact the Ministry when it became aware of CFN’s land, water, and subsurface rights assertion to Boblo Island and the surrounding area? If yes, please provide all communications between EGI and the Ministry related to EGI’s knowledge of CFN’s asserted rights. If no, please explain why EGI did not seek further instruction from the Ministry in light of the direction from the Ministry noted above.
- d) What is EGI’s position concerning the implications of CFN’s assertion of land, water, and subsurface rights for the purposes of this Application and/or the Project?
- e) Please provide details of any analysis undertaken by EGI to assess and determine the impacts on the Traditional Territory and Treaty lands of CFN as part of the (i) Application, generally, and (ii) the Environmental Report. Did EGI perform any analysis prior to contacting CFN? If no analysis was performed, please explain why not.
- f) What agreements, authorizations, and or approvals with and/or from CFN does EGI envision needing or entering into to support the Project?
- g) Please indicate whether EGI has or will consider the equity participation of CFN in relation to the Project. If yes, please discuss what equity participation means to EGI and how CFN may participate. If no, please explain why not and how denying equity

participation is consistent with the IPP, IRAP, and Enbridge's policies supporting reconciliation.

Question: H-CFN-3.

Reference:

- Environmental Report, Sections 4.2, 5, and 6
- Environmental Report, Appendix A

Preamble: Stantec notes that the study area for the Environmental Report is considered the area within which direct interactions with the socio-economic and natural environment could occur (the “**Study Area**”).

- a) Does EGI recognize CFN's jurisdiction over its Traditional Territory and over the Study Area that forms the subject of the Environmental Report? Please explain why or why not, as well as the implications in the current Application.
- b) Does EGI recognize CFN's responsibility to care for the lands, waters, and all of creation as it relates to the Study Area? Please explain why or why not, as well as the implications in the current Application.
- c) Please provide EGI's position as to the relevance of the area's colonial history and the unceded status of CFN's Traditional Territory, lands, subsurface, and water rights for the purposes of Section 5 and Section 6 of its Environmental Report

Question: H-CFN-4.

Reference:

- Environmental Report, Section 6

Preamble: Stantec undertook a cumulative effects assessment, noting that the OEB has specified that only those effects that are additive or interact with the effects that have already been identified as resulting from the Project are to be considered under cumulative effects and that it is necessary to determine whether these effects warrant mitigation measures.

- a) Please provide any details of any efforts to understand the cumulative effects of development and projects, including the Project, on CFN's traditional and contemporary uses in and around the Study Area, including, inter alia, hunting, fishing, and ceremonial activities, and how Stantec's research and consultations with CFN informed Section 6 of the Report.

Question: H-CFN-5.

Reference: • Environmental Report, Section 3.5.7

Preamble: Stantec notes that it welcomes the opportunity for Indigenous communities to share context and background to the findings of both the archaeological studies as well as the natural heritage studies completed for the Project (the “**Studies**”) so that it may gain a sense of the full value of the species and ecosystems (and subsequent impacts) discussed in the Environmental Report.

Stantec notes that CFN has developed a Species of Interest List.

- a) Will EGI ensure that CFN is able to participate in the Studies, including through providing capacity funding and employment opportunities for CFN members?
- b) Please provide details on how CFN’s traditional knowledge, context and background will be included in the Studies to ensure that CFN and its members meaningfully contribute to the Studies.
- c) Will EGI undertake a Stage 2 archaeological assessment? If yes, please provide details regarding how EGI will ensure that CFN meaningfully contributes and participates. If no, please explain why not in light of Stantec’s recommendation for, at minimum, a Stage 2 archaeological assessment for a portion of the Study Area.
- d) Please confirm whether EGI has determined that any Stage 3 and/or Stage 4 archaeological assessments have been recommended or will be required. If yes, please provide details, including how EGI will ensure that CFN meaningfully participates and contributes to the assessment(s).
- e) Will EGI incorporate measures to mitigate impacts on species identified in CFN’s Species of Interest List? If no, please explain why not. If yes, please provide details on how CFN can participate to ensure that mitigation measures adopted by EGI protect species of interest and importance to CFN and its members.
- f) Please confirm whether EGI will commit to sharing with CFN, on an ongoing basis, details concerning any future discoveries of archaeological resources.

Question: H-CFN-6.

Reference:

- Environmental Report, Section 1.2.1
- Ontario Energy Board: *Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario* (the “**Environmental Guidelines**”), Section 5.14 Social Impacts

Preamble: The Environmental Report was prepared to, among others, complete a detailed review of socio-economic features along the preferred route of the Project and establish mitigation and protective measures that may be used to reduce or eliminate potential socio-economic impacts of the Project.

The Environmental Guidelines provides that Social Impact Assessment (“**SIA**”) is an integral component of environmental analysis and ensures that the extent and distribution of a project’s social impacts are considered in an explicit and systematic way.

- a) Please discuss whether EGI has considered the social impacts of the proposed project on CFN. If yes, please provide details and all related reports, presentations, or other documents specific to CFN. If no, please explain why not.
- b) Please discuss whether EGI has considered the cultural heritage impacts of the proposed project on CFN. If yes, please provide details and all related reports, presentations or other documents specific to CFN. If no, please explain why not.
- c) Please discuss whether EGI considered the Project’s impacts on systemic social inequalities faced by CFN’s members, including gender, gender diverse people, race, ethnicity, religion, age, mental or physical disability. If not, please explain why these identified types of social impacts were not considered as part of EGI’s assessment of social impacts.
- d) Please discuss whether EGI has considered the safety risks of the expected construction workforce on CFN and vulnerable members of CFN, including as it relates to safety risks such as potential substance abuse, disproportionate impacts on women in communities, and impacts on the sex trade and how EGI intends to mitigate the identified safety risks.

Question: H-CFN-7.

Reference:

- Environmental Report, Table 5.1
- Environmental Report, Section 7.1.4

Preamble: The Environmental Report provides a description of the potential effects on vegetation in the Study Area.

- a) Will EGI commit to undertaking a vegetation survey in the Study Area and undertake the mitigation and protective measures identified in Table 5.1? If yes, please provide details on how EGI will ensure that CFN meaningfully participates and contributes to the vegetation survey and implementation of mitigation and protective measures. If not, please explain why not.
- b) Please confirm whether EGI will implement tree protection zones adjacent to working areas.
- c) Please confirm whether EGI will commit to sharing tree removal plans with CFN prior to removing trees and to consult with CFN to ascertain appropriate measures for tree removals and compensation.
- d) Please confirm whether EGI will commit to consulting with CFN prior to replacing any trees removed as part of the construction of the Project and any vegetation restoration plans.
- e) Please confirm whether EGI will commit to provide CFN with updates concerning restoration planning and obligations subsequent to construction.
- f) Please confirm whether EGI commits to restoring any disturbed areas to a condition superior to their original state.
- g) Please confirm whether EGI commits to eliminate any invasive species in the Project area, including *Phragmites australis*.
- h) Will EGI commit to sharing its post-construction monitoring report with CFN prior to finalization so that CFN may review and provide any feedback?

Question: **H-CFN-8.**

Reference: • Environmental Report, Sections 3.4.2.3, 3.4.2.5, and 7.1.5
 • Environmental Report, Table 5.1

Preamble: The Environmental Report provides a description of the potential effects on wildlife and wildlife habitat, and the identification of species at risk in the Study Area.

The Environmental Report notes that unevaluated wetlands may be present in the Study Area and a vegetation survey is recommended.

- a) Please confirm whether EGI will commit to sharing with CFN, on an ongoing basis, details concerning significant wildlife encounters or incidents, as well as any discoveries of active wildlife habitat that reasonably raise the question of whether to suspend construction.
- b) Please confirm whether EGI will commit to advising CFN of any encounters with species at risk or species of interest to CFN in the Study Area throughout all phases of the Project?
- c) Please confirm that EGI will sweep for nests within 24-48 hours prior to the construction activities that may impact trees and nesting areas in the Study Area.
- d) Please confirm whether EGI will commit to informing CFN in the event a nest or reptilian or amphibian habitat is found during construction activities, especially nests and habitats for species of interest to CFN.
- e) Please confirm whether EGI will commit to notifying CFN before the removal of trees known to be used or potentially used by Migizi (Bald Eagle), as well as to provide CFN with reasonable capacity funding to complete sweeps prior to tree removal.
- f) Please confirm whether EGI will commit to sharing the post-construction environmental reports with CFN prior to finalization.

Question: **H-CFN-9.**

Reference: • Environmental Report, Table 5.1, Section 7, and Appendix H

Preamble: The Environmental Report anticipates the employment of an “Environmental Inspector” and various inspection duties and activities.

- a) Please confirm whether EGI will commit to employing an environmental inspector.
- b) Please confirm whether EGI will commit to sharing the relevant job posting or job summary relating to the environmental inspector, and whether CFN will have the opportunity to provide input into the job parameters for and/or the ultimate selection of the environmental inspector.
- c) Please confirm whether EGI will commit to monitoring reports as recommended in the Environmental Report and to share all such reports with CFN prior to finalization.

Question: H-CFN-10.

Reference:

- Environmental Report, Section 2.5.1

Preamble: EGI notes that it works to build an understanding of project related interests, ensure regulatory requirements are met, mitigate, or avoid project-related impacts on Aboriginal interests including rights, and provide mutually beneficial opportunities where possible.

- a) Do the stated objectives give rise to a need for EGI – or Stantec on its behalf – to do any or all of the following as part of the Indigenous consultation program:
- Make all reasonable efforts to identify any applicable CFN policy, including Band Council Resolutions;
 - Make all reasonable efforts to identify applicable laws and policy documents, including UNDRIP;
 - Consider the effect of CFN’s Protocols of Engagement and Consultation and Band Council Resolutions on project decisions and the Project more generally;
 - Consider the effect of UNDRIP on project decisions and the Project more generally.

Please provide an explanation of EGI’s position for each element of the above.

- b) Please reconcile EGI’s (and Stantec’s) consideration (or lack thereof) of UNDRIP with the stated objectives set out in Section 2.5.1 and the IPP and IRAP.

Question: **H-CFN-11.**

Reference: • Environmental Report, Sections 7.2.4 and 7.2.5

Preamble: The Environmental Report assumes that an Environmental Protection Plan (“**EPP**”) will be developed prior to construction of the Project.

- a) Will EGI’s EPP consider mitigation measures recommended by CFN? If yes, please provide details of how these mitigation measures will be communicated to EGI and how they will be incorporated into the EPP.
- b) Will EGI commit to sharing the EPP prior to its finalization so that CFN can review it and provide any feedback?
- c) Is EGI’s commitment that it will include all mitigation measures recommended in the Environmental Report and those received from permitting agencies?

ALL OF WHICH IS RESPECTFULLY
SUBMITTED THIS

17th day of January, 2025



Lisa (Elisabeth) DeMarco
Resilient LLP
Counsel for CFN



DT Vollmer
Resilient LLP
Counsel for CFN