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BY EMAIL

April 28, 2025

Ms. Nancy Marconi
Registrar
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4
Registrar@oeb.ca

Dear Ms. Marconi:

**Re: Ontario Energy Board (OEB) Staff Submission
Enbridge Gas Inc. – Boblo Island Community Expansion Project –
Application for Exemption from Leave-to-Construct (LTC) Requirement
OEB File Number: EB-2024-0249**

Please find attached OEB staff's submission in the above referenced proceeding, pursuant to Procedural Order No. 2.

Yours truly,

Zora Crnojacki
Senior Advisor, Natural Gas Applications

Encl.

c: EGIRegulatoryProceedings@enbridge.com
Henry Ren, Senior Legal Counsel, henry.ren@enbridge.com



ONTARIO ENERGY BOARD

OEB Staff Submission

Enbridge Gas Inc.

**Boblo Island Community Expansion Project –
Application for Exemption from Leave-to-Construct
(LTC) Requirement**

EB-2024-0249

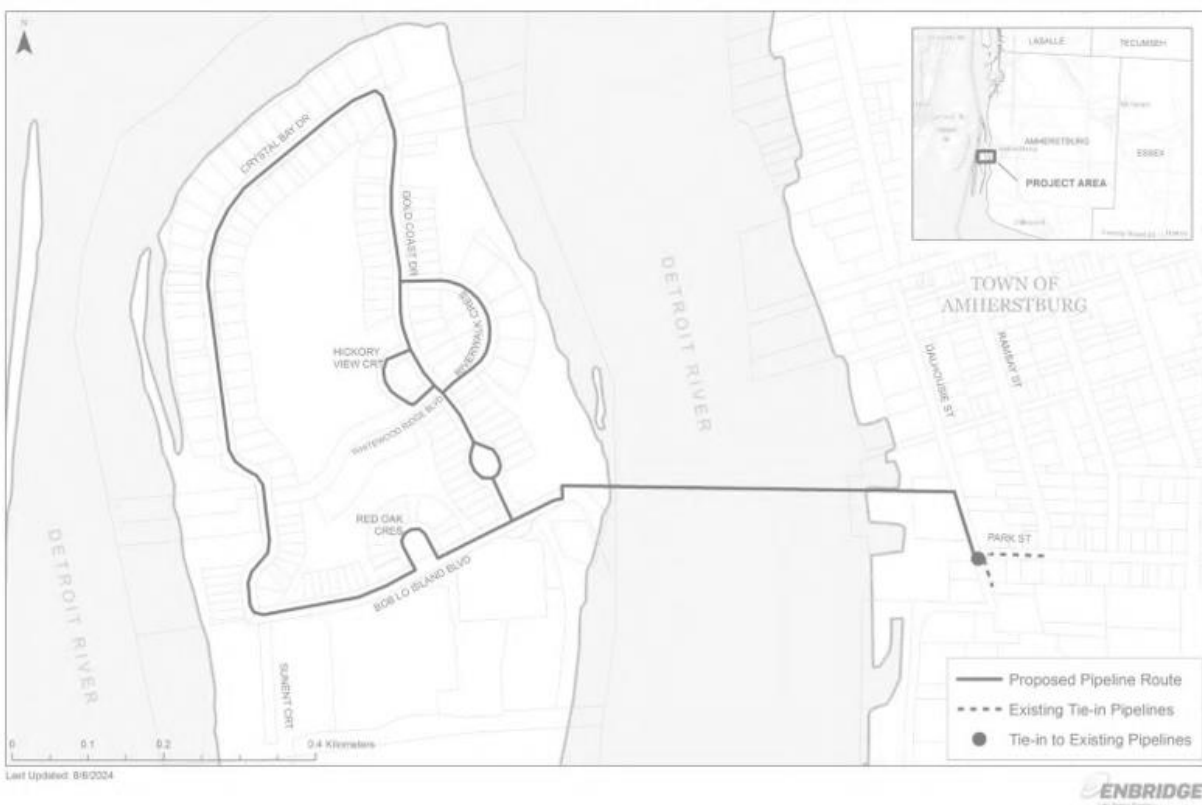
April 28, 2025

INTRODUCTION

Enbridge Gas Distribution Inc. (Enbridge Gas) applied to the Ontario Energy Board (OEB) on August 9, 2024, under subsection 95(2) of the *Ontario Energy Board Act, 1998* (OEB Act) for an order exempting Enbridge Gas from the requirement to obtain leave to construct natural gas pipelines and facilities in the community of Boblo Island in the Town of Amherstburg (Boblo Island Project or Project).

The Project is expected to cost \$5.2 million and serve approximately 347 customers in the community. The Project was approved to receive funding assistance under Phase 2 of the Government of Ontario's [Natural Gas Expansion Program](#).

The proposed project consists of 170 metres of Nominal Pipe Size (NPS) 4 polyethylene (PE) natural gas distribution pipeline; approximately 600 metres of NPS 4 steel natural gas distribution pipeline; and approximately 2.3 kilometres of NPS 2 PE natural gas distribution pipeline. The majority of the pipelines are in the road allowances requiring Enbridge Gas to acquire approvals from the Town of Amherstburg and County of Essex. A general location of the Project is shown in the map below¹.



¹ Exhibit A, Tab 2, Schedule 1, Attachment 1, page 1 of 1

Boblo Island is located within the Detroit River. To reach the Boblo Island community the Project includes approximately 600 m trenchless Horizontal Directional Drilling (HDD) crossing of the Detroit River by a NPS 4 ST natural gas distribution pipeline.²

Exemption from Leave to Construct Requirement

Enbridge Gas relies on section 3.0.1(1) of O. Reg. 328/03, for its application. This provision authorizes the OEB to make an order under subsection 95 (2) of the OEB Act that exempts a person from the requirement to obtain leave from the OEB under subsection 90 (1). The exemption shall be granted if:

- a) leave is required only by virtue of clause 90 (1) (b) of the OEB Act;
- b) the proposed hydrocarbon line is projected to cost more than the amount specified (\$2 million) in section 3 for the purposes of that clause but not more than \$10 million; and
- c) the OEB makes a determination that the Crown's duty to consult, if it applies in respect of the application, has been adequately discharged.

OEB staff notes that in this application, leave is only required because the cost of the Project is more than \$2 million. However, the \$5.2 million estimated cost of the Project is below the \$10 million maximum amount for which an exemption is available.

As a result, the central issue for the OEB to consider is whether the Crown's duty to consult has been adequately discharged.

Duty to Consult

The duty to consult, and where appropriate, accommodate, is a duty that stems from the Honour of the Crown and the Constitutional recognition of Aboriginal and treaty rights in section 35 of the *Constitution Act, 1982*. The scope and content of the duty continues to evolve within Canadian jurisprudence. Broadly, the duty is triggered in instances where (1) the Crown has knowledge of a potential Aboriginal claim or right, (2) the Crown contemplates conduct, (3) there is the potential that the contemplated conduct may adversely impact the Aboriginal claim or right. Canadian courts have also confirmed that

² According to Enbridge Gas's evidence Horizontal Directional Drilling involves setting up a receiving hole and an exit hole, drilling a pilot hole on the design path, reaming the pilot hole larger by passing a cutting tool and pulling the pipe back through the bored hole (Exhibit D, Tab 1, Schedule 1, page 4). Department of Fisheries and Oceans and Enbridge Gas entered into an agreement *Related to Watercourse Crossings for Pipeline Construction and Maintenance in Ontario*, which obliges Enbridge Gas to implement protective and contingency measures to mitigate and prevent impacts on fish and fish habitat or the impairment of water quality from an inadvertent release of drilling fluid or sedimentation (Environmental Report: Boblo Island Community Expansion, September 21, 2023, Appendix H)

regulatory boards and tribunals may be delegated procedural aspects of the duty, including making determinations as to whether the duty has been met.

In order to ensure that the OEB has all the information it requires to make a determination on the duty to consult, the OEB has developed a process to ensure that all relevant concerns and evidence can be placed before it through the hearing process. This process is set out in the OEB's *Environmental Guidelines for Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario* (Environmental Guidelines)³, and also through the procedural steps established by the OEB in this proceeding. The process includes:

- Early (i.e. pre-application) identification of potentially impacted Indigenous communities by the Ministry of Energy and Electrification - now the Ministry of Energy and Mines (collectively, the Ministry) and a delegation of the procedural aspects of the duty to consult to the applicant.
- The requirement that the applicant engage with potentially impacted Indigenous nations or communities and prepare and file an Indigenous Consultation Report (ICR) that describes the consultation activities that were undertaken, provides copies of all communications and a summary of any rights-based concerns raised by Indigenous communities, and describes any accommodations that are proposed.
- Once the application is filed, the provision of notice by the OEB to all potentially impacted Indigenous nations or communities, including a statement that "[t]he OEB will also assess whether the duty to consult with Indigenous nation or communities potentially affected by the proposed pipeline has been discharged with respect to the application."
- The thorough testing of the application through the OEB interrogatory process, including any questions with respect to the duty to consult as it relates to the project.
- The opportunity, as permitted by the OEB, for OEB staff and intervenors to file evidence that is relevant to the application, including evidence related to the duty to consult.
- The opportunity, as permitted by the OEB, for OEB staff, intervenors and the applicant to file written submissions with the OEB.

OEB staff submits that, based on the current evidentiary record of the proceeding, the Crown's duty to consult has been adequately discharged and that the OEB should grant an order under section 95(2) exempting Enbridge Gas from the requirement to obtain leave to construct for the Project. OEB staff proposes conditions of approval (see Schedule A) should the OEB approve Enbridge Gas's exemption application.

³ OEB Environmental Guidelines, pages 16-18 Chapter 3.2 Indigenous Consultation

HEARING PROCESS

On December 8, 2022, by way of a Delegation Letter, the Ministry identified six potentially impacted Indigenous communities that Enbridge Gas should consult:

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

The Delegation Letter specifies roles and responsibilities it delegated to Enbridge Gas as well as roles and responsibilities assumed by the Crown and scope and content of consultation record.⁴

The OEB served each potentially impacted community a Notice of Hearing on September 11, 2024. The Notice of Hearing provided each potentially impacted Indigenous community until October 26, 2024 (45 calendar days) to become an intervenor, comment or ask to follow the hearing as a monitor.

Caldwell First Nation requested intervenor status in the proceeding.

Chippewas of the Thames First Nation filed a Letter of Comment expressing its concerns that the Crown's duty to consult has not been adequately discharged in respect of the Project.

No other Indigenous communities sought intervenor status or chose to file a letter of comment or to monitor the proceeding.

On December 4, 2024, the OEB issued Procedural Order No. 1 which granted intervenor status and cost award eligibility to Caldwell First Nation. Procedural Order No. 1 also set the schedule for written discovery on Enbridge Gas's evidence. According to the procedural schedule, Caldwell First Nation and OEB staff filed interrogatories on December 18, 2024. On January 31, 2025 Enbridge Gas filed: (i) written response to the interrogatories of Caldwell First Nation and OEB staff and (ii) a written response to the letter of comment filed by Chippewas of the Thames First Nation.

On April 1, 2025, the OEB issued Procedural Order No. 2. The OEB asked Enbridge Gas to file additional information on the status of the Walpole Island First Nation land claim and the consultation with Walpole Island First Nation related to the land claim.

⁴ Exhibit H, Tab 1, Schedule 1, Attachment 2-Delegation Letter, December 8, 2022, Appendix: Procedural Consultation

INDIGENOUS CONSULTATION

Evidentiary Record

As required by the Environmental Guidelines, Enbridge Gas prepared the ICR describing and documenting the Indigenous consultation it has been conducting. The ICR was updated on December 18, 2024.⁵ The ICR is part of Enbridge Gas's evidence in support of the Project.

The evidentiary record also includes information Enbridge Gas filed in response to OEB staff interrogatories, Caldwell First Nation interrogatories, the letter of comment by Chippewas of the Thames First Nation and the OEB information request.

As of the date of filing this submission, a letter of opinion on the sufficiency of consultation has not been filed by the Ministry.

Information Enbridge Gas Provided to Consulted Indigenous Communities

The evidence filed by Enbridge Gas indicates that at the outset of consultation, it provided the following information to the six Indigenous communities⁶:

- Notice of Study Commencement (February 2023)
- A detailed description of the nature and initial scope of the Project
- Maps of the Project location
- Information on the In-Person and Virtual Information Sessions (February and March 2023)
- Environmental Report, providing information about the potential effects of the Project on the Environment (June 2023)
- Notice of Project Change, providing information about the route reducing potential cumulative effects, interference and safety hazards with operation and maintenance of the pipeline in the future
- the OEB's Notice of Hearing, providing information on how to participate in this application (September 2025)

All six Indigenous communities were given opportunity to review draft and final Environmental Report and comment.⁷ Correspondence related to the review of the draft Environmental Report is included in the ICR.⁸

In addition to this initial information, Enbridge Gas continued to provide information in response to the questions/concerns raised by the Indigenous communities during the process of consultation.

⁵ Exhibit H-1-1 Attachment 6 Updated ICR Summary Table as of December 10, 2024. Exhibit H-1-1 Attachment 7 Updated ICR Log as of December 10, 2024

⁶ Exhibit F, Tab 1, Schedule 1, paragraph 5, page 2

⁷ Exhibit F, Tab 1, Schedule 1, Attachment 1 Environmental Report section 5.2. Table 5.1

⁸ Exhibit F, Tab 1, Schedule 1, Attachment 1 Environmental Report, Appendix B.7

Enbridge Gas stated it is committed to continuing engagement with Indigenous communities throughout the lifecycle of the Project. Enbridge Gas stated it would coordinate Indigenous engagement and respond to any additional concerns related to the Project that the communities may raise after the date of the ICR update (December 10, 2024).⁹

Capacity Funding

Enbridge Gas offered capacity funding to each Indigenous community identified as potentially impacted by the Project to support timely activities such as technical review of project documents and engagement in meaningful consultation.¹⁰

In response to an OEB staff interrogatory¹¹ Enbridge Gas provided more detailed information on the capacity funding offered to communities:

- Enbridge Gas has provided capacity funding to Caldwell First Nation, Chippewas of Kettle and Stony Point First Nation, and Chippewas of the Thames First Nation.
- Aamjiwnaang First Nation and Walpole Island First Nation provided quotes for capacity funding which were agreed to by Enbridge Gas. Enbridge Gas is awaiting the invoices from Aamjiwnaang First Nation and Walpole Island First Nation and will provide the capacity funding upon receipt of the invoices.

Issues and Concerns Raised and Accommodation

Concerns with mitigation of environmental impacts of the Project, impacts of Detroit River crossing and relations of the Project and Walpole Island First Nation land claim were the most common and emphasized concerns. The lack of opportunity for equity participation was raised in the letter of comment filed by Chippewas of the Thames First Nation.

In response to an OEB staff interrogatory,¹² Enbridge Gas provided a summary of actions (i.e., accommodation) it has committed and agreed to make, or already made, to any of the six consulted Indigenous communities in response to the concerns raised through consultation.

⁹ Enbridge Gas response to Exhibit I.STAFF-, page 2

¹⁰ Exhibit H, Tab 1, Schedule 1, Attachment 7: Indigenous Consultation Report: Summary Tables (as of December 10, 2024)

¹¹ Enbridge Gas Response to interrogatory).STAFF-3, page 1-2

¹² Enbridge Gas Response to interrogatory Exhibit I.OEB STAFF- 4 pages 1-4

Aamjiwnaang First Nation

In response to Aamjiwnaang First Nation's comments, Enbridge Gas explained that it has planned mitigation measures in relation to soil resources, vegetation, species at risk (SAR) and watercourse crossings. Enbridge Gas committed to offering Aamjiwnaang First Nation the opportunity to participate in Stage 2 archaeological fieldwork and noted that a representative from Enbridge Gas Supply Chain Management had met with Aamjiwnaang First Nation to discuss opportunities on Enbridge Gas projects. Enbridge Gas also said it will share the results of the archaeological assessment with Aamjiwnaang First Nation. Enbridge Gas also responded to concerns about the impacts of the HDD for Detroit River crossing and advised that the downstream waterway is not at risk of contamination by leaked natural gas during the drilling.¹³

Chippewas of Kettle and Stony Point First Nation

Chippewas of Kettle and Stony Point First Nation expressed concerns and commented on the Project impact on SAR, archeology, watercourses and groundwater, wildlife, aquatic species, the subsurface environment, air quality and atmospheric environment, and cumulative effects. Enbridge Gas described planned mitigation measures in response to these concerns.

Enbridge Gas has committed to make available to Chippewas of Kettle and Stony Point First Nation information that would be related to construction of the Project but is not available at the time of consultation. This information will include any significant shifts in the Project schedule, the HDD Sediment Control Plan, tree removal plans prior to tree removal, large wildlife encounters and incidents, SAR encounters, the identification of nests during construction activities, the discovery of archaeological resources during construction, reportable spills, and monitoring reports.¹⁴

Caldwell First Nation

Caldwell First Nation expressed concerns with the Project's impacts on SAR, watercourses and groundwater, wildlife, aquatic species, the subsurface environment, air quality and atmospheric environment, cumulative effects, and protection of archaeological heritage. Enbridge Gas emphasized its commitment to ongoing consultation and agreed to share information on significant shifts in the Project construction schedule, the HDD Sediment Control Plan, tree removal plans prior to tree removal, information regarding large wildlife encounters and incidents, species at risk encounters, the identification of nests during construction activities, the discovery of archaeological resources during construction, reportable spills, and monitoring reports.¹⁵

¹³ Exhibit H, Tab 1, Schedule 1, Attachment 7 (updated December 18, 2024), in line-item attachments 1.18 and 1.24.

¹⁴ Exhibit H, Tab 1, Schedule 1, Attachment 7 (updated December 18, 2024), in line-item attachment 3.25.

¹⁵ Exhibit H, Tab 1, Schedule 1, Attachment 7 (updated December 18, 2024), in line-item attachment 2.70

Caldwell First Nation expressed an interest in receiving post-construction monitoring reports from Enbridge Gas.¹⁶ Enbridge Gas has committed to share with Caldwell First Nation post construction monitoring reports if the OEB imposes a condition that the post-construction reports be filed.¹⁷

Walpole Island First Nation

In response to Walpole Island First Nation's questions and comments, Enbridge Gas communicated additional information about the Project, environmental assessment and the planned mitigation measures to address Walpole Island First Nation's concerns including: SAR sightings, nesting period for Bald Eagles, nest sweeps, overwintering turtles and turtle eggs, clean equipment protocol, rare vegetation species, HDD operation, and site remediation.

Enbridge Gas agreed to consult with Walpole Island First Nation should there be a need to perform work during the Bald Eagle avoidance window. Enbridge Gas also committed to providing Walpole Island First Nation the opportunity to monitor the fieldwork should the Ministry of Environment Conservation and Parks identify a need for additional fieldwork. Enbridge Gas offered Walpole Island First Nation the opportunity to participate in the Stage 2 archaeological assessment and committed to providing the final Stage 2 archaeological assessment report. Enbridge Gas also committed to update the Cultural Heritage Screening Checklist to indicate the presence of a Canadian Heritage River in response to Walpole Island First Nation's comment and based on previous consultation with Walpole Island First Nation, and planting trees at a ratio of 3:1 for the Project for any trees cleared during construction. Enbridge Gas also offered to discuss further ways to enhance or create new wildlife habitats or improve riparian areas.¹⁸

Chippewas of the Thames First Nation

In response to Chippewas of the Thames First Nation questions and comments, Enbridge Gas provided additional information on the Project, environmental assessment and planned mitigation measures.

Enbridge Gas addressed the concerns including: vegetation removal, wildlife surveys monitoring, SAR and the methodology of HDD for Detroit River crossing. Chippewas of the Thames First Nation participated in the Stage 2 archaeological assessment and

¹⁶ Appendix D of the OEB's Natural Gas Facilities Handbook lists the OEB's Standard Leave to Construct Conditions of Approval. One of the standard conditions is the requirement to file with the OEB a post construction report within three months of the full project in-service date and a final monitoring report no later than fifteen months after the full project in-service date.

¹⁷ Enbridge Gas response to interrogatory I.CFN-7 h)

¹⁸ Exhibit H, Tab 1, Schedule 1, Attachment 7 (updated December 18, 2024), in line-item attachment 6.33

Enbridge Gas committed to engaging further with Chippewas of the Thames First Nation should additional archaeological assessments be required.

Enbridge Gas committed to offer Chippewas of the Thames First Nation an opportunity to participate in any targeted wildlife and vegetation surveys. Enbridge Gas agreed to notify Chippewas of the Thames First Nation within six hours of a HDD frac-out (i.e., inadvertent release of drilling fluid) and that the requirement would be included in the Environmental Protection Plan. Enbridge Gas committed to make available to Chippewas of the Thames First Nation for review a complete final Environmental Protection Plan prior to construction start. Enbridge Gas also agreed to work with Chippewas of the Thames First Nation to include the on-site environmental monitors and arrange site visits once site restoration has been completed.¹⁹

Oneida Nation of the Thames

Oneida Nation of the Thames did not express substantive concerns about the Project to Enbridge Gas.

In response to concerns raised by some of the Indigenous communities about environmental impacts of the Detroit River crossing, Enbridge Gas noted that mitigation measures associated with water crossings via HDD are set in the Environmental Report. Enbridge Gas will have to obtain the necessary permits from the Essex Region Conservation Authority prior to the start of construction. Enbridge Gas will have to implement measures to protect fish and fish habitat in accordance with Fisheries and Oceans Canada requirements.

Enbridge Gas considered the potential social impacts of the Project on the Indigenous communities are outlined in the Environmental Report.²⁰

Walpole Island First Nation Land Claim

Five out of six consulted communities have expressed outstanding concerns with the Project going ahead while the active land claim by Walpole Island First Nation is before the Federal Courts. The land claim includes Boblo Island. Enbridge Gas's evidence is that Oneida Nation of the Thames has not expressed any concerns related to the Project.²¹

¹⁹ Exhibit H, Tab 1, Schedule 1, Attachment 7 (updated December 18, 2024), in line-items 4.20 and 4.35

²⁰ Exhibit F, Tab 1, Schedule 1, Attachment 1 Environmental Report, section 3.5.7

²¹ Exhibit H, Tab 1, Schedule 1 Attachment 7: Indigenous Consultation Report: Summary Table (as of December 10, 2024) and Enbridge Gas response to OEB staff interrogatory I-STAFF.2

Enbridge Gas discussed concerns related to Walpole Island First's land claim with Walpole Island First Nation, Aamjiwnaang First Nation, Chippewas of Kettle and Stony Point First Nation, Caldwell First Nation, and Chippewas of Thames First Nation.

Walpole Island First Nation commented that Boblo Island is part of its land claim and noted that the Project is of "significant interest to the Walpole Island First Nation community."²²

Aamjiwnaang First Nation informed Enbridge Gas that they "...were looking into advancing their own land claim on Boblo Island."

Caldwell First Nation stated that aboriginal title to Boblo Island was never surrendered. Chippewas of Kettle and Stony Point First Nation was concerned that the Project was to start prior to resolution of Walpole Island First Nation's land claim to Boblo Island which was before the courts.

Chippewas of Thames First Nation expressed their concern with the Project commencing before the resolution of Walpole Island First Nation's land claim.

Enbridge Gas has committed to continue engaging with the Indigenous communities throughout the life of the Project.

Enbridge Gas's position is that there is no need to delay the Project until the resolution of the land claim. Enbridge Gas also noted that it has kept the Ministry aware of its conversations with Walpole Island First Nation with respect to the land claim.

On April 1, 2025, in Procedural Order No. 2,²³ the OEB asked Enbridge Gas for additional information to update and clarify the record on the issue of Walpole Island First Nation land claim:

- 1) Information on the status of the land claim and the consultation with Walpole Island First Nation related to the land claim.
- 2) A complete Consultation Log, including the timeline and content of any consultation with the Walpole Island First Nation on the land claim.
- 3) Copies of written communication (i.e., emails, memos) documenting the consultation between Enbridge Gas and Walpole Island First Nation regarding the land claim.

²² Exhibit H, Tab 1, Schedule 1 Attachment 6: Indigenous Consultation Report: Summary (as of December 10, 2024), page 7

²³ OEB Procedural Order No. 2, April 1, 2025, page 3.

On April 11, 2025, Enbridge responded to the OEB questions. Enbridge Gas stated that according to the online status report by the Government of Canada's Crown-Indigenous Relations and Northern Affairs Canada Specific Claims Branch, a file on a Walpole Island First Nation claim regarding Boblo (Bois Blanc) Island was closed as of November 19, 2019. In addition, a Walpole Island First Nation action against the federal and provincial Crown claiming unextinguished aboriginal title before the Ontario Superior Court of Justice (Court File No. 00CV-189329) was placed in abeyance by consent in 2019. Enbridge Gas stated that "...While the Crown-Indigenous Relations and Northern Affairs Canada website identifies "Walpole Island" as one of the negotiation tables in Ontario, no further detail is provided."²⁴

In response to the OEB's questions Enbridge Gas also explained that a medium level of consultation with Walpole Island First Nation is indicated by the Ministry in the Delegation Letter and that the Ministry's direction was informed by Walpole Island First Nation's land claim, including Walpole Island First Nation's assertion of rights. Also, Enbridge Gas noted that, during consultation, it did not receive Ministry direction to elevate the level of consultation with Walpole Island First Nation.

Enbridge Gas emphasized that it consulted with Walpole Island First Nation throughout the process and that "...Walpole Island First Nation provided two sets of comments on the Project's Environmental Report and Enbridge Gas replied in detail to these comments and, in some instances, made additional commitments in response to those comments."²⁵ In addition, Enbridge Gas kept Walpole Island First Nation informed of the further opportunities to provide feedback, including advising of the OEB process and the options for participation in the proceeding."²⁶

Enbridge Gas stated it continued to provide monthly project updates to Walpole Island First Nation since the filing of the updated ICR on December 18, 2024. Enbridge Gas referred to the evidence which includes record of all communication and documentation related to the Walpole Island First Nation land claim."²⁷

²⁴ Enbridge Gas response to OEB's Questions, April 11, 2025, page 1

²⁵ Enbridge Gas response to OEB staff interrogatory Exhibit I.OEB STAFF-4

²⁶ Enbridge Gas response to the OEB Additional Information Request, April 11, 2025, page 2

²⁷ Exhibit H, Tab 1, Schedule 1, Attachment 7 (updated December 18, 2024). Communication related to the Walpole Island First Nation's land claim and asserted rights can be found at line-items 6.1, 6.7, 6.10, and line-item attachment 6.23.

Economic Participation

Chippewas of the Thames First Nation raised a concern regarding economic participation in Enbridge Gas projects, stating that "...To date, EGI has not offered equity opportunities in rate-regulated assets to Rights Holding First Nations in southwestern Ontario." Chippewas of the Thames First Nation continued: "...EGI owns and operates assets, including pipelines and gas storage infrastructure, throughout Chippewas of the Thames First Nation's Traditional and Treaty territory. Chippewas of the Thames First Nation does not financially benefit from and did not consent to these assets. The Ontario government is not adequately capturing the cumulative impacts of such infrastructure on Chippewas of the Thames First Nation's inherent and constitutionally protected rights."²⁸ Enbridge Gas responded that it is exploring the opportunities and options for equity participation on Enbridge Gas projects within Ontario. Enbridge Gas pointed to "...regulatory and financial barriers that exist for equity sharing on OEB-regulated Enbridge Gas assets, such as financing costs, profitability, a potential need to transfer assets to a new entity, OEB approvals including a Certificate of Public Convenience and Necessity, franchise agreement, rate order, and regulatory obligations pursuant to OEB rules and Technical Standards and Safety Authority requirements."²⁹

OEB STAFF SUBMISSIONS

OEB staff notes that:

- Enbridge Gas consultation was initiated in 2022 when the Project proposal was first developed
- Enbridge Gas is committed to continue the engagement with the communities after the approval of the Project and throughout the lifetime of the Project
- Enbridge Gas has offered and provided or will provide capacity funding to the communities to support their participation in the consultation related to the Project

Regarding the concerns Indigenous communities raised out the environmental impacts of the Project, Enbridge Gas is committed to certain accommodations to mitigate the impacts, OEB staff notes that:

²⁸ Chippewas of the Thames First Nation Letter of Comment, October 28, 2024, page

²⁹ Enbridge Gas response to Chippewas of the Thames First Nation Letter of Comment, January 31, 2025, page 2

- Enbridge Gas expressed commitment to implement site -specific mitigation measures recommended by Stantec in the Environmental Report and proposed by consulted Indigenous communities
- Enbridge Gas is committed to making the Environmental Protection Plan available to the communities prior to construction start and to provide the communities' representatives opportunities to participate in surveys and observe and monitor construction
- Enbridge Gas has agreed to provide copies of interim and final environmental monitoring reports to the communities upon request

OEB staff notes that the Walpole Island First Nation land claim has been in abeyance since 2019. Moreover, OEB staff is not aware of any court decisions that state that an outstanding land claim by itself makes it impossible for the duty to consult to be discharged. Rather, as noted by the Supreme Court of Canada, the strength of an outstanding land claim goes to the level of consultation required in a given circumstance.³⁰ The evidence filed in this case indicates that Enbridge Gas has been responsive to the concerns/questions raised by Walpole Island First Nation regarding the Environmental Report for the Project.³¹ OEB staff further notes that Walpole Island First Nation has not sought to intervene in this application to raise specific concerns about the level of consultation that it has received for the Project.

The issue of economic participation related to the Project has been raised by Chippewas of the Thames First Nation. Enbridge Gas responded that it has been communicating with Indigenous communities about options and explained its view on barriers to implementation of the economic partnerships.

Considering the above observations and the current evidentiary record, OEB staff submits that to the extent that the duty to consult has been triggered by the Project, the duty to consult has been discharged sufficiently to allow the OEB to approve the Project. This submission is made under the assumption that: i) Enbridge Gas will fulfil its commitments to accommodation activities; and ii) Enbridge Gas will continue to engage with the six communities throughout the life of a Project.

OEB staff submits that the OEB should approve the Project with the proposed Conditions of Approval, attached as Schedule A to this submission. The proposed conditions in Schedule A include all the conditions that OEB staff proposed its submission in Enbridge Gas's Cherry Valley leave to construct exemption application³², plus an additional condition requested by Caldwell First Nation. The additional condition

³⁰ *Haida Nation v. British Columbia (Minister of Forests)*., 2004 SCC 73, paras 43-45.

³¹ Exhibit H, Tab 1, Schedule 1, Attachment 7, pages 315-318 of 327.

³² EB-2024-0084

is a request that Enbridge Gas prepare and file interim and final post-construction monitoring reports (condition # 6 in Schedule A)³³. OEB staff welcomes any comments Enbridge Gas may have on the proposed conditions for the Project in its reply submission.

-All of which is respectfully submitted~

³³ This condition is a standard condition of approval for s. 90 leave to construct application. To adhere to this condition Enbridge Gas has been preparing the interim and final post-construction monitoring reports for approved leave to construct projects for some time. The reports have a standardized format and content and are typically 10-20 pages long.

Schedule A

Proposed Conditions of Approval

EB-2024-0249

April 28, 2025

Enbridge Gas Inc.

EB-2024-0249

OEB Staff Proposed Conditions of Approval

1. Enbridge Gas shall construct the facilities and restore the land in accordance with its application and the evidence filed in EB-2024-0249 and these Conditions of Approval.
2. Unless otherwise ordered by the OEB, exemption from the requirement to obtain leave to construct shall terminate 12 months from the date of the OEB's approval of the exemption application, unless construction has commenced prior to that date.
3. 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 full project in-service date, no later than 10 days after all the facilities go into service.
4. Enbridge Gas shall obtain all necessary approvals, permits, licences, certificates, agreements, and the rights required to construct, operate and maintain the Project.
5. Enbridge Gas shall implement all the recommendations of the Environmental Report filed in the proceeding.
6. Both during and after construction, Enbridge Gas Inc. 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 full project in-service date, which shall:
 - i. provide a certification, by a senior executive of the company, of Enbridge Gas Inc.'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 Inc., 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 full project 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 Inc.'s adherence to Condition 5
 - 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 Inc., 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.