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May 8, 2025

**VIA EMAIL and RESS**

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

Dear Nancy Marconi:

**Re: Enbridge Gas Inc. (Enbridge Gas)  
Ontario Energy Board (OEB) File: EB-2024-0249  
Boblo Island Community Expansion Project (Project)  
Reply Submissions**

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In accordance with Procedural Order No. 2, please find attached Enbridge Gas's Reply Submissions in the above-noted proceeding.

Sincerely,

*Evan Tomek*

Evan Tomek  
Senior Advisor, Regulatory Applications – Leave to Construct

cc: Tania Persad (Enbridge Gas Counsel)  
Arend Wakeford (Enbridge Gas Counsel)  
Kristen Lozynsky (Enbridge Gas Counsel)  
Zora Crnojacki (OEB Case Manager)  
Lawren Murray (OEB Counsel)  
Lisa (Elisabeth) DeMarco (Resilient LLP)  
Daniel Vollmer (Resilient LLP)  
John Wladarski (Northwind Business Development Inc.)  
Chief Nikki van Oirschot (Caldwell First Nation)

**ONTARIO ENERGY BOARD**

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

**AND IN THE MATTER OF** an application by Enbridge Gas  
Inc. for an order granting 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.

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**ENBRIDGE GAS INC.**

**REPLY SUBMISSION**

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**A. Introduction**

1. These are the Reply submissions of Enbridge Gas Inc. (Enbridge Gas or the Company) in respect of its application to the Ontario Energy Board (OEB) under section 95(2) of the *Ontario Energy Board Act, 1998* (OEB Act) for an order exempting the Company from the requirement to obtain leave to construct for natural gas pipelines and facilities in the community of Boblo Island, in the Town of Amherstburg (the Application or Project).
2. The Project is required to support the Government of Ontario's Natural Gas Expansion Program (NGEP) and is designed to expand access to natural gas to areas of Ontario that do not currently have access to natural gas. The need for the Project is directly supported by the community's municipal government through its request for natural gas for their constituents. The Town of Amherstburg has emphasized its support for the Project via a council resolution dated September 15, 2023.<sup>1</sup> Core to the need for the Project is the clearly expressed preference for and interest in natural gas service from future customers within the community in question.<sup>2</sup>

**B. Exemption from Leave to Construct Requirement**

3. Section 95(2) of the OEB Act, together with Ontario Regulation 328/03 (Regulation) subsection 3.0.1 (1) set out certain circumstances in which a person is exempt from having to obtain leave under section 90(1) of the OEB Act.
4. As the Project is less than 20 km in length, uses pipes sizes less than 12 inches and will have an operating pressure less than 2,000 kilopascals, leave is only required by virtue of clause 90(1)(b) of the OEB Act. At a cost of \$5.2 million including ancillary costs, the Project cost is less than the \$10 million exemption cap prescribed by the Regulation. Therefore, Enbridge Gas agrees with OEB staff that, in accordance with section 3.0.1 of the Regulation, the central issue for

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<sup>1</sup> Exhibit B-1-1, Attachment 2.

<sup>2</sup> Exhibit B-1-1, para. 11; Exhibit B-1-1, Attachment 6.

the OEB to consider is whether the Crown's duty to consult has been adequately discharged.

5. Consistent with OEB staff's submissions, Enbridge Gas is of the view the Crown's duty to consult in relation to the Project has been adequately discharged through the consultation undertaken by Enbridge Gas and the regulatory process itself. Therefore, the OEB should grant an order under section 95(2) exempting Enbridge Gas from the requirement to obtain leave to construct for the Project.<sup>3</sup>

**C. Indigenous Consultation**

6. The Ministry of Energy and Electrification (ENERGY) delegated the procedural aspects of the duty to consult to Enbridge Gas and specifically outlined its expectations in relation to the consultation to be undertaken. Enbridge Gas accordingly implemented its consultation in a manner that met or exceeded the requirements ENERGY identified.
7. Consistent with the direction provided by ENERGY, Enbridge Gas implemented an expansive consultation program that involved: providing Project notification to the six Nations identified by ENERGY as being potentially impacted by the Project early on in Project development; offering capacity funding to each Nation<sup>4</sup>; sharing information including the Environmental Report (ER); inviting each Nation to share comments and information, including information about any Indigenous rights practiced in the Project area; and responding to any expressed concerns and explaining how those concerns would be addressed, through mitigation or otherwise, moving forward. During the course of this consultation, Enbridge Gas offered to engage with the Nations in a variety of ways, including written communications, in-person meetings with a Nation's representatives and participation of the Nations in fieldwork.

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

<sup>4</sup> Exhibit I.OEB STAFF-3.

8. Enbridge Gas retained Stantec Consulting Ltd. (Stantec) to undertake a route evaluation and environmental and socio-economic impact study, which included a cumulative effects assessment and a Stage 1 Archaeological Assessment, to select the preferred route for the Project. Mitigation measures designed to minimize environmental and community impacts resulting from construction and operation of the Project were also developed as part of the study. The assessment was reflected in the ER, which was completed in accordance with the OEB's *Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario, 7<sup>th</sup> Edition, 2016*, and/or the OEB's *Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Projects and Facilities in Ontario, 8<sup>th</sup> Edition (2023)* (the Guidelines),<sup>5</sup> and Enbridge Gas subsequently confirmed its commitment to undertaking the mitigation and protection measures identified in Table 5.1 of the ER.<sup>6</sup>
9. All six Indigenous Nations or communities identified by ENERGY in its Delegation Letter<sup>7</sup> were given the opportunity to review and comment on the draft ER and ask questions about the Project. Correspondence related to the review of the draft ER is included in the Indigenous Consultation Report<sup>8</sup>, Appendix B.7 of the ER<sup>9</sup>, and Attachment 2 to Exhibit F-1-1.
10. Several of the identified Nations provided extensive comments on the ER and asked questions about the Project and Enbridge Gas, in turn, responded in an effort to address any outstanding concerns. Enbridge Gas addressed the Indigenous communities' concerns by providing relevant Project information and explaining how proposed mitigation measures would limit impacts on the matters of interest to the communities. In certain circumstances, Enbridge Gas made

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<sup>5</sup> The OEB released the 8<sup>th</sup> edition of the Guidelines in March 2023 after the initiation and consultation component of the Project.

<sup>6</sup> Exhibit I.CFN-7, part a).

<sup>7</sup> Exhibit H-1-1, Attachment 2.

<sup>8</sup> Exhibit H-1-1, Attachment 7 (updated December 18, 2024).

<sup>9</sup> Exhibit F-1-1, Attachment 1.

additional commitments to the individual Nations, as summarized in Exhibit I.OEB STAFF-4.

11. For example, in addition to explaining the planned mitigation measures related to matters identified by the Nations such as potential impacts to water and aquatic life, Enbridge Gas committed to share information regarding the following with Chippewas of Kettle and Stoney Point First Nation and Caldwell First Nation (CFN): significant shifts in the schedule; the Horizontal Directional Drilling (HDD) Sediment Control Plan; tree removal plans prior to tree removal; wildlife encounters and incidents; species at risk (SAR) encounters; the identification of nests during construction activities; the discovery of archaeological resources during construction; reportable spills; and monitoring reports.
12. Similarly, in response to Walpole Island First Nation's questions and comments, Enbridge Gas explained its assessment and planned mitigation measures in relation to a myriad of subject areas that were the focus of WIFN's comments and agreed to share specific information with WIFN including information regarding SAR encounters and spills. In addition, Enbridge Gas committed to: providing WIFN the opportunity to participate as fieldwork monitors should there be an identified need for additional fieldwork; updating the Cultural Heritage Screening Checklist to indicate the presence of a Canada Heritage River; planting trees at a ratio of 3:1 for the Project for any trees cleared during construction; consulting with WIFN should there be a need to perform work during the Bald Eagle avoidance window; and discussing further ways to enhance or create new wildlife habitats or improve riparian areas.
13. Enbridge Gas's commitments to Chippewas of the Thames First Nation (COTTFN) include a commitment to offer additional opportunities to participate in targeted wildlife or vegetation surveys should they be required, notification within six hours of an HDD frac-out, and providing the EPP once it is finalized before construction commences, and working to include COTTFN environmental monitors and site visits.

14. In addition to responding to Aamjiwnaang First Nation (AFN) questions and comments, providing further explanation of its assessment, as well as the planned mitigation measures in relation to such matters as soil resources, vegetation, SAR and watercourse crossings, Enbridge Gas committed to offering AFN the opportunity to participate in the Stage 2 archaeological fieldwork and to share the results of the assessment with AFN.
15. This engagement, as detailed further in the ICR, goes beyond “mere notification or one-way communication”<sup>10</sup> as described by CFN, and is consistent with Enbridge Gas’s respect for the unique rights of Indigenous peoples, Treaties and UNDRIP.
16. In addition to the consultation Enbridge Gas has undertaken with the six Nations identified by ENERGY, the OEB process for Enbridge Gas’s Application, as fully described in OEB staff’s submission, provided the Nations a further opportunity to share their comments and concerns about the Project and gain an understanding of how those concerns would be addressed. A notice of hearing was served on all potentially impacted Nations or communities, providing the opportunity to become an intervenor, provide comments or ask to follow the hearing as a monitor. CFN requested intervenor status in the proceeding and COTTFFN filed a letter of comment expressing its concerns. No other Indigenous communities sought intervenor status or chose to file a letter of comment or to formally monitor the proceeding. Enbridge Gas responded to certain interrogatories from OEB staff, CFN and to COTTFFN’s letter of comment and parties were provided with the opportunity to make final submissions, with CFN taking up the opportunity to do so.
17. CFN’s submission details concerns the community has in regards to the Indigenous consultation undertaken for the Project. Enbridge Gas addressed the majority of these concerns in its responses to CFN’s interrogatories<sup>11</sup>, and

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<sup>10</sup> CFN Submissions, para. 15.

<sup>11</sup> Exhibit I.CFN-1 – Exhibit I.CFN-11.



through ongoing engagement as detailed in the ICR<sup>12</sup>. The following addresses certain specific concerns identified by CFN in relation to Indigenous consultation.

18. CFN suggests that the application is premature while Aboriginal rights and title remain unresolved, claiming that there is ongoing uncertainty surrounding jurisdiction over the Project area and suggesting that CFN's assertion of Aboriginal and treaty rights requires Enbridge Gas to obtain its express permission prior to any usage of the lands, water, or subsurface on Boblo Island and relevant areas of the Town of Amherstburg in the Project area as part of the Project.
19. Enbridge Gas does not agree with CFN's characterization in this regard. Development is not frozen in circumstances where rights are claimed but not yet proven. Rather, it is the duty to consult that affords a level of protection to Aboriginal interests where rights claims are being seriously pursued and the Crown is contemplating conduct (such as a regulatory approval) that might adversely affect it.<sup>13</sup> Furthermore, while Enbridge Gas acknowledges that consultation is necessary to the extent there is a potential impact on a claimed right, consent is not legally required.<sup>14</sup>
20. Nevertheless, it remains a goal of Enbridge Gas's engagement to avoid or mitigate any potential impacts the Project may have on Indigenous rights and Enbridge Gas has committed to mitigation measures that are designed to minimize impacts on water, aquatic life, lands, vegetation and wildlife and thereby minimize impacts to related traditional uses. By following its standard construction practices and adhering to the recommendations and mitigation measures identified in the ER and subsequent Environmental Protection Plan (EPP), and additional measures provided by regulatory agencies through the permitting and approval process, Enbridge Gas is of the view that the

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<sup>12</sup> Exhibit H-1-1, Attachment 7 (updated December 18, 2024).

<sup>13</sup> *Haida Nation v. British Columbia (Minister of Forests)* 2004 SCC 73 (*Haida Nation*) at para. 27.

<sup>14</sup> *Haida Nation* at para. 48; *Coldwater First Nation v. Canada (Attorney General)*, 2020 FCA 34 at para. 194.

construction of the Project will have negligible impacts on the environment. The cumulative effects assessment completed as part of the ER also determined that, provided the mitigation and protective measures outlined in the ER are implemented and that concurrent projects implement similar mitigation and protective measures, potential cumulative effects are not anticipated to occur, or if they do occur are not anticipated to be significant.<sup>15</sup>

**D. Caldwell First Nation - Proposed Conditions**

21. In its submission, CFN highlights certain environmental concerns the community has regarding the Project and proposes a number of conditions to address those concerns. Enbridge Gas addressed the majority of these concerns in its responses to CFN's interrogatories<sup>16</sup>, and through ongoing engagement as detailed in the ICR<sup>17</sup>. The following provides Enbridge Gas's response to CFN's proposals.

Aquatic Habitats

22. In its submission, CFN described concerns about impacts of water discharges on aquatic species of interests in the Project area and surrounding waterways, including the Detroit River, and requested that the OEB include the following in any order<sup>18</sup>:

(a) EGI be required to adhere strictly to the mitigation and protective measures set out in the Environmental Report, for all activities that may impact CFN's rights to all waters implicated in the Project area, and any other activities that impact or have the potential to impact CFN's Aboriginal rights associated with the waters in the Project area; and

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<sup>15</sup> Exhibit F-1-1, Attachment 1, p. 82.

<sup>16</sup> Exhibit I.CFN-1 – Exhibit 1.CFN-11.

<sup>17</sup> Exhibit H-1-1, Attachment 7 (updated December 18, 2024).

<sup>18</sup> CFN Submissions, pp. 12 – 14.

- (b) EGI should be required to propose a plan for ongoing testing and monitoring of aquatic habitats and aquatic life during the construction phase. This plan should be subject to review and comment by CFN, with recourse to the OEB in the event of dispute, prior to implementation. It should also include provisions for regular reporting and communications with CFN, and for providing capacity funding to CFN if it is determined that ongoing monitoring is necessary to protect aquatic species and habitat.
23. Enbridge Gas has committed to adhering to all mitigation and protective measures set out in the ER. The mitigation and protective measures for aquatic resources can be found in Table 5.1 of the ER.
24. Enbridge Gas submits a more general condition such as Condition 1 in OEB Staff's Proposed Conditions of Approval, which requires Enbridge Gas to construct the facilities and restore the land in accordance with its application and the evidence filed in this proceeding, is appropriate.
25. In Enbridge Gas's view, CFN's proposed additional plan for ongoing testing and monitoring of aquatic habitats and aquatic life during the construction phase is not necessary. The ER confirms that with the implementation of HDD construction method and the mitigation and protective measures, no adverse impacts on aquatic features are anticipated.<sup>19</sup> Additionally, CFN had the opportunity to review and provide recommendations on the proposed monitoring and contingency plans, including those related to aquatic habitats, in section 7 of the ER.<sup>20</sup>
26. Moreover, the ER recommends turbidity monitoring along transects upstream and downstream of the HDD crossing of the Detroit River for the duration of the drilling, to monitor for inadvertent returns of drilling fluid.<sup>21</sup> Enbridge Gas has committed to providing CFN with its HDD Sediment Control Plan and working

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<sup>19</sup> Exhibit F-1-1, Attachment 1, p. 64.

<sup>20</sup> Exhibit H-1-1, Attachment 7 (updated December 18, 2024), p. 171.

<sup>21</sup> Exhibit F-1-1, Attachment 1, p. 65.

with CFN once turbidity monitoring recommendations are developed to determine how CFN can be involved as environmental monitors on site during turbidity monitoring and how turbidity monitoring reports will be shared.<sup>22</sup>

### Vegetation

27. In its submission, CFN described concerns regarding Enbridge Gas's commitment to meaningful Indigenous participation in the post-construction vegetation monitoring and restoration process and requested that the OEB include the following in any order<sup>23</sup>:
- (a) EGI should be required to prepare and file a post-construction monitoring report;
  - (b) CFN should be offered the opportunity to participate in post-construction and restoration monitoring walkthroughs, including with capacity funding;
  - (c) CFN should be provided with sufficient time and capacity funding to review and comment on the monitoring and restoration reports prior to their finalization and submission to the OEB; and
  - (d) EGI's mitigation and protective measures specific to forest and vegetation cover, should be updated, in consultation with CFN, to incorporate traditional ecological knowledge and site-specific concerns related to culturally important species and land use practices.
28. In its submission, OEB staff acknowledged CFN's request for Enbridge Gas to prepare and file interim and final post-construction monitoring reports<sup>24</sup> and proposed it as a Condition of Approval for the Project<sup>25</sup>. Enbridge Gas will prepare and file a post-construction report and final monitoring in accordance with the proposed OEB Staff Conditions of Approval. Enbridge Gas has also stated that it would welcome CFN to participate in a post construction and

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<sup>22</sup> Exhibit H-1-1, Attachment 7 (updated December 18, 2024), p. 161.

<sup>23</sup> CFN Submissions, pp. 14 – 15.

<sup>24</sup> OEB Submission, pp. 13-14.

<sup>25</sup> OEB Submission, Schedule A, Condition 6.

restoration monitoring walkthrough and can share the subsequent reports with CFN directly upon their submission to the OEB.<sup>26</sup> Consistent with Enbridge Gas's commitment to ongoing engagement, to the extent CFN has concerns with the information provided in the reports filed with the OEB, CFN can raise those concerns with Enbridge Gas and Enbridge Gas will make efforts to address those concerns.

29. Regarding CFN's request to update its mitigation measures, in response to a CFN interrogatory regarding CFN participation and contribution to the implementation of mitigation and protective measures for vegetation, Enbridge Gas stated that it commits to undertaking the mitigation measures identified in Table 5.1 of the ER and plans to continue to engage CFN throughout the lifecycle of the Project and would be pleased to discuss any additional concerns or suggestions CFN might have in relation to the measures outlined in the ER.<sup>27</sup>

#### Species of Interest and Species at Risk

30. In its submission, CFN noted that it is particularly concerned about potential disturbance of trees that may serve as nesting sites for Migizi (Bald Eagle) and requested that Enbridge Gas expand its commitment to include reporting on all encounters with Species of Interest to CFN throughout all phases of the Project. CFN therefore requested that the OEB include the following in any order<sup>28</sup>:

- (a) A requirement for EGI to sweep for nests within 48 hours of construction activities;
- (b) A requirement that EGI provide capacity funding and the opportunity for CFN to participate as a monitor during all pre-construction wildlife and nest surveys, including prior to any tree removal; and

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<sup>26</sup> Exhibit I.CFN-7, part h).

<sup>27</sup> Exhibit I.CFN-7, part a).

<sup>28</sup> CFN Submissions, pp. 15 – 17.

(c) A requirement that EGI fulfill its commitments to report to CFN on significant wildlife encounters or incidents, encounters with species at risk, and all encounters with CFN's identified Species of Interest during all phases of the Project.

31. In Enbridge Gas's view, the proposed conditions are not necessary. In response to a CFN interrogatory, Enbridge Gas confirmed that no tree removal is proposed for the Project and that should avoidance of tree removal and of the trees potentially used by Migizi (Bald Eagle) not be possible, Enbridge Gas will provide CFN with an opportunity to participate as a monitor during sweeps and will provide CFN with reasonable compensation for their time to complete the sweeps.<sup>29</sup> This commitment would be covered by the OEB Staff Conditions of Approval general condition 1. With respect to the timing of nest sweeps, Enbridge Gas has committed to completing nest sweeps within 7 days prior to commencing construction activities in migratory bird habitat within the restricted activity period, as recommended in section 7.1.4, Table 1.1., and Table 5.1 of the ER.<sup>30</sup> The commitment to completing such sweeps within 7 days is reasonable as it affords the appropriate level of protection while allowing for flexibility in scheduling necessary resources.
32. Similarly, Enbridge Gas has committed to sharing with CFN all significant wildlife encounters or incidents and encounters with SAR<sup>31</sup> and therefore this commitment would also be covered by OEB Staff Conditions of Approval general condition 1. Enbridge Gas has requested but has not received CFN's species of interest list and as such cannot determine if encounters with species of interest to CFN occur.<sup>32</sup> Should CFN provide its species of interest list, Enbridge Gas will commit to sharing with CFN all significant encounters or incidents with such species during construction.

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<sup>29</sup> Exhibit I.CFN-8, part e).

<sup>30</sup> Exhibit I.CFN-8, part c).

<sup>31</sup> Exhibit I.CFN-8, parts a)-b).

<sup>32</sup> Exhibit I.CFN-8, part b).

### Environmental Protection Plan

33. In its submission, CFN noted concerns that the EPP will not be finalized or shared until all environmental permits and approvals are obtained, and immediately prior to construction, leaving limited opportunity for CFN to meaningfully review or influence its contents. CFN submitted that post-approval engagement on mitigation and the EPP is insufficient to satisfy the requirements of meaningful consultation and a process that permits review only after the finalization of the EPP, with no mechanism to resolve disagreement, falls short of the required duty to consult expectations. CFN therefore requested that the OEB include the following conditions in any order<sup>33</sup>:
- (a) EGI must provide CFN with a draft EPP in a reasonable amount of time prior to its finalization, to allow for meaningful review and feedback;
  - (b) EGI must engage in good faith discussions with CFN regarding any recommended mitigation or protection measures proposed by CFN, including those informed by CFN's traditional ecological knowledge;
  - (c) EGI must provide a written explanation outlining the rationale for excluding any mitigation measures recommended by CFN that are not adopted, including any constraints cited; and
  - (d) The final EPP must document all Indigenous community input received, including a summary of how each recommendation was addressed, and the final EPP must be shared with the OEB as part of any post-approval filings.
34. Enbridge Gas has committed to making the EPP available to the Indigenous communities prior to construction start.
35. Enbridge Gas submits that the conditions requested in relation to the EPP are not necessary given the consultation that has occurred and Enbridge Gas's commitment to ongoing engagement. Through the consultation described above,

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<sup>33</sup> CFN Submissions, pp. 17 – 18.

Enbridge Gas has provided significant information regarding planned mitigation measures and has committed to ongoing engagement with Nations. The Nations have had the opportunity to comment on those mitigation measures and propose additional mitigation measures. In response, Enbridge Gas has made a number of additional commitments.

36. In response to a CFN interrogatory<sup>34</sup>, Enbridge Gas described how mitigation measures recommended by Indigenous communities would be incorporated in the EPP and how the majority of environmental mitigation and protection measures that will be in the EPP are outlined in the ER which has been made available to CFN as part of the consultation process. Enbridge Gas has also made it clear that it welcomes CFN's recommendations regarding specific mitigation measures as detailed in the attachments to the ICR<sup>35</sup>. A final EPP, composed of the mitigation measures outlined in the ER and any additional mitigation measures identified by Indigenous communities and agreed upon by Enbridge Gas, will not be available until all necessary permits and approvals are obtained,<sup>36</sup> as such permits and approvals may contain specific conditions that are necessary to include in the EPP. Enbridge Gas continues to welcome any specific mitigation measures identified by CFN for consideration and will share the EPP with CFN once it is finalized.

#### **E. Indigenous Economic Inclusion**

37. The lack of opportunity for equity participation was raised in the letter of comment by COTTFN. CFN also commented on the OEB's role with respect to equity participation. While Enbridge Gas continues to explore opportunities in relation to Indigenous equity participation, Enbridge Gas is of the view that the OEB's role with respect to equity participation is beyond the scope of this proceeding.

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<sup>34</sup> Exhibit I.CFN-11.

<sup>35</sup> Exhibit H-1-1, Attachment 7 (updated December 18, 2024).

<sup>36</sup> Exhibit I.CFN-11.



**F. Conditions of Approval**

38. OEB staff submits that the OEB should approve the Project with the proposed Conditions of Approval attached as Schedule A to its submissions.<sup>37</sup> Enbridge Gas agrees and is prepared to adhere to the conditions proposed by OEB staff.

**G. Conclusion**

39. Based on the foregoing, Enbridge Gas respectfully requests that the OEB issue an order exempting the Company from the requirement to obtain leave to construct for the Boblo Island Community Expansion Project pursuant to section 95(2) of the OEB Act. If exempted, Enbridge Gas is targeting to commence construction for the Project in June 2025 and be placed into service by July 2025. As such, Enbridge Gas respectfully requests that the OEB issue its decision expeditiously to enable Enbridge Gas to meet the construct schedule for the Project and its broader community expansion portfolio.

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<sup>37</sup> OEB Staff Submission, p.13.