

May 27, 2025

Via E-Mail & RESS

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File no. G10017497

Nancy Marconi
Registrar
2300 Yonge Street, 27th Floor
P.O. Box 2319
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Dear Ms. Marconi:

Re: EB-2024-0325: Glendale Community Expansion Project
Mohawk Council of Akwesasne Written Submissions

Please accept the enclosed Written Submissions from MCA pursuant to Procedural Order No.2, in the above-noted matter.

Sincerely,

Gowling WLG (Canada) LLP

Gowling WLG (Canada) LLP



Adam Chamberlain

Joshua Shoemaker

cc: Patricia Squires, Enbridge - Manager, Regulatory Applications
Tania Persad, Enbridge - Senior Legal Counsel
Judith Fernandes, OEB - Case Manager
Lawren Murray, OBE - Counsel
Mohawk Counsel of Akwesasne

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act*, 1998, S.O. 1998, c. 15, Schedule B, and in particular, subsections 90(1) and 95(2);

AND IN THE MATTER OF an Application by Enbridge Gas Inc. for an Order exempting Enbridge Gas from the requirement to obtain leave to construct natural gas pipelines and associated facilities in the Township of South Glengarry in the United Counties of Stormont, Dundas and Glengarry

SUBMISSIONS ON THE MOHAWK COUNCIL OF AKWESASNE

May 27, 2025

INTRODUCTION

1. These are the submissions of the Mohawk Council of Akwesasne (“**MCA**”) in respect of the application filed by Enbridge Gas Inc. (“**Enbridge**”) for an exemption of the requirement to obtain leave to construct natural gas pipelines and facilities (“**Project**”), as provided under s. 95(2) of the *Ontario Energy Board Act* (“**Act**”). Specifically, Enbridge relies on s. 3.0.1(1) of O. Reg. 328/03, which makes the exemption available if, *inter alia*, the Ontario Energy Board (“**OEB**” or “**Board**”) makes a determination that the Crown’s duty to consult has been adequately discharged.
2. Enbridge is a regulated public utility, and a corporation incorporated under the laws of the Province of Ontario, with its offices in the City of Toronto and the Municipality of Chatham-Kent.
3. MCA is the governing body for the Mohawks of Akwesasne (“**Akwesasne**” or “**Nation**”), a First Nation uniquely located along the north shore of the St. Lawrence River and the Canada-US border with approximately 13,531 members. MCA is comprised of twelve District Chiefs who serve on various portfolios, and a Grand Chief, who is a general representative of the Mohawks of Akwesasne. Together, MCA governs Akwesasne and represents the Nation in consultations with the Crown on matters that may have an adverse impact on its Aboriginal and Treaty rights.
4. MCA opposes the application by Enbridge. While Enbridge’s consultation efforts continue with Akwesasne, those consultation efforts fall short of being “discharged” as required by O. Reg. 328/03 and Canadian jurisprudence.

SUBMISSIONS

A. The Board cannot approve Enbridge’s Application unless the duty to consult has been adequately discharged

5. The Board cannot provide an Order under s. 95(2) of the Act unless it has evidence before it that the duty to consult has been adequately discharged. Section 3.2 of the Ontario Energy

Board, Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Projects and Facilities in Ontario (“**Guidelines**”)¹ provide that,

In cases where the duty to consult is triggered, the OEB cannot issue a final decision approving an application unless it is satisfied, based on the evidence before it, that the duty to consult has been discharged.²

6. Section 3.0.1(1) of O. Reg. 328/03 reflect the Guidelines, which requires that the duty to consult be discharged *before* an exemption under s. 95(2) of the Act is provided.
7. Both the Guidelines and O. Reg. 328/03 follow established jurisprudence on the issue. In the 2017 *Chippewas of the Thames v. Enbridge* case, the Supreme Court of Canada stated that, “If the Crown's duty to consult has been triggered, a decision maker may only proceed to approve a project if Crown consultation is adequate”.³ The Crown must discharge the duty to consult before it acts to approve a project,⁴ in this case, the Application brought by Enbridge.
8. *Clyde River (Hamlet) v Petroleum Geo-Services Inc.*,⁵ further stresses that the Board must withhold approval for Enbridge’s Application until consultation has taken place. There, the Supreme Court of Canada notes that, “[i]f the Crown's duty to consult has been triggered, a decision maker may only proceed to approve a project if Crown consultation is adequate.”⁶ In writing about the National Energy Board, Justices Karakatsanis and Brown state that,

... where the Crown's duty to consult an affected Indigenous group with respect to a project under [the Canada Oil and Gas Operations Act] remains unfulfilled, the NEB must withhold project approval. And, where the NEB fails to do so, its approval decision should (as we have already said) be quashed on judicial review, since the duty to consult must be fulfilled prior to the action that could adversely affect the right in question ...⁷

9. The Board does not have the evidence before it that the duty to consult has been adequately discharged. The Indigenous Consultation Report (“**ICR**”) demonstrates that consultations with the Mohawks of Akwesasne have only just begun and that a number of critical steps remain,

¹ Ontario Energy Board, Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Projects and Facilities in Ontario (“**Guidelines**”).

² Ontario Energy board, Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Projects and Facilities in Ontario, s. 3.2, p 16.

³ *Chippewas of the Thames First Nation v Enbridge Pipelines Inc.*, [2017 SCC 41](#) at [para 36](#).

⁴ *Chippewas of the Thames First Nation v Enbridge Pipelines Inc.*, [2017 SCC 41](#) at [para 36](#).

⁵ *Clyde River (Hamlet) v Petroleum Geo-Services Inc.*, [2017 SCC 40](#).

⁶ *Clyde River (Hamlet) v Petroleum Geo-Services Inc.*, [2017 SCC 40](#) at [para 39](#).

⁷ *Clyde River (Hamlet) v Petroleum Geo-Services Inc.*, [2017 SCC 40](#) at [para 39](#).

including providing capacity funding, facilitating site visits, and possible community engagement.

10. As such, providing an exemption under s. 95(2) of the Act at this juncture would be contrary to the Guidelines, O. Reg. 328/03, and Canadian jurisprudence.

B. Akwesasne has asserted and established Aboriginal and Treaty rights along the north shore of the St. Lawrence River

11. The Project is located on land that was historically a Reserve belonging to the Mohawks of Akwesasne, known as the “Nutfield Tract”, or the “Indian Reserve in Glengarry”. The Nutfield Tract is the subject of one existing Specific Claim under Canada’s Specific Claims Policy, with two additional claims in active development. Indeed, the Mohawks of Akwesasne used and occupied the entire north shore of the St. Lawrence River before it was unlawfully taken by the Crown in 1784 and used to settle loyalists after the American Revolutionary War.
12. MCA is aware that Akwesasne members continue to hunt and trap on land throughout the north shore, and may include the Project area. Though much of the land is now privately held, Akwesasne nevertheless asserts Aboriginal and Treaty rights along the north shore and the Nutfield Tract, including the Project area.
13. Indeed, in *R v. Adams*⁸, the Supreme Court of Canada recognized Akwesasne’s Aboriginal right to fishing in Lake St. Francis and the St. Lawrence River. The waterway is located approximately 5 kilometers from the Project site, where Akwesasne members routinely fish and exercise such rights.
14. Given the presence of these rights and interests, MCA intends to conduct site visits to the Project area to investigate the presence of any plants or wildlife of interest, whether the area is capable of supporting the exercise of Aboriginal and Treaty rights, and any potential for the Project to have adverse impacts along the north shore of the St. Lawrence River and Lake St. Francis. MCA may also conduct community consultation in order to determine the extent to which Akwesasne members may be exercising their Aboriginal or Treaty rights within the Nutfield Tract and Project lands.

⁸ *R v Adams*, [1996 CanLII 169 \(SCC\)](#), [1996] 3 SCR 101.

15. Without a reasonable opportunity to investigate the above considerations, Akwesasne cannot meaningfully participate in these consultations.

C. The duty to consult has not yet been adequately discharged; consultations remain ongoing

16. Enbridge has not completed the procedural aspects of the duty to consult delegated to it by the Ministry of Energy (“**MOE**”). As such, the Crown has not adequately discharged its duty to consult.
17. The consultation process with MCA has only recently started and is not complete. Enbridge representatives met with MCA on April 28th, 2025 during a Council meeting to discuss and provide clarity on preliminary matters.⁹ That meeting followed a short “meet and greet” meeting between Enbridge representatives and the relevant portfolio Chiefs. Such meetings were the beginning stages of a longer and more comprehensive process.
18. The MOE Delegation Letter¹⁰ to Enbridge, dated January 5, 2024, directs Enbridge to “undertake a deeper level of consultation, *i.e.* in the moderate range” with Akwesasne, and expressly outlines a number of requirements for said consultation, stating that,

Enbridge should provide opportunities for the community to share evidence or submissions about potential impacts should the community so choose; and offer capacity funding to support meaningful participation should the communities so choose; and offer capacity funding to support meaningful participation by the communities in the consultation process, as appropriate. Enbridge should also be able to demonstrate how any concerns were considered and responded to, and what impact they had on project decisions moving forward.¹¹

19. MCA intends to undertake a number of activities as part of these consultation efforts, including seeking capacity funding, making site visits to the Project locations and potential engagement with its membership. Though such efforts are underway, they cannot be accomplished in a

⁹ Letter dated May 12, 2025 filed on behalf of MCA, online: [GWLG Letter to OEB Comments on May Updates to ICL for Glendale Community Project_20250512](#); [Updated Enbridge Application](#), 2025-05-05, EB-2024-0325, Exhibit H, Tab 1, Schedule 1, Attachment 8, Pages 13 - 14 of 140 (pp 500 to 501).

¹⁰ Issued pursuant to s. 3.2 of the Guidelines.

¹¹ [Updated Enbridge Application](#), 2024-11-07, EB-2024-0325, Exhibit H, Tab 1, Schedule 1, Attachment 2, Page 2 of 7 (p 462)

matter of days. MCA is committed to meaningful consultation, and as such, requires an appropriate timeline in which to complete them.

20. MCA acknowledges that Enbridge made attempts throughout 2024 to contact the Nation about the Project¹² and that consultation is occurring relatively late in the Project planning stage.
21. The Application filed by Enbridge shows outreach in the form of emails from November 27, 2023 to July 18, 2024,¹³ and December 12, 2024 to January 15, 2025¹⁴ to the e-mail address “grand.chief@akwesasne.ca” and one phone call on October 22, 2024 to an unknown phone number.¹⁵ There is no record of any response from MCA as a result of this outreach. Any correspondence that was received by MCA and the resulting replies are focused on efforts to set up meetings and opportunities to discuss the Project. No actual consultation occurred.
22. Unfortunately, Enbridge repeatedly sent correspondence to the “grand.chief@akwesasne.ca” email address. We note that Enbridge was provided with contact information by the MOE with the email address “info@akwesasne.ca”,¹⁶ but that Enbridge chose instead to direct correspondence to an email that was not yielding a response.
23. Nevertheless, MCA provided Enbridge with a list of contacts to include in all correspondence concerning the Project to ensure that the issue does not reoccur.¹⁷

CONCLUSION

24. MCA is pleased that consultation with the Crown, *via* Enbridge, has begun in earnest. However, consultation is not a mere procedural checkmark. MCA has asserted and established Aboriginal and Treaty rights around the north shore of the St. Lawrence, including

¹² [Updated Enbridge Application](#), 2025-05-05, EB-2024-0325, Exhibit H, Tab 1, Schedule 1, Attachment 8, pages 1 - 5 of 140 (pp 488 to 492).

¹³ [Updated Enbridge Application](#), 2025-05-05, EB-2024-0325, Exhibit H, Tab 1, Schedule 1, Attachment 8, Pages 23 - 40 of 140 (pp 510 to 527).

¹⁴ [Updated Enbridge Application](#), 2025-05-05, EB-2024-0325, Exhibit H, Tab 1, Schedule 1, Attachment 8, Pages 48 - 49 of 140 (pp 535 to 536).

¹⁵ [Updated Enbridge Application](#), 2025-05-05, EB-2024-0325, Exhibit H, Tab 1, Schedule 1, Attachment 8, Page 3 of 140 (p 490)

¹⁶ [Updated Enbridge Application](#), 2024-11-07, EB-2024-0325, Exhibit H, Tab 1, Schedule 1, Attachment 2, Page 2 of 7 (p 462).

¹⁷ [Updated Enbridge Application](#), 2025-05-05, EB-2024-0325, Exhibit H, Tab 1, Schedule 1, Attachment 8, Pages 61 - 63 of 140 (pp 548 to 550).

the Project area, as well as other legal interests. Meaningful consultation must account for these considerations and provide opportunity for MCA to participate in the discussions.

25. The MOE Delegation Letter expressly provides that a deeper level of consultation, *i.e.* in the moderate range, is owed to Akwesasne. On the evidence before the Board, only one meeting has occurred between Enbridge and MCA, along with a number of emails. Though efforts continue, MCA has not yet been afforded the opportunities to meaningfully participate in negotiations.

26. MCA respectfully requests that Board deny Enbridge's Application for an exemption under s. 95(2) of the Act at this time.

ALL OF WHICH IS RESPECTFULLY SUBMITTED by:



A handwritten signature in blue ink, appearing to read 'A Chamberlain', is written over a horizontal line.

GOWLING WLG (CANADA) LLP, per:

Adam Chamberlain

Joshua Shoemaker

Counsel to MCA

May 27, 2025