



Ontario
Energy
Board | Commission
de l'énergie
de l'Ontario

BY EMAIL

May 27, 2025

Mr. Ritchie Murray
Registrar
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4
Registrar@oeb.ca

Dear Mr. Murray:

**Re: Ontario Energy Board (OEB) Staff Submission
Enbridge Gas Inc. – Glendale Community Expansion Project –
Application for Exemption from Leave-to-Construct Requirement
OEB File Number: EB-2024-0325**

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

Yours truly,

Judith Fernandes
Senior Advisor, Natural Gas Applications

Encl.

c: All Parties



ONTARIO ENERGY BOARD

OEB Staff Submission

Enbridge Gas Inc.

Glendale Community Expansion Project

**Application for Exemption from Leave-to-Construct
Requirement**

EB-2024-0325

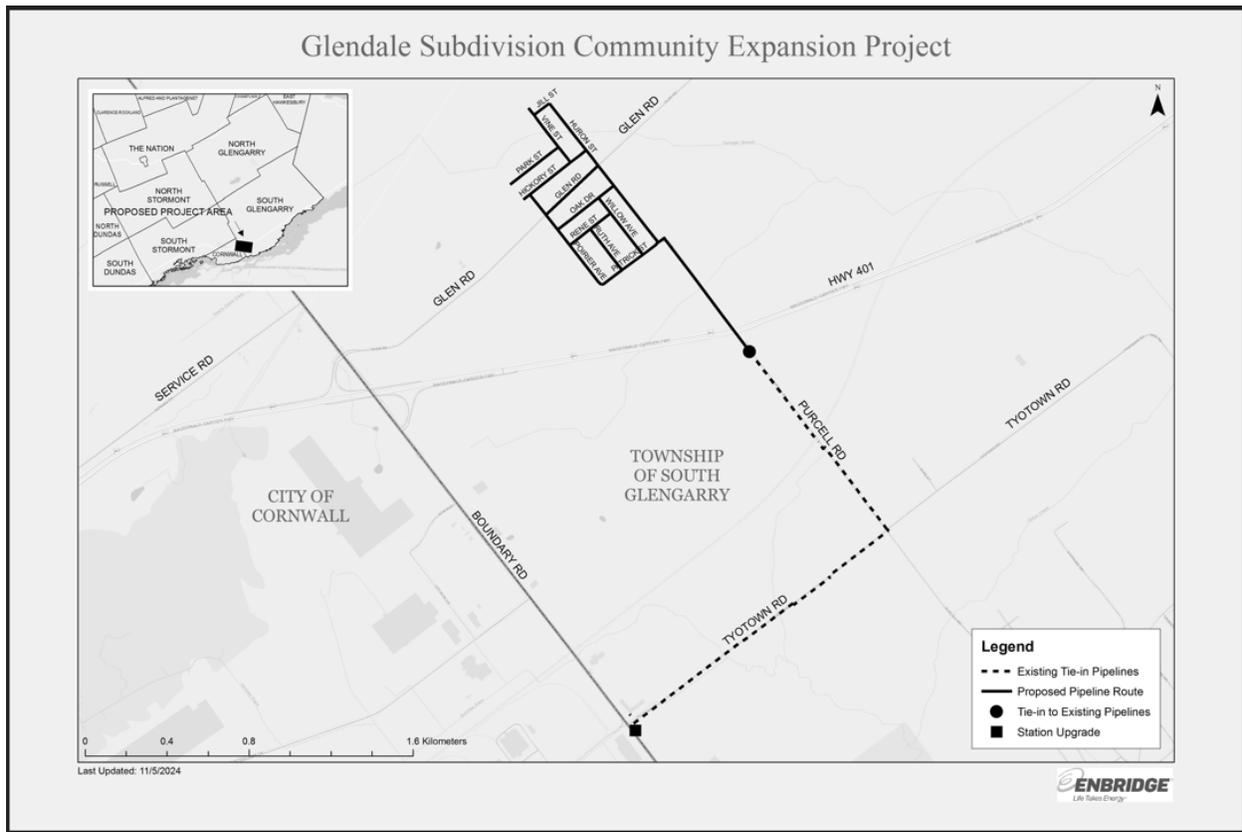
May 27, 2025

INTRODUCTION

Enbridge Gas Inc. (Enbridge Gas) applied to the Ontario Energy Board (OEB) on November 7, 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 (Project) to serve the community of Glendale Subdivision in the Township of South Glengarry in the United Counties of Stormont, Dundas and Glengarry.

The Project is expected to cost \$3.7 million and serve approximately 128 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 approximately 4.9 kilometres of Nominal Pipe Size (NPS) 2 polyethylene (PE) Intermediate pressure (IP) natural gas distribution pipeline and 720 metres of NPS 4 PE IP natural gas distribution pipeline. A general location of the Project is shown in the map below¹.



¹ Application, Exhibit A, Tab 2, Schedule 1, Attachment 1, p.1

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. Moreover, the 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 regulatory boards and tribunals may be delegated procedural aspects of the duty, including making determinations as whether the duty as 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)², and also through the procedural steps established by the OEB in this proceeding. The process includes:

² OEB Environmental Guidelines, pp.16-18, Section 3.2 Indigenous Consultation

- 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 delegation of the procedural aspects of the duty to consult to the applicant.
- The requirement that the applicant engage with potentially impacted Indigenous 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.
- The provision of notice by the OEB to all potentially impacted Indigenous communities once the application is filed, 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, intervenors and the applicant to file written submissions with the OEB.

HEARING PROCESS

On January 5, 2024, by way of a Delegation Letter, the Ministry identified two potentially impacted Indigenous communities that Enbridge Gas should consult:

- Huron-Wendat Nation (HWN)
- Mohawk Council of Akwesasne (MCA)

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.³

The OEB served each potentially impacted community a Notice of Hearing on December 10, 2024. The Notice of Hearing provided each potentially impacted Indigenous community until January 31, 2025 (52 calendar days) to become an intervenor, comment or ask to follow the hearing as a monitor.

MCA requested intervenor status in the proceeding.

³ Application, Exhibit H, Tab 1, Schedule 1, Attachment 2-Delegation Letter, January 5, 2024, Appendix: Procedural Consultation

On February 19, 2025, the OEB issued Procedural Order No. 1 which granted intervenor status and cost award eligibility to MCA. Procedural Order No. 1 set out a schedule for written discovery on Enbridge Gas's evidence and directed Enbridge Gas to file an updated ICR and any correspondence to Enbridge Gas from the Ministry regarding Enbridge Gas's consultation activities. Procedural Order No. 1 provided MCA with an opportunity to provide comments in response to Enbridge Gas's updated ICR.

In accordance with Procedural Order No. 1, Enbridge Gas filed an updated ICR on February 26, 2025 and MCA provided comments on Enbridge Gas's updated ICR on March 12, 2025. OEB staff filed interrogatories on March 26, 2025 and Enbridge Gas filed interrogatory responses on April 9, 2025. As part of its interrogatory responses, Enbridge Gas stated that a meeting between Enbridge Gas and MCA was scheduled for April 28, 2025 to discuss the Project and indicated that it would provide a summary of the meeting to the OEB.

On April 22, 2025 the OEB issued Procedural Order No. 2 setting the dates for the filing of written submissions from MCA and OEB staff by May 27, 2025 and any reply submissions from Enbridge Gas by June 10, 2025. Procedural Order No. 2 also directed Enbridge Gas to provide a summary of the meeting with MCA, an updated ICR, and any correspondence from the Ministry to Enbridge Gas on Enbridge Gas's consultation activities. Procedural Order No. 2 also provided for MCA to file comments in response to Enbridge Gas's meeting summary, updated ICR and any correspondence from the Ministry.

Enbridge Gas filed a summary of the April 28, 2025 meeting with MCA as part of its updated ICR on May 5, 2025. MCA filed comments on May 12, 2025 on the meeting summary provided by Enbridge Gas.

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. During the course of this proceeding, Enbridge Gas has provided multiple updates to the ICR in response to the OEB's procedural orders and as part of its response to OEB staff interrogatories.⁴ The ICR is part of Enbridge Gas's evidence in support of the Project.

⁴ Updated Application dated May 5, 2025, Exhibit H-1-1, Attachment 6, Exhibit H-1-1, Attachment 7 and EGI IRRs, Exhibit I-STAFF-1

The evidentiary record also includes information Enbridge Gas filed in response to OEB staff interrogatories as well as letters filed by MCA.

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

Information Enbridge Gas Provided to Consulted Indigenous Communities

The evidence filed by Enbridge Gas indicates that it has provided the following information to MCA and HWN:⁵

- Notice of Upcoming Project including Map of the Project Location
- Notification Letter and Notice of Study Commencement
- In-Person and Virtual Information Sessions letters
- Environmental Report, providing information about the potential effects of the Project on the environment
- The OEB's Notice of Hearing providing information on how to participate in the hearing
- Information in response to questions and/or concerns raised by MCA and HWN

Capacity Funding

In response to interrogatories, Enbridge Gas stated that it has offered capacity funding to MCA and HWN. Enbridge Gas also noted that HWN requested capacity funding at an April 3, 2025 meeting and Enbridge Gas agreed to make arrangements to provide the funding. Enbridge Gas stated that no concerns have been raised regarding the capacity funding that has been offered in relation to the Project.

In a letter filed on May 12, 2025, MCA stated that it is currently preparing an outline of costs for Enbridge Gas to consider as part of Enbridge Gas's funding obligations set out in the Ministry's January 5, 2024 delegation letter to Enbridge Gas.

Enbridge Gas may wish to confirm in its reply submission if the capacity funding that it offered to HWN has been accepted and provided, and if so, include a description of the activities supported by the capacity funding that was provided. Enbridge Gas may also wish to comment on any capacity funding requests by MCA, including any capacity funding that has been offered and accepted by MCA.

⁵ Application, Exhibit H, A Tab 1, Schedule 1, Attachment 8, p. 14

Issues and Concerns Raised and Accommodation

Details of Enbridge Gas's Indigenous consultation activities with MCA and HWN were provided in updates to the ICR and in response to OEB staff interrogatories. A summary of the issues and concerns raised by MCA and HWN and Enbridge Gas's response is provided below.

MCA

In its Notification letter filed on January 30, 2025, MCA stated that neither Enbridge Gas nor the Ministry have meaningfully consulted with MCA with respect to the Project and that it intends to contest Enbridge Gas's application. MCA further stated that based on the ICR filed with the application, Enbridge Gas completed outreach to an email address and to an unknown phone number, and there is no record of any response from MCA as a result of this outreach. MCA submitted that Enbridge Gas had an obligation to ensure that its correspondence was received by MCA but instead continued its outreach to an email address that provided no response. MCA stated that, prior to receiving the Notice of Hearing, MCA was not aware of the Project at all. MCA submitted that, given the above, the Crown's duty to consult has not been adequately discharged.

Enbridge Gas responded to MCA's letter on February 6, 2025, stating that it wishes to clarify the record in respect of MCA's claim that "there has been no consultation with the Mohawks of Akwesasne with respect to the Project." Enbridge Gas stated that it has logged eight emails and one phone call from Enbridge Gas to MCA representatives in its ICR filed as part of its application. Enbridge Gas also stated that the emails included Project information, the Environmental Report, and invitations to MCA to provide comments and ask questions. Enbridge Gas noted that these consultations occurred on or before October 22, 2024, which was the date that Enbridge Gas finalized the ICR for filing with the application on November 7, 2024, and that it had not received any responses from MCA representatives. Enbridge Gas asserted that since then, it has received correspondence from MCA and has engaged in on-going dialogue related to the Project, with the most recent correspondence from MCA occurring on January 28, 2025. Enbridge Gas stated that it was prepared to file an updated ICR.

As per the OEB's direction in Procedural Order No. 1, Enbridge Gas filed an updated ICR on February 26, 2025. Procedural Order No. 1 provided MCA with an opportunity to comment in response to Enbridge Gas's updated ICR.

On March 12, 2025, MCA provided comments stating that it has reviewed the updated ICR filed by Enbridge Gas and remains of the view that the Crown's duty to consult has not been adequately discharged. MCA stated that the updated ICR shows additional

correspondence that went unreceived by MCA. MCA further stated that the correspondence it received, as well as the subsequent replies, simply focus on efforts to set up meetings. MCA claimed that such correspondence falls short of substantive consultation and does not satisfy the Crown's duty to consult. MCA stated that it continues to have concerns about the Project that have neither been discussed nor addressed to date. MCA noted that it is currently in contact with Enbridge Gas to set up a meeting in which substantive consultation can begin.

As part of Enbridge Gas's interrogatory responses filed on April 9, 2025, Enbridge Gas confirmed that a virtual meeting with MCA was scheduled for April 28, 2025 and provided an updated ICR. In response to OEB staff interrogatories asking Enbridge Gas to describe any outstanding concerns raised by MCA, Enbridge Gas stated that on March 4, 2025, MCA provided a letter stating that the Project is in a historically occupied area by the MCA and advised that any development in the Nutfield tract (where the Glendale Project is located) requires consent from MCA.⁶ Enbridge Gas stated that MCA expressed willingness to reopen dialogue on the Project and advised Enbridge Gas of the individuals to whom official Project correspondence should be sent, including MCA's legal counsel.

In accordance with the OEB's direction in Procedural Order No. 2, on May 5, 2025, Enbridge Gas filed an updated ICR that included a summary of the meeting with MCA on April 28, 2025. In the updated ICR, Enbridge Gas noted that at the meeting, MCA specifically asked about the generation of excess soil, Black Ash, the use of native grass species for restoration, the spread of invasive species, and potential site visits. Enbridge Gas explained that the Project was not expected to generate volumes of excess soil that would trigger a filing on the Ministry of the Environment, Conservation and Parks registry and the soil-related assessment and analysis it was performing. Enbridge Gas also confirmed that no Black Ash were found during targeted studies and no tree removal is expected; the plan to use native grass species; and its equipment cleaning protocols to prevent the spread of invasive species. Enbridge Gas also noted that they could discuss site visits with MCA.⁷

Procedural Order No. 2 provided MCA with an opportunity to provide comments on Enbridge Gas's meeting summary and the updated ICR.

In a letter filed on May 12, 2025, MCA stated that Enbridge Gas's summary of the meeting contained in the ICR is largely accurate and that while it is pleased with Enbridge Gas's effort to begin consulting in earnest, such consultation remains

⁶ EGI IRRs, Exhibit I, OEB STAFF-1, p.3

⁷ Updated Application May 5, 2025, Exhibit H, Tab 1, Schedule 1, Attachment 8

ongoing. MCA noted that the meeting generated valuable discussion between MCA and Enbridge Gas but it does not represent the end of consultation at this stage. MCA indicated that it intends to undertake several activities as part of these consultation efforts, including site visits to the Project locations and potential engagement with its membership. MCA mentioned that it is currently preparing an outline of costs for Enbridge Gas to consider as part of Enbridge Gas's funding obligations set out in the Ministry's January 5, 2024 delegation letter to Enbridge Gas. MCA stated that, given the foregoing, its position is that consultation has begun but has not been discharged at this stage of the Project.

HWN

Through the pre-hearing consultation, HWN advised that it is interested in participating in the Stage 2 Archaeological Assessment (AA) work and Enbridge Gas contacted HWN to provide the opportunity to participate in the work scheduled for the week of October 14, 2024. HWN then advised that it has reduced staff and does not have a field liaison available because of the hunting season but would like to receive a draft copy of the Stage 2 AA report.⁸

In response to OEB staff's interrogatories asking Enbridge Gas to describe any outstanding concerns raised by HWN, Enbridge Gas stated that on March 31, 2025, HWN contacted Enbridge Gas again stating that the Stage 2 AA report is a valuable source of information that helps HWN to assess if the Project risks impacting HWN rights and heritage. HWN advised that having access to the Stage 2 report prior to the application being approved would help HWN flag any concerns it may have with the Project and work with Enbridge Gas to address those concerns. On April 3, 2025 at an in-person meeting with HWN, Enbridge Gas explained the reasoning behind the typical timing of the Stage 2 AA and provided the Stage 2 AA report for the Project to HWN.⁹

In response to OEB staff's interrogatories on forms of accommodation that Enbridge Gas has agreed to make or made to each of the consulted Indigenous communities in response to concerns raised in the Indigenous consultation process for the Project, Enbridge Gas noted that HWN had expressed a general concern regarding the protection of archaeological resources. Enbridge Gas stated that it designed the Project, in part, with a view to mitigating impacts to archaeological resources and has performed AAs of the Project area. The results of the Stage 2 AA did not identify any archaeological resources. Enbridge Gas stated that should previously undocumented

⁸ Application, Exhibit H, Tab 1, Schedule 1, Attachment 8, pages 18,19

⁹ Exhibit I, STAFF-1, p. 3 and Updated Application May 5, 2025 Exhibit H, Tab 1, Schedule 1, Attachment 8, pages 21,22

archaeological resources be discovered during Project work, Enbridge Gas would cease alteration of the area and engage an archaeologist. Enbridge Gas further stated that related mitigation measures are detailed in Table 5.1 and section 4.5.10 of the Environmental Report.¹⁰ Enbridge Gas noted that the mitigation measures identified in the Environmental Report are designed to minimize the extent of impacts of the Project, including impacts on wildlife, water courses, vegetation and archaeological resources, which are often matters of concern to Indigenous communities.¹¹

In its application, Enbridge Gas stated that it will continue to actively engage with all identified Indigenous groups in meaningful ongoing dialogue concerning the Project and endeavor to meet with each Indigenous group, provided they are willing, for the purpose of exchanging information regarding the Project and to respond to inquiries in a timely manner. Enbridge Gas also stated that it will hear and address concerns as is feasible and seek information on the exercise of, and potential impacts to, Aboriginal or treaty rights, traditional use in the Project area and how any potential Project-related impacts can be mitigated.¹²

OEB STAFF SUBMISSIONS

Duty to Consult

OEB staff submits that this proceeding should be placed into abeyance to allow for additional time for the identified Indigenous communities to review the proposed Project and raise potential issues that could impact their section 35 rights. While the dialogue between Enbridge Gas and the communities has been constructive to date, these discussions appear to still be at an early stage, especially with respect to MCA.

The evidence indicates that the first substantive meeting between MCA and Enbridge Gas to discuss the Project took place on April 28, 2025 (less than a month before this submission). MCA has noted that the April 28, 2025 meeting generated valuable discussion between MCA and Enbridge Gas but it does not represent the end of consultation at this stage. MCA indicated that it intends to undertake several activities as part of these consultation efforts, including site visits to the Project locations and potential engagement with its membership. MCA mentioned that it is currently preparing an outline of costs for Enbridge Gas to consider as part of Enbridge Gas's funding obligations set out in the Ministry's January 5, 2024 delegation letter to Enbridge Gas.

¹⁰ Exhibit F-1-1, Attachment 1, Environmental Report, Table 5.1 and section 4.5.10

¹¹ Ibid

¹² Application, Exhibit H, Tab 1, Schedule 1, pp.3,4

It is important to note that in the Ministry's Delegation Letter, the Ministry directed Enbridge Gas to undertake a level of consultation in the "moderate range" with MCA. This level of consultation should, among other things, include an opportunity to:

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.¹³

OEB staff submits that further time should be provided so that Enbridge Gas and MCA can further discuss the Project so the expectations outlined in the Delegation Letter can be met.

With respect to HWN, the Ministry's preliminary assessment was that Enbridge Gas should undertake a level of consultation in the low range. This level of consultation should, at a minimum, include that Enbridge Gas:

notify the community of the project; share information about the project and provide an opportunity for the community to comment. Any issues raised by the community should be discussed and considered in light of the potential to impact rights, with mitigation or other forms of accommodation identified where appropriate. Enbridge's initial notice of the Project to the community could include a request to confirm whether the community believes the Project will impact their rights and accordingly whether they are interested in being consulted. Should no response be received, Enbridge should continue to provide high-level notifications in accordance with project stage milestones.¹⁴

Based on the updated ICR filed on May 5, 2025, HWN made a request to Enbridge Gas for a draft copy of the Stage 2 AA report in October 2024 during the pre-hearing consultation process. On March 31, 2025, HWN made a second request for the Stage 2 AA report which Enbridge Gas provided to HWN on April 3, 2025. It is possible that HWN may have comments on the Stage 2 AA report.¹⁵ Placing this matter in abeyance for a period of time will allow HWN an opportunity to raise any comments on the Stage 2 AA report and have any such comments addressed by Enbridge Gas before this application is decided.

¹³ Delegation Letter, January 5, 2024, p.2, Appendix, p.5

¹⁴ Ibid

¹⁵ Updated application, May 5, 2025, Exhibit H-1-1, Attachment 8, pp. 20-22

OEB staff observes that Enbridge Gas has provided multiple updates to the ICR in response to the OEB's procedural orders and as part of its response to OEB staff interrogatories. In OEB staff's view, these recent updates reflect that Enbridge Gas's consultation with MCA and HWN has progressed. OEB staff submits that further time should be allowed for HWN and MCA to consider the Project and provide any additional feedback to Enbridge Gas on matters that could impact their section 35 rights. OEB staff submits that 60 days would appear to be a reasonable amount of time to place this matter in abeyance to allow for further review and comments by HWN and MCA. OEB staff also notes that Enbridge Gas has not filed the Ministry's letter of opinion at this time.

At the end of the sixty-day period, OEB staff submits that Enbridge Gas should file an updated ICR reflecting any new activities. The OEB can then consider next steps including whether further time is needed for discussions between Enbridge Gas and the communities.

-All of which is respectfully submitted~