



Patricia Squires
Manager
Regulatory Applications - LTC
Regulatory Affairs

Tel: (416) 753-6284
Email: Patricia.Squires@Enbridge.com
EGIRegulatoryProceedings@enbridge.com

Enbridge Gas Inc.
500 Consumers Road
North York, Ontario, M2J 1P8
Canada

June 10, 2025

VIA RESS AND EMAIL

Ritchie Murray
Registrar
Ontario Energy Board
2300 Yonge Street, Suite 2700
Toronto, ON M4P 1E4

Dear Ritchie Murray:

**Re: Enbridge Gas Inc. (Enbridge Gas)
Ontario Energy Board (OEB) File: EB-2024-0325
Glendale Community Expansion Project
Reply Submissions**

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

Sincerely,

Patricia Squires

Patricia Squires
Manager, Regulatory Applications – Leave to Construct

Cc: Tania Persad (Enbridge Gas Counsel)
Kristen Lozynsky (Enbridge Gas Counsel)
Judith Fernandes (OEB staff)
Lawren Murray (OEB Counsel)
Adam Chamberlain (MCA Counsel – Gowlings)
Joshua Shoemaker (MCA Counsel – Gowlings)
Chief Vincent Thompson (District Chief for Kawehno:ke)
Theresa A. Benedict (Sr. Researcher, Akwesasne Rights and Research Office)

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 Glendale Subdivision in the Township of South Glengarry in the United Counties of Stormont, Dundas and Glengarry.

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 Glendale Subdivision in the Township of South Glengarry in the United Counties of Stormont, Dundas and Glengarry (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 their request for natural gas for their constituents.¹
3. The Project is one of the smallest Phase 2 NGEP community expansion projects, well below the threshold criteria for exemption from the requirement to obtain leave to construct from the OEB. The Project is comprised of approximately 5 km of Nominal Pipe Size (NPS) 2 and NPS 4 polyethylene pipe, proposed to be built within existing municipal road allowances, and with the implementation of identified mitigation and protective measures identified in Table 5.1 of the Environmental Report (ER)², will have minimal to no impact on cultural or archaeological features, aquatic or terrestrial species or habitat, surface water or groundwater, and socio-economic features in the area.³

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

² Exhibit F, Tab 1, Schedule 1, Attachment 1.

³ Ibid., pp 15-18.

B. Exemption from Leave to Construct Requirement

4. 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.
5. As the Project is less than 20 km in length, uses pipe 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 \$2.7 million, the cost of the hydrocarbon line 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 the OEB to consider is whether the Crown's duty to consult has been adequately discharged.⁴
6. For reasons further outlined below, Enbridge Gas is of the view that the Crown's duty to consult in relation to the Project has been discharged, through the consultation efforts already undertaken by Enbridge Gas and through the opportunity to participate in the regulatory process itself.

C. Indigenous Consultation

7. Enbridge Gas was delegated the procedural aspects of Indigenous consultation by the Ministry of Energy (ENERGY) in its January 5, 2024 Delegation Letter⁵ and has carried out (and continues to carry out) engagement with the identified Indigenous communities (Huron-Wendat Nation (HWN)⁶ and Mohawk Council of Akwesasne (MCA)). Enbridge Gas intends to file the Ministry of Energy and

⁴ EB-2024-0325, OEB Staff Submissions, May 27, 2025, p. 2.

⁵ Exhibit H, Tab 1, Schedule 1, Attachment 2.

⁶ Enbridge Gas acknowledges the June 3, 2025 request from HWN to refer to them as Wendat Nation going forward, and will honour this request in future communications and engagement. For the purposes of consistency across the record of this proceeding, however, Enbridge Gas continues to use HWN in this reply submission.

Mines (MEM) letter of opinion (Sufficiency Letter) with the OEB upon receipt from MEM⁷.

8. Consistent with the direction provided by ENERGY, Enbridge Gas implemented an expansive consultation program that involved: providing Project notification to the two Nations identified by ENERGY as being potentially impacted by the Project early on in Project development; offering capacity funding to each Nation⁸; sharing information including the 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.
9. 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 and Stage 2 Archaeological Assessment (AA), 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 Projects and Facilities in Ontario, 8th Edition (2023)*. Enbridge Gas is committed to undertaking the mitigation and protection measures identified in Table 5.1 of the ER⁹.

⁷ Effective March 19, 2025, the ministry name was changed to the Ministry of Energy and Mines.

⁸ Exhibit I.OEB STAFF-2.

⁹ Exhibit F, Tab 1, Schedule1, Attachment 1, pp. 84-100.

10. Both Indigenous Nations identified by ENERGY in its Delegation Letter 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 Report¹⁰.
11. HWN provided a comment on the ER, expressing concern regarding the protection of archaeological resources during horizontal directional drilling, and Enbridge Gas, in turn, responded in an effort to address HWN's concern.¹¹ Enbridge Gas explained that a Stage 1 AA had been completed and that a Stage 2 AA had been recommended, with no adverse impacts to archaeological resources anticipated with the implementation of the archaeological assessment and mitigation measures. Subsequently, Enbridge Gas invited HWN to participate in the Stage 2 AA; the Stage 2 AA was completed, which confirmed that there were no archaeological resources in the Project area. When HWN advised Enbridge Gas of its concerns regarding the timing of the Stage 2 AA,¹² Enbridge Gas explained the typical timing of the Stage 2 AA in an in-person meeting with HWN on April 3, 2025.¹³
12. Recognizing ENERGY's Delegation Letter identified HWN as requiring consultation on the low end of the spectrum as well as the minimal anticipated impacts of the Project, the consultation efforts undertaken by Enbridge Gas clearly meet any consultation obligations owed to HWN in relation to the Project. While OEB staff have indicated that an abeyance would provide HWN additional opportunity to raise any comments regarding the Stage 2 AA and have them addressed before the Application is decided, in Enbridge Gas's view, it would be inappropriate to grant an abeyance to allow additional time for such review when the duty to consult has been discharged. Furthermore, Enbridge Gas notes that HWN has had the Stage 2 AA for more than two months and has not identified

¹⁰ Exhibit H, Tab 1, Schedule 1, Attachment 8 (Updated May 5, 2025).

¹¹ Ibid., Line-item attachment 2.16 and 2.18.

¹² Exhibit H, Tab 1, Schedule 1, Attachment 8 (Updated May 5, 2025), Line-item attachment 2.26.

¹³ Ibid, Line-item 2.29.

any outstanding concerns. In any event, Enbridge Gas has committed to mitigation measures that should effectively minimize impacts to any undiscovered archaeological resources, which should address HWN's stated concerns.

13. With respect to MCA, MCA characterizes a recent meeting with Enbridge Gas as being preliminary while OEB staff describes consultation with MCA as being at an early stage. While Enbridge Gas recognizes that it was only recently that MCA chose to share substantive comments and questions about the Project with Enbridge Gas, Enbridge Gas would not characterize the consultation as being at an early stage. Enbridge Gas has made significant efforts to consult with MCA, providing relevant Project information, offering opportunities for review and comment and repeatedly offering capacity funding to ensure that appropriate resources were available to MCA. Furthermore, MCA registered as an intervenor in the OEB proceeding in January 2025, represented by legal counsel, providing MCA with a further opportunity to identify Project concerns.
14. MCA seems to suggest that the lack of communication on MCA's part was the result of the use of an incorrect email address. While it is true that many of the outreach emails containing Project information from Enbridge Gas during the November 2023 to August 2024 period went unanswered by MCA, there was two-way email dialogue on aspects of the Project in October 2024, prior to the filing of the Application with the OEB on November 7, 2024. In the October 2024 email exchange¹⁴, Enbridge Gas responded to an inquiry from Chief Vanessa Adams, agreeing to provide a presentation on the Project, and inviting MCA to participate in archaeological fieldwork for the Project. The Enbridge Gas representative requested options for a follow-up meeting, however this email was not responded to. Similarly, two emails from Stantec, the Project's environmental

¹⁴ Exhibit H, Tab 1, Schedule 1, Attachment 8 (Updated May 5, 2025), Line-item attachments 1.11 and 1.12

consultant, to Chief Vanessa Adams (with a known, active email address) went unanswered.¹⁵

15. Enbridge Gas takes its delegated duty to consult seriously and made multiple attempts to contact and engage with MCA using an email address that had previously been used for similar engagements. Once two-way contact was established in October 2024, it was reasonable for Enbridge Gas to assume that there was an awareness of the Project within MCA and that MCA's concerns and questions, should they have any, would be forthcoming in a timely fashion. However, no further substantive communications in respect of the Project came from MCA until several months later, in March 2025¹⁶, after repeated outreach from Enbridge Gas in February 2025. While MCA intervened and made submissions in this proceeding, MCA opted not to ask any interrogatories of Enbridge Gas as part of the OEB proceeding in late March 2025.
16. While Enbridge Gas has been delegated the Crown's duty to consult, consultation is a two-way street and Nations have reciprocal obligations to participate in good faith and cannot frustrate reasonable good faith efforts by refusing to participate. They must raise concerns early and with specificity.¹⁷
17. Contrary to the position of MCA, the duty to consult MCA has been met. ENERGY identified that its preliminary assessment of the duty to consult with MCA was in the moderate range. In Enbridge Gas's view, when one considers the expected impacts of the Project, as outlined in Enbridge Gas's ER and evidence, which is information that ENERGY did not have available to it when it made its initial assessment, the consultation obligation owed to MCA would more appropriately be at the lower end of the spectrum. Nevertheless, the consultation

¹⁵ Ibid, Line-item attachments 1.9 and 1.13.

¹⁶ Ibid, Line-item attachment 1.28.

¹⁷ Haida Nation v. British Columbia (Minister of Forests) 2004 SCC 73 at para. 42; Ktunaxa Nation v. British Columbia, 2017 SCC 54 at para. 80; Michipicoten First Nation v. Minister of Natural Resources and Forests, 2016 ONSC 5705

that has been undertaken with MCA is consistent with the description of consultation in the moderate range included in ENERGY's Delegation Letter.

18. MCA was provided opportunities to share evidence or submissions about potential impacts of the Project on MCA should the community have chosen to do so. MCA was encouraged to share information with Enbridge Gas and capacity funding was repeatedly offered to support MCA's participation.
19. Furthermore, any concerns that were shared by MCA were considered and responded to, with an explanation of how those concerns were addressed. When MCA asked Enbridge Gas about the generation of excess soils, Enbridge Gas explained its plans to support excess soils management, including its assessment, and its plan should volume estimates change. Enbridge Gas also answered MCA's questions regarding Black Ash trees, noting that targeted vegetation studies were performed for Black Ash and that there were none located along the preferred route, and confirming that no tree removal was anticipated for the Project. With respect to MCA's questions about the use of native grass species for restoration work, Enbridge Gas advised that the ER prescribes the use of local native species. And, when MCA expressed concern about the spread of invasive species, Enbridge Gas outlined the clean equipment protocols to ensure invasive species are not spread between work sites. Enbridge Gas further committed to discussing fieldwork participation with MCA in response to a request for a site visit to inspect the mitigation measures for the Project.¹⁸
20. Enbridge Gas recognizes MCA expects further engagement on the Project and, as is Enbridge Gas's practice, Enbridge Gas plans to engage with the Nations throughout the lifecycle of the Project. However, recognizing the nature of the Project, including the anticipated impacts, and the efforts made to date to consult with both Nations, there is no need to place the application in abeyance, as the

¹⁸ Exhibit H, Tab 1, Schedule 1, Attachment 7 (Updated May 5, 2025), pp 1-2.

duty to consult has been discharged. Enbridge Gas is committed to maintaining ongoing engagement with the Indigenous communities throughout the life of the Project to ensure any potential impacts on Aboriginal and treaty rights are addressed, as appropriate.

D. Capacity Funding

21. OEB Staff's submission suggests that Enbridge Gas provide an update regarding capacity funding. Enbridge Gas reiterates that capacity funding was offered early on in the consultation process and reminders of the availability of capacity funding were sent. In response to an interrogatory¹⁹, Enbridge Gas provided information regarding which communities accepted and were provided capacity funding. In that interrogatory response, Enbridge Gas confirmed that HWN requested capacity funding at an April 3, 2025 meeting and Enbridge Gas agreed to make arrangements to provide the funding.²⁰ Enbridge Gas provided HWN with a capacity funding agreement for review on April 24, 2025. Enbridge Gas and HWN met on June 3, 2025 where HWN agreed to the capacity funding proposal and indicated they will continue to engage in the Project going forward.
22. The topic of capacity funding was discussed with MCA at the April 28, 2025 virtual meeting. MCA indicated that funding would be required and that they would let Enbridge Gas know their requirements. At the time of filing this reply submission, over six weeks since the April 28 meeting, no further input on capacity funding has been received from MCA. Enbridge Gas sent MCA follow-up emails on May 28, 2025 and June 4, 2025 to inquire about the status of MCA's capacity funding request. A responding email was received from MCA on June 4, 2025 indicating that MCA would be collecting input from their council and they will respond further once that feedback is received, however no specifics on capacity funding requirements or a timeline for that response was provided.

¹⁹ Exhibit I.OEB STAFF-2.

²⁰ Ibid.

E. Conditions of Approval

23. Enbridge Gas submits that if the OEB approves the LTC exemption that they include the same Conditions of Approval as proposed by OEB Staff for the Tweed LTC Exemption application,²¹ included as Schedule A to this reply. Enbridge Gas is prepared to adhere to those conditions.

F. Conclusion

24. Enbridge Gas is of the view that the OEB has sufficient evidence to issue an order exempting the Company from the requirement to obtain leave to construct for the Glendale Community Expansion Project pursuant to section 95(2) of the OEB Act.
25. Recognizing the consultation that has been undertaken to date and the continued commitment to consultation throughout the lifecycle of the Project, Enbridge Gas does not support the abeyance as proposed in the OEB Staff submission, particularly given the importance of regulatory efficiency and the risk that even a short abeyance will lead to additional procedural steps and much more significant delay. Given the small size, scope and anticipated minimal impacts of the Project, Enbridge Gas submits that the regulatory timelines for this LTC exemption application – already comparable to a full LTC proceeding for a much larger, more impactful project - should not be extended unreasonably. However, should the OEB determine that a limited amount of additional time is appropriate in these specific circumstances, Enbridge Gas submits that no more than a 30-day abeyance from the date of Enbridge Gas's reply submissions should be implemented and that the OEB should provide direction as to what specifically needs to be done during that time and at the conclusion of the abeyance, recognizing that Enbridge Gas obviously has no control over the actions of the Nations in response to further outreach.

²¹ EB-2024-0303, OEB Staff Submission, May 5, 2025.

Schedule A

Proposed Conditions of Approval

(Proposed by OEB Staff in EB-2024-0303)

Enbridge Gas Inc.
EB-2024-0325

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-2024-0325 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 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. 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.