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Via RESS

Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Attention: Ritchie Murray, Acting Registrar

Re: Enbridge Gas Inc. EB-2025-0125 – Consultation on the Integrated Resource Planning Framework Review

Dear Mr. Murray:

We provide these submissions on behalf of Ginoogaming First Nation (“**GFN**”) and in advocacy for an approach to the Ontario Energy Board’s (“**OEB**” or “**Board**”) Integrated Resource Planning Framework (“**IRPF**”) that better supports reconciliation through improvements to the way First Nations participate in the IRPF’s decision-making processes and have their interests reflected in the IRPF’s intended outcomes.

The current proceeding takes place at a time of growing recognition in Ontario and in Canada of the priority of reconciliation. Among other examples:

- The Ontario Government’s most recent policy statements set out in Ontario’s Affordable Energy Future (“**OAEF**”) and Energy for Generations (“**EFG**”) both affirm reconciliation, as well as partnerships with and the support of Indigenous peoples, as essential elements of a successful energy transition and energy sector.¹
- Canada’s adoption of the United Nations Declaration on the Rights of Indigenous Peoples (“**UNDRIP**”) has underscored and likely increased requirements for Crown governments and those acting on behalf of the Crown to meaningfully engage First Nations towards the full and proper recognition of their rights, as the Federal Court recently affirmed.²

¹ We elaborate on this point below.

² We elaborate on this point below.

- Enbridge Gas Inc. (“**EGI**”) agreed to settlement terms in Phase 1 of its rebasing proceeding that established the Indigenous Working Group, which has the potential to develop into an important forum where First Nations are engaged and are able to raise questions and concerns with the benefit of expert support at earlier stages and with more information and support than was previously the case.

The original IRP framework lags behind these positions. Where the above examples (to varying degrees) support an enhanced role for Ontario’s energy sector and its participants in advancing reconciliation in a broader sense, the original IRP framework generally limits itself to a recognition of the applicability of the duty to consult in relevant circumstances, without much elaboration.

This proceeding represents an opportunity to address reconciliation in a way that is more consistent with the stated priorities of the Ontario Government, the requirements of UNDRIP and the case law surrounding it, and many of the positions that EGI has itself adopted in its Indigenous Reconciliation Action Plan (“**IRAP**”) and its Indigenous Peoples Policy (“**IPP**”).

Integrated resource planning can have a significant and positive impact on many of the issues that are most important to First Nations like GFN in the context of Ontario’s energy sector, such as meaningful Indigenous participation, sustainability, affordability, reliability, innovation and employment. For that potential to be achieved, however, it is essential for the IRPF to engage First Nations meaningfully and early in the process, and for First Nations to have their interests and priorities reflected in the IRPF’s central guidance documents and measurable outcomes from the outset.

These general principles and constitutional imperatives inform GFN’s submissions below, which address OEB Staff’s Discussion Paper (the “**Discussion Paper**”) questions in order, omitting questions where GFN takes no position.

Question #1: What implications does the current public policy environment have for an evolved IRP framework and the OEB’s IRP-related expectations of natural gas distributors

GFN believes that reconciliation should form part of the OEB’s approach to all significant frameworks, including the IRPF.

For the purposes of the IRPF, any discussion will be incomplete without the meaningful consideration of and response to reconciliation and the developing policy environment related to reconciliation. At the moment, the absence of any such discussion from the IRPF (and from the Discussion Paper) represents a substantial gap. By limiting itself to an acknowledgment of the duty to consult and accommodate, the IRPF and the Discussion Paper fail to engage reconciliation in any adequate or meaningful sense.

Accordingly, this section of GFN’s submissions identifies the developing policy environment’s items most relevant to reconciliation in the context of the current review. GFN has drawn these examples from Ontario’s energy sector, as well as case law applicable to the energy sector, in order to demonstrate that policy frameworks in the energy sector should now meaningfully seek to advance reconciliation as a matter of course.

The consideration of how reconciliation should inform frameworks like the IRPF can begin with a general affirmation of what reconciliation means in the context of Ontario's energy sector. Ontario's Electrification and Energy Transition Panel has provided a definition of economic reconciliation, which highlighted the centrality of trust building and joint leadership:

Simply defined, economic reconciliation can be understood as the inclusion of Indigenous people, communities, and business in all aspects of economic activity. As outlined in the Truth and Reconciliation Commission of Canada (the "TRC") Final Report, all reconciliation efforts require the following overarching principles of trust building, joint leadership, accountability, transparency and a substantial investment of resources.³

Recent policy statements from the Ontario Government have shown an increasing recognition that meaningful Indigenous leadership and participation are essential elements for a successful energy sector. Its recent OAEF, for example, emphasized the need for Indigenous leadership, representation, and participation in Ontario's energy sector. Its introductory paragraphs highlight this focus from the document's outset:

Ontario cannot afford to repeat the same mistakes as past governments and must move forward with energy planning that considers all sources of energy to meet our growing energy needs.

This is a complex undertaking that will require [a] comprehensive view of how all energy sources are used across the economy. The pace of change has accelerated, and this is likely to continue as Ontario becomes home to new technologies and growing industries. Ontario must also plan for localized needs in certain communities and regions, changing the way power must flow across the province.

To meet this challenge, Ontario needs planning and regulatory frameworks that support building infrastructure and resources quickly and cost-effectively, and in a way that continues to promote Indigenous leadership and participation in energy projects....⁴

(Emphasis added.)

Elsewhere, the OAEF lists the following priorities, among others, to strengthen Indigenous leadership and participation in Ontario's energy sector:

- (a) **Early and meaningful engagement and consultation with Indigenous communities on energy planning and major energy projects is critical to building out our energy system;**
- (b) Continued capacity funding and support for Indigenous ownership and participation in energy projects is needed, through programs like the provincial Aboriginal Loan Guarantee Program and the recently expanded IESO Indigenous Energy Support Program;

³ Ontario's Clean Energy Opportunity, Report of the Electrification and Energy Transition Panel, December 2023, page 52: [Ontario's Clean Energy Opportunity - Report of the EETP](#).

⁴ OAEF, page 17.

- (c) Energy procurements need to incorporate the value of Indigenous leadership and participation by building on existing incentives and engagement requirements; and
- (d) **Indigenous representation is critical to ensuring there are Indigenous voices at the table on provincial energy matters.**⁵

(Emphasis added.)

Ontario's even more recent EFG contains similar statements emphasizing the Ontario Government's acknowledgment that meaningful Indigenous participation, representation and leadership in, among other things, energy planning and project development, are essential aspects of Ontario's vision for its energy sector. The EFG devotes a full chapter to a focus on "Indigenous Leadership and Partnership", which commits to economic reconciliation, Indigenous partnerships, and participation:

Advancing economic reconciliation is essential to Ontario's energy future. As the province plans for growing demand and builds out new infrastructure, Indigenous communities are not only key partners in this work, they are leaders in shaping Ontario's energy transformation.

Through equity partnerships, energy planning, and project development, Indigenous communities are helping deliver the generation, transmission, and innovation Ontario needs — while unlocking long-term economic opportunities that build intergenerational prosperity. Ensuring Indigenous communities share in the economic benefits of energy development is at the heart of the province's approach.⁶

Elsewhere, the EFG puts pronounced emphasis on the importance of providing Indigenous representatives a central role in the planning and implementation of new resources and infrastructure, similar to the types of projects contemplated by the IRPF:

Indigenous participation in Ontario's energy future goes beyond project ownership — it includes a central role in planning and implementation of new resources and infrastructure. Partnership enables Indigenous communities to help define priorities, shape project development and ensure long-term benefits align with their values and aspirations.⁷

The document similarly provides particular emphasis on the importance of including Indigenous communities early on in energy planning processes towards, among other things, reducing delays and ensuring the projects reflect local interests and priorities:

Engaging Indigenous communities early in energy planning helps reduce project delays, builds stronger partnerships, and ensures that projects reflect local interests and priorities. Early engagement gives Indigenous communities the opportunity to understand emerging system needs, participate in planning, and position themselves for

⁵ OAEF, page 22.

⁶ Energy for Generations, page 130.

⁷ EFG, page 136.

potential partnership opportunities when new projects – like transmission lines – are identified.⁸

This growing recognition in Ontario’s energy sector of the importance of meaningful Indigenous leadership, partnership and participation, including representation at decision-making tables, is currently missing from the IRPF’s discussion, constituting a gap that should be corrected.

A second significant gap relates to the absence of any reference to UNDRIP, the federal *United Nations Declaration on the Rights of Indigenous Peoples Act*, or the case law that has begun to address UNDRIP’s place in Canadian law, such as the recent Federal Court decision *Kebaowek First Nation v. Canadian Nuclear Laboratories*,⁹ and the Supreme Court’s decisions in *First Nations, Inuit and Metis children, youth and families*¹⁰ and *Dickson v Vuntut Gwitchin First Nation*.¹¹ Each of these sources stands for the position that UNDRIP now serves as an important source for the interpretation of domestic laws, introducing enhanced requirements on matters including but not limited to the duty to consult and accommodate.

For the purposes of a provincial regulator like the OEB, the court’s findings that section 35 should be interpreted in a manner consistent with UNDRIP¹² underscore that UNDRIP informs the assessment of the constitutionality of activities within both the provincial and the federal jurisdiction. Although *Kebaowek* remains, for the time being, a lower court ruling, it is important to note that these findings are consistent with previous case law from the Supreme Court that has used UNDRIP as part of its interpretation of the Charter,¹³ as well as Supreme Court case law that has affirmed the role of customary international law as appropriately informing domestic law, including for the purposes of Charter interpretation.¹⁴

Given these findings, the omission of UNDRIP from the IRPF and the Discussion Paper represents a gap that should be addressed. As *Kebaowek* recognized, the duty to consult and accommodate is properly understood as informed by UNDRIP, including by the standard of free, prior and informed consent (“FPIC”).¹⁵ The Federal Court held that, in light of UNDRIP and FPIC, the duty to consult requires robust, deep consultation that is directed towards finding mutual agreement.¹⁶ Furthermore, the Crown “must make reasonable efforts to alter their processes to build in aspect that respect Indigenous laws, knowledge, and processes.”¹⁷

Taken together, recent policy developments and the impact of UNDRIP on domestic law impose heightened obligations on regulators like the OEB to ensure that its policy frameworks, advisory bodies, and decision-making processes are adequately constructed to advance reconciliation and improve First Nations representation, leadership, and participation in decision-making processes. GFN asks that the OEB expressly recognize these standards and requirements in its

⁸ EFG, page 136.

⁹ 2025 FC 319.

¹⁰ 2024 SCC 5.

¹¹ 2024 SCC 10.

¹² [Kebaowek](#), para. 79-85.

¹³ [Dickson v Vuntut Gwitchin First Nation](#), 2024 SCC 10, para 117.

¹⁴ *R. v. Hape*, 2007 SCC 26; *Nevsun Resources Ltd. v Araya*, 2020 SCC 5; *Saskatchewan Federation of Labour v Saskatchewan*, 2015 SCC 4; *United States v. Burns*, [2001] 1 S.C.R. 283, para. 80.

¹⁵ [Kebaowek](#), paras 177, 130, 133.

¹⁶ [Kebaowek](#), paras 130, 133, 183.

¹⁷ [Kebaowek](#), paras 140, 183.

update to the IRFP, then make strong efforts to deliver on them, as detailed in the recommendations below.

Question #6: How do you see the role of the IRP Working Group evolving under an updated IRP Framework? Do you agree with OEB Staff's proposed approach? Why or why not?

GFN generally agrees with OEB Staff's proposal for the IRP Working Group to review and provide substantive input on a draft of the IRP implementation plan prior to adjudication, subject to the following:

- It is a problematic gap that, at present, GFN is aware of no Indigenous representation on the IRP Working Group. Nor is GFN aware of any specific efforts that the working group is required to undertake in order to remedy this gap or to ensure that the interests of First Nations are fairly represented as part of deliberations.

The working group should ensure that its membership includes First Nations representation, along with adequate capacity funding. Adequate representation could help the OEB to promote meaningful Indigenous leadership, participation, and general engagement at earlier stages of the decision-making process as it relates to IRP. It could also increase the likelihood of Indigenous participation in IRP projects themselves, and that First Nations communities will have their interests considered and promoted.

- It is unclear from the Discussion Paper whether the working group is merely reactive, or whether OEB Staff's recommended approach includes the ability on the part of the working group to raise topics for discussion and to issue binding requests to EGI for information or other discussion. GFN would support a more empowered IRP working group, equipped with the tools to meaningfully consider the full range of opportunities at an early stage and maximizing the full potential of the expertise of the working group's membership.

Question #8: Which, if any, of the four proposed oversight mechanisms for innovation-related proposals do you support and why?

Related to the comments set out above in relation to Question #6, GFN believes that, whichever oversight mechanism the OEB ultimately adopts, it should expressly provide for meaningful Indigenous participation so that Indigenous perspectives, concerns and interests are raised at the earliest stages. A structure that guarantees effective Indigenous engagement increases the odds that Indigenous interests will be reflected in outcomes, the opportunities for Indigenous support, as well as opportunities for Indigenous partnership or employment as part of a project that is ultimately pursued.

As a result, GFN believes there are strong advantages to preserving some form of the IRP Working Group, so long as the working group's notable lack of Indigenous representation is corrected. If it works effectively, the Working Group should be able to provide participants with the opportunity to raise concerns, identify opportunities, and engage in general discussions in a way that can shape proposals in respect of which EGI ultimately seeks approvals. The key advantage is that this can take place before EGI publicly commits to a position, at which point the introduction of compromise or entirely different approaches can become more difficult to incorporate.

A model that allows for a more collaborative or creative approach is especially important in circumstances where IRP proposals will often present a break with EGI's current ways of doing business and potentially conflict with the company's short-term interests.

Maintaining the working group could complement OEB Staff's recommended approach, since the working group could provide valuable input and advanced consideration before EGI's proposals are subjected to heightened scrutiny in a more formal proceeding.

Question #9: What assessment criteria would best support value-driven innovation? Do you agree with the five considerations proposed by OEB staff?

GFN believes that OEB Staff's assessment criteria are a good start, subject to the following comments:

- Under the "risk and oversight" criterion, consideration of how risks and uncertainties may affect Indigenous customers (i.e., not just "customers" generally) should be made explicit. Absent this express guidance, GFN believes the interests of Indigenous customers may never be specifically analyzed, overlooking the distinct energy circumstances that many First Nations communities face in terms of connections with their territories, remote locations, access to reliable and affordable energy, access to energy alternatives, lack of financial resources, and increased vulnerability to the burden of stranded assets in the context of the energy transition.

GFN's suggested amendment to OEB staff's currently proposed language is: "Describe uncertainties and risks, including those that may affect Indigenous and non-Indigenous customers..."

- For the same reasons, the consideration of the interests of Indigenous customers should be made express with respect to the "Evaluation and Scalability" criterion. The distinct circumstances of many First Nations communities mean that some IRP projects may be more challenging to implement in those communities (i.e., in some cases, absent complementary programming) and some IRP projects may offer even greater benefits to First Nations communities that currently suffer from a shortage of viable energy alternatives.

Accordingly, GFN proposes the following amendment to OEB Staff's suggested language: "Identify how the outcomes of the proposed solution would be evaluated and assessed and outline a transition plan for broader deployment, including on reserve in First Nations communities, if the proposal proves successful, including key milestones and decision points."

- Finally, GFN believes that OEB Staff's proposed criteria may be inadvertently tilted towards a focus on a project's risks over its potential benefits. While some potential benefits will be addressed as part of an evaluation under Criterion #1 (Potential to Address System Needs), there is currently no obvious location to consider benefits such as environmental and/or sustainability impacts, Indigenous employment and/or partnership opportunities, or impact on reconciliation more broadly.

GFN therefore proposes that a new criterion be introduced that allows the proponent to identify any further "Potential to Produce Additional Benefits". As part of any such new

criterion, EGI should be expressly provided the opportunity to identify any benefits relating to environmental and/or sustainability impacts, Indigenous employment and/or partnership opportunities, or impact on reconciliation more broadly, in addition to any other potential benefits as appropriate.

Concluding Remarks

These submissions have advanced the idea that the anticipated updates to the IRPF provide an important opportunity to advance reconciliation in Ontario's energy sector by support First Nations participation, leadership, and engagement, but that this opportunity has been generally overlooked in the Discussion Paper.

GFN respectfully asks the OEB to adopt updates that better promote these priorities, in a manner consistent with recent policy statements from the Ontario Government, the case law developing in relation to UNDRIP, and the requirements of UNDRIP itself.

Yours sincerely,

Nicholas Daube