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File # 6854

December 3, 2025

Via RESS

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

Attention: Ritchie Murray, Acting Registrar

Re: Enbridge Gas Inc. EB-2025-0065 – Enbridge Gas Inc. Five-Year Gas Supply Plan

Dear Mr. Murray:

We provide these submissions on behalf of Ginoogaming First Nation (“**GFN**”) and in advocacy of the position that Enbridge Gas Inc.’s (“**EGL**”) Gas Supply Plan (“**GSP**”) fails to address the specific interests of First Nations, resulting in a plan that fails to meet the Ontario Energy Board’s (“**OEB**” or “**Board**”) requirements.

Notably, the GSP includes no section dedicated to the implications of its proposals for First Nations, representing a massive gap. In fact, it contains no express consideration of Indigenous interests whatsoever, despite the impact that supply decisions will have on the traditional territories of First Nations that the pipelines of EGL and its suppliers cross.

This categorical omission renders impossible the Board’s task of determining whether EGL has appropriately balanced the three guiding principles applicable to gas supply plans, in a way that is prudent and delivers value to customers. It also leaves EGL’s analysis of relevant public policy objectives incomplete, lacking any consideration as to how its decisions may support or undermine reconciliation.

For the reasons that follow, GFN requests that the Board order that:

- reconciliation should expressly form part of EGL’s proposed approach to balancing the Board’s three guiding principles for the assessment of gas supply plans;
- in particular, reconciliation should form part of EGL’s consideration of relevant public policy objectives;
- EGL’s proposal should include an assessment of the implications of available options for First Nations, including any impact that decisions will have on the territories of First Nations located in Ontario. These should include any likely increase (or decrease) of

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required maintenance operations, stranded asset risk, or environmental impacts generally, in addition to an assessment of whether the supply decision is likely to give rise to a need for additional infrastructure in First Nations territories in the future. Impacts should include those relating to infrastructure owned by EGI's suppliers and located in Ontario, such that the Board can understand and evaluate the material impacts of EGI's supply decisions for First Nations in a comprehensive way not obscured by corporate separation;

- EGI's GSP should not receive final approval until such time as this information and these issues are properly considered; and
- For the purposes of future gas supply plans and annual updates, EGI should be required to discuss its plans with the Indigenous Working Group in a manner and with sufficient time so as to allow for the raising of Indigenous interests and concerns, such that EGI has the opportunity to address those interests and concerns (as appropriate) in its submission to the Board.

The Proposed GSP Impacts First Nations and Their Lands, Which EGI Has Failed to Examine

In OEB Staff's review of EGI's Annual Update ("**OEB Staff Review**"), OEB Staff recognized that EGI's supply decisions had consequences for, among other things, upstream long-haul transportation and upstream pipeline usage. OEB Staff characterized the objective of the GSP in a manner that anticipates a relationship with and therefore implications for the operations of upstream partners:

The objective of Enbridge Gas's GSP is to identify an efficient combination of upstream transportation, supply purchases and storage assets to serve sales service and bundled (direct purchase) customers' annual, seasonal and design day natural gas delivery requirements.¹

The OEB Staff Review also recognized that, beyond just partnership, EGI's choices have an impact on utilization rates for long-haul transportation and pipeline utilization. The report devotes a section to "Unutilized Capacity", noting at the time that EGI did not plan for any unutilized capacity for the EGD rate zone on its TCPL long-haul transportation, that EGI planned unutilized capacity in the Union North rate zones, and that it planned for upstream pipeline capacity to flow at 100% utilization in the Union South rate zone.²

In short, EGI's decisions to source from any given supply point over another produce significant implications (whether positive or negative) for the utilization of area infrastructure. This in turn has implications for First Nations in terms of the amount of infrastructure maintenance and monitoring that will take place on their territories,³ longer-term risks of stranded or underutilized assets, as well as the risk of aging or underused infrastructure with attendant environmental and/or safety risks.

¹ EB-2024-0067, OEB Staff Report, "Review of 2024 Annual Update to Enbridge Gas Inc. Natural Gas Supply Plan", page 8.

² OEB Staff Review, page 25.

³ Ontario's Superior Court of Justice has characterized some of a pipeline operator's maintenance activities, such as integrity digs and hydrostatic tests, as "very invasive insofar as they require extensive disruption of the land". See *Aroland First Nation v. Transcanada Pipelines Limited*, [2018 ONSC 4469](#), at para. 24.

From the perspective of First Nations like GFN, the essential question is the impact that EGI's gas supply decisions will have on its territories, regardless of whether the impacts are directly linked to infrastructure owned and operated by EGI. Put another way, EGI should not be entitled to exclude from its analysis consequences significant to First Nations on the basis of corporate separation, but this is exactly the risk that EGI's proposed GSP creates.

EGI admits that the GSP includes no examination of the specific concerns or interests of First Nations. There are similarly no sections of the GSP expressly guided by EGI's Indigenous Reconciliation Plan, and the GSP contains no substantive references to First Nations or Indigenous peoples.⁴ It also acknowledges that it did not engage or consult with First Nations in preparing the gas supply plan, and it did not present to the Indigenous Working Group on the gas supply plan.⁵

EGI's failure to investigate or discuss the interests of First Nations appears, in part, to be based on a misguided and arbitrarily narrow view of the extent to which the proposals set out in the GSP will affect First Nations. EGI has historically denied that their gas supply plans have an impact on traditional lands or on treaty rights.⁶ Statements from the stakeholder conference for EGI's 2024 Annual Update provide a recent example of this:

The gas supply plan update does not have an impact on traditional lands or on Aboriginal and treaty rights, and, therefore, Enbridge Gas has not undertaken a consultation as it would in relation to an application for facilities that may have a potential impact on traditional lands or Aboriginal and treaty rights.⁷

In the current proceeding, EGI confirmed that its position remains the same, elaborating with additional detail:

Enbridge Gas's position remains the same in the current proceeding. The gas supply plan focuses on the movement of the gas molecules using existing facilities. Hence, the gas supply plan does not have any impact on traditional lands or on Aboriginal and treaty rights. If new facilities were required, Enbridge Gas would consult with potentially affected Indigenous groups in relation to the potential adverse impacts such facilities may have on traditional lands or on Aboriginal and treaty rights as part of a Leave to Construct application, if required.⁸

As described below, EGI's failure to examine the broader impacts of its supply decisions for First Nations, such as impacts on maintenance and monitoring activities that take place on their territories, is not only arbitrarily narrow in its focus, it is also inconsistent with established public policy and developing jurisprudence.

⁴ Technical conference transcript, volume 1, pages 111-112.

⁵ Exhibit I.1-GFN-1, Responses C-E.

⁶ As set out in further detail below, EGI has also confirmed that there is not sufficient certainty on the question of whether, for the purposes of this proceeding, public policy directly includes Indigenous and First Nations matters such that it should form part of EGI's analysis. See Technical conference transcript, volume 1, pages 114.

⁷ EB-2024-0067, Consultation Transcript, pages 22-23.

⁸ Exhibit I.1-GFN-2, Response A.

EGL's Omission Is Inconsistent with Established Public Policy and Developing Case Law

EGL's failure to examine the implications of its proposals for First Nations located in Ontario leaves the GSP inconsistent with the Board's three guiding principles for assessing gas supply plans, since it fails to support established public policy on issues relating to reconciliation.

EGL's position at the technical conference was that there is not sufficient certainty on the question of whether, for the purposes of its analysis in this proceeding, public policy should include Indigenous and First Nations matters.⁹ However, contrary to EGL's position, the current state of public policy in Ontario, developing jurisprudence relating to United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP"), as well as UNDRIP itself, underscore the energy sector's growing commitment to promoting reconciliation, partnerships with and the support of Indigenous peoples as necessary components to a successful energy transition and energy sector.

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 participation by Indigenous peoples, as essential elements of a successful energy transition and energy sector.
- Canada's adoption of 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 and interests, as the Federal Court recently affirmed.

The consideration of how reconciliation should inform proposals like the GSP 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.¹⁰

Recent policy statements from the Ontario Government have shown an increasing recognition that meaningful reflection of Indigenous interests, perspectives and concerns, supported through Indigenous leadership and participation, are essential elements for a successful energy sector. For example, the OAEF lists the following priorities, among others, to strengthen Indigenous leadership and participation in Ontario's energy sector:

⁹ Technical conference transcript, volume 1, pages 114.

¹⁰ 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](#).

Early and meaningful engagement and consultation with Indigenous communities on energy planning and major energy projects is critical to building out our energy system.¹¹

Ontario's even more recent EFG puts particular emphasis on the importance of including Indigenous communities early on in energy planning processes towards, among other things, reducing delays and ensuring that 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 potential partnership opportunities when new projects – like transmission lines – are identified.¹²

In its failure to examine the impacts of its proposals on First Nations and their territories, the GSP fails to keep pace with the growing recognition in Ontario's energy sector of the importance of meaningful inclusion of Indigenous the full extent of Indigenous interests and concerns.

Case law developing in relation to UNDRIP and the federal *United Nations Declaration on the Rights of Indigenous Peoples Act* only increases the onus on regulators like the OEB to ensure that 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*,¹³ and the Supreme Court's decisions in *First Nations, Inuit and Metis children, youth and families*¹⁴ and *Dickson v Vuntut Gwitchin First Nation*.¹⁵

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. As *Kebaowek* recognized, tribunals "must make reasonable efforts to alter their processes to build in aspects that respect Indigenous laws, knowledge, and processes."¹⁶

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 UNDRIP¹⁷ 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,¹⁸ 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.¹⁹

¹¹ [OAEF](#), page 22.

¹² [Energy for Generations](#), page 136.

¹³ [2025 FC 319](#).

¹⁴ [2024 SCC 5](#).

¹⁵ [2024 SCC 10](#).

¹⁶ [Kebaowek](#), paras 140, 183.

¹⁷ [Kebaowek](#), para. 79-85.

¹⁸ [Dickson v Vuntut Gwitchin First Nation](#), 2024 SCC 10, para 117.

¹⁹ *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.

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, decision-making processes, and expectations for the utilities under its jurisdiction are adequately constructed to advance reconciliation, ensure that Indigenous interests and concerns are properly reflected, and improve First Nations representation, leadership, and participation in decision-making processes.

The GSP cannot be said to meet this standard, given its narrow focus and the consequent total omission of any examination of the impact the GSP will have on the territories of First Nations located in Ontario from the analysis.

Concluding Remarks

These submissions have argued that the GSP's failure to address the consequences of its proposals for First Nations leaves it unable to satisfy the Board's three guiding principles for gas supply plans. The decision not to examine the implications for First Nations and their territories renders the GSP well behind the advancing requirements in both the public policy and jurisprudential spheres, both of which increasingly call for processes that are inclusive of Indigenous interests and concerns.

Accordingly, GFN respectfully asks that the Board order that:

- reconciliation should expressly form part of EGI's proposed approach to balancing the Board's three guiding principles for the assessment of gas supply plans;
- in particular, reconciliation should form part of EGI's consideration of relevant public policy objectives;
- EGI's proposal should include an assessment of the implications of available options for First Nations, including any impact that decisions will have on the territories of First Nations located in Ontario. These should include any likely increase (or decrease) of required maintenance operations, stranded asset risk, or environmental impacts generally, in addition to an assessment of whether the supply decision is likely to give rise to a need for additional infrastructure in First Nations territories in the future. Impacts should include those relating to infrastructure owned by EGI's suppliers and located in Ontario, such that the Board can understand and evaluate the material impacts of EGI's supply decisions for First Nations in a comprehensive way not obscured by corporate separation; and
- EGI's GSP should not receive final approval until such time as this information and these issues are properly considered; and

- For the purposes of future gas supply plans and annual updates, EGI should be required to discuss its plans with the Indigenous Working Group in a manner and with sufficient time so as to allow for the raising of Indigenous interests and concerns, such that EGI has the opportunity to address those interests and concerns (as appropriate) in its submission to the Board.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'NDaube', is positioned below the closing text.

Nicholas Daube