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BY EMAIL

May 6, 2026

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

**Ontario Energy Board (OEB) Staff Submission
Enbridge Gas Inc. – Port Colborne Reinforcement Project – Application for
Exemption from Leave-to-Construct (LTC) Requirement
OEB File Number: EB-2025-0301**

Dear Mr. Murray:

Please find attached OEB staff's submission in the above referenced proceeding, pursuant to Procedural Order No. 5.

Randy Doradat
Advisor, Natural Gas

Encl.

c: All parties in EB-2025-0301



ONTARIO ENERGY BOARD

OEB Staff Submission

Enbridge Gas Inc.

Port Colborne Reinforcement Project

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

EB-2025-0301

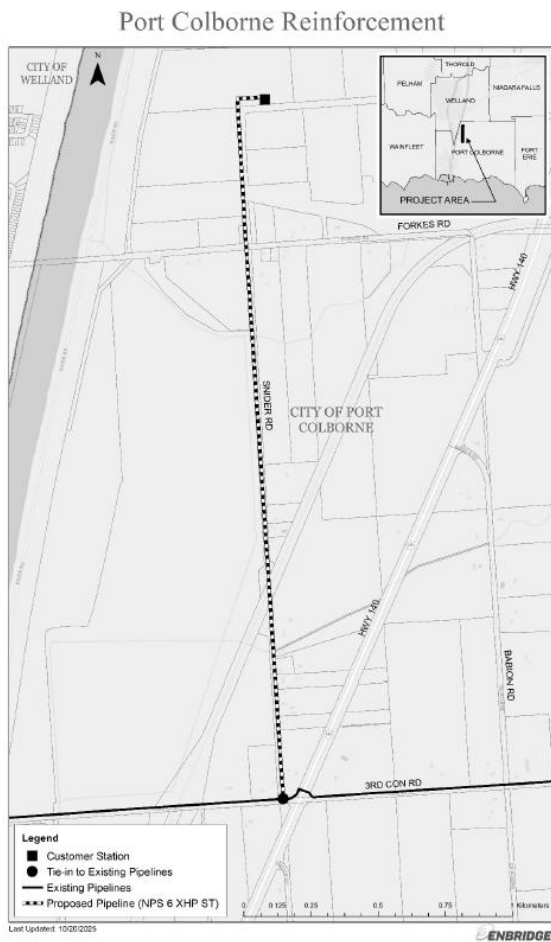
May 6, 2026

INTRODUCTION

Enbridge Gas Inc. (Enbridge Gas) applied to the Ontario Energy Board (OEB) on November 7, 2025, 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 in the City of Port Colborne, Regional Municipality of Niagara (Project).

The Project is expected to cost \$9.1 million and serve an industrial customer in the City of Port Colborne, Regional Municipality of Niagara.

The proposed project consists of approximately 2.65 kilometres (km) of Nominal Pipe Size (NPS) 6-inch steel (ST) extra high pressure (XHP) natural gas distribution pipeline. The pipeline will travel approximately 2.65 km along Snider Road and will tie into the existing NPS 8 ST XHP Enbridge Gas system at the 3rd Concession Road. A general location of the Project is shown in the map below.¹



¹ Exhibit A, Tab 2, Schedule 1, Attachment 1, page 1 of 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). 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 required only by virtue of section 90 (1) of the OEB Act, specifically because the cost of the Project is more than \$2 million. However, 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.

PROCESS

As part of the evidence in this proceeding, Enbridge Gas filed the delegation letter from the Ministry of Energy and Mines (Ministry), dated April 4, 2025, in which the procedural aspects of the Crown's duty to consult in relation to the Project were delegated to Enbridge Gas. The delegation letter identified the following Indigenous communities to be consulted:

- Haudenosaunee Confederacy Chiefs Council (HCCC)
- Mississaugas of the Credit First Nation (MCFN)
- Six Nations of the Grand River (Elected Council) (Six Nations)

The OEB served each potentially impacted community a Notice of Hearing on December 2, 2025. The Notice of Hearing provided each potentially impacted Indigenous community until December 15, 2025 to become an intervenor, comment or ask to follow the hearing as a monitor.

On December 8, 2025 Six Nations requested intervenor status and on December 12, 2025 requested to be approved for cost award eligibility in the proceeding.

On January 9, 2026, the OEB issued Procedural Order No. 1 which granted intervenor

status and cost award eligibility to Six Nations. Procedural Order No. 1 set out a schedule for written discovery on Enbridge Gas' application and for written submissions by OEB staff, Six Nations and Enbridge Gas.

On January 12, 2026 Six Nations asked for an extension of the timeline set in Procedural Order No. 1. On January 28, 2026, in Procedural Order No. 2, the OEB approved the extension request by Six Nations and set an extended procedural schedule. According to the schedule, OEB staff and Six Nations filed interrogatories to Enbridge Gas on February 17, 2026, and Enbridge Gas filed responses on March 2, 2026.

On March 10, 2026, Six Nations requested leave of the OEB to file evidence and included the evidence at issue, an unsworn affidavit with attached exhibits. On March 12, 2026, the OEB issued Procedural Order No. 3 suspending further procedural deadlines in order to address Six Nations' correspondence. Six Nations subsequently sent a sworn version of the affidavit with attachments on March 18, 2026.

On March 26, 2026, the OEB issued Decision on Intervenor Evidence and Procedural Order No. 4, granting leave for Six Nations to file its requested evidence and setting out further procedural steps including written interrogatories with respect to Six Nations' evidence and for Six Nations to file written responses to any interrogatories, as well as a schedule for parties' written submissions. OEB staff subsequently filed interrogatories for Six Nations on April 7, 2026, and Six Nations filed responses on April 22, 2026.

On April 24, 2026, OEB staff filed a request that the proceeding be placed in abeyance to allow for the Ministry's Letter of Opinion expressing its view on the adequacy of Indigenous consultation to be placed on the record. On April 28, 2026 the OEB denied OEB staff's request for abeyance and extended the procedural schedule for two calendar days setting May 6, 2026 as the date for OEB staff's and Six Nations' submissions and May 19, 2026 for Enbridge Gas' reply submissions.

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:

- Early (i.e. pre-application) identification of potentially impacted Indigenous communities by the Ministry of Energy and Mines (Ministry) and a 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.
- Once the application is filed, the provision of notice by the OEB to all potentially impacted Indigenous communities, 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 and impacted Indigenous communities who choose to intervene in the proceeding to file evidence that is relevant to the application, including evidence related to the duty to consult.
- The opportunity, as permitted by the OEB, for OEB staff, impacted Indigenous communities who choose to intervene in the proceeding and the applicant to file written submissions with the OEB.

OVERVIEW OF OEB RECORD – INDIGENOUS CONSULTATION

Delegation Letter

The Ministry issues two formal letters to proponents who apply for OEB approval of hydrocarbon facilities project with regard to the Indigenous consultation:

- i) A Delegation Letter,³ at the onset of consultation prior to filing an application

² OEB Environmental Guidelines, pages 16-18 Chapter 3.2 Indigenous Consultation

³ Application, Exhibit H, Tab 1, Schedule 1, Attachment 2-Delegation Letter, April 4, 2025

with the OEB, delegating the procedural actions of consultation to applicants.

- ii) A Letter of Opinion, with the Ministry's assessment of adequacy of procedural aspects of consultation. This letter has not yet been filed by Enbridge Gas. Enbridge Gas stated that it will be filed with the OEB upon receipt.⁴

As noted above, the Delegation Letter dated April 4, 2025 identified HCCC, MCFN and Six Nations as Indigenous communities that should be consulted in relation to the Project, and formally assigned responsibility for implementation of procedural aspects of consultation to Enbridge Gas.

The Ministry's Delegation Letter stated that its preliminary assessment determined that a moderate level of consultation, at minimum, is appropriate for Enbridge Gas' consultation with each of the three Indigenous communities. The Delegation Letter also noted that Enbridge Gas should inform the Ministry and seek updated guidance if, during the consultation, information becomes available suggesting that project impacts will be significant enough to warrant a deeper level of consultation.

The Delegation Letter also notes that "...An ICR should be maintained and updated throughout the life of the Project, and ICR updates should be provided to [the Ministry] from time to time if any new s.35 rights-based issues or concerns are identified before key Project milestones."⁵

Enbridge Gas' Evidence Regarding Pre-application Engagement

The evidence filed by Enbridge Gas indicates that it provided the following information to MCFN, Six Nations, and Haudenosaunee Development Institute (HDI) who represents HCCC⁶, prior to filing the exemption application with the OEB:⁷

- Initial notice of the Project, April 22, 2025
- Notice of Upcoming Project including Map of the Project Location, April 25, 2025
- Notification Letter and Notice of Study Commencement, May 8, 2025
- Virtual Information Sessions letters (sessions were held from May 26, 2025 to June 9, 2025)
- Invitation to field verification surveys, May 2025

⁴ Enbridge Gas Inc. Application, Exhibit H, Schedule 1, page 1.

⁵ ibid

⁶ <https://www.haudenosauneeconfederacy.com/departments/haudenosaunee-development-institute/>

⁷ Exhibit H, Tab 1, Schedule 1, Attachment 6

- Capacity funding offer, June 2025
- Notice of Preferred Route, July 2025
- Environmental Report, providing information about the potential effects of the Project on the environment, September 2025

Copies of all the information noted above have been included in Enbridge Gas' application evidence.

ICR and Consultation Log

Enbridge Gas provided the ICR and consultation log with its evidence to the OEB and to the Ministry on November 7, 2025 (the date of filing this application). The November 7, 2025 ICR covers consultation activities from April 22, 2025 to October 23, 2025.

Enbridge Gas filed updates to the ICR and the log as of February 24, 2026 in response to OEB staff interrogatories.⁸ The ICR and the consultation log include copies of emails and other communication with the Indigenous communities and the Ministry. According to the updated ICR, HDI and Six Nations have outstanding concerns as of the date of the ICR, February 24, 2026. Enbridge Gas' updated ICR indicates that MCFN's concerns have been addressed and that it has no outstanding concerns with the Project.

In its application, Enbridge Gas stated that it will continue to actively engage with all identified Indigenous communities in meaningful ongoing dialogue concerning the Project and endeavor to meet with each Indigenous communities, to exchange information and 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.⁹

Capacity Funding

In response to OEB staff interrogatories, Enbridge Gas noted that it offered funding to MCFN, Six Nations, and HDI. According to Enbridge Gas, capacity funding will support consultation. According to the ICR, the Capacity Funding Agreements were executed with MCFN and Six Nations. Enbridge Gas filed the form of capacity funding letter that was executed in favor of each of MCFN and the Six Nations with interrogatory responses.¹⁰

Enbridge Gas indicated that it has discussed with HDI capacity funding mechanisms and HDI participation in fieldwork monitoring for the Stage 2AA, which is planned to be conducted in spring 2026. Enbridge Gas stated it plans to continue to engage with HDI to

⁸ Enbridge Gas Inc. Response to interrogatories by OEB Staff I.STAFF-1,

⁹ Enbridge Gas Inc. Application, Exhibit H, Tab 1, Schedule 1, page 3, paragraph 9

¹⁰ Enbridge Gas Inc. Response to interrogatories by OEB Staff I.STAFF-1

finalize a form of a monitoring agreement and any acceptable capacity funding arrangements that may be requested by HDI.¹¹

Six Nations' Evidence and Concerns, and Enbridge Gas' Response

In this proceeding, Six Nations filed an affidavit with attachments, which the OEB accepted onto the record as evidence. The affidavit is sworn by Peter Graham, Consultation Supervisor of the Six Nations of the Grand River.

Six Nations' affidavit describes consultation between Enbridge Gas and Six Nations starting with first notification by Enbridge Gas on April 22, 2025, until November 25, 2025.¹²

The affidavit describes the issues and concerns raised by Six Nations, and Enbridge Gas' activities in response to Six Nations' concerns. The concerns of Six Nations include: lack of baseline data in Enbridge Gas' route selection methodology, cumulative impacts of the Port Colborne Project, and the adequacy of the Environmental Report. The affidavit states that Enbridge Gas "...failed to take seriously..."¹³ Six Nations' need for baseline data prior to route selection. The affidavit also states that Enbridge Gas filed the application with the OEB while the consultation was "...only just beginning...".¹⁴ The affidavit states that the preferred route for the Project was chosen without considering Six Nations' Indigenous perspective.¹⁵

Additionally, Six Nations stated that Enbridge Gas took the position that there would be no forthcoming responses to the concerns raised by Six Nations in their June 2025 meeting because it was a verbal meeting and the concerns were not received in writing. Six Nations stated they explained to Enbridge Gas they are primarily oral people and that a requirement for them to voice their concerns in writing after it was done orally, was inappropriate.¹⁶

In its March 18, 2026 response to Six Nations' request for leave to file evidence, Enbridge Gas disputed several aspects of Six Nations' affidavit including that it did not engage in consultation prior to a preferred pipeline route being selected.¹⁷ Subsequently, in correspondence of March 23, 2026, Six Nations stated that Enbridge Gas' March 18, 2026 correspondence contained several inaccuracies.¹⁸

¹¹ Enbridge Gas Inc. Response to interrogatories by OEB Staff I.STAFF-1, g)

¹² Six Nations of the Grand River, Evidence, March 18, 2026

¹³ Six Nations of the Grand River, Evidence, March 18, 2026, paragraphs 28-41, pages 8-11

¹⁴ Six Nations of the Grand River, Evidence, March 18, 2026, paragraph 46, page 12

¹⁵ Six Nations of the Grand River, Evidence, March 18, 2026, paragraphs 11-12, pages 3-4

¹⁶ Six Nations of the Grand River, Evidence, March 18, 2026, paragraphs 38-39, pages 10-11

¹⁷ Enbridge Gas Reply to Six Nations of the Grand River (SNGR) Request for Leave to File Evidence, March 18, 2026

¹⁸ Six Nations Response to Enbridge's Letter dated March 18, 2026, March 23, 2026

In responses to OEB staff interrogatories on the intervenor evidence, Six Nations stated that Six Nations met with Enbridge Gas on April 21, 2026 and that no progress had been made following the meeting on November 25, 2025. Six Nations maintained that their concerns remained unaddressed by Enbridge Gas.¹⁹ Also, Six Nations stated that in their June 2025 meeting, Enbridge Gas said it would review Metrolinx’s vegetation guide to determine where its policies in this area could be improved, but in their April 21, 2026 meeting, said it had not reviewed the guide. In addition, Six Nations referred to “financial accommodation” and stated that in their April 21, 2026 meeting, Enbridge Gas refused to discuss it in good faith and took the position that none is owed.²⁰

On April 29, 2026, Enbridge Gas filed comments in response to Six Nations’ responses to OEB Staff interrogatories. Enbridge stated that the consultation has been adequate to discharge the duty to consult. It stated that it believed its April 21, 2026 meeting to be constructive and productive, and that it has made significant efforts to explain and answer questions with respect to project assessments and studies. Regarding Six Nations’ comments on “financial accommodation”, Enbridge Gas stated that it clearly explained why, in its view, financial accommodation is not warranted for the project, accounting for negligible expected project impacts and its commitment to implement appropriate mitigation measures. Enbridge Gas stated as per the ICR, it offered capacity funding to all First Nations identified by the Ministry, which Six Nations accepted. With regards to the Metrolinx vegetation guide, Enbridge Gas stated it committed at the April 21 meeting to review the guide.²¹

ENBRIDGE GAS’ VIEWS ON ABEYANCE

As noted above, on April 27, 2026, the OEB denied OEB staff’s request that this proceeding be placed in abeyance and for procedural steps to resume after the Ministry’s Letter of Opinion has been filed. Subsequently, on April 29, 2026, Enbridge Gas filed correspondence which responded to Six Nations’ responses to OEB interrogatories, as discussed above. This correspondence also made comments regarding placing this proceeding in abeyance.

With respect to the subject of abeyance, Enbridge Gas stated that the determination of whether the duty to consult has been discharged must be made by the OEB and it is well-suited to do so even in the absence of a Letter of Opinion from the Ministry. Enbridge Gas stated that per the OEB’s *Environmental Guidelines for Hydrocarbon Projects and Facilities in Ontario* (Guidelines), the Letter of Opinion will be provided to the applicant prior to the record being closed by the OEB. Enbridge Gas stated this implied the Ministry must work within the OEB’s procedural timelines and therefore the OEB should not

¹⁹ Six Nations Response to OEB staff interrogatories 1 and 2, April 7, 2026

²⁰ SNGR Response to Interrogatories of OEB Staff, April 22, 2026, Response to Question (1) (b)

²¹ Enbridge Gas Comments on Interrogatory Responses of Six Nations of the Grand River (SNGR) and OEB Staff Abeyance Recommendation, April 29, 2026

suspend timelines to accommodate further Ministry consultation with First Nations for whom there already exists a robust consultation record.

Enbridge Gas referenced Investment Ontario's letter of comment²² stating Investment Ontario is of the view that any further delays would have significant and detrimental financial and implementation impact to the project of the sole customer to be served by this pipeline.

Enbridge Gas stated abeyance would introduce unnecessary delay and materially increase the risk that the Project will be unable to achieve its planned in-service date and consequently adversely affect the customer's project, according to Investment Ontario. Enbridge Gas stated that this uncertainty is costly for both Enbridge Gas and prospective customers, and it sends a clear signal of discouraging timely investment and economic growth in the province, contrary to aims of the province as outlined in its Integrated Energy Plan.

OEB STAFF SUBMISSIONS

OEB staff observes that Enbridge Gas generally followed the current protocol for Indigenous consultation set in the OEB Environmental Guidelines for hydrocarbon projects. OEB staff observes that Enbridge Gas provided an update to the ICR up to February 24, 2026, in response to OEB staff interrogatories. In OEB staff's view, these recent updates reflect that Enbridge Gas' consultation has been taking place and has been ongoing since April 2025. Enbridge Gas shared the Environmental Report for the Project with the Indigenous communities in September 2025.²³ The updated ICR notes that Six Nations and HDI still have outstanding concerns and that Enbridge Gas has committed to continue consultation on the outstanding issues raised by Six Nations and HDI.

OEB staff submits that Enbridge Gas and Six Nations have very different positions regarding the productivity of the consultation that has occurred. This is indicated most recently in Six Nations' responses to OEB staff interrogatories on its evidence along with Enbridge Gas' response to those interrogatory responses, which both reference their most recent meeting of April 21, 2026. OEB staff notes that per the most recent evidence, Six Nations believes their concerns have gone unaddressed by Enbridge Gas while Enbridge Gas believes it has sufficiently discharged the duty to consult.

Based on this evidence, OEB staff submits that further time may be needed for consultation between Enbridge Gas and Indigenous communities.

OEB staff suggests that Enbridge Gas, in its reply submission, describe the progress of

²² Filed April 22, 2026

²³ Enbridge Gas Inc. Application, Exhibit F, Tab 1, Schedule 1, page 3, paragraph 9

consultation since the April 21, 2026 meeting. The updates could include any issues or concerns still subject to the consultation, how these issues or concerns will be addressed and the anticipated timeline for addressing or accommodating them.

OEB staff notes that the Ministry coordinates the Crown's duty to consult obligations, engages directly with Indigenous communities, and has first-hand knowledge about the consultation. This information factors into the assessment that leads to a Letter of Opinion. OEB staff submits that the Ministry's Letter of Opinion is important to the decision before the OEB. OEB staff suggests that Enbridge Gas provide information on the anticipated timeline for filing the Ministry's Letter of Opinion, and identify outstanding issues that may delay filing the Letter of Opinion.

OEB staff notes that denial of its request for abeyance²⁴ was partially due to there being outstanding procedural steps outlined in prior Procedural Orders. OEB staff notes that the only remaining procedural step after the current submission is Enbridge Gas' reply submission. OEB staff submits that upon receipt of Enbridge Gas' reply submission, if the Letter of Opinion is not filed, and in light of there being no remaining procedural steps, placing the application in abeyance could be revisited. The abeyance would allow more time for the Ministry's Letter of Opinion to be placed on the record and for more consultation, as needed. If any new information arises as a result of a further filing by Enbridge Gas related to the duty to consult, OEB staff may file additional correspondence with its view on the appropriate next steps.

In regards to Enbridge Gas' April 29, 2026 letter, OEB staff submits that the OEB has no authority over when the Ministry may issue Letters of Opinion. Additionally, OEB staff submits that while Enbridge Gas raised cost, need and customer-related issues, the issue to be decided by the OEB in this proceeding is whether the duty to consult has been adequately discharged.

OEB staff submits that, if the OEB determines that Crown's duty to consult has been adequately discharged and the OEB grants an order under subsection 95(2) of the OEB Act the exemption should be granted subject to proposed conditions of approval (see Schedule A).

-All of which is respectfully submitted~

²⁴ Decision on Abeyance Request and Procedural Order No. 5, April 28, 2026

Schedule A
Conditions of Approval
EB-2025-0301
May 06, 2026

Enbridge Gas Inc.
EB-2025-0301

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-2025-0301 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.