

**Ontario Energy Board
EB-2025-0313**

**IN THE MATTER OF *an application by Enbridge Gas Inc. for exemption
from leave to construct a natural gas pipeline and associated facilities in the
City of Burlington***

**SUMMARY OF THE SUBMISSIONS OF THE INTERVENOR, SIX
NATIONS OF THE GRAND RIVER**

SUMMARY OF THE SUBMISSIONS OF THE INTERVENOR

PART I - INTRODUCTION

1. The Intervenor, Six Nations of the Grand River (“**SNGR**”), opposes Enbridge Gas Inc. (“**Enbridge**”)’s application to the Ontario Energy Board (the “**Board**”) for exemption from leave-to-construct for the Cedar Springs Community Expansion Project (the “**Project**”). Enbridge has failed to adequately discharge the duty to consult and accommodate SNGR, as delegated to it by the Ministry of Energy and Mines (“**MEM**”). MEM, which retains the ultimate responsibility to adequately consult, has also failed to meet its duty. Enbridge’s application must be denied.

PART II - SUMMARY OF FACTS

2. On October 19, 2021, MEM delegated to Enbridge the procedural aspects of the Crown’s constitutional duty to consult and accommodate with respect to the Project. MEM delivered a delegation letter setting out what it viewed as the consultation requirements for the Project.¹ These obligations included: (1) providing SNGR with sufficient notice and information to make its views known; (2) ensuring that SNGR received notices and information; and (3) discussing and implementing changes sought by SNGR.²

3. In 2021, Enbridge provided SNGR with initial notice and a Notification of Project Commencement for the Project.³ SNGR heard nothing further about the Project until June 6, 2025, when Enbridge sent it a Notice of Upcoming Project.⁴ SNGR then wrote to Enbridge to propose that the Project be discussed at a meeting on June 10 that had already been scheduled to discuss other projects.⁵ However, the Project was ultimately not discussed at that meeting.

¹ Letter from Ministry of Energy re Cedar Springs Community Expansion Project, Oct 19, 2021, Appendix A, at pp. 4–5. (Application, Ex H, Tab 1, Sched. 1, Attachment 2) [**Delegation Letter**] – Tab 1.

² Delegation Letter, at pp. 4–5.

³ Affidavit of Peter Graham, sworn Mar 18, 2026, at paras. 3–4 (Filed with the OEB as SNGR_EVD_20260318) [**Graham Affidavit**] – Tab 2, citing Email from K. Berube to L. Bomberry, Sept 29, 2021 (Responses to Written Interrogatories of Enbridge Gas Inc. Mar 9, 2026 [**Responses**], Ex I, STAFF-1, Attachment 1, Line-item Attachment 3.0, p. 150) – Tab A, and Email from K. Berube to L. Bomberry Nov 9, 2021 (Responses, Ex I, STAFF-1, Attachment 1, Line-item Attachment 3.1, p. 153) – Tab B.

⁴ Graham Affidavit, at para. 5 – Tab 2, citing Email from K. Berube to L. Bomberry June 6, 2025 (Responses, Ex I, STAFF-1, Attachment 1, Line-item Attachment 3.2, 155) – Tab C.

⁵ Graham Affidavit at para. 6 – Tab 2, citing Email from P. Graham to K. Berube & L. Bomberry, June 9, 2025 (Responses, Ex I, STAFF-1, Attachment 1, Line-item Attachment 3.3, p. 157) – Tab D.

4. On July 18, 2025, Enbridge apparently attempted to deliver key Project documents to SNGR by e-mail, including the “Project Description Report” (“**PDR**”) and notice of a virtual information session scheduled between August 4 to 18, 2025.⁶ Delivery of the e-mail failed.⁷ Enbridge made no efforts to confirm that the large email had gone through, despite the fact that it did not hear back from SNGR in response to the materials,⁸ and the fact that SNGR did not participate in the August information sessions. The PDR includes important findings on the Project’s scope and impacts, and is crucial to meaningful consultation.⁹

5. On September 16, 2025, Enbridge sent SNGR an Environmental Report for the Project.¹⁰ The Report emphasized purported “extensive consultation” that had taken place. This was wrong with respect to SNGR, **as no consultation whatsoever had occurred**, beyond basic notice of the Project’s existence.¹¹ The Report also falsely suggested that the PDR had been sent to SNGR on July 18, 2025, which it had not.¹² The PDR was not sent to SNGR until September 25, 2025.¹³

6. On September 16, 2025—before SNGR had even received the PDR—Enbridge requested comments on the Environmental Report by October 31, 2025.¹⁴ In light of the lack of consultation or baseline information provided up to that point, this arbitrary deadline was obviously unworkable for (and unfair to) SNGR. SNGR told this to Enbridge and offered to schedule a time to meet.¹⁵

7. Enbridge failed to properly consult with SNGR on two other projects around the same time, prompting SNGR’s Consultation Supervisor to tell Enbridge on September 16, 2025: “As you know, we are very disappointed with the state of consultation on the other two lines, so I’m

⁶ Graham Affidavit, at para. 8; see also Indigenous Consultation Report, Line-item 3.4 (Responses, Ex I, STAFF-1, Attachment 1, p. 20) – Tab 3.

⁷ Graham Affidavit, at para. 9 – Tab 2, citing Email from P. Graham to K. Berube, Sept 16, 2025 (Responses, Responses, Ex I, STAFF-1, Attachment 1, Line-item Attachment 3.5, p. 159) – Tab F [**Email from P. Graham to K. Berube Sept 16, 2025**].

⁸ Graham Affidavit, at para. 9 – Tab 2.

⁹ Graham Affidavit, at para. 14 – Tab 2.

¹⁰ Graham Affidavit, at para. 11 – Tab 2, citing Email from P. Graham to K. Berube Sept 16, 2025 – Tab F.

¹¹ Graham Affidavit, at para. 12 – Tab 2, citing Email from P. Graham to K. Berube, Sept 16, 2025 – Tab F.

¹² Graham Affidavit, at para. 13 – Tab 2, citing Email from P. Graham to K. Berube, Sept 16, 2025 – Tab F.

¹³ Graham Affidavit, at para. 17 – Tab 2, citing Indigenous Consultation Report, Line-item 3.17 (Responses, Ex I, STAFF-1, Attachment 1, p. 24 – Tab H.

¹⁴ Graham Affidavit, at para. 18 – Tab 2, citing Email from P. Graham to K. Berube, Sept 17, 2025 (Responses, Ex I, STAFF-1, Attachment 1, Line-item Attachment 3.11, p. 167) – Tab I [**Email from P. Graham to K. Berube, Sept 17, 2025**].

¹⁵ Graham Affidavit, at para. 21 – Tab 2, citing Email from P. Graham to K. Berube, Sept 17, 2025 – Tab I.

particularly concerned this one's starting off so poorly".¹⁶ As a result of these persistent failings, SNGR's Consultation and Accommodation Process team determined that an MOU which "outlines a structured consultation process is necessary for meaningful consultation to occur on Enbridge's projects".¹⁷ Enbridge's approach to consultation on this Project must be viewed in the context of its overall treatment of SNGR in recent years.

8. Enbridge and SNGR finally attended an introductory meeting on November 25, 2026. At this meeting, Enbridge committed to (among other things) holding a relationship meeting in early 2026. SNGR left that meeting feeling that Enbridge was finally beginning to engage in good faith.¹⁸ However, unbeknownst to SNGR, Enbridge had by then **already applied to the Board for this exemption—a fact it kept secret from SNGR.**

A. CONSULTATION HAS NOT ADEQUATELY BEEN DISCHARGED

9. Consultation requires Enbridge to meaningfully consider SNGR's concerns and minimize adverse impacts.¹⁹ Enbridge has not considered SNGR's perspective, meaningfully or at all. Significantly, Enbridge did not deliver the baseline necessary information to SNGR (including the PDR) that would allow SNGR to meaningfully articulate its concerns and participate in consultation as an equal partner. When it finally delivered the material, it did not give SNGR enough time to review and provide comments on it. Instead, Enbridge forged ahead with its application to the Board, and concealed this fact from SNGR when it finally had a first meeting.

10. Enbridge treated consultation with SNGR as a mere box-checking exercise, without regard for whether any real engagement had occurred. Clearly, Enbridge's goal was to seek an exemption from the Board as soon as possible, regardless of SNGR.

¹⁶ Graham Affidavit, at para. 15 – Tab 2, citing Email from P. Graham to K. Berube, Sept 16, 2025 – Tab F. See also: Email from P. Graham to K. Berube, Oct 16, 2025 (Responses, Ex I, STAFF-1, Attachment 1, Lineitem Attachment 3.29, p. 183) – Tab K [Email from P. Graham to K. Berube, Oct 16, 2025]. SNGR representatives were permitted to attend a field verification survey related to the Project on Oct 21, 2025. This did not involve any substantive discussion or consultation, and SNGR field monitors are not permitted to consult on behalf of SNGR (Graham Affidavit, at para. 23).

¹⁷ Graham Affidavit, at para. 29 – Tab 2, citing Email from P. Graham to K. Berube, Oct 16, 2025 – Tab K.

¹⁸ Graham Affidavit, at paras. 30-32 – Tab 2, citing Letter from R. Murray to S. Hill, Dec 15, 2025 (Filed with the OEB as Notice_EGI_LtCExemption_Cedar Springs Project_SNGR_updated_20251216) – Tab L.

¹⁹ *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, 2005 SCC 69 at [para. 64](#) [Mikisew].

11. To grant Enbridge's application would allow it to treat consultation as an opportunity for SNGR to "blow off steam" rather than to meaningfully consider and undertake SNGR'S concerns and to accommodate accordingly.²⁰

12. MEM imposed certain consultation requirements in its Delegation letter. In addition to these, significant consultation is also owed in this matter due to major cumulative effects: Enbridge and other proponents have for decades placed numerous oil and gas lines on SNGR land, most without permission or consultation. These have frequently been for profit-generating activities, without SNGR being compensated in any way. This Project's effects must be considered in the context of all of SNGR's land cumulatively used for similar projects. The Supreme Court of Canada has confirmed that cumulative effects and historical context must be considered and inform the scope of the duty to consult.²¹

B. CONSULTATION MUST BE DISCHARGED BEFORE THE APPLICATION IS BROUGHT AND THE BOARD'S DECISION IS MADE

13. The *OEB Regulations* make adequate discharge of the duty to consult a necessary condition to leave-to-construct approval.²² The OEB's guidelines recognize the constraint:

In cases where the duty to consult is triggered, the OEB cannot issue a final decision approving an application unless it is satisfied, based on the evidence before it, that the duty to consult has been discharged.²³

14. These regulations mirror well-established constitutional law: the SCC has clearly stated that, "[i]f the Crown's duty to consult has been triggered, a decision maker may only proceed to approve a project if Crown consultation is adequate."²⁴ It is not sufficient for the Board to direct

²⁰ *Mikisew*, at [para. 54](#).

²¹ *Chippewas*, at [para. 42](#).

²² *General*, O. Reg 328/03, [s. 3.0.1\(1\)\(c\)](#).

²³ OEB, *Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Projects and Facilities in Ontario*, 2023, at p. 16 (section 3.2).

²⁴ *Chippewas of the Thames First Nation v. Enbridge Pipelines Inc.*, 2017 SCC 41 at [para. 36](#) [*Chippewas*].

future consultation to occur.²⁵ For consultation to be adequate, it must take place prior to project approval.²⁶ Where the Duty remains unfulfilled, the Board *must* withhold approval.²⁷

15. Enbridge purported to begin consultation in this project at a meeting that took place *after* it applied to the Board. As a matter of law, Enbridge cannot consult after-the-fact to make up for its earlier failures. Deficient consultation cannot be cured by late or one-sided efforts. Consultation requires a genuine and sustained two-sided dialogue, where the consulted party has the opportunity to raise their concerns and have them meaningfully considered.²⁸

16. The Duty must be discharged before a project that could adversely affect Aboriginal or treaty rights is approved.²⁹

17. If the OEB allows Enbridge's application, it would have the effect of validating Enbridge's poor behaviour and embolden it to continue to run roughshod over Aboriginal rights. Respectfully, this should not be permitted to occur.

PART III - ORDER REQUESTED

18. SNGR respectfully requests that the Board decline to grant Enbridge the leave to construct exemption it seeks under s. 95(2) of the *OEB Act*.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 9th day of July, 2026.



Brittiny Rabinovitch

²⁵ *Clyde River (Hamlet) v. Petroleum Geo-Services Inc.*, 2017 SCC 40 at [para. 39](#) [*Clyde River*].

²⁶ *Chippewas*, at [para. 36](#); *Clyde River*, at [para. 39](#).

²⁷ *Clyde River*, at [para. 39](#).

²⁸ See, for example, *Clyde River* at para. 49; *Eabametoong First Nation v. Minister of Northern Development and Mines*, 2018 ONSC 4316 at paras. 124-127; *Tsleil-Waututh Nation v. Canada (Attorney General)*, 2018 FCA 153, at paras. 6 and 753-756.

²⁹ *Chippewas of the Thames*, at para 36, citing *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44, at para 78.

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SCHEDULE “A”

LIST OF AUTHORITIES

1. *Chippewas of the Thames First Nation v. Enbridge Pipelines Inc.*, [2017 SCC 41](#)
2. *Clyde River (Hamlet) v. Petroleum Geo-Services Inc.*, [2017 SCC 40](#)
3. *Eabametoong First Nation v. Minister of Northern Development and Mines*, [2018 ONSC 4316](#)
4. *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, [2005 SCC 69](#)
5. *Tsilhqot'in Nation v. British Columbia*, [2014 SCC 44](#)
6. *Tsleil-Waututh Nation v. Canada (Attorney General)*, [2018 FCA 153](#)

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY - LAWS

1. General, O. Reg 328/03, [s. 3.0.1\(1\)\(c\)](#)

Exemption under subs. 95 (2) of the Act

3.0.1 (1) The Board shall, on application, make an order under subsection 95 (2) of the Act exempting a person from having to obtain the Board’s leave under subsection 90 (1) of the Act to construct a hydrocarbon line if,

- (a) leave is required only by virtue of clause 90 (1) (b) of the Act;
- (b) the proposed hydrocarbon line is projected to cost more than the amount specified in section 3 for the purposes of that clause but not more than \$10 million; and
- (c) the Board makes a determination that the Crown’s duty to consult, if it applies in respect of the application, has been adequately discharged. O. Reg. 274/24, s. 3.

2. Ontario Energy Board, [Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Projects and Facilities in Ontario, 2023](#)

Chapter 3: Engagement and Consultation

3.2 Indigenous Consultation

In cases where the duty to consult is triggered, the OEB cannot issue a final decision approving an application unless it is satisfied, based on the evidence before it, that the duty to consult has been discharged. Impacts on Indigenous rights or interests can arise in other proceedings. Where that is the case, representatives of affected Indigenous communities are encouraged to participate in the proceeding and make their views known to the OEB. Further Information regarding the OEB’s role and how to participate is set out on the [OEB’s Consultation with Indigenous Peoples](#) webpage.

