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March 16, 2017

VIA RESS AND COURIER

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319, 27th Floor
2300 Yonge Street
Toronto, ON M4P 1E4

Dear Ms. Walli:

Re: Applications by EPCOR Southern Bruce Gas Inc. for approval of franchise agreements and Certificates of Public Convenience and Necessity for the Municipality of Arran-Elderslie, the Municipality of Kincardine and the Township of Huron-Kinloss (the Southern Bruce Municipalities) Ontario Energy Board (Board File) Nos.: EB-2016-0137 / EB-2016-0138 / EB-2016-0139

We are counsel to Anwaatin Inc. (**Anwaatin**) in the above-mentioned proceeding (the **Proceeding**). The Board granted Anwaatin intervenor status for the first phase of the Proceeding Procedural Order No. 2, dated March 3, 2017 (**PO #2**). The Board limited participation in the second phase of the Proceeding to directly affected customers. Anwaatin's Indigenous members for the Proceeding include:

- Aroland First Nation (**Aroland**), a First Nation that is developing business plans for the provision of natural gas services to currently unserved First Nations across Ontario, potentially including other Indigenous communities, including the other Anwaatin's member for this Proceeding; and
- Saugeen Ojibway Nation (**SON**), which consists of Saugeen Ojibway First Nation and the Chippewas of Nawash Unceded First Nation, and whose traditional territories include the Municipality of Kincardine and the Township of Huron-Kinloss, **and which will be a directly affected natural gas customer in the proposed Southern Bruce natural gas franchise area.**

As such, we hereby request confirmation of Anwaatin's intervenor status in Phase 2 of the Proceeding in accordance with the April 7, 2017 deadline stipulated in PO #2.

In addition, PO #2 indicates that the Board has determined that costs will not be awarded for Phase 1 of the proceeding. We respectfully request that the Board reconsider this determination, particularly as it pertains to directly affected Indigenous rights holders in light of the constitutionally enshrined duty to consult and accommodate such rights holders.

Anwaatin submits that the failure to provide Anwaatin with intervenor funding to participate meaningfully in Phase 1 of the Proceeding, will effectively negate the ability for directly affected Indigenous groups to meaningfully participate in any form of consultations, and their right to be heard in a procedurally fair manner. Anwaatin submits that one of the preliminary threshold issues in this Proceeding that would benefit from its participation is the application of the Crown's duty to consult and accommodate First Nations in considering the selection of the distributor to provide low-cost, low-carbon natural gas to serve the areas covered by a proposed municipal franchise agreement. Further, the Board may be well served in proactively addressing the views and needs of Indigenous rights holders early and at the same time as the proposed threshold issues are being determined.

Further, we respectfully submit that awarding cost eligibility for Phase 1 of the Proceeding is most consistent with the express wording and the spirit and intent of the Board's Practice Direction on Cost Awards. Specifically, it does not appear to be procedurally fair to effectively exclude Anwaatin, the intervenor that made express submissions on the substance and form of potential filing requirements in the generic proceeding, from the ability to meaningfully participate on these critical issues in Phase 1 of the Proceeding.

We trust that the Board¹ will act in a manner that is consistent with the Crown's duty to consult, and where appropriate, accommodate Aboriginal peoples where the decision at hand has the potential to affect Aboriginal and treaty rights, in accordance with section 35 of the Constitution.² Anwaatin hopes to participate and file submissions regarding the draft Issues List and the draft Filing Requirements on or before March 31, 2017 and therefore requests further direction from the Board on its cost eligibility for Phase 1 of the Proceeding on or before March 28, 2017.

Thank you in advance for your timely consideration of this matter.

Yours very truly,



Lisa (Elisabeth) DeMarco

¹ Jurisprudence supports extension of the duty to consult to regulatory boards and tribunals.
² *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982*, c 11.