



Lisa (Elisabeth) DeMarco  
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March 30, 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: Board File Nos.: EB-2016-0137 / EB-2016-0138 / EB-2016-0139  
South Bruce Expansion Applications – Applications to serve the Municipality of  
Arran-Elderslie, the Municipality of Kincardine and the Township of Huron-Kinloss  
with natural gas distribution services**

We are counsel to Anwaatin Inc. (**Anwaatin**) in the above-mentioned proceeding (the **Proceeding**). Pursuant to Procedural Order No. 3, dated March 23, 2017, Anwaatin hereby requests intervenor status for Phase 2 of the Proceeding and cost eligibility for Phase 1 and Phase 2 of the Proceeding. Anwaatin makes these requests further to and supported by its prior letter, filed with the Board on March 16, 2017, and attached hereto as Appendix "A".

If the Board grants Anwaatin's request for intervenor status, Anwaatin requests that further communications with respect to the Proceeding be sent to the following:

**Anwaatin Inc.**

c/o Mississaugas of the New Credit First Nation  
3034 Mississauga Road, RR#6  
Hagersville, Ontario N0A 1H0

Attention: Larry Sault, CEO  
Telephone: 416-675-3226 x 311  
Facsimile: 226-314-2100  
Email: [larry@anwaatin.com](mailto:larry@anwaatin.com)

AND TO ITS CONSULTANT

**Shared Value Solutions Ltd.**

62 Baker Street  
Guelph, ON N1H 4G1

Attention: Don Richardson, Managing Partner  
Telephone: 226-706-8888 x 101  
Facsimile: 226-314-1200  
Email: [don.richardson@sharedvaluesolutions.com](mailto:don.richardson@sharedvaluesolutions.com)

AND TO ITS COUNSEL

**DeMarco Allan LLP**

200-5 Hazelton Avenue  
Toronto, ON M5R 2E1

Attention: Elisabeth DeMarco  
Telephone: (647) 991-1190  
Facsimile: 1-888-734-9459  
Email: [lisa@demarcoallan.com](mailto:lisa@demarcoallan.com)

Attention: Jonathan McGillivray  
Tel: 1-888-389-5798  
Facsimile: 1-888-734-9459  
Email: [jonathan@demarcoallan.com](mailto:jonathan@demarcoallan.com)

Attention: Cary Ferguson  
Tel: 1-888-389-5798  
Facsimile: 1-888-734-9459  
Email: [cary@demarcoallan.com](mailto:cary@demarcoallan.com)

Yours very truly,

A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal line that ends in an arrowhead pointing to the right.

Lisa (Elisabeth) DeMarco

# **APPENDIX A**



Lisa (Elisabeth) DeMarco  
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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 Board<sup>1</sup> 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.<sup>2</sup> 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

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