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June 27, 2019

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

Dear Ms. Walli:

**Re: Enbridge Gas Inc. Application for Leave to Construct Natural Gas Distribution Pipelines to serve the Georgian Sands planned subdivision
Board File No.: EB-2018-0226**

We are counsel to Anwaatin Inc. (**Anwaatin**) in the above-mentioned proceeding. Please find enclosed Anwaatin's written submissions, filed pursuant to Procedural Order No. 2.

Sincerely,

A handwritten signature in black ink that reads "Jonathan McGillivray". The signature is fluid and cursive, with the first name being particularly prominent.

Jonathan McGillivray

Encl.

- c. Mark Kitchen and Guri Pannu, Enbridge Gas Inc.
Larry Sault, Anwaatin Inc.
Don Richardson, Shared Value Solutions Ltd.

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*,
S.O. 1998, c. 15, Sched. B, as amended (the **Act**);

AND IN THE MATTER OF an application by Enbridge Gas
Inc., pursuant to section 90 of the Act for an order granting
leave to construct an NPS 8 and NPS 6 natural gas
distribution pipeline and ancillary facilities to service the
Georgian Sands planned subdivision in Simcoe County.

EB-2018-0226

SUBMISSIONS OF

ANWAATIN INC.

June 27, 2019

INTRODUCTION AND OVERVIEW

1. We are counsel to Anwaatin Inc. (**Anwaatin**) in the Ontario Energy Board (the **Board**) EB-2018-0226 proceeding to review Enbridge Gas Inc's. (**Enbridge's**) application for an order pursuant to section 90 granting leave to construct an NPS 8 and NPS 6 natural gas distribution pipeline and ancillary facilities to serve the Georgian Sands planned subdivision in Simcoe County. Specifically, Enbridge is seeking leave to construct approximately 8 m of Nominal Pipe Size (NPS 8) Extra High Pressure (XHP) steel nature gas pipeline and approximately 6.4 km of NPS 6-inch intermediate pressure (IP) polyethylene pipe in Simcoe County (the **Project**).
2. Anwaatin is a collective of Indigenous communities generally focused on: (i) ensuring that Indigenous rightsholders have been meaningfully consulted and accommodated; (ii) alleviating energy poverty and achieving reliable, affordable, and sustainable energy for its member Indigenous communities; and (iii) ensuring that the land, water, and broader environment are sustainably managed in a manner that reflects stewardship for seven generations. To that end, Anwaatin has been very active on several other natural gas proceedings before the Board.
3. Anwaatin provides these submissions with the aim of assisting the Ontario Energy Board (the **Board**) in understanding the interests of Indigenous communities in accessing low-carbon, low-cost natural gas for home, business, industrial/institutional heating, power generation, and reducing the need for First Nations to rely on the electrical grid to provide baseload heat energy.
4. These submissions are provided in an overarching policy and pragmatic context for First Nations living in Ontario. That context includes:
 - (a) **energy poverty**: a disproportionate number of Ontario's First Nations live in energy poverty and are saddled with increasing and unmanageable energy costs;
 - (b) **pre-existing sovereignty**: Ontario's First Nations have pre-existing sovereignty that must be respected by all governments and cannot be ceded by treaty;

(c) **duty to consult and accommodate:** the duty to consult with and accommodate First Nations on decisions and major government discussions has been enshrined in the Constitution and affirmed by the Supreme Court of Canada; and

(d) **United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP):** Canada has become a signatory to, and is in the process of adopting, the UNDRIP, which, among other things, supports the First Nations rights.

Anwaatin asks the Board to consider and read these submissions in this overarching context to assist it and others in addressing the energy needs of First Nations set out herein.

5. The First Nations supporting Anwaatin's submissions are directly affected by energy poverty. Natural gas promises an alternative, low-carbon, low-cost source of heat energy that will have the additional benefit of opening local transmission grids to harness renewable energy sources such as solar, wind, and hydro-electricity.

OVERVIEW

6. Anwaatin's submissions address the Board's consideration of:
 - (a) Enbridge's approach to consultation and relationships with Indigenous communities;
 - (b) the adequacy of Enbridge's services for its Indigenous customers; and
 - (c) proposed Project should reflect the Indigenous rights and processes set out in the Official Plan of Simcoe County (the **Official Plan**).

SUBMISSIONS

(a) The Board should consider Enbridge's approach to consultation and relationships with Indigenous communities.

7. Anwaatin submits that the Board should consider Enbridge's approach to, and success with, its Indigenous rights-holders as part of its decision-making process. Specifically, the Board

should consider Enbridge's Indigenous policy (which Enbridge has placed on the record in this proceeding at Exhibit G, Tab 1, Schedule 1, Attachment 3) and how it has engaged with and consulted the Indigenous communities. The Board should consider whether and how Enbridge has determined, interpreted, and applied its own procedural requirements, the Crown's procedural requirements, and the Board's procedural requirements in assisting the Crown to fulfill its duty to consult and accommodate affected Indigenous communities, including those that are directly affected natural gas customers in the Georgian Sands planned subdivision.

8. Anwaatin submits the Board must ensure that Enbridge, as a party seeking leave to construct the Project, and the Crown have discharged their duty to consult prior to the commencement of construction. Further, consultation should include discussion of any relevant treaty rights and interests relating to affected First Nations territory.

(b) The Board should consider the adequacy of Enbridge's services for its Indigenous customers.

9. There is a serious need to address energy poverty in First Nations communities through access to affordable, reliable, sustainable, and modern energy access. The expense of transporting diesel, heating oil and propane fuels, heating with electricity, and securing wood supplies for supplemental wood stove heating can be cost-prohibitive for First Nations. First Nations in Northern Ontario, for example, commonly pay eight to ten times more than southern Ontarians to heat their homes and other buildings. Natural gas is not available to many First Nations across Ontario.
10. The Board noted the importance of energy poverty existing in First Nations communities and indicated that it would respond to any proposal brought forward in the new framework with due consideration to the needs of the intended customers in its Decision with Reasons in EB-2016-0004.
11. Anwaatin submits that the Board should also assess and ensure the adequacy of Enbridge's services for its First Nations customers. Anwaatin submits that expanding reliable and

affordable natural gas distribution service to Indigenous communities should be a priority in the Board's consideration of the Application.

(c) The proposed Project should reflect the Indigenous rights and processes set out in the Official Plan.

12. The Project should reflect the Indigenous rights and processes set out in the Official Plan, including the following specific elements thereof:
 - (a) one of the Official Plan's six goals is the "achievement of coordinated land use planning among the County's local municipalities and with neighbouring counties, district, regions, and separated cities, and First Nations lands" (Section 1.4);
 - (b) the Official Plan recognizes that the "settlement of the County [of Simcoe] by First Nations and subsequently by non-aboriginal settlers has resulted in a wealth of cultural heritage resources" (Section 2.3) and, further, that "heritage resources including structures, buildings, properties, and forested lands containing archaeological sites and resources, and cultural heritage landscapes should be conserved wherever feasible. Measures to conserve cultural heritage resources during the Planning, design, and construction of structures and infrastructure, and the development of properties should be implemented... [and] consultation with a County heritage advisory committee, LACACs where they exist, and the representatives of any First Nation, prior to the alteration of any structures, buildings or infrastructure that may affect a cultural heritage resource is recommended" (Appendix 6);
 - (c) in respect of the determination of archaeological potential, the Official Plan notes that "archaeological potential mapping and criteria can be used to determine archaeological potential as per the provincial guidelines at the time when development applications are submitted," and with such potential based on criteria that include "evidence of the site being associated with historical activities, events or occupations with the use of documentary sources, local knowledge and/or aboriginal oral history" (Appendix 6);
 - (d) the Official Plan also defines cultural heritage landscapes (Section 5.9) to mean "a defined geographical area of heritage significance which has been modified by human activities. Such an area is valued by a community, and is of significance to the

understanding of the history of people or place. Examples may include, but are not limited to, historical parks, gardens, designated conservation districts such as mainstreets or neighbourhoods, marked cemeteries, abandoned mine sites, historical ruins, aboriginal sacred areas, battlefields, and monuments. Only views and vistas associated with the defined geographical area of heritage significance are considered as part of a cultural heritage landscape”;

- (e) in respect of both cultural heritage landscapes and archaeological resources, the Official Plan states that “[s]ignificant built heritage resources, archaeological resources, and cultural heritage landscapes, collectively termed cultural heritage resources, will be conserved” (Section 4.6.1) and, further, that “development proposals shall have regard for the cultural heritage resource policies of [the Official Plan]. The conservation of significant archaeological resources will involve removal and documentation, or preservation on site, on which only development that maintains the heritage integrity of the archaeological feature is permitted. Similarly, in the conservation of significant built heritage resources and cultural heritage landscapes consideration shall be given to restoration, documentation, and maintenance in its original context. Development should be compatible with these built heritage resources and cultural landscapes” (Section 4.6.3).

REQUESTED RELIEF

13. Anwaatin requests that the Board:

- (a) consider and expressly determine whether Enbridge has adequately consulted with affected Indigenous communities;
- (b) consider and expressly determine whether Enbridge has fully executed the procedural duties of consultation delegated to it by the Crown, particularly in relation to cultural heritage, archaeology, socio-economic, and environmental rights and interests;
- (c) impose the following conditions of any potential approval of the application:
- i. for each work site, during construction and for the lifecycle of the project where maintenance work involving excavation or integrity digs are

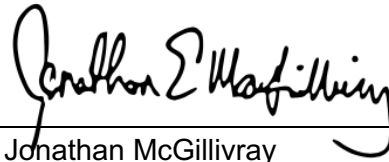
required, provide First Nations with the following information: (A) exact location and size of site; (B) plans to protect the environment and sensitive watershed; and (C) the contamination characteristics, dewatering details, and water treatment and discharge plans for the site;

- (d) require Enbridge to permit monitors selected by the each First Nation to actively participate in Enbridge's environmental and archaeological assessment and monitoring work at any work site, during construction and for the lifecycle of the project where maintenance work involving excavation or integrity digs are required, and any area that has high archaeological potential or has significant environmental concerns, as determined by the First Nations;
- (e) provide reasonable financial resources to the First Nations to hire and administer the monitors and to hire consultants to review the construction permits and approvals required by Enbridge, to the extent necessary to protect the First Nation rights, title and interests, where maintenance work involving excavation or integrity digs are required during construction and for the lifecycle of the project;
- (f) require Enbridge to have adequate insurance and reserve a specified quantum of funds sufficient for any cleanup, compensation, and restoration in the event of accidents and malfunctions on the First Nation traditional territory resulting from the project;
- (g) stipulate that all affected First Nations communities receive natural gas service and natural rates that reflect their inherent rights to the land and resources upon which the proposed project is built; and
- (h) expressly determine Enbridge's ongoing compliance with these conditions and specifically whether Enbridge has ensured access to reliable and affordable natural gas services for Indigenous communities.

ALL OF WHICH IS RESPECTFULLY
SUBMITTED THIS 27th DAY OF JUNE,
2019.



Lisa (Elisabeth) DeMarco
DeMarco Allan LLP
Counsel for Anwaatin



Jonathan McGillivray
DeMarco Allan LLP
Counsel for Anwaatin