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July 30, 2019

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

Dear Ms. Walli:

Re: EB-2018-0264
EPCOR Natural Gas Limited Partnership (EPCOR) application for gas distribution rates and other charges for the period from January 1, 2019 to December 31, 2028

We are counsel to Anwaatin Inc. (**Anwaatin**) in the above-mentioned proceeding (the **Proceeding**) and file these reply submissions on Board Staff's Draft Issues List (the **Draft Issues List**) in accordance with Procedural Order No. 3.

Anwaatin reiterates its request that the Board ensure that Indigenous rate payers and rights holders have, and can exercise, their right to be heard in this Proceeding through the inclusion of draft issue 11(a) in the final Issues List:

Issue 11: Stakeholder Engagement

- a) Has EPCOR effectively engaged and consulted with key stakeholders and First Nations and Métis communities? Has EPCOR undertaken consultation to ensure Indigenous rights and interests in the application have been considered and addressed?

Anwaatin's reply submissions on Board Staff's and EPCOR's submissions follow.

Indigenous consultation. Board Staff submits that it is difficult to envision what aboriginal or treaty rights could be impacted by a rates case.¹ Anwaatin respectfully disagrees. Indigenous peoples, including those living off reserve who hold Treaty rights within the service area, have traditional aboriginal rights in and around the land that may be impacted by the Common Infrastructure Plan that is being implemented through this Proceeding. Further, Indigenous rights and aboriginal title include economic rights, which may be adversely affected by the natural gas

¹ Ontario Energy Board Staff Submissions on Proposed Issues List (July 23, 2019), p. 16.

rates that EPCOR seeks to have approved in this Proceeding. Government decision-makers, delegated regulators (including administrative tribunals like the Board), and proponents have a constitutionally-enshrined and judicially-enforced duty to consult Indigenous communities if the decision-maker or proponent is contemplating conduct that might adversely affect a treaty or aboriginal right that an Indigenous community has or credibly asserts.² Whether such a right exists or is credibly asserted in the context of this Proceeding has not yet been tested. Anwaatin submits that the duty to consult is therefore an appropriate issue and should be reflected in the final Issues List.

Anwaatin’s legitimate expectations. Board Staff also appears to suggest that engagement with key stakeholders and First Nations and Métis communities should not form a part of the final Issues List because the “issue appears to be adequately covered under Issue 2: ‘customer feedback and preferences.’” Anwaatin wishes to note that EPCOR has proposed removing the reference to “customer feedback and preferences” in its submissions on the Draft Issues List.³ The Board’s failure to include Indigenous customers and customer engagement in the final Issues List would constitute a major departure from its own procedures and practices and violate Anwaatin’s legitimate expectations with respect to same.

EPCOR appears to oppose the inclusion of draft issue 11(a) in the final Issues List in part on the basis that there are no obligations in the Board’s *Filing Requirements for Natural Gas Rate Applications* (the **Filing Requirements**) to carry out any engagement or consultation with key stakeholders. In fact, EPCOR’s own application in this Proceeding expressly indicates that one of EPCOR’s goals in bringing the Southern Bruce system on line is effectively engaging and consulting with “key stakeholders and First Nations and Métis communities.”⁴ In this regard, Anwaatin refers to its submissions on the Filing Requirements as well as the Board’s *Handbook for Utility Rate Applications* as they relate to Anwaatin’s legitimate expectations with respect to the Board’s administration of the Proceeding and its consideration of customer engagement.

Anwaatin reiterates its request that the Board ensure that draft issue 11(a) is included in the final Issues List for the Proceeding.

Sincerely,



Jonathan McGillivray

- c. Bruce Brandell and Dana Bissoondatt, EPCOR Utilities Inc.
Richard King, Osler, Hoskin & Harcourt LLP
Larry Sault, Anwaatin Inc.
Don Richardson, Shared Value Solutions Ltd.

² *Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73, paras 35, 64; *Rio Tinto Alcan Inc v Carrier Sekani Tribal Council*, 2010 SCC 43, para 31.

³ EPCOR Natural Gas Limited Partnership Submissions on Proposed Issues List (July 23, 2019), p. 8.

⁴ Exhibit 1, Tab 2, Schedule 1, p. 9.