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October 18, 2019

VIA RESS AND COURIER

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4
Attention: Registrar

Dear Ms. Long:

**Re: EPCOR Natural Gas Limited Partnership Rate Application for Natural Gas Distribution Pipelines to serve the Municipality of Arran-Elderslie, the Municipality of Kincardine, and the Township of Huron-Kinloss
Board File No.: EB-2018-0264**

We are counsel to Anwaatin Inc. (**Anwaatin**) in the above-referenced proceeding (the **Proceeding**). Please find enclosed Anwaatin's final argument in the Proceeding, filed pursuant the Board's Decision on Settlement Proposal and Procedural Order No. 6 and Procedural Order No. 7.

Sincerely,

A handwritten signature in black ink that reads "Jonathan McGillivray". The signature is written in a cursive, flowing style.

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.
All Intervenors in EB-2018-0264

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 EPCOR
Natural Gas Limited Partnership pursuant to section 36(1)
of the Act for an order or orders approving or fixing just and
reasonable rates and other charges for the sale and
distribution of gas to be effective January 1, 2019 for the
gas distribution system to be constructed by EPCOR
Natural Gas Limited Partnership to serve the Municipality
of Arran-Elderslie, the Municipality of Kincardine and the
Township of Huron-Kinloss.

EB-2018-0264

FINAL ARGUMENT OF

ANWAATIN INC.

October 18, 2019

INTRODUCTION AND OVERVIEW

1. We are counsel to Anwaatin Inc. (**Anwaatin**) in the Ontario Energy Board (the **Board**) EB-2018-0264 proceeding to review EPCOR Natural Gas Limited Partnership's (**EPCOR's**) application pursuant to section 36(1) of the Act for an order or orders approving or fixing just and reasonable rates and other charges for the sale and distribution of gas to be effective January 1, 2019 for the gas distribution system (the **Southern Bruce Project**) to be constructed by EPCOR to serve the Municipality of Arran-Elderslie, the Municipality of Kincardine and the Township of Huron-Kinloss (the **Application**).
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 other natural gas proceedings before the Board, including the EB-2016-0137 / EB-2016-0138 / EB-2016-0139 proceeding, in which EPCOR Southern Bruce Gas Inc. was granted a certificate of public convenience and necessity related to the Southern Bruce Project and the EB-2018-0263 proceeding, in which EPCOR was granted leave to construct the Southern Bruce Project.
3. The Board provided for a settlement conference between EPCOR and intervenors in this proceeding with the objective of reaching a settlement on the issues in this proceeding. Anwaatin participated extensively in the settlement conference and parties reached a settlement on some issues, including the Rate Base and Utility System Plan, and the consistency of planned capital expenditures with EPCOR's CIP proposal (Issue 2(a)) and the Incentive Rate Setting Proposal, and the absence of an earnings sharing mechanism (Issue 8(a)). A settlement proposal was filed with the Board on September 16, 2019. Anwaatin's final argument therefore addresses only the following partially settled issue:

Issue 11: Stakeholder Engagement. Has EPCOR South Bruce effectively engaged with and sought input from key stakeholders and First Nations and Métis communities?

Partial Settlement: The Parties agree that EPCOR South Bruce has effectively engaged with and sought input from key stakeholders. There is no agreement with respect to EPCOR's engagement with First Nations and Métis communities. [page 25]

4. Anwaatin provides these submissions with the aim of assisting 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.
5. 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.

6. The First Nations supporting Anwaatin's current submissions are directly affected by energy poverty. These First Nations include Animbiigoo Zaagi'igan Anishinaabek First Nation, Aroland First Nation, and Ginoogaming First Nation, which seek to advance the above policies and context for all natural gas expansion programs in Ontario. 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. The First Nations supporting Anwaatin's submissions are directly affected by energy poverty, and are seeking ways and means to access affordable natural gas for both on-reserve and off-reserve community members. The Government of Ontario has committed to expanding natural gas with the *Access to Natural Gas Act, 2018*, SO 2018, c. 15 – Bill 32. Each new natural gas expansion application decision made by Board sets precedents for the decisions that follow. Anwaatin seeks to enable the Board to set precedents that positively address First Nation energy poverty, improve proponent consultation and relationships with Indigenous communities for the life of each project, and extend services to unserved or underserved First Nation community members living on-reserve or off-reserve.

OVERVIEW

7. Anwaatin's submissions address the Board's consideration of:
 - (a) EPCOR's approach to consultation and relationships with Indigenous communities;
 - (b) the adequacy of EPCOR's services for its Indigenous customers; and
 - (c) the need for natural gas rate assistance for all low-income Indigenous customers.

SUBMISSIONS

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

8. Anwaatin submits that the Board should consider EPCOR's approach to, and success with, its Indigenous rights-holders as part of its decision-making process in respect of the Application. Specifically, the Board should consider EPCOR's Indigenous policy and how it has engaged with and consulted Indigenous communities. The Board should consider whether and how EPCOR 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 Southern Bruce Project area.

9. Anwaatin submits the Board must ensure that EPCOR, as a party seeking just and reasonable rates and other charges for the sale and distribution of gas in the Southern Bruce region, and the Crown have discharged their duty to consult Indigenous communities. Further, consultation should include discussion of any relevant treaty rights and interests relating to affected First Nations territory.
10. EPCOR has indicated that it has completed various required Stage 2 archaeological assessments (AAs) and has submitted the results to the Ministry of Tourism, Culture, and Sport. EPCOR has further indicated that it is proceeding on Stage 3 AAs, where required. Anwaatin submits that, as conditions of the Board's approval of EPCOR's Application, the Board should require EPCOR to facilitate ongoing (i) communications with Indigenous communities as the archaeological assessment process and line construction continues and (ii) Indigenous monitoring of archaeological work and construction. Further, the Board should require EPCOR to establish, in consultation with Indigenous communities and within ninety (90) days of the Board's Decision and Order on the Application, an ongoing utility-wide protocol governing archaeological assessments with Indigenous communities for all future construction, operations, maintenance/integrity programs, and pipeline replacements.

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

11. 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.
12. 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.

13. Anwaatin submits that the Board should also assess and ensure the adequacy of EPCOR's services for its First Nations customers. Anwaatin submits that expanding reliable natural gas distribution service at affordable rates to Indigenous communities should be a priority in the Board's consideration of the Application.
14. Anwaatin therefore submits that, as a condition of its approval of the Application, the Board should require EPCOR to facilitate one-window, enhanced access to applications for low-income rates for Indigenous customers (both on- and off-reserve, as applicable) through a process coordinated directly by EPCOR (not by a third-party community organization) that provides rate assistance to all low-income Indigenous customers and is not constrained to emergency financial assistance for customers who are in arrears.

REQUESTED RELIEF

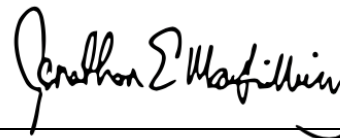
15. Anwaatin requests that the Board:
 - (a) consider and expressly determine whether EPCOR has adequately consulted with affected Indigenous communities;
 - (b) consider and expressly determine whether EPCOR has fully executed the procedural duties of consultation delegated to it by the Crown, particularly 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. facilitate ongoing (i) communications with Indigenous communities as the archaeological assessment process and line construction continues and (ii) Indigenous monitoring of archaeological work and construction;
 - ii. establish, in consultation with Indigenous communities and within ninety (90) days of the Board's Decision and Order in this proceeding, an ongoing utility-wide protocol governing archaeological assessments with

- Indigenous communities for all future construction, operations, maintenance/integrity programs, and pipeline replacements; and
- iii. facilitate one-window, enhanced access to applications for low-income rates for Indigenous customers (both on- and off-reserve, as applicable) through a process coordinated directly by EPCOR (not by a third-party community organization) that provides rate assistance to all low-income Indigenous customers and is not constrained to emergency financial assistance for customers who are in arrears.
- (d) expressly determine EPCOR's ongoing compliance with these conditions and specifically whether EPCOR has ensured access to reliable and affordable natural gas services for Indigenous communities.

ALL OF WHICH IS RESPECTFULLY
SUBMITTED THIS 18th DAY OF OCTOBER,
2019.



Lisa (Elisabeth) DeMarco
DeMarco Allan LLP
Counsel for Anwaatin



Jonathan McGillivray
DeMarco Allan LLP
Counsel for Anwaatin