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January 6, 2020

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: Corporation of the Town of Marathon North Shore LNG Project Application
Board File No.: EB-2018-0329**

We are counsel to Anwaatin Inc. (**Anwaatin**). Please find enclosed Anwaatin's written final submissions in the above-noted proceeding, 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 the most prominent.

Jonathan McGillivray

- c. Daryl Skworchinski, Town of Marathon
Helen Newland, Dentons Canada LLP
Larry Sault, Anwaatin Inc.
Don Richardson, Shared Value Solutions Ltd.

Encl.

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, SO 1998, c. 15 (Sched B), as amended (the **Act**) and the *Municipal Franchises Act* (the **MFA**), RSO 1990, c. M.55, as amended;

AND IN THE MATTER OF an application by the Corporation of the Town of Marathon under section 8 of the MFA for an order or orders granting Certificates of Public Convenience and Necessity to the Corporation for the construction of works in the Town of Marathon, Township of Manitouwadge, Township of Schreiber, Township of Terrace Bay, and Municipality of Wawa (the **Municipalities**);

AND IN THE MATTER OF an application by the Corporation of the Town of Marathon under section 90 of the Act for an order or order granting leave to construct natural gas distribution pipelines and ancillary facilities to serve the Town of Marathon, Township of Manitouwadge, Township of Schreiber, Township of Terrace Bay, and Municipality of Wawa;

AND IN THE MATTER OF an application by the Corporation of the Town of Marathon under section 97 of the Act for an order or orders approving the form of easement agreements;

AND IN THE MATTER OF an application by the Corporation of the Town of Marathon for an order or orders for a gas supply plan to serve the Town of Marathon, Township of Manitouwadge, Township of Schreiber, Township of Terrace Bay, and Municipality of Wawa;

AND IN THE MATTER OF an application by the Corporation of the Town of Marathon for an order or orders pre-approving the cost consequences associated with a long-term upstream liquefied natural gas contract to serve the Town of Marathon, Township of Manitouwadge, Township of Schreiber, Township of Terrace Bay, and Municipality of Wawa.

EB-2018-0329

**SUBMISSIONS OF
ANWAATIN INC.**

January 6, 2020

INTRODUCTION AND OVERVIEW

1. We are counsel to Anwaatin Inc. (**Anwaatin**) in the Ontario Energy Board (the **Board**) EB-2018-0329 proceeding to review the application of the Corporation of the Town of Marathon (the **Corporation**), on its own behalf and as representative of the Township of Manitouwadge, the Township of Schreiber, the Township of Terrace Bay, and the Municipality of Wawa (collectively, the **Municipalities**), for certain approvals from the Board to furnish natural gas service within the Municipalities (the **Application**). Specifically, the Corporation has applied for approval to construct a total of 116.5 km of natural gas pipelines in the Municipalities and form a new natural gas distribution company to distribute natural gas in the Municipalities through liquefied natural gas (**LNG**) supply transported to the Municipalities by truck and delivered using distribution facilities (the **North Shore Project** or the **Project**).
2. Anwaatin is a collective of Indigenous communities including Indigenous rights holders with land, territory and indigenous rights that are directly affected by the Project. Anwaatin's members for this proceeding are Aroland First Nation, Animbiigoo Zaagi'igan Anishinaabek Nation, and Ginoogaming First Nation (collectively, the **Anwaatin First Nations**). Maps of the historical lands and territories of each and all of the Anwaatin First Nations may be found at the following link: <http://www.rds.oeb.ca/HPECMWebDrawer/Record/656648/File/document>. The Anwaatin First Nations are directly affected by energy poverty. Natural gas promises an alternative, lower carbon, low-cost source of heat energy that, when used to displace electricity as a ubiquitous heat source, may have the additional benefit of freeing capacity on local electricity transmission grids to further support efficient distributed energy resources to service the Anwaatin and other Indigenous communities.
3. The Anwaatin communities are generally very supportive of the Project and the requested approvals on the understanding that: (i) the Board will ensure that all affected Indigenous rights holders have been meaningfully consulted and that the Crown, directly and as delegated to the Board and the Corporation, has discharged its duty to consult and accommodate; (ii) the Project will help alleviate energy poverty and facilitate reliable, affordable, and sustainable energy for the Anwaatin First Nations; (iii) any of the Board's

terms and conditions to the requested approvals will facilitate optimization of, and access to, the Project in order to maximize its efficiency and the cumulative energy and environmental benefits for neighbouring Indigenous communities; and (iv) the Corporation will ensure that the land, water, and broader environment affected by the Project will be sustainably managed in a manner that reflects stewardship for seven generations.

4. Anwaatin provides these submissions on the Application to assist the Board in assessing the Project in the context of the overarching **energy poverty** that the Anwaatin First Nations experience, and the beneficial impact that the Project may have. This includes providing lower cost natural gas for home, business, industrial/institutional heating, and reducing First Nations' reliance on the electrical grid for baseload heat energy.

SUBMISSIONS

(i) The territorial, aboriginal, and treaty rights impacted by the Project.

5. The Anwaatin First Nations each have traditional territory, and associated treaty and aboriginal rights and interests protected by the *Constitution Act, 1982*, which will be impacted by the North Shore Project and the outcomes of this proceeding. This includes, without limitation, potential impacts on cultural heritage, harvesting, and environmental issues directly related to:
 - (a) The leave to construct in the Anwaatin First Nations' traditional territories;
 - (b) The terms and conditions of requested certificates of public convenience, which may have implications for current and future LNG distribution within the Anwaatin First Nations' traditional territories;
 - (c) The municipal franchise agreements, which may have implications for current and future access to natural gas by, and LNG distribution within, the Anwaatin First Nations';
 - (d) The terms and conditions of the easement agreements, which may have specific local cultural heritage, harvesting, and environmental impacts that could impact the Anwaatin First Nations;

- (e) The proposed gas supply plan, which may impact access to natural gas and help alleviate energy poverty within the Anwaatin First Nations' traditional territories; and
 - (f) The long-term gas supply contract, which may impact some of the Anwaatin First Nations' access to LNG or other natural gas, and thereby impact energy poverty of on-reserve and off-reserve Anwaatin First Nations rights holders.
6. In short, there are many potential negative and positive impacts that the Project may have on the territorial, traditional, aboriginal and treaty rights of the Anwaatin First Nations and other indigenous communities that trigger the Crown's duty to consult and warrant the Board's express attention to confirm that the Crown's duty has or will be discharged.

(ii) The Crown's duty to consult.

7. Anwaatin requests that the Board expressly ensure that all affected Indigenous rights holders have been meaningfully consulted and that the Crown, directly and as delegated to the Board and the Corporation, has discharged its duty to consult and accommodate (**DTCA**). Anwaatin requests that the Board:
- (a) ensure that it has all necessary DTCA documentation from the Ministry of Energy, Northern Development and Mines (**MENDM**) either upon or as a condition to the approvals;
 - (b) set out in its decision and reasons on the Application the Municipalities' approach to, and success with, Indigenous rights holders, the Municipalities' Indigenous policy and how the Corporation has engaged the policy to discharge the DTCA;
 - (c) document whether and how the Municipalities have determined, interpreted, and applied their 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 Anwaatin First Nations, including those that are directly affected natural gas customers in and around the Municipalities; and
 - (d) consistent with the practices of other energy regulators, including the Alberta Utilities Commission, consider addressing its own delegated duty to consult, in part by visiting

the affected indigenous communities, including those experiencing energy poverty, which may be positively impacted by the Project and/or access to the resulting natural gas.

(iii) Optimizing the Project efficiency and cumulative benefits.

8. There is a serious need to address energy poverty in the Anwaatin First Nations 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, and the Project, directly or indirectly, has the ability to facilitate access to natural gas in neighbouring First Nation and other communities.
9. The Board noted the existence of energy poverty 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.
10. Anwaatin recognizes and agrees that there is a serious need for access to natural gas in the region surrounding the North Shore Project and submits that this need is not limited to the Municipalities. The Anwaatin First Nations and other Indigenous communities — both on and off-reserve — could be served and provided with access to natural gas from an LNG facility in Nipigon, Ontario, including and especially communities on or near the Highway 17 and Highway 11 corridors. Many commercial, industrial, and institutional customers beyond the Municipalities could also benefit from the North Shore Project and related services, including customer entities owned and operated by First Nations or having joint-ventures and business agreements with First Nations.
11. The Corporation itself notes that “[i]f the Project were to be extended to areas beyond the five (5) Municipalities in order to serve certain Indigenous reserve communities, residents in these communities would have access to an energy source, the cost of which would be

materially less than existing sources of energy.”¹ As a result, the Board may wish to consider terms and conditions of approval that facilitate both the design and construction and the operation of the Project that allows for expansion or access by the Corporation or future applicants.

12. Future access to or expansion of the Project to other neighbouring communities, including some or all of the Anwaatin First Nations, may also be supported by future energy cost savings, and enhanced Project economics.
 - (a) **Energy cost savings.** Inclusion of some or all of the Anwaatin First Nations, other communities beyond the Municipalities, and other commercial, industrial, and institutional customers would significantly multiply the projected 10-year (est. \$56.7 million) and 40-year (est. \$294 million) total energy cost savings and related benefits associated with the proposed distribution system.²
 - (b) **Enhanced Project economics.** The economic feasibility of the Project may potentially be enhanced by facilitating construction/design and/or natural gas access for the Anwaatin First Nations, communities beyond the Municipalities, and other commercial, industrial, and institutional customers connected to the Highway 17 and Highway 11 corridors.
13. Anwaatin notes that Stantec’s cumulative effects assessment does not appear to include the potential positive benefits of enabling an LNG production and distribution facility that can provide for service to or access by the Anwaatin First Nations, other communities beyond the Municipalities, and other commercial, industrial, and institutional customers connected to the Highway 17 and Highway 11 corridors.
14. Anwaatin agrees with the Corporation that “the LNG Services Agreement is not a ‘usual,’ ‘normal course’ or ‘typical’ utility gas transportation contract”, but that it is instead “the lynchpin of a virtual gas transportation pipeline, extending from a point of interconnection between the LNG Facilities and the TCPL Mainline, to points of interconnections between

¹ Interrogatory Response Anwaatin.5(b).

² Town of Marathon’s Argument-in-Chief (December 11, 2019), p. 15.

the LNG Depots and the Distribution System in each of the five Municipalities. The LNG Services will be a link in the chain of natural gas transportation from Alberta to the burner tip.”³ In this regard, the Project may constitute an integral, lower emission energy hub for Lake Nipigon and other Northern communities and industries if constructed and operated accordingly; and

15. The Board should, if it grants pre-approval of the LNG Services Agreement, consider terms and conditions that may facilitate future expansion to, or access by, neighbouring customers and communities.

REQUESTED RELIEF

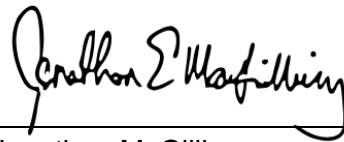
16. Anwaatin requests that the Board approve the Corporation’s requested approvals and:
 - (a) in its written decision and reasons, expressly consider and determine whether and how the Crown directly, and as delegated through the Board and the Corporation, has adequately consulted with affected Indigenous communities and discharged its duty to consult and accommodate all affected Indigenous rights holders;
 - (b) consider terms and conditions that may facilitate the future access to and/or expansion of the Project by the Corporation or other qualified applicants; and
 - (c) require that the Corporation file the notice of sufficiency of consultation activities from MENDM, the Indigenous Consultation Summary Report including details on the policy and process followed to discharge the Crown’s duty to consult and accommodate directly, and indirectly through the Board and the Corporation.

³ Town of Marathon’s Argument-in-Chief (December 11, 2019), p. 33.

ALL OF WHICH IS RESPECTFULLY
SUBMITTED THIS 6th DAY OF JANUARY,
2020.



Lisa (Elisabeth) DeMarco
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Counsel for Anwaatin



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