



Lisa (Elisabeth) DeMarco
Senior Partner
Bay Adelaide Centre
333 Bay Street, Suite 625
Toronto, ON M5H 2R2
TEL +1.647.991.1190
FAX +1.888.734.9459
lisa@demarcoallan.com

April 17, 2020

VIA RESS

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

Dear Ms. Long:

Re: Board File No.: EB-2020-0107 (the Motion): Red Rock Indian Band and Bingwi Neyaashi Anishinaabek First Nation (collectively, the Moving Parties) Motion to Review and Vary the Phase 1 Decision (the Decision) in the EB-2018-0329 North Shore LNG Project (the Proceeding)

We are counsel to Anwaatin Inc. (**Anwaatin**) on the Motion and generally support the Moving Parties on the Motion. The following submissions address the threshold issues set out by the Board in Procedural Order No. 1 on the Motion.

Anwaatin generally submits that the Applicant in the Proceeding, as well as the Moving Parties, had a legitimate expectation that the Board would follow its long-standing practice and procedure of deciding the Application on its merits as set out in the evidence filed by the Applicant. Given that the Board has consistently adhered to the procedural practice of deciding related applications on the basis of the project applied for in past proceedings, the scope of the duty of procedural fairness owed to the Applicant and the Moving Parties is broad and should also reflect the honour of the Crown in respecting the duty to consult affected Indigenous interests.

Specifically, the Applicant and the Moving Parties had a legitimate expectation, based on the consistent practice and procedures of the Board, that the Application would be decided on the basis of the gas supply plan filed by the Applicant (which was formulated in a manner consistent with the duty to consult), and not an alternate gas supply plan that was effectively promulgated by a competitor intervenor during the course of the hearing (and was not consistent with the duty to consult). The Board appears to have breached the legitimate expectation of the Moving Parties and introduced the requirement that the Applicant deviate from its LNG supply proposed, and provide an assessment of CNG as the *primary supply* of natural gas (the **CNG Requirement**).

Anwaatin respectfully submits that this deviation from the Board's regular practice and the legitimate expectation of the Moving Parties, constitutes a breach of the duty of procedural

fairness owed by the Board to the parties. Such breach prejudices the Applicant and the Indigenous Moving Parties by materially delaying and adding additional costs to the Proceeding.¹ This breach of procedural fairness may constitute an error of law and may, in turn, result in the Board varying the Decision.

Anwaatin respectfully submits that the Board's deviation from the legitimate expectations in the Decision, may result in the Board varying the Decision in order to eliminate CNG Requirement as it may unnecessarily delay, and jeopardize the viability of, the project. In the broader context, this is inconsistent with facilitating natural gas by northern Ontario First Nations, which are currently subject to significant energy poverty and lack access to affordable, reliable, sustainable, and modern energy.

Anwaatin therefore respectfully submits that the issue of whether the matter should be reviewed on the merits should be answered in the affirmative.

Sincerely,



Lisa (Elisabeth) DeMarco

- c. Larry Sault, Anwaatin Inc.
Don Richardson, Shared Value Solutions Ltd.
Chief Marcus Hardy and Alyssa Ray, Red Rock Indian Band
Alex Smith, Henein Hutchison LLP
Daryl Skworchinski, Town of Marathon
Helen Newland and Dennis Wong, Dentons Canada LLP
All Parties to EB-2020-0107

¹ *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 26.