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July 9, 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: Enbridge Gas Inc.
2020 Federal Carbon Pricing Program (FCCP) Application
OEB File No.: EB-2019-0247**

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

Sincerely,

A handwritten signature in black ink, appearing to be "Lisa", with a long, sweeping horizontal line extending to the right.

Lisa (Elisabeth) DeMarco

c. Adam Stiers and Tania Persad, Enbridge Gas Inc.
Larry Sault, Anwaatin Inc.
Don Richardson

Encl.

ONTARIO ENERGY BOARD

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

AND IN THE MATTER OF an application by Enbridge Gas Inc. (**Enbridge Gas**), for an order or orders for gas distribution rate changes and clearing certain non-commodity deferral and variance accounts related to compliance obligations under the *Greenhouse Gas Pollution Pricing Act*, S.C. 2018, c. 12, s. 186. (the **Application**).

EB-2019-0247

SUBMISSIONS

OF

ANWAATIN INC.

July 9, 2020

1. We are counsel to Anwaatin Inc. (**Anwaatin**) in the matter of Enbridge Gas' application to the Ontario Energy Board (the **Board** or the **OEB**), for (a) a **final** order allowing it to charge customers a Federal Carbon Charge under the *Greenhouse Gas Pollution Pricing Act*, SC 2018, c 12, s 186 (the **GGPPA**), **effective April 1, 2020**; (b) a **final** order approving or fixing just and reasonable rates for all Enbridge Gas rate zones (EGD, Union North and Union South), **effective April 1, 2020**, to allow Enbridge Gas to recover other costs (including Facility Carbon Charge costs) in compliance with the GGPPA; and (c) approval of 2019 balances for all FCPP-related deferral and variance accounts, for all Enbridge Gas rate zones and for an **order to dispose of those balances effective October 1, 2020** (the **Application**).
2. Anwaatin is a collective of Indigenous communities including Aroland First Nation, Animbiigoo Zaagi'igan Anishinaabek Nation, and Ginoogaming First Nation (the **Anwaatin First Nations**) and has full intervenor status in this proceeding. The Anwaatin First Nations each have traditional territory, and associated Aboriginal rights and interests protected by the *Constitution Act, 1982*, that may be impacted by the outcomes of this proceeding.
3. Anwaatin and the Board have had several interchanges regarding the express scope of Anwaatin's intervention and the Board's intent to defer the constitutional and indigenous taxation issues raised by Anwaatin and the Chiefs of Ontario (**COO**), without creating a deferral and variance account for such charges. They are summarized below:

Procedural History	Impact or Outcome
<p>Jan. 27, 2020: Anwaatin's Notice of Intervention indicated it may make submissions on:</p> <ul style="list-style-type: none"> • constitutional and section 35 dimensions of Application and related First Nations rights; and • disproportionate number of Indigenous communities currently living in energy poverty in Ontario and stakeholder views on differential 	<p>Feb. 6: Board granted Anwaatin intervenor status (and cost eligibility) in Procedural Order No. 1, noted that "OEB Panel hearing this application will make a determination on the extent to which the issues that COO and Anwaatin have raised will be considered as part of the current proceeding."³</p>

³ Procedural Order No. 1 (February 6, 2020) at pp. 4-5, available online at: <http://www.rds.oeb.ca/HPECMWebDrawer/Record/667101/File/document>.

<p style="text-align: center;">impact of natural gas rates on remote and near-remote communities.¹</p> <p>Jan. 23: COO application for intervenor status noted concerns with respect to application of ss. 87 and 89 of <i>Indian Act</i> to charges imposed by the GGPPA.²</p>	
<p>Mar. 19: Board decision to:</p> <ul style="list-style-type: none"> • proceed on basis that Court of Appeal for Ontario (ONCA) has rendered opinion (currently on appeal to Supreme Court of Canada (SCC)) that GGPPA, and therefore charges imposed by GGPPA, are constitutional;⁴ • defer consideration of Deferred Issues raised by COO and Anwaatin until SCC decision;⁵ and • exclude from scope of proceeding issues raised by Anwaatin associated with energy poverty in indigenous communities and differential impact of natural gas rates on remote and near remote communities.⁶ <p>Board stated that “should the SCC uphold the constitutionality of the GGPPA and of the charges thereunder such that the concerns raised by the COO and Anwaatin remain, these matters can be considered at that time and be informed by the SCC’s views.”⁷ Board also stated that “the issue of whether the</p>	<p>Anwaatin intervenor status effectively revoked by exclusion of Deferred Issues.</p> <p>Mar. 27: Anwaatin response noted that:</p> <ul style="list-style-type: none"> • applicability of GGPPA charges falls within Board’s jurisdiction; Board’s failure to consider Deferred Issues effectively fetters Board’s discretion and results in <i>de facto</i> decision that GGPPA charges are, in fact, applicable to indigenous and reserve communities without due consideration, reasons, or procedural protections afforded by rules of natural justice;⁹ • neither ONCA nor SCC was, or is, seized of <i>applicability</i> of GGPPA; appeals to SCC are instead confined to sole issue of whether the GGPPA is constitutionally <i>valid</i>.¹⁰ <p>Attorney General of Canada noted in recent SCC submissions (attached as Exhibit A) that</p>

¹ Anwaatin Inc., Notice of Intervention (January 27, 2020) at para 6, available online at: <http://www.rds.oeb.ca/HPECMWebDrawer/Record/666152/File/document>.

² Chiefs of Ontario, Application for Intervenor Status (January 23, 2020), available online at: <http://www.rds.oeb.ca/HPECMWebDrawer/Record/665912/File/document>.

⁴ Decision on Updated Intervention Requests and Scope of Proceeding (March 19, 2020) at p. 6, available online at: <http://www.rds.oeb.ca/HPECMWebDrawer/Record/671414/File/document>. The opinion of the Court of Appeal for Ontario in question (2019 ONCA 544) is currently on appeal to the Supreme Court of Canada, as are two related opinions of the Court of Appeal for Saskatchewan (2019 SKCA 40) and the Court of Appeal of Alberta (2020 ABCA 74).

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

⁹ Anwaatin Inc., Letter (March 27, 2019) at p. 1, available online at: <http://www.rds.oeb.ca/HPECMWebDrawer/Record/672965/File/document>.

¹⁰ *Ibid.*

<p>charges imposed by the GGPPA are taxes has been raised in the SCC proceedings.”⁸</p>	<p>issues under s. 87 of <i>Indian Act</i> concern GGPPA’s <i>application, not its validity</i>.¹¹</p>
<p>Apr. 3: Board reiterated deferral of Deferred Issues until SCC has rendered decision and restated that scope of proceeding does not include issues raised by Anwaatin associated with energy poverty in indigenous communities and differential impact of natural gas rates on remote and near remote communities.¹²</p>	<p>Apr. 15: Anwaatin reiterated that SCC is seized of the constitutional <i>validity</i> of the GGPPA, and not its applicability. Anwaatin requested that Board clarify its intended procedures to consider Deferred Issues and ensure that all GGPPA charges affected by the Deferred Issues be placed in a deferral and variance account pending Board’s due consideration.¹³</p>
<p>Apr. 21: Board replied indicating that it remains of view that all consideration of the Deferred Issues is postponed and no further action is required at this time.¹⁴ Board stated that such postponement “does not limit the OEB’s ability to address this issue at a future date.”¹⁵</p>	<p>Board refused Anwaatin’s request to establish deferral and variance account for GGPPA charges affected by Deferred Issues.</p> <p>Charges affected by Deferred Issues imposed on the Anwaatin First Nations and other First Nation and Métis communities without due consideration, reasons, or procedural protections afforded by rules of natural justice.</p>

4. Specifically, the Board has refused to hear Anwaatin’s issues on energy poverty in indigenous communities and the differential impact of natural gas rates on remote and near remote communities and deferred any Board consideration of Anwaatin issues related to the application of sections 87 and 89 of the *Indian Act* and section 35 of the *Constitution Act, 1982* to the charges imposed by the GGPPA (the **Deferred Issues**) and in doing so has predetermined that such charges will apply to the Anwaatin communities without hearing from Anwaatin.
5. The Board has therefore effectively silenced Anwaatin and denied its members of their legislative, constitutional, and common law right to be heard contrary to each and all of: sections 2, 19, 20, and 36 of the *Ontario Energy Board Act, 1998*; sections 87 and 89 of the

⁸ *Ibid.*

¹¹ See Exhibit A, Letter (June 29, 2020), Attorney General of Canada, Court File Nos., 38663, 38781 and 39116 [emphasis added].

¹² Board Secretary, Letter (April 3, 2020) at p. 1, available online at: <http://www.rds.oeb.ca/HPECMWebDrawer/Record/673587/File/document>.

¹³ Anwaatin Inc., Letter (April 15, 2020) at pp. 1-2, available online at: <http://www.rds.oeb.ca/HPECMWebDrawer/Record/674327/File/document>.

¹⁴ Board Secretary, Letter (April 21, 2020) at p. 1, available online at: <http://www.rds.oeb.ca/HPECMWebDrawer/Record/675039/File/document>.

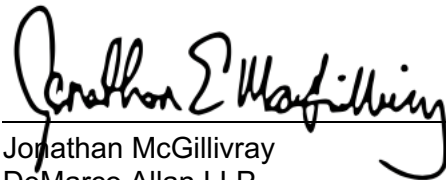
¹⁵ *Ibid.*

Indian Act; section 35 of the *Constitution Act, 1982*; and the common law as set out in *Dunsmuir v New Brunswick*, 2008 SCC 9; *Baker v Canada (Minister of Citizenship & Immigration)*, [1999] 2 SCR 817; *United States v Lake*, 2008 SCC 23; *NLNU v Newfoundland & Labrador (Treasury Board)*, 2011 SCC 62; *Burke v NAPE*, 2010 NLCA 12; and *Clifford v Ontario Municipal Employees Retirement System*, 2009 ONCA 670.

ALL OF WHICH IS RESPECTFULLY
SUBMITTED THIS
9th day of July, 2020



Lisa (Elisabeth) DeMarco
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Counsel for Anwaatin



Jonathan McGillivray
DeMarco Allan LLP
Counsel for Anwaatin

EXHIBIT A



Department of Justice
Canada

Ministère de la Justice
Canada

Security Classification/
Classification de sécurité :

PROTECTED B

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Winnipeg MB R3C 0S6

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Our File/Notre dossier: 500002615 / 500005032
Your file/Votre dossier: 38663 / 38781

June 29, 2020

VIA EMAIL

Supreme Court of Canada
301 Wellington Street
Ottawa, Ontario K1A 0J1

Attention: Mr. Roger Bilodeau, Q.C., Registrar

Dear Sir:

Re: Attorney General of Saskatchewan v. Attorney General of Canada; File No. 38663
Attorney General of Ontario v. Attorney General of Canada; File No. 38781
Attorney General of British Columbia v. Attorney General of Alberta; File No. 39116

This is the Attorney General of Canada's (Canada) response to Thunderchild First Nation's motion for an extension of time and for leave to intervene in the Saskatchewan (38663) and Ontario (38781) appeals in which Canada is a party.

Canada does not oppose Thunderchild First Nation's motion for an extension of time. Further, Canada does not oppose Thunderchild First Nation's motion for leave to intervene. However, Canada asks that this Court limit Thunderchild First Nation's intervention to arguments addressing the issues before the Court in these appeals.

Specifically, Canada accepts that Thunderchild First Nation has an interest in the issues in these appeals. Further, Canada agrees that s. 35 of the Constitution is relevant to this Court's consideration of the constitutional validity of the *Greenhouse Gas Pollution Pricing Act (Act)*. However, Thunderchild First Nation's proposed submissions on whether the exemption available to Indians and Indian bands under s. 87 of the *Indian Act*, 1985 c. I-5, should exempt the Band or its members from some or all applications (direct or indirect) of the fuel charge under the *Act* concern the *Act's* application, not its validity. Further, this is a new and complex issue that is not before this Court in the current appeals. Thus, Thunderchild First Nation should not be permitted to advance arguments regarding the tax exemption provided under s. 87 of the *Indian Act*.

Yours truly,

Sharlene Telles-Langdon
Senior General Counsel
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Department of Justice Canada

cc. *via* email

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