



March 31, 2021

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. Integrated Resource Planning Proposal Application
Board File No.: EB-2020-0091

We are counsel to Anwaatin Inc. (**Anwaatin**) in the above-noted proceeding. Please find attached Anwaatin's Final Argument in the proceeding, which is filed further to Procedural Order No. 9.

Sincerely,

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

Jonathan McGillivray

c. Regulatory Affairs, Enbridge Gas Inc.
David Stevens, Aird & Berlis LLP
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. for a determination that its Integrated
Resource Planning Proposal is reasonable and
appropriate.

EB-2020-0091

ANWAATIN INC.

FINAL ARGUMENT

March 31, 2021

1. We are counsel to Anwaatin Inc. (**Anwaatin**) on Enbridge Gas Inc.'s (**Enbridge Gas's** or the **Company's**) application to the Ontario Energy Board (the **Board**), for a determination that its Integrated Resource Planning (**IRP**) Proposal is reasonable and appropriate (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 intervenor status in this proceeding. The Anwaatin First Nations each have traditional territory, and associated Aboriginal rights and interests protected by section 35 of the *Constitution Act, 1982*, that may be impacted by the outcomes of this proceeding. The Anwaatin First Nations also have affected Indigenous rights and a direct interest in ensuring equitable and optimized energy services, which may include integrated natural gas expansions efficiently integrated with existing electricity services.

A. OVERVIEW

3. Anwaatin's submissions are generally that:
 - i. the identification of needs and constraints may be unduly narrow and not fully informed by the current regulatory and policy context, Enbridge Inc.'s own net-zero climate commitments, and accurate carbon pricing assumptions;
 - ii. the repeatedly revised (five?) binary screening criteria are likely to have the effect of screening out a very significant proportion of the Company's potential projects from consideration of non-pipeline alternatives or integrated resource planning alternatives (**IRPAs**) and thereby result in inefficient asset decisions and potentially stranded assets;
 - iii. the proposed screening approach is not consistent with natural gas-electricity optimization that may be very beneficial to all customers, but particularly Indigenous customers that are currently predominantly served by often unreliable and expensive electrical heating;

- iv. the economic assessment tests that are proposed for projects that are ‘screened in’ do not include appropriate consideration of the actual announced, and/or social, costs of carbon, which are considered by other jurisdictions; and
 - v. Enbridge did not act in accordance with its own Indigenous Peoples Policy (**IPP**) in this proposed change to procedures and operations, and the proposed IRP Framework itself is inconsistent with the IPP.
4. Anwaatin is also concerned that the approvals sought by Enbridge Gas for the proposed IRP Framework and non-pipeline alternatives (a leave ‘not-to-construct’) is currently not authorized by sections 36, 90, 91, or 92 of the *Ontario Energy Board Act* (the **OEB Act**) and the proposed Framework approach may bifurcate and/or constrain the Board’s jurisdiction to consider need and alternatives in the context of a ‘regular’ leave-to-construct application.
5. These main submissions are organized in accordance with the following elements of Enbridge Gas’ Argument-in-Chief:
- (a) IRP Assessment Process
 - STEP ONE: Identification of Needs/Constraints
 - STEP TWO: Binary Screening Criteria
 - (i) Emergent Safety Issues
 - (ii) Timing
 - (iii) Customer-Specific Builds
 - (iv) Community Expansion
 - (v) Pipeline Replacement and Relocation Projects
 - STEP THREE: Two-Stage Evaluation Process
 - (b) Stakeholder Outreach and Engagement Process
 - (c) Future IRP Plan Applications

B. SUBMISSIONS

(a) IRP Assessment Process

STEP ONE: Identification of Needs/Constraints

6. Enbridge Gas' proposed process for identification of needs and constraints may be unduly narrow and does not appear to be informed by the current regulatory and policy context, Enbridge Inc.'s own net-zero climate commitments, and accurate carbon pricing assumptions.
7. Anwaatin submits that the proposed IRP Framework should facilitate avoiding inefficient asset decisions and potentially stranded assets in light of the current regulatory and policy context including Enbridge Inc.'s announced targets of net-zero emissions by 2050, a 35% reduction in greenhouse gas (**GHG**) emissions intensity from operations by 2030,¹ and the federal government's announced carbon prices rising in \$15 dollar annual increments from \$50 per tCO₂e in 2022 to \$170 per tCO₂e in 2030.
8. The IRP Framework should, in Anwaatin's view, include mechanisms that (i) ensure adequate incentives for Enbridge Gas to pursue IRPAs and (ii) mitigate the potential for Enbridge Gas to be predisposed toward traditional 'pipe' responses to identified needs or constraints. Enbridge Gas' planning processes, including its AMP, should include assumptions providing for certain levels of IRPAs to be included at baseline. In Anwaatin's view, it is not sufficient for planning processes to account only for IRPAs that have already been chosen or approved. assumptions.
9. In its current form, the proposed IRP Framework is at risk of multiplying inefficiencies and exacerbating the potential for assets to be stranded. Anwaatin submits that the IRP Framework should seek to optimize existing assets, and avoid stranded assets in particular, for the benefit of the most vulnerable consumers in the Ontario energy paradigm. This requires an approach for the identification of needs and constraints and related IRP analysis that breaks down 'gas' and 'electricity' silos and pursues an integrated approach.
10. The broader regulatory and policy context is also moving toward net-zero goals. Bill C-12, the *Canadian Net-Zero Emissions Accountability Act*, for example, is

¹ Enbridge Inc., Net Zero by 2050: Pathways to Reducing Our Emissions, available online at: https://www.enbridge.com/~/_media/Enb/Documents/About%20Us/Net_Zero_by_2050.pdf.

currently in its second reading in the House of Commons. The Bill would, if enacted, set a national target of net-zero emissions by 2050 and provide that interim targets are to be set for each of 2030, 2035, 2040, and 2045. The Minister of Environment would be required, in setting interim targets, to take into account “the best scientific information available as well as Canada’s international commitments with respect to climate change.”² The Bill states that “‘net-zero emissions’ means that anthropogenic emissions of [GHG] into the atmosphere are balanced by anthropogenic removals of [GHG] from the atmosphere over a specified period.”³

11. The Supreme Court of Canada has furthermore now provided confirmation that the federal Parliament has the constitutional authority to set minimum national standards for GHG price stringency to reduce GHG emissions⁴, adding force to the federal government’s announced carbon price increases.
12. Anwaatin submits that the Board should require Enbridge Gas to broaden its approach to identification of needs and constraints and consider all of the latest material information available with respect to the regulatory and policy context, Enbridge Inc.’s own net-zero targets, and accurate carbon pricing assumptions (see discussion at paragraphs 30 and 31). If the Board authorizes the Company’s proposed IRP Framework without these modifications, Anwaatin respectfully submits that there is greater potential for the stranding of related fossil fuel assets with related — and avoidable — costs being imposed on customers that are least able to afford them. This risk may be eliminated by a thorough integrated resource planning process that necessitates full consideration of the increasing regulatory climate change constraints and the Company’s own net zero target.

² Bill C-12, *Canadian Net-Zero Emissions Accountability Act* (First Reading, November 19, 2020), available online at: <https://parl.ca/DocumentViewer/en/43-2/bill/C-12/first-reading>.

³ Bill C-12, *Canadian Net-Zero Emissions Accountability Act* (First Reading, November 19, 2020), available online at: <https://parl.ca/DocumentViewer/en/43-2/bill/C-12/first-reading>.

⁴ *Reference re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11 at para 4.

STEP TWO: Binary Screening Criteria

13. Anwaatin is concerned that the repeatedly revised binary screening criteria are likely to have the effect of screening out a very significant proportion of the Company's potential projects from consideration as IRPAs and similarly result in inefficient asset decisions and potentially stranded assets. The Company's evidence is that only 189 (13.1%) of its 1,439 current capital projects would pass the binary screening criteria (excluding the timing criterion) at the proposed \$10 million threshold for replacement and relocation projects and be eligible for IRPA consideration.⁵ Of those 189 projects, 164 (11.4%) are system reinforcement projects and 25 (1.7%) are replacement and relocation projects. When the proposed three-year timing criterion is applied, the number of projects eligible for IRPA consideration drops from 189 to 78 (5.4%), which is made up of 64 system reinforcement projects (4.4%) and 14 replacement and relocation projects (<1%).⁶ Table 1, referred to at paragraph **Error! Reference source not found.**, below, provides additional detail on these figures.
14. The proposed screening approach is also inconsistent with natural gas-electricity optimization that may be very beneficial to all customers, but particularly Indigenous customers that are currently predominantly served by often unreliable and expensive electrical heating.
15. Anwaatin believes that several of the criteria are unnecessarily broad, imprecise and should be made more flexible in order to ensure that viable IRPAs are not excluded in the first instance. Anwaatin submits that the Board should order Enbridge Gas to revise the screening criteria for each and all of (i) emergent safety issues, (ii) timing, (iii) customer-specific builds, (iv) community expansion, and (v) pipeline reinforcement and relocation projects.
16. **(i) Emergent safety issues.** Anwaatin submits that Enbridge Gas' proposal to automatically screen out IRPAs responsive to service safety and reliability requires greater precision. Anwaatin understands that rapid replacement of a damaged

⁵ Exhibit J1.1 at 5 (Table 2).

⁶ Exhibit J1.9 at 2 (Table 1).

pipeline is required in order to ensure the safety of local communities and the Company's broader transmission and distribution system. Anwaatin also acknowledges and appreciates that Enbridge Gas has indicated that longer-term safety-related system constraints/needs may be appropriate for an IRPA solution. However, the gap between these two categories is large — and not defined by the proposed criterion. In particular, Anwaatin notes that there appears to be a significant margin between “emergent” and “longer-term”. Anwaatin requests that the Board direct Enbridge to precisely describe the safety and/or reliability considerations it will apply in screening out potential IRPAs (including greater specificity with respect to timeframes to respond to safety and reliability issues).

17. **(ii) Timing.** Anwaatin submits that Enbridge Gas' proposal to automatically screen out IRPAs responsive to identified system constraints and needs that must be met in under three years is unnecessarily constraining and inflexible. The timing criterion risks unduly excluding from consideration IRPAs that may otherwise efficiently and effectively address identified system needs. Anwaatin suggests that that Board consider reducing the timing threshold from three years to one to two years. A period shorter than three years is more than sufficient to evaluate the ability of an IRPA to resolve an identified system constraint/need and implement that IRPA. Enbridge Gas' statement that it expects most reinforcements will be identified with sufficient time to allow for IRP planning, as it develops experience with IRP planning, further supports a shorter timing threshold.⁷
18. Moreover, Enbridge Gas notes several exceptions to the timing criterion as proposed, including “supply-side solutions like CNG and bridging or market-based alternatives in combination with other IRPAs where such exceptions/IRPAs can address a more imminent constraint/need.”⁸ These exceptions are, in Anwaatin's view, evidence that there are likely a variety of IRPAs that can address imminent constraints/needs and that the timing threshold criterion should therefore be adjusted or excluded from Enbridge Gas' binary screening process.

⁷ Exhibit J1.1 at 1.

⁸ Enbridge Gas Inc., Argument-in-Chief at para 78(ii).

19. Table 1 of Exhibit J1.9, below, reflects the percentage of reinforcement, replacement and relocation that are also likely to be excluded from consideration through binary screening. The table illustrates that this threshold criterion may exclude a very significant number of investments that may benefit from consideration of a non-pipeline alternative, at all cost thresholds. The table below should be read in conjunction with Tables 1 and 2 at Exhibit J1.1, which we have not included here in the interest of brevity.

Exhibit J1.9, Table 1:

Category	Capital Spend	# Investments	% Capital	% Investments
IRP Potential	\$ 2,377,169,577	548		
No - Capital Spend 2021-3	\$ 1,233,809,502	372	52%	68%
Yes - 2024 +	\$ 1,143,360,075	176	48%	48%
IRP Planning - System Reinforcement	\$ 978,323,070	164		
No - Capital Spend 2021-3	\$ 482,638,580	100	49%	61%
Yes - 2024 +	\$ 495,684,490	64	51%	39%
IRP Planning - Replacement & Relocation - Cost < \$2M	\$ 136,456,054	303		
No - Capital Spend 2021-3	\$ 109,817,896	221	80%	73%
Yes - 2024 +	\$ 26,638,158	82	20%	27%
IRP Planning - Replacement & Relocation - Cost > \$2M	\$ 119,612,000	40		
No - Capital Spend 2021-3	\$ 82,518,977	28	69%	70%
Yes - 2024 +	\$ 37,093,022	12	31%	30%
IRP Planning - Replacement & Relocation - Cost > \$5M	\$ 116,775,377	16		
No - Capital Spend 2021-3	\$ 88,178,069	12	76%	75%
Yes - 2024 +	\$ 28,597,308	4	24%	25%
IRP Planning - Replacement & Relocation - Cost > \$10M	\$ 1,026,003,077	25		
No - Capital Spend 2021-3	\$ 470,655,980	11	46%	44%
Yes - 2024 +	\$ 555,347,096	14	54%	56%
Grand Total	\$ 2,377,169,577	548		

Note: For 2 investments, the spend has been split across the No and Yes categories as these investments represent projects that are yet to be defined but are anticipated to be identified with 3-5 years of lead time. They are divided as follows which represents the split of the yet to be identified projects.

20. **(iii) Customer-specific builds.** Anwaatin submits that Enbridge Gas' proposal to automatically screen out system constraints/needs that are underpinned by a customer's "clear determination for a facility option"⁹ is insufficiently precise and risks potentially stranding assets for which the Company is accountable. Anwaatin requests that the Board direct Enbridge Gas to set out the precise circumstances

⁹ Enbridge Gas Inc., Argument-in-Chief at para 78(iii).

in which it will refuse to consider a non-pipeline alternative because of the determination of a particular customer or group of customers.

21. **(iv) Community expansion.** Enbridge Gas proposes to automatically exclude IRP analysis in situations where a facility project has been driven by policy and related funding explicitly aimed at delivering natural gas into communities to help bring heating costs down.¹⁰ Enbridge Gas further notes that “where government grants are not identified for the specific purpose of growing natural gas access, then IRP could be considered for community expansion provided IRPAs such as district energy systems were included in scope.”¹¹
22. This proposed screening criterion originates in the context of the *Access to Natural Gas Act, 2018*, which amended the OEB Act to add section 36.2 and the Board’s Final Guidelines for Potential Projects to Expand Access to Natural Gas Distribution issued on March 5, 2020.¹² Anwaatin submits that the criterion is unduly restrictive and is based on an overly narrow interpretation of the statutory and regulatory regime under section 36.2 of the OEB Act.
23. Section 36.2 of the OEB Act provides that:

in approving just and reasonable rates for a gas distributor, shall provide rate protection for consumers or prescribed classes of consumers with respect to costs incurred by the gas distributor in making a qualifying investment **for the purpose of providing access to a natural gas distribution system** to those consumers by reducing the rates that would otherwise apply in accordance with the prescribed rules.¹³

A gas distributor is furthermore “entitled to be compensated for lost revenue resulting from the rate reduction provided” pursuant to the above.
24. Ontario Regulation 24/19 (O. Reg. 24/19) made under section 36.2 of the OEB Act provides that ‘natural gas distribution system’ means “a system for distributing natural gas by hydrocarbon pipeline in Ontario and includes any structures, equipment or other things used for that purpose.”¹⁴ It is clear that government-

¹⁰ Enbridge Gas Inc., Argument-in-Chief at para 78(iv).

¹¹ Enbridge Gas Inc., Argument-in-Chief at para 78(iv).

¹² *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Sched. B, s. 36(2) [OEB Act]; EB-2019-0255, Ontario Energy Board, Final Guidelines for Potential Projects to Expand Access to Natural Gas Distribution (March 5, 2020), available online at: <https://www.oeb.ca/sites/default/files/ltr-final-guidelines-gas-expansion-20200305.pdf>.

¹³ OEB Act, s. 36.2(2) [emphasis added].

¹⁴ O. Reg. 24/19, Expansion of Natural Gas Distribution Systems, s. 1.

funded community expansion projects delivered under section 36.2 must therefore include a component that is — but is not entirely — a hydrocarbon pipeline.

25. Anwaatin submits that the definition does not preclude an approach to community expansion that includes a hydrocarbon pipeline combined with an IRPA, which may include an optimized electricity element. Enbridge Gas acknowledged that it may be feasible to consider integrated solutions for future community expansion projects carried out under O. Reg. 24/19, assuming sufficient Board direction.¹⁵ The province's access to natural gas regime furthermore clearly does not preclude Enbridge Gas from pursuing community expansion-type projects through IRPAs that are in locations other than those currently or subsequently referenced in Schedule 1 to O. Reg. 24/19.
26. Enbridge Gas has requested approval "to use a wide variety of demand side alternatives (gas and non-gas, including electricity-based solutions), along with appropriate supply side alternatives, to meet an identified need/constraint".¹⁶ If the Board grants such approval, there may be several IRPA options available to Enbridge Gas that could accommodate innovative approaches to community expansion.
27. Anwaatin therefore proposes that the Board order Enbridge Gas to amend the screening criterion in a manner that promotes, rather than precludes, innovative non-pipeline approaches to community expansion. The criterion should be drafted to ensure that it does not erroneously screen out (i) future integrated gas/IRPA community expansion projects carried out under O. Reg. 24/19 and (ii) community expansion IRPAs carried out outside of the O. Reg. 24/19 scheme.
28. **(v) Pipeline reinforcement and relocation projects.** Anwaatin submits that Enbridge Gas' proposed \$10 million minimum cost for facility projects being advanced for replacement or relocation of a pipeline is unduly constraining. It is not clear to Anwaatin whether this criterion applies only where a pipeline is not being increased, as discussed during the oral hearing. Anwaatin requests that the

¹⁵ Transcript, Volume 2 (March 2, 2021) at 200:23-201:8.

¹⁶ Enbridge Gas Inc., Argument-in-Chief at para 51.

Board closely examine Enbridge Gas' claim that IRP will not be "appropriate for smaller scale pipeline replacement projects (less than \$10 million cost), as the cost savings that would result from downsizing pipeline size will not be significant enough to support consideration of IRPAs."¹⁷ Anwaatin moreover requests that the Board direct the Company to (i) precisely state the type or types of projects to which the criterion relates and (ii) revise the cost threshold downward from \$10 million to \$2 million, where the size of the pipeline is being increased.

STEP THREE: Two-Stage Evaluation Process

29. Anwaatin submits that the economic assessment tests that are proposed for projects that are 'screened in' do not include appropriate consideration of the actual announced and/or social costs of carbon, which are considered by other jurisdictions.
30. The price of excess emissions under the *Greenhouse Gas Pollution Pricing Act* (**GGPPA**) is regulated by law and is set at \$40 per tCO₂e in 2021 and \$50 per tCO₂e in 2022. On December 11, 2020, the Government of Canada announced that, starting in 2023, prices will rise by \$15 per tCO₂e each year out to 2030¹⁸ in accordance with the following schedule:

	2023	2024	2025	2026	2027	2028	2029	2030
Price (per tCO₂e in CAD)	\$65	\$80	\$95	\$110	\$125	\$140	\$155	\$170

31. Enbridge Gas, in spite of these directional signals, continues to undertake planning activities, perform demand forecasts, and can reasonably be expected to carry out IRP economic assessment on the basis of a \$50 per tCO₂e for all years after 2022. Enbridge Gas' position is that there is not yet any legislative basis for the federal

¹⁷ Enbridge Gas Inc., Argument-in-Chief at 78(v).

¹⁸ Government of Canada, Background, "A Health Environment and a Healthy Economy", available online at: <https://www.canada.ca/en/environment-climate-change/news/2020/12/a-healthy-environment-and-a-healthy-economy.html>.

government's December 11, 2020 announcement that the price of carbon will increase to \$170 per tCO₂e in 2030, and that it will not proceed on the price change until it is regulated. Anwaatin notes, with respect, that although Enbridge Gas assumes a carbon price \$50 per tCO₂e well into the future, there is also no legislative or regulatory basis for that figure beyond 2022.¹⁹ Anwaatin urges the Board to direct Enbridge Gas to announced federal future carbon prices into its planning activities and demand forecasts as an integral part of integrated resource planning.

32. Anwaatin moreover submits that the proposed economic assessment does not include appropriate consideration of the social costs of carbon, a metric that is used for IRP assessment in other jurisdictions. For example, New York has

¹⁹ See Transcript, Technical Conference, Volume 3 (February 12, 2021) at 31:21-33:6 (excerpted below).

MS. DeMARCO: Thank you. I just have one last series of questions in relation to your response to GEC 8 about the forward and future carbon price that you're using.

Are you assuming zero carbon price after 2022?

MR. STIERS: No, we are currently carrying the 2022 price forward, I believe.

MS. DeMARCO: But there's no legislation in relation to post 2022, is that right?

MR. STIERS: No. There is not legislation enacted. There's an announcement by the federal government.

MS. DeMARCO: So you're acting on an announcement of the federal government in the post 2022 --

MR. STIERS: No, we are simply holding 2022 as it is.

MS. DeMARCO: I am sorry --

MR. STIERS: Carrying 2022 forward, that's --

MS. DeMARCO: So you are assuming a flat price. You are speculating and using a \$50 price for 2022 forward?

MR. STIERS: No, we are saying that the best available information based on enacted legislation currently should hold.

MS. DeMARCO: But there's no legislation enacted for 2023.

MR. STIERS: My understanding is no, there is not. It is an announcement only at this point, and I think over the past two days, we have discussed at length that to the extent that the announced increased federal carbon price increasing to \$170 per tonne CO₂E by, I believe, 2030 is put into law. Then we would reflect that fact in forecasts going forward.

MS. DeMARCO: So in the absence of legislation, you're making an assumption of a placeholder of \$50. Is that right?

MR. STIERS: I think -- no, I have already responded to say we are holding it at the level that we understand it to, according to law, stop at.

MS. DeMARCO: Sorry, we don't have any data for 2023, there is no law in relation to 2023, is that right?

MR. STIERS: Not as of now, no.

MS. DeMARCO: And so there's no law pertaining to 2023.

MR. STIERS: I do not know what the current Greenhouse Gas Pollution Pricing Act speaks to with regard to what happens beyond 2022. And what it says around the government's intentions with regard to federal carbon pricing, I can't speak to that specifically.

established a social cost of carbon of \$125 USD (\$158 CAD) per metric tonne for calendar year 2020. That value increases annually to \$142 USD (\$180 CAD) in 2030 and \$160 USD (\$202 CAD) in 2040.²⁰ In addition, the Revised Con Edison *Gas Benefit-Cost Analysis Handbook* (filed September 15, 2020) describes an avoided CO₂ emissions calculation using a social cost of carbon estimate, defined as the “total impacts on society associated with an incremental increase in carbon dioxide emissions, measured in dollars per ton of CO₂ equivalent.”²¹ Anwaatin requests that the Board direct Enbridge Gas to appropriately consider either the actual announced Canadian carbon price and or an analogous social cost of carbon in its economic assessment of IRPAs.

33. In addition, Enbridge proposes to include IRPAs in its Gas Supply Planning and Asset Management Plan (**AMP**) **only after they have been approved** by the Company and the Board raises serious concerns about the impact and inefficiencies resulting from the proposed reactive — as opposed to proactive — resource “planning”. Mr. Gillett and Ms. McCowan confirmed during the oral hearing that none of Enbridge Gas’ gas or asset planning processes will reflect IRPAs until they are approved via the Company’s IRP assessment process:

MS. DeMARCO: So just so I'm clear on this point, the gas supply plan won't reflect any IRP until it's been approved; is that right?

MR. GILLETT: That's right. I don't think any of our planning processes would reflect an IRPA until it's been chosen.

MS. DeMARCO: Perfect. And then in relation to the AMP, it would be up to five years before an AMP -- five years after an IRPA is approved before an AMP reflects it; is that right?

MS. McCOWAN: I don't think that's the case. What we've said is that the AMP will reflect the best available information, so if we have approved an IRPA, then the next AMP that's released annually, or an addendum to it would reflect that for that need or constraint, an IRPA is the preferred solution.

MS. DeMARCO: That only occurs after the IRP has been specifically approved, is that right?

MS. McCOWAN: That's correct.²²

²⁰ Exhibit J4.6.

²¹ Exhibit J4.2.

²² Transcript, Volume 1 (March 1, 2021) at 176:16-177:6.

34. Anwaatin requests that the Board ensure that, after its many years of directions to Enbridge, the Company's integrated resource planning process is truly a proactive planning process and not simply a means of implementing approved asset and operations decisions. The IRP Framework should, in Anwaatin's view, include mechanisms that (i) ensure adequate incentives for Enbridge Gas to pursue IRPAs and (ii) mitigate the potential for Enbridge Gas to be predisposed toward traditional 'pipe' responses to identified needs or constraints; (iii) proactively reflect potential non-pipeline alternatives in both gas supply and asset management planning; and (iv) by doing so, avoid the potential costs and inefficiencies resulting from stranded assets that are implemented without the benefit of proactive integrated resource planning.

(b) Stakeholder Outreach and Engagement Process

35. The Company confirmed that the proposed IRP Framework constitutes a proposed change in Enbridge Gas' operations and that it was subject to the IPP. It should therefore have been the subject of consultation and engagement with Indigenous communities in accordance with the IPP, the United Nations Declaration on the Rights of Indigenous Peoples (**UNDRIP**), and Canadian jurisprudence on the duty to consult and accommodate. Enbridge Gas, however, failed to carry out any Indigenous consultation and engagement on the proposed IRP Framework. Anwaatin submits that, going forward, Enbridge Gas' stakeholder outreach and engagement process must demonstrate a stronger adherence and commitment to the IPP, UNDRIP, and the duty to consult and accommodate.
36. **The IRP Framework constitutes "operations"**. Enbridge Gas witnesses confirmed several times that the proposed IRP Proposal represents a change in the Company's operations:

MS. DeMARCO: I just want to clarify, incorporation is not incorporation of a new entity. It's incorporation of these new operating processes and procedures. Is that fair?

MS. THOMPSON: Into the respective planning process, yes, achieving the framework and the corresponding decision that's made by the Board and incorporating it into our current planning processes.²³

[...]

MS. DeMARCO: Subject to that qualification around the annual update for approved IRPs, demand forecasting going into your gas supply plan informing your facilities planning is business as usual for you, is that right?

MS. McCOWAN: I don't think I would characterize it as business as usual. I think Mr. Stiers and Ms. Thompson have identified a few things that would be new, specifically the need to really understand the IRPAs for an investment we would previously have scoped out for 10 years, but wouldn't have had to really dig into the planning for it in the short-term. And in order to understand whether or not IRPAs are feasible, I think we would need to start doing that work much earlier.

So I think there are some stages of that that do drive a change in our existing processes and significant additional work.²⁴

37. **The IPP requires consultation on “operations”.** The IPP includes several commitments that guide Enbridge Gas’ relationship with Indigenous Peoples.²⁵ In particular, the IPP states: “[w]e engage in forthright and sincere consultation with Indigenous Peoples about **Enbridge’s** projects and **operations through processes that seek to achieve early and meaningful engagement** so their input can help define our projects that may occur on lands traditionally used by Indigenous Peoples.”²⁶
38. The IPP also acknowledges the importance of UNDRIP, which provides for:
- i. Indigenous participation in decision-making that could affect their rights (Article 18);
 - ii. consultation and cooperation in good faith with Indigenous peoples in order to obtain their free, prior and informed consent before adopting measures that may affect them (Article 19);
 - iii. the right to conservation and protection of the environment and the productive capacity of their lands and/or territories and resources (Article 29(1));

²³ Transcript, Volume 1 (March 1, 2021) at 174:27-175:4.

²⁴ Transcript, Volume 1 (March 1, 2021) at 177:7-22.

²⁵ The IPP notes that it applies to Enbridge Inc.’s affiliates, employees, and contractors.

²⁶ Exhibit I.Anwaatin.1 at 3, footnote 2 (hyperlink); Exhibit K1.6 at 54-55. Enbridge Inc.’s Indigenous Peoples Policy is available online at:
https://www.enbridge.com/%7E/media/Enb/Documents/About%20Us/indigenous_peoples_policy.pdf?la=en.

- iv. the right of Indigenous peoples to determine and develop priorities and strategies for the development or use of their lands or territories and other resources (Article 32);
 - v. the right of Indigenous peoples to have access to financial and technical assistance for the enjoyment of their rights (Article 39);
39. It is moreover Anwaatin's understanding that the spirit and intent of the IPP is consistent with jurisprudence on the duty to consult and accommodate Indigenous rights-holders, which is well-established in Canadian law. Government decision-makers, delegated regulators (including administrative tribunals like the Board) and many proponents have a constitutionally enshrined and judicially enforced duty to consult a given Indigenous community if the decision-maker or proponent is contemplating conduct that may adversely affect a recognized or credibly asserted treaty or Aboriginal right.²⁷
40. The Supreme Court of Canada has confirmed that that the duty to consult is not limited to projects or decisions and conduct that have an immediate impact on land and resources. It extends to "strategic, higher level decisions", of the same nature as the proposed IRP Framework and the Board's approval of same, which may affect Aboriginal claims and rights. The duty to consult has been found to extend to decisions from general province-wide infrastructure inquiries, general pipeline review processes, new forest services, to specific pipeline applications and tree licenses.²⁸
41. **Enbridge Gas failed to carry out Indigenous consultation and engagement on the proposed IRP Framework.** Enbridge Gas acknowledges that there was no stakeholder consultation of any kind on the formation of the IRP Framework.²⁹ There was moreover no Indigenous consultation in respect of the foundational ICF Canada report titled "Natural Gas Integrated Resource Planning: Initial Assessment of the Potential to Employ Targeted DSM to Influence Future Natural

²⁷ *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 [*Carrier Sekani*].

²⁸ *Carrier Sekani* at para 44.

²⁹ Transcript, Volume 2 (March 2, 2021) at 179:22-24; Exhibit I.PP.3.

Gas Infrastructure Investment”, which was prepared in 2018 to be part of the filings of Enbridge Gas Distribution Inc. and Union Gas Limited for the 2015-2020 DSM Plan process.³⁰ Enbridge Gas confirmed the lack of Indigenous engagement on the proposed IRP Framework during the oral hearing:

MS. DeMARCO: [...] So in terms of the formation of this [IRP Proposal], there was absolutely no involvement of First Nations.

MS. MILLS: There was no consultation with First Nations group[s], correct.

MS. DeMARCO: There was no engagement with First Nations groups either. Is that fair?

MS. MILLS: There was no engagement; that's correct.³¹

42. Moreover, the person responsible for the stakeholder process under the proposed IRP Framework appeared not to have read the UNDRIP, a document that is fundamental to and an express part of Enbridge Gas' own IPP — which Enbridge Gas indicates was in fact followed throughout the development of its IRP Framework³²:

MS. DeMARCO: So in that regard we have got you on the record saying you've never seen this document before.

MS. VAN DER PAELT: I did not say that. I said I have seen this policy. Enbridge shares these policies with their employees, and I have read this part. I have not read the UNDRIP.

MS. DeMARCO: This is exactly what I was saying. You have not ever read the United Nations Declaration on the Rights of Indigenous Peoples.

MS. VAN DER PAELT: Correct.³³

43. In response to Anwaatin's concerns about a lack of Indigenous consultation and engagement on the IRP Proposal, Enbridge Gas notes that “it **intends** to consult with any impacted Indigenous group in relation to proposed IRP Plans, IRPAs and LTC applications”, following existing processes.³⁴ With respect, Enbridge Gas' intentions in relation to Indigenous consultation on proposed IRP Plans, IRPAs and LTC applications are not material to its failure to carry out Indigenous consultation and engagement on the proposed IRP Framework.

³⁰ Transcript, Volume 2 (March 2, 2021) at 179:25-180:10.

³¹ Transcript, Volume 2 (March 2, 2021) at 180:11-18.

³² Exhibit I.VECC.1 at 1.

³³ Transcript, Volume 2 (March 2, 2021) at 179:6-15.

³⁴ Enbridge Gas Inc., Argument-in-Chief at para 112 [emphasis added].

44. Anwaatin submits that the proposed IRP Framework includes changes to “operations” and should therefore have been the subject of “forthright and sincere” consultation with Indigenous peoples in accordance with the IPP. We request that the Board make an express finding that Enbridge Gas failed to comply with its own IPP in relation to the proposed IRP Framework and require it to do so.
45. It is not sufficient to promise to consult with impacted Indigenous groups on future proposed IRP Plans, IRPAs, and LTC applications in the absence of consultation on the framework that Enbridge Gas proposes will directly govern each and all of those processes. The proposed IRP Framework, if approved by the Board in its current form, may significantly diminish the procedural rights afforded to all stakeholders, including Indigenous rights-holding communities, pursuant to the existing process for leave-to-construct applications. Anwaatin’s concerns with Enbridge Gas’ proposed approach to future IRP Plan applications is discussed below at paragraphs 50 through 57.
46. **Going forward.** Enbridge Gas requests approval for a three-component “stakeholdering” process consisting of three components: (1) gathering data and insights through existing stakeholder engagement channels, (2) holding annual Stakeholder Days, and (3) targeted engagement on specific IRPAs or IRP Plans.³⁵
47. During the oral hearing, Enbridge Gas acknowledged that its stakeholder outreach and engagement process did not include specific engagement with respect to Indigenous communities or specific inclusion of Indigenous representatives on the proposed technical working group:
- MS. DeMARCO: Certainly we will have argument reserved to both, and I'm asking a very factually-based question, and the question again, if I need to repeat it, Ms. Van Der Paelt, is, is there a First Nations representative included in the IRP procedure?
- MS. VAN DER PAELT: We have not specifically identified any representatives in our procedure.
48. Anwaatin notes that, in its Argument-in-Chief, the Company now explicitly makes reference to Indigenous representation “as appropriate” on the proposed technical

³⁵ Enbridge Gas Inc., Argument-in-Chief at paras 101 and 106.

working group.³⁶ Anwaatin requests, as a minor point, that the Board direct Enbridge Gas to remove the words “as appropriate” in respect of Indigenous representation on the technical working group. Anwaatin also understands that there are now more details around Enbridge Gas’ proposed inclusion of Indigenous consultation and engagement in each of the three components of the process.³⁷

49. Anwaatin requests that the Board direct Enbridge Gas to conduct Indigenous-specific engagement *in advance* pursuant to each and all of the three components to ensure that there is an opportunity for the Company to engage *proactively* in a considered and meaningful two-way dialogue with affected Indigenous communities. Anwaatin submits that, going forward, Enbridge Gas’ stakeholder outreach and engagement process should demonstrate a stronger adherence and commitment to the IPP, UNDRIP, and the duty to consult and accommodate.

(c) Future IRP Plan Applications

50. Anwaatin is concerned that the approvals sought by Enbridge Gas for the proposed IRP Framework and IRPAs (a leave ‘not-to-construct’) is currently not authorized by sections 36, 90, 91, or 92 of the OEB Act and may bifurcate and/or constrain the Board’s jurisdiction to consider need and alternatives in the context of a ‘regular’ leave-to-construct application.
51. Anwaatin submits that a fundamental tenet should govern the Board’s approach to future IRP Plan applications: Enbridge Gas’ proposed IRP Framework cannot constrain the Board’s discretion. The Board must remain able, at all times, to adjudicate the implementation of the IRP Framework, the IRP assessment process, IRP Plans, the IRPAs selected by Enbridge Gas for approval, and the stakeholder outreach and engagement process conducted in relation to IRP.
52. Enbridge Gas requests Board approval of an “LTC-like process to review and approve a proposed IRP Plan designed to meet an identified need/constraint”, with

³⁶ Enbridge Gas Inc., Argument-in-Chief at para 108.

³⁷ Enbridge Gas Inc., Argument-in-Chief at paras 106.

built-in flexibility to adjust the IRP Plan without further Board approval as long as additional costs are less than 25% of the total approved cost.³⁸ Enbridge Gas proposes to seek Board approval only for IRP Plans above the threshold level for LTC applications (currently \$2 million, but likely increasing to \$10 million).³⁹ Enbridge Gas presumes that such applications to the Board could be made pursuant to section 36 of the OEB Act.⁴⁰

53. Anwaatin submits that the OEB Act currently does not authorize the Board to issue the approvals sought by Enbridge Gas for the proposed IRP Framework and IRPAs. This lack of statutory authority risks bifurcating and/or constraining the Board's jurisdiction to consider need and alternatives in the context of a 'regular' leave-to-construct application. This leaves open the potential for Enbridge Gas to strategically avoid the requirement to satisfy the Board of its assessment of the need and alternatives in relation to future projects. If the Board approves the proposed IRP Framework, Anwaatin requests that the Board consider expressly confirming that it does not negate the requirement to assess need and alternatives in 'regular' leave-to-construct proceedings.
54. Anwaatin opposes Enbridge Gas' proposal that no adjudicative process of its decisions to pursue or to not pursue investments in IRPAs in advance of an associated application to the Board for leave-to-construct is necessary.⁴¹ It is clear from Enbridge Gas' evidence that, if this proposal were implemented, at least some IRPA decisions would never be subject to Board scrutiny. This would severely hinder the legitimacy of the IRP Framework.
55. Any approved IRP Framework should provide the Board with oversight over all Enbridge Gas decisions to pursue an IRPA or implement an IRP Plan, not pursue an IRPA or implement an IRP plan, and cease an IPRA or IRP Plan.

³⁸ Enbridge Gas Inc., Argument-in-Chief at para 127; Exhibit B, para 73.

³⁹ Enbridge Gas Inc., Argument-in-Chief at para 128. See Environmental Registry of Ontario, "Proposed Revision to Ontario Energy Board (OEB) Leave to Construct Cost Threshold for Hydrocarbon Pipelines", ERO No. 019-3041, available online at: <https://ero.ontario.ca/notice/019-3041>.

⁴⁰ Enbridge Gas Inc., Argument-in-Chief at para 131; Exhibit JT1.17; Transcript Volume 1 (March 1, 2021) at 185:2-23.

⁴¹ Exhibit J1.3 at 1.

56. Anwaatin submits that decisions by Enbridge Gas *not* to pursue IRPAs that are supported by stakeholders — including and especially those screened out pursuant to the criteria upon which Anwaatin has made submissions at paragraphs 13 through 27, above — should be subjected to an adjudicative process that includes discovery and written submissions. Anwaatin notes in this regard that Enbridge Gas' proposed stakeholder outreach and engagement process may not be sufficient to ensure appropriate regulatory scrutiny of decisions to screen out IRPAs early in the proposed IRP assessment process.
57. Anwaatin requests that the Board establish a robust adjudicative process as part of the IRP Framework. Anwaatin notes that the adjudicative process put forward by Enbridge Gas in the alternative at Exhibit J1.3 may provide the broad outlines of a regulatory approach that maintains regulatory efficiency and is properly situated with respect to the Company's existing annual rate setting proceedings. Anwaatin submits that any adjudicative process should include opportunities for stakeholders and intervenors to engage in discovery and file written submissions.

C. CONCLUSION

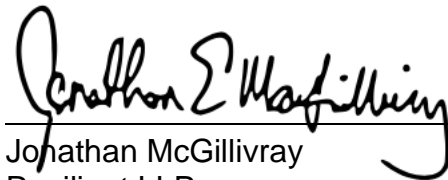
58. This Final Argument has addressed several of the key elements set out in Enbridge Gas' Argument-in-Chief. Anwaatin's submissions, stated generally, are that:
- i. the identification of needs and constraints may be unduly narrow and not fully informed by the current regulatory and policy context, Enbridge Inc.'s own net-zero climate commitments, and up-to-date carbon pricing assumptions;
 - ii. the binary screening criteria are likely to have the effect of screening out a very significant proportion of the Company's potential projects from consideration of IRPAs and thereby result in inefficient asset decisions and potentially stranded assets;
 - iii. the proposed screening approach is not consistent with natural gas-electricity optimization that may be very beneficial to all customers especially Indigenous customers currently served by unreliable electric heating;

- iv. the economic assessment tests that are proposed for projects that are 'screened in' do not include appropriate consideration of the actual announced and/or social costs of carbon, which are considered by other jurisdictions; and
 - v. Enbridge did not act in accordance with its own IPP in this proposed change to its procedures and operations, and the proposed IRP Framework may be inconsistent with the IPP.
59. Anwaatin has also expressed its concerns throughout this Final Argument that the approvals sought by Enbridge Gas for the proposed IRP Framework and non-pipeline alternatives (a leave 'not-to-construct') is currently not authorized by sections 36, 90, 91 or 92 of the OEB Act; and may bifurcate and/or constrain the Board's jurisdiction to consider need and alternatives in the context of a 'regular' leave-to-construct application.

ALL OF WHICH IS RESPECTFULLY
SUBMITTED THIS
31st day of March, 2021



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