



May 3, 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.
2020 and 2021 Federal Carbon Pricing Program Applications (the FCPP
Applications)
OEB File Nos.: EB-2019-0247 and EB-2020-0212**

We are counsel to Anwaatin Inc. (**Anwaatin**) in the FCPP Applications and are in receipt of the Board's request for further communications pursuant to Procedural Order No. 3 (the **Procedural Order**). Anwaatin confirms that it expects the Board to adjudicate the Deferred Issues in accordance with its interim decision on the 2020 FCPP Application in EB-2019-0247.

The Procedural Order notes that, on March 25, 2021, the Supreme Court of Canada (**SCC**) issued its decision (the **SCC Decision**) finding that the *Greenhouse Gas Pollution Pricing Act* (**GGPPA**) sets minimum national standards of GHG price stringency to reduce GHG emissions and falls within federal jurisdiction under section 91 of the *Constitution Act, 1867*. The Procedural Order also indicates that the majority of the SCC concluded that "the Fuel Charge and excess emission charge imposed by the GGPPA are not taxes, but rather constitutionally **valid** regulatory charges"¹ (emphasis added).

As per Anwaatin's prior submissions of [March 27, 2020](#), [April 15, 2020](#), [July 9, 2020](#), and [July 29, 2020](#), the SCC Decision addresses the **constitutional validity** of the GGPPA. The SCC Decision does not address, and is not dispositive of, the **constitutional applicability** of GGPPA charges and levies to Indigenous communities on- and off-reserve pursuant to sections 87 and 89 of the *Indian Act*, Treaty rights, and section 35 of the Constitution. The SCC Decision does not include any consideration of whether the charges resulting from the GGPPA, when calculated by a natural gas distributor and included in natural gas charges, are **constitutionally applicable** to Indigenous communities in light of the *Indian Act*, relevant treaties, and section 35 of the Constitution. The issue of whether these charges are validly construed as a "tax" or a "regulatory charge" is irrelevant to the Board's determination of the **applicability** of the charges given that sections 87 and 89 of the *Indian Act* apply to, without limitation, any "charge or levy." Specifically, section 89(1) of the *Indian Act* provides that:

¹ EB-2019-0247, Procedural Order No. 3, at 3.

Subject to this Act, the real and personal property of an Indian or a band situated on a reserve is not subject to charge, pledge, mortgage, attachment, levy, seizure, distress or execution in favour or at the instance of any person other than an Indian or a band.

In light of the foregoing, we understand that the Board is now properly seized of these Deferred Issues. Anwaatin respectfully requests that the Board adjudicate the Deferred Issues, and hereby indicates that it intends to file submissions.

Sincerely,

A handwritten signature in black ink, consisting of a large, sweeping loop followed by a horizontal line that ends in an arrowhead pointing to the right.

Lisa (Elisabeth) DeMarco

c. Larry Sault, Anwaatin
Don Richardson