



June 7, 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 Federal Carbon Pricing Program Applications
OEB File No: EB-2019-0247**

We are counsel to Anwaatin Inc. (**Anwaatin**) in above-referenced proceeding. Please find attached Anwaatin's submissions on issues related to the constitutionality of the *Greenhouse Gas Pollution Pricing Act* Fuel Charge and the requirements of the federal *Indian Act* (the Deferred Issues), filed pursuant to the Board's Procedural Order No. 4.

Sincerely,

A handwritten signature in black ink, appearing to be "Lisa DeMarco", with a long, sweeping horizontal stroke 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 (the **Act**);

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.

June 7, 2021

A. BACKGROUND AND OVERVIEW

1. We are counsel to Anwaatin Inc. (**Anwaatin**) in the matter of Enbridge Gas Inc.'s (**Enbridge's**) application to the Ontario Energy Board (the **Board**) for (a) a final order allowing it to charge customers a federal carbon charge on a volumetric basis, in the amount of the federal carbon charge required to be paid pursuant to 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 of the Enbridge's rate zones (EGD, Union North and Union South), effective April 1, 2020, to allow the Enbridge to recover other costs (including facility carbon charge costs) in compliance with the GGPPA; and (c) approval of 2019 balances for all federal carbon pricing program (**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**) that each have traditional territory and constitutionally protected Aboriginal rights that may be impacted by the outcome of this proceeding. Anwaatin and the Chiefs of Ontario (**COO**) each independently raised issues regarding the constitutional applicability of Enbridge's FCPP charges under the GGPPA (**FCPP Charge**) being imposed on Indigenous customers in apparent contravention of sections 87 and 89 of the *Indian Act*, RSC, 1985, c I-5 (**Indian Act**) and section 35 of the *Constitution Act*, 1982 (the **Constitution**) (collectively, the **Deferred Issues**) at the time of their intervention¹ and thereafter.²
3. On March 19, 2020, the Board issued its Decision on Updated Intervention Requests and Scope of Proceeding (the **March 19 Decision**) and decided to proceed on the basis that the Court of Appeal for Ontario (**ONCA**) determined that the GGPPA is constitutional and that the charges imposed by the GGPPA are regulatory charges.³

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

³ 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>.

4. Anwaatin repeatedly clarified, and again hereby clarifies, that:
 - i. It was/is not challenging the constitutional **validity** of the GGPPA;
 - ii. It was/is not challenging the characterization of the GGPPA levies imposed by Enbridge through the FCPP Charge as valid “levies” or regulatory “charges”;
 - iii. It was/is only challenging the constitutional **applicability** of such charges to Indigenous customers pursuant to sections 87 and 89 of the *Indian Act*, and section 35 of the *Constitution Act, 1982*;
 - iv. The Deferred Issues remain undecided and the FCPP Charge has been imposed upon Indigenous customers on an interim basis prior to hearing the Deferred Issues.
5. The ONCA decision on the GGPPA⁴ was appealed to the Supreme Court of Canada (SCC).⁵ The Board continued to defer the Deferred Issues⁶ and determined that if the SCC upheld the GGPPA’s constitutionality, the Deferred Issues may be considered at that time,⁷ and noted that “the issue of whether the charges imposed by the GGPPA are taxes has been raised in the SCC proceedings.”⁸ The characterization of the GGPPA levies as “taxes” or “charges” has never been raised by or at issue for Anwaatin.
6. Anwaatin then filed a letter responding to the March 19 Decision stating that the applicability of the GGPPA charges falls squarely within the Board’s jurisdiction and that the Board’s failure to consider the applicability of the FCPP Charges effectively fetters the Board’s discretion vis-à-vis Indigenous customers resulting in a *de facto* decision that the GGPPA charges are, in fact, applicable to Indigenous and reserve communities without due consideration, reasons, or the procedural protections afforded by the rules of natural justice.⁹ Anwaatin also noted that neither ONCA nor the SCC was seized of the issue of the *applicability* of the GGPPA and that the appeals to the SCC were instead confined to the

⁴ Reference re Greenhouse Gas Pollution Pricing Act, 2019 ONCA 544, available online at: <https://www.canlii.org/en/on/onca/doc/2019/2019onca544/2019onca544.html?resultIndex=1>.

⁵ Reference re Greenhouse Gas Pollution Pricing Act, 2020 ABCA 74, available online at: <https://www.canlii.org/en/ab/abca/doc/2020/2020abca74/2020abca74.html?resultIndex=1>. Two related opinions of the Court of Appeal for Saskatchewan and the Court of Appeal of Alberta were also appealed to the SCC.

⁶ 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>.

⁷ *Ibid.*

⁸ *Ibid.*

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

sole issue of whether the GGPPA is constitutionally *valid*.¹⁰ Indeed, in submissions before the SCC, the Attorney General of Canada noted that “proposed submissions on whether the exemption available to Indians and Indian bands under section 87 of the [*Indian Act*] should exempt [a] 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.”¹¹

7. The Board nonetheless decided to continue to defer the Deferred Issues pending the SCC decision.¹² Anwaatin again clarified that the SCC is seized of the constitutional *validity* of the GGPPA, and not its *applicability*, and requested that the Board clarify its intended procedures on the Deferred Issues in order to ensure that all GGPPA charges affected by the Deferred Issues be placed in a deferral and variance account pending the Board’s due consideration.¹³ The Board reiterated that all consideration of the Deferred Issues was postponed and no further action was required.¹⁴ On August 13, 2020, the Board rendered its Decision on the Application (other than the Deferred Issues) and imposed Enbridge’s FCPP on Indigenous customers on an interim basis.¹⁵
8. On March 25, 2021, the SCC handed down its decision in the *References re Greenhouse Gas Pollution Pricing Act*, upheld the constitutional validity of the GGPPA, and confirmed the characterization of the GGPPA Part 1 levy as a regulatory “charge”. The SCC issued no decision on the applicability of the GGPPA to Indigenous peoples under either the *Indian Act* or the Constitution as it was never seized of the issue.
9. Anwaatin communicated the SCC Decision to the Board and on May 3, 2021, requested that the Board adjudicate the Deferred Issues. On May 21, 2021, Anwaatin and COO jointly filed a Notice of Constitutional Question with the Attorneys General of Canada and Ontario.¹⁶

¹⁰ *Ibid.*

¹¹ Letter (June 29, 2020), Attorney General of Canada, Court File Nos., 38663, 38781 and 39116.

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 Board Decision, p.18.

¹⁶ Decision and Order (13 August 2020) at p 18, available online at:
<https://www.rds.oeb.ca/CMWebDrawer/Record/684131/File/document>.

B. SUBMISSIONS

10. These submissions are organized as follows:
 - I. The nature of the federal fuel charge giving rise to the Enbridge FCPP Charge;
 - II. The applicability of the Enbridge FCPP Charge to Indigenous peoples is:
 - a. Prohibited by sections 87 and 89 of the *Indian Act*;
 - b. Inconsistent with Indigenous rights enshrined in section 35 of the Constitution;
and
 - c. Inconsistent with the objective of reconciliation and the *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)*.
 11. In addition, Anwaatin adopts the submissions of COO as they relate to section 35 and the honour of Crown and the inapplicability of Enbridge's FCPP Charge to Enbridge's on- and off-reserve Indigenous customers.
 12. Anwaatin generally submits that:
 - i. The SCC has characterized the GGPPA Part 1 levy giving rise to the FCPP Charge as a regulatory "charge";
 - ii. The FCPP Charge is not applicable to Indigenous peoples given that section 87 and 89 of the *Indian Act* exempt the personal property of Indigenous peoples from *taxes, charges, and levies* (including charges and levies on energy) in order to uphold the honour of the Crown and prevent the erosion and dispossession of the property of First Nations and their members;
 - iii. Charges and levies, however applied, on the personal property of Indigenous customers unfairly diminish their ability to enjoy and exercise full section 35 rights by placing an undue burden on Indigenous peoples and their property; and
 - iv. The FCPP Charges are inapplicable with respect to the personal property rights of off-reserve Indigenous customers in so far as it infringes on or diminishes the exercise and enjoyment of any and all Aboriginal and treaty rights protected under section 35 of the Constitution.
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I. The nature of the federal fuel charge giving rise to the Enbridge FCPP Charge

13. Part 1 of the GGPPA establishes a fuel **charge** that is applied to producers, distributors, and importers of prescribed carbon-based fuels, including natural gas. Part 2 of the GGPPA provides for an output-based pricing system (**OBPS**), which is a pricing mechanism for the industrial greenhouse gas emissions of emissions-intensive industrial facilities. The FCPP Charge directly passes on Enbridge's GGPPA charges to Enbridge's customers. The SCC has expressly determined that all GGPPA charges are characterized as **levies** that are constitutionally valid regulatory **charges**.¹⁷

II. The applicability of the Enbridge FCPP to Indigenous Peoples

14. Anwaatin generally submits that the FCPP Charge is not applicable to Indigenous customers as it is: (i) prohibited by sections 87 and 89 of the *Indian Act*; (ii) inconsistent with Indigenous rights enshrined in section 35 of the Constitution; and (iii) inconsistent with the objective of reconciliation and the UNDRIP.

a. Prohibited by sections 87 and 89 of the Indian Act

15. Section 87(1) of the *Indian Act* provides that, subject to certain limitations, the following property is exempt from taxation: (a) the interest of an Indian or a band in reserve lands or surrendered lands; and (b) the personal property of an Indian or a band situated on a reserve. Section 87(2) provides that no Indian or band is subject to taxation in respect of the ownership, occupation, possession, or use of any such property or is otherwise subject to taxation in respect of such property.
16. Section 89 of the *Indian Act* provides a similar exemption from "charges" or "levies" on the "personal property" of indigenous people. Specifically, section 89(1) of the *Indian Act* provides that:

*the **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.** [emphasis added]*

¹⁷ SCC Decision, para 219.

17. The SCC has affirmed that statutes are to be interpreted “in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.”¹⁸ The SCC has also expressly ruled that the GGPPA charges constituting the Enbridge FCPP Charge are, in fact, “levies” taking the form of a regulatory “charge”. The FCPP Charges are therefore a charge and/or levy, falling expressly within the wording of section 89 of the *Indian Act*, that are applied to all Enbridge customers to recover Enbridge’s costs of the levies and charges under the GGPPA. Applying the grammatical and ordinary meaning of these terms, the FCPP Charge therefore constitutes a “levy” or “charge” from which the personal property of certain Indigenous peoples is exempt.
18. “Personal property”, for the purposes of sections 87 and 89 of the *Indian Act*, has been interpreted to include intangible personal property — including energy. Specifically, the BC Court of Appeal in *Brown v. The Queen in Right of British Columbia* expressly found that the section 87 exemption from “taxes” on personal property included exemptions on energy.¹⁹ The Court held that electricity is property located on-reserve and falls under the meaning of on-reserve property,²⁰ as it is understood under sections 87 and 89 of the *Indian Act*.
19. Similarly, in *Williams v. Canada*, [1992] 1 S.C.R. 877, Gonthier J. considered the purpose of the *Indian Act*, applied a purposive interpretation of “personal property”, and did not allow taxes or charges to be applied to personal property that included unemployment insurance benefits being earned by an Indigenous employee.
20. This interpretation of the “charge, levy, and taxation” exemptions set out in sections 87 and 89 of the *Indian Act* is also consistent with the purpose of these sections, which has been determined to be to preserve the entitlements of “Indians” to their reserve lands, and to ensure that the use of their property on their reserve lands is not eroded by the ability of governments to charge, or otherwise tax it.²¹ This interpretation is also consistent with

¹⁸ E. Driedger *Construction of Statutes* (2nd ed. 1983), p. 87, as quoted in *Rizzo v. Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27, para 21; see also *R v. Jarvis*, 2002 SCC 73; *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42; *R v. Gladue*, [1999] 1 SCR 688.

¹⁹ *Brown v. The Queen in Right of British Columbia*, (1979) 3 CNLR 67 (BCCA).

²⁰ See *ibid*; *Mitchell v. Peguis Indian Band*, [1990] 2 S.C.R. (*Mitchell*).

²¹ *Bastien Estate v. Canada*, 2011 SCC 38 at para 23.

section 12 of the *Interpretation Act*, RSC, 1985, c. I-21, which provides that statutes “shall be deemed to be remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.”

21. The SCC further considered the purpose of sections 87 and 89 of the *Indian Act*, in the context of a tax imposed on the Peguis Indian Band for electricity by Manitoba Hydro. The Court found that sections 87 and 89:
- i. “guard against the possibility that one branch of government, through the imposition of taxes, could erode the full measure of the benefits given by that branch of government entrusted with the supervision of Indian affairs”; and
 - ii. “ensure that the enforcement of civil judgments by non-natives will not be allowed to hinder Indians in the untrammelled enjoyment of such advantages as they had retained or might acquire pursuant to the fulfillment by the Crown of its treaty obligations.”²²

In addition, the SCC has indicated that sections 87 and 89 serve to uphold and satisfy the Crown’s obligation and honour to Indigenous peoples to “shield Indians from any efforts by non-natives to dispossess Indians of the property which they hold qua Indians, i.e., their land base and the chattels on that land base.”

22. The *Indian Act* and other statutes and treaties relating to Indigenous peoples are to be interpreted liberally with any “doubtful expressions” to be interpreted in favour of Indigenous peoples.²³ This concept is supported in the jurisprudence of the SCC, where it was affirmed that statutes are to be interpreted in a broad manner when they are aimed at maintaining the rights of Indigenous peoples and narrowly when aimed at abrogating their rights.²⁴
23. Sections 87 and 89 protect and promote the section 35 Aboriginal and treaty rights of Indigenous persons to their property, supported since the *Royal Proclamation of October 7, 1763*. The rights recognized under the *Royal Proclamation of October 7, 1763* have been further constitutionalized by its recognition and protection under section 25 of the *Constitution Act, 1982*.

²² *Mitchell*.

²³ *Nowegijick v. The Queen*, [1983] 1 S.C.R. 29, at p. 36.

²⁴ *Mitchell* at p. 143

24. When interpreting the *Indian Act*, and sections 87 and 89 in particular, the purpose of the exemptions must be a guide to interpretation. The objective of shielding Indigenous peoples from any efforts by non-Indigenous peoples to dispossess them of the property which they hold qua Indigenous peoples, including on-reserve chattels, is entirely consistent with shielding them from the FCPP Charge on natural gas delivered and sold by Enbridge.
25. In summary on this point, the requisite ordinary, grammatical, and purposive interpretation of section 87 and 89 of the *Indian Act* and the jurisprudence both support the conclusion that the charges and levies that constitute the FCPP Charge are not applicable to natural gas sold to Indigenous peoples and communities on-reserve. Anwaatin further submits that should there be any doubt as to this interpretation, it must be interpreted in favour of Indigenous peoples in order to uphold the honour of the Crown. The FCPP Charge is therefore inapplicable to Indigenous peoples on reserve, as they are exempt pursuant to section 89 of the *Indian Act*.

b. Inconsistent with Indigenous rights enshrined in section 35 of the Constitution

26. Section 35 of the Constitution recognizes and affirms existing Aboriginal and treaty rights of the Aboriginal peoples of Canada. Legislation and regulations are constitutionally inapplicable when they interfere unjustifiably with the exercise of any existing Aboriginal or treaty rights.²⁵
27. Aboriginal rights are generally those held by Aboriginal peoples that relate to activities that are an element of a practice, custom, or tradition integral to the distinctive culture of the Aboriginal group claiming such rights.²⁶ Treaty rights include rights to and protection of reserves and livelihoods on reserves, as well as harvesting and other rights. They have also been held to include economic rights.²⁷ Aboriginal and treaty rights therefore include such rights that are unconstitutionally impaired by the application of the FCPP Charge to Indigenous natural gas customers.

²⁵ See *R v. Nikal*, [1996] 1 S.C.R. 1013; *R v. Adams*, [1996] 3 S.C.R. 101; *R v. Côté*, [1996] 3 S.C.R. 139; *R v. Badger*, [1996] 1 S.C.R. 771; *R v. Marshall*, [1999] 3 S.C.R. 533.

²⁶ See *R v. Van der Peet*, [1996] 2 S.C.R. 507.

²⁷ See *R v. Gladstone*, [1996] 2 SCR 723.

28. Anwaatin submits that imposing the FCPP Charge on all Indigenous natural gas customers is inconsistent with the honour of the Crown. The honour of the Crown is a legal principle born out of the assertion of Crown sovereignty as against Indigenous peoples where there was no conquest or discovery of lands — *terra nullius* — but where nonetheless the Crown took *de facto* control over the Indigenous lands, and it has become an obligation of the highest order applicable to all dealings between the Crown and Indigenous peoples, now enshrined as part of section 35 of the *Constitution Act, 1982*.²⁸
29. The erosion of Indigenous personal, intangible, and other property rights impairs Aboriginal and treaty rights with respect to the establishment and maintenance of reserve lands, the rights and benefits associated with reserve lands and traditional territories, Aboriginal economic rights, and other Aboriginal and treaty rights diminished or impaired by the application of the FCPP Charge, contrary to section 35 of the Constitution.
30. Further, the GGPPA, in its preamble, expressly recognizes the disproportionate impact that climate change has on Indigenous communities in Canada, many of which have been guardians of the land and water from time immemorial. It is entirely anathema to the GGPPA's explicit recognition of Indigenous peoples, and incompatible with the honour of the Crown, to impose the FCPP Charge on Indigenous peoples, who are both the most affected, and among the least responsible, for climate change.
31. Anwaatin therefore submits that applying the FCPP Charge to the personal property of all Indigenous peoples erodes both the Aboriginal and treaty rights of Indigenous communities and the honour of the Crown, contrary to section 35 of the Constitution. Further, it is antithetical to setting "just and reasonable" rates pursuant to section 36 of the *Ontario Energy Board Act, 1998*, as amended.

c. Inconsistent with the objective of reconciliation and UNDRIP

32. Anwaatin submits that, should the Board have any remaining ambiguity regarding the applicability of the FCPP Charge to Indigenous peoples, it should be resolved in favour of such Indigenous peoples. The peremptory *Canadian* norm is that ambiguities and uncertainties encountered when interpreting statutes that affect the rights of Indigenous

²⁸ See *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511; *Manitoba Metis Federation v. Canada (Attorney General)*, [2013] 1 S.C.R. 623; *Mikisew Cree First Nation v. Canada (Governor General in Council)*, [2018] 2 S.C.R. 765.

peoples must always be interpreted liberally and in a manner that is consistent with the honour of the Crown and the objectives of reconciliation.²⁹ Any discrepancy as to whether the FCPP Charge is prohibited by either the *Indian Act* or section 35 of the Constitution must therefore be resolved in favour of Indigenous peoples.

33. Anwaatin further submits that the FCPP Charge, which is both prohibited by the *Indian Act* and inconsistent with the section 35 of the Constitution and the honour of the Crown, erodes Aboriginal and treaty rights by unfairly limiting the economic rights of both on- and off-reserve Indigenous customers.
34. The Truth and Reconciliation Commission of Canada (the **TRC**) has issued Calls to Action that direct all orders of government in Canada to recognize and implement UNDRIP.³⁰ Canada has affirmed its support for UNDRIP³¹ and it is in the process of implementing UNDRIP into Canadian law.³² This objective is exceedingly poignant in light of recent discoveries and confirmation of atrocities perpetuated against Indigenous children by government sanctioned residential schools across Canada.³³
35. The TRC has also called on businesses and the corporate sector to adopt the principles of UNDRIP as a reconciliation framework and to apply its principles, norms, and standards to corporate policy and core operation activities involving Indigenous peoples.³⁴ Enbridge itself has adopted a corporate Indigenous Peoples Policy recognizing the importance of UNDRIP.³⁵ The imposition of the FCPP Charge on Indigenous peoples, appears to be inconsistent with Enbridge's own policy.

²⁹ See *Nowegijick; Union of New Brunswick Indians v. New Brunswick (Minister of Finance)*, [1998] 1 SCR 161; *Mitchell*

³⁰ Truth and Reconciliation Commission of Canada, *Calls to Action*, Call to Action 42, available online at: <http://trc.ca/assets/pdf/Calls_to_Action_English2.pdf>.

³¹ United Nations, *Continuing Session, Speakers in Permanent Forum Call upon Government to Repeal Oppressive Laws, Practices that Encroach on Rights of Indigenous Peoples*, (10 May 2016), HR/5299, available online at: <<https://www.un.org/press/en/2016/hr5299.doc.htm>>.

³² See Bill C-15, *An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples*, available at: <<https://parl.ca/DocumentViewer/en/43-2/bill/C-15/third-reading>>.

³³ CBC News, "Remains of 215 children found buried at former B.C. residential school, First Nation say" *CBC News* (27 May 2021) available online at <<https://www.cbc.ca/news/canada/british-columbia/tk-emlúps-te-secwépemc-215-children-former-kamloops-indian-residential-school-1.6043778>>.

³⁴ TRC *Calls to Action*, Call to Action 92.

³⁵ Enbridge Inc., *Indigenous Peoples Policy*, available online at: <https://www.enbridge.com/~/_media/Enb/Documents/About%20Us/indigenous_peoples_policy.pdf?la=en>.

36. UNDRIP recognizes the rights of Indigenous peoples and articulates the minimum standards for the survival, dignity, and well-being of Indigenous peoples. Article 8(2)(b) of UNDRIP provides that states shall provide effective mechanisms for prevention of, and redress for any action which has the aim or effect of dispossessing Indigenous peoples of their lands, territories or resources. Article 20 provides that Indigenous peoples have the right to maintain and develop their political, **economic** and social systems or institutions and to be **secure in the enjoyment of their own means of subsistence and development**, and to engage freely in all their traditional and **other economic** activities.
37. Article 26 directs states to provide legal recognition and **protection** to the lands, territories and resources which Indigenous peoples have traditionally owned, occupied or otherwise used or acquired. And finally, Article 37 requires Canada to honour, recognize, observe and enforce treaties, agreements and other constructive arrangements concluded between Canada and Indigenous peoples.

C. RELIEF REQUESTED

38. Anwaatin respectfully requests the Board find that:
- (i) Enbridge's Application for gas distribution rate changes and clearing certain non-commodity deferral and variance accounts related to compliance obligations under the GGPPA (termed the FCPP Charge) on natural gas sold, is both constitutionally inapplicable to all Indigenous customers pursuant to section 35 of the Constitution and prohibited by sections 87 and 89 of the *Indian Act*;
 - (ii) Enbridge's Application to impose the FCPP Charge on Indigenous customers be denied as in relation to Indigenous customers and the Deferred Issues;
 - (iii) The imposition of the FCPP Charge on Enbridge's Indigenous customers is inconsistent with the honour of the Crown, the objective of reconciliation, the recommendations of the TRC, and the UNDRIP;
 - (iv) The imposition of the FCPP Charge on Enbridge's Indigenous customers is contrary to the Board's obligation to set just and reasonable rates for natural gas pursuant to section 36 of the *Ontario Energy Board Act*, as amended;

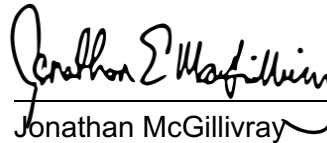
- (v) Any and all deferral accounts held in relation to the FCPP Charge(s) applicable to Indigenous customers be cleared in their favour, through the most equitable and expedient measures ordered by the Board; and
- (vi) Such further and other relief as counsel may advise, and this Board may grant.

ALL OF WHICH IS RESPECTFULLY
SUBMITTED THIS

7th day of June, 2021



Lisa (Elisabeth) DeMarco
Resilient LLP
Counsel for Anwaatin



Jonathan McGillivray
Resilient LLP
Counsel for Anwaatin