



May 19, 2022

**VIA RESS**

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

Dear Ms. Marconi,

**Re: Enbridge Gas Inc. Multi-Year Demand Side Management Plan**  
**Board File No.: EB-2021-0002**

We are counsel to Anwaatin Inc. (**Anwaatin**) in the above-noted proceeding. Please find enclosed Anwaatin's final arguments in the above-noted proceeding, filed further to Procedural Order No. 6.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel Vollmer".

DT Vollmer

c. Regulatory Affairs, Enbridge Gas Inc.  
Asha Patel, Enbridge Gas Inc.  
Dennis M. O'Leary, Aird & Berlis LLP  
Larry Sault, Anwaatin Inc.  
Don Richardson

## **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. (**EGI**) pursuant to Section 36(1) of the Act, for an order or orders approving its Demand Side Management Plan for 2022-2027 (the **Application**).

**EB-2021-0002**

**SUBMISSIONS OF**  
**ANWAATIN INC. (Anwaatin)**

**May 19, 2022**

## OVERVIEW

1. We are counsel to Anwaatin Inc. (**Anwaatin**) in the matter of the application by Enbridge Gas Inc. (the **Applicant**) to the Ontario Energy Board (the **OEB** or the **Board**) for order or orders for order or orders approving the Applicant's proposed Demand Side Management (**DSM**) Framework effective 2023 and proposed 2023-2027 Multi Year DSM Plan (the **Application**).
3. 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.
4. The central issues addressed in these submissions are:
  - **Issue 1.** Does Enbridge Gas's 2023-2027 DSM Framework and DSM Plan adequately respond to previous OEB direction and guidance on future DSM activities (e.g., DSM Mid-Term Review Report, 2021 DSM Decision, OEB's post-2021 DSM guidance letter)?
  - **Issue 2.** Does Enbridge Gas's 2023-2027 DSM Framework and DSM Plan adequately support energy conservation and energy efficiency in accordance with the policies of the Government of Ontario, including having regard to consumers' economic circumstances?
  - **Issue 10.** Has Enbridge Gas proposed an optimal suite of program offerings that will maximize natural gas savings and provide the best value for rate payer funding?
    - **(i).** Are Enbridge Gas's proposed program offerings appropriate for customers in Indigenous communities?
  - **Issue 17.** Is Enbridge Gas's stakeholder engagement proposal reasonable, including its engagement with Indigenous communities?
5. Anwaatin's submissions address the Board's consideration of:
  - (a) Enbridge's adherence to and incorporation of the Board's prior direction on DSM, including the Board's guidance on targets and metrics issued at the end of the Post-2020 Natural Gas DSM Framework proceeding; and

(b) Enbridge's existing consultation and accommodation of Indigenous communities in the development of the Application and its proposed consultation and accommodation of Indigenous communities in its delivery of DSM programs.

**A. Enbridge did not appropriately incorporate the Board's guidance on DSM metrics**

6. Anwaatin submits that Enbridge has not appropriately internalized and incorporated the Board's direction in the Post-2020 Natural Gas DSM Framework (the **DSM Guidance**) that "additional metrics should [...] be proposed to ensure all segments of the market are reached and small volume, low-income customers and on-reserve First Nations communities are well-served."<sup>1</sup> Anwaatin is supportive of continued use of the utility shareholder incentive as a reward for meeting or exceeding DSM performance targets. In addition, however, it is important that future performance be assessed relative to appropriate targets and metrics, including those that ensure Indigenous communities are well-served by Enbridge's DSM programs. Enbridge has moreover cited this passage of the DSM Guidance as one of principles guiding development of the Application.<sup>2</sup>
7. Ms. Van Der Paelt directed the Board to Enbridge's use of an Indigenous engineering services company as a DSM delivery agent when asked to point to examples of additional metrics Enbridge is using in its DSM programs to ensure Indigenous communities are well-served.<sup>3</sup> Anwaatin supports the use of Indigenous delivery agents but respectfully submits that this is not the type of activity that the Board had in mind when it directed Enbridge to employ additional metrics in the DSM Guidance. Rather, Anwaatin understands the DSM Guidance as a direction for Enbridge to implement additional metrics that allow the Board and stakeholders to assess whether small volume, low-income customers, and on-reserve First Nations communities are well-served. It appears that none of the relevant DSM programs have such metrics.
8. Enbridge's home winterproofing offering and the affordable housing multi-residential offering are part of a broader Low Income Program Proposal and are particularly relevant to Indigenous communities and Enbridge acknowledges that tailored customer outreach is needed.<sup>4</sup> Yet Enbridge's plan for the program and the framework for measuring its success

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<sup>1</sup> EB-2019-0003, Board Letter re Post-2020 Natural Gas DSM Framework (December 1, 2020), available online at: <https://www.rds.oeb.ca/CMWebDrawer/Record/695770/File/document>.

<sup>2</sup> Exhibit C, Tab 1, Schedule 1 (updated), pp. 6-7.

<sup>3</sup> Oral Hearing Transcript, Volume 1 (March 28, 2022), 70:14-72:7.

<sup>4</sup> Exhibit I, Tab 1, Schedule 3, para 14.

includes few, if any, “additional metrics” that will ensure it is appropriately serving the communities it targets.

9. Anwaatin requests that the Board direct Enbridge to include in its annual report additional metrics that ensure all segments of the market are reached and Indigenous communities are well-served by Enbridge’s DSM programs.

**B. Enbridge’s Indigenous consultation and engagement on the Application was not sufficient**

10. Anwaatin submits that the Application constitutes a proposed change in Enbridge’s operations. Accordingly, it should have been the subject of robust consultation and engagement with Indigenous communities in accordance with Enbridge’s Indigenous People’s Policy (IPP)<sup>5</sup>, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), and Canadian jurisprudence on the duty to consult and accommodate. It is not sufficient for Enbridge to simply “propose” to engage with Indigenous communities on DSM issues going forward; it must also consult with and accommodate Indigenous communities on the DSM framework and plan during their development.
11. Anwaatin requests an express finding from the Board that Enbridge’s stakeholder outreach and engagement process should have demonstrated a stronger adherence and commitment to the IPP, UNDRIP and the duty to consult and accommodate. Further, Anwaatin requests that the Board direct Enbridge to undertake robust consultation and accommodation on DSM-related issues and programs on a go-forward basis.
12. Enbridge’s view appears to be that the IPP only applies to traditional capital projects and normal operations of its pipelines and storage facilities, and not the DSM framework or plan. However, Enbridge acknowledges that the “spirit” of the IPP applies to everything Enbridge does, including the Application.<sup>6</sup> Anwaatin’s view is that the Application constitutes a proposed change in Enbridge’s operations and therefore should have been directly subject to the IPP, including requirements for “forthright and sincere consultation” and “early and meaningful engagement” and working in a manner that “achieve[s] benefits” for Indigenous peoples. The IPP also acknowledges the importance of UNDRIP, which provides for:
  - (a) Indigenous participation in decision-making that could affect their rights (Article 18);

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<sup>5</sup> Exhibit I.17.EGI.Anwaatin.5, Attachment 1.

<sup>6</sup> Oral Hearing Transcript, Volume 1 (March 28, 2022), 77:20-78:9.

- (b) 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);
  - (c) the right to conservation and protection of the environment and the productive capacity of their lands and/or territories and resources (Article 29(1));
  - (d) 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); and
  - (e) the right of Indigenous peoples to have access to financial and technical assistance for the enjoyment of their rights (Article 39).
13. Anwaatin also submits that the Application should have been carried out in accordance with Enbridge Inc.'s approach to reconciliation, as reflected in the company's Reconciliation Action Plan.<sup>7</sup> This includes a lifecycle approach to consultation that includes continuous engagement throughout the life of Enbridge assets, not just when Enbridge has a project to build. Ms. Van Der Paelt acknowledged that Enbridge is "trying to follow this spirit" of this approach.
14. Anwaatin notes with general concern that Enbridge, when pressed to provide examples of its consultation and engagement with Indigenous communities, often points to its employment of an Indigenous delivery agent, an on-reserve Indigenous business that delivers the home winterproofing program.<sup>8</sup> Anwaatin respectfully submits that the employment of an Indigenous delivery agent has no bearing on, and is entirely irrelevant to, consultation and accommodation of Indigenous communities with respect to DSM plans and programs. Anwaatin requests that the Board expressly direct Enbridge to consult and accommodate Indigenous communities on its DSM plans and programs going forward.
15. Anwaatin submits that the Application includes changes to Enbridge's "operations" and should therefore have been the subject of "forthright and sincere" consultation with Indigenous peoples in accordance with Enbridge's own IPP. Anwaatin argues, as it has argued before, that robust consultation includes, at minimum: (1) gathering data and insights through existing stakeholder engagement channels; (2) holding stakeholder days

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<sup>7</sup> Exhibit K1.4, Tab 5.

<sup>8</sup> See e.g., Enbridge Gas Inc. Final Argument (April 29, 2022), para 111.

on an appropriate interval; and (3) conducting targeted consultation on DSM planning and specific DSM programs and offerings.

16. Anwaatin submits that such consultation and engagement should be conducted in respect of all DSM activities, including but not limited to, the proposed program strategy to support off-reserve Indigenous customers through home winterproofing and any opportunities Enbridge pursues jointly with the Independent Electricity System Operator or otherwise for buildings, including perhaps multi-unit residential buildings, owned and/or operated by Indigenous band councils.<sup>9</sup>
17. Anwaatin requests that the Board direct Enbridge to conduct Indigenous-specific engagement *in advance* pursuant to each and all of the three components to ensure that there is an opportunity for Enbridge to engage proactively in a considered and meaningful two-way dialogue with affected Indigenous communities.

## **CONCLUSION**

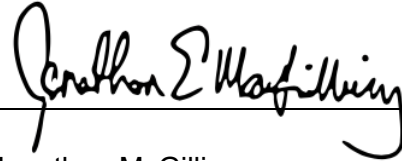
18. In these submissions, Anwaatin has argued that Enbridge did not appropriately incorporate the Board's guidance on DSM metrics and that Enbridge's Indigenous consultation and engagement on the Application was not sufficient. Anwaatin requests that the Board direct Enbridge to make improvements on both aspects in its DSM planning and program delivery.

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<sup>9</sup> Oral Hearing Transcript, Volume 1 (March 28, 2022), 84:3-85:10.

ALL OF WHICH IS RESPECTFULLY  
SUBMITTED THIS

19<sup>th</sup> day of May, 2022

A handwritten signature in black ink, reading "Jonathan McGillivray", written over a horizontal line.

Jonathan McGillivray  
Resilient LLP  
Counsel for Anwaatin