

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15 (Schedule B);

AND IN THE MATTER OF the *Municipal Franchises Act*, R.S.O. 1980, Chapter 309, as amended;

AND IN THE MATTER OF an Application for the renewal of a franchise agreement between Natural Resource Gas Limited and the Corporation of the Town of Aylmer.

**VARY ORDER – RATE APPLICATION DATE
SUBMISSIONS OF INTEGRATED GRAIN PROCESSORS
CO-OPERATIVE INC.**

1. IGPC Ethanol Inc. and the Integrated Grain Processors Co-operative Inc. (“**IGPC**”) is in receipt of the Ontario Energy Board’s (the “**Board**”) letter dated June 30, 2009 regarding Natural Resource Gas Limited’s (“**NRG**”) Application to review and vary the Board’s Decision dated May 5, 2009 in respect of NRG’s Franchise Renewal. Pursuant to that Decision, NRG is required to submit its rate application on or before November 5, 2009. NRG has requested an extension to that deadline to January 31, 2010, a difference of almost three months.
2. While IGPC does not wish to have additional costs placed on ratepayers, as is suggested by NRG, IGPC is cognizant of the fact that by the time the Board is able to issue a decision in the new rate application, it will be almost 4 years since the Board last approved NRG’s rates.
3. Also, on a procedural note, it is not clear that NRG has complied with the Board’s *Rules of Practice and Procedure* (the “**Rules**”) regarding a motion to review and vary a Board Decision.

Previous Board Proceedings

4. During the previous rate application in 2005/06, Board file number EB-2005-0544, NRG had been requested to provide a multi-year rate application. However, NRG had prepared a filing for a single year because it was concerned with a number of issues,

including the uncertainty of the continued downturn in the tobacco industry and the potential of the new ethanol plant. NRG indicated that it would be returning the following year, and would consider a multi-year application.

5. NRG subsequently entered a Pipeline Cost Recovery Agreement and Gas Delivery Contract with IGPC which were filed with the Board as part of the Leave to Construct proceeding, EB-2006-0243. Section 3 of the Gas Delivery Contract required NRG to consider a new rate classification for IGPC in its next rate application, which was anticipated to be in April of 2007. No such application was made.

“The Utility acknowledges that the volumes in this agreement are significantly greater than the volumes delivered to existing Rate 3 customers and that a new rate may be more appropriate for the Utility and the Customer. The Utility has committed to developing a new rate for the Customer, to be included in the Utility’s Fiscal 2008 rate application which is anticipated to be filed with the Ontario Energy Board in April 2007.”

Franchise Renewal Hearing, EB-2008-0413

6. During the oral hearing for the Franchise Renewal, the timing of NRG’s rate application was discussed. The Board panel had wanted NRG to commit to filing within 6 months. NRG’s counsel indicated that NRG was prepared to file prior to the end of the calendar year.

MR. THACKER: All right. We would be prepared to agree to apply to file for a rate hearing by the end of the calendar year.¹

7. Mr. Thacker’s statement was made with the knowledge that a Board decision would not be issued for 60 to 90 days from the date of the oral hearing. Ultimately, the Decision provided almost nine months from the time of hearing and, as such, NRG has been provided a significant length of time to prepare for this Application.
8. In the Decision, at page 13 (reproduced below), the Board noted that NRG had a history of non-disclosure and tardiness, to the extent that it was failing to meet the Board’s filing requirements.

¹ EB-2008-0413, Transcript February 12, 2009, p. 99., ll.18-20.

“The Board’s concerns are only heightened by NRG’s pattern of non-disclosure. The reports the utility is required to file with the Board were months late.... “

9. The Board was fully aware of the issue that is the subject matter of this request by NRG.
10. NRG has indicated a number of factors related to the request: (a) consultant availability and workload; (b) additional costs; (c) workload related to IGPC; and (d) staff turnover. IGPC would like to make a comment about each.
11. NRG has used a consultant, Aiken & Associates, to prepare its last several rate applications. The potential requirement to retain a new consultant had been identified prior to the Franchise Renewal hearing.
12. IGPC recognizes that NRG has had a significant turnover in its senior management and staffing. No doubt current staff has a challenge in preparing the application and completing the day-to-day activities of running the utility. However, IGPC submits that a utility must manage its internal staffing and the high turnover is NRG’s responsibility to manage. Further, the additional resources of the consultant should be alleviating the burden current staff is bearing.
13. NRG indicated it was occupied with the additional workload related to IGPC. This is related to 2 issues; a potential new rate class and concluding arrangements in respect of the pipeline.
 - (a) IGPC recognizes that the new rate class will increase the work to prepare the rate application. However, this requirement has been known to NRG since 2006. Further, it would appear to IGPC that much of this work is either performed by the consultant or would be performed as part of the pipeline cost reconciliation.
 - (b) With respect to the reconciliation of the actual costs of the pipeline facilities, the primary work is the tracking of the reasonable capital costs of the pipeline construction. Once the capital cost of the pipeline is agreed to by IGPC and NRG, the calculations and any payment should be relatively straightforward. While some additional work is no doubt required, the delay in resolving this issue results from NRG’s inability to provide information to IGPC in a timely manner, at the conclusion of the construction of the pipeline in the fall of 2008.
14. NRG’s submissions are unclear in specifying the amount of the “premium” that is associated with a November filing. The underlying work to prepare a rate application needs to be completed. The premium is the additional cost of an accelerated timeframe

(November 5, 2009 versus January 31, 2010). NRG has not provided compelling evidence to justify or explain the premium.

Procedural Issue – The Board’s Rules

15. It does not appear that NRG has complied with the Rules, specifically 42.01 (reproduced below) which required the motion to be brought within 20 days of the Decision. The Decision is dated May 5, 2009 and the letter from NRG is dated June 24, 2009, well beyond the 20 day period.

42.03 The notice of motion for a motion under **Rule 42.01** shall include the information required under **Rule 44**, and shall be filed and served within 20 calendar days of the date of the order or decision.

16. Rule 44.01, requires a party seeking to vary a Board’s decision to provide a basis for the motion. NRG has not expressly provided a basis for its motion and it is not evident from the submissions which ground NRG is relying upon.

44.01 Every notice of a motion made under **Rule 42.01**, in addition to the requirements under **Rule 8.02**, shall:

- (a) set out the grounds for the motion that raise a question as to the correctness of the order or decision, which grounds may include:
 - (i) error in fact;
 - (ii) change in circumstances;
 - (iii) new facts that have arisen;
 - (iv) facts that were not previously placed in evidence in the proceeding and could not have been discovered by reasonable diligence at the time;

Closing Remarks

17. IGPC remains concerned that NRG’s pattern of tardiness and lack of transparency, and lack of adherence to the Board’s requirements continues.
18. However, IGPC is sympathetic to the plight of NRG’s ratepayers and the potential that a November filing could increase the cost that ratepayers would ultimately bear. IGPC does not wish to see ratepayers unnecessarily burdened with such additional costs to gain a few weeks.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated: July 10, 2009

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