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Toronto, March 22, 2010

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, Suite 2700
Toronto, ON M4P 1E4

Dear Ms. Walli:

RE: Natural Resource Gas Limited (EB-2008-0413)
Motion to Review

Please find enclosed Natural Resource Gas Limited's Motion to Review the Board's Decision and Order dated May 5, 2009 in the above-noted proceeding. The Motion is also being filed on the Board's RESS system, and served on all parties to the proceeding.

Please do not hesitate to contact me should you have any questions or concerns.

Yours very truly,

Richard King

Encl.

RK/mnm

cc: All Parties to EB-2008-0413

EB-2008-0413

ONTARIO ENERGY BOARD

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

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

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

NOTICE OF MOTION

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1	Notice of Motion	March 18, 2010	1-7
2A	Ontario Energy Board Decision and Order	May 5, 2009	8-40
2B	Pre-Filed Evidence of Natural Resource Gas Limited	December 19, 2008	41-223
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2G	Written Submissions of the Intervenor, the Corporation of the Town of Aylmer	February 27, 2009	515-539
2H	Written Submissions of the Intervenor, IGPC Ethanol Inc. and Integrated Grain Processors Cooperative Inc.	February 27, 2009	540-568
2I	Written Submissions of Ontario Energy Board Staff	February 27, 2009	569-580
2J	Reply Written Submissions by Natural Resource Gas Limited	March 3, 2009	581-613

Tab	Document	Date	Pages
3	Natural Resource Gas Limited's Natural Gas Service Rules and Regulations	October 1, 2009	614-631
4	Natural Resource Gas Limited Financial Statements (Recent)	September 30, 2009	632-656
5	Natural Resource Gas Limited GDAR Exemption Application	January 28, 2010	657-659
6	Natural Resource Gas Limited Action Plan regarding RRR	January 28, 2010	660-665
7	Natural Resource Gas Limited Quality Assurance Program (referring to s. 7.3.2.1 of GDAR and G.2.1.9.B.1 of SQR) and Emergency Procedures Manual	February 12, 2010	666-682

EB-2008-0413

ONTARIO ENERGY BOARD

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

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

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

NOTICE OF MOTION

Natural Resource Gas Limited ("NRG") will make a motion to the Ontario Energy Board (the "Board") at its offices at 2300 Yonge Street, at a time and date to be set by the Board. The motion is for a review of the Board's Decision and Order dated May 5, 2009 in the above-noted proceeding (the "Decision").

A. Relief Sought

1. The relief sought in this motion is for an order(s):
   (a) renewing NRG's franchise agreement with the Town of Aylmer ("Town") for a period of twenty years;
   (b) extending the time for the filing of this Motion; and,
   (c) such further and other relief the Board deems appropriate.

2. NRG also requests that this Motion be heard in advance of the conclusion of the NRG fiscal 2011 rate application (EB-2010-0018).

B. Basis for Board's Decision in EB-2008-0413

3. In its franchise renewal application, NRG had requested a twenty-year renewal term for its franchise arrangement in Aylmer. NRG's position was supported by Board Staff, and opposed by the Town and IGPC Ethanol Inc. ("IGPC").

4. The Board Panel based its decision to renew NRG's franchise with the Town for a very short three-year term on the following grounds: (i) concerns with respect to NRG's **quality of service**; (ii) concerns with respect to NRG's **financial viability**; and, (iii) the failure to file utility reports in a timely manner exhibiting a pattern of "**non-disclosure**" by NRG.

(i) Quality of Service

5. It is clear from the Decision that the Board's concern about NRG's quality of service appears to be based on three factors:

- IGPC Contractual Issues of June 2007: The Board found that NRG's failure to sign the contractual assignments in connection with the IGPC Ethanol Inc. facility "failed to meet the standard expected of a public utility in this Province". The Board referenced the fact that when NRG was ordered to sign the assignment, NRG refused and the Board ordered an administrative penalty against NRG.

- Union's Application to Discontinue Service: The Board found that by failing to settle Union's request to provide security for Union's supply contract, NRG forced Union to bring an application to discontinue supply. The Board found: "In reviewing the evidence it was clear to the Board that NRG could have solved the problem expeditiously without confrontation by supplying Union with a postponement agreement similar to the one provided to the Bank of Nova Scotia months earlier."

- NRG's Security Deposit Policy: The Board cited the petition received by the Town complaining about NRG's customer deposit policy, and the increase in level of security deposits held by NRG. Although the Board dealt with this issue by

ordering NRG to amend its security deposit policy by July 6, 2009, it is clear from the Decision that the Board Panel considered the security deposit issue an issue of service quality.

6. With respect to the security deposit policy, NRG submits that there are significant **changed circumstances** since the Board's EB-2008-0413 proceeding. NRG implemented the security deposit policy mandated by the Board well in advance of the Board's deadline (July 6, 2009), despite being of the view that this policy is to the detriment of NRG's credit-worthy customers. At the time of the hearing, the Town of Aylmer presented a petition signed by approximately 400 Aylmer residents to change the credit policy yet none of these petitioners attended at the hearing to explain their particular complaint.

7. With respect to Union's application to discontinue service, NRG submits that the Board Panel **erred in fact** in two ways. First, the Board Panel stated in its Decision that "*In reviewing the evidence it was clear to the Board* that NRG could have solved the problem expeditiously without confrontation by supplying Union with a postponement agreement similar to the one provided to the Bank of Nova Scotia months earlier." This is plain wrong. In fact, the opposite is what the record of the proceeding indicates. NRG offered (during the course of the proceeding) a postponement agreement to Union Gas Limited, and Union advised the Board that it would not accept a postponement agreement at three different points in time during the proceeding (see EB-2008-0272 Transcript, page 106, lines 5 – 8, page 46 lines 3 – 5, and page 92, lines 1 – 4). Consequently, the Board clearly erred by stating that the problem could have been solved expeditiously without confrontation had NRG offered Union a postponement agreement. Union would not have accepted a postponement agreement. The evidence is clear. The second error committed by the Board is that the Board classified this as a "service quality" issue. It is unclear how this is a service quality issue. Union is not a customer of NRG's. Union is a service supplier to NRG – one of many service suppliers to NRG. The fact that Union happens to be regulated by the Board is irrelevant. NRG received a request for financial assurance from a supplier pursuant to a contract. Under the terms of that contract, NRG did not believe the request for financial assurance was warranted. Further, the financial remedy

(that is, providing a cash deposit, and the alternative remedy sought by the supplier, namely moving to a later contract start date) would have had significant cost consequences to NRG's ratepayers. So NRG advised the supplier that it would not provide the assurance. This was a contractual dispute between NRG and one of its suppliers. This was not an issue of service quality. The question of Union discontinuing service to NRG was never an issue in the proceeding. The proceeding was about whether financial assurance was required. NRG could have simply acceded to Union's request, but the consequence would have been higher rates to NRG's customers.

8. That leaves the last issue identified by the Board under service quality; namely, the IGPC contractual issues of 2007. To be clear, the failure of NRG to sign the contractual assignments was in June 2007, approaching three years ago now. This refusal to sign was primarily driven by IGPC's failure to provide adequate financial assurances to protect both the ratepayers and shareholders of NRG (which assurance was subsequently ordered by the Board to be paid by IGPC). Notwithstanding IGPC's delays in providing a letter of credit, NRG began construction of the IGPC pipeline and completed it ahead of schedule and under budget. Further, the EB-2008-0273 oral hearing was nearly a year and a half ago. In that year and a half, NRG is not aware of any operational or service issues with IGPC. NRG has been supplying natural gas to IGPC for approximately 18 months, and in fact was ready to supply gas two months ahead of when IGPC started to flow gas. NRG's management continues to work in building a constructive relationship with IGPC. Finally on this point, the Board Panel sited the administrative penalty more than once in its decision. NRG immediately appealed the levying of that penalty, and perfected its appeal in a timely manner. The OEB has failed to file any responding material for over two years. It was nearly three years ago that the penalty was levied, and the OEB has taken no steps to respond to NRG's appeal in Divisional Court. In fact, the only way in which the Board sought to follow-up on its compliance order was to offer to NRG (curiously, at the conclusion of the oral phase of the Aylmer franchise renewal proceeding) to withdraw the penalty if NRG contributed the penalty amount to the Winter Warmth Program (EB-2008-0413 Transcript, page 187 starting at line 4).

(ii) Financial Viability of NRG

9. In its Decision, the Board cited the concerns raised in the EB-2008-0273 proceeding (Union Application to Discontinue Service). That proceeding was prompted by a change in accounting rules that required NRG's Class C retractable shares to be reported as debt (not equity) in NRG's financial statements (NRG's shares had been retractable for a number of years prior to the accounting change). These shares, when treated as debt, showed that NGR "has little or no equity" according to the Board. Further, the Board stated that NRG "has little or no working capital outside of the customer deposits". For more than one year, the Board has been receiving quarterly financial statements from NRG as ordered by the Board. These statements clearly reflect a solid financial position.

(iii) Non-Disclosure

10. The Board concluded in its Decision that NRG had missed certain routine filings with the OEB. Since the oral proceeding in EB-2008-0413, NRG has gone through a process audit with the Ontario Energy Board and prepared an Action Plan (with the Board) to address these issues. NRG has also applied for an exemption from those provisions of GDAR that it believes should not be applicable to NRG (i.e., are more suited to larger utilities). This exemption application was made in cooperation with the Board's audit staff.

C. Extension of Time

11. NRG is also requesting that the Board extend the time for filing of this motion. It is NRG's position that this is the most expedient method for dealing with the renewal of the Aylmer franchise, given the complete evidentiary record available to all parties in EB-2008-0413 (including the Board's reasons in the EB-2008-0413 Decision). NRG could, instead, bring an application for a franchise renewal at any time. That would likely attract a more cumbersome process (e.g., publication of notice of application, intervention period, etc.) merely to get to the same issues that can be addressed by way of this motion.

D. Hearing in Advance of Rate Application Conclusion

12. Further, NRG views the renewal of the Aylmer franchise as directly connected to its current rate application. In its rate application, NRG has requested distribution rates to be determined on the basis of normal depreciation rates. However, NRG has included in its application a rate schedule to demonstrate what the distribution rates would be if NRG's depreciation rate matched the Aylmer franchise renewal period.

13. Determining the appropriate amortization period to use in NRG's rate application was not a straightforward matter for NRG during the preparation of that application. In the normal course, NRG would have simply applied for rates utilizing normal depreciation rates, regardless of the remaining term left in any franchise agreement. However, given the Board's decision to renew the Aylmer franchise for a very short time period, and to align that franchise expiry with others, NRG felt compelled to include an illustrative rate schedule utilizing the shorter amortization period (i.e., an amortization period that matched the remaining term of the franchise).

14. NRG is unaware of the Board ever having not renewed a franchise agreement for a more standard, longer term – let alone a franchise area that is the most important to a utility. Moreover, the Board chose a short renewal period over other regulatory tools that the Board could have used to address the Board's concerns (e.g., compliance orders, administrative penalties, regular orders). In other cases where the Board has been concerned about the conduct of Board-licensed entities (including in instances where there were admitted cases of licensed entities making fraudulent representations to consumers), the Board has elected to impose penalties rather than contemplate license revocation. The Board's decision in EB-2008-0413 borders on license revocation.

15. Given the extraordinary measure chosen by the Board, NRG views the amortization period used in its rate application as intimately connected to the franchise renewal period. NRG believes that the hearing of this motion in advance of the conclusion of the rate proceeding by the Board will inform the Board's consideration of the appropriate amortization period.

E. Supporting Evidence

16. The following documentary evidence will be relied upon for these motions:

(a) the complete record of the Board proceeding in EB-2008-0413;

(b) NRG's updated Natural Gas Service Rules & Regulations;

(c) NRG's financial statements at September 30, 2009;

(d) NRG's application for exemption from certain Gas Distribution Access Rule provisions dated January 28, 2010;

(e) NRG's action plan in response to the OEB audit (dated January 27, 2010)

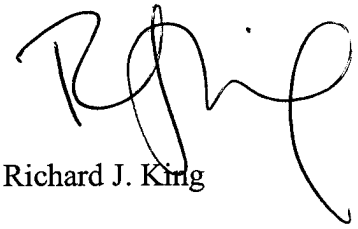
(f) NRG's Quality Assurance Program (referring to s. 7.3.2.1 of GDAR and G.2.1.9.B.1 of SQR) and Emergency Procedures Manual; and,

(g) such further evidence as counsel may advise and the Board permit.

All of which is respectfully submitted this 22nd day of March, 2010.

NATURAL RESOURCE GAS LIMITED

By its Counsel,



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TO: All Parties in EB-2008-0413

Ontario Energy Board

Commission de l'énergie de l'Ontario

Ontario

EB-2008-0413

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 Resources Gas Limited and the Corporation of the Town of Aylmer.

BEFORE: Gordon Kaiser
Presiding Member and Vice Chair

Ken Quesnelle
Member

Cathy Spoel
Member

DECISION AND ORDER

This is an application by Natural Resources Gas Limited ("NRG") pursuant to Section 10 of the *Municipal Franchises Act*, ("MFA") to renew its existing franchise agreement with the Town of Alymer ("the Town"). The application is opposed by the Town, the largest municipality in which NRG distributes gas, and the Integrated Grain Processors Cooperative ("IGPC"), the largest customer in the franchise area.

NRG is a privately owned utility that distributes natural gas in Southern Ontario to approximately 6500 customers in Aylmer and surrounding areas. The service territory stretches south from Highway 401 to the shores of Lake Erie. In addition to Aylmer, NRG has franchise agreements with the Township of Malahide, the Municipality of Thames Centre, the Township of Bayham, the Township of South West Oxford, and the Municipality of Central Elgin.

NRG and Aylmer entered into the existing franchise agreement in 1984. The agreement, which expired on February 27, 2009, is attached as Appendix A. This franchise agreement accounts for most of NRG's 6500 customers. The franchise agreements between NRG and the other five municipalities expire at later dates. Three of them, Malahide, Thames Centre and Bayham, expire in 2012.

The Board held an oral hearing on this Application in Aylmer on February 12, 2009, and at the conclusion of the hearing issued an interim order extending the existing franchise agreement for 90 days or until the Board grants a renewal of that franchise agreement under the MFA, whichever comes first.

For some time NRG and the Town of Aylmer have been negotiating the terms of a new franchise agreement but have been unable to reach an agreement. The main point of difference is that NRG wants a 20 year term while Aylmer is prepared to offer only a 3 year term. There are other differences in their positions but they are less important and more easily resolved.

The Board's Jurisdiction

Section 10 was added to the MFA in 1969. Prior to that time both the utility and the municipality had a common law right to terminate a franchise upon expiry of a franchise agreement. Section 10 is intended to allow the Board to intervene and renew a franchise where the municipality and the utility cannot come to an agreement. Either party can apply during the last year of the franchise term. This section allows the Board to determine the term of the new franchise as well as other terms and conditions. Section 10 of the MFA as amended now provides:

> 10(1) Where the term of a right [...] to operate works for the distribution of gas has expired or will expire within one year, either the municipality or the party having the right may apply to the Ontario Energy Board for an order for a renewal of or an extension of the term of the right.
>
> (2) The Ontario Energy Board has and may exercise jurisdiction and power necessary for the purposes of this section and, if public convenience and necessity appear to require it, may make an order renewing or extending the term of the right for such period of time and upon such terms and conditions as may be prescribed by the Board, or if public convenience and necessity do not appear to require a renewal or extension of the term of the right, may make an order refusing a renewal or extension of the right. [...]

> (5) An order of the Board heretofore or hereafter made under subsection (2) renewing or extending the term of the right shall be deemed to be a valid by-law of the municipality concerned assented to by the municipal electors for the purposes of this Act and section 58 of the Public Utilities Act.

In resolving this dispute the Board must determine what is in the public interest or what "meets public convenience and necessity". That determination must consider the objectives of the Board as set out in Section 2 of the OEB Act. The objectives relevant to this inquiry are set out below;

> The Board in carrying its responsibilities under this or any other Act in relation to gas should be guided by the following objectives;
>
> a) To facilitate competition in the sale of gas to users. [Section 2(1)]
>
> b) To protect the interests of consumers with respect to prices and the reliability and quality of gas service. [Section 2(2)]
>
> c) To facilitate the rational expansion of transmission and distribution systems. [Section 2(3)]
>
> d) To facilitate the maintenance of a financially viable gas industry for the transmission, distribution and storage of gas. [Section 2(5)]

In *Union Gas Limited* v. *Dawn*[1] the court confirmed that the Board has the sole jurisdiction to determine "public convenience and necessity" under section 10 of the MFA. At page 622 the Court stated:

> In my view this statute makes it crystal clear that all matters relating to or incidental to the production, distribution, transmission or storage of natural gas, including the setting of rates, location of lines and appurtenance, expropriation of lines and appurtenances, expropriation of necessary lands and easements, are under the exclusive jurisdiction of the Ontario Energy Board and are not subject to legislative authority by municipal councils under the *Planning Act*...

The Board is under no obligation to continue any of the terms in the existing agreement. As the Divisional Court stated in the *Peterborough v. Consumers Gas*[2]

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[1] *Union Gas Limited v. Dawn (Township)* (1977) 76 D.L.R. (3d) 613, Ontario (H.C.J..).

[2] *Peterborough (City) v. Consumers Gas* (1980), 111 DLR (3d) 234, Ontario, (Div. Ct.)

> There is nothing in the statutory provisions to require that the terms and conditions found in the expiring agreement must be continued or that what is prescribed by the Board as a result of its adjudication be agreeable to either or both of the parties. It is for the Board to adjudicate when the matter is set down before them. Assuming the hearing has been properly held, it is immaterial that the terms and conditions imposed are not those either in the expiring agreement or in a new agreement or are acceptable to the contending parties.

In *Centra Gas and the City of Kingston*[3], the Board found that the "public interest" and "public convenience and necessity" are broader than local interests. The Board is required to consider matters affecting the provincial gas distribution system as a whole, and not just local interests. While the views of the municipalities should be taken account by the Board they do not entirely determine public convenience and necessity. By the same token the Board in that case noted that the fact that the utility might feel it has a "reasonable expectation" does not end the matter. "The mere fact that most franchises are renewed without dispute is not sufficient to justify an assumption of automatic renewal of a franchise". [page 26]

This is not the first time the Board has considered a dispute between a municipality and a utility regarding the renewal term of a franchise agreement. In a number of cases a municipality's request for a lesser term was refused by the Board, which instead chose to impose the Model Franchise Agreement. That agreement will be addressed shortly.

There are also a number of cases where the municipality opposed renewal of the franchise because it wanted to take over the gas distribution business itself[4]. Those decisions led to the principle described above that the Board in considering the public interest must look beyond the interest of the specific municipality and also consider broader provincial interests.

It's important to understand the context of those decisions. They invariably relate to Union Gas Ltd. and Enbridge Gas Distribution Inc. or their predecessor corporations. Both companies are substantially larger than NRG. Enbridge for example has

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[3] *Centra and City of Kingston, (E.B.A 825), June 23, 2000.. .See also: Union Gas Limited v. Township of Dawn* (1977) 76 DLR (3d) d13, (Ontario Divisional Court); Surrey *v. British Columbia Electric Company* (1957) SCR 121; and *Sydenham Gas and Petroleum Company v. Union Gas Limited* [1955] O.J.. 234 (C.A.).

[4] *Sudbury (City) v. Union Gas Limited* (2001), 54 O.R. (3d) 439 , (CA); *Kingston (City) v. Ontario Energy Board and Union Gas Limited,* [2001] O.J. No. 3485, (Div. Ct.)

approximately 1.8 million customers and 150 franchise agreements, while Union has approximately 1.3 million customers and 800 franchise agreements.

NRG is not a province wide utility. Nor is the Town of Aylmer attempting to take over and operate the franchise itself. In the case of province wide distribution systems the Board understandably has been reluctant to divide territory based on profit maximizing initiatives of a local municipality. It is significant that in none of the previous decisions was the quality of service or financial integrity of the utility a major issue. That is not the case here.

The Model Franchise Agreement

Prior to 1988 franchise agreements between municipalities and utilities were negotiated between the parties on an individual basis. In November 1985 the Board held a generic hearing to provide guidance on issues frequently arising in franchise agreements. As a result a Model Franchise Agreement was developed[5], which has since formed the template for most new and renewed franchises.

The Board Report stated that the term of a first time agreement should not be less than 15 years and no longer than 20 years. In the case of renewals, a term of 10 to 15 years was considered adequate. The Board issued another Report on the Model Franchise Agreement in December of 2000[6] that confirmed, with minor differences, the view of the Board in the 1986 Report.

The 1998 Decision of the Board[7] in the application by Centra Gas[8] for renewal of franchise agreements in the City of Orillia, the Town of Gravenhurst, the Township of Severn, and the Town of Bracebridge, reviewed the municipalities' request for a reduced term within the context of the 1986 Report. There the parties were also unable to reach agreement on the term. The utility requested a 20 year term while the municipalities offered 10 years. The Board concluded at page 16 of the Decision:

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[5] *Report of the Board on the Review of Franchise Agreements, E.B.O. 125, May 21, 1986*

[6] *Report to the Board, December 29, 2000 Re: The Municipal Franchise Act and the 2000 Model Franchise Agreement*

[7] *Board Decision with Reasons, March 31,1988 Re: Application by Centra Gas Ontario Inc. for franchise renewals with the Corporations of the City of Orillia, the Town of Gravenhurst, the Township of Severn and the Town of Bracebridge. The Board File Numbers are: E.B.A. 767, E.B.A. 768, E.B.A. 769, E.B.A. 783*

[8] Centra Gas Ontario Inc. merged with Union Gas Limited on January 1, 1998.

> The Board finds that the four Municipalities have not demonstrated unusual[9] circumstances specific to these Municipalities which would justify different terms and conditions in their agreements from those in the Model Agreement. The Board therefore finds that the franchise agreement for each of the Municipalities should be in the model form without the requested amendments. As to the term of the agreement, for the same reasons given by the Board in E.B.A. 795, terms of 15 years are ordered in each of the four agreements.

Service Quality

In this proceeding both NRG and Board staff submit that the Board should not depart from the terms set by the Model Franchise Agreement. The municipality however is only prepared to offer a 3 year term.

The Town's position is set out in page 4 of its argument[10];

> Circumstances have arisen in which NRG has been in default in its responsibilities to customers and to the electors of the Town. These circumstances have raised concerns about both the financial viability of NRG and the quality and reliability of its service to customers. They have severely shaken the Town's confidence, and that of the Town's constituents in NRG as their incumbent gas supplier and distributor.

The Town's concern with service quality and financial viability were supported by IGPC, largest customer in the franchise area. The IGPC concerns are summarized at page 2 of its argument;

> NRG has demonstrated a pattern of conduct that is not acceptable in a publicly regulated utility...During the last two years, NRG has admitted that it has: (a) failed to comply with its obligations under the GDAR; (b) been the subject of an administrative penalty for contravening an order of the Board; (c) been the subject of an application to discontinue service; and (d) the subject of an unprecedented number of complaints to the Board such that the Board commenced a review of its security deposit policies. NRG has failed to complete the cost reconciliation required by the Pipeline Cost Recovery Agreement ("PCRA"), which was to be completed within 45 Business Days of commencing gas service to IGPC. Finally, there are still unanswered questions about NRG's financial well-being.....If ever there was a situation so unique that it

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[9] *Ten years earlier in Township of Moore and Union Gas Limited, the Board had also rejected a short term because there were no "unusual circumstances", E.B.A. 304, December 21, 1978, page 16*

[10] *Town of Aylmer, Final Written Submissions dated February 27, 2009, Paragraph 9, page 4*

warranted the Board departing from its traditional practice, this is such a situation. A three year renewal is appropriate – if not generous.

Two main reasons are offered for the proposed shorter term. First, the Town and IGPC say that a shorter period, of 3 years is appropriate in order to give NRG a probationary period in which to rebuild customer confidence regarding service quality.

The second ground is that the Town believes that a three year period is necessary in order to align the renewal period of the Town's franchise agreement with those of the neighbouring municipalities.

Quality of service is a broad and a general term. The Town and IGPC site a number of examples which they claim demonstrate that NRG has been unresponsive to the interests of the Town, its gas consumers, and IGPC. A number of them relate to the difficulty both the Town and IGPC have faced in dealing with NRG regarding a new ethanol plant in Aylmer.

In 2006, NRG applied to the Board to construct approximately 28 kilometres of gas pipeline to connect the Union Gas distribution system to the new ethanol facility being developed by IGPC in the Town of Aylmer. The Board granted leave on February 2, 2007[11] after reviewing the financial viability of the project and receiving assurances that there would be no negative impact on existing ratepayers.

Months later in June 2007, NRG refused to execute a necessary assignment. Without the assignment, IGPC could not proceed with the financing of the ethanol plant. An Emergency Motion was brought on June 29, 2007. The Board[12] ordered NRG to execute the necessary documentation on the grounds that the assignment had been agreed to by the parties and the Board had approved the Agreements when granting the leave to construct[13].

The Town in its submissions relies on the Board's Decision on the Motion where the Board stated;

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[11] *Board Decision and Order, dated February 2, 2007 Re Application by NRG for Leave to Construct 28.5 km natural gas pipeline to supply natural gas to the ethanol plant owned by Integrated Grain Processors Co-operatives Inc. in the Town of Aylmer*

[12] *Transcript, Motion Hearing, June 29, 2007 page 81, line 21 to page 82 line 14 and page 85, line 3 to page 86, line 9*

[13] *Decision and Order, February 2, 2007, granting leave to construct the pipeline, page 2, "Proceeding" Section, 2nd Paragraph (EB-2006-0243)*

> There is no basis on this record to conclude that a refusal to execute the consent is reasonable. The agreement specifically contemplated it and the parties agreed that a consent would be executed to the benefit of the company's lenders and, as such, would be considered reasonable. We see no basis for this refusal and hereby order NRG to execute the consent in the form provided by the applicant.

Despite the Order, NRG refused to sign the Agreement[14]. As a result the Board levied an administrative penalty[15]. The Town and IGPC in their submissions rely on the Board's findings in that Decision;

> NRG has been franchised to provide natural gas service in this municipality, in the Town of Aylmer. .This is an exclusive franchise. Natural gas is not available from anyone else. But that exclusivity carries with it certain responsibilities to act in the public interest. It is not apparent that NRG understands those responsibilities at all.
>
> The failure to comply with this Board's order signals a complete disregard for the Board and its processes. It also signals a complete disregard for the people of Aylmer, many of whom are out of work as a result of the decline in the tobacco industry. It looked like this ethanol facility would offer considerable relief in that regard.
>
> It is also a complete disregard for the federal government, the province of Ontario, and the investors, the farmers that have invested in this facility, and of course, IGPC, all of whom have in vested considerable time over a considerable period to bring about the agreements which would result in the construction of this facility.

Another incident both IGPC and the Town cite regarding service quality is the failure of NRG to deal in a timely manner with the request of its gas supplier, Union Gas, for adequate security, under its gas supply contract with NRG. This ultimately led to an application by Union Gas[16] to the Board to discontinue the supply of gas to NRG – a matter of considerable concern to both the Town and IGPC.

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[14] *Transcripts, Motion Hearing, (Addendum) June 29, 2007(Afternoon), page 22, line 21 to page 23 line 18*

[15] Note, NRG has appealed the fine

[16] *Union Gas Limited Application on August 1, 2008 seeking the Board's approval to discontinue service to Natural Resource Gas Limited ("NRG")*

The issue turned in part on the state of NRG's financial accounts and, NRG's claim that redeemable shares should be regarded as equity as opposed to debt. The evidence by NRG's own accountants recognized that under Generally Accepted Accounting Principles ("GAAP") redeemable shares were properly classified as debt rather than equity. This meant NRG had little or no equity and Union Gas had no security for the outstanding balances.

It turned out that the Bank of Nova Scotia, the main lender to NRG, had the same concern. Those concerns were addressed months earlier when NRG provided the Bank with a postponement agreement by which the security interest of the redeemable preference shares was postponed to the interest of the bank[17]. The Board ordered NRG to provide Union Gas with a similar postponement agreement.

The arguments of both IGPC and the Town rely on the Board's Decision[18] as further evidence of the lack of adequate service quality;

> Union's concern with the financial stability of NRG was well founded, given NRG's decision to reclassify the preferred shares. The Scotia Bank had a similar concern and NRG addressed it promptly by providing a Postponement Agreement.
>
> In the case of Union's request for security, NRG did not act in a timely manner. The record suggests that NRG essentially stone-walled Union. This resulted in significant cost for Union, the Board, the Town of Aylmer and the Integrated Grain Processors Co-operative. This type of brinkmanship is not helpful where 6,500 customers and a recently activated ethanol plan supported by substantial Federal and provincial funding are involved.

IGPC and the Town also note that the conduct of NRG was sanctioned by the Board by an administrative penalty against NRG in the case of refusal to sign the assignment and a cost award against the NRG shareholders in the case of Union's application to discontinue supply to NRG.

The arguments above were advanced by both the Town and IGPC. However the Town raised an additional complaint relating to NRG's security deposit policy.

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[17] The redeemable preferred shares are owned by the shareholders of NRG

[18] *Board Decision and Order dated November 27, 2008, pages 5-7 Re: Union Gas Limited's Application seeking the Board's approval to discontinue service to Natural Resource Gas Limited ("NRG"),. (EB-2008-0273)*

In 2008, the Town received a petition with 457 written and 65 on-line signatures complaining about NRG's customer deposit policy. The evidence before us is that the level of security deposits which the Board approved for test year 2007 was $105,000. By September 2006 NRG was holding security deposits of $280,000 which increased to $603,000 by September 2007 and further to $757,000 by September 2008. The 650% increase in security deposits demanded by NRG from its customers in this three year period led to widespread customer complaints and the petition to the Town Council.

The NRG response to the security deposit issue is that NRG was unaware of the petition notwithstanding that it was advertised in the local newspaper. Second, NRG states that it is prepared to comply with new rules the Board has been considering with respect to security deposits.

NRG further submits that the increases in deposits resulting from the initiation of the new deposit policy and the amount of deposits held will decline as the program matures and refunds are made to those demonstrating a good payment record.

NRG offered little response to the allegations that the utility's quality of service failed to meet minimum standards. The main response seemed to be that the Town was acting in bad faith and failed to advise NRG earlier that the Town was not prepared to grant NRG the requested 20 year term. It was suggested that the Town was in some fashion coordinating a takeover of NRG facilities with Union Gas and the failure to advise NRG of the Town's position earlier was part of that exercise.

There is no evidence that Union Gas was involved in any way in these discussions. Moreover, the evidence of Ms. Adams, the Town's Chief Administrative Officer, is clear. She was not at liberty to disclose the Council's position regarding the renewal of franchise agreement, until such time as the Council had voted on the matter. There is no evidence that she misled NRG.

Financial Viability

Both the Town and IGPC also question the financial viability of NRG. These submissions rely for the most part on the application by Union to discontinue supply.

Union claimed that NRG's financials demonstrated that there was no equity and therefore no security for the debt NRG was incurring to Union under its gas supply

contract. IGPC and the Town agreed. They argued that without the security deposits NRG had little or no working capital. Finally, they point to the Board's findings in that Motion that NRG was late in providing the Board with the financial statements required under the Board's rules.

NRG responds that the short term proposed by the municipality will in fact limit the utility's ability to finance and creates no incentive for NRG to invest in facilities.

It's true that the Board in previous decisions has linked the term of the franchise agreement to the financing of the utility[19]. This is particularly true for original franchise agreements as opposed to renewals. Here the situation is different. This utility, unlike any other in the province, has no long term financing. All the financing is short term. In fact the financing is a demand note.

NRG then argues that if the Board only awards a three year term its lender will likely call the demand note placing the utility in financial jeopardy. There is no convincing evidence that this is likely.

The fact that NRG chooses to finance its operations by way of a demand note (which is admittedly unusual) cannot be used as the basis for arguing for a longer term. Moreover, when this note was put in place NRG had less than 5 years remaining on its existing 20 year franchise agreement. Nor does the Board accept that a shorter term will reduce the incentive of the utility to maintain its facilities. The Town's position is exactly the opposite; a shorter term may encourage NRG to pay more attention to its service quality and financial integrity.

The Alignment of Franchise Agreements

Another rationale offered by the Town for a shorter term of three years is that this will allow the Town of Aylmer to align renewal of its franchise agreements with the neighbouring municipalities. NRG responds that this is merely a strategy to allow the Town to more easily replace NRG with an alternative supplier. NRG claims this is an improper motive.

The Town admits that this was one of the reasons for the 3 year term. The Town, however argues that a municipality should, if it is in the public interest, have the option to contract with a different supplier. The Town argues while a municipality no longer

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[19] *Re Northern and Central Gas, E.B.A 194, December 3, 1976*

has the unilateral right to terminate an agreement, the right to terminate always exists provided that the Board finds it in the public interest. The Town also notes that whatever happens three years from now will still be subject to Board approval.

The Board does not accept NRG's position that the alignment of expiration dates in the franchise agreements of adjacent municipalities is an improper motive. Different dates are simply an artificial barrier to municipalities seeking alternative supply in the appropriate circumstances, a rationale the Board accepted in the 1986 Report[20] that created the Model Franchise Agreement;

> A uniform expiry date within a regional area could help achieve two goals. It might place the local municipalities in a better negotiating position with the utility and it would contribute to the standardization of franchise agreements at least within each regional municipality or county.

Board Findings - Term of the Franchise Agreement

The Board accepts that the Model Franchise Agreement serves an important and useful purpose. And the Board agrees that the term should be reduced only in "unusual" circumstances. The question is: do unusual circumstances arise in this case?

The Board finds that unusual circumstances do exist in this case and they warrant a term substantially less than the standard term specified in the Model Franchise Agreement.

The Town and IGPC question both the financial viability and quality of service of NRG. The Board agrees that there are serious concerns with respect to both. However there is no evidence to support the Town claim that NRG's service was unreliable.

The Board accepts the arguments of both IGPC and the Town that the conduct of NRG, as confirmed in previous Board decisions, failed to meet the standard expected of a public utility in this Province. There was no apparent reason for refusing to sign the assignment to contracts involved in the construction of the ethanol plant. That refusal placed in jeopardy an asset which doubled the size of NRG and offered

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[20] *Report of the Board on the Review of Franchise Agreements, E.B.O. 125, May 21, 1986, page 7/16, paragraph 7.39*

increased financial stability to the entire franchise area. Furthermore when the Board ordered the assignment to be signed, the utility refused.

The NRG contract with respect to the Union gas supply contract was equally disturbing. Union was forced to bring an application to discontinue supply which placed the entire franchise in jeopardy. In reviewing the evidence it was clear to the Board that NRG could have solved the problem expeditiously without confrontation by supplying Union with a postponement agreement similar to the one provided to the Bank of Nova Scotia months earlier. In the Board's view the Town and IGPC are entitled to raise these concerns as questions of service quality in this proceeding.

The Union proceeding also raised valid concerns regarding the financial viability of NRG. It appears that this utility has little or no working capital outside of the customer deposits. When proper accounting treatment is applied, the utility has little or no equity.

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. The rate application has been delayed. In these circumstances the Board believes it is not in the public interest to renew this franchise agreement for a term greater than the three years proposed by the Town of Aylmer.

For the reasons stated above the Board orders that the franchise agreement between Natural Resource Gas Limited and the Town of Aylmer be extended for a period of three years and expire on February 27, 2012.

It is not the intention of the Board in this decision to diminish the importance of the Model Franchise Agreement. The Model Franchise Agreement is an important tool to efficiently administer the many franchise agreements across this Province. The Model Franchise Agreement should be departed from only in exceptional and unusual circumstances. This, however, is such a case.

Board Findings - Other Conditions

In addition to limiting the term to three years, the Town asked the Board to impose four other conditions on renewing this franchise:

1. The Board should require NRG to file a new rate application within 6 months.

2. The Board should require NRG to implement the Board proposed revisions to its customer deposit policy.

3. NRG must give the Town notice of any proceedings brought before the Board in which NRG is involved.

4. The security deposits should be placed in a trust account.

The Board agrees that NRG should file a rate application within 6 months for rates to be effective October 1, 2010. The last NRG rate decision[21] was rendered in 2006. It is difficult to understand why NRG has not filed a rate application. The utility has just embarked on a capital expansion that doubled its rate base. The project is completed. Those assets now appear to be used and useful. Most utilities would be anxious to have the additions to rate base approved by the Board so they can earn a rate of return on those assets.

The Board will order NRG to bring a rate application within six months. That hearing will allow the Board to more completely examine the financial status of NRG. That examination will materially assist any future Board Panel examining the renewal of this franchise agreement three years from now.

The next matter relates to security deposits. That issue has been canvassed earlier in this decision. It is a concern of the Town and its residents. In this proceeding, NRG has agreed to comply with new rules. Accordingly, the Board will order that as a condition of approving this franchise extension NRG within a period of 60 days amend its security deposit policies to comply with the rules set out in Appendix B of this decision.

The Town has also asked the Board to order NRG to hold the customer security deposits in a trust account. The Town's concern is that NRG has limited or no equity and the customer security deposits represent most of the working capital of the utility. NRG's response is that there will be costs involved in setting up a trust account. The Board recognizes the Town's concern, but at the same time believes that the new security deposit rules set out in Appendix B will address the problem. Accordingly, the Board, will not order that a trust account be created.

The final matter relates to the Town's request that the franchise agreement be amended to require NRG to provide the Town notice of any regulatory proceedings.

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[21] *Board Decision with Reasons, September 20, 2006, approving the rates for Test Year 2007 (EB-2005-0544)*

The Board does not believe it's appropriate to add this type of term to the franchise agreement. The Town presumably believes this would provide greater security because non compliance would constitute a breach in the agreement. That, however, would create unnecessary risks for the customers.

The Board will however, order that as a condition of approving the franchise agreement that NRG provide notice to the Town of any applications it makes to the Board. In all likelihood the Town will receive this notification in the ordinary course. There is little harm, however, in making this clear to both the Town and NRG.

IT IS THEREFORE ORDERED THAT:

1. The existing franchise agreement between Natural Resource Gas Limited and the Town of Aylmer shall be extended for a period of three years and expire on February 27, 2012.

2. Natural Resource Gas Limited shall on or before July 6, 2009 amend its security deposit policy to comply with the procedures set out in Appendix B.

3. NRG shall file an application for new rates within six months of this decision for rates to be effective October 1, 2010.

4. NRG shall provide notice to the Town of Aylmer and its duly authorized representatives, of any regulatory application or proceeding coming under the jurisdiction of the Board.

DATED at Toronto, May 5, 2009

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

Appendix A

Copy of Expired Franchise Agreement (February 27, 2009)
[Natural Resource Gas Limited and The Corporation of the Town of Aylmer]

Board Decision and Order
Re: Natural Resource Gas Limited Application for Franchise Renewal
with the Town of Aylmer (EB-2008-0413)

May 5, 2009

THIS AGREEMENT made the 27th day of February , 1984

B E T W E E N:

NATURAL RESOURCE GAS LIMITED

Hereinafter called the "Company"

OF THE FIRST PART

-and-

THE CORPORATION OF THE TOWN OF AYLMER

Hereinafter called the "Municipality"

OF THE SECOND PART

WHEREAS the Company desires to distribute and sell gas (which term shall mean and include natural gas, manufactured gas, synthetic gas, or liquefied petroleum gas, and includes any mixture of natural gas, manufactured gas, synthetic gas, or liquefied petroleum gas, but does not include a liquefied petroleum gas that is distributed by means other than a pipe line) in the Municipality upon the terms and conditions hereinafter set forth.

AND WHEREAS by By-law passed by the Council of the Municipality, the Mayor and Clerk of the Municipality have been authorized and directed to execute, seal and deliver this Agreement on behalf of the Municipality.

NOW THEREFORE THIS AGREEMENT WITNESSETH that for valuable consideration (the receipt and sufficiency of which is hereby acknowledged):

1. The consent, permission and authority of the Municipality are hereby given and granted to the Company, to lay down, maintain and use pipes and other necessary works for the transmission and distribution of gas, on, in, under, along or across any highway under the jurisdiction of the Council of the Municipality, including therein the right from time to time and at any time, to survey, construct, lay, maintain, inspect, alter, repair, renew, remove, abandon, replace, reconstruct, extend, use and operate in, through,

upon, under, along and across the same or any of them or any part or parts of them, such transmission and distribution mains, pipes, lines, services and works (with any and all necessary or incidental apparatus, attachments, appliances, arrangements for cathodic protection, regulators, valves, curb boxes, safety appliances and other suchlike appurtenances) which the Company may desire from time to time and at any time for the transmission of gas in and through the Municipality and for a gas distribution system and any extension or extensions from time to time thereto and together with the furthe: right from time to time and at any time to entar upon, open up, dig, trench, use and occupy such highways or any part or parts of them for any of the purposes aforesaid and further together with the right from time to time and at all times to use and operate a gas transmission and distribution system in the Municipality and to transmit gas in and through the Municipality and to provide gas service to any resident or residents of the Municipality, and to bring in, transmit, produce, distribute, supply and sell gas in and through the Municipality for fuel, heat and power.

2. The company shall well and sufficiently restore forthwith to as good condition as they were in before the commencement of the Company's operation to the satisfaction of the Municipal Engineer (which term means from time to time such employee of the Municipality as the Municipality shall have designated as such for the purposes of this Agreement, or failing such designation, the senior employee of the Municipality for the time being charged with the administratic of public works and highways in the Municipality) all highways, squares and public places which it may excavate or interfere with in the course of laying, constructing, or repairing or removing of its mains, pipes, regulators, valves, curb boxes, safety appliances and other appurtenances and shall make good any settling or subsidence thereafter caused by such excavation, and further, in the event of the Company failing at any time to do any work required by this Section the Municipality may forthwith have such work done and charged to and collect from the Company the cost thereof and the

Company shall on demand pay any reasonable account therefor certified by the Municipal Engineer.

3. The Company shall at all times wholly indemnify the Municipality from and against all loss, damage and injury and expense to which the Municipality may be put by reason of any damage or injury to persons or property resulting from the imprudence, neglect or want of skill of the employees or agents of the Company in connection with the construction, repair, maintenance or operation by the Company of any of its works in the Municipality.

4. All new (or renewal) mains, pipes, lines and works inst by the Company under this By-law shall be constructed and laid in accordance with good engineering and constructing practices. Expect in case of emergency,

(a) no excavation, opening or work (exclusive of service connections from the street main to the property line) which will disturb or interfere with the travelled surfa of any highway shall be undertaken or commenced by the Company without written notice to such officer of the Municipality as may from time to time be appointed by th Council of the Municipality for the purpose of general supervision over its highways (hereinafter referred to a "the said officer of the Municipality", which term shall include the person acting in his stead in the event of his absence from duty), such notice to be given at least 24 hours in advance of commencing such work unless other wise agreed to by the said officer of the Municipality and

(b) before laying or installing any new (or renewal) mai pipes, lines and works (exclusive of service connections from the street main to the property line), the Company shall first file with the said officer of the Municipali a preliminary map or plan showing what it proposes to la or install and the proposed location thereof and shall a check with and obtain the written approval of the said officer of the Municipality as to such proposed location

Not later than three months after the close of the Compa second fiscal year, the Company shall file with the clerk of the Municipality, a map or plan showing the location and size of mains, pipes, lines and works laid or installed or existing in the Town, exclusive, however, of service connections from the street main to the property line. Not later than three months after the close of each of its fiscal years thereafter, the Company shall file with

Clerk of the Municipality maps or plans showing the location and size of all mains, pipes, lines and works laid or installed by the Company in the highways during the previous fiscal year, exclusive however, of service connections from the street main to the property line. The Company shall further up-date and compile this plan once every fifth fiscal year thereafter during the term of this agreement, the said up-dating being completed not later than three months after the close of each of the aforesaid fifth fiscal year periods.

5. Insofar as it is reasonably practicable, all lines and w constructed or installed by the Company shall be placed underground, and, except where it shall be necessary to cross a highway, along the sides of the highway. All lines and works constructed by the Company shall be so constructed as when completed not to obstruct or interfere with or render more difficult or dangerous the use of the highway or any municipal sewers, water pipes, drains, bridges, culverts or ditches thereon or therein, or other municipal works or improvements thereon or therein or the improvement or repair thereof, or with the roads or bridges to property fronting thereon, and wherever any such line shall be carried across an open drainage ditch, it shall be carried either wholly under the bottom thereof or above the top thereof, so as not in any way to interfere with the carrying capacity of such ditch.

6. The Company shall use at all times proper and practical means to prevent the excape or leakage of gas from its mains and pipes and the causing of any damage or injury therefrom to any person or property.

7.The rates to be charged and collected and the terms of services to be provided by the Company for gas supplied by it under this franchise shall be the rates and the terms of service approved or fixed by the Ontario Energy Board or by any other person or body having jurisdiction to approve or fix such rates

or terms of service. Any application to approve or fix rates to be charged and collected or terms of services to be provided by the Company for gas supplied by it shall be made in accordance with the Ontario Energy Board Act, R. S. O. 1980, Chapter 332, as amended from time to time or any other statute regulating such application.

8. The Municipality will not build or permit any Commission or other public utility or person to build any structure or structures encasing any mains or pipes of the Company.

9. (a) This Agreement and the respective rights and obligations hereunto of the parties hereto are hereby delcared to b subject to the provisions of all regulating statutes and to all ord and regulations made thereunder and from time to time remaining in effect; and in the event of any dispute or disagreement between the parties hereto as to the meaning or interpretation of anything herein contained or as to the performance or non-performance by either of such parties of any of the provisions hereof or as to the respective rights and obligations of the parties hereto hereunder, either or such parties may refer such dispute or disagreement to arbitration under the provisions of Paragraph 9(b) hereof.

(b) Whenever the Municipal Arbitrations Act, R. S. O. 19 Chapter 304, shall extend and apply to the Municipality any references to arbitration pursuant to the provisions of Paragraph 9(a) hereof shall be to the Official Arbitrator appointed under the Act and shall be governed by the provisions of that Act. At any other time the procedure upon an arbitration pursuant to the provisions of the said Paragraph 9(a) shall be as follows:

> Within twenty days after the written request of either of the parties hereto for arbitration each of them shall appoint one arbitrator and the two so appointed shall, within twenty days after the expiring of such twenty-day period select a third. In case either of the parties hereto shall fail to name an arbitrator within twenty days after the said written request for arbitration, the arbitrator appointed shall be the

only arbitrator. In case the two arbitrators so appointed are unable to agree on a third arbitrator withi twenty days after the expiry of the first twenty-day period above mentioned, application shall be made as soon as reasonably possible to any Judge of the Supreme Court of Ontario for the appointment of such third arbitrator. The arbitrator or arbitrators so appointed shall have all the powers accorded arbitrators by the Arbitration Act, R. S. O. 1980, Chapter 25, as from time to time amended, or any Act in substitution therefor. The decisi of the said arbitrator or arbitrators (or of a majority of such arbitrators) shall be final and binding on the parties hereto.

10. In the event of the Company being prevented from carrying out its obligations under this Agreement by reason of any cause beyond its control, the Company shall be relieved from such obligations while such disability continues and in the event of dispute as to the existence of such disability, such dispute shall be determined as hereinbefore provided. Provided, however, that the provisions of this Paragraph 10 shall not relieve the Company from any of tis obligations as set out in Paragraph 3 hereof.

11. The franchise hereby granted shall be for a term of twenty-five (25) years from and after the final passing of the By-la provided that if at any time prior to the expiration of the said term of twenty-five (25) years or prior to the expiration of any renewal thereof, the Company shall notify the Municipality in writing that it desires a renewal thereof for a further period, the Municipality may but shall not be obligated to renew by By-law this Agreement from time to time for further periods not exceeding twenty-five (25) years at any time.

12. For the purpose of this Agreement and of any matters arising out of the same, the Municipality shall act by the Council thereof.

13. Wherever the word "highway" is used in this Agreement or i the said By-law, it shall mean common and public highways and shall include any bridge forming part of a highway on or over and across which a highway passes and any public square, or road allowance and shall include not only the travelled portion of such highway,

but also ditches, driveways, sidewalks, and sodded areas forming part of the road allowance.

14. Upon the expiration of this franchise or any renewal thereof, the Company shall have the right, but nothing herein contained shall require it, to remove its mains, pipes, plant and works laid in the said highway. Provided that forthwith upon the expiration of this franchise or any renewal thereof, the Company shall deactivate such pipeline in the Municipality. Provided further that if the Company should leave its mains, pipes, plants and works in the highway as aforesaid and the Municipality at any time after a lapse of one year from termination, require the removal of all or any of the Company's said facilities for the purpose of altering or improving the highway or in order to facilitate the construction of utility or other works in the highway the Municipality may remove and dispose of so much of the Company's said facilities as the Municipality may require for such purposes and neither party shall have recourse against the other for any loss, cost or expense occasioned thereby.

15. Any notice to be given under any of the provisions hereof may be effectually given to the Municipality by delivering the same to the Municipal Clerk or by sending the same to him by registered mail, postage prepaid, addressed to "46 Talbot Street West, Aylmer, Ontario, N5H 1J7", and to the Company by delivering the same to its Manager or other Chief Officer in charge of its place of business in the Town of Aylmer, or by sending the same by registered mail, postage prepaid, addressed to "Natural Resource Gas Limited, P. O. Box 3117, Terminal A, London, Ontario, N6A 4J4." If any notice is sent by mail the same shall be deemed to have been given on the day succeeding the posting thereof.

16. It is recognized that gas is a public utility, the use of which may be essential to the proper development of any new area of subdivision and industrial developments. The Municipality,

therefore may notify the Company of each new plan of subdivision before the same has been approved by the Council and to take any reasonable steps to ensure that in each new plan of subdivision, adsquate provision is made for the reservation of lands for gas regulator sites. Insofar as is reasonably practicable the Company shall endeavour to construct its main in new areas of subdivision and industrial developments at the same time as the Municipality is constructing its public services therein.

17. This Agreement shall extend to, benefit and bind the parties thereto, their successors and assigns, respectively.

IN WITNESS WHEREOF the said Company has hereunto caused its Corporate Seal to be affixed and these presents signed by its proper officers in that behalf and the said Corporation has hereunto caused its Corporate Seal to be affixed and these presents signed by the Municipality and the Clerk.

NATURAL RESOURCE GAS LIMITED

THE CORPORATION OF THE TOWN OF AYLMER

000032

DATED: Feburary 27 ,1984

BETWEEN:

NATURAL RESOURCE GAS LIMITED

-and-

THE CORPORATION OF THE TOWN OF AYLMER

FRANCHISE AGREEMENT

BELANGER, CASSINO & BENSON
Barristers and Solicitors
153-759 Hyde Park Road
London, Ontario
N6H 3S2

BY-LAW NO. 9-84

OF THE CORPORATION OF THE TOWN OF AYLMER

Being a By-Law to authorize a Franchise Agreement between the Corporation and Natural Resource Gas Limited.

WHEREAS the Council of the Corporation of the Town of Aylmer deems it expedient to enter into the attached franchise agreement with Natural Resource Gas Limited;

AND WHEREAS the Ontario Energy Board, by its Order issued pursuant to The Municipal Franchises Act on the 5th day of May, 1982, has approved the terms and conditions upon which and the period for which, the franchise provided for in the attached agreement, is proposed to be granted, and has declared and directed that the assent of the municipal electors in respect of this By-Law is not necessary;

NOW THEREFORE, BE IT ENACTED;

1. That the attached franchise agreement between the Corporation and Natural Resource Gas Limited, is hereby authorized and the franchise provided for therein is hereby granted.

2. That the Mayor and Clerk are hereby authorized and instructed on behalf of the Corporation to enter into and execute under, its corporate seal and deliver the aforesaid agreement which agreement is hereby incorporated into and shall form part of this By-Law.

READ A First and Second time this 27th day of February, 1984.

ACTING MAYOR

CLERK

READ A Third time and finally passed this 27th day of February, 1984.

ACTING MAYOR

CLERK

CERTIFIED TRUE COPY

DATE May 21/84 CLERK/TREAS.

Appendix B

Security Deposit Policy for Natural Resource Gas Limited ("NRG")

Board Decision and Order
Re: Natural Resource Gas Limited Application for Franchise Renewal with the Town of Aylmer (EB-2008-0413)

May 5, 2009

Appendix B

Security Deposit Policy for Natural Resource Gas Limited ("NRG")

Definitions

(a) "general service consumer" means a consumer that is not a residential consumer and that annually consumes no more than 100,000 m^3 of gas; and

(1) In managing consumer non-payment risk, NRG shall not discriminate among consumers with similar risk profiles or risk related factors except where expressly permitted under this Security Deposit Policy.

(2) NRG may require a security deposit from a consumer who is not billed by a gas vendor under gas vendor-consolidated billing unless the consumer has a good payment history of 1 year in the case of a residential consumer, 5 years in the case of a general service consumer and 7 years in the case of any other consumer. The time period that makes up the good payment history must be the most recent period of time and some of the time period must have occurred in the previous 24 months. NRG shall provide a consumer with the specific reasons for requiring a security deposit from the consumer.

(3) For the purposes of section (2), a consumer is deemed to have a good payment history unless, during the relevant period of time referred to in section (2) any of the following has occurred other than by reason of an error by NRG:

(a) the consumer has received more than one disconnection notice from NRG indicating that NRG intends to disconnect the consumer for non-payment;

(b) more than one cheque given to NRG by the consumer has been returned by reason of insufficient funds;

(c) more than one pre-authorized payment from the consumer to NRG has failed to be made by reason of insufficient funds; or

(d) at least one visit to the consumer's premises has been made by or on behalf of NRG for the purpose of demanding payment of an overdue amount or to shut off or limit the supply of gas to the consumer's premises for non-payment.

(4) Despite section (2), NRG shall not require a security deposit from a consumer where:

(a) the consumer provides a letter from another gas distributor or an electricity distributor in Canada confirming a good payment history with that distributor for the most recent relevant time period set out in section (2) where some of the time period that makes up the good payment history has occurred in the previous 24 months; or

(b) the consumer is a residential consumer or a general service consumer and provides a satisfactory credit check conducted at the consumer's own expense.

(5) Subject to sections (6) and (7), the maximum amount of a security deposit that NRG may require a consumer to pay shall be calculated as follows: billing cycle factor x consumer's estimated bill. For this purpose:

(a) the billing cycle factor shall be 2.5 if the consumer is billed monthly and shall be 1.75 if the consumer is billed bi-monthly; and

(b) a consumer's estimated bill shall be determined based on:

i. NRG's rates and charges in effect at the relevant time; and

ii. the consumer's average monthly consumption of gas during the most recent 12 consecutive months within the past two years. Where the relevant gas consumption information is not available for a consumer for 12 consecutive months within the past two years or where the distributor does not have systems capable of making this calculation, the consumer's average monthly consumption shall be based on a reasonable estimate made by NRG.

(6) Where in a relevant 12-month period a consumer has received more than one disconnection notice from NRG indicating that NRG intends to disconnect the consumer for non-payment, the consumer's estimated bill may be determined based on the consumer's highest actual or estimated monthly consumption in the most recent 12 consecutive months within the past two years.

(7) Where a consumer other than a residential consumer or a general service consumer has a credit rating from a recognized credit rating agency, the maximum amount of a security deposit that NRG may require the consumer to pay shall be reduced in accordance with the following table:

Credit Rating (Using Standard and Poor's Rating Terminology)	**Allowable Reduction In Security Deposit**
AAA- and above or equivalent	100%
AA-, AA, AA+ or equivalent	95%
A-, From A, A+ to below AA or equivalent	85%
BBB-, From BBB, BBB+ to below A or equivalent	75%
Below BBB- or equivalent	0%

(8) Subject to section (1) NRG may reduce the amount of a security deposit that it requires a consumer to pay for any reason, including where the consumer pays under an interim payment arrangement or where the consumer makes pre-authorized payments.

(9) NRG shall accept payment of a security deposit by any consumer in the form of cash or cheque, and shall also accept from a non-residential consumer security in the form of an automatically renewing, irrevocable letter of credit from a bank as defined in the Bank Act (Canada). In either case, the form shall be at the discretion of the consumer. NRG may also accept other forms of security.

(10) NRG shall permit a consumer to provide a security deposit in equal instalments paid over at least four months, or over such shorter period as the consumer may choose.

(11) Interest shall accrue monthly on security deposits paid by way of cash or cheque, commencing on the date of receipt of the total amount of the security deposit required by NRG. The interest rate shall be the Prime Business Rate published on the Bank of Canada website less 2 percent, updated quarterly. For any quarter that the noted Prime Business Rate is 2 percent or less, the interest rate shall be zero percent. Any accrued interest shall be paid out to the consumer at least once every twelve months and shall be paid out earlier upon the return or application of the security deposit, in whole or in part, or the closure of the consumer's account. Payment of accrued interest may be effected by crediting the consumer's account or by other means.

(12) NRG shall, at least once in each calendar year, review each consumer's security deposit to determine whether:

(a) the security deposit is to be returned to the consumer by reason of

the fact that the consumer has become entitled to the benefit of the exemption set out in section (2) or (4) or

(b) the amount of the security deposit is to be adjusted based on a re-calculation of the maximum amount of the security deposit in accordance with section (5).

This section applies to all security deposits, whether paid by a consumer before or after this Security Deposit Policy came into force (not later than **July 6, 2009**).

(13) Subject to section (14), upon being requested to do so by a consumer NRG shall review the consumer's security deposit to determine whether:

(a) the security deposit is to be returned to the consumer by reason of the fact that the consumer has become entitled to the benefit of the exemption set out in section (2) or (4); or

(b) the amount of the security deposit is to be adjusted based on a re-calculation of the maximum amount of the security deposit in accordance with section (5).

This section applies to all security deposits, whether paid by a consumer before or after this Security Deposit Policy came into force (not later than **July 6, 2009**).

(14) NRG shall not be required to review a security deposit at the request of a consumer under section (13) where less than 12 months has elapsed since:

(a) the date on which the total amount of the security deposit was paid; or

(b) the date on which the consumer last made a request for review under that section.

(15) Subject to section (16), where a review conducted under section (12) or (13) reveals that some or all of a security deposit must be returned to a consumer, NRG shall promptly return the relevant amount to the consumer, with interest where applicable, by crediting the consumer's account or otherwise.

(16) Where a review conducted under section (12) or (13) reveals that a consumer other than a residential consumer or a general service consumer has become entitled to the benefit of the exemption set out in section (2) or (4), NRG may nonetheless retain up to 50% of the security deposit.

(17) Where a review conducted under section (12) or (13) reveals that additional security may be sought from a consumer based on the re-calculation of the maximum amount of the security deposit, NRG may require that the additional security be paid at the same time as the consumer's next regular bill comes due.

(18) NRG shall return any security deposit received from a consumer, with interest where applicable, within six weeks of closure of the consumer's account, subject to the right of NRG to use all or a part of the security deposit and interest to set off other amounts owing by the consumer to NRG.

(19) NRG shall apply a security deposit, with interest where applicable, to the final bill prior to a change in service where a consumer changes supply from system gas to a gas vendor that uses gas vendor-consolidated billing or where a consumer changes billing options from NRG-consolidated billing to split billing or gas vendor-consolidated billing. However, where a consumer changes billing options from NRG-consolidated billing to split billing, NRG may retain that portion of the security deposit amount that reflects NRG's reasonable assessment of the non-payment risk associated with the new billing option. In all cases, NRG shall promptly return any remaining portion of the security deposit and interest where applicable to the consumer. NRG shall not pay any portion of a consumer's security deposit to a gas vendor.

(20) Despite sections (12), (13), (15), (18) and (19), where all or part of a security deposit has been paid by a third party on behalf of a consumer, NRG shall return the amount of the security deposit paid by the third party, including interest where applicable, to the third party. This obligation shall apply where and to the extent that:

(a) the third party paid all or part (as applicable) of the security deposit directly to NRG;

(b) the third party has requested, at the time the security deposit was paid or within a reasonable time thereafter, that NRG return all or part (as applicable) of the security deposit to it rather than to the consumer; and

(c) there is not then any amount overdue for payment by the consumer that NRG is permitted by this Rule to off set using the security deposit.

(21) A consumer that is a corporation within the meaning of the Condominium Act, 1998 who has an account with NRG that:

(a) relates to a property defined in the Condominium Act, 1998 and comprised predominantly of units that are used for residential purposes; and

(b) relates to more than one unit in the property,

shall be deemed to be a residential consumer for the purposes of sections (2)and (9) provided that the consumer has filed with NRG a declaration in a form approved by the Board attesting to the consumer's status as a corporation within the meaning of the Condominium Act, 1998.

(22) Sections (12) and (13) shall be applied on the basis that a consumer referred to in section (21) is a residential consumer even if the consumer paid the security deposit prior to the date on which section (21) came into force.

ONTARIO ENERGY BOARD

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

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

EB-2008-0413

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ONTARIO ENERGY BOARD

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

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

APPLICATION

1. The Applicant, Natural Resource Gas Limited ("NRG"), is an Ontario corporation, and carries on the business of, among other things, owning and operating natural gas distribution facilities in the Town of Aylmer (the "Town").

2. NRG and the Town have an existing franchise agreement dated February 27, 1984 (the "Existing Franchise Agreement"), which grants NRG the right to construct and operate works for the distribution of gas in the Town's municipal boundaries and to supply gas to the Town's residents. Pursuant to section 11 of the Existing Franchise Agreement, NRG's franchise rights in Aylmer expire on February 27, 2009.

3. NRG and the Town were unable to agree on the terms and conditions of the franchise renewal. NRG is seeking to renew the rights set out in section 1 of the Existing Franchise Agreement by way of a new 20-year franchise agreement (the "NRG Preferred Agreement") based on the Model Franchise Agreement established by the Ontario Energy Board (the "Board").

4. The Town is proposing a new franchise agreement (the "Aylmer Preferred Agreement") that is also based on the Board's Model Franchise Agreement but: (a) has a term of only three years; and (b) is subject to seven conditions set out in a proposed "Schedule A" to the Aylmer Preferred Agreement.

5. NRG is prepared to accept two of the seven additional conditions being proposed by the Town, and has incorporated these two conditions into the NRG Preferred Agreement included in NRG's Pre-Filed Evidence. These two conditions would require NRG to: (a) provide its audited financial statements to the Town no later than four months after the end of NRG's fiscal year end; and (b) by December 15 of each year, provide the Town with an up-to-date map of its system assets (including estimated age of those assets and any improvements or additions made during the year).

6. With respect to the other five conditions being sought by the Town, NRG believes that some are already in place (e.g., Board's existing GDAR provisions related to service requirements, NRG's existing Gas Service Rules and Regulations, etc.) and others will be met upon the completion of current Board proceedings (e.g., Board's proposed GDAR amendments to security deposit policies (EB-2008-0313)), with which NRG will comply.

7. NRG hereby applies to the Board for an Order or Orders made pursuant to Section 10 of the *Municipal Franchises Act* (Ontario) ("MFA"):

   (a) renewing the term of the right to operate works for the distribution of gas for a period of 20 years, upon such terms and conditions as set out in the NRG Preferred Agreement, which is based upon the Model Franchise Agreement developed by the Board and modified to include two of the seven conditions being sought by the Town (section 10(2) MFA);

   (b) if necessary, interim relief continuing the right to operate works for the distribution of gas in accordance with the Existing Franchise Agreement until an Order is made under section 10(2) of the *Municipal Franchises Act* in respect of this application (section 10(4) MFA); and

   (c) such further and other relief as the Board may deem necessary or appropriate.

8. This Application affects the inhabitants of the Town of Aylmer, and natural gas distribution customers of NRG outside the Town of Aylmer, who are too numerous to list.

All of which is respectfully submitted this 19th day of December, 2008.

NATURAL RESOURCE GAS LIMITED

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LEGISLATIVE FRAMEWORK

This application and the Ontario Energy Board's powers in respect of this application are governed primarily by the *Municipal Franchises Act* (Ontario) ("MFA"), and to a lesser extent the provisions of the *Ontario Energy Board Act, 1998* (the "OEB Act").

Franchise Renewal under the MFA

The legislative framework specific to this application is provided by the MFA, which requires a gas distribution company that wants to construct or operate natural gas works or distribution works in a municipality to obtain and maintain franchise rights from that municipality.

With respect to the renewal of franchise rights, the MFA sets out two distinct regimes, the application of which depends upon whether the gas distributor and the municipality have reached agreement on the terms of the renewal or extension. Specifically, section 9 of the MFA applies where the parties have reached complete agreement on renewal terms and conditions, whereas section 10 applies to circumstances where the gas distributor and the municipality have not been able to reach agreement (*Report of the Board on the Review of Franchise Agreements and Certificates of Public Convenience and Necessity*, E.B.O. 125 (May 21, 1986), ss. 3.5 and 3.6).

This application is being brought under section 10 of the MFA because NRG and the Town disagree on: (a) the appropriate term for the new franchise agreement; and (b) the inclusion of five conditions in the new franchise agreement.

Where a distributor and municipality cannot agree on the terms and conditions upon which, and/or the period for which, the franchise rights are to be renewed or extended, an application can be brought by either the municipality or the gas distributor under subsection 10(1) of the MFA for an order by the Board renewing or extending of the term of the franchise rights. An application under subsection 10(1) of the MFA can only be brought where the term of the franchise rights have expired or will expire within one year. The Existing Franchise Agreement between NRG and the Town expires on February 27, 2009.

Upon receipt of an application under subsection 10(1) of the MFA, the Board must then give appropriate notice and hold a public hearing on the application (MFA, s.10(3)). At the conclusion of the proceeding, if "public convenience and necessity" appear to require it, the Board may make an Order renewing or extending the term of the franchise for such period of time and upon such terms and conditions as the Board may prescribe (MFA, s.10(2)). Where the Board makes an Order renewing or extending the term of the franchise rights, that Order is deemed to be a valid by-law of the affected municipality.

The MFA does not prescribe specific criteria for the Board to apply in assessing the "public convenience and necessity" of renewing or extending a franchise.

Interim Order-Making Power under the MFA

Where an application has been brought under subsection 10(1) of the MFA and the term of the franchise right has or is likely to expire before the application has been disposed of, the applicant may request and the Board may (without holding a public hearing) make an interim Order continuing the right until a final Order is made under subsection 10(2) (MFA, s.10(4)). As with a final Order, an interim Order is deemed to be a valid by-law of the affected municipality (MFA, s.10(5)).

In this case, given the short period of time to the date that the Existing Franchise Agreement expires, NRG is requesting that the Board exercise its interim Order-making powers in the event that the proceeding associated with this application is not concluded (i.e., no final Order is received) by February 27, 2009.

Objectives Regarding Gas Distribution in the OEB Act

In addition to the general powers of the Board that are enumerated in the OEB Act, section 2 of the OEB Act sets out the objectives that are to guide the Board in carrying out its responsibilities in relation to natural gas:

"1. To facilitate competition in the sale of gas to users.
2. To protect the interests of consumers with respect to prices and the reliability and quality of gas service.
3. To facilitate rational expansion of transmission and distribution systems.
4. To facilitate rational development and safe operation of gas storage.
5. To promote energy conservation and energy efficiency in a manner consistent with the policies of the Government of Ontario.
5.1 To facilitate the maintenance of a financially viable gas industry for the transmission, distribution and storage of gas.
6. To promote communication within the gas industry and the education of consumers."

We have emphasized those objectives that may be relevant to this proceeding.

Français

Municipal Franchises Act

R.S.O. 1990, CHAPTER M.55

Consolidation Period: From August 1, 2003 to the e-Laws currency date.

Last amendment: 2003, c.3, s.1.

Definitions

1. In this Act,

"franchise" includes any right or privilege to which this Act applies; ("concession")

"gas" means natural gas, manufactured gas or any liquefied petroleum gas, and includes any mixture of natural gas, manufactured gas or liquefied petroleum gas, but does not include a liquefied petroleum gas that is distributed by a means other than a pipe line; ("gaz")

"highway" includes a street and a lane; ("voie publique")

"public utility" means natural and other gas works. ("service public") R.S.O. 1990, c. M.55, s. 1; 1998, c. 15, Sched. E, s. 21 (1); 2001, c. 25, s. 480 (1).

1.1 REPEALED: 2001, c. 25, s. 480 (2).

2. REPEALED: 1999, c. 14, Sched. F, s. 7.

Restriction

3. (1) A municipal corporation shall not grant to any person nor shall any person acquire the right to use or occupy any of the highways of the municipality for a public utility or to construct or operate any part of a public utility in the municipality unless a by-law setting forth the terms and conditions upon which and the period for which such right is to be granted or acquired has been assented to by the municipal electors. 2001, c. 25, s. 480 (3).

(2) REPEALED: 1998, c. 15, Sched. E, s. 21 (3).

(3) REPEALED: 2001, c. 25, s. 480 (4).

(4) REPEALED: 2001, c. 25, s. 480 (4).

Consent of council of city, when required

4. (1) The council of a local municipality shall not grant a franchise upon any highway of the municipality within a radius of eight kilometres of the boundary of any city without notice in writing to the council of the city, and if the council of the city, within four weeks after the receipt of the notice, gives a notice in writing to the council of the local municipality that it objects to the granting of the franchise the approval of the Ontario Energy Board shall be obtained, and if the council of the city does not give such notice within such time, it shall be deemed to have no objection and the council of the local municipality may grant the franchise with the assent of the municipal electors of the local municipality as provided by section 3. R.S.O. 1990, c. M.55, s. 4 (1); 2001, c. 25, s. 480 (5).

Definition

(1.1) In subsection (1),

"city" means a local municipality that was a city on December 31, 2002. 2002, c. 17, Sched. F, Table.

(2) REPEALED: 2001, c. 25, s. 480 (6).

Extension of certain existing works not to be made without by-law

5. (1) Where a by-law granting a franchise or right in respect of a public utility under subsection 3 (1), that has not been assented to by the municipal electors as provided by that subsection, was passed before the 16th day of April, 1912, no extension of or addition to the works or services constructed, established or operated under the authority of such by-law as they existed and were in operation at that date shall be made except under the authority of a by-law hereafter passed with the assent of the municipal electors, as provided by subsection 3 (1), and such consent is necessary, although such last-mentioned

by-law is expressly limited in its operation to a period not exceeding one year. R.S.O. 1990, c. M.55, s. 5 (1); 2001, c. 25, s. 480 (7).

Exceptions as to franchises granted before 16th March, 1909

(2) Subsection (1) does not apply to a franchise or right granted by or under the authority of any general or special Act of the Legislature before the 16th day of March, 1909, but no such franchise or right shall be renewed, nor shall the term thereof be extended by a municipal corporation except by by-law passed with the assent of the municipal electors as provided in section 3. R.S.O. 1990, c. M.55, s. 5 (2).

Exceptions:

6. (1) Except where otherwise expressly provided, this Act does not apply to a by-law,

works originating in another municipality

(a) granting the right of passing through the municipality for the purpose of continuing a line, work or system that is intended to be operated in or for the benefit of another municipality and is not used or operated in the municipality for any other purpose except that of supplying gas in a municipality to persons whose land abuts on a highway along or across which the same is carried or conveyed, or to persons whose land lies within such limits as the council by by-law passed from time to time determines should be supplied with any of such services;

gas transmission lines

(b) granting the right of passing through the municipality with a line to transmit gas not intended to be distributed from such line in the municipality or only intended to be distributed from such line in the municipality to a person engaged in the transmission or distribution of gas;

works required for transmission of gas

(c) conferring the right to construct, use and operate works required for the transmission of gas not intended for sale or use in the municipality; or

limited to three years

(d) that is expressly limited in its operation to a period not exceeding three years and is approved by the Ontario Energy Board. R.S.O. 1990, c. M.55, s. 6 (1); 2001, c. 25, s. 480 (8-11).

(2) REPEALED: 2001, c. 25, s. 480 (12).

Extension of franchise

7. (1) Where a by-law to which clause 6 (1) (d) applies is passed, that clause does not apply to any subsequent by-law in respect of the same works or any part of them or to an extension of or addition to them, although the subsequent by-law is expressly limited in its operation to a period not exceeding three years, and no such subsequent by-law has any force or effect unless it is assented to by the municipal electors as provided by subsection 3 (1). R.S.O. 1990, c. M.55, s. 7 (1).

Idem

(2) Despite subsection (1), clause 6 (1) (d) applies to a subsequent by-law or by-laws in respect of the same works or any part of them or to an extension of or addition to them if the period of operation of such subsequent by-law or by-laws is expressly limited so that the total period of operation of the original by-law and the subsequent by-law or by-laws does not exceed three years. R.S.O. 1990, c. M.55, s. 7 (2).

Approval for construction of gas works or supply of gas in municipality

8. (1) Despite any other provision in this Act or any other general or special Act, no person shall construct any works to supply,

(a) natural gas in any municipality in which such person was not on the 1st day of April, 1933, supplying gas; or

(b) gas in any municipality in which such person was not on the 1st day of April, 1933, supplying gas and in which gas was then being supplied,

without the approval of the Ontario Energy Board, and such approval shall not be given unless public convenience and necessity appear to require that such approval be given. R.S.O. 1990, c. M.55, s. 8 (1); 1998, c. 15, Sched. E, s. 21 (4).

Form of approval

(2) The approval of the Ontario Energy Board shall be in the form of a certificate. R.S.O. 1990, c. M.55, s. 8 (2).

Jurisdiction of Energy Board

(3) The Ontario Energy Board has and may exercise jurisdiction and power necessary for the purposes of this section and to grant or refuse to grant any certificate of public convenience and necessity, but no such certificate shall be granted or refused until after the Board has held a public hearing to deal with the matter upon application made to it therefor, and of which hearing such notice shall be given to such persons and municipalities as the Board may consider to be interested or affected and otherwise as the Board may direct. R.S.O. 1990, c. M.55, s. 8 (3).

Gas franchise by-law to be approved by Energy Board

9. (1) No by-law granting,

(a) the right to construct or operate works for the distribution of gas;

(b) REPEALED: 1998, c. 15, Sched. E, s. 21 (5).

(c) the right to extend or add to the works mentioned in clause (a); or

(d) a renewal of or an extension of the term of any right mentioned in clause (a),

shall be submitted to the municipal electors for their assent unless the terms and conditions upon which and the period for which such right is to be granted, renewed or extended have first been approved by the Ontario Energy Board. R.S.O. 1990, c. M.55, s. 9 (1); 1998, c. 15, Sched. E, s. 21 (5-7).

Jurisdiction of Energy Board

(2) The Ontario Energy Board has and may exercise jurisdiction and power necessary for the purposes of this section and may give or refuse its approval. R.S.O. 1990, c. M.55, s. 9 (2).

Hearing to be held

(3) The Ontario Energy Board shall not make an order granting its approval under this section until after the Board has held a public hearing to deal with the matter upon application therefor and of which hearing such notice shall be given in such manner and to such persons and municipalities as the Board may direct. R.S.O. 1990, c. M.55, s. 9 (3).

Electors' assent may be dispensed with

(4) The Board, after holding a public hearing upon such notice as the Board may direct and if satisfied that the assent of the municipal electors can properly under all the circumstances be dispensed with, may in any order made under this section declare and direct that the assent of the electors is not necessary. R.S.O. 1990, c. M.55, s. 9 (4).

Application to Energy Board for renewal, etc., of gas franchise

10. (1) Where the term of a right referred to in clause 6 (1) (a), (b) or (c) that is related to gas or of a right to operate works for the distribution of gas has expired or will expire within one year, either the municipality or the party having the right may apply to the Ontario Energy Board for an order for a renewal of or an extension of the term of the right. R.S.O. 1990, c. M.55, s. 10 (1); 1998, c. 15, Sched. E, s. 21 (8).

Powers of Energy Board

(2) The Ontario Energy Board has and may exercise jurisdiction and power necessary for the purposes of this section and, if public convenience and necessity appear to require it, may make an order renewing or extending the term of the right for such period of time and upon such terms and conditions as may be prescribed by the Board, or if public convenience and necessity do not appear to require a renewal or extension of the term of the right, may make an order refusing a renewal or extension of the right. R.S.O. 1990, c. M.55, s. 10 (2).

Hearing

(3) The Board shall not make an order under subsection (2) until after the Board has held a public hearing upon application therefor and of which hearing such notice shall be given in such manner and to such persons and municipalities as the Board may direct. R.S.O. 1990, c. M.55, s. 10 (3).

Interim order

(4) Despite subsection (3), where an application has been made under subsection (1) and the term of the right has expired or is likely to expire before the Board disposes of the application, the Board, on the written request of the applicant, and without holding a public hearing, may make such order as may be necessary to continue the right until an order is made under subsection (2). R.S.O. 1990, c. M.55, s. 10 (4).

Order deemed by-law assented to by electors

(5) An order of the Board heretofore or hereafter made under subsection (2) renewing or extending the term of the right or an order of the Board under subsection (4) shall be deemed to be a valid by-law of the municipality concerned assented to by

the municipal electors for the purposes of this Act and of section 58 of the *Public Utilities Act*. R.S.O. 1990, c. M.55, s. 10 (5).

Right expired before commencement of section

(6) An application may not be made under this section in respect of a right that has expired before the 2nd day of December, 1969. R.S.O. 1990, c. M.55, s. 10 (6).

11. REPEALED: 2003, c. 3, s. 1.

Français

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HISTORY OF NRG AND GAS SERVICE IN THE AREA

The history of gas service in NRG's franchise areas can be traced back to the early 1900s, when the system was largely a gathering system for some local natural gas production wells that had been drilled at the time. The system evolved through the mid-1970s under the ownership of a single family. That family sold the system (as it existed) to two individuals who attempted to modernize the distribution system. However, these individuals experienced financial difficulties and the company went into receivership in 1979.

In 1979, NRG was purchased out of receivership by its current owners. The gas wells and distribution assets of NRG were at that time in very poor condition. The distribution facilities were primarily comprised of old steel lines with a high leakage rate, along with non-temperature-compensated iron gas meters, and an old office building. Over the past thirty years, virtually all of the original assets have been replaced and modernized. In addition, the service area of the utility has been greatly expanded. NRG has also introduced and implemented improved operating and training procedures, constructed significant new and expanded pipelines, as well as a new office building and service facility located more conveniently within the Town of Aylmer. Throughout this period of significant investment, modernization and expansion, NRG has nurtured business and operational practices and a culture that have helped NRG to become the safe and reliable gas utility that it is today. NRG has achieved this by means of various risk management measures, including programs for replacing and upgrading facilities, as well as through efforts to ensure compliance with current regulatory and safety requirements.

Pipeline Replacement and Expansion

Today, NRG has approximately 638 km of pipeline in service, of which approximately 61 km is situated within the Town of Aylmer. Almost all of NRG's pipelines are new, and fabricated out of plastic. NRG's distribution system serves close to 7,000 customers (compared to approximately 2,000 customers when NRG took ownership of the system in 1979).

When NRG was purchased by its current owners in 1979, the company had only a bare 'skeleton' of pipeline. There were a number of communities within the service area that did not have any gas service. Now gas service extends to all communities within NRG's service area, and on all streets in all communities within the service area. As a result, NRG's years of large expansions have come to an end. Nevertheless, NRG continues to seek expansion by adding new customers (i.e., gas conversion s and new builds).

Office Building and Personnel

Prior to 2003, NRG had its office and service building located in World War II barracks at a former air force base north of Aylmer. The previous and current owners had operated the company from those premises since the 1950s, which was located on a 15-acre site, largely comprised of flood-plain designated land. The buildings were in very poor condition. In 2003, the old buildings were sold and a new office/service building was constructed on a 2-acre site in the Town of Aylmer. It is a pre-engineered steel building, the footprint of which is roughly 8,500 sq. ft. The building provides much better working conditions for NRG's employees, while providing the company with an enhanced image and visibility in the community in comparison with the old facility. NRG has, on average, 16 to 18 employees in the Town of Aylmer.

Customer Service

With respect to customer service, NRG has a fully integrated service department whose employees work not only on the utility side of the meter, but also on the customer side of the meter. The ancillary service business, which includes the provision of services for the installation, replacement and repair of gas appliances and hot water heaters, is important to NRG for a number of reasons. First, it allows NRG the scope it needs to have employees answer emergency calls. In other words, when NRG gets a high volume of service calls at the beginning of the winter or during an emergency, NRG typically has enough capacity to handle all of those service situations. Second, the ancillary services business continues to produce positive returns that help offset gas distribution rates for the benefit of NRG's customers.

EXISTING FRANCHISE AGREEMENT

A copy of the Existing Franchise Agreement between NRG and the Town dated February 27, 1984 is attached to this Exhibit C, Tab 2. Also attached is a copy of Town of Aylmer By-Law 9-84, authorizing the entering into of the Existing Franchise Agreement.

The Existing Franchise Agreement was for a term of 25 years (section 11, Existing Franchise Agreement). It is in a form which predates the Board's current Model Franchise Agreement.

THIS AGREEMENT made the 27th day of February , 1984

B E T W E E N:

NATURAL RESOURCE GAS LIMITED

Hereinafter called the "Company"

OF THE FIRST PART

-and-

THE CORPORATION OF THE TOWN OF AYLMER

Hereinafter called the "Municipality"

OF THE SECOND PART

WHEREAS the Company desires to distribute and sell gas (which term shall mean and include natural gas, manufactured gas, synthetic gas, or liquefied petroleum gas, and includes any mixture of natural gas, manufactured gas, synthetic gas, or liquefied petroleum gas, but does not include a liquefied petroleum gas that is distributed by means other than a pipe line) in the Municipality upon the terms and conditions hereinafter set forth.

AND WHEREAS by By-law passed by the Council of the Municipality, the Mayor and Clerk of the Municipality have been authorized and directed to execute, seal and deliver this Agreement on behalf of the Municipality.

NOW THEREFORE THIS AGREEMENT WITNESSETH that for valuable consideration (the receipt and sufficiency of which is hereby acknowledged):

1. The consent, permission and authority of the Municipality are hereby given and granted to the Company, to lay down, maintain and use pipes and other necessary works for the transmission and distribution of gas, on, in, under, along or across any highway under the jurisdiction of the Council of the Municipality, including therein the right from time to time and at any time, to survey, construct, lay, maintain, inspect, alter, repair, renew, remove, abandon, replace, reconstruct, extend, use and operate in, through,

upon, under, along and across the same or any of them or any part or parts of them, such transmission and distribution mains, pipes, lines, services and works (with any and all necessary or incidental apparatus, attachments, appliances, arrangements for cathodic protection, regulators, valves, curb boxes, safety appliances and other suchlike appurtenances) which the Company may desire from time to time and at any time for the transmission of gas in and through the Municipality and for a gas distribution system and any extension or extensions from time to time thereto and together with the further right from time to time and at any time to enter upon, open up, dig, trench, use and occupy such highways or any part or parts of them for any of the purposes aforesaid and further together with the right from time to time and at all times to use and operate a gas transmission and distribution system in the Municipality and to transmit gas in and through the Municipality and to provide gas service to any resident or residents of the Municipality, and to bring in, transmit, produce, distribute, supply and sell gas in and through the Municipality for fuel, heat and power.

2. The company shall well and sufficiently restore forthwith to as good condition as they were in before the commencement of the Company's operation to the satisfaction of the Municipal Engineer (which term means from time to time such employee of the Municipality as the Municipality shall have designated as such for the purposes of this Agreement, or failing such designation, the senior employee of the Municipality for the time being charged with the administratic of public works and highways in the Municipality) all highways, squares and public places which it may excavate or interfere with in the course of laying, constructing, or repairing or removing of its mains, pipes, regulators, valves, curb boxes, safety appliances and other appurtenances and shall make good any settling or subsidence thereafter caused by such excavation, and further, in the event of the Company failing at any time to do any work required by this Section the Municipality may forthwith have such work done and charged to and collect from the Company the cost thereof and the

Company shall on demand pay any reasonable account therefor certified by the Municipal Engineer.

3. The Company shall at all times wholly indemnify the Municipality from and against all loss, damage and injury and expense to which the Municipality may be put by reason of any damage or injury to persons or property resulting from the imprudence, neglect or want of skill of the employees or agents of the Company in connection with the construction, repair, maintenance or operation by the Company of any of its works in the Municipality.

4. All new (or renewal) mains, pipes, lines and works inst by the Company under this By-law shall be constructed and laid in accordance with good engineering and constructing practices. Expect in case of emergency,

(a) no excavation, opening or work (exclusive of servic connections from the street main to the property line) which will disturb or interfere with the travelled surf of any highway shall be undertaken or commenced by the Company without written notice to such officer of the Municipality as may from time to time be appointed by t Council of the Municipality for the purpose of general supervision over its highways (hereinafter referred to "the said officer of the Municipality", which term shal include the person acting in his stead in the event of his absence from duty), such notice to be given at least 24 hours in advance of commencing such work unless othe wise agreed to by the said officer of the Municipality and

(b) before laying or installing any new (or renewal) mai pipes, lines and works (exclusive of service connection from the street main to the property line), the Company shall first file with the said officer of the Municipali a preliminary map or plan showing what it proposes to l or install and the proposed location thereof and shall check with and obtain the written approval of the said officer of the Municipality as to such proposed location

Not later than three months after the close of the Comp second fiscal year, the Company shall file with the clerk of the Municipality, a map or plan showing the location and size of mains, pipes, lines and works laid or installed or existing in the Town, exclusive, however, of service connections from the street main to the property line. Not later than three months after the close of each of its fiscal years thereafter, the Company shall file with

Clerk of the Municipality maps or plans showing the location and size of all mains, pipes, lines and works laid or installed by the Company in the highways during the previous fiscal year, exclusive however, of service connections from the street main to the property line. The Company shall further up-date and compile this plan once every fifth fiscal year thereafter during the term of this agreement, the said up-dating being completed not later than three months after the close of each of the aforesaid fifth fiscal year periods.

5. Insofar as it is reasonably practicable, all lines and w constructed or installed by the Company shall be placed underground, and, except where it shall be necessary to cross a highway, along the sides of the highway. All lines and works constructed by the Company shall be so constructed as when completed not to obstruct or interfere with or render more difficult or dangerous the use of the highway or any municipal sewers, water pipes, drains, bridges, culverts or ditches thereon or therein, or other municipal works or improvements thereon or therein or the improvement or repair thereof, or with the roads or bridges to property fronting thereon, and wherever any such line shall be carried across an open drainage ditch, it shall be carried either wholly under the bottom thereof or above the top thereof, so as not in any way to interfere with the carrying capacity of such ditch.

6. The Company shall use at all times proper and practical means to prevent the excape or leakage of gas from its mains and pipes and the causing of any damage or injury therefrom to any person or property.

7.The rates to be charged and collected and the terms of services to be provided by the Company for gas supplied by it under this franchise shall be the rates and the terms of service approved or fixed by the Ontario Energy Board or by any other person or body having jurisdiction to approve or fix such rates

or terms of service. Any application to approve or fix rates to be charged and collected or terms of services to be provided by the Company for gas supplied by it shall be made in accordance with the Ontario Energy Board Act, R. S. O. 1980, Chapter 332, as amended from time to time or any other statute regulating such application.

8. The Municipality will not build or permit any Commission or other public utility or person to build any structure or structures encasing any mains or pipes of the Company.

9. (a) This Agreement and the respective rights and obligations hereunto of the parties hereto are hereby delcared to b subject to the provisions of all regulating statutes and to all ord and regulations made thereunder and from time to time remaining in effect; and in the event of any dispute or disagreement between the parties hereto as to the meaning or interpretation of anything herein contained or as to the performance or non-performance by either of such parties of any of the provisions hereof or as to the respective rights and obligations of the parties hereto hereunder, either or such parties may refer such dispute or disagreement to arbitration under the provisions of Paragraph 9(b) hereof.

(b) Whenever the Municipal Arbitrations Act, R. S. O. 19 Chapter 304, shall extend and apply to the Municipality any references to arbitration pursuant to the provisions of Paragraph 9(a) hereof shall be to the Official Arbitrator appointed under the Act and shall be governed by the provisions of that Act. At any other time the procedure upon an arbitration pursuant to the provisions of the said Paragraph 9(a) shall be as follows:

> Within twenty days after the written request of either of the parties hereto for arbitration each of them shall appoint one arbitrator and the two so appointed shall, within twenty days after the expiring of such twenty-day period select a third. In case either of the parties hereto shall fail to name an arbitrator within twenty days after the said written request for arbitration, the arbitrator appointed shall be the

only arbitrator. In case the two arbitrators so appointed are unable to agree on a third arbitrator withi twenty days after the expiry of the first twenty-day period above mentioned, application shall be made as soon as reasonably possible to any Judge of the Supreme Court of Ontario for the appointment of such third arbitrator. The arbitrator or arbitrators so appointed shall have all the powers accorded arbitrators by the Arbitration Act, R. S. O. 1980, Chapter 25, as from time to time amended, or any Act in substitution therefor. The decisi of the said arbitrator or arbitrators (or of a majority of such arbitrators) shall be final and binding on the parties hereto.

10. In the event of the Company being prevented from carrying out its obligations under this Agreement by reason of any cause beyond its control, the Company shall be relieved from such obligations while such disability continues and in the event of dispute as to the existence of such disability, such dispute shall be determined as hereinbefors provided. Provided, however, that the provisions of this Paragraph 10 shall not relieve the Company from any of tis obligations as set out in Paragraph 3 hereof.

11. The franchise hereby granted shall be for a term of twenty-five (25) years from and after the final passing of the By-la provided that if at any time prior to the expiration of the said term of twenty-five (25) years or prior to the expiration of any renewal thereof, the Company shall notify the Municipality in writing that it desires a renewal thereof for a further period, the Municipality may but shall not be obligated to renew by By-law this Agreement from time to time for further periods not exceeding twenty-five (25) years at any time.

12. For the purpose of this Agreement and of any matters arising out of the same, the Municipality shall act by the Council thereof.

13. Wherever the word "highway" is used in this Agreement or i the said By-law, it shall mean common and public highways and shall include any bridge forming part of a highway on or over and across which a highway passes and any public square, or road allowance and shall include not only the travelled portion of such highway,

but also ditches, driveways, sidewalks, and sodded areas forming part of the road allowance.

14. Upon the expiration of this franchise or any renewal thereof, the Company shall have the right, but nothing herein contained shall require it, to remove its mains, pipes, plant and works laid in the said highway. Provided that forthwith upon the expiration of this franchise or any renewal thereof, the Company shall deactivate such pipeline in the Municipality. Provided further that if the Company should leave its mains, pipes, plants and works in the highway as aforesaid and the Municipality at any time after a lapse of one year from termination, require the removal of all or any of the Company's said facilities for the purpose of altering or improving the highway or in order to facilitate the construction of utility or other works in the highway the Municipality may remove and dispose of so much of the Company's said facilities as the Municipality may require for such purposes and neither party shall have recourse against the other for any loss, cost or expense occasioned thereby.

15. Any notice to be given under any of the provisions hereof may be effectually given to the Municipality by delivering the same to the Municipal Clerk or by sending the same to him by registered mail, postage prepaid, addressed to "46 Talbot Street West, Aylmer, Ontario, N5H 1J7", and to the Company by delivering the same to its Manager or other Chief Officer in charge of its place of business in the Town of Aylmer, or by sending the same by registered mail, postage prepaid, addressed to "Natural Resource Gas Limited, P. O. Box 3117, Terminal A, London, Ontario, N6A 4J4." If any notice is sent by mail the same shall be deemed to have been given on the say succeeding the posting thereof.

16. It is recognized that gas is a public utility, the use of which may be essential to the proper development of any new area of subdivision and industrial developments. The Municipality,

therefore may notify the Company of each new plan of subdivision before the same has been approved by the Council and to take any reasonable steps to ensure that in each new plan of subdivision, adequate provision is made for the reservation of lands for gas regulator sites. Insofar as is reasonably practicable the Company shall endeavour to construct its main in new areas of subdivision and industrial developments at the same time as the Municipality is constructing its public services therein.

17. This Agreement shall extend to, benefit and bind the parties thereto, their successors and assigns, respectively.

IN WITNESS WHEREOF the said Company has hereunto caused its Corporate Seal to be affixed and these presents signed by its proper officers in that behalf and the said Corporation has hereunto caused its Corporate Seal to be affixed and these presents signed by the Municipality and the Clerk.

NATURAL RESOURCE GAS LIMITED

THE CORPORATION OF THE TOWN OF AYLMER

000065

DATED: Feburary 27 ,1984

BETWEEN:

NATURAL RESOURCE GAS LIMITED

-and-

THE CORPORATION OF THE TOWN OF AYLMER

FRANCHISE AGREEMENT

BELANGER, CASSINO & BENSON
Barristers and Solicitors
153-759 Hyde Park Road
London, Ontario
N6H 3S2

BY-LAW NO. 9-84

OF THE CORPORATION OF THE TOWN OF AYLMER

Being a By-Law to authorize a Franchise Agreement between the Corporation and Natural Resource Gas Limited.

WHEREAS the Council of the Corporation of the Town of Aylmer deems it expedient to enter into the attached franchise agreement with Natural Resource Gas Limited;

AND WHEREAS, the Ontario Energy Board, by its Order issued pursuant to The Municipal Franchises Act on the 5th day of May, 1982, has approved the terms and conditions upon which and the period for which, the franchise provided for in the attached agreement, is proposed to be granted, and has declared and directed that the assent of the municipal electors in respect of this By-Law is not necessary.

NOW THEREFORE, BE IT ENACTED:

1. That the attached franchise agreement between the Corporation and Natural Resource Gas Limited, is hereby authorized and the franchise provided for therein is hereby granted.

2. That the Mayor and Clerk are hereby authorized and instructed on behalf of the Corporation to enter into and execute under, its corporate seal and deliver the aforesaid agreement which agreement is hereby incorporated into and shall form part of this By-Law.

READ A First and Second time this 27th day of February, 1984.

ACTING MAYOR

CLERK

READ A Third time and finally passed this 27th day of February, 1984.

ACTING MAYOR

CLERK

CERTIFIED TRUE COPY

DATE May 2/84 CLERK/TREAS.

HISTORY OF FRANCHISE RENEWAL NEGOTIATIONS

NRG has made numerous attempts to initiate discussions with the Town in order to discuss the franchise renewal, and any issues that the Town has with franchise renewal. These attempts began in early June 2008, but the Town refused to disclose its position or have a truly substantive discussion about the franchise renewal until December 16, 2008. The exchange of correspondence referred to below is attached in the pages that follow.

NRG's first request for a meeting was made via voicemail from Mr. Mark Bristoll (NRG) to Ms. Heather Adams (Administrator, Town of Aylmer) on June 6, 2008. After two follow-up emails from Mr. Bristoll and a meeting request letter from NRG's counsel dated June 13, 2008, Ms. Adams responded to NRG on June 17, 2008 advising that the Town would not meet with NRG until "immediately after natural gas is being provided by NRG to site [sic] of the Town's newest business, IGPC Ethanol Inc."

In its June 13, 2008 letter from NRG's counsel to the Town, NRG had proposed to enter into a new franchise agreement (the "NRG Preferred Agreement") for a term of 20 years. The NRG Preferred Agreement was attached to the June 13 letter, and is basically the Board's Model Franchise Agreement with a term of 20 years.

On June 20, NRG responded to the Town, repeating its request for an opportunity to meet with the Town and confirming that construction of the pipeline to serve NRG was well underway, and was expected to be completed by July. NRG specifically sought to determine if the Town had any concerns about the renewal of NRG's franchise so that NRG could address them immediately.

NRG made subsequent requests (through counsel) for a meeting to discuss the franchise renewal, by way of letters dated June 27 and July 3, 2008. On July 8, the Town responded through their counsel, again refusing to set a date for the meeting.

On July 17, 2008, Mr. Bristoll called Ms. Adams to request a meeting with the Town on July 23, 2008. On that same date, NRG's counsel responded to the July 8th letter of the Town. On July 20, Ms. Adams (via email), advised Mr. Bristoll that the Town would be unavailable to meet to discuss the franchise renewal until mid-August 2008.

On August 11, NRG through counsel again repeated its previous requests for an opportunity to meet with the Town to discuss the franchise renewal process.

On September 9, 2008, Mr. Bristoll made another request for a meeting with the Town via a telephone conversation with Ms. Adams.

Finally, on September 11, 2008, a meeting was held between NRG and the Town. At that meeting, NRG simply provided the Town with the Model Franchise Agreement and asked for any comments. The Town advised that it would provide comments to NRG shortly.

In follow-up correspondence (letters of September 11 and 16, and telephone conversation of October 14) with the Town, Mr. Bristoll thanked the Town for the meeting and confirmed that NRG was looking forward to obtaining the Town's comments on the Model Franchise Agreement.

Having heard nothing, NRG wrote to the Mayor and Ms. Adams on November 19, 2008, again requesting a meeting to discuss the Town's comments on NRG's proposal for a franchise renewal. On November 26, 2008, the Town responded in writing agreeing to a meeting on December 16, 2008.

On December 16, 2008, more than six months after NRG sought to obtain a meeting with the Town to discuss the Town's issues with franchise renewal, a meeting was finally held where the Town outlined their position. Unfortunately, the Town's position was by this point "set in stone" as a result of the Aylmer Town Council meeting of December 15, 2008. Rather than discussing

the issues with NRG before that meeting in an effort to resolve or better understand issues of concern, the Town's position was presented to NRG as a decision of Town Council.

At the meeting between NRG and the Town on December 16, 2008, the Town provided a letter to NRG attaching a copy of materials considered at the Aylmer Town Council Meeting of December 15, 2008. The materials included: (a) a cover letter from Ms. Heather Adams, Town Administrator to Mr. Mark Bristoll; (b) a Memo from Ms. Adams to the Aylmer Town Council dated December 11, 2008; and (c) the Town's preferred form of franchise agreement (the "Aylmer Preferred Agreement").

The December 11th Memo contained a recommendation that Aylmer "[m]eet with NRG and offer to renew the franchise agreement for 3 years to February 27, 2012 with the addition of a list of conditions Council wants to have NRG commit to undertake during that 3 years."

The Aylmer Preferred Agreement is also based on the Board's Model Franchise Agreement, but contains the following key differences from the NRG Preferred Agreement:

- Term: The NRG Preferred Agreement proposes a 20 year renewal term. The Aylmer Preferred Agreement proposes a 3 year renewal term.
- Additional Conditions: The Aylmer Preferred Agreement contains a Schedule A which sets out seven conditions that are not in the Board's Model Franchise Agreement. These conditions would require NRG to: (1) immediately apply to the Board for a comprehensive rate hearing; (2) implement the currently-proposed amendments to the Gas Distribution Access Rule by December 15, 2009 "whether or not the OEB hads made them mandatory by such time"; (3) adhere to a new written security deposit policy, customer complaint policy, and work estimate policy by May 15, 2009; (4) keep all monies from customer security deposits in a segregated trust fund; (5) make its annual audited financial statements available every year for the next three years no later than four months after the end of NRG's fiscal year; (6) give notice to the Town of any proceeding that NRG is a party to before the Board (regardless of whether NRG is an

applicant or intervenor); and (7) provide updated annual system asset maps by December 15 of each year showing estimated age of assets and any improvements or additions made during the year.

NRG's view is that the three year term is unacceptable. With respect to the seven conditions, NRG has no issue with two conditions (specifically 5 and 7), but believes the remainder are unnecessary for a variety of reasons discussed later in the pre-filed evidence. However, NRG was never able to convey this to the Town because it was never given the opportunity to meet with and discuss any of these conditions with the Town.

There are two consequences that flow from the Town's refusal to discuss their issues of concern for over six months, and then simply presenting a preferred contract with the seven conditions as a *fait accompli* (i.e., approved by the Town's Council):

- First, NRG has not been provided with an opportunity to address the Town's concerns in some instances, and is unaware of the reasons for conditions to be imposed in others. NRG has not been provided with an opportunity to work with the Town to rectify or clarify the situation.
- Second, by ignoring NRG's repeated requests to discuss the issues, a Board hearing becomes the only forum for discussing and resolving the concerns. This is not the best use of the Town's, NRG's or this Board's time or resources.

Darlene Whitfield

From: Darlene Whitfield
Sent: Monday, June 09, 2008 10:01 AM
To: 'hadams@town.aylmer.on.ca'
Cc: Mark J. Bristoll
Subject: Mark Bristoll Meeting with Mayor - June 16, 17 or 18

HI Heather,

This is a follow-up to a couple of voicemails I left for you on Friday, June 6th. I don't mean to be a pest but I'm looking to book with you an appointment for Mark Bristoll, President, Natural Resource Gas Limited to meet with the Mayor on either June 16, 17, or 18 preferably around 10:00 a.m.

Could you please advise if either of these dates are available in the Mayor's calendar? If not, we will appreciate your offering alternative dates and times. Many thanks for your time.

Darlene Whitfield
Assistant to Mark Bristoll
Ayerswood Development Corporation
1299 Oxford Street East
P.O. Box 3117, Terminal "A"
London, ON N6A 4J4
Phone (519) 433-8126
Fax (519) 433-6132
Darlene.Whitfield@cpirentals.com

Darlene Whitfield

From: Darlene Whitfield
Sent: Wednesday, June 11, 2008 1:48 PM
To: 'hadams@town.aylmer.on.ca'
Cc: Mark J. Bristoll
Subject: Mark Bristoll Meeting with Mayor - June 16, 17 or 18

Hello again, Heather. This is a follow up my voicemails from last week and email from Monday looking to book an appointment for Mark Bristoll, Natural Resource Gas Limited with the Mayor. Suggested dates are June 16, 17 or 18 around 10:00 a.m. but if these dates and times are not available, please suggest alternatives.

I can be reached by return email or by telephone at 519-433-8126 Ext. 200. Please call me at your earliest opportunity. Thanks for your time.

Darlene Whitfield
Assistant to Mark Bristoll
Ayerswood Development Corporation
1299 Oxford Street East
P.O. Box 3117, Terminal "A"
London, ON N6A 4J4
Phone (519) 433-8126
Fax (519) 433-6132
Darlene.Whitfield@cpirentals.com

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LENCZNER SLAGHT ROYCE
SMITH GRIFFIN LLP
BARRISTERS

Direct Line: (416) 865-3097
Email: lthacker@litigate.com

June 13, 2008

VIA EMAIL AND FAX

Mayor Bob Habkirk
Town of Aylmer
46 Talbot Street West
Aylmer, Ontario
N5H 1J7

Dear Mayor Habkirk:

Re: Natural Resource Gas Limited ("NRG") and Integrated Grain Processors Co-operative Inc. ("IGPC") Franchise Renewal

We act for NRG.

As you know, NRG's existing Franchise Agreement with the Town of Aylmer expires in less than a year (February 27, 2009). The process for renewing a franchise is a multi-staged process that involves agreeing to the terms of a new Franchise Agreement, making an application to the Ontario Energy Board ("OEB"), public notice of that application, a public hearing before the OEB, and ultimately (if the OEB approves the Franchise Agreement that has been negotiated) passage of a municipal by-law and signature of the final Franchise Agreement.

Given the lengthy process involved, we are enclosing for your review a draft Franchise Agreement. The draft Franchise Agreement is based entirely upon the OEB's Model Franchise Agreement, which is viewed as the generally accepted template for municipal franchises.

In order to commence the Franchise Renewal Application NRG attempted to arrange a meeting with yourself by way of Heather Adams, Chief Administrative Officer, of the Town of Aylmer. Ms. Adams informed us on Tuesday, June 11, 2008 that she was unable to obtain a meeting date and time and that she would get back to us at an undetermined future date.

NRG would like to meeting with yourself, to commence the Franchise Renewal process, by June 23, 2008 to ensure that the Franchise Renewal process can be completed in a timely and orderly fashion. Please let me know what dates would be convenient for you.

We look forward to meeting with you.

Yours truly,

Lawrence E. Thacker

LET/rl

cc: Heather Adams
bcc Mark Bristoll

FRANCHISE AGREEMENT

THIS AGREEMENT effective this day of _____ of _____.

BETWEEN: -

CORPORATION OF THE TOWN OF AYLMER
hereinafter called the "**Corporation**"

-and –

NATURAL RESOURCE GAS LIMITED
hereinafter called the "**Gas Company**"

WHEREAS the Gas Company desires to distribute, store and transmit gas in the Municipality upon the terms and conditions of this Agreement;

AND WHEREAS by by-law passed by the Council of the Corporation (the "**By-law**"), the duly authorized officers have been authorized and directed to execute this Agreement on behalf of the Corporation;

THEREFORE the Corporation and the Gas Company agree as follows:

ARTICLE 1 – DEFINITIONS

1.1 In this Agreement:

(a) "**decommissioned**" and "**decommissions**" when used in connection with parts of the gas system, mean any parts of the gas system taken out of active use and purged in accordance with the applicable CSA standards and in no way affects the use of the term 'abandoned' pipeline for the purposes of the *Assessment Act*;

(b) "**Engineer/Road Superintendent**" means the most senior individual employed by the Corporation with responsibilities for highways within the Municipality or the person designated by such senior employee or such other person as may from time to time be designated by the Council of the Corporation;

(c) "**gas**" means natural gas, manufactured gas, synthetic natural gas, liquefied petroleum gas or propane-air gas, or a mixture of any of them, but does not include a liquefied petroleum gas that is distributed by means other than a pipeline;

(d) "**gas system**" means such mains, plants, pipes, conduits, services, valves, regulators, curb boxes, stations, drips or such other equipment as the Gas Company may require or deem desirable for the distribution, storage and transmission of gas in or through the Municipality;

(e) "**highway**" means all common and public highways and shall include any bridge, viaduct or structure forming part of a highway, and any public square, road allowance or walkway and shall include not only the travelled portion of such highway, but also ditches, driveways, sidewalks, and sodded areas forming part of the road allowance now or at any time during the term hereof under the jurisdiction of the Corporation;

(f) "**Model Franchise Agreement**" means the form of agreement which the Ontario Energy Board uses as a standard when considering applications under the *Municipal Franchises Act*. The Model Franchise Agreement may be changed from time to time by the Ontario Energy Board;

(g) "**Municipality**" means the territorial limits of the Corporation on the date when this Agreement takes effect, and any territory which may thereafter be brought within the jurisdiction of the Corporation;

(h) "**Plan**" means the plan described in Paragraph 3.1 of this Agreement required to be filed by the Gas Company with the Engineer/Road Superintendent prior to commencement of work on the gas system; and

(i) whenever the singular, masculine or feminine is used in this Agreement, it shall be considered as if the plural, feminine or masculine has been used where the context of the Agreement so requires.

ARTICLE 2 – RIGHTS GRANTED

2.1 To provide gas service:

The consent of the Corporation is hereby given and granted to the Gas Company to distribute, store and transmit gas in and through the Municipality to the Corporation and to the inhabitants of the Municipality.

2.2 To Use Highways.

Subject to the terms and conditions of this Agreement the consent of the Corporation is hereby given and granted to the Gas Company to enter upon all highways now or at any time hereafter under the jurisdiction of the Corporation and to lay, construct, maintain, replace, remove, operate and repair a gas system for the distribution, storage and transmission of gas in and through the Municipality.

2.3 Duration of Agreement and Renewal Procedures.

(a) The rights hereby given and granted shall be for a term of 20 years from the date of final passing of the By-law provided that, if during the 20-year term this Agreement, the Model Franchise Agreement is changed, then on the 7th anniversary and on the 14th anniversary of the date of the passing of the By-law, this Agreement shall be deemed to be amended to incorporate any changes in the Model Franchise Agreement in effect on such anniversary dates. Such deemed amendments shall not apply to alter the 20-year term.

(b) At any time within two years prior to the expiration of this Agreement, either party may give notice to the other that it desires to enter into negotiations for a renewed franchise upon such terms and conditions as may be agreed upon. Until such renewal has been settled, the terms and conditions of this Agreement shall continue, notwithstanding the expiration of this Agreement. This shall not preclude either party from applying to the Ontario Energy Board for a renewal of the Agreement pursuant to section 10 of the *Municipal Franchises Act*.

ARTICLE 3 – CONDITIONS

3.1 Approval of Construction

(a) The Gas Company shall not undertake any excavation, opening or work which will disturb or interfere with the surface of the travelled portion of any highway unless a permit therefor has first been obtained from the Engineer/Road Superintendent and all work done by the Gas Company shall be to his satisfaction.

(b) Prior to the commencement of work on the gas system, or any extensions or changes to it (except service laterals which do not interfere with municipal works in the highway), the Gas Company shall file with the Engineer/Road Superintendent a Plan, satisfactory to the Engineer/Road Superintendent, drawn to scale and of sufficient detail considering the complexity of the specific locations involved, showing the highways in which it proposes to lay its gas system and the particular parts thereof it proposes to occupy.

(c) The Plan filed by the Gas Company shall include geodetic information for a particular location:

(i) where circumstances are complex, in order to facilitate known projects, including projects which are reasonably anticipated by the Engineer/Road Superintendent, or

(ii) when requested, where the Corporation has geodetic information for its own services and all others at the same location.

(d) The Engineer/Road Superintendent may require sections of the gas system to be laid at greater depth than required by the latest CSA standard for gas pipeline systems to facilitate known projects or to correct known highway deficiencies.

(e) Prior to the commencement of work on the gas system, the Engineer/Road Superintendent must approve the location of the work as shown on the Plan filed by the Gas Company, the timing of the work and any terms and conditions relating to the installation of the work.

(f) In addition to the requirements of this Agreement, if the Gas Company proposes to affix any part of the gas system to a bridge, viaduct or other structure, if the Engineer/Road Superintendent approves this proposal, he may require the Gas Company to comply with special conditions or to enter into a separate agreement as a condition of the approval of this part of the construction of the gas system.

(g) Where the gas system may affect a municipal drain, the Gas Company shall also file a copy of the Plan with the Corporation's Drainage Superintendent for purposes of the *Drainage Act*, or such other person designated by the Corporation as responsible for the drain.

(h) The Gas Company shall not deviate from the approved location for any part of the gas system unless the prior approval of the Engineer/Road Superintendent to do so is received.

(i) The Engineer/Road Superintendent's approval, where required throughout this Paragraph, shall not be unreasonably withheld.

(j) The approval of the Engineer/Road Superintendent is not a representation or warranty as to the state of repair of the highway or the suitability of the highway for the gas system.

3.2 As Built Drawings.

The Gas Company shall, within six months of completing the installation of any part of the gas system, provide two copies of "as built" drawings to the Engineer/Road Superintendent. These drawings must be sufficient to accurately establish the location, depth (measurement between the top of the gas system and the ground surface at the time of installation) and distance of the gas system. The "as built" drawings shall be of the same quality as the Plan and, if the approved pre-construction plan included elevations that were geodetically referenced, the "as built" drawings shall similarly include elevations that are geodetically referenced. Upon the request of the Engineer/Road Superintendent, the Gas Company shall provide one copy of the drawings in an electronic format and one copy as a hard copy drawing.

3.3 Emergencies

In the event of an emergency involving the gas system, the Gas Company shall proceed with the work required to deal with the emergency, and in any instance where prior approval of the Engineer/Road Superintendent is normally required for the work, the Gas Company shall use its best efforts to immediately notify the Engineer/Road Superintendent of the location and nature of the emergency and the work being done and, if it deems appropriate, notify the police force, fire or other emergency services having jurisdiction. The Gas Company shall provide the Engineer/Road Superintendent with at

least one 24 hour emergency contact for the Gas Company and shall ensure the contacts are current.

3.4 Restoration

The Gas Company shall well and sufficiently restore, to the reasonable satisfaction of the Engineer/Road Superintendent, all highways, municipal works or improvements which it may excavate or interfere with in the course of laying, constructing, repairing or removing its gas system, and shall make good any settling or subsidence thereafter caused by such excavation or interference. If the Gas Company fails at any time to do any work required by this Paragraph within a reasonable period of time, the Corporation may do or cause such work to be done and the Gas Company shall, on demand, pay the Corporation's reasonably incurred costs, as certified by the Engineer/Road Superintendent.

3.5 Indemnification

The Gas Company shall, at all times, indemnify and save harmless the Corporation from and against all claims, including costs related thereto, for all damages or injuries including death to any person or persons and for damage to any property, arising out of the Gas Company operating, constructing, and maintaining its gas system in the Municipality, or utilizing its gas system for the carriage of gas owned by others. Provided that the Gas Company shall not be required to indemnify or save harmless the Corporation from and against claims, including costs related thereto, which it may incur by reason of damages or injuries including death to any person or persons and for damage to any property, resulting from the negligence or wrongful act of the Corporation, its servants, agents or employees.

3.6 Insurance

(a) The Gas Company shall maintain Comprehensive General Liability Insurance in sufficient amount and description as shall protect the Gas Company and the Corporation from claims for which the Gas Company is obliged to indemnify the Corporation under Paragraph 3.5. The insurance policy shall identify the Corporation as an additional named insured, but only with respect to the operation of the named insured (the Gas Company). The insurance policy shall not lapse or be cancelled without sixty (60) days' prior written notice to the Corporation by the Gas Company.

(b) The issuance of an insurance policy as provided in this Paragraph shall not be construed as relieving the Gas Company of liability not covered by such insurance or in excess of the policy limits of such insurance.

(c) Upon request by the Corporation, the Gas Company shall confirm that premiums for such insurance have been paid and that such insurance is in full force and effect.

3.7 Alternative Easement

The Corporation agrees, in the event of the proposed sale or closing of any highway or any part of a highway where there is a gas line in existence, to give the Gas Company reasonable notice of such proposed sale or closing and, if is feasible, to provide the Gas Company with easements over that part of the highway proposed to be sold or closed sufficient to allow the Gas Company to preserve any part of the gas system in its then existing location. In the event that such easements cannot be provided, the Corporation and the Gas Company shall share the cost of relocating or altering the gas system to facilitate continuity of gas service, as provided for in Paragraph 3.8 of this Agreement.

3.8 Pipeline Relocation

(a) If in the course of constructing, reconstructing, changing, altering or improving any highway or any municipal works, the Corporation deems that it is necessary to take up, remove or change the location of any part of the gas system, the Gas Company shall, upon notice to do so, remove and/or relocate within a reasonable period of time such part of the gas system to a location approved by the Engineer/Road Superintendent.

(b) Where any part of the gas system relocated in accordance with this Paragraph is located on a bridge, viaduct or structure, the Gas Company shall alter or relocate that part of the gas system at its sole expense.

(c) Where any part of the gas system relocated in accordance with this Paragraph is located other than on a bridge, viaduct or structure, the costs of relocation shall be shared between the Corporation and the Gas Company on the basis of the total relocation costs, excluding the value of any upgrading of the gas system, and deducting any contribution paid to the Gas Company by others in respect to such relocation; and for these purposes, the total relocation costs shall be the aggregate of the following:

(i) the amount paid to Gas Company employees up to and including field supervisors for the hours worked on the project plus the current cost of fringe benefits for these employees,

(ii) the amount paid for rental equipment while in use on the project and an amount, charged at the unit rate, for Gas Company equipment while in use on the project,

(iii) the amount paid by the Gas Company to contractors for work related to the project,

(iv) the cost to the Gas Company for materials used in connection with the project, and

(v) a reasonable amount for project engineering and project administrative costs which shall be 22.5% of the aggregate of the amounts determined in items (i), (ii), (iii) and (iv) above.

(d) The total relocation costs as calculated above shall be paid 35% by the Corporation and 65% by the Gas Company, except where the part of the gas system required to be moved is located in an unassumed road or in an unopened road allowance and the Corporation has not approved its location, in which case the Gas Company shall pay 100% of the relocation costs.

ARTICLE 4 – PROCEDURAL AND OTHER MATTERS

4.1 Municipal By-laws of General Application

The Agreement is subject to the provisions of all regulating statutes and all municipal bylaws of general application, except by-laws which have the effect of amending this Agreement.

4.2 Giving Notice

Notices may be delivered to, sent by facsimile or mailed by prepaid registered post to the Gas Company at its head office or to the authorized officers of the Corporation at its municipal offices, as the case may be.

4.3 Disposition of Gas System

(a) If the Gas Company decommissions part of its gas system affixed to a bridge, viaduct or structure, the Gas Company shall, at its sole expense, remove the part of its gas system affixed to the bridge, viaduct or structure.

(b) If the Gas Company decommissions any other part of its gas system, it shall have the right, but is not required, to remove that part of its gas system. It may exercise its right to remove the decommissioned parts of its gas system by giving notice of its intention to do so by filing a Plan as required by Paragraph 3.1 of this Agreement for approval by the Engineer/Road Superintendent. If the Gas Company does not remove the part of the gas system it has decommissioned and the Corporation requires the removal of all or any part of the decommissioned gas system for the purpose of altering or improving a highway or in order to facilitate the construction of utility or other works in any highway, the Corporation may remove and dispose of so much of the decommissioned gas system as the Corporation may require for such purposes and neither party shall have recourse against the other for any loss, cost, expense or damage occasioned thereby. If the Gas Company has not removed the part of the gas system it has decommissioned and the Corporation requires the removal of all or any part of the decommissioned gas system for the purpose of altering or improving a highway or in order to facilitate the construction of utility or other works in a highway, the Gas Company may elect to relocate the decommissioned gas system and in that event Paragraph 3.8 applies to the cost of relocation.

4.4 Use of Decommissioned Gas System

(a) The Gas Company shall provide promptly to the Corporation, to the extent such information is known:

(i) the names and addresses of all third parties who use decommissioned parts of the gas system for purposes other than the transmission or distribution of gas; and

(ii) the location of all proposed and existing decommissioned parts of the gas system used for purposes other than the transmission or distribution of gas.

(b) The Gas Company may allow a third party to use a decommissioned part of the gas system for purposes other than the transmission or distribution of gas and may charge a fee for that third party use, provided

(i) the third party has entered into a municipal access agreement with the Corporation; and

(ii) the Gas Company does not charge a fee for the third party's right of access to the highways.

(c) Decommissioned parts of the gas system used for purposes other than the transmission or distribution of gas are not subject to the provisions of this Agreement. For decommissioned parts of the gas system used for purposes other than the transmission and distribution of gas, issues such as relocation costs will be governed by the relevant municipal access agreement.

4.5 Franchise Handbook

The Parties acknowledge that operating decisions sometimes require a greater level of detail than that which is appropriately included in this Agreement. The Parties agree to look for guidance on such matters to the Franchise Handbook prepared by the Association of Municipalities of Ontario and the gas utility companies, as may be amended from time to time.

4.6 Agreement Binding Parties

This Agreement shall extend to, benefit and bind the parties thereto, their successors and assigns, respectively.

IN WITNESS WHEREOF the parties have executed this Agreement effective from the date written above.

THE CORPORATION OF THE TOWN OF AYLMER

By: _____

By: _____

NATURAL RESOURCE GAS LIMITED

By: _____
Mark Bristoll, Chairman

NRC

Ontario, Canada
Aylmer
Proud Heritage. Bright Future.

The Corporation of the Town of Aylmer
46 Talbot Street, West, Aylmer, Ontario N5H 1J7
Office: 519-773-3164 Fax: 519-765-1446
www.aylmer.ca

June 17, 2008

Mr. Mark Bristoll
Natural Resources Gas Ltd.
By Fax to 519 433-6132

Dear Mark:

Re: Town of Aylmer Franchise Agreement with NRG

Thank you very much for your telephone call requesting that you and your solicitor, Mr. Lawrence Thacker would like to meet with Mayor Bob Habkirk and myself to discuss the franchise agreement between NRG and the Town of Aylmer. This request was subsequently reiterated in a letter to Mayor Habkirk from Mr. Thacker. That was followed by a phone call from me to you confirming that I would provide a response to the request once it had been considered by Council. Your solicitor also provided a draft Franchise Agreement.

I would like to advise that the Mayor and I would be pleased to meet with you to discuss the franchise agreement on a mutually convenient date immediately after natural gas is being provided by NRG to site of the Town's newest business, IGPC Ethanol Inc. We expect that this will happen some time in July, 2008. In the interim, we will proceed to review the document you have submitted.

I you have any questions, please feel free to contact me directly at 519 773-4901.

Sincerely

M. Heather Adams
Administrator

cc: Mayor and Council
M. Phillip Tunley, Stockwoods

/ha

LENCZNER SLAGHT ROYCE
SMITH GRIFFIN LLP
BARRISTERS

Direct Line: (416) 865–3097
Email: lthacker@litigate.com

June 20, 2008

VIA FACSIMILE

Heather Adams
Town of Aylmer
46 Talbot Street West
Aylmer, Ontario
N5H 1J7

Dear Ms. Adams:

Re: Natural Resource Gas Limited ("NRG") and Integrated Grain Processors Co-operative Inc. ("IGPC") Franchise Renewal

As you know, I act for Natural Resource Gas Limited ("NRG").

We are in receipt of your letter dated June 17.

For the reasons explained in my letter of June 13, 2008, NRG wishes to move forward with the renewal process as soon as possible. There are a number of steps that will have to be taken, and NRG wishes to ensure the process can unfold in an orderly manner. For that reason, NRG would like to meet with you and the Mayor as soon as possible.

NRG does not understand whether and, if so, why the Town wishes to link franchise renewal to the opening of the IGPC facility. As I am sure you are aware, construction of the pipeline is well underway and is expected to be completed by July.

If the Town has any issues with the renewal of NRG's franchise agreement, NRG would like to be made aware of these issues as soon as possible.

Yours truly,

Lawrence E. Thacker

LET/rl

LENCZNER SLAGHT ROYCE
SMITH GRIFFIN LLP
BARRISTERS

Direct Line: (416) 865-3097
Email: lthacker@litigate.com

June 27, 2008

VIA FACSIMILE

Heather Adams
Town of Aylmer
46 Talbot Street West
Aylmer, Ontario
N5H 1J7

Dear Ms. Adams:

Re: Natural Resource Gas Limited ("NRG") and Integrated Grain Processors Co-operative Inc. ("IGPC") Franchise Renewal

We have not received any response from you to our letter of June 27.

We presume that the Town of Aylmer does not foresee any difficulties in the renewal process and, for that reason, does not feel it necessary to meet with NRG.

NRG will proceed on the basis that the Town of Aylmer does not oppose the renewal of the Franchise Agreement with NRG.

Yours truly,

Lawrence E. Thacker

LET/rl

bcc Mark Bristoll

LENCZNER SLAGHT ROYCE
SMITH GRIFFIN LLP
BARRISTERS

Direct Line: (416) 865-3097
Email: lthacker@litigate.com

July 3, 2008

VIA FACSIMILE

Heather Adams
Town of Aylmer
46 Talbot Street West
Aylmer, Ontario
N5H 1J7

Dear Ms. Adams:

Re: Natural Resource Gas Limited ("NRG") and Integrated Grain Processors Co-operative Inc. ("IGPC") Franchise Renewal

We have not received any response from you to our letter of June 27.

We presume that the Town of Aylmer does not foresee any difficulties in the renewal process and, for that reason, does not feel it necessary to meet immediately with NRG.

NRG will proceed on the basis that the Town of Aylmer does not oppose the renewal of the Franchise Agreement with NRG. NRG would like to meet with you to begin implementing the renewal as soon as possible.

Yours truly,

Lawrence E. Thacker

LET/rl

bcc Mark Bristoll

STOCKWOODS

Barristers

M. Philip Tunley
Direct Line: 416-593-3495
Direct Fax: 416-593-9345
philt@stockwoods.ca

July 8, 2008

Lawrence Thacker
Lenczner Slaght Royce Smith
Griffin LLP
Suite 2600
130 Adelaide Street West
Toronto, ON M5H 3P5

Dear Mr. Thacker:

Re: Natural Resource Gas Limited ("NRG") and the Town of Aylmer

As you know, I act for the Town of Aylmer.

Your letter of June 13, 2008 addressed to Mayor Bob Habkirk enclosing a draft of a new Franchise Agreement between our respective clients was referred to us for consideration on June 17. By letter of that date from Heather Adams, Administrator of the Town of Aylmer, Mr. Mark Bristoll of NRG was advised that the Mayor and Ms. Adams would be pleased to meet with him to discuss the Franchise Agreement on a mutually convenient date immediately after Natural Gas is provided to the ethanol plant which is the subject of recent Ontario Energy Board proceedings involving our respective clients. We understand that is scheduled to occur as soon as the end of next week. In the meantime, your follow-up letters to Ms. Adams dated June 20 and July 3, 2008 have been referred to us for response.

Given Ms. Adams' letter of June 17, your presumptions about the position of the Town of Aylmer regarding renewal are premature. As indicated in that letter, the Town is willing to meet with your client to discuss the renewal issue shortly. If you will be present at that meeting, I expect the Town will wish me to be present as well. In the meantime, the Town does not understand why NRG is so anxious to pre-empt discussion and begin implementing the renewal process.

I would like to suggest that you provide the Town with an outline of the steps that you believe will have to be taken to ensure that any renewal process can unfold in an orderly manner, as I am sure that you will.

In addition, I would be grateful if you would address any further correspondence in this matter directly to me.

Yours very truly,

M. Philip Tunley
MPT/scb

c. Heather Adams, Town of Aylmer
Mark Bristoll, Natural Gas Resources Ltd.

LENCZNER SLAGHT ROYCE
SMITH GRIFFIN LLP
BARRISTERS

Direct Line: (416) 865-3097
Email: lthacker@litigate.com

July 17, 2008

VIA EMAIL

Philip Tunley
Stockwoods LLP
Barristers
The Sun Life Tower
150 King Street West
Suite 2512
Toronto, ON M5H 1J9

Dear Mr. Tunley:

Re: Natural Resource Gas Limited ("NRG") and Integrated Grain Processors Co-operative Inc. ("IGPC")

I have your letter of July 8.

We are pleased that the Town of Aylmer is willing to meet with NRG to discuss renewal. NRG does not wish to pre-empt any discussion. NRG has repeatedly requested an opportunity to meet with the Town, and we are pleased the Town is now willing to meet with NRG. We are available to meet at your earliest convenience.

The construction of the pipeline by NRG is complete and the pipeline was commissioned on July 3. It would appear that construction of the IGPC facility is significantly behind schedule and IGPC is not yet able to receive natural gas. NRG and IGPC have agreed that the deemed "In-Service Date" for the pipeline will be July 15, 2008. NRG remains ready, willing and able to deliver gas when IGPC's construction is complete and IGPC commences operations, and IGPC has fulfilled its financial obligations owed to NRG.

The steps that will have to be taken to renew the franchise depend entirely on the position to be taken by the Town of Aylmer. That is why NRG has requested repeatedly that the Town provide its position on whether or not it will support the renewal of the franchise.

NRG is pleased that the Town is now ready to meet with NRG, and await your response as to a date to meet.

Yours truly,

Lawrence E. Thacker

LET/rl/jb

bcc Mark Bristoll

Darlene Whitfield

From: Heather Adams [hadams@town.aylmer.on.ca]
Sent: Sunday, July 20, 2008 4:37 PM
To: Mark J. Bristoll
Cc: Mayor; bhabkirk@amtelecom.net
Subject: RE Meeting

HI Mark:

This e-mail is a follow up to the phone message I left for you on Friday evening. As I explained, the Mayor and I are unable to meet with you and Mr. Graat this coming week. I am on vacation but could be available on Tues or Wed but the Mayor is out of Town on Tues and Wed.

So as I explained I am on vacation until mid-August and we can plan to meet then

Heather Adams

LENCZNER SLAGHT ROYCE
SMITH GRIFFIN LLP
BARRISTERS

Direct Line: (416) 865-3097
Email: lthacker@litigate.com

August 11, 2008

VIA EMAIL

Philip Tunley
Stockwoods LLP
Barristers
The Sun Life Tower
150 King Street West
Suite 2512
Toronto, ON M5H 1J9

Dear Mr. Tunley:

Re: Natural Resource Gas Limited ("NRG") and Integrated Grain Processors Co-operative Inc. ("IGPC")

I have your letter of July 8.

We are pleased that the Town of Aylmer is willing to meet with NRG to discuss renewal. NRG does not wish to pre-empt any discussion. NRG has repeatedly requested an opportunity to meet with the Town, and we are pleased the Town is now willing to meet with NRG. We are available to meet at your earliest convenience.

The construction of the pipeline by NRG is complete and the pipeline was commissioned on July 3. It would appear that construction of the IGPC facility is significantly behind schedule and IGPC is not yet able to receive natural gas. NRG and IGPC have agreed that the deemed "In-Service Date" for the pipeline will be July 15, 2008. NRG remains ready, willing and able to deliver gas when IGPC's construction is complete and IGPC commences operations, and IGPC has fulfilled its financial obligations owed to NRG.

The steps that will have to be taken to renew the franchise depend entirely on the position to be taken by the Town of Aylmer. That is why NRG has been requesting that the Town provide its position on whether or not it will support the renewal of the franchise.

NRG is pleased that the Town is now ready to meet with NRG, and await your response as to a date to meet.

Yours truly,

Lawrence E. Thacker

LET/rl/jb

bcc Mark Bristoll

NATURAL RESOURCE GAS LIMITED
Supporting your natural gas *Lifestyle*

RECEIVED
SEP 15 2008

Friday, September 12, 2008

Via Courier

The Corporation of the Town of Aylmer
46 Talbot Street West
Aylmer, ON N5H 1J7

Attention: Mr. Bob Habkirk, Mayor
Ms. Heather Adams, Administrator

Dear Sirs:

On behalf of Mr. Tony Graat, Mr. Jack Howley and myself, thank you for the opportunity to meet with you yesterday to discuss various matters as they relate to Natural Resource Gas Limited and the Town of Aylmer.

We look forward to working together with you going forward, and to building a long and prosperous relationship between The Corporation of the Town of Aylmer and Natural Resource Gas Limited.

Yours truly,
Natural Resource Gas Limited

Per: Mark Bristoll
President

cc: Mr. Tony Graat
Mr. Jack Howley

000098

RECEIVED
SEP 17 2008

AYERSWOOD
DEVELOPMENT CORPORATION

Friday, September 16, 2008

Via Courier

The Corporation of the Town of Aylmer
46 Talbot Street West
Aylmer, ON N5H 1J7

Attention: Mr. Bob Habkirk, Mayor
Ms. Heather Adams, Administrator

Dear Sirs/Madame:

Please accept this letter as Natural Resource Gas Limited's confirmation and commitment to work with The Corporation of the Town of Aylmer on its many initiatives including, but not be limited to:

- To collaborate with the Town of Aylmer on Natural Resource Gas Limited business and/or customer issues that are of mutual concern
- Attendance at pre-construction meetings
- Review of Comsatec transportation costs
- Involvement with and attendance at Emergency Planning Committee meetings
- Actively participate in Business Development Opportunities and work closely with the Town to assure corporations interested in relocating to Aylmer that Natural Resource Gas Limited is a community partner willing and able to satisfy their natural gas needs.

As discussed, our General Manager, Mr. Jack Howley, is available at (519) 773-5321 to assist the Town of Aylmer.

Yours truly,
Ayerswood Development Corporation

Per: Mark Bristoll
President

Natural Resource Gas Limited

November 19, 2008

VIA COURIER AND EMAIL

The Corporation of the Town of Aylmer
46 Talbot Street West
Aylmer, ON N5H 1J7

Attention: Mayor Bob Habkirk
Ms. Heather Adams, Administrator

Dear Sirs and Madam:

Re: Natural Resource Gas Limited ("NRG") and
Integrated Grain Processors Co-operative Inc. ("IGPC")
Franchise Renewal

On June 13, 2008, our Counsel, Mr. Lawrence E. Thacker wrote to you on our behalf regarding the Franchise Renewal with the Town of Aylmer. As Mr. Thacker stated, NRG's existing Franchise Agreement expires February 27, 2009. The process for renewing a franchise is a multi-staged process that involves agreeing to the terms of a new Franchise Agreement, making an application to the Ontario Energy Board ("OEB"), public notice of that application, a public hearing before the OEB, and ultimately (if the OEB approves the Franchise Agreement that has been negotiated) passage of a municipal by-law and signature of the final Franchise Agreement.

In June, 2008, we provided for your review a draft Franchise Agreement and noted that the draft Franchise Agreement is based entirely upon the OEB's Model Franchise Agreement, which is viewed as the generally accepted template for municipal franchises.

During our latest conversation of October 14th, Ms. Adams advised comments were forthcoming shortly. The renewal expiry deadline is fast approaching and there is much work to be done prior to February 28, 2009.

NRG would welcome the opportunity to sit down and discuss the Town of Aylmer's comments in person by November 30, 2008. For your convenience we have enclosed a copy of the Franchise Agreement.

As stated previously, NRG is committed to the Town of Aylmer and the franchise area and will make every effort possible to work with the Town of Aylmer to resolve any outstanding matters.

You may reach me by calling 519-433-8126.

Yours truly,
Natural Resource Gas Limited

Per: Mark Bristoll
President

c.c. Mr. Jack Howley, General Manager, Natural Resource Gas Limited

Enclosure – Franchise Agreement

Ontario, Canada
Aylmer
Proud Heritage. Bright Future.

The Corporation of the Town of Aylmer
46 Talbot Street, West, Aylmer, Ontario N5H 1J7
Office: 519-773-3164 Fax: 519-765-1446
www.aylmer.ca

November 26, 2008

Mr. Mark Bristoll
President
Natural Resource Gas Limited
Box 310
Aylmer ON
N5H 2S1

Dear Mark:

Re: Town of Aylmer Franchise Renewal

Thank you very much for your letter to the Mayor and myself dated November 19, 2008. You indicated your wish to meet with representatives of the Town of Aylmer to discuss the Town's comments on your proposal for renewal of the existing franchise between the two corporations.

The Mayor and I would be pleased to meet with you. We would suggest we meet at 1:30 p.m. on Tuesday, December 16, 2008 at our offices. Please advise me directly if this time is suitable for you.

Sincerely

M. Heather Adams
Administrator

cc: Mayor B. Habkirk
J. Howley, NRG
P. Tunley, Stockwoods

/ha

Ontario, Canada
Aylmer
Proud Heritage. Bright Future.

The Corporation of the Town of Aylmer
46 Talbot Street, West, Aylmer, Ontario N5H 1J7
Office: 519-773-3164 Fax: 519-765-1446
www.aylmer.ca

December 16, 2008

Mr. Mark Bristoll
President
Natural Resource Gas Limited
Box 310
Aylmer ON
N5H 2S1

Dear Mark:

Re: Town of Aylmer Franchise Renewal

Thank you very much for meeting with us today to discuss the Town's position on your proposal for renewal of the existing franchise between the two corporations. At its meeting last night, December 15, 2008, Council passed the following resolution:

> "That the Council of the Town of Aylmer adopts the staff recommendations set out in the report of the Administrator dated December 11, 2008 regarding the franchise agreement between the Town and NRG.
>
> That Council approve the draft franchise agreement as presented in that report and that the agreement be presented to NRG as the Town's position regarding the renewal of the franchise for a period of 3 years.
>
> And Further that following the meeting with NRG, the Town applies to the OEB for approval of the franchise agreement as drafted by the Town."

A copy of the report that was adopted by Council is attached for your reference as well as a copy of the franchise agreement which Council approved for presentation to NRG. This version of the franchise agreement is essentially the same as the one NRG proposed, that is, the Model Franchise Agreement, but the differences are that the Town proposes a three year renewal and have added some important conditions as a new Appendix A to the agreement.

You will note that the Town adopted the following goals in considering its options:

- Ensure the continued supply of cost-effective natural gas to Aylmer
- Ensure that the customer service and security deposit concerns expressed by the residents of Aylmer are dealt with effectively and efficiently

- Respect the role of the Ontario Energy Board as the regulator of monopoly natural gas distributors in Ontario
- Ensure that the economic development opportunities for the community are enhanced by having a supportive natural gas distributor who supplies a cost-effective alternative source of energy
- Repair the negative image of Aylmer in the context of our natural gas distributor
- Restore confidence in and respect for the natural gas distributor by their consumers, other residents and the Town as they put in place a permanent acceptable customer relations policy

We trust that the Town's proposal will provide a process for us all to work together over the next three years to achieve a positive relationship between all parties involved.

Sincerely

M. Heather Adams
Administrator

cc: Mayor B. Habkirk & Council, Town of Aylmer
N. Irving, Clerk, Town of Aylmer
P. Tunley, Stockwoods

Attachments (2)

/ha

#8(g)

Ontario, Canada
Aylmer
Proud Heritage. Bright Future.

Memo

To: Council

From: M. Heather Adams
Administrator

Date: December 11, 2008

Re: Natural Resource Gas Ltd. (NRG) Franchise

Discussion:

The franchise agreement between the Town of Aylmer and NRG expires on February 27, 2009. At its meeting of October 14, 2008, Council considered a report on issues related to NRG and passed the following resolution:

Resolution No. 370-08

Moved by Councillor M. French and seconded by Deputy Mayor R. G. Baldwin:

"That the Council of the Town of Aylmer hereby endorses the Report dated October 8, 2008 prepared by the Administrator, regarding Natural Resource Gas Ltd. (NRG);

AND FURTHER THAT Council hereby approves the actions outlined below:

1. **Ensure that the Ontario Energy Board is fully aware of the concerns regarding NRG by:**
   - **providing a copy of this report and the petitions received from the local residents regarding the issues with NRG and request that the OEB use its regulatory and oversight tools to fully inquired into the issues identified;**
   - **endorsing the OEB proposed amendment to the Gas Distribution Access Rule provide direction to natural gas distributors regarding customer security deposits; and**

#8(g.)

- intervening at OEB hearings which involve NRG to ensure the OEB is aware of issues of concern to the Town and its residents generally identified as follows:
  - Quality of infrastructure;
  - Rates not competitive;
  - Reluctance to serve new commercial/industrial customers;
  - Significant customer service issues;
  - Financial issues raised by customers and suppliers are troubling; and
  - Deterrent to local economic development.

2. Request that the OEB consider the following regulatory and/or policy changes in order to improve customer service requirements of natural gas distributors
   - Require that customer service measures are made available to the public
   - Require that the annual audited financial statements of the distribution companies are made available to the public
   - Provide a clear complaint and enforcement process for natural gas consumers to have complaints heard and resolved
   - Require that consumer security deposits be kept in a trust fund and not used as working capital for distribution companies

3. Request that the OEB establish a process for a review of the legislation and regulations which require that municipalities and natural gas distributors enter into franchise agreements. The realities of the current process for these agreements do not operate such that they improve the distribution of natural gas to its customers. The municipality has no real ability to negotiate even the minimum of service delivery requirements, no realistic ability to enforce the provisions of the franchise agreement when a distribution company does not meet them and no real ability to change who provides the service. The legislation guiding franchises is outdated and its provisions such as the requirement for a public vote typically are replaced with the OEB approval process.

4. Circulate this Report to the other municipalities with franchise agreements with NRG for their consideration and endorsement.

5. Forward the Report and recommendation to the Minister of Energy and Infrastructure and our local M.P.P., the Honourable Steve Peters."

Since that time the following has taken place:

- OEB hearing into the application by Union Gas re NRG was held in Aylmer on October 20, 2008. Town was successful in having its evidence stay on the record. The OEB has made its decision on the application and the Union and NRG are to sign new 5 year agreements for the supply of natural gas, NRG is to provide Union with regular Financial Statements and NRG is to provide Union with

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a postponement agreement related to the retractable shares. Further, those retractable shares are to be treated as debt not equity. The NRG shareholder was directed to pay the costs of the Town and IGPC as interveners in the hearing.

- To date, there has been no response from the OEB or from the Provincial Minister of Energy to the comprehensive report and resolution forwarded to them.

- Staff has had several conversations and a meeting with Jack Howley who is the General Manager of NRG as well as Mark Bristoll. NRG has attended the most recent meeting regarding the South Street infrastructure project and have promised to attend future meetings. They have requested and received information on our 5 year infrastructure plans. NRG has provided the Town with a detailed map of its infrastructure in Aylmer. They have met with us and assured us they are now dealing with all requests and complaints regarding their customer security deposits. They have reviewed the issues we have had with the statements for our gas purchasing contract and they have committed to providing the required information to Comsatec on a more regular basis.

- The Town has received another letter from NRG requesting that we meet with them prior to November 30, to outline our position regarding renewal of the franchise agreement and a meeting has been scheduled for next week.

Goals:

- Ensure the continued supply of cost-effective natural gas to Aylmer
- Ensure that the customer service and security deposit concerns expressed by the residents of Aylmer are dealt with effectively and efficiently
- Respect the role of the Ontario Energy Board as the regulator of monopoly natural gas distributors in Ontario
- Ensure that the economic development opportunities for the community are enhanced by having a supportive natural gas distributor who supplies a cost-effective alternative source of energy
- Repair the negative image of Aylmer in the context of our natural gas distributor
- Restore confidence in and respect for the natural gas distributor by their consumers, other residents and the Town as they put in place a permanent acceptable customer relations policy

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Staff Recommendation:

After consideration of all of the options, the impact of various options and previous direction and decisions of Council, Staff recommends the following approach:

- Meet with NRG and offer to renew the franchise agreement for 3 years to February 27, 2012 with the addition of a list of conditions Council wants to have NRG commit to undertake during that 3 years.

- Whether or not NRG agrees to the terms, the Town applies to the OEB for approval of its proposed agreement and conditions and requests that the OEB hold a hearing in Aylmer where the consumers can provide c comments to the Board.

- Suggested Conditions for Franchise Renewal:

  1. The NRG immediately apply to the OEB for a comprehensive rate hearing
  2. NRG agrees to implement the proposed amendments to the Gas Distribution Access Rule (EB-2008-0313), regarding customer service measures by the end of 2009 whether or not the OEB has made them mandatory by the time.
  3. NRG makes the distribution company's annual audited financial statements available to the public no later than 4 months following the close of its fiscal year.
  4. NRG adopts, and adheres to a written and publicly available consumer security deposit policy which includes clear information about the circumstances in which a security deposit is required, how the amount of the deposit is calculated, the circumstances in which the deposit will be returned to the customer, that all deposits will be returned by cheque unless otherwise requested in writing by the customer; and that a maximum dollar value for any security deposit be calculated using the proposed calculation in the OEB proposed amendments to the GDAR (EB-2008-0313)
  5. NRG adopts, and adheres to a written and publicly available complaint process for its customers
  6. NRG keeps all monies from consumer security deposits in a trust fund and not used as working capital for distribution company.
  7. NRG ensures that written notice is given to all the municipalities with whom they have franchises of any application by NRG to the OEB.
  8. NRG provides to the Town of Aylmer annually prior to December 15, a detailed and up to date system map of its

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assets within the Town of Aylmer including the estimated age of those assets and any improvements or additions during the year are highlighted.

9. NRG agrees to prepare and adhere to a written policy regarding meeting with new and relocating retail, commercial and industrial customers to provide information and natural gas service cost estimates on a timely basis and at a competitive rate.

A proposed franchise agreement has been drafted using the terms of the Model Franchise Agreement and adding the conditions outlined above. A copy of the agreement is attached.

Council Action:

It is recommended that Council pass the following resolution:

"That the Council of the Town of Aylmer adopts the staff recommendations set out in the report of the Administrator dated December 11, 2008 regarding the franchise agreement between the Town and NRG.

That Council approve the draft franchise agreement as presented in that report and that the agreement be presented to NRG as the Town's position regarding the renewal of the franchise for a period of 3 years.

And Further that following the meeting with NRG, the Town applies to the OEB for approval of the franchise agreement as drafted by the Town."

Respectfully submitted

M. Heather Adams
Administrator

Attachments (1)

/ha

Franchise Agreement

THIS AGREEMENT effective this ___ day of _____, 2009.

BETWEEN:

THE CORPORATION OF THE TOWN OF AYLMER

hereinafter called the "Corporation"

- and -

NATURAL RESOURCE GAS LIMITED

hereinafter called the "Gas Company"

WHEREAS the Gas Company desires to distribute, store and transmit gas in the Municipality upon the terms and conditions of this Agreement;

AND WHEREAS by by-law passed by the Council of the Corporation (the "By-law"), the duly authorized officers have been authorized and directed to execute this Agreement on behalf of the Corporation;

THEREFORE the Corporation and the Gas Company agree as follows:

Part I – Definitions

1. In this Agreement:

   (a) "decommissioned" and "decommissions" when used in connection with parts of the gas system, mean any parts of the gas system taken out of active use and purged in accordance with the applicable CSA standards and in no way affects the use of the term 'abandoned' pipeline for the purposes of the *Assessment Act;*

   (b) "Engineer/Road Superintendent" means the most senior individual employed by the Corporation with responsibilities for highways within the Municipality or the person designated by such senior employee or such other person as may from time to time be designated by the Council of the Corporation;

   (c) "gas" means natural gas, manufactured gas, synthetic natural gas, liquefied petroleum gas or propane-air gas, or a mixture of any of them, but does not

include a liquefied petroleum gas that is distributed by means other than a pipeline;

(d) "gas system" means such mains, plants, pipes, conduits, services, valves, regulators, curb boxes, stations, drips or such other equipment as the Gas Company may require or deem desirable for the distribution, storage and transmission of gas in or through the Municipality;

(e) "highway" means all common and public highways and shall include any bridge, viaduct or structure forming part of a highway, and any public square, road allowance or walkway and shall include not only the travelled portion of such highway, but also ditches, driveways, sidewalks, and sodded areas forming part of the road allowance now or at any time during the term hereof under the jurisdiction of the Corporation;

(f) "Model Franchise Agreement" means the form of agreement which the Ontario Energy Board uses as a standard when considering applications under the *Municipal Franchises Act*. The Model Franchise Agreement may be changed from time to time by the Ontario Energy Board;

(g) "Municipality" means the territorial limits of the Corporation on the date when this Agreement takes effect, and any territory which may thereafter be brought within the jurisdiction of the Corporation;

(h) "Plan" means the plan described in Paragraph 5 of this Agreement required to be filed by the Gas Company with the Engineer/Road Superintendent prior to commencement of work on the gas system; and

(i) whenever the singular, masculine or feminine is used in this Agreement, it shall be considered as if the plural, feminine or masculine has been used where the context of the Agreement so requires.

Part II - Rights Granted

2. To provide gas service.

The consent of the Corporation is hereby given and granted (subject to the conditions set out herein and in Schedule A) to the Gas Company to distribute, store and transmit gas in and through the Municipality to the Corporation and to the inhabitants of the Municipality. The Corporation signs this Agreement on the condition that the Gas Company agrees to and adheres to those conditions set out in Schedule A.

3. To Use Highways.

Subject to the terms and conditions of this Agreement the consent of the Corporation is hereby given and granted to the Gas Company to enter upon all highways now or at any time hereafter under the jurisdiction of the Corporation and to lay, construct, maintain,

replace, remove, operate and repair a gas system for the distribution, storage and transmission of gas in and through the Municipality.

4. Duration of Agreement and Renewal Procedures.

(a) The rights hereby given and granted, and the terms hereof, shall be for a term of 5 (three) years from the date of final passing of the By-law. If during the 5 year term of this Agreement, the Model Franchise Agreement is changed, then 1 (one) year following the date such change(s) is effected, this Agreement shall be deemed to be amended to incorporate such change(s) in the Model Franchise Agreement, unless the parties hereto agree otherwise in writing. Such deemed amendments shall not apply to alter the 5 (three) year term of this Agreement.

(b) At any time within two years prior to the expiration of this Agreement, either party may give notice to the other that it desires to enter into negotiations for a renewed franchise upon such terms and conditions as may be agreed upon. Until such renewal has been settled, the terms and conditions of this Agreement shall continue, notwithstanding the expiration of this Agreement. This shall not preclude either party from applying to the Ontario Energy Board for a renewal of the Agreement pursuant to section 10 of the *Municipal Franchises Act*.

Part III – Conditions

5. Approval of Construction.

(a) The Gas Company shall not undertake any excavation, opening or work which will disturb or interfere with the surface of the travelled portion of any highway unless a permit therefore has first been obtained from the Engineer/Road Superintendent and all work done by the Gas Company shall be to his satisfaction.

(b) Prior to the commencement of work on the gas system, or any extensions or changes to it (except service laterals which do not interfere with municipal works in the highway), the Gas Company shall file with the Engineer/Road Superintendent a Plan, satisfactory to the Engineer/Road Superintendent, drawn to scale and of sufficient detail considering the complexity of the specific locations involved, showing the highways in which it proposes to lay its gas system and the particular parts thereof it proposes to occupy.

(c) The Plan filed by the Gas Company shall include geodetic information for a particular location:

(i) where circumstances are complex, in order to facilitate known projects, including projects which are reasonably anticipated by the Engineer/Road Superintendent, or

(ii) when requested, where the Corporation has geodetic information for its own services and all others at the same location.

(d) The Engineer/Road Superintendent may require sections of the gas system to be laid at greater depth than required by the latest CSA standard for gas pipeline systems to facilitate known projects or to correct known highway deficiencies.

(e) Prior to the commencement of work on the gas system, the Engineer/Road Superintendent must approve the location of the work as shown on the Plan filed by the Gas Company, the timing of the work and any terms and conditions relating to the installation of the work.

(f) In addition to the requirements of this Agreement, if the Gas Company proposes to affix any part of the gas system to a bridge, viaduct or other structure, if the Engineer/Road Superintendent approves this proposal, he may require the Gas Company to comply with special conditions or to enter into a separate agreement as a condition of the approval of this part of the construction of the gas system.

(g) Where the gas system may affect a municipal drain, the Gas Company shall also file a copy of the Plan with the Corporation's Drainage Superintendent for purposes of the *Drainage Act*, or such other person designated by the Corporation as responsible for the drain.

(h) The Gas Company shall not deviate from the approved location for any part of the gas system unless the prior approval of the Engineer/Road Superintendent to do so is received.

(i) The Engineer/Road Superintendent's approval, where required throughout this Paragraph, shall not be unreasonably withheld.

(j) The approval of the Engineer/Road Superintendent is not a representation or warranty as to the state of repair of the highway or the suitability of the highway for the gas system.

6. As Built Drawings.

The Gas Company shall, within six months of completing the installation of any part of the gas system, provide two copies of "as built" drawings to the Engineer/Road Superintendent. These drawings must be sufficient to accurately establish the location, depth (measurement between the top of the gas system and the ground surface at the time of installation) and distance of the gas system. The "as built" drawings shall be of the same quality as the Plan and, if the approved pre-construction plan included elevations that were geodetically referenced, the "as built" drawings shall similarly include elevations that are geodetically referenced. Upon the request of the Engineer/Road Superintendent, the Gas Company shall provide one copy of the drawings in an electronic format and one copy as a hard copy drawing.

7. Emergencies.

In the event of an emergency involving the gas system, the Gas Company shall proceed with the work required to deal with the emergency, and in any instance where prior approval of the Engineer/Road Superintendent is normally required for the work, the Gas

Company shall use its best efforts to immediately notify the Engineer/Road Superintendent of the location and nature of the emergency and the work being done and, if it deems appropriate, notify the police force, fire or other emergency services having jurisdiction. The Gas Company shall provide the Engineer/Road Superintendent with at least one 24 hour emergency contact for the Gas Company and shall ensure the contacts are current.

8. Restoration.

The Gas Company shall well and sufficiently restore, to the reasonable satisfaction of the Engineer/Road Superintendent, all highways, municipal works or improvements which it may excavate or interfere with in the course of laying, constructing, repairing or removing its gas system, and shall make good any settling or subsidence thereafter caused by such excavation or interference. If the Gas Company fails at any time to do any work required by this Paragraph within a reasonable period of time, the Corporation may do or cause such work to be done and the Gas Company shall, on demand, pay the Corporation's reasonably incurred costs, as certified by the Engineer/Road Superintendent.

9. Indemnification.

The Gas Company shall, at all times, indemnify and save harmless the Corporation from and against all claims, including costs related thereto, for all damages or injuries including death to any person or persons and for damage to any property, arising out of the Gas Company operating, constructing, and maintaining its gas system in the Municipality, or utilizing its gas system for the carriage of gas owned by others. Provided that the Gas Company shall not be required to indemnify or save harmless the Corporation from and against claims, including costs related thereto, which it may incur by reason of damages or injuries including death to any person or persons and for damage to any property, resulting from the negligence or wrongful act of the Corporation, its servants, agents or employees.

10. Insurance.

(a) The Gas Company shall maintain Comprehensive General Liability Insurance in sufficient amount and description as shall protect the Gas Company and the Corporation from claims for which the Gas Company is obliged to indemnify the Corporation under Paragraph 9. The insurance policy shall identify the Corporation as an additional named insured, but only with respect to the operation of the named insured (the Gas Company). The insurance policy shall not lapse or be cancelled without sixty (60) days' prior written notice to the Corporation by the Gas Company.

(b) The issuance of an insurance policy as provided in this Paragraph shall not be construed as relieving the Gas Company of liability not covered by such insurance or in excess of the policy limits of such insurance.

(c) Upon request by the Corporation, the Gas Company shall confirm that premiums for such insurance have been paid and that such insurance is in full force and effect.

11. Alternative Easement.

The Corporation agrees, in the event of the proposed sale or closing of any highway or any part of a highway where there is a gas line in existence, to give the Gas Company reasonable notice of such proposed sale or closing and, if is feasible, to provide the Gas Company with easements over that part of the highway proposed to be sold or closed sufficient to allow the Gas Company to preserve any part of the gas system in its then existing location. In the event that such easements cannot be provided, the Corporation and the Gas Company shall share the cost of relocating or altering the gas system to facilitate continuity of gas service, as provided for in Paragraph 12 of this Agreement.

12. Pipeline Relocation.

(a) If in the course of constructing, reconstructing, changing, altering or improving any highway or any municipal works, the Corporation deems that it is necessary to take up, remove or change the location of any part of the gas system, the Gas Company shall, upon notice to do so, remove and/or relocate within a reasonable period of time such part of the gas system to a location approved by the Engineer/Road Superintendent.

(b) Where any part of the gas system relocated in accordance with this Paragraph is located on a bridge, viaduct or structure, the Gas Company shall alter or relocate that part of the gas system at its sole expense.

(c) Where any part of the gas system relocated in accordance with this Paragraph is located other than on a bridge, viaduct or structure, the costs of relocation shall be shared between the Corporation and the Gas Company on the basis of the total relocation costs, excluding the value of any upgrading of the gas system, and deducting any contribution paid to the Gas Company by others in respect to such relocation; and for these purposes, the total relocation costs shall be the aggregate of the following:

(i) the amount paid to Gas Company employees up to and including field supervisors for the hours worked on the project plus the current cost of fringe benefits for these employees,

(ii) the amount paid for rental equipment while in use on the project and an amount, charged at the unit rate, for Gas Company equipment while in use on the project,

(iii) the amount paid by the Gas Company to contractors for work related to the project,

(iv) the cost to the Gas Company for materials used in connection with the project, and

(v) a reasonable amount for project engineering and project administrative costs which shall be 22.5% of the aggregate of the amounts determined in items (i), (ii), (iii) and (iv) above.

(d) The total relocation costs as calculated above shall be paid 35% by the Corporation and 65% by the Gas Company, except where the part of the gas system required to be moved is located in an unassumed road or in an unopened road allowance and the Corporation has not approved its location, in which case the Gas Company shall pay 100% of the relocation costs.

Part IV - Procedural And Other Matters

13. Municipal By-laws of General Application.

The Agreement is subject to the provisions of all regulating statutes and all municipal bylaws of general application, except by-laws which have the effect of amending this Agreement.

14. Giving Notice.

Notices may be delivered to, sent by facsimile or mailed by prepaid registered post to the Gas Company at its head office or to the authorized officers of the Corporation at its municipal offices, as the case may be.

15. Disposition of Gas System.

(a) If the Gas Company decommissions part of its gas system affixed to a bridge, viaduct or structure, the Gas Company shall, at its sole expense, remove the part of its gas system affixed to the bridge, viaduct or structure.

(b) If the Gas Company decommissions any other part of its gas system, it shall have the right, but is not required, to remove that part of its gas system. It may exercise its right to remove the decommissioned parts of its gas system by giving notice of its intention to do so by filing a Plan as required by Paragraph 5 of this Agreement for approval by the Engineer/Road Superintendent. If the Gas Company does not remove the part of the gas system it has decommissioned and the Corporation requires the removal of all or any part of the decommissioned gas system for the purpose of altering or improving a highway or in order to facilitate the construction of utility or other works in any highway, the Corporation may remove and dispose of so much of the decommissioned gas system as the Corporation may require for such purposes and neither party shall have recourse against the other for any loss, cost, expense or damage occasioned thereby. If the Gas Company has not removed the part of the gas system it has decommissioned and the Corporation requires the removal of all or any part of the decommissioned gas system for the purpose of altering or improving a highway or in order to facilitate the construction of utility or other works in a highway, the Gas

Company may elect to relocate the decommissioned gas system and in that event Paragraph 12 applies to the cost of relocation.

16. Use of Decommissioned Gas System.

(a) The Gas Company shall provide promptly to the Corporation, to the extent such information is known:

(i) the names and addresses of all third parties who use decommissioned parts of the gas system for purposes other than the transmission or distribution of gas; and

(ii) the location of all proposed and existing decommissioned parts of the gas system used for purposes other than the transmission or distribution of gas.

(b) The Gas Company may allow a third party to use a decommissioned part of the gas system for purposes other than the transmission or distribution of gas and may charge a fee for that third party use, provided

(i) the third party has entered into a municipal access agreement with the Corporation; and

(ii) the Gas Company does not charge a fee for the third party's right of access to the highways.

(c) Decommissioned parts of the gas system used for purposes other than the transmission or distribution of gas are not subject to the provisions of this Agreement. For decommissioned parts of the gas system used for purposes other than the transmission and distribution of gas, issues such as relocation costs will be governed by the relevant municipal access agreement.

17. Franchise Handbook.

The Parties acknowledge that operating decisions sometimes require a greater level of detail than that which is appropriately included in this Agreement. The Parties agree to look for guidance on such matters to the Franchise Handbook prepared by the Association of Municipalities of Ontario and the gas utility companies, as may be amended from time to time.

18. Agreement Binding Parties.

This Agreement shall extend to, benefit and bind the parties thereto, their successors and assigns, respectively.

IN WITNESS WHEREOF the parties have executed this Agreement effective from the date written above.

THE CORPORATION OF THE TOWN OF AYLMER

By: _____
Duly Authorized Officer

NATURAL RESOURCE GAS LIMITED

By: _____
Duly Authorized Officer

SCHEDULE 'A'

'Schedule A' to the Franchise Renewal Agreement between Natural Resource Gas Ltd. and the Corporation of the Town of Aylmer

The Corporation signs this Agreement on the condition that the Gas Company agrees to and adheres to the following.

1) Immediately upon the execution of this Agreement, the Gas Company will apply to the Ontario Energy Board ("OEB") for a comprehensive rate hearing.

2) The Gas Company will, by December 15, 2009,

   a) implement the proposed amendments to the Gas Distribution Access Rule (EB-2008-0313) regarding customer service measures, whether or not the OEB has made them mandatory by such time.

3) The Gas Company will, by May 15, 2009,

   a) adopt and adhere to a written and publicly available consumer security deposit policy which includes clear information about the circumstances in which a security deposit is required, how the amount of the deposit is calculated, the circumstances in which the deposit will be returned to the customer, that all deposits will be returned by cheque unless otherwise requested in writing by the customer; and that a maximum dollar value for any security deposit be calculated using the proposed calculation in the OEB proposed amendments to the GDAR (EB-2008-0313);

   b) adopt and adhere to a written and publicly available complaint process for its customers; and

   c) adopt and adhere to a written policy regarding meeting with and providing written estimates for providing natural gas services to new and relocating retail, commercial and industrial customers on a timely basis and at a competitive rate.

4) The Gas Company will keep all monies from consumer security deposits in a trust fund and it will not use such monies as working capital.

5) The Gas Company will make its annual audited financial statements available every year for the next three years to the public no later than 4 months following the close of the Gas Company's fiscal year.

6) The Gas Company will give notice to the Corporation of any proceeding before the OEB that the Gas Company is a party to, particularly, but not limited to, any application to the OEB made by the Gas Company.

7) By no later than December 15 of each year, the Gas Company will provide the Corporation with annual detailed and up-to-date maps of its system assets, including but not limited to system assets within the Town of Aylmer, including the estimated age of those assets and any improvements or additions during the year are highlighted.

THE NRG PREFERRED AGREEMENT

A copy of the NRG Preferred Agreement (i.e., the franchise agreement that NRG is prepared to sign), is attached to this Exhibit D, Tab 2. It is based on the Board's Model Franchise Agreement, and contains:

- a 20-year term (i.e., to February 27, 2029); and,
- a new section 3.9 that incorporates two of the seven conditions sought by the Town.

The two conditions in section 3.9 to the NRG Preferred Agreement are: (a) a commitment by NRG to provide the Town with NRG's audited financial statements every year no later than four months following the close of NRG's fiscal year; and (b) a commitment by NRG to provide the Town with annual detailed and up-to date maps of its system assets, including but not limited to system assets within the Town of Aylmer, highlighting the estimated age of those assets and any improvements or additions made during the year.

FRANCHISE AGREEMENT

THIS AGREEMENT effective this day of _____ of _____.

BETWEEN:

CORPORATION OF THE TOWN OF AYLMER
hereinafter called the "**Corporation**"

-and –

NATURAL RESOURCE GAS LIMITED
hereinafter called the "**Gas Company**"

WHEREAS the Gas Company desires to distribute, store and transmit gas in the Municipality upon the terms and conditions of this Agreement;

AND WHEREAS by by-law passed by the Council of the Corporation (the "**By-law**"), the duly authorized officers have been authorized and directed to execute this Agreement on behalf of the Corporation;

THEREFORE the Corporation and the Gas Company agree as follows:

ARTICLE 1 – DEFINITIONS

1.1 In this Agreement:

(a) "**decommissioned**" and "**decommissions**" when used in connection with parts of the gas system, mean any parts of the gas system taken out of active use and purged in accordance with the applicable CSA standards and in no way affects the use of the term 'abandoned' pipeline for the purposes of the *Assessment Act*;

(b) "**Engineer/Road Superintendent**" means the most senior individual employed by the Corporation with responsibilities for highways within the Municipality or the person designated by such senior employee or such other person as may from time to time be designated by the Council of the Corporation;

(c) "**gas**" means natural gas, manufactured gas, synthetic natural gas, liquefied petroleum gas or propane-air gas, or a mixture of any of them, but does not include a liquefied petroleum gas that is distributed by means other than a pipeline;

(d) "**gas system**" means such mains, plants, pipes, conduits, services, valves, regulators, curb boxes, stations, drips or such other equipment as the Gas Company may require or deem desirable for the distribution, storage and transmission of gas in or through the Municipality;

(e) "**highway**" means all common and public highways and shall include any bridge, viaduct or structure forming part of a highway, and any public square, road allowance or walkway and shall include not only the travelled portion of such highway, but also ditches, driveways, sidewalks, and sodded areas forming part of the road allowance now or at any time during the term hereof under the jurisdiction of the Corporation;

(f) "**Model Franchise Agreement**" means the form of agreement which the Ontario Energy Board uses as a standard when considering applications under the *Municipal Franchises Act*. The Model Franchise Agreement may be changed from time to time by the Ontario Energy Board;

(g) "**Municipality**" means the territorial limits of the Corporation on the date when this Agreement takes effect, and any territory which may thereafter be brought within the jurisdiction of the Corporation;

(h) "**Plan**" means the plan described in Paragraph 3.1 of this Agreement required to be filed by the Gas Company with the Engineer/Road Superintendent prior to commencement of work on the gas system; and

(i) whenever the singular, masculine or feminine is used in this Agreement, it shall be considered as if the plural, feminine or masculine has been used where the context of the Agreement so requires.

ARTICLE 2 – RIGHTS GRANTED

2.1 To provide gas service:

The consent of the Corporation is hereby given and granted to the Gas Company to distribute, store and transmit gas in and through the Municipality to the Corporation and to the inhabitants of the Municipality.

2.2 To Use Highways.

Subject to the terms and conditions of this Agreement the consent of the Corporation is hereby given and granted to the Gas Company to enter upon all highways now or at any time hereafter under the jurisdiction of the Corporation and to lay, construct, maintain, replace, remove, operate and repair a gas system for the distribution, storage and transmission of gas in and through the Municipality.

2.3 Duration of Agreement and Renewal Procedures.

(a) The rights hereby given and granted shall be for a term of 20 years from the date of final passing of the By-law provided that, if during the 20-year term this Agreement, the Model Franchise Agreement is changed, then on the 7th anniversary and on the 14th anniversary of the date of the passing of the By-law, this Agreement shall be deemed to be amended to incorporate any changes in the Model Franchise Agreement in effect on such anniversary dates. Such deemed amendments shall not apply to alter the 20-year term.

(b) At any time within two years prior to the expiration of this Agreement, either party may give notice to the other that it desires to enter into negotiations for a renewed franchise upon such terms and conditions as may be agreed upon. Until such renewal has been settled, the terms and conditions of this Agreement shall continue, notwithstanding the expiration of this Agreement. This shall not preclude either party from applying to the Ontario Energy Board for a renewal of the Agreement pursuant to section 10 of the *Municipal Franchises Act.*

ARTICLE 3 – CONDITIONS

3.1 Approval of Construction

(a) The Gas Company shall not undertake any excavation, opening or work which will disturb or interfere with the surface of the travelled portion of any highway unless a permit therefor has first been obtained from the Engineer/Road Superintendent and all work done by the Gas Company shall be to his satisfaction.

(b) Prior to the commencement of work on the gas system, or any extensions or changes to it (except service laterals which do not interfere with municipal works in the highway), the Gas Company shall file with the Engineer/Road Superintendent a Plan, satisfactory to the Engineer/Road Superintendent, drawn to scale and of sufficient detail considering the complexity of the specific locations involved, showing the highways in which it proposes to lay its gas system and the particular parts thereof it proposes to occupy.

(c) The Plan filed by the Gas Company shall include geodetic information for a particular location:

(i) where circumstances are complex, in order to facilitate known projects, including projects which are reasonably anticipated by the Engineer/Road Superintendent, or

(ii) when requested, where the Corporation has geodetic information for its own services and all others at the same location.

(d) The Engineer/Road Superintendent may require sections of the gas system to be laid at greater depth than required by the latest CSA standard for gas pipeline systems to facilitate known projects or to correct known highway deficiencies.

(e) Prior to the commencement of work on the gas system, the Engineer/Road Superintendent must approve the location of the work as shown on the Plan filed by the Gas Company, the timing of the work and any terms and conditions relating to the installation of the work.

(f) In addition to the requirements of this Agreement, if the Gas Company proposes to affix any part of the gas system to a bridge, viaduct or other structure, if the Engineer/Road Superintendent approves this proposal, he may require the Gas Company to comply with special conditions or to enter into a separate agreement as a condition of the approval of this part of the construction of the gas system.

(g) Where the gas system may affect a municipal drain, the Gas Company shall also file a copy of the Plan with the Corporation's Drainage Superintendent for purposes of the *Drainage Act*, or such other person designated by the Corporation as responsible for the drain.

(h) The Gas Company shall not deviate from the approved location for any part of the gas system unless the prior approval of the Engineer/Road Superintendent to do so is received.

(i) The Engineer/Road Superintendent's approval, where required throughout this Paragraph, shall not be unreasonably withheld.

(j) The approval of the Engineer/Road Superintendent is not a representation or warranty as to the state of repair of the highway or the suitability of the highway for the gas system.

3.2 As Built Drawings.

The Gas Company shall, within six months of completing the installation of any part of the gas system, provide two copies of "as built" drawings to the Engineer/Road Superintendent. These drawings must be sufficient to accurately establish the location, depth (measurement between the top of the gas system and the ground surface at the time of installation) and distance of the gas system. The "as built" drawings shall be of the same quality as the Plan and, if the approved pre-construction plan included elevations that were geodetically referenced, the "as built" drawings shall similarly include elevations that are geodetically referenced. Upon the request of the Engineer/Road Superintendent, the Gas Company shall provide one copy of the drawings in an electronic format and one copy as a hard copy drawing.

3.3 Emergencies

In the event of an emergency involving the gas system, the Gas Company shall proceed with the work required to deal with the emergency, and in any instance where prior approval of the Engineer/Road Superintendent is normally required for the work, the Gas Company shall use its best efforts to immediately notify the Engineer/Road Superintendent of the location and nature of the emergency and the work being done and, if it deems appropriate, notify the police force, fire or other emergency services having jurisdiction. The Gas Company shall provide the Engineer/Road Superintendent with at

least one 24 hour emergency contact for the Gas Company and shall ensure the contacts are current.

3.4 Restoration

The Gas Company shall well and sufficiently restore, to the reasonable satisfaction of the Engineer/Road Superintendent, all highways, municipal works or improvements which it may excavate or interfere with in the course of laying, constructing, repairing or removing its gas system, and shall make good any settling or subsidence thereafter caused by such excavation or interference. If the Gas Company fails at any time to do any work required by this Paragraph within a reasonable period of time, the Corporation may do or cause such work to be done and the Gas Company shall, on demand, pay the Corporation's reasonably incurred costs, as certified by the Engineer/Road Superintendent.

3.5 Indemnification

The Gas Company shall, at all times, indemnify and save harmless the Corporation from and against all claims, including costs related thereto, for all damages or injuries including death to any person or persons and for damage to any property, arising out of the Gas Company operating, constructing, and maintaining its gas system in the Municipality, or utilizing its gas system for the carriage of gas owned by others. Provided that the Gas Company shall not be required to indemnify or save harmless the Corporation from and against claims, including costs related thereto, which it may incur by reason of damages or injuries including death to any person or persons and for damage to any property, resulting from the negligence or wrongful act of the Corporation, its servants, agents or employees.

3.6 Insurance

(a) The Gas Company shall maintain Comprehensive General Liability Insurance in sufficient amount and description as shall protect the Gas Company and the Corporation from claims for which the Gas Company is obliged to indemnify the Corporation under Paragraph 3.5. The insurance policy shall identify the Corporation as an additional named insured, but only with respect to the operation of the named insured (the Gas Company). The insurance policy shall not lapse or be cancelled without sixty (60) days' prior written notice to the Corporation by the Gas Company.

(b) The issuance of an insurance policy as provided in this Paragraph shall not be construed as relieving the Gas Company of liability not covered by such insurance or in excess of the policy limits of such insurance.

(c) Upon request by the Corporation, the Gas Company shall confirm that premiums for such insurance have been paid and that such insurance is in full force and effect.

3.7 Alternative Easement

The Corporation agrees, in the event of the proposed sale or closing of any highway or any part of a highway where there is a gas line in existence, to give the Gas Company reasonable notice of such proposed sale or closing and, if is feasible, to provide the Gas Company with easements over that part of the highway proposed to be sold or closed sufficient to allow the Gas Company to preserve any part of the gas system in its then existing location. In the event that such easements cannot be provided, the Corporation and the Gas Company shall share the cost of relocating or altering the gas system to facilitate continuity of gas service, as provided for in Paragraph 3.8 of this Agreement.

3.8 Pipeline Relocation

(a) If in the course of constructing, reconstructing, changing, altering or improving any highway or any municipal works, the Corporation deems that it is necessary to take up, remove or change the location of any part of the gas system, the Gas Company shall, upon notice to do so, remove and/or relocate within a reasonable period of time such part of the gas system to a location approved by the Engineer/Road Superintendent.

(b) Where any part of the gas system relocated in accordance with this Paragraph is located on a bridge, viaduct or structure, the Gas Company shall alter or relocate that part of the gas system at its sole expense.

(c) Where any part of the gas system relocated in accordance with this Paragraph is located other than on a bridge, viaduct or structure, the costs of relocation shall be shared between the Corporation and the Gas Company on the basis of the total relocation costs, excluding the value of any upgrading of the gas system, and deducting any contribution paid to the Gas Company by others in respect to such relocation; and for these purposes, the total relocation costs shall be the aggregate of the following:

(i) the amount paid to Gas Company employees up to and including field supervisors for the hours worked on the project plus the current cost of fringe benefits for these employees,

(ii) the amount paid for rental equipment while in use on the project and an amount, charged at the unit rate, for Gas Company equipment while in use on the project,

(iii) the amount paid by the Gas Company to contractors for work related to the project,

(iv) the cost to the Gas Company for materials used in connection with the project, and

(v) a reasonable amount for project engineering and project administrative costs which shall be 22.5% of the aggregate of the amounts determined in items (i), (ii), (iii) and (iv) above.

(d) The total relocation costs as calculated above shall be paid 35% by the Corporation and 65% by the Gas Company, except where the part of the gas system required to be moved is located in an unassumed road or in an unopened road allowance and the Corporation has not approved its location, in which case the Gas Company shall pay 100% of the relocation costs.

3.9 Additional Conditions

In addition to the conditions in sections 3.1 and 3.8 above, the Gas Company agrees to:

(a) provide its annual audited financial statements to the Corporation every year, no later than four months following the close of the Gas Company's fiscal year end; and,

(b) by no later than December 15 of each year, the Gas Company will provide the Corporation with annual detailed and up-to-date maps of its system assets, including but not limited to system assets within the Town of Aylmer, including the estimated age of those assets and any improvements or additions during the year are highlighted.

ARTICLE 4 – PROCEDURAL AND OTHER MATTERS

4.1 Municipal By-laws of General Application

The Agreement is subject to the provisions of all regulating statutes and all municipal bylaws of general application, except by-laws which have the effect of amending this Agreement.

4.2 Giving Notice

Notices may be delivered to, sent by facsimile or mailed by prepaid registered post to the Gas Company at its head office or to the authorized officers of the Corporation at its municipal offices, as the case may be.

4.3 Disposition of Gas System

(a) If the Gas Company decommissions part of its gas system affixed to a bridge, viaduct or structure, the Gas Company shall, at its sole expense, remove the part of its gas system affixed to the bridge, viaduct or structure.

(b) If the Gas Company decommissions any other part of its gas system, it shall have the right, but is not required, to remove that part of its gas system. It may exercise its right to remove the decommissioned parts of its gas system by giving notice of its intention to do so by filing a Plan as required by Paragraph 3.1 of this Agreement for approval by the Engineer/Road Superintendent. If the Gas Company does not remove the part of the gas system it has decommissioned and the Corporation requires the removal of all or any part of the decommissioned gas system for the purpose of altering or improving a highway or in order to facilitate the construction of utility or other works in any highway, the Corporation may remove and dispose of so much of the decommissioned gas system as the Corporation may require for such purposes and neither party shall have recourse

against the other for any loss, cost, expense or damage occasioned thereby. If the Gas Company has not removed the part of the gas system it has decommissioned and the Corporation requires the removal of all or any part of the decommissioned gas system for the purpose of altering or improving a highway or in order to facilitate the construction of utility or other works in a highway, the Gas Company may elect to relocate the decommissioned gas system and in that event Paragraph 3.8 applies to the cost of relocation.

4.4 Use of Decommissioned Gas System

(a) The Gas Company shall provide promptly to the Corporation, to the extent such information is known:

(i) the names and addresses of all third parties who use decommissioned parts of the gas system for purposes other than the transmission or distribution of gas; and

(ii) the location of all proposed and existing decommissioned parts of the gas system used for purposes other than the transmission or distribution of gas.

(b) The Gas Company may allow a third party to use a decommissioned part of the gas system for purposes other than the transmission or distribution of gas and may charge a fee for that third party use, provided

(i) the third party has entered into a municipal access agreement with the Corporation; and

(ii) the Gas Company does not charge a fee for the third party's right of access to the highways.

(c) Decommissioned parts of the gas system used for purposes other than the transmission or distribution of gas are not subject to the provisions of this Agreement. For decommissioned parts of the gas system used for purposes other than the transmission and distribution of gas, issues such as relocation costs will be governed by the relevant municipal access agreement.

4.5 Franchise Handbook

The Parties acknowledge that operating decisions sometimes require a greater level of detail than that which is appropriately included in this Agreement. The Parties agree to look for guidance on such matters to the Franchise Handbook prepared by the Association of Municipalities of Ontario and the gas utility companies, as may be amended from time to time.

4.6 Agreement Binding Parties

This Agreement shall extend to, benefit and bind the parties thereto, their successors and assigns, respectively.

IN WITNESS WHEREOF the parties have executed this Agreement effective from the date written above.

THE CORPORATION OF THE TOWN OF AYLMER

By: _____

By: _____

NATURAL RESOURCE GAS LIMITED

By: _____
Mark Bristoll, Chairman

TERMS AND CONDITIONS IN DISPUTE

The difference between the NRG Preferred Agreement and the Aylmer Preferred Agreement are set out below:

Term

The NRG Preferred Agreement proposes a 20 year renewal term. The Aylmer Preferred Agreement proposes a 3 year renewal term.

Additional Conditions

NRG disagrees with the inclusion of five of the Town's seven conditions in a new franchise agreement. The five conditions in dispute are as follows:

(1) Rate Hearing: That NRG "immediately upon the execution of this Agreement ... apply to the [Board] for a comprehensive rate hearing."

(2) GDAR Implementation (Customer Service Measures): That NRG, by December 15, 2009, "implement the proposed amendments to the Gas Distribution Access Rule (EB-2008-0313) regarding customer service measures, whether or not the OEB has made them mandatory by such time."

(3) Three Written Policies: That NRG, by May 15, 2009:

a. "adopt and adhere to a written and publicly available consumer security deposit policy which includes clear information about the circumstances in which a security deposit is required, how the amount of the deposit is calculated, the circumstances in which the deposit will be returned to the customer, that all deposits will be returned by cheque unless otherwise requested in writing by the customer; and that a maximum dollar value for any security deposit be calculated using the proposed calculation in the OEB proposed amendments to the GDAR (EB-2008-0313);"

b. "adopt and adhere to a written and publicly available complaint process for its customers;" and,

c. "adopt and adhere to a written policy regarding meeting with and providing written estimates for providing natural gas services to new and relocating retail, commercial and industrial customers on a timely basis and at competitive rates".

(4) Security Deposit Trust Fund: That NRG "keep all monies from consumer security deposits in a trust fund and ... not use such monies as working capital."

(5) Notice of OEB Proceedings: give notice to the Town of any proceeding that NRG is a party to before the Board (regardless of whether NRG is an applicant or intervenor).

NRG's position on the term and five conditions is discussed in the following Exhibit D, Tabs 4 through 10 inclusive).

APPROPRIATE TERM OF NEW FRANCHISE AGREEMENT

The NRG Preferred Agreement proposes a 20-year renewal term. The Aylmer Preferred Agreement proposes a three-year renewal term.

The Board's current Model Franchise Agreement proposes a franchise term of 20 years. That, together with the fact that NRG's ability to obtain financing would likely be adversely affected by any shorter franchise period, is the basis for NRG's preference for a 20-year term.

The Board has in the past (E.B.A. 194) recognized that the length of a franchise term is of critical importance to a utility's ability to finance:

> "The Board recognizes that there is some merit in franchises, in most cases, being for a period related to a degree to the normal debt financing term used by gas distributors. With the present uncertainty as to future gas supplies, it seems unlikely, however, that gas distributors will be financing on the basis provided for a longer repayment term than 20 years.
> The foregoing would appear to dictate that a reasonable minimum period for a franchise by-law in ordinary circumstances would be 20 years."

NRG's current financing arrangements are as follows:

- $6,500,000 Credit Facility, 5 year term, due March 2011; and,
- $5,200,000 Ethanol Credit Facility, 5 year term, due October 2013.

Thus, NRG will have to re-finance the bulk of its debt on or before early 2011. Given that the Town of Aylmer is the main urban centre in NRG's franchise area, an abnormally short renewal period would not be viewed favourably by any potential lenders to NRG. In addition, any major new facility requiring stand-alone financing (e.g., the ethanol plant) also would be compromised by having a short-term franchise agreement.

NRG is of the view that the Town's position on this point is contradictory to its stated goal (in its December 11 Memo to Town Council) to "[e]nsure that the economic development opportunities for the community are enhanced by having a supportive natural gas distributor who supplies a

cost-effective alternative source of energy." NRG disagrees with the Town that it has done anything other than be supportive of the Town's ability to attract new industry. However, it seems contradictory to NRG to on the one hand take the position that the incumbent natural gas utility is not supportive of local economic development and on the other hand, hamper that utility's ability to obtain financing by establishing an abnormally short franchise term.

Moreover, the Town has not stated its reasons for offering a franchise renewal period of only three years – which is an exceptionally short period by the Board's standards. NRG can only assume that it relates to the seven conditions that the Town is seeking to impose in the Aylmer Preferred Agreement. As noted in the Application and this pre-filed evidence, NRG accepts two of the seven conditions, and with respect to the other five conditions, provides evidence as to why they ought not be conditions in a franchise renewal agreement. To summarize:

- Condition 1 – Immediate Comprehensive Rate Hearing: Rate hearings take a substantial amount of time to prepare and file, and are not without costs that ultimately get passed on to NRG's customers. NRG does not file annual cost-of-service rate applications, and leaves existing rates in place if NRG believes that no application is needed. If the Town's concerns are with NRG's rates being higher than those of other utilities, the Board has always approved NRG's rates as just and reasonable. Moreover, the Board has in the past examined the competitiveness of NRG's rates vis-à-vis the other utilities. NRG's rates are comparable and in many cases more favourable than those charged by Union or Enbridge (see Exhibit D, Tab 5).
- Condition 2(a) – Implement GDAR Customer Service Measures: These measures are already binding on NRG (see Exhibit D, Tab 6).
- Condition 3(a) – Adopt GDAR Security Deposit Policy: NRG will implement the Board's ultimate amendments to the GDAR that relate to the establishment of security deposit policies by all natural gas utilities, but does not believe that it should be required to adopt such a policy based on the current proposed amendments in advance of other utilities. NRG is of the view that it should wait until the final Board decision is issued (anticipated shortly), and bring its existing security deposit policies into compliance with

the final amendments within six months (which is the compliance period being proposed by the Board in EB-2008-0313) (see Exhibit D, Tab 7).

- Condition 3(b) – Adopt a Customer Complaint Policy: NRG is of the view a company-specific customer complaint policy is probably unnecessary because it would be duplicative of the OEB's complaint process (see Exhibit D, Tab 8).
- Condition 3(c) – Adopt a New Gas Service Policy: NRG already has an existing Board-approved document (Natural Resource Gas Limited Gas Service Rules and Regulations) that sets out how the utility provides new gas service (e.g., estimates, etc.) (see Exhibit D, Tab 9).
- Condition 4 – Segregate Customer Deposits into a Trust Fund: NRG believes that there is no rationale to support this request by the Town, unless that requirement is placed on other utilities in the current GDAR amendment process related to security deposits (EB-2008-0313). At present, there is no contemplation that any utilities will be required to keep its security deposit funds segregated. Moreover, the implication of this condition is that NRG is less financially stable than other utilities – which is simply untrue, as evidenced by the recent Union Gas Application to discontinue service to NRG (see Exhibit D, Tab 7).
- Condition 6 – Provide Notice to Town of any Proceeding to Which NRG is a Party: The Board has a long-established practice of ensuring (through its notice requirements) that parties potentially impacted by a proceeding are given notice (either by direct service of the application, or via publication). Further, the Town has never sought to intervene in an NRG rate proceeding. Had it done so, it is NRG's experience that the Town would as a matter of Board practice, be added to the list of traditional intervenors in NRG's applications (see Exhibit D, Tab 10).

IMMEDIATE RATE HEARING

The Aylmer Preferred Agreement contains a proposed condition that "[i]mmediately upon execution of this Agreement, the Gas Company will apply to the Ontario Energy Board ("OEB") for a comprehensive rate hearing."

NRG is of the view that this condition is unnecessary, inaccurate and inappropriate for inclusion in a franchise agreement. Rate hearing applications take a substantial amount of time to prepare and file, and are not without costs that ultimately get passed on to NRG's ratepayers. NRG does not file annual cost-of-service rate applications, and leaves existing rates in place if NRG believes that no application is needed. The regulation of NRG's rates are a matter for Board rate proceedings, and are distinct from franchise considerations.

If the Town's concerns are with NRG's rates being higher than those of other utilities, the Board has always approved NRG's rates as just and reasonable. Moreover, the Board has in the past examined the competitiveness of NRG's rates vis-à-vis the other utilities (and in particular Union Gas' rates). In the last NRG rates proceeding, the Board held a Public Forum in Aylmer at which this issue was raised. The Board summarized the reasons for the rate differential in its Decision (EB-2005-0544) dated September 20, 2006:

> "NRG responded to customer concerns about difference in rates between Union and NRG at the oral hearing in Toronto and provided a detailed explanation. NRG's analysis indicated that its cost of providing gas to a residential customer is approximately 20% higher than a customer in Union's southern operations area and 8% higher than a customer in Union's eastern operations area. With respect to NRG's seasonal customers such as tobacco curing customers, the cost is 17% higher than for a similar Union customer.
>
> The Company provided a number of reasons for the difference as outlined below:
>
> - The volumes consumed by an average NRG customer are considerably less than the volumes consumed by an average Union customer. This is true for all classes of customers and essentially makes the NRG system a more costly system to operate.
> - NRG has a higher return on equity as compared to Union.

- Union has embedded debt costs of 7.68% in its rates as compared to NRG's total debt cost of 8.45%.
- NRG has a relatively new rate base compared to Union. This means that its meters, regulators and mains have not depreciated to the same extent as Union's. In other words, NRG is carrying a higher net book value in its rate base.
- NRG's franchise area is essentially rural with no urban centres while Union has large urban centres in its Southern Operations Zone, including Hamilton, London and Windsor. This means that NRG has to put more pipes in the ground to get to the same number of customers. This is one of the reasons why Union's other operating areas that are sparsely populated reveal smaller differences in rates compared to NRG."

The full explanation can be found in the transcripts of that proceeding (EB-2005-0544, volume 2, pages 103 to 108), which are attached hereto.

Faced with this explanation, the Board concluded, at page 5 of its Decision:

> "With respect to differences in rates between Union and NRG which was raised at the town hall meeting, the Board instructed NRG to provide an analysis. That analysis explains the differences to the satisfaction of the Board. There are significant difference in operating costs which flow directly from the nature of the territory in which the two companies operate. Essentially NRG enjoys smaller economies of scale than Union. NRG also has newer plant and therefore higher level of capital costs including a higher level of equity and debt."

All of this evidence was also submitted in reply to the evidence of the Town at the recent application by Union Gas Limited to discontinue service to NRG. It was not canvassed or discussed because the Board in the proceeding determined that the Town's evidence would not be referred to or considered.

In addition to the above, the following should be noted on this point:

- With respect to gas commodity, it is difficult to compare Union, NRG and Enbridge, since these rates change quarterly and are dependent upon each utility's respective portfolio at any given time. Currently (i.e., based on the October QRAMs), NRG's gas

commodity cost is 38.9444 cents per cubic meter, which is modestly better than Union's (at 39.3075 cents) but worse than Enbridge's (at about 35.5 cents).

- If you compare the distribution charges for NRG and Enbridge for a residential customer, they are virtually identical for a customer using 2,000 m^3 of natural gas. Enbridge's distribution rates are in the 14 to 15 cent range, with NRG in the 15 cent range as well. However, NRG has a fixed monthly charge of $11.50 compared to Enbridge's $14.
- If you look at the average annual consumption figures of residential customers for each utility, NRG has the lowest overall gas costs on an annual basis (see attached table). This is in part due to the fact that proportionately more of NRG's customers have recently switched from oil to natural gas. As a result, the residential heating equipment installed by NRG's newer customers is on average much newer and much more efficient than residential heating equipment used by Union Gas and Enbridge customers.

undertaking again?

MR. KAISER: I'm not sure.

MR. FAYE: I think we're going delay the undertaking and see if this sheet here answers the question.

MR. KAISER: Why don't you look at the document first and then he'll come back to the question. Maybe the document answers it.

MR. BRISTOLL: Thank you.

MR. FAYE: That exhibit number will be K2.10.

EXHIBIT NO. K2.10: SOURCE DOCUMENT UPON WHICH NRG BASES ITS PRICING OF THE GAS COMMODITY CONTRACT

MR. BRISTOLL: We'll get copies of that.

MR. FAYE: Yes, you'll get your original back.

MR. BRISTOLL: Thank you.

MR. FAYE: Now I'd like to move to something we heard at the public hearing that I think the Panel asked that I bring up at some point during these proceedings.

That was that there were a number of Rate 1/Rate 2 customers at that meeting that explained that NRG's rates were about 25, maybe 29 percent, higher than comparable Union Gas rates. Have you developed an explanation for this difference?

MR. AIKEN: Yes, we have. I did an analysis for a residential customer based on the average residential consumption profile in NRG's territory, which is about 2,067 cubic metres per year, and compared the total cost to the customer, the total bill for that year, to a customer served by Union in their southern area, as well as to a customer served in their eastern operations area.

The cost of NRG providing gas to a residential customer is approximately 20 percent higher than a customer in Union's southern operations area, and it's approximately 7.8 percent higher than a customer in Union's eastern operations area.

I also did a comparison of a typical seasonal or tobacco-curing customer, and in this case only with Union's Southern Ontario operations area, because there are no tobacco customers in eastern Ontario. And the typical seasonal customer would pay 16.7 percent more to NRG than to Union Gas. I should note that Union Gas serves their tobacco customers under their all-purpose M2 rate schedule that covers residential customers as well.

Now, the difference -- and this, I apologize in advance, may take a while, there are a number of reasons for the higher rates. To put what I'm about to give you in context, NRG's total revenue requirement is approximately $4 million. And I have a total of eight items here that result in higher rates for NRG customers.

The first one and the largest one is the lower residential use that NRG has compared to customers in Union's southwest area. All these comparisons are to Union's southwest.

To give you an idea, the forecast here for the 2007 test year, the average residential customer of NRG uses 2,067 cubic metres.

In the recently completed Union Gas hearing for the

same year, 2007, they are forecasting average use of 2,479 cubic metres.

That's a difference of 412 cubic metres per residential customer.

When you multiply that by the number of residential customers NRG has times the delivery rate for those customers, that translates into a reduction in revenues because of a lower average use of $430,000.

So that by itself is more than 10 percent of Union's -- or, sorry, of NRG's total revenue requirement, driven by the fact of lower average use.

That's the first item. The second item is the same analysis for a commercial customer. And what I've done is I've converted all of NRG's customers to see where they would fit under Union's rate schedules. I should preface this by saying that there is only one customer that NRG currently serves that would qualify to be a contract customer on the Union system, and that's Imperial Tobacco. When they're gone, none of NRG's customers would qualify to be a contract. So they would all be served under their M2 rate schedule.

Union's average commercial use is a little over 16,000 cubic metres. Even pulling in these large customers on the NRG system, the average use for a commercial customer is a little over 11,000. The difference is actually 5,153 cubic metres.

Multiplying that by the number of customers, approximately 440, times an average of the first and second block rate that these customers pay, results in a revenue shortfall, I guess you would call it, of $280,000.

Thirdly, the same thing with the industrial use. Union's industrial use is a little over 73,000 cubic metres on average. NRG's is just over 58,000, for a difference of almost 15,000 cubic metres per year.

You multiply that by the number of customers, which is approximately 70, times the lower rate, distribution rate, that those customers get charged, results in a reduction of revenues of approximately $85,000.

So those two items -- sorry, those three together are about in the neighbourhood of $800,000, which is 20 percent of the revenue requirement.

Item number 4 on my list is -- I've touched on is that the lack of large-volume contract accounts. Right now the only one is Imperial Tobacco. Union, of course, has very large customers, and quite a few of them.

Item number 5 is the return on equity. Essentially, the difference between Union and Enbridge is this 150 basis points that we're talking about, or, I guess, actually 135, given that Union is 15 above Enbridge.

That translates into about $80,000 in additional costs. Item number 6 is the difference between the long-term debt rate that Union has embedded in its rates, which is 7.68 percent. NRG, with its new financing, involving the redeployment costs and everything else rolled in, is 8.45 percent. That difference translates into an additional cost to NRG customers of approximately $50,000.

Those are the items where I could quantify. And then I had two other items that I could not quantify but I believe are part of the difference.

The first one of those two is the age of the rate base. And what I mean by that is, how much accumulated appreciation has taken place on this rate base.

NRG has a relatively new rate base compared to Union, and that's because of the number of customers they've added since 1991. I think we alluded to these numbers on Friday.

At the end of 1991 NRG had 2,348 customers. At the end of 2007 we're forecasting that there will be 6,872. That's a growth of 193 percent over 16 years or somewhere in the neighbourhood of 7 percent per year.

Along with that growth you have expenditures on meters, regulators and services. These meters, regulators, and services have lives somewhere in the neighbourhood of 40 years. But they've only been depreciated at most by 17 years. So the net book value is quite high.

More specifically, the main additions, 68 percent of the gross value of main additions that the utility is carrying in its rate base have been added since 1991. And in the depreciation that the Board approved a number of years ago, mains are expected to have a 55-year life. So again, those mains, 68 percent of which have been added in the last 17 years, have not depreciated to the same extent that Union's would, because Union is adding a smaller proportion every year.

And then the final item comes down to the customer density. And this is especially relevant to the residential customers.

NRG is basically a rural utility that serves a couple of small towns, such as Aylmer and Belmont. But they do not have any large urban centres. As a result NRG basically has to put more pipe in the ground to get the same number of customers. You have to go further to find them.

The analysis I did do is that a 1 percent increase in residential customers -- in other words, infill customers -- would generate about $30,000 in distribution margin.

I don't have any specific data on the customer density of NRG versus Union, but I think I'm quite safe in saying that because NRG does not have a London or a St. Thomas or a Waterloo, that the density is lower in NRG's territory.

And this is part of the reason -- this all ties back into the marketing program that Mr. Bristoll has talked about, is to get that number of customers up so there's more revenue being generated. But that concludes my essay on the difference in rates.

MR. KAISER: Do you think it's possible to convert the essay into a table?

MR. AIKEN: I could convert the first six where there are numerical estimates.

MR. KAISER: Right.

MR. AIKEN: Yes.

MR. KAISER: That would be helpful, Mr. Aiken.

NATURAL RESOURCE GAS LIMITED
Rates Comparision
For Rates in Effect as at October 1, 2008

	Limited		Union Gas		Union Gas		Enbridge	
Consumption (m3)	**$**	**Per m3**	**$**	**Per m3**	**$**	**Per m3**	**$**	**Per m3**
Average Annual Consumption		2,000		2,000		2,600		3,064
Average Monthly Consumption		167		167		217		255
Average Monthly Charge								
Gas Commodity	$ 64.91	$ 0.39	$ 65.51	$ 0.39	$ 85.17	$ 0.39	$ 86.19	$ 0.34
Monthly Rate	$ 11.50	$ 0.07	$ 17.00	$ 0.10	$ 17.00	$ 0.08	$ 17.00	$ 0.07
Storage	-	-	1.62	0.01	2.11	0.01	-	-
Delivery	25.50	0.15	11.99	0.07	15.59	0.07	41.14	0.16
Total Delivery	$ 37.00	$ 0.22	$ 30.62	$ 0.18	$ 34.70	$ 0.16	$ 58.14	$ 0.23
Total Average Monthly Billing	$ 101.91	$ 0.61	$ 96.13	$ 0.58	$ 119.87	$ 0.55	$ 144.33	$ 0.57

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PROPOSED GDAR CUSTOMER SERVICE MEASURES

The Aylmer Preferred Agreement included as a proposed condition that by December 15, 2009 NRG "implement the proposed amendments to the Gas Distribution Access Rule (EB-2008-0313) regarding customer service measures, whether or not the OEB has made them mandatory by such time."

NRG seeks further clarification from the Town with respect to this proposed condition. The current EB-2008-0313 Board proceeding deals exclusively with the Board's proposed establishment of a standardized security deposit policy for all natural gas utilities in Ontario. This standardized policy is being proposed by way of amendments to the Gas Distribution Access Rule ("GDAR"). The proposed amendments being considered in the EB-2008-0313 proceeding do not deal with "customer service measures", as suggested by the Town's proposed condition.

If the Town instead is seeking to have NRG comply with the service quality requirements set out under Rule 7 of the GDAR, these are already in effect, and applicable to NRG.

PROPOSED GDAR SECURITY DEPOSIT POLICIES

The Aylmer Preferred Agreement included the following two proposed conditions in respect of security deposits:

3. a) That NRG will by May 15, 2009 "adopt and adhere to a written and publicly available consumer security deposit policy which includes clear information about the circumstances in which a security deposit is required, how the amount of the deposit is calculated, the circumstances in which the deposit will be returned to the customer, that all deposits will be returned by cheque unless otherwise requested in writing by the customer, and that a maximum dollar value for any security deposit be calculated using the proposed calculation in the OEB proposed amendments to the GDAR (EB-2008-0313)."

4. That NRG will keep all monies from consumer security deposits in a trust fund and not use such monies as working capital.

As a regulated gas utility, NRG is monitoring the Gas Distribution Access Rule ("GDAR") proceeding (EB-2008-0313) and has reviewed the Board's October 8, 2008 notice of proposed amendments to the GDAR, which would have the effect of establishing a standardized regulatory framework for collecting and administering security deposits by all distributors in Ontario.

NRG has no objections to the proposed provisions related to natural gas utilities. In fact, NRG was pleased to find that its current security deposit policy is in many respects consistent with or comparable to the proposed standardized framework.

Upon the conclusion of the GDAR proceeding and the finalization of the standardized framework, NRG will bring its security deposit policy in line with the final framework in accordance with whatever timeline the Board mandates. Based on the draft framework issued by the Board, NRG anticipates that the final framework and, in turn, NRG's security deposit policy

once amended in accordance with the framework, will address all of the items enumerated in the Town's proposed condition above.

Notably, the Board's proposed framework does not contemplate any requirements for distributors to keep monies received from consumer security deposits segregated in trust funds, not to be used for working capital. The Town's proposal in this regard implies that NRG is experiencing or at a high risk of experiencing economic hardship. As was discussed in EB-2008-0273, which was recently heard by the Board, this is simply not the case. NRG therefore does not see a need for its security deposits to be segregated.

In terms of timing, the Board has proposed that the amendments to the GDAR come into force on the first day of the month that is 6 full months from the date on which the amendments are published on the OEB website after having been made by the Board. As such, NRG does not intend to make any amendments to its security deposit policy until such time as the GDAR proceeding has been concluded and the policy can be amended to bring it into line with the standardized approach. In NRG's view, it would be imprudent to adopt a security deposit policy based on the Board's current proposed policy, because that policy might change before being finalized.

CUSTOMER COMPLAINT PROCESS

The Aylmer Preferred Agreement included as a proposed condition that NRG "adopt and adhere to a written and publicly available complaint process for its customers."

NRG believes such a process is unnecessary, because it is duplicative of the Board's existing utility complaints process. The Board's process for receiving and responding to complaints about utilities is set out publicly on the Board's website as follows:

> "If you have a question or concern about an electricity or natural gas utility, an electricity retailer or a natural gas marketer, please let us know. We regulate Ontario's energy sector and part of our role is ensuring that companies follow all applicable laws, regulations and regulatory requirements that we have authority to enforce.
> As part of our role, we:
> - provide information to consumers on the energy sector and consumer issues
> - work with utilities, retailers and marketers to ensure they understand and comply with their legal and regulatory obligations
> - facilitate interaction between utilities, retailers and marketers and consumers who have complaints, by bringing the complaint to the attention of the company and helping to resolve complex or difficult matters
> - track trends in the marketplace to identify consumer issues and determine how to best address them
> - investigate allegations that a utility, retailer or marketer is not meeting its legal or regulatory obligations."

This public process is easily accessible by consumers, and offers an impartial arbiter for any disputes. NRG supports the Board's complaint process, and thinks a company-specific process would not provide any value to customers.

NEW GAS SERVICE POLICY

The Aylmer Preferred Agreement included as a proposed condition that, by May 15, 2009, NRG will "adopt and adhere to a written policy regarding meeting with and providing written estimates for providing natural gas services to new and relocating retail, commercial and industrial customers on a timely basis and at a competitive rate."

NRG already has such a policy – see the *Natural Resource Gas Limited Gas Service Rules and Regulations* ("NRG Rules"), first made August 1, 1995, and periodically updated and approved at NRG's cost of service rate proceedings. The most recent version of the NRG Rules is dated December 20, 2005 and is attached hereto. The NRG Rules cover a number of service issues, including natural gas service initiation (including an Application for Gas Service), responsibility for piping on the customer-side of the meter, inspection of new and existing installations, service maintenance, charges for customer service work, rental equipment service, etc. NRG always provides estimates to potential new customers.

The most recent version of the NRG Rules was approved at NRG's last rates proceeding (EB-2005-0544). It is submitted for approval as a matter of course in all rate proceedings.

To the best knowledge of NRG's current management, the Town has never elected to participate in an NRG rates proceeding, as such the Town may not have a copy of the NRG Rules. Neither its December 11th Memo nor its proposed Schedule A to the Aylmer Preferred Agreement set out specific changes that the Town would like to see made to the NRG Rules. However, NRG is of the view that if specific changes are sought, the place to do so would be in NRG's next rate proceeding, where these issues are typically dealt with. By tying them to the franchise agreement, it would tie those changes to the ultimate term of the franchise agreement. It seems more prudent for all involved – especially the Town – to be able to revisit these more frequently (i.e., at each rate case) – as is the current practice.

NATURAL RESOURCE GAS LIMITED

GAS SERVICE

RULES & REGULATIONS

Effective August 1, 1995

Revised December 20, 2005

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1. INITIATION OF SERVICE

1.1 APPLICATIONS

The Company may, at its discretion, accept applications for gas service on existing service laterals or new service laterals. Each applicant must complete an Application for Gas Service in the form attached as Schedule 1A. Any business or company making application must also complete a Credit Application in the form attached as Schedule 1B. The applicant must complete both sides of the blue copy and will receive the yellow copy for their records after approval.

The only exception to the above shall be in the case of contract rate customers. Contract rate customers are required to execute a contract for a specified term of not less than one year.

The Company will charge a $30.00 transfer/connection charge, plus GST, on all approved applications, which will be charged on the first gas billing.

1.2 SECURITY DEPOSITS

All Residential & Commercial Customers

A credit report will be obtained for all accounts. The General Manager will review the credit report and determine if and how much of a deposit will be required.

Minimum - $ 0
Maximum - an amount equal to 2.5 months of the highest consumption

An increased deposit for disconnected accounts will be determined by the General Manager.

Major Commercial & Industrial Accounts (over 15,000 M^3/Yr)

Minimum - $ 0
Maximum - An amount determined by the Company in relation to the charges for previous or estimated consumption of gas

Unconditional "Letters of Credit" from a customer's banker in an appropriate amount or a personal guarantee from the owners may be accepted in lieu of cash security on commercial and industrial accounts.

All Accounts

Simple interest will be paid on cash security deposits at a rate established annually equal to the interest rate paid on savings accounts by the bank with which the Company carries on the majority of its banking.

Prior to reconnecting an account disconnected for non-payment, the Company will require an additional deposit as determined by the General Manager.

Should the customer fail to pay the requested amount of deposit, the service will be disconnected. A reconnection charge must be paid together with the security deposit before the gas will be reconnected.

Deposits may be refunded at the option of the Company to customers who have established a good credit history and whose deposits have been held for a minimum of 12 months. When a customer discontinues service and all accounts are settled in full, any deposits not previously returned will be refunded to the customer. If the customer's account is not settled in full prior to requesting the refund, the deposit will be applied to pay any unpaid amounts with the remaining balance being refunded to the customer.

1.3 MAIN EXTENSIONS

The Company will make extensions of its mains to some applicants when, in the sole discretion of the Company, the main extension is economically feasible.

When the extension is not economically feasible, the applicant will be required to pay an "Aid to Construction" in an amount determined by the Company to make the project economically feasible.

1.4 SERVICE LATERAL INSTALLATIONS

Service laterals will only be installed provided that:

(i) an application (contract) has been properly completed and approved,
(ii) any deposit required has been collected,
(iii) any main extension can be justified in accordance with the Company's line extension practice, and
(iv) any charges for service lateral installation in accordance with the following have been paid

All Customers - A gas service lateral extending from the property line to the meter location selected by the Company will be installed for a fee of $80.00 for the first 20 meters plus an additional charge of $7.00 per meter thereafter.

Meter Set Locations are determined as follows:

a) For residential customers, meters may be located on the front or on either side of the dwelling in which it serves. If the meter is located along one of the sides of the dwelling, the distance from the front corner to the meter location cannot exceed 10 feet.

b) All meter set locations must comply with the Technical Standards and Safety Act and Codes and Standards Adopted by Regulation.

c) When the distance from the property line to a dwelling or building requiring the gas service exceeds 100 meters, it may be required that the meter be located near the property line. In these cases, a cost estimate must be done to determine the outlet cost of underground piping from the meter set to the building.

1.5 CUSTOMER PIPING

Applicants for service shall, at their own expense, equip their premises with all piping and attachments from the meter to the appliances or equipment served. It is the customer's responsibility to maintain the piping and equipment beyond the outlet side of the meter. Such piping and attachments shall be installed and maintained in accordance with the rules of the Company and the Technical Standards and Safety Act and Codes and Standards Adopted by Regulation.

Meters will not be connected with customer's piping when that piping and/or appliances or heating equipment attached thereto are known by the Company to be defective or not in accordance with applicable rules and regulations, ordinances or codes. The Company reserves the right to discontinue service at any time it finds the piping, venting, appliances or other gas-fired equipment on customer's premises defective or in an unsafe condition.

The customer is expected to immediately notify the Company of any leakage or escape of gas on his premises.

1.6 INSPECTION OF NEW AND EXISTING INSTALLATIONS

All inspections shall conform to the "Ontario Energy Act" and the " Technical Standards and Safety Act and Codes and Standards Adopted by Regulation" and amendments in force at the time of inspection.

All new installations of supply piping and gas appliances on premises served with gas for the first time, require inspection to ensure that they are in accordance with legislative requirements.

A general inspection will be made of gas appliances and installations:

(a) whenever a meter is initially installed,
(b) whenever a meter is changed,
(c) whenever a meter is physically reset on an inactive service or account, or
(d) in accordance with the requirements of the Ontario Energy Act

A modified inspection will be made of vented gas appliances:

(a) whenever a previously inactive account is reactivated,
(b) when a meter is turned on after credit lock offs, seasonal turn offs or routine repairs to mains or services, or
(c) when vented equipment is lit up after component replacement

2. MAINTENANCE OF SERVICE

2.1 MAINTENANCE

The Company and its authorized representatives shall have the right to enter the premises of the customer at all reasonable times, upon reasonable notice, to read, inspect, test, repair, replace or remove meter and regulator equipment.

2.2 TESTING METERS

Meters will be tested at the Company's option or at the request of the customer or when required by legislative requirements. When a meter is tested at the customer's request, the Company will collect from the customer any cost involved in the removal, testing, Government inspection and meter replacement where it is determined that the meter was within acceptable tolerances.

2.3 SERVICE DEPARTMENT CHARGES

The Company provides regular service during the normal working hours, and emergency service 24 hours per day.

(i) ***Charge for Service to Customer Owned Appliances***

Repairs will be performed on a time and material basis in accordance with the Company's prevailing parts and labour prices, except when covered by Company or manufacturer's warranties.

(ii) ***Charge for Service to Company Owned Appliances***

The Company agrees to supply such maintenance as in the judgement of the Company is required for the proper use of the appliance at no charge to the customer.

(iii) The Company does not charge for leak complaints, insufficient gas supply, inspection of appliances in accordance with Government Regulations. Repairs required to remedy gas leaks and insufficient supply of gas from causes downstream of the meter, will be charged on a time and material basis.

2.4 CUSTOMER SERVICE WORK

The following are the rates currently in effect by the company. These rates are subject to amendment from time to time.

Regular Hours

Minimum charge (initial 30 minutes)	$46.20
31 to 60 minutes	$63.80
each additional 30 minutes	$28.60

After Hours

Minimum charge (initial 30 minutes)	$81.95
31 to 60 minutes	$105.60
each additional 30 minutes	$52.80

Disconnection- Non Payment or Discontinuance of Service (i.e. seasonal)

Flat Fee	$78.00

Customer Transfer/Connection Charge

Flat Fee	$30.00

7% GST will also be added to the above charges.

3. RENTAL EQUIPMENT

3.1 MONTHLY RENTALS

The Company rents water heaters and water softeners. Water softeners are also rented on a rent to own basis. The rates for water heaters are as indicated below:

Conventional Models	
30 US Gallon	$ 6.85 – 8.40 monthly
40 US Gallon	$ 7.25 – 9.70 monthly
50 US Gallon	$ 8.40 – 12.00 monthly
60 US Gallon	$ 9.50 – 12.25 monthly
Power Vented or Direct	
40 US Gallon	$12.80 – 15.50 monthly
50 US Gallon	$13.90 – 17.00 monthly
60 US Gallon	$15.30 – 22.00 monthly
50/65 US Gallon	$15.60 – 18.95 monthly

The rental for water heaters other than those listed above will be calculated by the General Manager.

Water softeners are rented at the rate of $24.95 per month. Customers choosing the rent-to-own program can rent the water softener for $40.50 per month for 36 months after which the water softener becomes the property of the customer.

3.2 INSTALLATION COSTS

The customer bears the initial installation cost of all equipment. Such installation done by NRG is generally done on a quoted basis. NRG may, from time to time, offer installation assistance through its marketing and promotion efforts. The cost of installing replacement units still under warranty is borne by the Company.

3.3 RENTAL AGREEMENT

Prior to installation of a rental water heater, or removal from inventory for rental, a Rental Agreement form must be completed by the customer in the form attached as Schedule 2. The blue copy remains in the office, the yellow copy is returned to the customer after insertion of the installation and contract dates, and serial and Company numbers.

A Rental Agreement must also be completed by an applicant who is moving into a property where a rental water heater exists. The form can be fully completed at the time of application, and the yellow copy may be given to the customer at that time for his records.

4. BILLINGS & COLLECTIONS

4.1 BILLINGS & COLLECTIONS

Bills will be issued and payable monthly and must be paid at or mailed to the office of the Company, an established collection agency of the Company, or at any chartered bank authorized by the Company.

Bills for gas service furnished by the Company are due when rendered. For customers paying their bill after sixteen days from the billing date, a late payment charge will apply (see section 4.2).

Bills will be mailed to the customer at the last known address as shown on the Company records, unless the customer has directed the Company to send the bill to another address.

Gas consumed will be based on meter readings, or estimates with an estimated bill issued for interim months, and will be computed on the applicable rate schedule approved by the Ontario Energy Board. Any necessary adjustments due to estimated bills will be made on the next regular billing.

A claim for an error in billing should be made by the customer as soon as discovered. If in the opinion of the Company the claim is valid, the Company will make a proper adjustment to the bill.

Where billing errors have resulted in overbilling, the customer will be credited with the amount erroneously paid for a period not exceeding six years.

Where billing errors have resulted in underbilling, the customer shall be charged with the amount erroneously not billed for a period not exceeding:

(a) two years, in the case of an individual residential customer who was not responsible for the error, and
(b) six years, in other cases.

The timing for billings and notices etc., will be as follows. The days represent the days after the end of a billing cycle (e.g. if a normal billing cycle ended on the 14th of the month, day one would commence on the 15th).

Day 1	to 3	Reading, billing and mailing of invoices
Day 17	to 19	Bills due
Day 24	to 28	Reminder Notices mailed out on past due accounts. For customers who are two months in arrears, a hand delivered notice is given to the customer that shows the date on which the account is to be disconnected. See also comments in section 5.1
Day 30	to 32	For those customers who have received the hand delivered notice and have not paid by the date noted in the letters, disconnections take place.

4.2 DELAYED PAYMENT

Bills or due upon rendering. Payments made after sixteen days after the billing date will be considered late and those accounts will have their balances increased by 1.5% of the amount unpaid after sixteen days. Payments made at any chartered bank will be considered paid on the date payment is made to the bank. Any amounts unpaid for subsequent months will be increased by a further 1.5% for each billing cycle that the balance remains unpaid. The minimum increase will be $1.00.

4.3 PAYMENT BY MAIL

When payments are made by mail, bills will be considered to have been paid on the date received by the company.

4.4 BUDGET BILLING PLAN

The budget plan for payment of gas bills is designed to equalize the monthly payments for gas service of residential customers using gas for heating purposes and is available to any heating customer who can establish satisfactory credit with the Company.

New residential heating customers and existing heating customers with satisfactory credit and no balance outstanding, may be enrolled in the plan at their request. Customers may withdraw from the plan at any time upon notification to the Company.

The Company will estimate the aggregate amount of the customer's bill for gas service for a normal year's operation from June to April. Such estimated amount will then be divided by eleven, rounded up to the next $5.00 or $10.00 amount, and shall be the monthly budget instalment the customer will pay in lieu of the regular monthly billing

Bills for the month of May will be computed for settlement of the account either by the customer paying the excess of actual charges incurred over the sum of budget payments made, or by the Company crediting to the customer any credit balance then existing. This budget to actual difference will be added or subtracted, as the case may be, to the actual gas charges incurred on bills for the month of May.

Any estimate furnished by the Company in connection with such payment plan shall not be construed as a guarantee or assurance that the total actual charges will not exceed the estimates. The Company may at any time submit a revised estimate to the customer and require that the customer pay the revised monthly budget instalment as a condition to the continuation of the budget payment plan for that customer.

Such estimates shall apply only to the premises then occupied by the customer. If the customer vacates such premises, the budget payment plan with respect to those premises, and for that customer, shall immediately terminate and any amount payable by the customer shall be paid or any amount due to the customer by the Company shall immediately be refunded.

4.5 GROUP BILLINGS

Combinations of reading from several meters may be done at the Company's sole discretion.

Group billing will be permitted only in special situations at the discretion of the Company.

5. DISCONNECTION & RECONNECTION OF SERVICE

5.1 DISCONNECTION & RECONNECTION - NON PAYMENT

All bills for service are due when invoices are rendered. If any bill for gas service remains unpaid after the date of payment shown on the reminder notice, the Company shall have the right to discontinue such service upon two days notice in writing of its intentions. Such discontinuance of service may be in effect until the bill, together with any other arrears, disconnect and reconnect charges, and additional deposits, have been paid. Special provisions may apply to customers who are consistently in arrears as described in the following paragraph.

If a customer is continually in arrears and the company is forced to take steps to collect the balances due, then the company may identify that customer for special collection procedures. Any customers who are so identified may be required to have deposited with the company a deposit equal to 2.5 times their highest bill in the preceding twelve months. In addition, those customers will only receive one notice prior to the notice of disconnection.

If contract rate customers fail to pay all of the amount of any bill when such amount is due, and if failure to pay continues for thirty (30) days after payment is due, the Company in addition to any other remedy it may have under the gas sales contract, may suspend further delivery of gas until such amount is paid. If the customer in good faith disputes the amount of any such bill or part thereof and pays to the Company such amounts as it considers to be correct and at any time thereafter within twenty (20) days of a demand made by the Company shall furnish surety bond satisfactory to the Company, guaranteeing payment to the Company of the amount ultimately found due upon such bill after a final determination which may be reached either by agreement, arbitration decision or judgement of the courts, the Company will not suspend further delivery of gas because of such non-payment unless and until default be made in the conditions of the bond.

The charges for disconnection and reconnection is a flat fee charge of $78.00 plus GST.

5.2 DISCONTINUANCE FOR CAUSE OTHER THAN NON-PAYMENT

Service may be discontinued by the Company at any time to prevent fraudulent use or to protect its property.

The Company further reserves the right upon discovery of any condition of the customer's appliance or piping which is, in the opinion of the Company, immediately hazardous to life and property, to discontinue gas service until such time as the hazardous conditions shall be remedied.

5.3 DISCONTINUANCE ON CUSTOMER'S ORDER

The agreement between the customer and the Company created by the acceptance of the customer's request for gas service, where no contract for a main extension or term of service is involved, shall continue in full force and effect until terminated by the customer (except as provided under Sections 5.1 and 5.2) giving sufficient notice to a Company business office relative to the intent to discontinue service. The customer shall be liable for all gas supplied to the premises and safe custody of the Company's property until service is discontinued in accordance with the customer's instructions. When a customer requests disconnection of service within 90 days of connection, a disconnection charge of $78.00 plus GST will be applied to the final billing.

5.4 TEMPORARY DISCONTINUANCE OF SERVICE

Customers who temporarily discontinue service during any twelve consecutive months without payment of a monthly fixed charge for the months in which the gas is temporarily disconnected, shall pay for disconnection and reconnection.

5.5 DISCONNECTION & RECONNECTION CHARGES

For services connected for less than 12 months the disconnection and reconnection fee is $78.00 plus GST.

Natural Resource Gas Limited
Application for Gas Service

Natural Resource Gas Limited
PO Box 307, 39 Beech St. E.
Aylmer, Ont. N5H 2S1

Aylmer: 519-773-5321
Service Departm

_____ 20 _____

I/WE _____ (the "Customer")

apply to Natural Resource Gas Limited ("the Company") for gas service at _____

_____ (the "premises")

according to the following terms and conditions:

1. The Customer agrees to pay accounts when due.
2. Customer agrees that a meter connection will be established immediately after the installation of the service line and will be subject to the monthly fixed charge from that date.
3. Customers intending to vacate premises supplied with gas or to discontinue the use of gas shall give notice to the Company at 39 Beech Street E., Aylmer, Ontario or other such address as customer may be advised, fifteen (15) days before the Customer intends to discontinue service and in default of providing such notice, the Customer will remain liable for all gas which passes through the meter until such notice is given. In the event accounts for natural gas, rentals or other services are not paid in accordance with this agreement and collection procedures are made by the Company and/or its agent, Customers will be liable for collection costs incurred by the Company and/or its agent.
4. If the Customer discontinues service within ninety (90) days of application for gas service, there will be a charge for removal plus GST, or such charge as is currently in effect by the Company which will be added to the final billing and/or deducted from the original deposit.
5. The Company may discontinue service and disconnect and remove the meter for repair, lack of supply and/or non-payment of bills (including late penalty charges) when due. The original deposit will be refunded upon full payment of any outstanding amount.
6. Gas will be supplied to a meter installed by the Company. If that meter should fail to register the quantity of gas consumed or if access to read the meter cannot be made, the account of the Customer will be estimated by the Company.
7. Customer agrees to give immediate notice at the office of the Company of any escape of gas. In case of a leak, the stopcock at the meter must be immediately closed and no light taken near the escape until after free and full ventilation.
8. Except in the case of an emergency, the Company and/or its authorized agent shall at all reasonable hours, have access to the premises for the purposes of examining, regulating or repairing the gas apparatus installed, ascertaining the quantity of gas consumed or supplied and/or to discontinue or remove the meter. In the case of an emergency, the Company and/or its authorized agents shall have access to the premises at any hour.
9. The Company shall not be liable for any damages or losses resulting from any failure to supply. The Customer agrees with the Company that the Company will be not held liable by the Customer for any loss, damage, injury or delay to any person or to any property resulting from the transportation, storing or any use of the gas supplied to the premises including any damage or loss from explosion or fire. Further the Customer agrees to indemnify and save harmless the Company from and against all claims and demands arising out of the transportation, storing or use of the gas supplied to the Customer's premises including any loss or damage from explosion or fire made by any person and from and against all damages, losses, costs, charges and expenses which the Company may sustain or incur and be liable for as a consequence of any such claim or demand.
10. The Customer acknowledges that there will be a late charge on the past due amount (minimum $1.00) if the bill is not paid within sixteen (16) days of rendering and there will be a monthly fixed charge of
Both of the charges are subject to revision and approval by the Ontario Energy Board.
11. The Customer acknowledges that there will be a transfer/connection charge of $30.00 plus GST, or as may be ordered by the Ontario Energy Board, which will be charged on the first billing.

SIGNATURE OF APPLICANT _____

POSIT RECEIVED: $ _____ DEPOSIT RECEIVED BY: _____

PREMISES OWNED BY: _____

SEE REVERSE FOR CREDIT APPLICATION

APPLICATION FOR GAS SERVICE

'e of Application: _____ Date Service Req'd: _____ 20 _____

☐ Residential ☐ Commercial ☐ Industrial ☐ Seasonal

LAST NAME	FIRST NAME	INITIAL	DATE OF BIRTH MM/DD/YY	MAR. STAT. MARR. ☐ SING. ☐	SPOUSE NAME	NO. OF DEPEND

SERVICE ADDRESS	HOME PHONE #	LOT	CONC.	TOWNSHIP

MAILING ADDRESS	DRIVERS LIC. NO.

NAME OF LANDLORD AND ADDRESS	SOCIAL INS. NO.

EMPLOYER NAME & ADDRESS	POSITION	HOW LONG	BUSINESS PHONE #

SPOUSE'S EMPLOYER NAME & ADDRESS	POSITION	HOW LONG	BUSINESS PHONE #

PREVIOUS ADDRESS	HOW LONG

PREVIOUS EMPLOYER NAME & ADDRESS	POSITION	HOW LONG

SPOUSE'S PREVIOUS EMPLOYER NAME & ADDRESS	POSITION	HOW LONG

BANK	CREDIT CARDS	
NAME	NAME	NAME
BRANCH	BRANCH	BRANCH

NEAREST RELATIVE (NOT LIVING WITH APPLICANT)	RELATIONSHIP	ADDRESS	PHONE #
OTHER PERSONAL REFERENCE	RELATIONSHIP	ADDRESS	PHONE #

ne of the information contained in this application constitutes "personal information" and is thereby covered under Federal privac legislation. NRG obtains this information in order to bill for the products identified in this agreement, repairs and service to th equipment and for collections of arrears of amounts owing under this agreement. NRG does not share this information with thi parties with the exception of consultants, professional advisors and regulatory bodies. All of these parties are bound by their ow privacy obligations which restricts further dissemination of such information.

THE UNDERSIGNED AGREE(S) THAT A PERSONAL INVESTIGATION MAY BE CONDUCTED OR A CREDIT REPOR OBTAINED IN RESPECT OF THIS CONTRACT

SIGNATURE OF APPLICANT: _____

NOTES

NATURAL RESOURCE GAS LIMITED - RENTAL AGREEMENT

NRG, please supply the following goods to: Owner ☐ Tenant ☐ Builder ☐ Telephone Number

Address | City | Postal Code | Contract Date

Installation Address (if other than above) | City | Postal Code | Bill as Rental Only

ADDITIONS	Gas to Gas ☐	Builder ☐	Other Fuel to Gas ☐	Other ☐
REPLACEMENTS GAS TO GAS	Upgrade ☐	Leaker ☐	Limed Up ☐	Other (specify) ☐
DELETIONS	Demolitions ☐	Rental to Sale ☐	Gas to Gas ☐	Gas to Other Fuel ☐	Other ☐

Natural Resource Gas (hereinafter called NRG) leases to the Customer and the Customer rents from NRG the following:

Equipment	Water Heater Size	Description of Equipment	Monthly Rental $	TAX	Yes	No
Res. ☐ Comm. ☐ Ind. ☐				GST	☐	☐
				PST	☐	☐
Other Equipment		Description of Equipment	Monthly Rental $	GST ☐		PST ☐

Model Number (Commercial & Industrial Equipment Only) | Original Date of Installation Year 20 Month Day | Min. # Bills

ISSUE

Qty	Stock Number	Make	Mfg Code	Serial Number	Account Number

"(hereinafter called the Appliance) from the date hereof, for a monthly rental of $____ (plus applicable sales taxes), which monthly rental amount shall be subject to increase by NRG on at least thirty (30) days prior written notice and subject to the Conditions on the reverse side hereof."

Natural Resource Gas (hereinafter called NRG) leases to the Customer and the Customer rents from NRG the following:

Equipment	Water Heater Size	Description of Equipment other than Water Heater	Monthly Rental $	TAX	Yes	No
Res. ☐ Comm. ☐ Ind. ☐				GST	☐	☐
				PST	☐	☐

Removal Date - Year 20 Month Day | Original Installation Date - Year 20 Month Day | Storeroom | Original Contract #

RETURN

Qty	Stock Number	Make	Mfg Code	Serial Number	Account Number

☐ Scrapped ☐ In Inventory

ALL CONDITIONS OF RENTAL AGREEMENT ON REVERSE SIDE

Executed in duplicate this ____ day of _____ 20____

Customer Signature

Sales Department Signature

NRG not responsible for any damages resulting from tank leakage.

I hereby consent to the supply of service and installation of the equipment in the above premises, owned by me and agree to the conditions set forth herein. Any equipment of the Owner's removed by NRG in accordance with this authorization shall be left by NRG in the said premises and NRG shall have no further responsibility with respect to same.

Owner's Signature

Owner's Address

CONDITIONS OF RENTAL AGREEMENT

1. The CUSTOMER agrees to permit and keep the Appliance at the above address or at such other address as NRG may agree to in writing. The CUSTOMER agrees to protect the Appliance from any lien or encumbrance of any nature whatsoever and the CUSTOMER agrees not to sublet or assign his interest hereunder or part with possession of the Appliance without the written consent of NRG. The CUSTOMER shall supply adequately sized and properly charged water conditioning equipment, as specified by NRG. In the event the CUSTOMER fails to supply and maintain adequately sized equipment, the CUSTOMER shall reimburse NRG for all costs incurred as a result of such failure. The CUSTOMER further agrees to keep the Appliance insured for the full insurable value thereof. EXCEPT AS SPECIFICALLY PROVIDED HEREIN THE APPLIANCE SHALL BE OPERATED AT THE RISK OF THE CUSTOMER AND CUSTOMER AGREES TO INDEMNIFY AND SAVE HARMLESS NRG FROM ANY AND ALL CLAIMS AND DAMAGES HOWSOEVER CAUSED ARISING OUT OF THE USE OR THE INSTALLATION OF THE APPLIANCE.

2. Ownership of the Appliance shall at all times remain in NRG.

3. NRG shall maintain and repair the Appliance at its own expense provided that the CUSTOMER will indemnify NRG from any such costs or expenses arising as a result of damage to or destruction of the Appliance from any cause, reasonable wear and tear excepted.

4. If the CUSTOMER discontinues using gas supplied by NRG or fails to perform or observe any of the conditions herein, NRG may forthwith terminate this agreement and without any previous notice or demand or process of law enter the premises wherein the Appliance is situated to repossess the same. If the Appliance is removed by NRG as aforesaid, NRG shall not be liable for any damages resulting from such removal. If the CUSTOMER defaults within twelve months from the installation date, then in addition to any other rights NRG may have, the rental for the remaining months shall, at NRG's option, be due and payable immediately.

5. It is agreed by the CUSTOMER and NRG that the Appliance shall remain personalty.

6. Time is of the essence.

7. The terms of this Agreement constitute the entire Agreement between the parties and, except the monthly rental amount which is subject to increase by NRG, no modification to this Agreement shall be made except in writing signed by both parties.

8. Some of the information contained in this application constitutes "personal information" and is thereby covered under Federal privacy legislation. NRG obtains this information in order to bill for the rental of the products identified in this agreement, repairs and service to the equipment and for collections of arrears of amounts owing under this agreement. NRG does not share this information with third parties with the exception of consultants, professional advisors and regulatory bodies. All of these parties are bound by their own privacy obligations which restricts further dissemination of such information.

Natural Resource Gas Limited

P.O. Box 307, 39 Beech Street East
Aylmer, ON N5H 2S1

Phone: 519-773-5321

SERVICE POLICY

Regular Hours Calls

See section 2.4 for rates to be charged.

All service calls to be done on a time and material basis except for the following:

1. New equipment sold by NRG, no charge for the first year except for parts that are not guaranteed for one year.
2. No charge for service of any kind on any call due to failure of Company equipment.
3. After hours calls (see section 2.4 for rates).
4. All charges to be collected at time of call, unless otherwise authorized.

MISCELLANEOUS CHARGES

1. **Returned Cheques**

Account Closed Cannot Trace Funds Not Cleared More Than One Signature Required No Chequing Privileges Not Sufficient Funds Present Again Refer to Drawer Signature Required Signature Irregular Body & Figures Differ	$ 20.00 for each plus GST

2. **Lawyer's Letters**

Reply to request for account information	$ 20.00 plus GST

NATURAL RESOURCE GAS LIMITED

SCHEDULE OF SERVICE CHARGES

	Fiscal 2004	Fiscal 2005	Fiscal 2006	Fiscal 2007
Rental Water Heaters (monthly rental rates)				
30 gallon	$ 6.50-6.70	$ 6.85-7.00	$ 6.85-7.00	$ 7.05-8.55
40 gallon	$ 6.70-7.60	$ 7.25-9.70	$ 7.25-9.70	$ 7.50-10.00
40 gallon PV	$12.10-13.60	$12.80-15.50	$12.80-15.50	$13,20-15.95
50 gallon	$ 7.80-8.55	$8.40-12.00	$8.40-12.00	$8.65-12.35
50 gallon PV	$13.10-14.60	$13.90-17.00	$13.90-17.00	$14.30-17.50
60 gallon	$ 8.95-$9.70	$ 9.50-12.25	$ 9.50-12.25	$ 9.80-12.60
60 gallon PV	$14.40-15.60	$15.30-22.00	$15.30-22.00	$15.75-22.00
Connect/Transfer Charge	$30.00	$30.00	$30.00	$30.00
Reply to Lawyer's Letter	$20.00	$20.00	$20.00	$20.00
Disconnection Charge	$56.25	$56.25	$78.00	$78.00
NSF Charge	$20.00	$20.00	$20.00	$20.00
Contract Work	ON A QUOTED BASIS			
Merchandise	PARTS MARKED UP 30 – 50%			
Customer Service Work – Regular Hours				
Minimum Charge	$30.00			
11 to 20 minutes	$35.25			
21 to 30 minutes	$40.50			
up to 30 minutes	$42.00	$42.00	$46.20	$48.50
31 to 40 minutes	$45.75			
41 to 50 minutes	$51.00			
51 to 60 minutes	$56.25			
up to 60 minutes	$58.00	$58.00	$63.80	$67.00
Each additional 10 minutes	$ 5.25			
Each half hour or part thereof	$26.00	$26.00	$28.60	$30.00
Customer Service Work – After Hours				
Minimum Charge	$40.00			
11 to 20 minutes	$47.25			
21 to 30 minutes	$54.50			
up to 30 minutes	$74.50	$74.50	$81.95	$86.05
31 to 40 minutes	$61.75			
41 to 50 minutes	$69.00			
51 to 60 minutes	$76.25			
up to 60 minutes	$96.00	$96.00	$105.60	$110.90
Each additional 10 minutes	$ 7.25			
Each half hour or part thereof	$48.00	$48.00	$52.80	$58.10

March, 2006

NOTICE TO AYLMER

The Aylmer Preferred Agreement includes a proposed condition that NRG give notice to the Town of any proceeding before the Board that NRG is a party to, particularly, but not limited to, any application to the Board made by NRG. From NRG's perspective, it is unnecessary or appropriate to include such a requirement as a condition of a franchise agreement.

Board's Existing Notice Procedures

The Board's long-established practices and procedures for managing regulatory proceedings ensure that adequate notice of all proceedings is provided to the public and particularly to stakeholders who would reasonably be expected to have a particular interest in a given proceeding. As the Board is aware, upon receipt of an application or upon commencing a proceeding on its own initiative, prior to holding a public hearing, the Board publishes a Notice of Application or a Notice of Public Hearing that describes the subject matter of the proceeding and the steps that interested persons can take in order to participate. Such notices are typically published in those newspapers within Ontario that have the highest levels of readership or circulation for the community or communities most likely to have an interest in the particular proceeding. The basis for this process is enshrined in the Board's Rules of Practice and Procedure (Rule 21), which gives the Board the authority to direct a party to give notice to any person or class of person and to then file an affidavit or statement of service indicating how, when and to whom notice was provided. Through this process, it can be expected that the Town has and will continue to receive adequate notice of all proceedings before the Board that the Town might reasonably have an interest in.

Moreover, if the Town is not satisfied with the Board's long-established processes for ensuring notice of proceedings and hearings, the Town can take a more active role in monitoring the goings on at the Board through the Board's website. In this regard, the "Subscribe to What's New" feature of the website allows for a quick, easy and no-cost means for the Town to be notified of formal notices issued by the Board.

Town's Non-Participation in NRG Proceedings

The Town has never sought to participate in an NRG rate proceeding, and has only recently participated in NRG's other proceedings (e.g., related to the Ethanol plant, and Union's application to discontinue service). Now that the Town has formally begun to participate in NRG proceedings, it will likely receive automatic notice of any applications to the Board by NRG (since the Board's normal practice appears to notify past intervenors of any new applications for a particular utility).

Pages 170 to 223
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EB-2008-0413

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

AND IN THE MATTER OF the application by Natural Resource Gas Limited ("NRG") for a Franchise Agreement Renewal with the Town of Aylmer.

TOWN OF AYLMER

PRE-FILED EVIDENCE OF MARGARET HEATHER ADAMS

1. I am the Chief Administrative Officer of The Corporation of the Town of Aylmer (the "Town") and as such have knowledge of the matters herein.

The Municipal Areas Served by NRG and the Franchise Agreements in Place

2. The Town is one of six municipalities that are served by the natural gas distribution system operated by the Applicant, Natural Resource Gas Limited ("NRG").

3. In that regard, the Town is party to a Franchise Agreement dated February 27, 1984 with NRG regarding the supply of natural gas to customers within its area, a copy of which is found at Tab "C-2" of NRG's Exhibit Binder. In addition, I understand that the NRG service area includes all or parts of the areas served by the Corporations of the Townships of Malahide, and South-West Oxford, and of the Municipalities of Bayham, Central Elgin and Thames Centre. NRG has one or more Franchise Agreements with each of these municipalities, each of which have different renewal dates. To the best of the Town's knowledge, information and belief, the relevant renewal dates are as follows:

a. The Township of Malahide: 2012 and 2014
b. Corporation of the Municipality of Thames Centre: 2012

c. The Municipality of Bayham: 2012 and 2015

d. Corporation of the Township of South-West Oxford: 2013

e. Corporation of the Municipality of Central Elgin: 2016

4. Attached as **Tab "A"** is a recent NRG System Map which has been provided by NRG to the Town.

5. I understand that the NRG service area is entirely surrounded by franchise areas served by the Intervenor, Union Gas Limited ("Union"), and that NRG is dependent upon Union to supply gas to its service area.

Summary of the Town's Position and Concerns

6. In recent proceedings before the Board, circumstances have arisen which have shaken the confidence of the Town and its constituents in NRG as the incumbent supplier of natural gas to customers within the municipal area of the Town. These concerns relate both to the financial viability of NRG, and to the quality and reliability of its service to customers. The Town has detailed these concerns in its interventions in EB-2006-0243 (Compliance Order dated June 29, 2007, and Order dated March 12, 2008) and EB-2008-0273 (Decision and Order dated November 27, 2008), and in the Town's Submissions in response to the Board's consultation regarding revisions to its Gas Distribution Access Rule (EB-2008-0313).

7. It should be emphasized that these concerns do not originate with the Town of Aylmer or its own corporate interests. Rather, they are concerns raised by NRG's own customers, both individual and industrial/commercial, who have requested that the Town bring them to the attention of the Board forcefully and urgently at this time.

8. The most pertinent of the Town's concerns arising from these recent developments are documented in a comprehensive Report from me to Council, dated October 8, 2008. A copy of

that Report is attached at **Tab "B"**, and a copy of the Resolution of Council dated October 14, 2008 adopting the recommendations set out in that Report is attached at **Tab "C"**.

9. The Town's position and proposal specifically with respect to renewal of its Franchise Agreement, was developed based on these concerns, and approved by Council on December 15, 2008 and presented to NRG the next day. A copy of my Report to Council dated December 11, 2008, with attached proposed Draft Franchise Agreement, are found at the back of Tab D-1 of NRG's pre-filed evidence, together with the cover letter enclosing them to NRG dated December 16, 2008, which sets out the Resolution of Council approving this position. That Report, as adopted by Council, set out the following key goals to address these concerns, as follows:

- Ensure the continued supply of cost-effective natural gas to Aylmer
- Ensure that the customer service and security deposit concerns expressed by the residents of Aylmer are dealt with effectively and efficiently
- Respect the role of the Ontario Energy Board as the regulator of monopoly natural gas distributors in Ontario
- Ensure that the economic development opportunities for the community are enhanced by having a supportive natural gas distributor who supplies a cost-effective alternative source of energy
- Repair the negative image of Aylmer in the context of our natural gas distributor
- Restore confidence in and respect for the natural gas distributor by their consumers, other residents and the Town as they put in place a permanent acceptable customer relations policy

10. The Town is generally supported by other municipalities with respect to these goals, and the position it has outlined with regard to NRG as set out in that Report. The Town received specific letters of support from the Municipality of Thames Centre and from the Township of Malahide for these positions, when they were advanced in the Town's recent intervention before the Board in EB-2008-0273. Copies of these letters are attached at **Tab "D"**.

11. Further, and specific to the Town's position in this proceeding, the Town has received

further letters and resolutions of support from the Township of Malahide, the Municipality of Bayham and the Township of South West Oxford, copies of which are also included at **Tab "D"**.

12. In summary, the following issues addressed in that Report are pertinent to this proceeding

(a) Widespread customer complaints about NRG's quality of service;

(b) Widespread customer concerns about NRG's security deposit practices;

(c) NRG's rates generally exceed those charged by Union in surrounding areas;

(d) NRG's recent poor record of support for new industrial development; and

(e) NRG's lack of responsiveness to these concerns.

The Term of the Franchise Agreement Renewal

13. In order to address these concerns in a manner consistent with the goals it has set out, the Town has proposed to renew its Franchise Agreement with NRG, initially, for a term of three years. This term has been chosen for several reasons, principally:

(a) to allow NRG an opportunity in this time frame to regain the confidence of its customers within the Town as their incumbent gas supplier; and

(b) to permit the next renewal to come up in 2012, at a time to coincide with the pending renewals of NRG's Franchise Agreements with the Township of Malahide, the Municipality of Thames Centre, and the Municipality of Bayham.

14. The Town believes that, in order to allow all affected municipalities to consider the full range of alternatives with respect to the future supply of gas in these areas, including the option of renewal with NRG for a longer term, it is important to make provision for the various Franchise Agreements in NRG's service area to have the same renewal terms. This change will

also enable all of the municipalities to exercise greater collective influence upon NRG, particularly with respect to the quality and reliability of its service to customers.

15. The Town neither intends, nor accepts the concern raised by NRG, in suggesting that this renewal may affect its ability to refinance its long term debts in the interim. I note, first, that NRG itself has been arranging financing on a relatively short term (5-year on-demand) basis and not on anything like a 20-year term. NRG has been able to conclude such arrangements even at times when NRG's Franchise Agreements with the Town and other municipalities have had shorter terms than 5-years remaining prior to renewal. That situation appears to have had no impact on NRG's ability to refinance its debt, or to finance new construction, in 2006 and 2008.

16. The Town believes that the fact that NRG's debt would be fully secured against assets regulated by the Board pursuant to its statutory mandate to regulate in the public interest has been, is, and would remain the strongest assurance of repayment to any existing or new lender to NRG. That mandate includes ensuring continuity of gas supply to customers, as well as the financial viability and quality of service of gas distributors such as NRG.

Requiring NRG to Apply to the Board for a Comprehensive Rate Hearing

17. The second aspect of the Town's proposal in paragraph 1 of Schedule "A" to its proposed Draft Franchise Agreement is that NRG immediately apply to the Board for a comprehensive rate hearing.

18. This arises in part from the concerns that have been raised that NRG's current rates for gas service remain generally higher than those charged by Union in surrounding areas.

19. In addition, however, it is driven by the fact that NRG's rates currently include a significant "return on equity" payable to NRG's shareholders on some $13,461,418 of

"retractable" Class C shares. As noted in NRG's most recent 2007 and 2008 Financial Statements, and as recently found by the Board in its Decision and Order in EB-2008-0273, these shares should be shown as a liability (debt) rather than as equity, because they are redeemable and retractable at the option of the shareholders at any time. A copy of NRG's audited 2008 Financial Statement is attached at **Tab "E"**, and a copy of the Board's Decision and Order dated November 27, 2008 in EB-2008-0273 is attached at **Tab "F"**.

20. The Town believes that no return on equity should be included in rates in respect of these shares, and that the Board should have the earliest possible opportunity to address that issue.

21. The Town's concern also arises in part from the general concerns about NRG's financial viability, as highlighted by the continued qualification in its 2008 financial statements, and by Union's recent application in EB-2008-0273 as reflected in the Board's decision.

22. Although NRG is correct that the Town did not formally intervene in the previous rate case in EB-2005-0544, which was decided in 2006, in fact the Mayor and several members of the public did attend the hearing in that case, which was held in Aylmer. In any event, as noted, the Town's concerns about NRG's financial viability and customer service have generally arisen since 2005. The Town's request for an immediate rate hearing in the proposed Draft Franchise Agreement reflects the new circumstances as they have arisen and as they exist, today, and is not based on any historical review.

Customer Service and NRG's Support for New Industrial Development

23. Next, the Town's proposal, in paras. 2(a) and 3(b) and (c) of Schedule "A" to its proposed Draft Franchise Agreement, would require that NRG immediately commit to implement the proposed amendments to the Gas Distribution Access Rule (EB-2008-0313)

regarding customer service measures by December 15, 2009, and also by May 15, 2009 adopt a written complaint process and a new policy regarding new and relocating retail, commercial and industrial customers. These measures aim at effecting improvements to NRG's service quality and reliability, generally, but especially to address its current poor record of support for new industrial development within the Town.

24. The most recent and alarming example of this poor support and lack of effective and responsive communication, involves the development of an ethanol plant within the Town by Integrated Grain Processors Co-Operative Inc. and IGPC Ethanol Inc. ("IGPC"), and the related application for leave to construct a new pipeline to service that facility heard by the Board under EB-2005-0544 and/or EB-2006-0243. During that project, the Town and IGPC were faced with an inexplicable refusal by NRG to execute Board-approved contract documents, even following the Board's decision and Compliance Order dated June 29, 2007. Later, in February 2008, NRG again inexplicably sought additional payments with resulting delays in the project, which were addressed by the Board's Order, made on consent of the parties on February 28, 2008, and subsequent written Decision dated March 12, 2008. The challenges encountered by the ethanol plant project, as well as significant dissatisfaction expressed by Aylmer and area customers of NRG as outlined below, have been the subject of recent media coverage which has, in the Town's view, created a very negative atmosphere in which it seeks to attract much needed new industrial, commercial and residential development to its area.

25. More generally, the Town has become aware of widespread customer complaints by residents and business owners within its area about the quality of NRG's natural gas service generally. A further customer concern relates to the difficulties customers have experienced in contacting NRG with their complaints. As a result, the Town has received numerous complaints from NRG customers, public 'letters to the Editor' have appeared in the local newspaper. Copies

of some of these letters are attached at **Tab "G"**. Customer concerns are similarly outlined in a letter from some customers to the Board (which is also attached at Tab G). Further, a petition was presented to Town Council at its July 21, 2008 meeting, signed by 457 people along with an online petition with 65 entries. Copies of both the online and paper petition are attached at **Tab "H"**. The petition makes the following request:

> *"We are asking that NRG carefully review their deposit policy requirements. We ask that they take into account letters of reference from other utility companies as well as past credit history with them. We also ask that they have a clear policy for refunding deposits. We ask that deposits be FULLY refunded automatically one year to the date that the deposit was made if an account is in good standing. Also the deposit should be refunded in the form of a cheque or cash and NOT in the form of credit to the account."*

26. When considered together, these factors have caused the Town to be extremely concerned about NRG's commitment to provide high quality, uninterrupted supply of natural gas to customers within the Town's area, on reasonable terms and at reasonable rates. The proposals by the Town simply require NRG to adopt a proactive approach to these issues, based upon written commitments. The Town hopes NRG could apply these consistently in the three-year renewal period. This is essential, in order to restore customer confidence in NRG's service quality, communications, and responsiveness.

27. It is ironic that it is only in response to the Town's expressed concerns between July and December, 2008 that NRG has produced, in response, the copy of its existing Gas Service Rules and Regulations attached at Tab D-9 of its pre-filed evidence. If it had any meaning to NRG, this document should have been publicly available and displayed to customers all along. Instead, a review of its terms in relation to the customer complaints documented in Tabs "B", "G" and "H" only reinforces the concern, and suggests that it is not being consistently applied or complied with by NRG on an ongoing basis.

28. The Town's proposal seeks to have the requirement for these, and perhaps other Rules and Regulations, incorporated into its Franchise Agreement with NRG. The Town proposed some such additional Rules and Regulations in adopting my October 8 Report, at page 4. NRG has never responded to these suggestions, even in its materials filed in support of this Application.

29. With respect to the Town's request that NRG adopt its own written complaint policy, the issue is raised squarely by customers concerns as expressed to the Town. NRG's response on this issue is a clear acknowledgment that it currently has no formal process to document receipt of a complaint, or the steps it has taken in response. Customers' complaints of telephone calls not returned at all, or only after an extended time, cannot be refuted or ignored. NRG does not provide a formal process to file a written complaint, nor does it track the responses to any complaints received in writing, even informally. As a result, the Town has become the default mechanism for receiving a complaint, but has no means to follow up. However, an external complaint process, whether it be through the Town or the Board, cannot substitute for an effective internal process at NRG.

30. Including these provisions in the Franchise Agreement would serve both as a point of reference for the Town to assess the customer complaints which are referred to it, and as a means to monitor and enforce compliance by NRG during the coming term of its relationship with the Town. This may enable the Town to suggest other, better Rules and Regulations where it appears these are not working effectively. It would reinforce, without in any way pre-empting, the Board's own continued efforts to improve such Rules and Regulations for the gas distribution industry as a whole. However, given the current chronic problems at NRG, some special Rules and Regulations may be required beyond those applicable to the broader industry. It is imperative to our community's continued development that we have a positive and responsive

relationship with our monopoly supplier of natural gas.

Unsecured and rising customer security deposits

31. A further, major concern addressed by paras. 3(a) and 4 of Schedule "A" to the Town's proposed Draft Franchise Agreement, would require that NRG immediately address concerns about its practice of requiring large security deposits from customers, seemingly without regard to their creditworthiness and prior payment history, and of delays and difficulties in customers securing the release of such deposits

32. From Aylmer's perspective and that of its customers, there was significant evidence from NRG's financial statements as filed in the recent Union Application (EB-2008-0273) indicating that customer security deposits in the hands of NRG have risen dramatically recently, from approximately $105,000 in 2005, to $280,000 in 2006, again to $603,000 in 2007. In NRG's audited 2008 Financial Statement attached at Tab "E" it appears these deposits have risen yet again to $757,065 in 2008. This represents an astounding 650% increase over 3 years. It cannot represent "business as usual", or be defended as such. It coincides with a massive increase in customer complaints to the Town about NRG's security deposit practices. Yet NRG offers no substantive explanation of, or response to this issue.

33. These deposits are not held in secure, segregated trust accounts, but rather are used as working capital in NRG's day-to-day business. Various versions of NRG's security deposit policy are attached at **Tab "I"**. Those policies and other circumstances also raise a concern that NRG is demanding larger amounts by way of security deposits, from a wider range of customers, and holding them longer, than would be permitted by the Board's proposals in its consultation regarding revisions to the security deposit provisions of its Gas Distribution Access Rule (EB-2008-0313)

34. This is of concern, because the Board's Decision and Order dated November 27, 2008 in EB-2008-0273 (attached at Tab "F") specifically found, among other things, that Union was justified in its concerns that NRG's creditworthiness had become unsatisfactory, and that a significant increase in the financial risk associated with NRG had been disclosed. The concern is again compounded, because NRG's retractable Class C shares otherwise permit its shareholder to claim priority, after the Bank and Union but ahead of NRG's customers, to the monies it holds as "security deposits" from them. This concern is also highlighted by the express qualifications placed upon NRG's audited financial statements for 2007 and 2008.

35. The Town is concerned that, after repayment of the Bank and Union, there may simply be no assets within NRG with which to repay these customer deposits.

36. When considered together, these factors have caused the Town to be extremely concerned about NRG's financial position, and the security of the significant amounts in customer deposits that NRG is currently holding. In the circumstances that NRG is currently in, the Town is requesting that NRG maintain these deposits in segregated trust accounts. The Town has recommended this be adopted as policy for the entire industry in its submission responding to the Board's consultation. However, even if that is not accepted on an industry-wide basis, the Town submits it is appropriate for NRG at this time, and that the current franchise renewal hearing presents an opportunity to implement this measure.

Development of the Town's Proposal for new Franchise Agreement

37. The Town's Franchise Agreement with NRG is due for consideration and possible renewal on February 27, 2009, and those of other surrounding municipalities are due to follow on various dates between 2012 and 2016. In those circumstances, the Town began to examine its options for renewal and revisions to that agreement in the summer of 2008.

38. Contrary to the suggestions on page 1 of Tab D-1 of NRG's pre-filed evidence, the Town did not "refuse to disclose its position" when the issue was first raised in June, 2008: it specifically advised NRG that the Town was not prepared to discuss renewal until the IGPC ethanol plant was supplied with gas. Nor was the Town slow in responding to NRG. I was first contacted on June 6, got direction from the next Council meeting on June 16, and called Mr. Bristow with a response on June 17. I then received a letter of June 20, obtained direction at the next Council meeting on July 7, and provided a response by July 8.

39. As noted, during this exchange in July, Council was presented with the unprecedented petition by NRG customers referred to in Tab "B".

40. Indeed, this history shows the priority and importance given to this issue both by myself and Council. After the ethanol plant was supplied in July, the delay in meeting with NRG was solely due to the vacation schedules of both parties.

41. On September 11, 2008, the Mayor and I met with NRG's Mark Bristoll and Tony Graat. Again contrary to page 2 of Tab D-1 of NRG's pre-filed evidence, at this meeting, there were extensive discussions about NRG, including a detailed outline from me to NRG about the Town's concerns with the deposit issue, customer service concerns, complaints received from residents, police involvement by residents with respect to deposits, and our concerns relating to the Union Gas application. A copy of an email sent by me to the Town Mayor, Bob Habkirk, and the Town's counsel, reporting on this meeting, is attached at **Tab "J"**.

42. Following the September 11, 2008 meeting, there were continued discussions with NRG which are not referred to in the NRG outline. On September 17, 2008, I sent a detailed email to Mr. Bristoll, outlining issues that the Town's natural gas retailer, Comsatec, had in respect of NRG (attached at **Tab "K"**). There were also follow-up phone calls with Mr. Bristoll on or

about September 25 and October 14, 2008. After the Town's Report and resolution at Tabs "B" and "C" were provided to NRG, there were further phone discussions about all of these issues on or about October 29, 30, and November 11, 2008 with Mr. Jack Howley of NRG, pertaining to service issues and the security deposit issue. I met with Mr. Howley for further discussions on or about October 31, 2008. It was made clear by me throughout these discussions that these issues would have to be addressed in the context of any agreement for renewal of the Town's Franchise Agreement with NRG. The Town's position was also made clear to NRG in October in the context of the Town's intervention in Union Gas's Application EB-2008-0273.

43. These discussions throughout October, November and December, 2008 culminated on December 11, 2008, when I presented a second Report to Town Council, along with the Town's proposed Draft Franchise Agreement. On December 15, 2008, Town Council met and passed a resolution adopting the recommendation set out in my December 11, 2008 memo, and approving the Draft Franchise Agreement, based on renewal for a period of three years and the specific commitments outlined in Schedule "A" to our Draft Franchise Agreement.

44. A copy of my December 11, 2008 memo (with the draft franchise agreement attached) and the minutes of the December 15, 2008 Town Council meeting are attached at **Tab "L"**.

45. The Town believes that the conditions it has proposed are consistent with the Board's public interest mandate, and involve no material difficulty for NRG.

Date: February 10, 2009

Stockwoods, LLP
M. Philip Tunley LSUC#: 26402J
Tel: (416) 593-3495
Fax: (416) 593-3945

Counsel for The Corporation of the Town of Aylmer

NATURAL RESOURCE GAS LIMITED

APPLICATION FOR FRANCHISE AGREEMENT RENEWAL
WITH THE TOWN OF AYLMER

RESPONSES TO INTERROGATORIES FROM BOARD STAFF ("**Board**")

BOARD INTERROGATORY **#1**

Ref: Exh **C/Tab 2/Existing** Franchise Agreement – (expiry date February 27,2009)

Questions:

(i) Has the Town of Aylmer, or any other person or corporation, ever alleged to NRG that NRG has breached the terms of the existing Franchise Agreement? If so, please describe the nature of the dispute and provide all documentation regarding the allegations, from February 27,1984 to present time.

RESPONSE:

(i) To the best of NRG's knowledge, no person (including the Town) has alleged that NRG has breached the terms of the existing Franchise Agreement.

BOARD INTERROGATORY #2

Ref: Exh **D/Tab 4/pp.** 1-3 (Appropriate Terms of New Franchise Agreement)

Preamble:

In the noted Ref., NRG cited the impact of a shorter length of a franchise term and submitted that it would require NRG to refinance one of the two financing arrangements on or before early 2011. NRG went on to indicate that a shorter franchise term would not be viewed favourably by potential lenders. NRG also submitted that in addition, any major new facility requiring stand alone financing, as was the case with the IGPC ethanol plant, would also be compromised.

Questions:

(i) What would be **NRG's** plans in regard to the first financing arrangement of the $6.5 million Credit Facility, 5 year term, due March, 2011, assuming the franchise agreement to be a 20 year term?

(ii) What would be **NRG's** plans in regard to the first financing arrangement of the $6.5 million Credit Facility, 5 year term, due March, 2011, assuming the franchise agreement to be a 3 year term?

(iii) Did NRG make any effort to quantify the implications a three year renewal term would have on their efforts to refinance the second financing arrangement **i.e.,** the $5.2 million Ethanol Credit Facility, 5-year term, due October **2013?** If so, please provide all details.

(iv) If the answer to (iii) above is no, will NRG make inquiries to quantify the implications of the required refinancing to take place early in 2011 of the $5.2 million Ethanol Credit Facility, 5-year **term,** due October 2013.

RESPONSE:

(i) NRG would attempt to refinance the credit facility on the best available terms.

(ii) NRG would still attempt to refinance the credit facility on the best available terms. However, NRG is confident that its current lenders (and other potential lenders) would refuse to provide financing, and would call the loan. Without financing, NRG could no longer operate and its shareholder, employees and other stakeholders would incur a complete loss. The existing credit facility is a demand loan, and NRG does not need to be in default in order for the bank to call the loan.

That the bank will be concerned about the term of franchise renewal is demonstrated by the fact that, when the current financing was arranged, the bank sought a "comfort letter" from NRG's regulatory counsel regarding the regulatory process pertaining to franchise

agreements and certificates of public convenience and necessity. That letter is attached as **Appendix A.**

(iii) See answer to (ii) immediately above. At the time of the financing, we did not believe that we would be faced with the Town taking the position that they were prepared to only grant a short-term franchise renewal. Despite repeated requests by NRG to meet with the Town during the process of negotiations with IGPC, the Town refused to meet. Effectively, the Town misled NRG until the credit facility was agreed to. It is our business judgment that in the current credit market, the current demand facility would be called, and it would have to be re-financed with a three year amortization schedule.

(iv) No. We believe it would be premature and destructive to the utility, its employees and stakeholders to approach the bank and discuss the potential of a very short franchise renewal term.

BOARD INTERROGATORY #3

Ref: Exh **D/Tab 8/p 1/lines** 31-33

Preamble:

(a) NRG in the noted Ref. quoted a portion of the Board's process for receiving and responding to complaints about utilities, and stated that:
***"This public process is easily accessible by consumers, and offers an impartial arbiter for any disputes. NRG supports the Board's complaint process, and thinks a company-specific process would not provide any value to customers."*;**

(b) The portion quoted by NRG of the Board's process did not cover the necessary steps that precede having a customer contact the Board. For convenience pertinent excerpts of the Board's process is shown as Attachment 1 to this Board staff **interrogatories,** and specifically the steps described under the heading:

"If you have a concern with a utility, retailer or marketer:

- The first step is to try to resolve your issue directly with the company involved"

Questions:

(i) Please provide a description of the process that NRG follows when a customer follows the Board prescribed step of calling **NRG's** offices to deal with the problem first.

(ii) Does NRG have on its web site, bill, or on the phone book contact information for customers to call when they have an issue or complaint to discuss with NRG?

RESPONSE:

(i) NRG does not have a written procedure; however, this is the process followed by NRG staff: First, the customer would be put in contact with the NRG staff member best suited to answer the question or resolve the issue. In the event that NRG's General Manager is required, he would be involved in the resolution of the dispute. Information would be gathered from the complainant, from NRG's files and/or the Customer Information System computer, as required. Depending upon the nature of the problem, the time to gather this information will vary. If the problem cannot be solved immediately, NRG advises the client that it will be resolved in ten days or less. The customer is contacted by NRG with details of the resolution within ten days.

(ii) Contact information is provided on the top and bottom of each bill (see sample at Appendix B), and in the yellow and white pages of the telephone book (see Appendix C).

BOARD INTERROGATORY #4

Ref: Gas Distribution Access Rule ("GDAR"), Amended December 11,2007 / Section 7.3.1 and Section **7.3.6**

Preamble:

Section 7.3.1 of GDAR as it applies to NRG deals with Telephone Answering Performance and Section **7.3.6** as it applies to NRG deals with Customer Complaint Written Response.

Questions:

Section 2.3.1 of the GDAR requires a utility to maintain records documenting compliance with all aspects of the GDAR. Please provide the most recent documentation regarding **NRG's** performance with relation to sections 7.3.1 and **7.3.2.**

RESPONSE:

With respect to compliance with 7.3.1 (Call Answering Performance), the telephone system required to comply with the letter of section 7.3.1 would be uneconomic for a small utility of NRG's size. In other circumstances where this is the case, NRG complies with the principles in GDAR. For instance, calls to NRG during business hours are answered by a person as opposed to a message system. With respect to section 7.3.2 (Billing Performance) of GDAR, NRG performs a complete audit for every billing.

NATURAL RESOURCE GAS LIMITED

APPLICATION FOR FRANCHISE AGREEMENT RENEWAL

WITH THE TOWN OF AYLMER

RESPONSES TO INTERROGATORIES FROM TOWN OF AYLMER ("Aylmer")

AYLMER INTERROGATORY #1

Ref: Exh B, Tab 1, Pg. 1, Para. 3 (lines 12-18)

Questions:

(i) Please provide copy of the Report of the Board on the Review of Franchise Agreements and Certificates of Public Convenience and Necessity, E.B.O. 125 (May **21, 1986),** ss. 3.5 and 3.6.

(ii) Please indicate which portions of the this Report substantiate the evidence referenced above and how they do so.

RESPONSE:

(i) Sections *3.5* and *3.6* of the Report of the Board on the Review of Franchise Agreements and Certificates of Public Convenience and Necessity state the following:

> *"3.5* An application is made under section 9 of the *Municipal Franchises Act* for a first-time agreement, or on a renewal where the parties have reached agreement on the terms of the renewal. On a section 9 application the OEB has only the power to approve or reject the application. On a section 9 application the OEB may dispense with the assent of the electors.
>
> *3.6* Section 10 of the Act is used when the parties cannot agree on the terms of a renewal or extension. Again the OEB holds a hearing before it makes an order renewing or extending the right; the duration and terms and conditions are as prescribed by the Board. The OEB may refuse to renew or extend the right if the public convenience and necessity do not warrant the renewal or extension. This Ontario Energy Board order is deemed to be a valid by-law of the municipality consented to by its electors."

(ii) NRG's evidence referenced above is an accurate paraphrasing of sections *3.5* and *3.6.*

AYLMER INTERROGATORY #2

Ref: Exh C, Tab 1, Pg. 1, para. 2, lines 13 - 17

Preamble:

In respect of proof of the claims made at lines 13-17, the Town has only ever received one map of pipelines detailing their size, date of construction and valves. The Town has no further evidence of the steps NRG claims to have taken in respect of investment, modernization and expansion, nor in respect of the various measures and programs it claims to have implemented.

Questions:

(i) Please provide details as to the replacement and modernization of "virtually all of the original assets".

(ii) Please provide documentation confirming all those steps and measures detailed in lines 13-17.

RESPONSE:

The following responds to Questions (i) and (ii):

At each of it's past rate cases, NRG has filed: (a) its capital plans; and (b) its current and forecast number of customers. As a result, the Board is well aware of the fact that NRG's asset base is quite new (particularly in comparison to Union's and Enbridge's). For example, in 1991, NRG's gross fixed assets were $5.42 million and it served 2,348 customers, but by 2005 NRG's gross assets had nearly tripled to $15.1 million and its customer base had grown to nearly 6,200 customers (see RP-2005-0544).

The Town of Aylmer would be aware of the extent to which NRG has replaced, expanded and modernized its assets if the Town had intervened in any NRG rate case. NRG has served the Town with Notice of every rate application it has made (in accordance with the Letters of Direction issued by the Board). However, despite receiving notices of each rate proceeding, the Town has never chosen to intervene. In addition to this, the Town will know of NRG's expansions in Aylmer because: (a) NRG gets municipal approval for its works in Aylmer; and (b) NRG's property taxes are based on size and length of pipeline.

A summary of NRG's rapid recent growth and massive asset expansion was explained at length in RP-2002-0147 (NRG rates for fiscal 2003 and 2004) by NRG's former general manager, Mr. Bill Blake (see Appendix D). More recently, the subject arose at the Public Forum in Aylmer on July 18, 2006 (part of NRG's last rate case), and was explained to the Board. In its decision, the Board acknowledged that "NRG also has newer plant ..." as one of the reasons why NRG's capital costs were relatively higher than other utilities.

AYLMER INTERROGATORY #3

Ref: Exh D, Tab 4, Pg. 1, para. 5

Preamble:

While the Town may be the "main urban centre in NRG's franchise area", the Town only holds one of eight of NRG's municipal franchises.

Questions:

(i) Please explain how a short term renewal period would have an effect an NRG's current financing arrangements. Please provide evidence of any such effect.

(ii) Does NRG have any written material from a chartered bank or credit union that indicates that the length of one of its franchise agreements is significant in determining their creditworthiness?

(iii) Please provide evidence from prospective lenders that support's NRG's contention that a short renewal period would have a significant effect on its ability to **refinance/obtain** financing.

RESPONSE:

See response to Board Staff Interrogatory #2.

AYLMER INTERROGATORY #4

Ref: Exh D, Tab 1, Pg. 1

Preamble:

NRG's last rate hearing was in 2006. In the Town's view, a rate hearing is overdue for NRG. Further, the Board's ruling on Union Gas's application indicates that NRG's Class **"C"** retractable shares are not equity, but debt. This suggests that NRG's rates currently include an unwarranted "return on equity" on $13 million from customers.

Questions:

(i) Please provide details as to how long it would take NRG to prepare the necessary materials for a rate hearing.

(ii) Please outline whether (and if so, how) NRG's cost of providing gas continues to be higher than Union's costs.

(iii) Please explain whether it is NRG's view that its Class **"C"** retractable shares should still be considered equity and not debt, and if so, why.

RESPONSE:

(i) For a small utility such as NRG, a cost-of-service rate filing is a major endeavour and requires a substantial portion of NRG staff time (separate and apart from external counsel and consultants). Consequently, the length of time will depend in part on NRG's other priorities and the availability of NRG's rates consultant (who is currently occupied with other Board proceedings). Since its last rates case, NRG has re-financed, overseen the connection of the ethanol facility (which tripled NRG's throughput), and dealt with an application by Union Gas Limited to discontinue service to NRG. At present, NRG is involved in two generic proceedings before the Board (related to long-term contracting and commodity pricing), and this contested franchise application. Further, the outcome of this proceeding could impact NRG's next rate application – a short-term renewal could impact the depreciation schedule for NRG's capital assets.

(ii) It is unclear whether the question refers to commodity charges or distribution charges, so both are addressed below.

It is important to note that the Board sets NRG's commodity and distribution rates on a "just and reasonable" standard. It does so not in relation to Union's and Enbridge's rates, but in accordance with traditional rate-setting methodologies accepted by the Board over many years.

Gas Commodity: At present, based on the most recent QRAM decisions, the gas commodity cost for NRG is 35.9292 cents, and the equivalent for Union is 34.9565 cents, so NRG is slightly higher. The EGD equivalent is about 30.365 cents.

Distribution: The distribution charges for NRG and EGD are virtually identical (for a residential customer using 2,000 m^3 of gas). EGD's distribution rates are in the 14 to 15 cent range, with NRG in the 15 cent range as well. NRG has a fixed monthly charge of 11.50 compared to EGD's 14. Based on EGD's recent draft rate order, the annual distribution charge for a residential customer using 2,000 m3 annually would be about $466. This is compared to about $444 for NRG and about $324 for Union, based on its recent draft rate order.

In NRG's last rate case, this issue was dealt with fully. In the Board's Decision with Reasons dated September 20, 2006 (EB-2005-0544), the Board summarized NRG's reasons for the rate differences:

> *NRG responded to customer concerns about dzerence in rates between Union and NRG at the oral hearing in Toronto and provided a detailed explanation. NRG's analysis indicated that its cost of providing gas to a residential customer is approximately 20% higher than a customer in Union's southern operations area and 8% higher than a customer in Union's eastern operations area. With respect to NRG's seasonal customers such as tobacco curing customers, the cost is 17% higher than for a similar Union customer.*
>
> *The Company provided a number of reasons for the difference as outlined below:*
>
> - *The volumes consumed by an average NRG customer are considerably less than the volumes consumed by an average Union customer. This is true for all classes of customers and essentially makes the NRG system a more costly system to operate.*
> - *NRG has a higher return on equity as compared to Union.*
> - *Union has embedded debt costs of 7.68% in its rates as compared to NRG's total debt cost of 8.45%.*
> - *NRG has a relatively new rate base as compared to Union. This means that its meters, regulators and mains have not depreciated to the same extent as Union's. In other words, NRG is carrying a higher net book value in its rate base.*
> - *NRG's franchise area is essentially rural with no urban centres while Union has large urban centres in its Southern Operations Zone including Hamilton, London and Windsor. This means that NRG has to put more pipes in the ground to get to the same number of customers. This is one of the reasons why Union's other operating areas that are sparsely populated reveal smaller differences in rates when compared to NRG.*

The OEB was satisfied with NRG's explanations for the rate difference between NRG and Union:

With respect to differences in rates between Union and NRG which was raised at the town hall meeting, the Board instructed NRG to provide an analysis. That analysis explains the differences to the satisfaction of the Board.

Importantly, while rates (distribution and commodity) fluctuate over time (and the relative rates as between Union, Enbridge and NRG fluctuate relative to one another as well), what is consistent is that NRG's customers typically enjoy lower overall energy costs due to the fact that NRG's customers consume less. For example, NRG's average residential customers uses 2,000 cubic metres of gas annually, while Union and Enbridge's average residential customer use is much higher (2,600 cubic metres and 3,064 cubic metres). This is in part a function of the fact that NRG's system is much newer than Union's and Enbridge's, which means that NRG's customers are typically using higher efficiency gas appliances (which use less gas).

(iii) NRG considers these Class C retractable shares as equity for rate-setting purposes. The terms and conditions of the shares and the Postponement Agreement give them all the attributes of equity. In previous rate cases, the Board has also considered these to be equity for rate-setting purposes. There is no "unwarranted return on equity". That having been said, this question is irrelevant to this proceeding. It is a question for NRG's next rate proceeding.

AYLMER INTERROGATORY #5

Ref: Exh D, Tab 6, Pg. 1 & Exh D, Tab 7 & Exh D, Tab 8

Preamble:

The proposed provision that NRG seeks clarification is in respect of the Board's October 8, 2008 notice of proposed amendments to GDAR (EB-2008-0313). The Town has numerous concerns regarding NRG's customer service practices, which includes NRG's practices and policies concerning security deposits. The Town's concerns stem from complaints it has received from its citizens about NRG. It is the Town's position that NRG is deficient in this regard and more generally in the area of customer service and this is a key reason for the number of complaints from consumers about NRG. The Town believes any steps to improve customer service (including implementing the proposed amendments regarding security deposits) is a step in the right direction.

Questions:

(i) Please set out NRG's current security deposit policies.

(ii) Please answer whether NRG is willing to accept the proposed condition, namely whether it is willing to implement the proposed amendments to the GDAR **(EB-2008-0313),** whether or not the OEB has made them mandatory by such time.

(iii) Please provide a description of how customer concerns are handled by NRG if a customer contacts them directly.

(iv) How many (if any) employees does NRG have employed as customer service representatives? What kind of training is provided to such employees? What level of **oversight/management** are they subject to?

(v) Please explain NRG's policies in respect of responding to a complaint made through the Board's process.

(vi) How many (if any) employees does NRG employ that are responsible for responding to complaints made through the Board's process? What position do these employees hold? What kind of training have they received?

(vii) How many customer complaints has NRG received in the past 4 years? How many of those complaints were resolved? Were any of the complaints referred to the police for investigation?

(viii) Please outline the "customer service quality requirements" that NRG maintains it has in effect and please explain how these are implemented.

(ix) Please explain how NRG communicates and educates its consumers on various issues concerning its services. What NRG's main method of communicating with

their customers? Please advise on the number and nature of customer communication methods used in the past year, 2 years.

(x) Does NRG have a web site? What is the address?

(xi) Please provide a copy of all of the written material NRG provides to its customers.

(xii) Can NRG provide the mast recent documentation for the performance measurements under the GDAR sections **7.3.3** Meter Reading Performance, 7.3.4 Service Appointment Response Time, 7.3.5 Gas Emergency Response, 7.3.6 Customer Complaint Written Response, and 7.3.7 Reconnection Response Time?

RESPONSE:

(i) See Appendix E.

(ii) No. NRG will implement the Board's new security deposit policy in accordance with the timeline set by the Board. The Town provided its comments on the security deposit policy in the EB-2008-0313 proceeding.

(iii) See response to Board Staff interrogatory #3.

(iv) NRG does not have dedicated full-time customer service staff, for two reasons: (a) with just under 7,000 customers, there are very few complaints or customer service issues; and (b) as with any small company, staff have multiple roles. However, at all times, the General Manager is available to both NRG employees and customers to discuss and resolve customer service issues.

(v) The first step in the Board complaint process is to contact the utility. For this, see response to Board Staff interrogatory #3. If the client remained dissatisfied and the Board complaint process was engaged, the General Manager would take its cue from the OEB.

(vi) NRG has not received a complaint since November 3, 2008. These customer inquiries are handled directly by the General Manager or the President.

(vii) NRG receives very few complaints (the last being on November 3, 2008). When NRG began to implement its security deposit policy in 2006 (in response to rising commodity prices and local economic and credit uncertainty), several customers requested return of their security deposits, contrary to the terms of NRG's security deposit policy. NRG reviewed and responded to all these requests. Some customers approached the OEB and the police. Attached as Appendix F are two emails from the Board's Chief Compliance Officer, the last of which is dated August 2008. The Board has not contacted NRG further on the matter. Also attached at Appendix F is correspondence from NRG's counsel to the Aylmer Police. (See Appendix F).

(viii) See Appendix G.

(ix) For "system-wide" issues, NRG communicates with its customers via bill inserts which are sent out quarterly at a minimum (for gas cost changes). For local or individual customer issues, contact is via telephone.

(x) No.

(xi) This question is without parameters – either in terms of time or type of information (e.g., confidential customer information). If the request is for a sample bill insert or the Application for Gas Service form, please see **Appendix** H.

(xii) The most recent performance measurements for the measures set out in the noted sections of the GDAR are as follows:

7.3.3.1 Meter Reading Performance Measurement:

- 4 out of 6800 meters have had no reading for 4 consecutive months

7.3.4.1 Appointments Met Within the Designated Time Period:

- 360 appointments met within scheduled time1400 appointments per month

7.3.4.2 Time to Reschedule a Missed Appointment:

- All customers are contacted within 2 hours of the missed appointment time
- In most cases, customers are contacted hours prior to their appointment time to reschedule their service call

7.3.5.1 Percentage of Emergency Calls Responded to Within One Hour:

- 147 emergency calls responded to within 60 minutes1156 calls per year

7.3.6.1 Number of Days to Provide a Written Response:

- The current service coordinator has not received any written complaints to date, during her 7-month tenure with NRG Ltd.
- The service manager has addressed all written complaints in a timely manner (within 10 days)

7.3.7.1 Number of Days to Reconnect a Customer:

- NRG's policy is to immediately reconnect customers that bring their account into good standing

AYLMER INTERROGATORY #6

Ref: Exh D, Tab 9

Preamble:

This is the first time the Town as seen or learned of the **"NRG** Rules", despite having had discussions regarding **NRG's** approach to new customers.

Questions:

(i) Please explain why NRG has never before advised the Town of the existence of or provided a copy of the **"NRG** Rules".

(ii) Please explain why the **"NRG** Rules" are not publicly available to NRG customers.

RESPONSE:

The NRG Rules are filed, scrutinized and approved by the Board at every NRG rate proceeding. They are public documents. The Town thus far has chosen not to participate in NRG's rate cases.

AYLMER INTERROGATORY #7

Ref: Exh D, Tab 10

Questions:

(i) Despite whether NRG thinks it is an unnecessary requirement, is NRG willing to give notice to the Town of any proceeding before the Board that NRG is a party to, particularly, but not limited to, any application to the Board made by NRG.

(ii) Has one of its franchise holders or another person or corporation ever alleged to NRG that it has breached the terms of other agreements it has regarding the supply or provision of natural gas?

(iii) Does NRG have any outstanding issues with the OEB?

(iv) Does NRG have any outstanding law suits?

RESPONSE:

(i) No. The OEB has well-established rules that ensure any parties potentially impacted by a proceeding are given adequate notice. For NRG rate applications, NRG already gives the Town notice because the OEB always directs NRG to provide the Town with Notice.

i) With respect to franchise holders, the answer is no. With respect to other persons or corporations, the question is irrelevant. IGPC has repeatedly breached its contractual obligations to NRG and has made unproven allegations against NRG as a defence. In EB-2008-0273, Union Gas Limited alleged that NRG failed to provide financial assurance contrary to the terms of a gas supply contracts between Union and NRG. The Board found in that case that no financial assurance was required from NRG. Both the IGPC and Union cases were dispensed of by the OEB.

(iii) This question is overly broad. See answer to question (iv) below. The only outstanding proceedings are this current proceeding, and two Board-convened proceedings related to commodity pricing and long-term contracting.

(iv) NRG appealed an OEB compliance order (issued in June 2007) to Divisional Court. NRG perfected its appeal in August 2007. Since that time, the OEB and IGPC have failed to file any responding material.

NATURAL RESOURCE GAS LIMITED

APPLICATION FOR FRANCHISE AGREEMENT RENEWAL

WITH THE TOWN OF AYLMER

RESPONSES TO INTERROGATORIES FROM

INTEGRATED GRAIN PROCESSORS CO-OPERATIVE INC. ("IGPC")

IGPC INTERROGATORY #1

Exhibit D, Tab 4, Page 1

Preamble:

NRG indicates that it has 2 credit facilities: the first a 5 year facility in the amount of $6,500,000 that is due March 201 1 and the second facility in the amount of $5,200,000 is due in October 201 3. NRG then goes on to state that an abnormally short franchise period would be detrimental to its financing and the financing of any "major new facility requiring stand-along financing **(e.g.** the ethanol plant) also would be compromised by having a short franchise agreement"

Questions:

(a) Please confirm the second credit facility was used solely for the purpose of constructing the pipeline to serve the IGPC ethanol facility.

(b) Was the remaining time period of the Aylmer franchise (or any other franchise) an issue for the lender of the first credit facility in **2006?** If so, provide supporting documentation that quantifies the magnitude or significance of the issue for the lender **(i.e.** premium, additional covenants).

(c) Was the remaining time period of the Aylmer franchise an issue for the lender of the second credit facility in **2008?** If so, provide supporting documentation that quantifies the magnitude or significance of the issue for the lender **(i.e.** premium, additional covenants).

(d) The second credit facility expires in October 2013 two years after the three year extension requested by the Town of Aylmer. Please provide details of the impact on the second credit facility if the Board were to grant the **Town's** request.

(e) Please provide the evidence upon which NRG is relying to support the statement: "major new facility requiring stand-alone financing **(e.g.,** the ethanol plant) also would be compromised by having a short franchise agreement"?

(f) **Is NRG aware of any customers that have not located in NRG's franchise area where the limited time remaining in the current franchise agreement has been a factor? If so, provide the number of customers.**

RESPONSE:

(a) Confirmed.

(b) Yes it was. See response to Board Staff interrogatory #2.

(c) The Bank of Nova Scotia had already dealt with the fianchise term issue in the previous financing (see response to Board Staff interrogatory #2).

(d) If only a three-year renewal renewal is granted, NRG believes that the second credit facility will be demanded and will have to be repaid immediately. If replacement financing is available, we believe that the financing would limited to the franchise term. NRG's next rate application would have to reflect the recovery of the balance of its assets over the remaining term of the fianchise renewal.

(e) See response to Board Staff interrogatory #2. To be clear, the evidence quoted refers to a major new facility (not the existing ethanol plant) that would require stand-alone financing. We provide the ethanol plant as an example of a facility that required stand-alone financing.

(f) Everybody believed that the fianchise (like all franchises) would be renewed in the customary manner for a typical renewal term. The Town of Aylmer refused to disclose to NRG and anyone else (including prospective customers) their intention to oppose the standard and customary renewal.

Appendix A – Budd Law Letter

Budd Law

Strategic + Legal Advice

Peter Budd Barrister & Solicitor

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February 14, 2006

Mr. J. Robert Cowan
Harrison Pensa llp
450 Talbot Street
P.O Box 3237
London, ON
N6A 4K3

Dear Sir:

Re: Natural Resource Gas Limited ("NRG") - Bank of Nova Scotia Credit Facilities

Thank you for your letter of February 8,2006 wherein you indicated that you would like me to confirm, inter *alia*, certain aspects of the Ontario Energy Board's ("OEB") regulatory process pertaining to franchise agreements and certificates of public convenience and necessity.

1. ***The Regulatory Process for municipal franchise agreements and OEB certificates***

The regulatory process for utilities to acquire a franchise agreement with a municipality is a balanced, supervised process, which relies o n three main participant.: the utility, the elected municipal councilors and the OEB. The utility proposing to serve in the municipality must first propose a fi-anchise agreement (OEB standardized) to the municipal councilors, who are to review it and, if it is favorable, they will pass a first and second reading of a by-law accepting the terms and conditions of the franchise agreement. Once passage and public comment has been made (if any), the utility formally applies to the OEB for approval of the draft franchise agreement. The OEB may or may not deem it necessary to hold a hearing, but ultimately, if the OEB agrees with the granting of the franchise to the utility, the OEB will approve the draft franchise agreement, ultimately will issue a certificate of public convenience and necessity (i.e. the OEB's legal order) once the utility has returned to the municipality for a third and final reading of the by-law, which completes the process.

2. ***Transfer of Utility Ownership regulated by the OEB***

You also asked me to comment on the transferability or change in control and ownership of a utility and how the OEB looks at this situation. As a matter of administrative law, where there must always be the ability o f an unfettered decision-

Budd Law
Strategic + Legal Advice

maker to decide on a case-by-case basis, one OEB panel or decision can never bind a future panel dealing with a transfer of ownership issue. That said, having recently completed a change in control application before the OEB for NRG, I am aware that the OEB allowed for that transfer of shares (change of ownership) on the basis of a straightforward paper hearing (not an oral proceeding), a one-time newspaper advertising/publication and minimal filing of evidence.

The main interests of the OEB in any change of control or ownership situation are primarily with the maintenance of appropriate utility financing, competent operatorship (i.e. safety and reliability) as a going concern as well as stability and continuity of service and minimization of rate impacts to customers. If these issues are adequately addressed, the OEB is likely to approve such change in control or ownership. The OEB's predominant interest is to ensure that customers continue to receive uninterrupted gas service at just and reasonable rates, which is the root of their public interest and statutory mandate.

3. *Credit Facilities Agreement – page 5, second paragraph – Conditions Precedent*

I have reviewed the second paragraph of the Conditions Precedent on page 5 to which you directed my attention. In my opinion, the February 8,2006 draft letter that you propose to write to the OEB secretary asking the OEB to confirm that the Certificates of Public Convenience and Necessity and the related Franchise Agreements with the related municipalities are all in good standing is appropriate to send to the OEB (subject to revising *your* request relating to the documents in 'plural' as there are several Certificates and Franchise Agreements). I believe the OEB would have a tracking system as would NRG in respect to the documents' terms and expiry dates. The OEB would also be able to indicate the gas distributor license status of NRG as you requested. Subject to there being no surprises, the Bank should be satisfied with that reasonable due diligence effort and result in ensuring that NRG is in good standing with its regulator and with the municipalities in which it delivers gas service.

Contacting each individual municipality to ascertain the status of the current franchise agreement it has with NRG is likely to be an unnecessary, cumbersome and unproductive administrative task as with most municipalities, these agreements are long term and sometimes not even readily available in their files. As in past financings, the preferred and recommended procedure is to require from the utility production of the franchise files for legal review as to status, including perhaps writing the type of letter you drafted to the OEB secretary, but not to contact each clerk of each municipality. I am unaware of other Ontario utilities being required to get an individual response from each municipality in similar refinancing circumstances.

Budd Law
Strategic + Legal Advice

I trust the above will assist you in your management of the file. If *you* have any questions, please contact me.

Yours truly,

Budd Law
Counsel to NRG

PAGE 4/4 * R C M AT 1410212008 1:41:16 PM [Eastern Standard Time] * SVR:PENSA05/2 * DNIS:000 * CSID: * DURATION (mm-ss):01-44

Appendix B – Sample Bill Showing Contact Information

000260

Natural Resource Gas Limited
P.O. BOX 307
39 BEECH STREET EAST
AYLMER, ONT. N5H 2S1
(519) 773-5321

Supporting your Natural Gas Lifestyle

ACCOUNT NUMBER

P02000-01

AMOUNT DUE NOW
$ [redacted]
AFTER
18-Feb-09
AMOUNT DUE
$ [redacted]
AMOUNT PAID

PAYABLE AT MOST CHARTERED BANKS AND FINANCIAL INSTITUTIONS

[redacted]

RETURN TOP PORTION WHEN MAILING PAYMENT BRING ENTIRE BILL WHEN PAYING IN PERSON

BILLS ARE DUE WHEN RENDERED. AFTER 16 DAYS, A LATE CHARGE OF 1.5% PER MONTH WILL APPLY.

BILLING PERIOD		NUMBER OF DAYS	SERVICE ADDRESS	ACCOUNT NUMBER
FROM JAN 01 2009	TO JAN 31 2009	31	[redacted] AYLMER	[redacted]

PRESENT	PREVIOUS	METER DIFFERENCE	FACTOR	AMOUNT USED CUBIC METRES
		0		-

YOUR GAS SUPPLIED BY BLACKSTONE ENERGY SERVICES INC 416-628-2828

DELIVERY TO YOU [redacted]

DEMAND CHARGES [redacted]
add GST on regular gas charges [redacted]

MESSAGES:

BUDGET BILLING PLAN)	ACTUAL USE THIS MONTH	ACTUAL USE TO DATE	BUDGET BILLED TO DATE	BALANCE AFTER BILL CURRENT PAID
Natural Resource Gas Limited P.O. BOX 307 39 BEECH STREET EAST AYLMER, ONT. N5H 2S1 (519) 773-5321	AMOUNT DUE NOW [redacted]	AFTER 18-Feb-09	AMOUNT DUE $ [redacted]	

RETAIN THIS PORTION

Thank you for Choosing Natural Gas!

Appendix C – Contact Information as Shown in Telephone Book

Meesters B&J 15488 Imperial
Meesus Cornelius RR2 Aylmer
Meginnis Dale 60 Farmington
Mehary Bob 269 Talbot
Mehary Brent 67 Farmington
Mehary Dave 1146 Imperial
Mehary James A 52790 Calton Line
Mehary Ken
Mehary Robert 40 Broadway Springfield
Meier M RR2 Aylmer
Melville Verne 233 John S
Melvin Vic 41337 Dexter Line Aylmer
Mennill David 51280 Vienna Line
Modern
Facsimile 51280 Vienna Line
Mennill J L 432 Talbot E
Menno Lodge 53-58 Malahide Dr
Facsimile
Mennomax 69919 Talbot Line
Mennonite Central Committee (Ontario) MCC Resource Centre 16 Talbot E 765-3828
Mennonite Store 30 Talbot E 765-1356

MENNONITE FURNITURE GALLERY

10 Talbot W. 765-4386

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Web: www.mhsio.on.ca

Mercer Bill 138 Fish 765-1010
Mercer John F 71 Cedar 773-3010
Mercs Eugene 176 Caverly 773-1340
Merkley Richard 11454 Plank Rd 866-2434
Merkley Richard RR1 Strafordville 866-6161
Merkley William&Catherine 11518 Plank Rd Eden 866-3394
Merrick S 5-43 Parsonville 773-7863
Merrill Henry 5195 Imperial 773-1643
Merrin Ron 69240 Nova Scotia Line 773-2304
METAL SUPERMARKETS 2180 Oxford E London 681-1218
Metalum Resources Ltd RR1 Vittoria Simcoe 428-2464
Meulenmeester Lionel 11901 Plank Rd Eden 866-2391
Meurn Cor 18491 Imperial Road 773-2189
Meyer Warren 48018 Keniston Line 773-6869
Meyerhoffer John 53 Shelter Cres 773-8881
Michael Brian&Betty 3511 Conn Aylmer 773-3386
Michaud Brian&Betty 47 Planet Strafordville 866-3083
Michulin Kevin&Tyrin 9280 Plank Rd 866-8157
Middents Betty 121 Dufferin 773-8821
Mike Lacy's Auto —See Lacy's Mike Auto
Mikula Bill 3511 Conn 773-4983
Miles Pat 50218 Century Line 768-2217
Milan Filipa RR5 Aylmer 773-8863
Millard B&K 48888 Keniston Line 773-2787
Millard Charles 54 Robinson Port Burwell 874-4412
Millard Jean RR4 Aylmer 768-2227
Millard Ken RR4 Aylmer 765-2237
Millard M E 91 Spruce W 773-3367
Millard Michael RR7 Aylmer 765-4186
Sun Tan 773-8733
Millard Paul W RR4 Aylmer 773-8798
Millard P D 70 Oak 773-3189
Millard Randall RR7 Aylmer 765-4308
Millard Robert E RR 4 Aylmer 866-3683
Millard Tom 33 Erieus Port Burwell 874-4797
Millard W J 30 Oak 773-1349
Miller Bert&Shana 8323 Sandy Pond 866-3314
Miller C 18 Malahide Dr 765-1381
Miller Dave 57785 Calton Line 866-8119
Miller Deborah Upper 428 Talbot W 765-8879
Miller Diedrich RR5 Aylmer 773-3343
Miller D&B 49525 John Wesley Line 765-8835
Miller Don 26 Robertson 773-2536
Miller Ed 33 Parkview 768-1490
Miller Georgina RR1 Vienna 866-3317
Miller Gerard RR2 Aylmer 765-8201
Miller H 37 Victoria Port Burwell 874-4988
Miller Marilyn RR2 Springfield 765-4468
Miller M&D 3-119 Myrtle 874-1348
Miller Nancy 32 Wellington 866-8342
Miller Pete RR1 Eden 866-3317
Miller Peter 11 Oak 768-1377
Miller Robert M 58 Sinclair 773-8648
Miller T 783 Elm 773-7299
Miller T T G M 46-50 Malahide Dr 765-3618
Miller Wilhelm 10451 Cultoverville Aylmer 866-8065
Miller William RR1 Strafordville 866-3447
Miller William&Susanne 51220 Chalet Line 768-3810
Millen Clare 49408 Novel Cat Line 765-2961
Millinger Bernie RR4 Aylmer 765-3411
Millinger B&J 47 Clarence 768-8670
Mills B 18884 Plank Rd Eden 866-3364
Mills Donna 186-58 Talbot E 765-1137
Mills D&S 25 St Andrew 768-3508
Mills G J 144 Forth 773-8167
Mills R & C Canon Rev 118 Dufferin 773-7102
Mills Richard 22 Main Vienna 874-4493
Mills Ted 9 Elm Vienna 874-4129
Milward Kim 30 Harvey 765-2186
Milmine Clarence RR1 Aylmer 866-3436
Milmine Debby 226 Talbot W 768-1935
Milmine Gladys 475 Talbot E 773-3438
Milmine Larry RR1 Aylmer 866-3838
Milmine Painting&Roofing 88 South W 773-8592
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Milmine Roger 144 Forth 773-9604
Minors Leonard 178 South W 765-8288
Minerva Art&Custom Framing 11878 Springwater Line 765-1616
Minielly B D Dr 74 Pearl 765-2372
Minielly Jay RR1 Aylmer 765-3326
Minjoure MBC 144 Elm 773-2114
Minnema Greg 48 Treadwell 773-8204
Minor Cyril W 309-258 Talbot E 773-8288
Minor Mark&Judy 15 South E 773-3358
Children's Phone 773-2765
Minor Rick 78 Fourth Ave 768-4814
Mirtsos J&J 134 Dufferin 773-9396
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Mitchell Mrs RR1 Eden 866-3607
Mitchell N 35591 Arthur Strafordville 866-3992
Mitchell R&G Rr1 866-3913
Mitchell Russell RR1 Strafordville 866-3586
Mitchell S 32 Elm Vienna 874-4051
Mitchell William 54711 Heritage Line 866-3023
Mitts D RR1 Strafordville 866-8813
Mitts David RR4 Aylmer 765-6348
Mitts Russell RR4 Aylmer 866-3185
Mixon George 1-184 Sydenham W 773-9475
Modern Line Kevin Slavney 49249 Talbot Line 765-3158
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Moerman Dave 49583 Vienna Line 765-3681
Moerman Eme Anny 148 Fourth 773-9240
Moerman Roger G 49794 Vienna Line 773-3994
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Moldenhauer Joseph 139 Dufferin 773-9576
Mole Reginald Jr 4999 Plank Rd Vienna 874-4518
Molina Ilagi 47 Warren 765-8539
Moll Richard RR2 Aylmer 773-8198
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Mooij Michael 11834 Springfield Rd 768-3314
Moreaid Peter 112 Main Springfield 768-4484
Morissette Donald 25 Harvey 773-3942
Morissette Donald J RR2 Aylmer 765-1373
Morissette Ryan 26 Terrytyn 773-2286
Morissette R A F 174 Fifth 773-8286
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Morissette R A F 174 Fifth 773-8286
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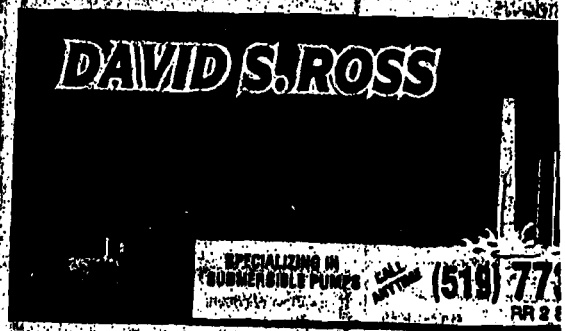
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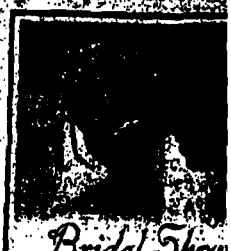
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Appendix D – Summary of NRG Growth from RP-2002-0147

Rep: OEB
Doc: 12QQV
Rev: 0
□

ONTARIO ENERGY BOARD

Volume: 1

26 MAY 2003

BEFORE:

P. VLAHOS
PRESIDING MEMBER

S.F. ZERKER
MEMBER

A. BIRCHENOUGH
MEMBER

RP-2002-0147

IN THE MATTER OF the Ontario Energy Board Act, 1998, S.O. 1998, c.15 (Schedule B); AND IN THE MATTER OF an Application by Natural Resource Gas Limited for an Order or Orders approving or fixing just and reasonable rates and other charges for the sale, distribution and transmission of gas commencing October 1, 2002 and commencing October 1, 2003.

RP-2002-0147

26 MAY 2003

HEARING HELD AT TORONTO, ONTARIO

APPEARANCES

MIKE LYLE
Board Counsel

JAI PRASHAD
Board staff

NEIL YOUNG
Board Staff

RICHARD KING
NRG Limited

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14

--- upon commencing at 9:30 a.m.

15

MR. VLAHOS: Good morning, everyone.

16

The Board is sitting today to hear evidence on NRG's obligation for rates fiscal years 2003-2004.

17

With me today are my colleagues Sally Zerker, and Arthur Birchenough.

18

For the record, my name is Paul Vlahos. Could I have appearances, please.

19

APPEARANCES:

20

MR. KING: My name is Richard King, I'm counsel for the applicant, Natural Resource Gas Limited.

21

MR. VLAHOS: Good morning, Mr. King.

22

MR. LYLE: Good morning, Mr. Chair, my name is Mike Lyle, counsel for Board Staff. With me is my colleague Jai Prashad. I'll spell that for the court reporter. It's J-a-i P-r-a-s-h-a-d.

23

MR. VLAHOS: Thank you, Mr. Lyle.

24

Mr. Lyle, are we properly constituted?

25

MR. LYLE: Yes, Mr. Chair, affidavits of service and publication have been filed with the Board.

MR. BLAKE: I just wanted to try and assist the Board and familiarize the Board with some of NRG's history. We have not appeared before the Board for a few years, and the company continues to evolve into a more mature gas utility operation.

99

The company and the gas utility started its operations in the early 1900s, largely as a gathering system from some local wells that were drilled at that time, and evolved over the years through one family's ownership until the mid-1970s. When that family sold it to another two individuals who were attempting to modernize the system and actually went into financial trouble and the company went into receivership in 1979.

100

So at that time in 1979 when it was taken over by our group, the company was in very, very bad shape, a lot of leaks, old steel line, non-temperature-compensated iron gas meters, everything was in bad shape, the buildings, facilities and everything.

101

And over the last 23 years, 24 years of ownership, we have virtually replaced everything. We have established, you know, new operating procedures, training, replaced pipelines, expanded pipelines, and this past year, we have sort of completed the final step which was building a new office and service facility in Aylmer.

102

So we currently have about 400 kilometres of pipeline, almost entirely plastic pipelines. We are serving about 5600 customers. We have, on average, around between 16 and 18, sometimes a few more, employees during some parts of the season.

103

We are actually operating with fewer employees now than we were probably ten years ago, largely through efficiencies in our office and in our physical plant operation.

104

We continue to add customers, although the years of sort of larger expansions sort of come to an end, we now have gas service in all the communities and on all of the streets in all of the communities; whereas, when we purchased the company, there were a number of communities that did not have gas service and a number of areas in those communities did not have gas service.

105

So we now have gas accessible to virtually every household and business in each community, and we also have quite a large number of the rural roads that have concentrations of homes and things, that we have gas lines on them.

106

And we brought a map, I am not sure that you can see it from where you are, but if I can maybe just describe briefly where the service area is. This would be the City of London in the top corner, and we actually have a couple of small lines that go into the newly amalgamated City of London. This is the highway 401 along here. Ingersoll is here, and I am not sure if you have seen the CAMI auto plant along the highway, along the 401 of Ingersoll.

107

And the rest of it is all south and east of London, this being the north shore of Lake Erie, and Tillsonburg would be here and St. Thomas over here.

108

So when we took the system over, it had a bare skeleton of pipeline. We had a line on Highway 74, a line down a country road, a couple of lines down through here, and one small line into the Houghton/Norfolk County area. A number of lines we built in the last couple of years to expand the service.

109

We are proud of our safety record for the company. We have never had any major incidents. We feel we have created a safe and reliable gas utility, and we think that's largely through some risk management that we have done, training, operating procedures, replacement of facilities, upgrading facilities and so forth.

110

One of the issues that -- one of the items that was on the issues list was the retention of the ancillary services, and I would like to just sort of speak about that for a moment.

111

Our company is unique in that we have a fully integrated service department, and those employees do work not only on the utilities side of the meter, but they also do work on the customer side of the meter.

112

And we think it is important that our company retain that ancillary business, that service and installation business, because it allows us the scope that we need that we can have the employees and the facilities to answer emergency calls and to take the sort of high points out of our service department needs. In other words, when we get a lot of service calls in the beginning of the winter or during an emergency or outages and that sort of thing, we have enough scope of operation that we can handle all those situations.

113

And the program has continued to produce positive returns. It earns greater than the rate of return from

the Board, and so that it actually contributes to reducing gas rates.

114
The final thing that I would like to just go over was sort of the last major phase that we see in our development on the replacement of the old system, and that was the new building this year.

115
And the building, in the evidence we have given you some pictures of our old facility, which were World War II barracks from an air force base that was located north of Aylmer that were moved to the location that we were on Spruce Street, and they were moved there, I believe in the 1950s, by the former owner.

116
And the site was about a 14- or 15-acre site, largely flood plain designated land, and we had about three or four acres on the high ground where the buildings were located.

117
And the buildings were in terrible condition. They were -- we made very few improvements on them over the years because we always anticipated that they would be replaced, so we just did the bare essential improvements over the years, a little bit of panelling, a little bit of drywall and replaced a carpet here or there, but the buildings were -- they had dirt floors in a crawl space under large portions of them. The roof on the building three where we kept our equipment was badly deteriorated and leaking. The building three was in such poor shape that the only thing you could consider it is almost outside storage for pipe.

118
And so when the opportunity arose that we could sell the buildings, we really had no choice other than we had to sell them and we had to move on to the new facility.

119
So our new location is on a two-acre site in Aylmer and in an industrial serviced -- a small industrial serviced area. It is right across the road from the police station, the Aylmer police station, so we get lots of exposure. We are not on the main street, we are only about two building lots off the main street, visible from the main street.

120
The footprint of the building is about 8500 square feet and it is a pre-engineered steel building, Steelway building, which might be similar -- you might be familiar with the Butler building, they are very similar.

121
So it is a steel building, and we have an office in one end and then our service department, and we have our trucks and equipment and so forth in the other end of the building, very functional. And so obviously, it gives us, you know, a much better working condition for our employees, and as well, it gives us an enhanced image in the community rather than operating out of the old facility.

122
We've had numerous, numerous comments about, I don't know how you ever lasted in the old building. You're new building looks so nice, and the company looks so much more professional, and so forth and so on.

123
And so anyway, I just wanted to sort of touch base on those items and sort of stress that the company is moving forward. We consider our company as becoming more mature in our evolution, and think we've positioned ourselves to go forward in the future and operate again in a safe and reliable utility operating in our area.

124
MR. BLAKE: Thank you very much.

Appendix E – Security Deposit Policy

Natural Resource Gas Limited

TO OUR VALUED CUSTOMERS,

FOR YOUR INFORMATION ONLY, **BELOW** IS OUR CURRENT SECURITY DEPOSIT POLICY.

RESIDENTIAL SECURITY DEPOSIT POLICY

How does our **Security** Denosit aroeram work? Why does it exist?
Thank youfor choosing natural gas as your energy source! NRG takes great **pride** in being a **financially** responsible provider of natural **gas** in our community. Protection of **rates** and costs associated with servicing our community are our number one priority. As such, the introduction of security deposits is a necessary step to try to protect both NRG & **our gas** customers from increased rates resulting from non paying customers.

Security **Deposits** are not a **prepayment** of **gas.**

When do Security **Deposits apply?**
Security deposits are requested for **all** new customers – both commercial & residential. The amount of the deposit is determined based on usage history applicable to the **specific** address in which gas service is installed or will be installed. For all security deposits held, interest will be paid annually as a credit right on your October statement. Accounts with poor payment history with **NRG will** likely **require** a security deposit prior to the continuation of service.

Row do I **apply?**
Requests for a **refund** of security deposits can be made after I year of service for residential accounts by writing to our credit department. Your letter must include; address, account number and state that you are applying to have your **Security** Deposit refunded. Please include a copy of your original receipt. Our Credit Department can be contacted at:

Fax	519-773-5335
Email	**creditdept@nrgas.on.ca**
Mail	39 Beech Street **E**, PO Box **307, Aylmer,** ON N5H **2S1**

Once received, a **thorough** examination of the following criteria will be **performed** and a decision made.

1.) If the customer's payment history has no late payments within 12 months = 50% security deposit refund
2.) If the customer's payment history has no late payments within 24 months – 100% security deposit refund
3.) If the customer has a disconnection notice within either **timeframe,** or a late payment, than 0% of the security deposit will be returned. The customer must then have a full 12 **months** of clean payment history in order to qualify for the 50% refund.

You will be notified in writing of our decision and at the discretion of NRG, a portion of your **deposit,** in whole, or in part, will be returned to you. Interest accrued (1% per year) will be applied directly to your account every October.

NRG believes that the security deposit **program** is in the best **interest** of all natural **gas** customers. These deposits **are** not a **prepayment** of **gas,** and are intended as an industry accepted best practice to help manage natural **gas** rates for our customers.

Please be advised that any future communication should be in **writing.**

- The Ontario Energy Board is currently developing a standardized framework or policy for collection and administering security deposits by **gas** distributors. The board has proposed to do this by means of amendments to the **gas** distribution access rule **("GDAR")** in **EB-2008-0313**. No final decision on these proposed changes has yet been established. NRG will comply when advised as to the date of commencement of these changes and you will be advised of any changes to our current policy..

If you have **any** questions, please feel **free** to send via mail to the address below, or via **email** at creditdept@nrgas.on.ca.

NATURAL RESOURCE GAS LIMITED

Supporting Your Natural Gas Lifestyle

Security Deposit Procedure

Annual Reviews

Security deposits are reviewed on an annual basis

A report is run every month to determine customers who have placed a security Deposit with Nautual Resouces Gas Limited.

At time of review customers file is pulled, and a history of the customers transaction history is printed for review.

The account is reviewed by the Credit Department for the following citreria:

Lates (more than 16 days as states on billing)
Missed or non payment
NSF cheques
Disconnection notice

After the reviewis completed, the Security Deposit form is filled out with the appropriate information.
The security Deposit form is tracked by sequence and account # on a master Spreadsheet for reference.
The Security Deposit form is signed and dated by Credit Department personal, and forwarded along with a copy of transaction history to General Manager for Approval.
A letter is sent to the customer advising them of a fund or denial.
Copies of both the Security Deposit form and the letter sent to the customer are placed in customer file for reference.

The Security Deposit form is then forwarded to Billing where a credit to the account, or a request for a cheque will take place.

If customer requests a refund in form of cheque, the Security Deposit form is forwarded to Payables to have the cheque issued and sent to the customer.

Security Deposit Reauests

Security Deposit Requests are received in the following manner:
Security Request form
E-mail
Regular letter mail
Fax

All requests regarding Security Deposits are returned, the same day or the next business day.
All requests are required to be forwarded to the Credit Department in Writing.

The Security Deposit Requests are processed daily, and are processed in the same fashion as the Security Deposit Reviews.

NATURAL RESOURCE GAS LIMITED

Supporting Your Natural Gas Lifestyle

Example of security deposit form

SECURITY DEPOSIT REFUND REQUEST #760

- ☐ DEP TO GAS
- ☐ FINAL BILL PROCESSED
- ☐ A/R TO CLEAR
- ☐ ANNIVERSARY REFUND
- ☐ MOVE/CANCELLATION
- ☐ CREDIT TO ACCOUNT
- ☒ ISSUE CHEQUE

CUSTOMER NAME: Susie Anyone

HOME NUMBER: 519-123-4567

ACCOUNT NUMBER: F20690-01

AMOUNT OF SECURITY DEPOSIT: 500.00

DATE SECURITY DEPOSIT RECEIVED: 01/15/08

DATE REFUND REQUEST RECEIVED: JAN 2008 REVIEW

PERSON REQUESTING REFUND: CREDIT DEPARTMENT

REASON FOR REFUND 1ST ANNIVERSAY No lates

CHEQUE MADE PAYABLE TO: Susie Anyone

PO BOX 123

Anywhere, ON, A1B 2C3

250.00

REFUND DUE DATE:

REFUND CHEQUE #:

CHEQUE DATE:

DATE CHEQUE MAILED:

C. EVELAND

PREPARED BY

APPROVED

PROCESSED

CC CUSTOMER FILE

CC Feb-2/09

NATURAL RESOURCE GAS LIMITED

Supporting Your Natural Gas Lifestyle

EXAMPLE OF DENIAL OF REFUND LETTER

CUSTOMER NAME **DATE**
ADDRESS

Re: Deposit Refund Request/ Review
Account #:

Dear Customer:

Recently, we have received a request for consideration to refund your security deposit held on your account by our company.

In reviewing security deposits, we require our customer's to meet the following requirements:

1.) If the customer's payment history has no late payments within 12 months= 50% security deposit refund.
2.) If the customer's payment history has no late payments within 24 months= 100% security deposit refund.
3,) If the customer has a disconnection notice within either timeframe, or a late payment, than 0% of the security deposit will be returned. The customer must then have a full 12 months of clean payment history In order to qualify for the 50% refund,

We regret that we are unable to provide a refund of your security deposit at this time due to failure to meet the criteria for one or all of the above factors.
Listed below is a summary of details:
IE(Billing date of 05/26/08 no payment received until 08/25/09 resulting in 3 months of missed payments.
We will be happy to review written requests In the future on the anniversary of your account.
Should you require further help on this matter, we would request that all future communications be in writing. We appreciate your feedback and support as we continually strive for utility service excellence

Sincerely,

The NRG Credit Department
c.c. Customer File

NATURAL RESOURCE GAS LIMITED

Supporting Your Natural Gas Lifestyle

EXAMPLE OF REVIEW LETTER

CUSTOMER NAME **DATE**
ADDRESS

Dear Customer:

Re: SECURITY DEPOSIT REVIEW
Account #:

Recently, we have reviewed your security deposit held on your account by our company.
In reviewing security deposits, we require our customer's to meet the following requirements:

1.) If the customer's payment history has no late payments within 12 months= 50% security deposit refund,
2.) If the customer's payment history has no late payments within 24 months= 100% security deposit refund.
3.) If the .customer has.a disconnection notice within either timeframe, or a late payment, than 0% of the security deposit will be returned'. The customer must then have a full 12 months 'of clean payment history in order to qualify for the 50% refund,

A review of your account has been done resulting in a partial/ full refund in the amount of $ _____.
The Refund cheque will be mailed to you in 3 to 6 weeks.
(Or will be credited to your account.)

We appreciate your support as we continually strive for utility service exceliencel
Sincerely,

The NRG Credit Department
c.c. Customer File

Natural Resource Gas Limited

Security Deposit Refund Request Form

Date:	Account No:
Service Address:	
Original Date of Hook Up:	
Reason for Request:	
Mailing Address For Refund:	
Phone Number:	
I would like my refund (circle one)	1) by cheque 2) credited to my account

I, (name on account) _____ (please print) request to have my security deposit reviewed for a possible refund.

Customer Signature:_____

For Office Use Only

Amount of Deposit	
Date Applied	
Refund Amount	
Approved By	
Refund Cheque #	
Cheque Date	
Date Cheque Mailed	

PREPARED BY: _____ DATE:_____

Appendix F – Letter re Security Deposit Policy Investigation

LENCZNER SLAGHT ROYCE
SMITH GRIFFIN LLP
BARRISTERS

Direct Line: (416) 865-3097
Email: lthacker@litigate.com

July 7,2008

VIA FACSIMILE

Bil Segui
Chief of Police
Town of Aylmer
46 Talbot Street West
Aylmer, Ontario
N5H 1J7

Dear Mr. Segui:

Re: Natural Resource Gas Limited ("NRG") and Integrated Grain Processors Co-operative Inc. ("IGPC") Franchise Renewal

I act for Natural Resource Gas Limited ("NRG").

On June 20, two police officers from the Aylmer Police Force attended at the office of NRG and spoke to Kevin Thompson. The police officers were Constable Gus Lagrandeur, Badge No. 47 and Constable Colbert Seuparsaud, Badge No. 59.

Constables Lagrandeur and Seuparsaud told Mr. Thompson that criminal charges have been or will soon be filed by a number of Aylmer residents concerning monies held on deposit by NRG pursuant to its security deposit program.

The officers asked Mr. Thompson if he was aware of a meeting held the previous week by individuals seeking to "file a petition" against NRG. Constables Lagrandeur and Seuparsaud then demanded that Mr. Thompson explained NRG's security deposit program and justify how the money held by NRG pursuant that program is managed.

Mr. Thompson explained the security deposit program fully to the officers and asked for a list of the specific people that Constables Lagrandeur and Seuparsaud were referring to when they said that criminal charges had been, or would be, laid against NRG.

Constables Lagrandeur and Seuparsaud also told Mr. Thompson that they wanted NRG to state its reasons for NRG's decision made with respect to each individual customer, which would require disclosing private and confidential information about those individuals, including their credit and payment history with NRG. Mr. Thompson said that he would certainly consider the request upon receiving from Constables Lagrandeur and Seuparsaud a list of the specific people for which they were requiring information, and a detailed written request for that specific information, Mr. Thompson stressed that NRG was willing to cooperate fully with any investigation and provide any information that it is able, and permitted by law, to provide.

Mr. Thompson noticed that neither of the two police officers made any notes during the meeting and did not leave their business cards. However, they were wearing uniforms for the Aylmer police force.

Neither Mr. Thompson nor anyone else at NRG has received any further response from Constables Lagrandeur and Seuparsaud. They did specifically agree to provide NRG with the names of the people that had laid, or would be laying, criminal charges against NRG, and the names of the people for whom they required credit and payment history information and the basis for NRG's decision with respect each of those people.

As I am sure you are aware, credit and payment history information, and the reasons why NRG makes a particular decision with respect to a security deposit for an individual person, is private and confidential information. It is protected by, among other things, applicable privacy legislation and NRG is not in a position to simply disclose it.

Accordingly, in order for NRG to determine whether it can provide the information that Constables Lagrandeur and Seuparsaud have demanded, we require a list of the people and a specific request from Constables Lagrandeur and Seuparsaud in their capacity as police officers of the Aylmer police force for all the information they are requesting. NRG will then able to determine whether or not it is in a position to cooperate and provide any such information.

The NRG security deposit is consistent with NRG's "Gas Service Rules & Regulations" (the "Rules") dated August 1, 1995 and revised December 20, 1995 (copy attached). These Rules were filed by NRG as evidence in the NRG's most recent rate case before the Ontario Energy Board ("OEB"). The OEB issued a decision that did not alter the Rules in any way. Accordingly, the OEB has approved NRG's Rules, including the security deposit policy NRG has implemented.

Moreover, the NRG security deposit is consistent with the security deposit policies followed by Union Gas and Enbridge. The Union Gas gas service guidelines (copy attached), in section 4.2, requires Union Gas customers to provide a security deposit. Enbridge has also implemented a security deposit policy similar to that implemented by NRG.

Accordingly, the NRG security deposit policy has been approved by the OEB, and is consistent with standard industry practice, including the security deposit policies implemented by Union Gas and Enbridge.

Yours truly,

Lawrence E. Thacker

LET/jb

Encl(s)

cc: Adrian Pye
Brian Hewson

Appendix G - Customer Service Quality Requirements

NRG Service Coordinator

Duties and Responsibilities

- Act as customer service contact for service department
- Schedule service calls and locates for technicians and line crew
- Address any issues/complaints customers have in a timely and efficient manner
- Ensure records are kept to meet both TSSA and OEB requirements
- Dispatch calls to service technicians throughout the day as they come in
- Answer inquiries related to service, parts, etc.
- During winter months, we receive an average of 20 calls related to service a day

Response Times for Service Calls

Furnace Calls

- No heat – same day
- Cleaning/maintenance – scheduled at customer's convenience (usually completed within 3 or 4 days of initial call)
- Noisy – within 2 days of call usually

Water Heater Calls

- No hot water – same day in most cases
- Water Leak – same day
- Noisy – within 2 or days or at customer's convenience
- Flashing Valve – if water heater has to be reset often due to flashing valve, response time is usually within 2 or 3 days of initial call
- Replacement – if service technician deems water heater should be replaced, NRG will usually replace it the same or next day

Air Conditioners

- No cold air – usually same day depending on schedule and weather
- Water leak – within 1 or 2 days
- Noisy – within 2 days of call

All other appliances (i.e. ranges, space heaters, etc)

- Depending on the problem, most service requests are addressed within 1-3 days of initial call

Gas Leaks/ Fumes

- Meter Escape – if someone reports smelling gas around a meter, an NRG technician will respond the same day (usually within 2 hours)
- Gas Line Break – ASAP (if a gas line or main is reported broken, NRG will respond immediately)

- Gas Smell in house – ASAP (if a customer reports smelling gas within their home, NRG usually responds within 2 or 3 hours of initial call)
- Carbon Monoxide – ASAP

Locates

- Most locate requests are completed within 3 business days of initial request

Appendix H – Sample Written Material



Natural Resource Gas Limited

NOTICE:

The Ontario Energy Board is currently developing a standardized framework or policy for collection and administering security deposits by gas distributors. The board has proposed to do this by means of amendments to the gas distribution access rule ("GDAR") in EB-2008-0313. No final decision on these proposed changes has yet been established. NRG will comply when advised as to the date of commencement of these changes and you will be advised of any changes to our current policy.

000287

Natural Resource Gas Limited
PO Box 307, 39 Beech St. E.
Aylmer, Ont. N5H 2S1

Natural Resource Gas Limited
Application for Gas Service

Service Department
Aylmer: 519-773-5321
Fax: 519-773-5335

_____ 20 _____

I/WE _____ (the 'Customer")

apply to Natural Resource Gas Limited ("the Company") for gas service at _____

_____ (the 'premises")

according to the following terms and conditions:

1. The Customer agrees to pay accounts when due.
2. Customer agrees that a meter connection will be established immediately after the installation of the service line and will be subject to the monthly fixed charge from that date.
3. Customers intending to vacate premises supplied with gas or to discontinue the use of gas shall give notice to the Company at 39 Beech Street E., Aylmer, Ontario or other such address as customer may be advised, fifteen (15) days before the Customer intends to discontinue service and in default of providing such notice, the Customer will remain liable for all gas which passes through the meter until such notice is given. In the event accounts for natural gas, rentals or other services are not paid in accordance with this agreement and collection procedures are made by the Company and/or its agent, Customers will be liable for collection costs incurred by the Company and/or its agent. ____ X
4. If the Customer discontinues service within ninety (90) days of application for gas service, there will be a charge for removal plus GST, or such charge as is currently in effect by the Company which will be added to the final billing and/or deducted from the original deposit.
5. The Company may discontinue service and disconnect and remove the meter for repair, lack of supply and/or non-payment of bills (including late penalty charges) when due. The original deposit will be refunded upon full payment of any outstanding amount
6. Gas will be supplied to a meter installed by the Company. If that meter should fail to register the quantity of gas consumed or if access to read the meter cannot be made, the account of the Customer will be estimated by the Company.
7. Customer agrees to give immediate notice at the office of the Company of any escape of gas. In case of a leak, the stop-cock at the meter must be immediately closed and no light taken near the escape until after free and full ventilation.
8. Except in the case of an emergency, the Company and/or its authorized agent shall at all reasonable hours, have access to the premises for the purposes of examining, regulating or repairing the gas apparatus installed, ascertaining the quantity of gas consumed or supplied and/or to discontinue or remove the meter. In the case of an emergency, the Company and/or its authorized agents shall have access to the premises at any hour.
9. The Company shall not be liable for any damages or losses resulting from any failure to supply. The Customer agrees with the Company that the Company will not be held liable by the Customer for any loss, damage, injury or delay to any person or to any property resulting from the transportation, storing or any use of the gas supplied to the premises including any damage or loss from explosion or fire. Further the Customer agrees to indemnify and save harmless the Company from and against all claims and demands arising out of the transportation, storing or use of the gas supplied to the Customer's premises including any loss or damage from explosion or fire made by any person and from and against all damages, losses, costs, charges and expenses which the Company may sustain or incur and be liable for as a consequence of any such claim or demand.
10. The Customer acknowledges that there will be a late charge on the past due amount (minimum $1.00) if the bill is not paid within sixteen (16) days of rendering and there will be a monthly fixed charge of $_____ . ____ X Both of the charges are subject to revision and approval by the Ontario Energy Board.
11. The Customer acknowledges that there will be a transfer/connection charge of $30 plus GST, or as may be ordered by the Ontario Energy Board, which will be charged on the first billing. ____ X

SIGNATURE OF APPLICANT _____

DEPOSIT RECEIVED: $ _____ DEPOSIT RECEIVED BY: _____

PREMISES OWNED BY: _____

SEE REVERSE FOR CREDIT APPLICATION

COMPANY COPY – BLUE: CUSTOMER COPY – CANARY

v.060110



ONTARIO ENERGY BOARD

FILE NO.: **EB-2008-0413**

VOLUME: **1**

DATE: **February 12, 2009**

BEFORE:	**Gordon Kaiser**	**Presiding Member and Vice-Chair**
	Cathy Spoel	**Member**
	Ken Quesnelle	**Member**

EB-2008-0413

THE ONTARIO ENERGY BOARD

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

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

Hearing held at the East Elgin Community Complex, Aylmer, Ontario, on Thursday, February 12th, 2009, commencing at 10:04 a.m.

VOLUME 1

BEFORE:

GORDON KAISER Presiding Member and Vice-Chair

CATHY SPOEL Member

KEN QUESNELLE Member

A P P E A R A N C E S

MICHAEL MILLAR	Board Counsel
NABIH MIKHAIL	Board Staff
RICHARD KING LARRY THACKER	Natural Resource Gas Limited (NRG)
PHIL TUNLEY	Town of Aylmer
SCOTT STOLL	Integrated Grain Processors' Cooperative Inc.

ALSO PRESENT:

MARK BRISTOLL	Natural Resource Gas Limited
HEATHER ADAMS	Town of Aylmer

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Thursday, February 12, 2009

--- On commencing at 10:04 a.m.

MR. KAISER: Please be seated.

Good morning, ladies and gentlemen. The Board is sitting today in connection with an application that was filed on December 19th, 2008 by Natural Resource Gas.

NRG is seeking an order pursuant to section 10 of the Municipal Franchises Act to renew its -- for a period of 20 years, its existing franchise agreement with the Town of Aylmer. The existing agreement is due to expire on February 27th, 2009.

May we have the appearances, please?

APPEARANCES:

MR. MILLAR: Good morning, Mr. Chair. Michael Millar, counsel for Board Staff. With me today is Mr. Nabih Mikhail.

MR. KAISER: Mr. Millar.

MR. KING: Richard King for Natural Resource Gas Limited. With me is my co-counsel Larry Thacker and Mr. Bristoll from NRG.

MR. KAISER: Mr. King.

MR. TUNLEY: My name is Phil Tunley. I am here for the Town of Aylmer as intervenor in the proceeding.

MR. KAISER: Mr. Tunley.

MR. STOLL: Scott Stoll. I am here for the Integrated Grain Processors Cooperative Inc., an intervenor in the proceedings.

MR. KAISER: Thank you. Mr. King.

MR. KING: We don't have any preliminary matters. Mr. Thacker will take care of a very short direct exam of Mr. Bristoll, and then Mr. Bristoll will be open for cross-examination.

MR. KAISER: Thank you. Mr. Thacker.

MR. THACKER: If it's acceptable to the Board, we discussed amongst counsel having the witnesses stay where they are.

MR. KAISER: No, that's fine.

MR. THACKER: Mr. Bristoll, do you have in front of you the prefiled evidence of the --

MR. KAISER: Excuse me. May we have the witness sworn, Mr. Thacker?

MR. THACKER: Oh, I'm sorry.

NATURAL RESOURCE GAS - PANEL 1

Mark Bristoll, Sworn.

MR. KAISER: Please proceed.

EXAMINATION BY MR. THACKER:

MR. THACKER: Mr. Bristoll, could I ask you to turn to tab C-1 of the prefiled evidence of Natural Resource Gas, which I will call NRG?

Can you just give us an outline of the history of NRG and its operations over the past 30 years?

MR. BRISTOLL: Is this working right here? Okay, good.

Natural Resource Gas was acquired by its current owners in 1979. At the time that the company was acquired, the conditions of the assets were basically in very poor

condition.

The pipeline consisted of predominantly steel pipe with a high leakage rate in approximately the 30 percent range. Since that time, most of the pipe has been replaced with plastic pipe, and we now have a very low leakage rate of almost zero.

NRG has almost upgraded many of its facilities, such as acquiring a new bulling recently to the tune of about $800,000. We have also increased our customer base from around 2,000 customers to approximately 7,000 customers today.

We have also a complete customer service department that is there to satisfy the needs of both the utility side of the business and the appliance side of the business for installation and so forth.

MR. THACKER: And have you ever had any difficulties in the past with the renewal of any franchise over the past 30 years?

MR. BRISTOLL: To the best of my knowledge, no, we have not.

MR. THACKER: Would you now turn to tab D-1? I just want you to give us a brief overview of the history of the negotiations, or at least NRG's attempts to negotiate with the town about this renewal.

MR. BRISTOLL: We first contacted the town in June of 2008 and requested that we get together to discuss the franchise renewal.

Through various correspondence and letters back and

forth, we were finally able to... Sorry, I thought I turned this off.

[Cell phone ringing]

MR. BRISTOLL: Through various conversations, e-mails, letters between ourselves and between counsel, we attempted to have a meeting. We were finally granted one in or about September 11th, 2008, and we met with Heather Adams and Mayor Bob Habkirk.

Subsequent -- at that point, we were told that we would receive a short list of issues that they had with the franchise renewal agreement that we had proposed to them.

MR. THACKER: Sorry, when was that meeting again?

MR. BRISTOLL: September 11th, I believe.

MR. THACKER: Did you ever receive any comments from the town, and, if so, when?

MR. BRISTOLL: The first comments we received from the town were on December 16th, 2008 in a meeting we had with them.

MR. THACKER: What did you find out about the significance of the date of December 16?

MR. BRISTOLL: It was the day following their town council meeting.

MR. THACKER: And did they tell you, in all of the two months between your first meeting and December 16, that there was going to be a town council meeting on December 15?

MR. BRISTOLL: No, I was not aware of that.

MR. THACKER: Did they give any explanation for why

they had to wait two months before they were willing to provide you with the comments you had been requesting?

MR. BRISTOLL: No.

On December 16th, we received a copy of the Town of Aylmer's proposed franchise agreement, and inside that agreement we received our first mention of a three-year renewal term.

MR. THACKER: Okay. Now, let me ask you about the issue between NRG and the town, which I will put succinctly as the town is seeking -- NRG is seeking a 20-year renewal and the town is seeking a three-year renewal with a series of conditions.

Can you tell me why the length of the renewal is significant for NRG? I would just refer you to tab D-4 of your evidence.

MR. BRISTOLL: The length of the term of the renewal is significant, because we're coming off of a 25-year term and the town is proposing a three-year term.

A three-year term would raise serious concerns with lenders, after a 25-year term, as to whether or not we would be able to renew at the end of that three-year period.

MR. THACKER: Why would the lenders be concerned about whether or not you would get a subsequent renewal after three years?

MR. BRISTOLL: The value of a franchise is basically the length of the term of the franchise, and without any -- without any reason with which to explain to them how we

would get a renewal, the value of our assets would deteriorate significantly.

MR. THACKER: Have you had a chance to review the Town of Aylmer's evidence filed the day before yesterday?

MR. BRISTOLL: I have.

MR. THACKER: What is now apparent -- or what have you now learned about the rationale for the proposed three-year renewal by the town?

MR. BRISTOLL: It would appear that the proposed renewal has nothing to do with us violating our franchise agreement in any way.

It would appear that what the Town of Aylmer is attempting to do is to line us up so that they can negotiate a renewal with somebody else.

MR. THACKER: And why is that of concern to NRG?

MR. BRISTOLL: Because it gives them an opportunity to negotiate with other parties in advance, and then it would significantly deteriorate our values and our viability and our ongoing ability to operate.

MR. THACKER: And what will happen to the value of NRG's business and its assets if the franchise is not renewed at the end of three years, for example?

MR. BRISTOLL: They would become valueless.

MR. KAISER: Mr. Bristoll, when you say that it's become apparent to you that the reason for the three-year term, proposed term, is to give the town an opportunity to negotiate with somebody else, who is the somebody else, or do you know?

MR. BRISTOLL: I don't know who it is, but I can guess.

MR. KAISER: Tell me what you believe it to be.

MR. BRISTOLL: I think it would be Union Gas.

MR. KAISER: And why do you -- leaving aside who it is, what is it you saw in their evidence that led you to that conclusion?

MR. BRISTOLL: I think they have stated it overtly in the evidence.

MR. THACKER: Could I ask you, Mr. Bristoll, to turn to the town's evidence -- and I can help the Panel. Would you turn, firstly, to the tab 1-D. And it's the second-last document. And it is a letter dated January 9 from Mr. Tunley to Ms. Walli, Board secretary. Second-last document in tab D. I can show you.

MR. BRISTOLL: Which one is it?

MR. THACKER: So does the Panel now have the January 9 letter?

MR. KAISER: We do.

MR. THACKER: I am going to refer you, Mr. Bristoll, to the second-last paragraph on page 2.

MR. BRISTOLL: Do you want me to read it?

MR. THACKER: Just read it to yourself and tell me, initially, what is implied as a possibility by this paragraph.

MR. BRISTOLL: The implication that I read from it was, is that the town's request to have all of our franchise agreements renew at the same time is a strategy

that will allow them to, en masse, go to another supplier and ask that supplier if they could take over our franchise area.

MR. THACKER: And will you turn now to the next document in that book. It is a letter dated January 29 from the Town of Bayham.

MR. BRISTOLL: The Town of Bayham states --

MR. THACKER: And look at paragraph 1. And can you tell me what is now indicated to you by the Town of Bayham's revealing of the real rationale behind this challenge?

MR. BRISTOLL: They state clearly:

> "This will permit Bayham, Aylmer, and any of Malahide, Central Elgin, Thames Centre, and Southwest Oxford, which may request the same opportunity, the ability to offer combined, larger, and more populous customer (sic) base for consideration of any potential supplier. A joint effort of this nature could achieve efficiencies and economies that would benefit..."

MR. THACKER: And are you aware -- or has the town ever explained to you any other possible rationale for trying to link up the expiry dates of the surrounding franchises?

MR. BRISTOLL: They have not.

MR. KAISER: Mr. Thacker, is there anything in the law that -- the regulations that says that at the end of a franchise agreement the town cannot solicit bids from other

potential suppliers?

MR. THACKER: No, I don't think there is anything in the law, but you do have a criteria to apply. The new supplier, of course, would have to build an entirely new infrastructure, which would cause the rates to go through the roof.

MR. KAISER: Or buy the existing infrastructure from the existing franchise holder.

MR. THACKER: Well, the problem is, what is being done here, in our submission, is that they are using your Board to lower the price that Union Gas is able to achieve the goal of acquiring our assets, right?

MR. KAISER: Do we have anyone from Union Gas here, Mr. Millar?

MR. MILLAR: No. They received notice, but I don't believe anyone is in attendance.

MR. KAISER: All right.

MR. THACKER: They chose not to attend.

MR. KAISER: All right. Thank you.

MR. THACKER: So my submission will be you ought not to let your process to be used as a commercial tool to lower the price.

Now, I just want to move on to the rate-hearing issue. It's been requested by the town as a condition of a renewal that you bring on a rate hearing. And that is -- I am now going back to the NRG evidence. Let me just find it for you.

What is NRG's position with respect to a rate

hearing? And if you look at tab D-5. Firstly, there have been a number of concerns about your actual rates. Who sets the rates that you charge the people of Aylmer?

MR. BRISTOLL: Our rates have been established as just and reasonable with the Ontario Energy Board in all our previous rate cases.

MR. THACKER: And so despite the approval of the OEB, the town is complaining that your rates are too high. What is NRG's position with respect to bringing on a rate hearing, and why haven't you done so, so far?

MR. BRISTOLL: Prior to -- just recently, we have installed a, almost, I guess, in gross numbers a $9 million pipeline. And up until this time we didn't know what the final costs on that pipeline would be.

In addition to that, I think they have requested that we do one immediately, and I think that the outcome of this proceeding will significantly impact how we would go about putting a rates case together. I think it will determine whether or not we will be required to amortize the balance of our assets over a short-term period, maybe, say, three, for example, or over a more reasonable period of time for recovery.

On top of that, many of our core consultants are currently heavily involved in other rate proceedings in front of the Board.

MR. KAISER: When was the last time we looked at your rates? Was it the '08 rates?

MR. BRISTOLL: No, it was the '07 rates.

MR. KAISER: '07 rates? Thank you.

MR. THACKER: And can you tell me why you started as early as last spring to attempt to determine the town's position on a renewal of this franchise?

MR. BRISTOLL: We wanted to be proactive, and we wanted to be able to have a renewal, an orderly renewal.

MR. THACKER: And if you had had the town's cooperation in either agreeing to a renewal or at least explaining their position earlier, what impact would that have had on your ability to bring on a rate hearing earlier?

MR. BRISTOLL: I think we would have been able to work with the town more closely on helping them satisfy some of their grievances with us, but I think that we've, for the last nine months, regardless, have always made efforts to improve the service we provide.

MR. THACKER: And lastly, you were -- sorry. There have been a number of -- there was an issue raised with respect to customer complaints. And in the town's evidence, there is a petition of a number of pages.

Can you tell me when you first were given a copy of this petition by the town?

MR. BRISTOLL: The first copy I've received with the full petition was, I believe, two days ago, when we received the evidence that the town had submitted for this hearing.

MR. THACKER: Okay. Have you ever seen part of that petition, ever, before the day before yesterday?

MR. BRISTOLL: I'd seen the first page.

MR. THACKER: And how did you acquire the first page?

MR. BRISTOLL: There was an application brought forward by Union Gas to discontinue service, and in that application the first page of that petition was submitted as evidence.

MR. THACKER: So although this petition apparently existed in June or July, did the town ever give you a copy of this petition, other than the two -- other than in the evidence the day before yesterday, or one page in October?

MR. BRISTOLL: Not at all.

MR. THACKER: And once you received the one page in October, what did you do with it?

MR. BRISTOLL: We went through the names on the list, and we evaluated who and who was not customers, and because it was a petition that revolved around security-deposit issues, we assessed who on that list had either received a security deposit back in full or partially.

We found that -- I think the front page has something like 12 names on it. Four of the 12 names weren't customers. Several of the customers had late-payment histories, and several of the customers also had received partial payments of the security deposit.

MR. THACKER: Okay. And if you had been provided a copy of this petition when it was submitted to the town, would you have been able to carry out the same analysis with respect to the other pages of that petition?

MR. BRISTOLL: We would have, yes.

MR. THACKER: And did the town ever explain to you why they never gave you a copy of this petition? Or has anyone ever explained to you why you were not provided a copy of this petition?

MR. BRISTOLL: No.

MR. THACKER: Okay. Another issue that's been raised is your relationship, NRG's relationship, with industrial customers. And I will break them into two categories: IGPC, being the new ethanol plant, and other customers.

Tell me about the relationship with IGPC first.

MR. BRISTOLL: Our relationship with IGPC, I think, has probably been somewhat rocky. I would like to point out, though, that throughout our relationship with them we have continued to work towards their goal of receiving gas supply in the Aylmer franchise area; that throughout the proceedings, even when IGPC was in default of their financial obligations, we continued to proceed forward. I think the most poignant one would be the example of where we issued the tender for the contract to put the pipe in the ground. At that point, we still had not received the letter of credit that was supposed to backstop that effort, but we pursued it anyways and put ourselves and our ratepayers at risk.

When it was time to flow gas --

MR. THACKER: Talk to me about the construction first. How did the construction proceed as compared to the anticipated timetable?

MR. BRISTOLL: They had requested that we be available

to supply gas on July 2nd of 2008, and on July 2nd, 2008 the pipe was standing, ready to do its job.

MR. THACKER: Was IGPC doing its job of constructing its plant by July 2nd so it could receive the gas it demanded?

MR. BRISTOLL: They weren't ready to receive gas for a month or two later.

Currently, we're providing them with gas with no difficulties whatsoever. And we believe that we have potential for a strong relationship with them.

MR. THACKER: Tell me about the security deposit. There was an issue with the security deposit. What was the issue and what was NRG's reaction in the face of that issue?

MR. BRISTOLL: The security deposit was not delivered when we started to flow gas. At that point, I guess we had the option of not flowing it, but we did anyways.

Initially, we couldn't work out whether or not it would expire properly or not, but that was resolved in the end, and we continued to flow gas.

MR. KAISER: Are there any outstanding issues now, or is this all in the past?

MR. THACKER: It's largely all in the past. We still have yet to do the final cost reconciliation. There are a few pieces of information that we need to do the final cost reconciliation, but that is it.

MR. KAISER: Is that the case, Mr. Stoll?

MR. STOLL: I'm not sure what information they need.

I think we have a significantly different version of some of the history.

MR. KAISER: I don't want to go back in the history. I just want to know, today, are you more or less satisfied with the service?

MR. STOLL: The service, yes. The reconciliation --

MR. KAISER: That's an accounting issue. They will sort that out in due course.

MR. STOLL: Hopefully.

MR. KAISER: Well, if you don't, you can always come here. But there are no service issues?

MR. STOLL: No. The gas has been flowing.

MR. KAISER: All right. Thank you.

MR. THACKER: Can you tell me why NRG was so cautious in its approach to its dealings with IGPC? Whose interests were at stake and why were you trying to protect those interests?

MR. BRISTOLL: IGPC, relative to the rest of our system, was a huge new customer, and our approach has always been to protect both our ratepayers and to protect our shareholders.

So along the way, we ensured that all of the proper securities were in place in order to do what we needed to do. We didn't want to leave anybody exposed due to the size of the risk that ethanol potentially presented to Natural Resource Gas.

And, at times, in order to keep the project going, we did expose ourselves to that risk.

MR. THACKER: And, lastly, there is some suggestion, although it is quite vague in the town's evidence, that there's been an impact on new economic development or other industrial customers.

Have you been made aware by the town of any specific example of allegation that NRG has somehow impaired or deterred somebody from locating in this area or operating in this area?

MR. BRISTOLL: The town has mentioned it to us, and I believe they mentioned to us in the meeting of September 11th. At that time, we asked them to provide us with a list of companies that have stated specifically that they would not come to Aylmer because of Natural Resource Gas or gas supply issues.

We have also told them that we would be willing to work with them; if they would give us the names of any new companies that approached them, that we would work hand in hand with them in order to assist in allowing them to relocate here and assure them that they would receive the natural gas supply they required.

MR. THACKER: And after making the requests of the town, has the town ever responded or given you any information or specifics?

MR. BRISTOLL: No.

MR. THACKER: In the evidence that was filed on October 18, there was a reference to Steelcase being the only specific example that NRG is aware of.

Can you describe that particular issue?

MR. BRISTOLL: Steelcase is a company -- I believe they have two facilities. They have one down by Lake Erie and they have another one in the Town of Aylmer.

They take -- they're fuelled by propane and not by natural gas. They have been around for an awful long time in this franchise area and they always used propane. We have approached them several times to bring them on to the natural gas system, but they're very comfortable with their propane supplier, and they have a long-term relationship with that company and see no need to switch.

MR. THACKER: So have they altered their operations in any way as a result of your efforts to try to line them up as a customer?

MR. BRISTOLL: I would believe not.

MR. THACKER: Those are my questions.

MR. KAISER: Thank you. Mr. Tunley.

CROSS-EXAMINATION BY MR. TUNLEY:

MR. TUNLEY: Thank you, Mr. Kaiser.

Mr. Bristoll, just by way of background and yourself, you are not an expert, I take it, in valuing franchises in the gas sector?

MR. BRISTOLL: No, I'm not.

MR. TUNLEY: How long have you been in the gas business?

MR. BRISTOLL: Since 2005.

MR. TUNLEY: And your job currently with NRG, that's your first experience in the gas business; is that right?

MR. BRISTOLL: That's correct.

MR. TUNLEY: You mentioned you had discussions with the Town of Aylmer about franchise renewal commencing in June 2008, and I would just like to deal with those.

You will agree with me, I take it, the town never said to you in those negotiations, at any time, that it would not renew the franchise agreement, did it?

MR. BRISTOLL: They never said they would not renew it, and they never said they wouldn't renew it in the standard form rate.

MR. TUNLEY: They always said to you, in fact, that the discussions that you wanted to have and they wanted to have would be about terms in addition to the standard form Board-approved franchise agreement; isn't that right?

MR. BRISTOLL: They said they would provide us with comments.

MR. TUNLEY: Comments on the terms and suggestions for additional provisions in the agreement?

MR. BRISTOLL: Not the terms. Additional provisions.

MR. TUNLEY: Right.

And the other thing that they were going to talk to you about was about the length of the term of the contract, right, of the renewal term?

MR. BRISTOLL: That was never brought forward.

MR. TUNLEY: That was never brought forward?

MR. BRISTOLL: No.

MR. TUNLEY: Never brought forward to you, then?

MR. BRISTOLL: It was not.

MR. TUNLEY: Did you bring it up?

MR. BRISTOLL: I had assumed that we would go with a standard renewal term.

MR. TUNLEY: All right. Let's just deal with that issue for a moment.

Your concern, as I understand it from your material and particularly tab D-5, the appropriate term of a new franchise agreement -- your concern centres on the term of your long-term debt; is that correct?

MR. BRISTOLL: I'm just going to go to D-5 first.

MR. TUNLEY: Sorry, D-4, I think -- tab D-4 of your material, Mr. Bristoll.

MR. THACKER: Sorry, Mr. Bristoll has an untabbed version of the evidence. I am going to give him a tabbed version.

MR. BRISTOLL: I have it right here. I found it. Go ahead, please.

MR. TUNLEY: The focus of your concern, as I understand it, is the length of the term of your various longer-term debt placements at the moment; is that right? Is that fair?

MR. BRISTOLL: My concern is the ability to renew that debt.

MR. TUNLEY: Right. And you will agree with me that both of your current long-term debt financings are five-year commitments, not 20-year commitments; right?

MR. BRISTOLL: They're standard five-year terms.

MR. TUNLEY: And, in fact, there has been no 20-year debt at NRG in the time that you have been with NRG at all,

has there?

MR. BRISTOLL: We had a 15-year term with Imperial Tobacco.

MR. TUNLEY: Prior to the current five-year debt instrument?

MR. BRISTOLL: That's correct.

MR. TUNLEY: My understanding is that you're talking about the debt that was placed in March of 2006, right, with the Bank of Nova Scotia?

MR. BRISTOLL: That is a five-year term.

MR. TUNLEY: And that's on a demand basis? The term can be shortened at any time by the lender?

MR. BRISTOLL: That is correct.

MR. TUNLEY: Right. And just, at the time you were able to renew that debt for a period of five years, you will agree with me that at that time there was less than three years to run on the franchise agreement with the town; correct?

MR. BRISTOLL: That is correct.

MR. TUNLEY: And there was less than five years to run on your franchise agreement with some of the other municipalities.

MR. BRISTOLL: That's also correct.

MR. TUNLEY: And the second time that you renewed your debt or placed new debt, just over $5 million -- I'm not sure of the exact figure for that debt. It isn't in your financial statements. But I understand it was in October 2008, just a few months ago.

MR. BRISTOLL: That's correct.

MR. TUNLEY: And that's five-year debt as well?

MR. BRISTOLL: Five-year term, yes.

MR. TUNLEY: And that's placed with only months to go on the term of your franchise agreement with the town and less than three years on most of the other municipal franchises that you have, right?

MR. BRISTOLL: That's correct.

MR. TUNLEY: And if your concern is uncertainty of renewal of debt, because of franchises coming up in the course of their term, would you not agree it would be preferable, if that is your real concern, to have all of these municipal franchise agreements coming up on the same schedule at the same time so that you could predict and this Board could predict and the municipalities could approach that issue on a one-time basis together, rather than staggered over a five- or six-year period, as currently appears? Wouldn't that be preferable?

MR. BRISTOLL: The relevant issue isn't how many years are left on the franchises. The relevant issue is whether or not there will be renewals. So if you have a three-year renewal with a franchise that represents 30 percent of your customer base, and there is no certainty of a renewal beyond that period of time, I don't -- I am not aware of anybody that would be willing to provide you with additional financing.

And the closest analogy I can make to this is that if any one of us was to go to the bank tomorrow and tell them

that they need to renew their home mortgage, but they're about to lose their job and there's no certainty of future income, the likelihood that the bank would renew your mortgage and give you the money would be significantly reduced.

MR. TUNLEY: Right. You would agree with me, though, that if your employer in those circumstances were to come with you to the bank and say, We're very happy with this employee, and we're almost certainly going to renew his employment or her employment after a period of time, there wouldn't be that concern, now, would there?

MR. BRISTOLL: If the Town of Aylmer was willing to go with us to our financiers and guarantee that they would renew, I think that would be a very different story.

MR. TUNLEY: And you understand we're here because they have set out some terms on which they would do that, they would renew the agreement that they have with you, right?

MR. BRISTOLL: I think the evidence shows --

MR. TUNLEY: Well, let's get your --

MR. THACKER: Sorry, let him finish, please. Can I ask the Panel to direct the counsel to allow the witness to complete his answer?

MR. KAISER: Go ahead, Mr. Bristoll.

MR. BRISTOLL: I believe the evidence shows that the town's intent is not to let us renew, but is to find someone else to replace us.

MR. KAISER: Let me understand. I thought I read the

evidence, as Mr. Tunley suggested, that they were prepared to renew if you accepted the conditions they set out. Is that not the case?

MR. BRISTOLL: Well, in any of the discussions that we've had, we have said that we would be willing to accept the majority of the conditions that were --

MR. KAISER: You were prepared to accept two of the conditions.

MR. BRISTOLL: Well, the GDAR ones for sure, yes, because we see no issues with those.

MR. KAISER: What are the conditions you're opposed to?

MR. BRISTOLL: The three-year renewal term.

MR. KAISER: Other than that, the conditions are acceptable?

MR. BRISTOLL: Effectively, yes.

MR. KAISER: All right. Thank you.

MR. TUNLEY: May I have a moment?

MR. KAISER: Yes, certainly.

Mr. Millar, why don't we take a 15-minute break to allow counsel to get organized.

MR. MILLAR: Thank you.

--- Recess taken at 10:40 a.m.

--- Upon resuming at 10:53 a.m.

MR. KAISER: Please be seated.

Mr. Tunley.

MR. TUNLEY: Thank you, Mr. Chairman.

Mr. Bristoll, I just want to be clear with you. You

understand that the other terms that have been put forward by the town were put forward for the purpose of improving past relationship issues so that, after a three-year term, there would be some hope, opportunity, of renewing again on a longer basis? Did you understand that that is the purpose?

MR. BRISTOLL: Not at all.

MR. TUNLEY: Okay. I understand what you have just said on the record is that but for the three-year term, you would be content with all of the other conditions in schedule A to the town's proposed franchise agreement.

Have I got that correctly?

MR. BRISTOLL: We are not content with lining up the franchise renewal dates. I want to make that clear, okay? We would be content with following the provisions of GDAR, which is, I think, the bulk of the conditions there, in order to I think assist with security deposit issues, and stuff like that, and putting an appropriate rate case in.

MR. TUNLEY: Right. Well, that's two of the issues. There are others. There's a request by the town that you put security deposits into trust accounts. Is that an acceptable condition that you can live with?

MR. BRISTOLL: The difficulty we have with that one has got more to do with logistics than anything. It is just how do you do that and how do you manage such a trust account?

We have strong financials. We have good cash reserves. And we do believe, quite strongly, that there

was a proceeding and that that proceeding addressed the concerns of 2.6 million or more customers, and that in that proceeding, in the proposed changes to I guess natural gas security deposit issues, it was not raised as an issue that was felt necessary for a regulated gas utility.

MR. TUNLEY: You are talking about the 2006 rate proceeding?

MR. BRISTOLL: No, no, I'm talking about this GDAR proceeding that the Town of Aylmer submitted their suggestions for.

MR. KAISER: There has been no final ruling on that, though; is that not correct?

MR. BRISTOLL: That's my understanding, also. But we would follow the provisions of GDAR.

MR. TUNLEY: The Board's proposed amendments to those provisions?

MR. BRISTOLL: The final decision. It seems a bit unfair to implement the proposed ones, and then find out six months later that we are going to re-implement something else. I think it would just create customer confusion.

MR. TUNLEY: Well, that's what's been asked for is to commit to implement them now. They're the Board's proposals.

MR. KAISER: I think I can assist you and Mr. Thacker on that.

You are absolutely right this matter came before the Board and there is a process, but there was recently a

decision of the Gas Committee, which I suppose has to be dealt with by the full Board, but that decision was, given that Union and Enbridge were opposed to those changes and, in fact, argued that the Board didn't have jurisdiction, and, further, said, There are no complaints with respect to us, these are all NRG complaints, the Board, at least at this time, said, you know, We're not going to put these other two utilities through this exercise. The problem is NRG, if there is a problem.

MR. BRISTOLL: Hmm-hmm.

MR. KAISER: And see if you can deal with it in the course of this franchise proceeding that we're now starting on today.

And you would have no reason to know that, but the Board, for other reasons, would like to deal with the security deposit issues here, because we don't see a need, given the objection of the other two gas utilities, to create a whole new process for them, when there is no problem there.

So I just give you that background, and the Board's rationale at the moment is we should see if we can deal with them in the context of the concerns here.

MR. TUNLEY: I guess for me, Mr. Bristoll, that focusses -- my question is: Are you prepared to meet the terms of the proposed GDAR changes even if they are not imposed on Enbridge and Union?

MR. BRISTOLL: I think our current policy, as it stands, satisfies an awful lot of -- the significant

changes that we would have to make would be to take all of the communications we have out there right now and compile them and turn them into a policy, that we would change our policy from one of granting credit based upon a credit history versus a payment history, which we have effectively done already.

I have difficulty with the trust fund issue. I just don't know how one would facilitate it. I think with the other issues, though, we could probably live with it.

MR. TUNLEY: Mr. Kaiser, just to -- I was hoping that the exchange earlier might shorten my cross and I could cut to some of the shorter issues, but I think in light of what you have just said and where we are in the process, I better go through what I had prepared.

MR. KAISER: That's fine.

MR. TUNLEY: I just note that.

MR. KAISER: That's fine.

MR. TUNLEY: Let me -- just before I leave the issue of length of term, Mr. Bristoll, is it black-and-white choice between three years and 20 years, or given that your debt is five-year debt, is a four- or five-year term of renewal something you can contemplate?

MR. BRISTOLL: What we would like to see is the standard renewal term that you would get on a renewal.

MR. TUNLEY: Right.

MR. BRISTOLL: Which I believe is well in excess of three years.

MR. TUNLEY: Let me explore one other issue, which is

that even -- as I understand it, even if we were to agree on a term for the Town of Aylmer and terms that would apply to service in the Town of Aylmer, I understand you are not prepared to align the other franchises or extend those terms to the township of Malahide, or Bayham or other municipalities in your area, is that --

MR. THACKER: I am going to object here, because -- for two reasons. These issues are not on the table. The question is irrelevant, in my submission. But, more importantly, what we have is a kind of sideways allegation, purportedly on behalf of a number of municipalities that chose not to intervene.

They are not here. They are not -- they have not brought forth evidence. Other than this letter from the Town of Bayham, that actually reveals the true purpose of this strategy here, no one else is here to complain, and so to get into an examination of aligning renewal terms for other franchises that don't expire for several years, in my submission, is not relevant to the issue before you today.

MR. KAISER: Mr. Tunley.

MR. TUNLEY: Mr. Kaiser, it is relevant. I mean, the current patchwork of renewal dates makes no sense. It means, effectively, that whatever the Board or the parties could agree to today, you know, may or may not extend to the other municipalities, and they may or may not be back here in two years' time or three years' time or more years' time raising the same issues.

The approach that we've taken - I outlined it in my

letter of January 9th to the Board - is that we want to address these issues for this franchise area. Ours is the first case to come forward, but the issues that we raise are generic.

The whole purpose of a short renewal -- there are two purposes of a short renewal. One is to address some recent historic relationship issues between the town -- well, not so much the town, but the customers of NRG and the utility, to try an address those in a formal way in the franchise agreement.

But the second is to bring these franchises together so that the issue can be addressed more squarely and all of the options are available.

MR. KAISER: All right. To the extent that they're generic issues, there are what, five other municipalities?

MR. TUNLEY: Yes.

MR. KAISER: We don't know, because we haven't heard the evidence from the other five, so Mr. Thacker is right about that. But in due course, we will hear it, I suppose. Those agreements will be coming up. As I understand it, they all come up over the next couple of years.

So I just have one question. This three-year term that you are proposing, does that mean that -- what's the latest date that one of the six comes up?

MR. TUNLEY: If you turn to our pre-filed evidence, they're all set out in -- it's tab 1 of our evidence binder, Mr. Kaiser. In paragraph 3, we have the five

municipalities lined up. Some of them have more than one franchise agreement, simply because of amalgamation history.

MR. KAISER: So am I right that 2016, that's the --

MR. TUNLEY: Is the last.

MR. KAISER: That's the last.

MR. TUNLEY: That's the Municipality of Central Elgin.

MR. KAISER: So this three years isn't going to take us to that, is it?

MR. TUNLEY: It's not. The three years takes us to 2012, when the township of Malahide, Corporation of Municipality of Thames Centre, and Bayham all come up.

MR. KAISER: So are those the big ones? I mean, if you are trying to coordinate them -- I am just trying to understand the proposition here. If the deal is that we want to have them all terminate at the same date, three years isn't going to get us there anyway, right? As this is set out. But it will get some of them there.

MR. TUNLEY: Right.

MR. KAISER: So is your logic that, well, we at least want the big ones to come up at the same date, or what?

MR. TUNLEY: The problem is that if you go past 2012, then you are going to have to have three applications from three municipalities, because of the wording of section 10 of the Municipal Franchises Act, which requires an application within the year preceding or prior -- at the time of expiry.

So we were trying to pick a date that would bring the

first group in, and then presumed that the Board would take it forward from there, a step at a time. That's the thinking. But --

MR. KAISER: So the first year was to get you to 2012.

MR. TUNLEY: Yes.

MR. KAISER: The three years --

MR. TUNLEY: Three years is to get us to 2012 --

MR. KAISER: All right.

MR. TUNLEY: -- when three other municipalities come available.

MR. KAISER: All right.

MR. TUNLEY: Now, I do point out, Mr. Thacker is correct that the letter from the Town of Bayham has a slightly different concept. They were thinking of a five-year term, and that just reflects different approaches of different municipalities.

The ultimate issue is in the hands of this Board. I mean, to step back, each of these issues is going to come forward as a section 10 application unless this Board sets some parameters for it that everybody understands.

The municipalities, as I understand the evidence, have talked about this. They want to get together. They want to get on the same timetable with each other, so that it isn't scattered, as it is at the moment.

MR. THACKER: I have to object now, because I do want to put this on the record. Mr. Tunley acts for the Town of Aylmer. He does not act for any of the other

municipalities. He tried to solicit their support because he wants to use them as part of his strategy to displace NRG, and not one of them came here.

So he doesn't have any authority to speak for what they will or won't do, whether or not there ever will be another section 10 hearing, because it is only the Town of Aylmer that is using this strategy so far. Nobody else has come to give evidence.

I would also say that Mr. Tunley's submission that the mere existence of a patchwork is nonsense. The entire province is a patchwork. He doesn't understand how the system works.

As you know, there are staggered renewal dates across the entire province. On his rationale you ought to truncate them all and make them one, because he thinks that is better for public policy. We all know that is not right.

But I just make that point. Patchwork alone has nothing to do with public policy. It is all about furthering the private objectives of the Town of Aylmer and perhaps somebody else who wants to replace NRG.

So he has got no standing to speak on behalf of the other municipalities. I would also say that he has got no evidence that you ought to place any weight on. We all know the best-evidence rule. If any of those other municipalities had a strong position, they would have come here and expressed it. They haven't introduced any evidence. All we have are sideways letters. And the only

real letter that you have is the Town of Bayham.

If you look at the other letters, they have nothing to do with supporting this strategy of unified renewals. All they support is the intervention of the town. Most of them are dated in October. They support the intervention from a previous hearing.

So it is really only the Town of Bayham that you have, and you have a hearsay letter, and it is clearly one that was solicited by Aylmer, if you read it carefully. It's something the Town of Aylmer put the Town of Bayham up to.

If they really believed what was going on here, they would be here.

MR. KAISER: Mr. Thacker, is that right? I am looking at tab D, which is a letter from the Thames Centre. And that was the resolution of council of Thames Centre supporting the Town of Aylmer, but that wasn't with respect to this proceeding. That was with respect to the previous proceeding we had here dealing with the Union application to cease service.

MR. THACKER: That's quite correct. So I say you should place no weight on suggestions as to what will or won't happen in the future. We may never have another contested renewal. Nobody else has come forward to say they intend to oppose renewal or even to suggest any other terms, and you ought not to entertain this. It's not the best evidence.

MR. KAISER: Well, Mr. Tunley, I think Mr. Thacker is right, but I am not sure that much turns on it at this

point. We will hear from those towns when we hear from them. We are just trying to understand your rationale for the three years.

MR. TUNLEY: Yes.

MR. KAISER: And as I understand it, it is to, if I can use the vernacular, put NRG on a short leash, number one, to see if some of these matters can be dealt with to your satisfaction, the satisfaction of your client. And the other is, you've said, to coincide -- to line up some of these renewal dates.

And my question simply was, the three years that you have proposed would do that, I guess, at least with respect to two of the additional ones. They may decide to join with you or not join with you, but at least on the face of it, three of the six on a three-year renewal would be on the same timeline, more or less.

MR. TUNLEY: Yes. Can I just comment on a couple of things? One that Mr. Thacker said, which I think is not correct, and I would like to just be clear, the letter from the township of Malahide, February the 5th, clearly -- it's in tab D, second from the back -- clearly does endorse the position in my letter to the Board --

MR. KAISER: Let us get that.

MR. TUNLEY: That's the Malahide. There was a resolution of their council.

MR. KAISER: This is a letter of February 5th?

MR. TUNLEY: Yes.

MR. KAISER: All right. In any event, we're not going

to -- I think, Mr. Thacker, we are not going to put much weight on these letters. Nobody is here. We don't have any witnesses. We don't have to deal with it anyway. We just wanted to understand your theory of the three years.

MR. TUNLEY: Yes.

MR. KAISER: I think we have that clear.

MR. TUNLEY: And let me just be clear on that. The other thing is, in terms of your comment about a short leash, I am asking this Board to put NRG on a short term, yes. But it's this Board's decision. Very clearly, under section 10 of the Municipal Franchises Acts, you have the authority.

So that's what I am asking you to do. And there is a background to why. But one of the objectives -- and it is important -- is to bring them together.

I agree with your observation. July -- sorry, the 2012 date is the first of the additional ones. It is also the two largest, as I understand it.

MR. KAISER: Well, that was the other part of my question. I was trying to think if there is some logic to this, that --

MR. TUNLEY: Yes.

MR. KAISER: -- you cared less about the 2016 one.

MR. TUNLEY: The other practical -- yes. And they're the ones that are likely to be relevant for banking purposes, for example, so -- but the last of them is 2016. The only problem with choosing that date was that you would then face interim renewal applications from each of the

four others.

So somewhere in there is a logical date, and all I am saying to -- through the witness and to this Board is, let's find a date when all of these can come together.

What I am hearing from Mr. Bristoll and which is relevant is, he doesn't want them to come together.

MR. KAISER: No, we understand his position.

While you are on your feet, your client's position, with respect to the rate case, what is that all about? You don't want to renew the franchise until you know what the rates are going to be? Is that basically it?

MR. TUNLEY: No. Not at all. It is simply to commit to file a rate case. We are prepared to live with the Board's process. And as I understand it -- I was going to explore it with the witness, but the main concern is the cost of doing that.

I mean, we may not need an oral hearing of the rate case. It may focus on discrete issues that have changed since 2006, and it may be a very focused enquiry. But there are significant issues that have been raised since 2006 that we believe should be addressed in a rate hearing, one of which is the Class C preferred-share issue and whether it is properly debt or equity, another of which --

MR. KAISER: Hasn't the Board already ruled on that?

MR. TUNLEY: Yes. But the other issue is the security deposits, because -- and it is clear in the evidence. I don't think there is going to be a dispute. But at the time of the last rate case, there was $105,000 in security

deposits. There is now $757,000.

MR. KAISER: So is it fair to say that this rate-case issue is just a security deposit times two? I mean, is it the security deposit that's the real -- outside of the alignment issue, which we understand --

MR. TUNLEY: Yes.

MR. KAISER: -- is it really the security deposit that is driving your opposition?

MR. TUNLEY: There are really three areas. There are security deposits, a customer complaint process that is in writing and that gels with the Board's process, and there is a written policy that facilitates industrial, commercial and retail development in this area.

This is an area that has the need for industrial, regional -- sorry, retail and commercial development, and we need a gas supplier that is positively a partner in that process. We don't feel that past history shows NRG in that category, and we are looking for a commitment from NRG to work with us in that regard.

I actually think what Mr. Bristoll is saying to you in evidence is they're prepared to live with all of that. They think that there's a hidden agenda here to go to somebody else -- I mean, we can hear from Ms. Adams.

That is not the case.

If we cannot solve the relationship issues, then all of the municipalities should have all of their options available. But that's a matter for the Board to decide, not for them to assert unilaterally, and they can only

decide that together.

MR. KAISER: Tell me this. What stops Union from coming in here right now and laying pipe to the ethanol plant, say? Anything?

MR. TUNLEY: The franchise agreement.

MR. KAISER: Can your client -- you are not restricted to one franchise agreement, are you?

MR. TUNLEY: No, but under the franchise agreement, the -- as I understand the scheme, the exclusive right to lay pipe is given to --

MR. KAISER: Is it exclusive?

MR. TUNLEY: Yes, it is. It is in all of these agreements.

MR. KING: I didn't think any franchise agreements are exclusive in Ontario.

MR. TUNLEY: There are bypass conditions. I mean the recent greenfield case indicates that even when there is an agreement that purports to be exclusive, the Board can --

MR. KAISER: You gentlemen can address it, but, I mean, as to whether Union is lurking in the wings and their only way of getting into this market is to buy out NRG, I just wanted some understanding on that point.

If Union really wanted desperately to come in here, in my understanding, they could come in here and provide service, if that was their real objective. In any event, you will address that, to the extent it is relevant. I am not sure it is.

Let me just -- I don't mean to interrupt you and I

shouldn't, but I am a little bit confused or don't understand why it is you want the security deposits to be in trust at your client as opposed to what every gas company does; they have, I guess, trust accounts and they're dealt with.

Is it you think NRG is going to run away with the money, or what?

MR. TUNLEY: Well, the issue was addressed squarely in the preceding hearing involving Union Gas as an unsecured creditor, which is all their customers are.

This Board has decided in the decision, which you will find -- actually, your decision is at tab F of our material, and I don't think there is any doubt about it.

MR. KAISER: So you are actually worried that the utility is financially unstable and the security deposits are at risk unless they're moved to somebody else's trust account; is that what you're saying?

MR. TUNLEY: That is exactly what Union came to this Board and said.

MR. KAISER: What do you say?

MR. TUNLEY: This Board has said they are.

MR. KAISER: Is that your position now, that this utility is in a unique situation, financially unsustainable and that we need the securities deposits to be moved to a safer spot?

MR. TUNLEY: Yes.

MR. KAISER: All right. Go ahead.

MR. TUNLEY: Mr. Bristoll, just to highlight that

issue, if you would just turn to the prefiled evidence of Ms. Adams for the town at tab 1 of the town's binder, and go with me to page 10, paragraph 32?

I take it there is no issue with the figures set out here, that in 2005 you had $105,000 in security deposits in your financial statements, and that was the figure used for the 2006 rate case?

Are you aware of that?

MR. BRISTOLL: I have no problem with those numbers.

MR. TUNLEY: And that it's increased each year, 280,000 by three times the next year, doubling again to 603,000 in 2007, and going up now in 2008 to 757,000?

MR. BRISTOLL: That's correct.

MR. TUNLEY: All right. And that is almost 10 percent of your entire capital requirement, debt and equity, for running this company is now security deposits?

MR. KAISER: Do those deposits count as part of your equity in your financial statements?

MR. BRISTOLL: No. They're not equity. They're liability.

MR. KAISER: Right.

MR. TUNLEY: As I understand it, Mr. Bristoll, you pay 1 percent, if and when those are returned, is that right, interest on those deposits?

MR. BRISTOLL: That's correct. I would like to remind you, though, that the proposed GDAR amendments require that we use the Bank of Canada rate less 2 percent, and the Bank of Canada rate currently is 3.5 percent.

MR. TUNLEY: You will agree with me that currently you set the rate at 1 percent regardless of the Bank of Canada, where it goes; right?

MR. BRISTOLL: It is currently 1 percent; that is correct.

MR. KAISER: It might be higher than the Bank of Canada rate today.

MR. BRISTOLL: Well, that was our thought. We're hoping the customers don't have to give us some money.

MR. TUNLEY: Let me come to this issue again. But that is, you will agree, a change in your circumstances from 2005, the rate case that you filed, to today, is you have had a 650 percent increase in your security deposits?

MR. BRISTOLL: Yes. Let me give you some background on that, okay?

MR. TUNLEY: Just first of all agree with that?

MR. BRISTOLL: I do agree with that, yes. The security deposits are not intended to be a cash grab of any sort. They're intended to ensure that none of the ratepayers are harmed by those ratepayers that show cracks in their financial armour, if I could put it that way.

The policy is designed to return security deposits to those who should have them returned to them.

I would like to point out that in 2008 we collected $292,000 in security deposits and refunded $138,000 in security deposits. I would like to point out that in 2009 year to date, we have collected $40,000 in security deposits and have refunded $83,220 in security deposits.

We are only doing it to protect everybody's interests. Prior to that point in time, when you saw the number of 105 and 280, security deposits weren't taken as seriously as they should be, but we ran into a few circumstances with tobacco farmers, in particular, who had quite large bills who did not pay those bills for significant periods of time, and those bills ran up to really large sums of money.

And it dawned upon us that in a community that unfortunately is finding itself in somewhat of an economic downturn, that it was incumbent upon us to ensure that the rest of our ratepayers did not suffer as a result of those ratepayers that could not afford to pay their bills.

MR. TUNLEY: And you will agree with me that a rate case that examined that issue of the impact of this change of circumstances from 105,000 to 750,000 and whether that is really, as you say, protecting the other ratepayers or whether it is a means of financing the operations of your company, that's a change in circumstances that a rate case could explore; right?

MR. BRISTOLL: Sure.

MR. TUNLEY: Let me go to another change of circumstances, and that's the finding by the Board that your class C shares are retractable and should be considered to be debt rather than equity.

MR. THACKER: Can you just point him to the finding you are referring to, since you have it in your book?

MR. TUNLEY: Yes. It is in the decision of the Board

at -- it's at tab F, the decision of the Board in the recent Union case.

MR. THACKER: Can you point out the finding that they are debt?

MR. TUNLEY: Well, there's the -- on page 3 under the heading "NRG's Financial Status".

MR. THACKER: Yes.

MR. TUNLEY: There is the recital of the evidence of Mr. Pallett, your auditor, indicating that they should -- were to be treated under GAAP as a liability.

MR. THACKER: I was looking for the word "debt".

MR. TUNLEY: Well, liability is debt; right?

MR. THACKER: You said debt, so I just want to be clear, when you're putting a proposition to the witness, that you're putting it fairly. So if that is the provision you're talking about, then we now know what you're speaking of.

MR. TUNLEY: I am also speaking of the finding of the Board at tab 4 -- sorry, page 4 of the decision, at the end of the third full paragraph, which recognizes that there's been a $13 million reduction in equity and a $13 million increase in liability, which is significant. And NRG is now in a negative equity position. So clearly, whether you like the word "debt" or not, Mr. Thacker, that is not equity, all right?

And then two paragraphs down, in the Board's view, disclosure of this circumstance is said to be a significant -- significantly increases the financial risk

associated with NRG.

So those are the findings that I am referring to.

MR. THACKER: Okay. So now I have your point. So your question was...?

MR. TUNLEY: My question was, just to confirm, as I understand it, there was some 4 million-600-and -- sorry, $4,064,000 of this retractable shares were treated as equity for purposes of your 2006 rate case.

Do you agree with that, Mr. Bristoll? The exact number is $4,064,219.

MR. BRISTOLL: Can you rephrase the question, please?

MR. TUNLEY: Do you agree with me that the equity that was considered by the Board in your 2006 rate case of $4,064,219 in equity is very largely the same Class C retractable shares that are referred to in the Board's decision in the Union case recently?

MR. BRISTOLL: Our equity at that time was a combination of our shares plus our retained earnings.

MR. KAISER: Can I just stop you there, Mr. Tunley?

Mr. Bristoll, while we're on this decision, at the top of page 5, you will recall that part of the Board's decision was that you were required to file your audited financial statements within four months of the year's end; i.e., by January 31st the following year. Has that happened?

MR. BRISTOLL: Definitely.

MR. KAISER: You have filed --

MR. BRISTOLL: Oh, yes, definitely.

MR. TUNLEY: They're in the evidence before you, Mr. Kaiser, at tab E.

MR. KAISER: All right. Thank you.

MR. TUNLEY: And just if we can go there, Mr. Bristoll. I don't think the presentation has changed. If you look at your -- I think it is the balance sheet on page 3 of the statements, at tab E.

MR. BRISTOLL: Yes.

MR. TUNLEY: You see there there is the $13 million of shareholders' equity, with a reference to share capital as described in note 11, right?

MR. BRISTOLL: I see that, yes.

MR. TUNLEY: Did you say there was retained earnings? I don't see retained earnings here.

MR. BRISTOLL: I said the combination of the two. That was a deficit, yes.

MR. TUNLEY: Okay. So it's -- the deficit is what you were referring to, with a net today of approximately -- or September 30th of approximately 4,600,000.

MR. BRISTOLL: I think in every rates case since these shares have been in existence it has been determined that they are equity. There is a difference between GAAP and what we're doing for rate-making purposes, and then for rate-making purposes these shares have always considered to be equity, not debt.

MR. TUNLEY: In the past. Just -- sorry, in the past that's been the case, right?

MR. BRISTOLL: It is a rate-case issue, so, yes.

MR. TUNLEY: Yes. And in 2006, these four-odd million dollars' worth of net share value were considered equity, and you got -- you are currently receiving, in rates, a 9.2 percent return on that $4 million, correct?

MR. BRISTOLL: That is correct.

MR. TUNLEY: Right. And you will agree with me that the circumstance we now have -- that is, those have been disclosed by your auditors to be a liability and found by the Board to be a liability -- may -- may affect how those are treated for rate purposes. I understand your position is it wouldn't. But it may, right?

MR. BRISTOLL: I agree with you that for GAAP purposes it would appear that they would be a liability. But I do not believe that the Board has found that they are a liability for rate-making purposes. I believe that the Board recognizes that they are equity.

MR. TUNLEY: Right. But you will agree with me that if, in a new rate case, the Board were to determine that they are a liability or debt for rate-making purposes, that would affect the returns that you are entitled to as a company, and that, in turn, would affect rates, right?

MR. BRISTOLL: If that was the case, yes.

MR. TUNLEY: In addition, in the rate decision, as I read it, you were assessed with a 50-basis-point risk premium, and in light of the Board's findings about risk in the company, that may change as well, right?

MR. BRISTOLL: I believe many things could change.

MR. TUNLEY: Right. And so just, those are some

factors that could have changed between 2006 and today; in fact, have changed. But there may be others as well is what you're saying, right?

MR. BRISTOLL: On that issue, I don't think anything has changed. I think that what has changed is how GAAP is presenting them. I don't think from a rate-making perspective anything has changed.

MR. TUNLEY: Well, what we can agree on is that if there's a change in risk related to the disclosure of your retractable shares as a liability and not as equity, that is not a change in risk associated with NRG's regulated business. That's a change in risk that is solely attributable to your share capital structure and your shareholders' affairs, correct?

MR. BRISTOLL: What has changed is how things are reported, not the substance of what we have.

MR. TUNLEY: Well...

MR. KAISER: Mr. Tunley, just in the interests of understanding where you are going, we understand the issues. We are familiar with this issue. It no doubt will arise in a rate case. But we are not deciding that today.

MR. TUNLEY: No.

MR. KAISER: Are you trying to get NRG to agree to some of these propositions now, or are you just flagging them, or are you actually saying, Board, you shouldn't renew this franchise agreement. This utility is not financially viable? Where are we going with this evidence?

MR. TUNLEY: I am going to ask you to renew it for three years, but with the conditions, including requiring NRG to have an immediate referral to a rate case.

MR. KAISER: And that's -- so they have a rate case and we issue a decision. What's that got to do with anything about the three years?

MR. TUNLEY: That would set rates on a go-forward basis.

MR. KAISER: You just want to make sure they come in for a rate case, because you think there might be a rate reduction, because the share capital might be adjusted or some such thing.

MR. TUNLEY: And because this Board may address whether it is proper to continue using the security deposits at the level they're at as working capital. Yes, those are the key issues. There may be others.

MR. KAISER: Using the security deposits as working capital, that is quite different from letting the town hold the funds in trust, I take it? Or is it one and the same?

MR. TUNLEY: Let me be clear. We have no desire to hold the funds in trust. The request, in our proposal, is that NRG set up a trust account in its affairs and hold this money in trust for their customers.

MR. KAISER: Oh, I somehow thought that you wanted the town to do it, but...

MR. TUNLEY: No.

MR. KAISER: All right.

MR. TUNLEY: No. Just as a general point, we are not

here to get into the business of running NRG's business --

MR. KAISER: So let me understand. I think we get it. This business about the rate case, just to summarize what I think your position is, is that Board -- you have had this case dealing with these preferred shares. We know there is an issue. We think that will have implications. We think it will have implications for the rate case. It may have rate implications. We just want to make sure it gets dealt with in a timely fashion. We want a commitment that NRG is going to file in a certain time frame.

MR. TUNLEY: Yes. And if you --

MR. KAISER: And what is your objection to that, Mr. Bristoll? That seems reasonable. They're not asking for any concession today. They are just saying, Tell us when you are going to file, so we can get these issues dealt with.

It is a live issue. You recognize it. We recognize it. Nobody is kidding themselves. You are quite right. It hasn't been dealt with in a rate case, but it will get dealt with.

What's wrong with committing that -- when do you want the rate case? In the next year? What's the time frame?

MR. KING: NRG's fiscal end is an October 1 start date.

MR. KAISER: What is your proposal?

MR. TUNLEY: In our schedule A -- you should have regard to our draft of the franchise agreement, which has attached schedule A. It is in tab L to our material. And

it is just before the last item, so it is just before the last green page. You should find page 10, schedule A. These are the added terms to the, what is essentially otherwise the standard form Board agreement.

MR. KAISER: And the date is...?

MR. TUNLEY: This was put forward to NRG on, I believe, December 16th. And it is paragraph 1, Mr. Kaiser:

> "Immediately upon the execution of this agreement, the gas company will apply."

Now, that's obviously just the soonest they could do it. We could play with the date --

MR. KAISER: Well, tell us so we can get a response. I mean, is it satisfactory to you if they file within six months?

MR. TUNLEY: I would expect so. The point is to get these issues addressed.

MR. KAISER: No, I understand. What is wrong with filing a rate application in six months? Any problem with that?

MR. BRISTOLL: If there's a -- if we are going to file a rate application, we would like to know that we're filing it under a reasonable term with certainty of renewal after that; otherwise, it significantly changes how we would file.

MR. KAISER: You are going to have a decision here, because this franchise agreement runs out at the end of this month. There's going to be some decision, and certainly within that six-month time frame; if not, within

90 days or earlier.

MR. BRISTOLL: So the issue for us is whether we're filing for a -- whether we will have to recover our assets over a three-year period, because there will be no renewal, or whether we will do it in the normal course of business, which significantly impacts how we would go about this.

MR. KAISER: Even if you get a three-year renewal - let's say a three-year, five-year, whatever - you think that is going to change how you file your rate case? You are going to try to depreciate all of your assets over the term of the franchise agreement?

MR. BRISTOLL: I don't know what else we would do, because if we get a three-year renewal, for example, with no certainty of a further renewal, like, in the normal course of business, I'm not exactly sure who -- what financial institution would want to take that risk on that they wouldn't be able to recover their loan to us.

MR. THACKER: The concern is what we have here is a disclosed strategy to make it more economically efficient and attractive to this Board to displace NRG at the end of three years. A financial institution will see that in two seconds, and then they will never finance it unless we depreciate all of our assets over three years, instead of ten or 20, and that's the problem.

We need to determine that issue before a rate case can be brought on. I don't think there is any objection to bringing on a rate case in a reasonable period of time.

MR. KAISER: It will be what it is.

MR. THACKER: Yes. I mean, within the next 12 months there will be a rate case. I think, if I read the act properly, they could have at any time over the last three years, the Town of Aylmer, brought on a rate case, or compelled us to do so. They haven't done it. They have all of the rights to provoke that process.

MR. KAISER: I am just trying, Mr. Thacker, to shorten the list, if we could. I am about to give up, but that is -- you know, if we file a rate case within six months, can we live with that?

MR. THACKER: Let me help you. I have just received instructions. Say within 12 months, no problem. Six months is a little short, because it may cause us to have to pay a premium or use a consultant that we don't otherwise want to use because of the consultant's availability, but within 12 months, certainly.

MR. KAISER: I will tell you this. The Board is interested in this issue. I mean, we have just gone through a hearing, and you were present --

MR. THACKER: Yes.

MR. KAISER: -- and the financial situation with this utility is not the best in the province. And so -- and that's why we wrote this decision in the way we did, to make sure you got your financials in, and the Board is reviewing it.

So the Board also can force you in. I was just trying to see if you could agree to file within six months. It seems to me to be a reasonable request, but you can

consider it.

I will tell you you will certainly have a decision in this case within 90 days.

MR. BRISTOLL: Thank you.

MR. KAISER: There won't be any question about that.

MR. THACKER: I can point out that there are two previous OEB hearings where these very same shares were determined to be equity.

MR. KAISER: We know that.

MS. SPOEL: Mr. Thacker, was before you had an opinion from your accountant that he had -- that they had to be viewed as a liability for GAAP purposes. So that information wasn't available to the Board the last time we went through this.

So it's new information. Whether it makes a difference in a rates case, I don't know.

MR. THACKER: Right.

MS. SPOEL: But it wasn't there the last time we had an NRG rates case, and that I do know, because I was on that panel.

MR. THACKER: Fair enough.

MS. SPOEL: So there is no point in talking about how that hasn't changed. Of course it's changed. The shares themselves haven't -- it appears, to be changed, but the way they're treated for accounting purposes has.

That may and it may not have an impact on the rates --

MR. THACKER: I agree with you.

MS. SPOEL: -- or the way they're dealt with in a

rates case. To say that they haven't changed, we know.

MR. KAISER: Mr. Tunley.

MR. TUNLEY: Let me just try to shorten matters, again, going back to the security deposit issue and finishing that off.

We went through the numbers, how that has increased and the 650 percent increase over the three-year period since 2005.

I mean, I guess to cut to the chase, is it your business judgment that that's a neutral fact, that that's a good thing? It's business as usual to have $750,000, almost a tenth of your capital requirement, in that form?

MR. BRISTOLL: We're not driving towards a percentage of anything. What we did is we looked at the individuals that came to us and had requested service, and we did a credit check on them and we based it upon what we thought were reasonable standards for credit checks. And it was evaluated that we would need to get a security deposit.

If they have a good payment history in the next 12 months, then our policy is to return 50 percent of it, which we do.

So it's not that we're chasing a number. It is just this is what materializes over time.

MR. TUNLEY: Well, it has materialized, in fairness, over the last three years since your last rate case.

MR. BRISTOLL: That is correct.

MR. TUNLEY: Right. You mentioned in your evidence the petition that was filed with the Town of Aylmer about

this issue of security deposits. That's at tab H of the material, if you want to turn to it.

I believe you are aware, sir, that this petition -- for Board members, it is the very last item at the back of tab H.

This petition was presented to council, in an open meeting of council on July 21st, 2008. Are you aware of that? It's a public document.

MR. BRISTOLL: I was not aware of that.

MR. TUNLEY: It was discussed with you, it appears from the minutes of the meeting, on September 11th -- not the minutes, but from Ms. Adams' summary of the meeting with you at tab J.

If you look about half way down the page, there is a discussion of 400-plus people having signed a petition. That was discussed with you on September 11th; correct?

MR. BRISTOLL: Again, I indicated at the time we had not yet seen a copy of the petition.

MR. TUNLEY: Right. Then the first page of the petition was filed with this Board in the context of the Union proceeding, right, in October?

MR. BRISTOLL: That's correct.

MR. TUNLEY: Did you ever request to see a petition with 400-plus signatures complaining about your security deposit policy?

MR. BRISTOLL: When we met with Mayor Habkirk and Heather Adams on September 11th, I believe it was, we did mention to them that we had never seen a copy of it.

MR. TUNLEY: You have now read it, I take it. You see the comments people are making about your company, characterizing it, as I read it, as stealing, robbery, very unfair, rip-off, scandalous?

MR. BRISTOLL: I have read the comments, yes.

MR. TUNLEY: Disgraceful, disgusting?

MR. BRISTOLL: Yes.

MR. TUNLEY: We are talking about some 600 of your customers seeing your policies that way.

MR. BRISTOLL: I am not sure that they're all our customers. It is people that have signed a petition, which is very different than a list of customers that have signed something.

MR. TUNLEY: Okay.

MR. BRISTOLL: I would also like to let you know that we have gone through great strides in the last nine months to put in place a policy that we believe is both fair to the utility and to the ratepayers, and I believe that policy has been filed as evidence and presented to the town several times.

MR. TUNLEY: But, Mr. Bristoll, just simply, because I'm not an expert on these things, but do you not see a connection between this dramatic increase in the amount of money you are holding from customers and this kind of response from residents in the town?

Do you not see a connection between those two, and can you not agree with me it's at least concerning from a business point of view?

MR. BRISTOLL: And we have gone through great strides to improve upon that. I think my numbers that I have indicated earlier and the questions in the returns would show that.

MR. TUNLEY: As I read your evidence, it is still saying and claiming that you have very few complaints of customer service, in spite of knowing about the details of this. I just don't understand.

MR. BRISTOLL: The last written complaint we received was on November 3rd, 2008. If people wish to complain directly to us, we would be very open to hear them and to address them, but they're not.

MR. TUNLEY: Let me come to that in a moment, because it is another point.

Let's go to your policy, which we have, I believe, produced in tab I. This is your security deposit policy, as I understand it; is that right? There are a number of different versions of the document here that -- do you recognize these various versions of the document?

MR. BRISTOLL: Bear with me for one second, please.

I'm ready now.

MR. TUNLEY: Okay. Just to identify what we have here, I understand that the first page at tab I is an internal document about how you administer your policy; is that correct? It's not sent to customers or publicly available?

MR. BRISTOLL: That's correct.

MR. TUNLEY: Is it accurate, though, as far as it goes

here?

MR. BRISTOLL: That's correct.

MR. TUNLEY: And I understand the next document is a version of your policy, as it is to be provided to customers, which was provided to the town in the September 11th meeting; is that correct?

MR. BRISTOLL: That's correct.

MR. TUNLEY: And then in the next document a version of that, somewhat amended, is being sent, according to your letter to the town of January the 15th, it's going to be sent to customers, I understand, for the first time in their February billing; is that right?

MR. BRISTOLL: It would not be for the first time. Anybody who has a security deposit with us has received a copy of this policy when we -- when the deposit was placed with us.

I think the other thing that you will notice with the three documents is that they're extremely consistent. They both talk about 50 percent being returned in the first year, and 100 percent will be returned -- the balance of the 50 percent, which is the next 50, will be returned in the second year, provided there is good payment history.

MR. TUNLEY: Well, let's just look at the first document, your internal -- as I understand it, the way you calculate the security deposit in the fourth full paragraph is to take 2.5 times the average of the three highest months of consumption.

MR. BRISTOLL: That's correct.

MR. TUNLEY: So we are looking at the three highest winter months, and then you multiply that by two and a half.

MR. BRISTOLL: That's the maximum security deposit that we would take; that's correct.

MR. TUNLEY: As opposed to what the Board has proposed in the GDAR, which is average monthly over the whole year, right?

MR. BRISTOLL: That's the difference between the two, yes.

MR. TUNLEY: That's the difference between the two.

MR. BRISTOLL: Right. That's correct.

MR. TUNLEY: And then as I understand it, looking at the procedure that you go through prior to that, there's a kind of presumption that that will be required, a deposit will be required, unless you get a customer's credit report showing that they meet certain criteria; is that right?

MR. BRISTOLL: We run a credit report on all new customers, with their authorization, to determine whether or not we are required to take a security deposit or not.

MR. TUNLEY: And then it is a matter of discretion, once you run that report, as to where you place the deposit that you require, between zero and the full amount of two-and-a-half times the average worst three months; is that right? There don't seem to be any criteria as to how you place an individual?

MR. BRISTOLL: You are placed within, effectively, one of two buckets. We either will accept a security deposit

from you or we won't.

MR. TUNLEY: Right. And so you either get the full amount or nothing. Is that what you're saying?

MR. BRISTOLL: Well, yes. We have to have a standard somewhere, so that is how we drew the line.

MR. TUNLEY: And do you have an equal-billing process, where you can kind of average the months; billings for customers over the year, rather than having them low in the summer and higher later?

MR. BRISTOLL: Yes, we do.

MR. TUNLEY: So your actual exposure isn't necessarily on a two-and-a-half times the worst month basis? That wouldn't normally arise in your business, would it?

MR. BRISTOLL: Our exposure with security deposits actually lies with the gas commodity more than anything. With the price of natural gas at times being very high, what has happened -- or what we experienced was, is that one-third of our bill would be distribution and two-thirds of our bill would be commodity-based.

But we earn no return on natural gas itself. It's a pass-through. We pay a dollar for gas. We pass through a dollar to the customer, effectively.

And if there's a bad debt associated with a bill, the lion's share of that debt has to be recouped, which -- so the lion's share of that debt would be non-profit-producing receivable. It would have to be recouped from a very small percentage of our business that runs profits.

So the risk for us is a lot higher than it actually

appears to be on the surface, as a result of that relationship between the commodity and the distribution on the bill.

MR. TUNLEY: Okay. Well, I hope there are people in the room who understand that, but I am pretty confident that the customers in the Town of Aylmer just see the amount that you are requiring from them -- never mind who is supplying you with the commodity -- and they're concerned about it. That's how I read the petition.

MR. BRISTOLL: And I recognize that concern, and I think we have gone a long way in the last while to work with the town and to work with our customers to come up with a much kinder, gentler, softer policy.

MR. TUNLEY: And the town has heard, as is indicated in the material, that the deposits you are requiring from new customers are, even for a residential customer, as much as $500 and $1,000 per customer as a security deposit. Are you aware of those numbers? Is that right?

MR. BRISTOLL: That is correct, yes. I would like to point out that that petition goes back to July 2008, and it is now February 2009. And a lot has transpired between those two dates.

MR. TUNLEY: Well, a lot has transpired. It's not in the evidence before us, I take it?

MR. BRISTOLL: No.

MR. TUNLEY: Right. Well...

Let's deal with the issue of customer complaints. I think it is clear, in your own evidence, that there is no

written policy at NRG on receipt of customer complaints, right?

MR. BRISTOLL: There's a procedure we follow internally, yes.

MR. TUNLEY: There is no written policy that sets out that procedure --

MR. BRISTOLL: That's correct.

MR. TUNLEY: -- is there? And there is no form that you can give to a customer to say, Fill this out and let us know the nature of your concern, is there?

MR. BRISTOLL: No, we have not done that.

MR. TUNLEY: And there is no single intake for telephone complaints. There's a number for one kind of complaint, and there's another number for security-deposit complaints, as I read your material, right? I think it is your response to the Board's interrogatories that gives me that information in your circular --

MR. BRISTOLL: Do we have a complaint line where you can dial in to a single person?

MR. TUNLEY: You don't, do you?

MR. BRISTOLL: No, we don't. That would be logistically very difficult for our company.

MR. TUNLEY: And you have no call-answering performance system to measure -- to record the information that comes in at any of those numbers and measure the response time of staff to those calls, do you? You don't have that system in place.

MR. BRISTOLL: No.

MR. TUNLEY: And there is no form that your staff are required to fill out indicating who called, when, what they were complaining of, and what actions were taken, is there?

MR. BRISTOLL: No. We have received very few complaints.

MR. TUNLEY: And -- well, how do you know?

MR. BRISTOLL: Because we follow up on every one we receive.

MR. TUNLEY: How?

MR. BRISTOLL: Because either -- with a company our size, the general manager would be involved in it, and we would address it at the time.

MR. TUNLEY: So you send it straight to the general manager and the president, if there's a call about complaints?

MR. BRISTOLL: No. If it's a localized call with somebody who is enquiring about something, it would go to the divisional department manager. But if it was to escalate, it would normally involve the general manager.

MR. TUNLEY: It's fair to say that you have provided a narrative in your answers to Board Interrogatory No. 3. Part 1 of the answer is about your process.

But it's fair to say that that's not documented or verifiable in any fashion at all within your systems, is it, Mr. Bristoll?

MR. BRISTOLL: The complaint process is not; you're correct.

MR. TUNLEY: It is not verifiable in any fashion.

And also, sir, you have no dedicated full-time customer-service staff, do you?

MR. BRISTOLL: We do not have somebody who would respond to one or two calls --

MR. TUNLEY: Right.

MR. BRISTOLL: -- at a time. For us to have a full-time customer-service staff member would be a huge waste of resources.

MR. TUNLEY: You understand that the Board's requirements in the GDAR are for you to document compliance with various aspects of your service requirements.

And I am just putting it to you that you don't comply with the Board's GDAR requirements to document compliance with customer-complaint handling. You don't.

MR. BRISTOLL: We have started the process whereby we do have a log now that records all written complaints, and it actually records the nature of the complaint and the resolution of that complaint.

MR. TUNLEY: And you do understand that the town, when it puts in its schedule A and asks you to submit a written policy, the town is not telling you what that should look like, what the documents should be, how they should be set up. They just want you to write it down.

MR. BRISTOLL: I have no issue with that.

MR. TUNLEY: And you don't have a problem with doing that.

MR. BRISTOLL: No, not at all.

MR. TUNLEY: Okay. Well, would you agree with me that, until you do that, you actually don't know how many customer complaints you have? You just don't know. You can't verify that.

MR. BRISTOLL: I will agree in the past we could not. I will say now we do have a log in place that is tracking them, all right?

MR. TUNLEY: All right. The other customer-service issues that the town has raised and asked you to consider are along the same lines. There's a request that you implement the Board-proposed GDAR changes ahead of any requirement to do so, and you're not prepared to do that, you've told the town?

MR. BRISTOLL: Our concern with implementing them was -- is to create -- is the desire not to create confusion with respect to implementing one thing, and then several months later having a process brought out and doing another.

So it would be our preference to wait until such time as there is a decision on what exactly there is we need to do, and then we would follow through with that and put it together.

We have -- our policy is basically a series of documents, which I don't have a problem putting together as a single document for the security deposits, but some of the other stuff, like sending out notices and stuff like that, I believe would be very, very confusing for the customer, especially if it had to change.

MR. TUNLEY: Isn't the problem, though, as I understand your response again to Board Interrogatory No. 4, is there is a GDAR at the moment as unamended and you are not even complying with that, as I read your answers?

You don't comply with section 2.3.1. You don't comply with section 7.3.1.

MR. BRISTOLL: Hmm-hmm.

MR. TUNLEY: How do we know if it's not in the franchise agreement, and if the residents of the town can't count on it as a commitment from you, how do we know you're going to comply even with the old GDAR?

MR. BRISTOLL: If we say we will comply, we will comply.

MR. TUNLEY: Okay. Again, you understand the town isn't -- doesn't want to go back and revisit past grievances, we are only interested in a go-forward commitment where these issues disappear. That's what schedule A is about.

MR. BRISTOLL: I know. And I agree with you. And we did, when we met with both Mayor Habkirk and Heather Adams, indicate that we are willing to work with them.

MR. TUNLEY: You understood that is what they're looking for is the go-forward commitment, more than anything else?

MR. BRISTOLL: When we met with them on September 11th, we -- I think in the evidence that Ms. Adams submitted there is a letter from myself indicating that we

would be -- that we are willing to work with the town on all future issues. And I...

MR. TUNLEY: The other specific issue they have asked you to address is this issue of new and relocating retail, industrial and commercial customers. You are aware that they want you to put in place a written process for addressing relocating new customers in the commercial sphere quickly and, if possible, giving them an incentive to locate into this area? You understand that is what the town is requesting?

MR. BRISTOLL: I was not aware of that.

MR. TUNLEY: Just look with me at schedule A to the proposed franchise agreement that the town has sent to you.

MR. BRISTOLL: Can you give me the tab, please?

MR. TUNLEY: Yes. Sorry, tab L at the back, just before the last green page, so it is page 10.

MR. MILLAR: Last page of your tab D -- tab D-1.

MR. BRISTOLL: Thank you.

MR. TUNLEY: Right. Thank you.

So if you have schedule A, just run down to point 3(a):

> "Adopt and adhere to a written policy regarding meeting with and providing written estimates for providing natural gas services to new and relocating retail, commercial and industrial customers on a timely basis and at a competitive rate."

Do you see that?

MR. BRISTOLL: Yes, I do.

MR. TUNLEY: You understand that the town is needfully in the process of trying to encourage all kinds of economic development and attract new businesses to the area and develop new businesses within the population of the area? You understand that; right?

MR. BRISTOLL: Well, of course.

MR. TUNLEY: And all they want you to do, again, is adopt and adhere to a policy that will help them, by addressing those issues for new and relocating customers. That's all they're asking.

MR. BRISTOLL: As we mentioned, and it is not in writing -- well, I guess it is in writing, because we did write that letter to Heather Adams and Mayor Habkirk, that we would be willing to assist them in any way that we can.

The term "competitive rate", our rates are competitive because they are assessed to be just and reasonable. So I believe that we already provide what one would call competitive rates.

MR. TUNLEY: Well, you are saying you are locked into what the Board has set for you and you can't offer incentives to new customers?

MR. BRISTOLL: We don't have an authorized incentive program at the moment, no.

MR. TUNLEY: Maybe that is another issue that could be addressed in a rate hearing.

MR. BRISTOLL: Yes. And working with the town, I think many things are possible.

MR. TUNLEY: Right. You do understand the importance of this to the town's economic development initiatives?

MR. BRISTOLL: And to ours.

MR. TUNLEY: I would hope so, yes. You do understand that?

MR. BRISTOLL: Yes, I do.

MR. TUNLEY: And have you conducted any review of these proposals that have been put to you by the town as to their feasibility, or how you might implement them going forward, in order to try and address some of the concerns that have been raised with you since the meeting in September, September 11th?

MR. BRISTOLL: It had been our hope that we would have probably had more consultative discussions with the town of Elmer -- not Elmer, but Aylmer, sorry -- with respect to those issues. For whatever reason, neither party got to that point.

Now, we are more than willing to sit down with the town and work these things through.

MR. TUNLEY: Right. And what the town is proposing is to give both parties time for that to occur, and we've proposed a three-year time frame. Do you have a problem with pursuing those initiatives over a three-year time frame to see if we can't improve the relationship and be prepared to come with you to see your bank prior to the next renewal?

MR. BRISTOLL: Our issue -- if we say we are hypothetically willing to accept a three-year renewal right

now, all right --

MR. TUNLEY: Well, the Board may order it.

MR. THACKER: Let him finish, please.

MR. BRISTOLL: If we were to accept a three-year renewal right now, right, with -- we would want a guaranteed renewal after that. But what you're really saying to me is, We will give you three years. If we deem you to be good, then we will give you some other period of time.

But my fear would be right now is that you will give us three years now, and then you will wait another three years to line the other group up, and then you will have the whole franchise under the same renewal period, and then -- I am being honest with you -- and then the final assault can occur.

So if we could come up with some sort of arrangement where we are guaranteed a long-term renewal, that's really our core issue. I mean, I have no issue helping the town prosper. It would be silly not to.

We have no issues resolving issues like customer service issues. I have no issue trying to work through security deposit issues and stuff like that.

MR. TUNLEY: You have no issue --

MR. THACKER: Let him finish.

MR. BRISTOLL: Right? So we think we have gone through great strides to do that as we stand right now. But you have to understand you have a gun to our head and we feel like we have a gun to our head, and we don't have

many -- and so three years is really -- you have just got the gun and you have cocked it, and we don't know when the bullet is coming out.

MR. TUNLEY: Well, as I've said, we don't hold a gun. We are here before the Board because, if there is a gun in the room, that's where it is.

But, in principle, you are saying to me it is very important -- you are saying to me that to solve these issues, three years is a reasonable time frame. You could commit to a three-year time table to solve these issues with the town?

MR. BRISTOLL: We want to solve the issues with the town, but we cannot agree to a three-year renewal time period.

MR. KAISER: Can I ask you, Mr. Tunley, something? You have your list of conditions on schedule A.

If in the next month your client and NRG could reach an agreement on the contents of schedule A, would the three-year demand go away?

MR. TUNLEY: No, unfortunately it would not. We at least want to have a report in, and it is a report in really to this Board.

My argument at the end of the day to you is going to be: This is really to help you exercise your oversight in what I am going to submit to you at the end of the day are rather unusual circumstances with a rather unusual gas distribution utility at a critical economic time for the Town of Aylmer.

But we need a report in to the Board before we can commit to a longer term, certainly anything as long as 20 years. We need that.

MR. KAISER: And what does this report contain that you need that you don't have?

MR. TUNLEY: It would take the form of a hearing like this one, if need be, to determine how well we've done in resolving the issues of the past in that three-year period. Again --

MR. KAISER: All right. But this is some of the issues of the past, the security deposits and this, that, and the other thing, right?

MR. TUNLEY: We think it addresses all of the key ones.

MR. KAISER: What's left off? Is it how the shares are going to be treated by the Board for rate-making purposes?

MR. TUNLEY: Well, that is addressed. It puts -- this puts that issue --

MR. KAISER: No, need to file a rate case, you say, immediately; they say within a year. But let's say you reached an agreement, We'll file a rate case in six months. That is point 1. I'm just trying to understand -- we understand your notion that it would be a good idea to synchronize with the other municipalities. We can understand that.

MR. TUNLEY: Yes.

MR. KAISER: But as to the, what I am going to call

the complaint, the service complaints -- you're legitimately raising service complaints -- you said, We don't care about the past. We just want you to behave going forward. Here is what we want you to put in this agreement, this franchise agreement. And incidentally, I mean, you have said, and it may well be the case, they're not complying with the existing GDAR anyway, and so you are going to put GDAR into the franchise agreement, as well as some other stuff that's not in GDAR. What remedy does that give you? If they don't comply with GDAR, what are you going to do? Revoke the franchise agreement?

MR. TUNLEY: Well, that is exactly the rationale for a three-year term. If all of this is a paper exercise and it doesn't result in real change, we need to know that before 20 years from now, because 20 years from now is too late.

MR. KAISER: All right.

MR. THACKER: If I understood your question, it was, if we can reach agreement on all these other conditions, to the point where they can be enshrined in a franchise agreement, does the three-year strategy fall away?

MR. KAISER: Right.

MR. THACKER: That seems to me eminently sensible --

MR. KAISER: Well, I think what he is saying -- you will correct me, no doubt, if I am wrong -- is, Yes, that would set up the rules, but we want a remedy if you don't comply with the rules, and our remedy would be three years. We'll say, You know, you agreed to these things, and you didn't do it. We're not renewing further. I think

that's your point, isn't it?

MR. TUNLEY: Yes.

MR. THACKER: Wouldn't the other way to look at it be that if we don't comply with the terms of the franchise agreement they have a remedy, where in breach of the agreement, and they can seek a remedy?

MR. KAISER: Well, that's a good question. That is where I was going. What is your remedy? Let's suppose you reach agreement on this, as Mr. Thacker says, and let's say there is not a three-year term, there is a longer term. But you've still got the breach of the franchise agreement. Can you come here, and are we required to have a hearing, and can we toss them out on their ear? What's the law?

MR. TUNLEY: I would need to address that for you as an alternative --

MR. KAISER: Can you deal with that?

MR. TUNLEY: I will deal with that --

MR. KAISER: Don't have to deal with it now.

MR. TUNLEY: I understand my friend's wish to have written argument, and I'll address that --

MR. KAISER: But, I mean, Mr. Thacker is right. I mean, that conceivably is a remedy, even a more immediate remedy.

MR. TUNLEY: I guess my answer is, the town doesn't want to be always in the applicant, always in the supplicant, always asking for compliance. They want a system that works. They want a closing date for review.

And if it is not there, let's move on.

MR. KAISER: All right. Thank you.

How are you doing on time? Do you want to take the lunch break now?

MR. TUNLEY: I'm finished. I'm finished.

MR. KAISER: You're finished?

MR. MILLAR: I just have a few questions -- Oh, I am not sure if Mr. Stoll has, but I -- more than five or ten minutes, I don't think, and I don't know about Mr. Stoll.

MR. STOLL: I would probably be five or ten minutes as well, so I'm in your hands whether --

MR. KAISER: What do you have -- do you have -- do we have any other evidence? Did you have witnesses?

MR. TUNLEY: I am prepared to put Ms. Adams in the witness box. I would like to do that just to make sure that her evidence is evidence before you, but I will only highlight from it and be very brief, and then --

MR. KAISER: All right. So let's do this, gentlemen. Let's finish with this witness, if we can, Mr. Stoll, Mr. Thacker, and Mr. Millar. And then after lunch we will deal with the town's evidence.

CROSS-EXAMINATION BY MR. STOLL:

MR. STOLL: Okay. If we can just go to your response to the IRs of IGPC. It is page 18 of 26 of the IR response.

MR. BRISTOLL: I am there.

MR. STOLL: Okay. And paragraph (d) talked about, you believe that if the three-year renewal is granted that the

second credit facility will be demanded. Is that based on any statement from the bank or your lender, or is that just your belief?

MR. BRISTOLL: We have not gone to our lender and said, If we have a three-year renewal and there is no guarantee of another renewal, what will you do to us? So the answer is, is that it is our strong belief that if there is not assurance of a long-term arrangement with the Town of Aylmer, that these facilities will be reviewed.

MR. STOLL: But the second credit facility is secured by the letter of credit directly from my client. So I am trying to understand the direct connection that you are making with the demand.

MR. BRISTOLL: It may be secured, but I don't know how they would respond to this situation. And I don't think that they would respond favourably to it.

MR. STOLL: All right. But that question has never been put directly to them.

MR. BRISTOLL: That's correct.

MR. STOLL: Okay. I just have a couple questions, and I guess you referred to our relationship as rocky over the past; is that correct?

MR. BRISTOLL: I did, yes.

MR. STOLL: And Mr. Tunley has referred to the circumstances as fairly unique, and I think -- I guess the question is, would you agree that the present circumstances that we all find ourselves here in are unique in the utility industry?

MR. BRISTOLL: Yes, I think they're unique. I mean, it is obvious that this doesn't happen on a regular basis, but I also think that we are the only utility of its size in Ontario, and that issues that arise in our utility seem to be magnified, if and when they arise, compared to if this was the same issue that would have happened with a larger utility somewhere else in southwestern Ontario or elsewhere in Ontario.

MR. STOLL: You are referring just to gas utilities in that context, right? There are several electric utilities that are of your size or smaller.

MR. BRISTOLL: I am. I don't follow the electrical scene.

MR. STOLL: Okay. All right. Okay. And if we can turn now to Aylmer's evidence. And it is the financial statements. I just want a couple of questions clarified, a couple of things.

MR. BRISTOLL: Okay.

MR. STOLL: Okay. On page 12 --

MR. THACKER: Can you give us a tab?

MR. STOLL: Oh, sorry. E. E. Tab E. Sorry, I am flipping back and forth between two different binders here and two different codes of numbering, so...

The second credit facility that was negotiated in October of this year, that would be a fairly significant event for NRG, would it not? The finalization of that financing?

MR. BRISTOLL: That's correct.

MR. STOLL: In reading through the financials, I did not see any mention of that note, and my understanding of GAAP -- and I am not an accountant -- was that subsequent events should be noted in -- of such a nature should be noted in the financials in order to comply with GAAP. Is that your understanding, or was this issue ever raised?

MR. BRISTOLL: Generally speaking, I believe that's correct, yes.

MR. STOLL: Okay. So there -- I'm not saying there is an issue, but there's potentially an issue that that note wasn't included in these financials.

MR. BRISTOLL: That would be at the discretion of our auditors.

MR. STOLL: But they were aware of the transaction?

MR. BRISTOLL: Yes, they were.

MR. STOLL: Okay. All right. Well, we'll maybe have to revisit that later with -- in a subsequent proceeding.

MR. KAISER: Before you move on, is that a concern to your client, and if so, why?

MR. STOLL: Well, I think it goes --

MR. KAISER: I mean, you know about it. Of all people, you know about it. Is it going to affect the rate case? There's a significant non-disclosure that we should be concerned about?

MR. STOLL: I think it is just is part of the continuing pattern that we've been having in getting proper communication and compliance with the rules. And we looked at this, and I just wanted to make sure whether the issue

had been raised and discounted, or whether it is an omission or a potential issue.

It may be significant later on in a rate hearing. I don't know, because, quite frankly, I think there is still a lot of work to be done to get to the rate hearing in respect of my client, because the pipeline wasn't there the last time we were here. I am sure there are going to be certain issues, and there hasn't been final reconciliation that was mentioned earlier on the reasonable costs that are included in the rate base of the utility.

So there will be probably a few issues. To the extent they're impacted by what is here in the financial, I can't say at this time.

MR. KAISER: What's your position on this issue that the town raises that they want to renew this agreement for just three years?

MR. STOLL: We are generally supportive of that. Our relationship with NRG is unlike any other relationship with our suppliers and what we consider colloquially the partners in our business.

We want to be seen -- we want our partners to work with us to achieve success. And the record is pretty clear and extensive before the Board that hasn't been the case.

We think, to borrow your phrase, there needs to be a bit of a short leash here to ensure that the utility does operate in a good utility manner with its customers; not just us, but all of its customers. We want to see improvement.

And I think the three-year terms are a reasonable expectation. I haven't seen any evidence of the financial impact of that. They have made some comments that there would be a rate impact, but it has not been quantified, even in broad strokes.

So to say that -- take a firm position on the rate impact or potential impact on our clients, it's a little early on that, but we think three years is reasonable.

We understand the town's rationale, and eventually there probably could be some efficiencies gained. And if, in three years, everything was sunny and rosy and there were no issues, then it would be up to the town and their future council to decide what they want to do as far as a longer renewal at that time.

But I think the three years is an appropriate term right now.

MR. KAISER: Do you have any conditions you want to throw into the mix? I'm wondering about this outstanding issue. I mean, we are here. We have come down here. I mean, I don't know whether this matter you referred to three or four times is just an accounting issue, you are confident it will get resolved or...

MR. STOLL: It will get resolved in one way or another. I think we're down to the final bits of information that need to be exchanged, and I would hope that that would be exchanged -- or concluded, outside that, without the need for the Board to intervene, or our meeting to request for --

MR. KAISER: It is your view, Mr. Bristoll, that you've just got to get the accountants to work?

MR. BRISTOLL: There are a few things we're going back and forth on.

MR. STOLL: Yes. So I don't see a need to add any conditions to this. Quite frankly, we are not a party to the agreement, so I don't think it is our place to add a condition.

There are one or two other questions I just have for the financials.

MR. KAISER: Yes, go ahead.

MR. STOLL: You had indicated earlier that a large part of the need for the security deposit was to secure the commodity cost of gas for the suppliers; is that correct?

MR. BRISTOLL: No. No, that's a misinterpretation.

We are -- we take the security deposits, because we pay the gas in advance and the customers pay us in arrears.

For those customers who we feel have not the best credit, we feel that it is necessary to secure their receivables.

MR. STOLL: Now, I think I understand that, but as far as if a customer was to go into arrears, a certain portion of that would be associated with the distribution charge and a certain portion would be associated with the commodity costs, and I think you said two-thirds was commodity, one-third was distribution?

MR. BRISTOLL: In this case, it would be the commodity revenue, the commodity, yes.

MR. STOLL: Right, right. NRG is maybe unique, in that it supplies a significant volume -- or a related company supplies a significant volume of its own gas?

MR. BRISTOLL: I don't follow how that works with security deposits.

MR. STOLL: Well, effectively you are trying to guarantee that you have an ability to pay the expenses that have been incurred for a customer who has defaulted.

The creditor in this circumstance happens to be an affiliate or a related company to NRG, because the commodity is purchased by NRG from a related company.

MR. BRISTOLL: Seventy percent of our gas comes from western purchases.

MR. STOLL: Right.

MR. BRISTOLL: Less than 30 percent comes from the related company that you referred to.

The purpose of the security deposit is to firm up our receivables, but, as I've mentioned, our intent is not to keep it indefinitely. It is return to return it upon proof of good payment history.

MR. STOLL: It may just be semantics, but on page 14 there is a note saying during the year the company purchased gas in the amount of 2.6 million from a related company --

MR. BRISTOLL: That's correct.

MR. STOLL: -- on gas commodity revenue of about 6.5 million. So that is hedging close to 40 percent?

MR. BRISTOLL: It does fluctuate.

MR. STOLL: All right. So there is a benefit to the related company. The better able NRG is to pay its bills because it has collected its security deposit, it has a benefit to its related companies, as well.

MR. BRISTOLL: The policy isn't in place to benefit a related company. The policy it is in place to ensure that our receivables are recoverable.

MR. STOLL: You would use those receivables to pay your payables?

MR. BRISTOLL: Receivables are used to pay payables, that's correct.

MR. STOLL: Right. And your related company is a payable?

MR. BRISTOLL: It is one of many payables, you are correct.

MR. STOLL: All right. Just one other note or question. Is the final capital cost of the pipeline under construction -- actually, I said I would deal with that later. I will deal with that later, so those are my questions.

MR. KAISER: Thank you. Mr. Millar.

CROSS-EXAMINATION BY MR. MILLAR:

MR. MILLAR: Thank you, Mr. Chair. I will be very brief.

Mr. Bristoll, can you just confirm for me that NRG's proposal, at least in the application, is that the Board approve what is the Board's model franchise agreement with no changes; is that correct?

MR. BRISTOLL: That's correct.

MR. MILLAR: Okay, thank you. Could I ask you to turn up -- I hate to take you back here, but the proposed conditions by the town. I have them at -- I think it is Exhibit D, tab 1, the very last page. It's called schedule A.

I bring you here because there has been some back and forth on this, but I am still not entirely sure which issues NRG -- which of these conditions NRG agrees to and which one it doesn't. So I am just going to go through real quick, and I will try and get your answer on that.

MR. BRISTOLL: Okay.

MR. MILLAR: For issue 1, it is the rates case issue. I take it NRG is agreeing, at least in principle, to bring a rates case within one year; is that correct?

MR. BRISTOLL: That's correct.

MR. MILLAR: Could I ask that over lunch -- there was some talk of a six-months period, for example. Maybe over lunch you could discuss that, and, if you could reduce that time period, could you let us know?

MR. BRISTOLL: We can discuss it.

MR. MILLAR: Okay, thank you.

Issue 2 -- just again on the rates case, am I right that when the last rates case came forward, the IGPC facility was not up and running; is that correct?

MR. BRISTOLL: That is correct, yes.

MR. MILLAR: So that pipeline is not in rate base?

MR. BRISTOLL: It is not.

MR. MILLAR: You're not earning a return on that pipeline, currently?

MR. BRISTOLL: It is not reflected, no.

MR. MILLAR: Okay. Similarly, you are obviously earning revenues from the flow of gas to the facility currently?

MR. BRISTOLL: That's correct.

MR. MILLAR: That wasn't considered in the last rates case?

MR. BRISTOLL: It was not.

MR. MILLAR: Okay, thank you. If we could move to issue 2, again, I want to make sure we are crystal clear here. I understood you to say that if the GDAR is approved by the Board, obviously you will comply by that; is that the case?

MR. BRISTOLL: Yes, we will.

MR. MILLAR: We heard from the chair earlier that, in fact, the Board may not proceed with the GDAR, and I think the town is still interested in having the provisions of that proposed amendment apply to you, irrespective of if GDAR goes forward or not.

Would you agree to do that? In the absence of the approval through the GDAR, would you agree to implement that system anyways?

MR. BRISTOLL: We would agree to implement it, provided we had the option to make changes as the business concerns or the business environment dictated.

MR. MILLAR: So the answer is "no".

MR. BRISTOLL: The answer is "yes", but if our environment changes we would like to have the ability to make changes, but not to be handcuffed by a proceeding every single time we want to make that change.

MR. MILLAR: Understood. But you would agree to it -- at least for now you would agree to it.

MR. BRISTOLL: Most of it we're doing anyway, so --

MR. MILLAR: I think that is right, but there are some changes, as Mr. Tunley took you through --

MR. BRISTOLL: Yes, we would have to -- yes, that's correct.

MR. MILLAR: But you would agree to those now.

MR. BRISTOLL: Yes, provided we had the ability to make changes as the business environment dictated.

MR. KAISER: But what does that mean? I mean, if GDAR had been implemented --

MR. BRISTOLL: Yes.

MR. KAISER: -- you would have to comply with it until it was amended.

MR. BRISTOLL: Right. I guess we would have to put some sort of -- if we thought, so we could --

MR. KAISER: So you're saying, We will comply with those terms, provided we have an option to come back to the Board and ask them to be amended if they don't meet current business conditions, or something like that?

MR. BRISTOLL: That's correct. Something like that, yes.

MR. KAISER: All right.

MR. MILLAR: Okay. That's helpful. Thank you.

So obviously, 3-A, if you are agreeing to a policy -- and it would be in writing -- I take it you would agree to make that written policy publicly available?

MR. BRISTOLL: Yes, we would.

MR. MILLAR: Okay. Thank you.

MR. BRISTOLL: I do want to state that we do make our policy publicly available. Every one that we receive --

MR. MILLAR: You are already doing that.

MR. BRISTOLL: Yes.

MR. MILLAR: Okay. Fair enough.

3-B, I take it you have agreed to this?

MR. BRISTOLL: We agreed to that.

MR. MILLAR: You don't currently have a written policy; is that right?

MR. BRISTOLL: No, but we have a, well, implemented policy that could be written down.

MR. MILLAR: But you have agreed to put it in writing and make it publicly available?

MR. BRISTOLL: That's correct.

MR. MILLAR: 3-C, I guess the same question. You have agreed to this? You have agreed to a written --

MR. THACKER: Not in a competitive rate. This is all entirely misplaced, so we are not agreeing. The rate is set by this Panel, this Board. So some of these conditions are not really drafted appropriately, but I think the question is whether or not -- if you are asking in spirit -

MR. MILLAR: Yes, okay. I think you are quite right.

Obviously, the Board sets the rate. If we take out the competitive rate part or -- I take it it is in your interest, obviously, deal with potential new businesses in the community, and you would agree to put something in writing and make it publicly available?

MR. BRISTOLL: Yes, and we want to work with the Town of Aylmer to do that.

MR. MILLAR: Thank you.

With regard to keeping security deposits in a trust fund, have you agreed to that or not?

MR. BRISTOLL: No. I just don't know how that would work, and I don't think that we need to be doing that.

MR. MILLAR: Okay. And let me ask you this: Currently, deposits are used as working capital?

MR. BRISTOLL: They are part of working capital; that's correct.

MR. MILLAR: And if they are not used as working capital any more, that would lead to a rate increase; is that correct? You would lower your -- you would have to -- you would have to secure working capital for some of --

MR. BRISTOLL: Yes, that's correct, yes.

MR. MILLAR: So that would lead to a rate increase?

MR. BRISTOLL: We would probably have to get more financing or something.

MR. MILLAR: And also on that point, I understand only about a sixth of your working capital from these damaged -- or, pardon me, security deposits is currently reflected in rates; is that right? It's gone up something like 100,000

to 650,000 since the last rates case?

MR. BRISTOLL: That would be correct. I don't know exactly, but I --

MR. MILLAR: Something like that.

MR. BRISTOLL: Yes.

MR. MILLAR: After a rates case, I take it that working capital would be reflected in rates, would actually lower rates a little bit?

MR. BRISTOLL: It is my understanding that is how it would work, yes.

MR. MILLAR: Okay. Thank you.

5 you have already agreed to before we got here today.

MR. BRISTOLL: Yes.

MR. MILLAR: Six, this relates to notice. Is there any real objection to that?

MR. BRISTOLL: I don't know -- I believe there is a current mechanism in place. If you intervene in a rates case, you automatically receive these notices.

MR. MILLAR: I think as a practical matter, I can't imagine many cases they wouldn't get notice anyways, but --

MR. BRISTOLL: Yes, and, I mean, they received our notice for every rates case.

MR. MILLAR: That's absolutely true. But are you willing to commit to give them notice to any application you have before the Board?

MR. KING: This is different, though. This doesn't say the application. This says any proceeding we're a party to.

MR. MILLAR: Oh, I see.

MR. KING: Which is a bit --

MR. MILLAR: Okay. So --

MR. KING: A generic gas proceeding.

MR. THACKER: We don't think we should have to do something that Union Gas doesn't have to do, just because the town wants it. They don't have any basis for --

MR. MILLAR: I just want to know if you agree or you don't agree. So the answer is "no".

MR. BRISTOLL: The answer is "no".

MR. MILLAR: Okay. Thank you.

And 7 you agree to? You have already agreed to 7.

MR. BRISTOLL: We have done that already --

MR. THACKER: We've already done it.

MR. MILLAR: So you agree.

MR. BRISTOLL: Correct.

MR. MILLAR: Okay. I think those are my questions, thank you.

MR. BRISTOLL: Thank you.

MR. KAISER: Mr. Thacker?

QUESTIONS BY THE BOARD:

MR. QUESNELLE: Mr. Thacker, just before you carry on, I would just like to ask Mr. Bristoll a question.

And just to gather a kind of a sense if there is anything unusual that goes on with the energy rates proceeding, but can you explain to me how you deal with bad debt as an expense in the realm of the rates case?

MR. BRISTOLL: It would be like any other O&M item,

operating and maintenance item.

MR. QUESNELLE: So you put forward a projection of your bad debt, ask for that bad debt in recovery.

MR. BRISTOLL: That would be correct, yes.

MR. QUESNELLE: And could you, just for the record -- what is the effect of collecting an expense for bad debt in rates?

MR. BRISTOLL: If it increases your O&M, your operating and maintenance cost, it would increase your rates.

MR. QUESNELLE: And would you agree then that it is in fact spreading bad debt across the whole customer base?

MR. BRISTOLL: Yes.

MR. QUESNELLE: Okay. Now, to the extent that you have had this new policy in place, or this -- it seems, by looking at the numbers, that either a new policy or an adherence to the policy since 2005 and the ramping up of your security deposits, has that had an effect on your bad-debt expense projections?

MR. BRISTOLL: We have -- well, the example that I provided earlier was the example of the tobacco farmer who didn't pay us for nine months. We don't see that happening anywhere near where we used to. So I would say that it would reduce our bad-debt projections.

MR. QUESNELLE: Okay. If you could run through the numbers, because I don't -- I want to just see if there is an expectation for the pattern to continue. You gave us some examples of the collection of security deposits and

the returns --

MR. BRISTOLL: Mm-hmm.

MR. QUESNELLE: -- on a ramp-up basis, and you mentioned your most recent numbers reverse that.

Can you maybe reiterate that and let me know what your expectations for the future are?

MR. BRISTOLL: My expectation is, is that it is likely -- all things equal, it's likely that we have probably matured at this level and that, if anything, we should see them either stabilize or drop.

But, I mean, if the price of gas goes to $20 an MCF or a GJ or something like that, it would change, you know, how you would look at a security deposit.

MR. QUESNELLE: So that taken into account, what I am trying to establish here is whether or not what we have been seeing as a ramp-up -- and I am not speaking to the quantitative amounts --

MR. BRISTOLL: Right.

MR. QUESNELLE: -- in 2.5 or what period that you are capturing in your security deposit. That aside -- but any security-deposit program that would have a beginning and reach to maturity and then a return, are we seeing that we perhaps have the tip of the bell curve behind you? Is that a reasonable expectation?

MR. BRISTOLL: Well, we have been at this for three years now, so -- or roughly, I think, you can see. So I can't, you know, see why it would rise significantly. I think, yes -- to answer, I think we're at the top of the

bell curve. I can't guarantee that, but I believe we are.

MR. QUESNELLE: So any program, irrespective of the quantum that you would be collecting, would have that, because it had a beginning of a new policy or adherence to an existing policy. Is that typical of what you would see in a collection and return?

MR. BRISTOLL: I think, if you start anything from zero and you have to build it up and there's a lag between when you're building it up and when you would be potentially returning, that you would see something like that happen, yes.

MR. QUESNELLE: So it is your expectation, all things being equal -- forget -- the price of gas aside and what-have-you, not the quantum, but the pattern -- your expectation is that this would run a normal course of being -- of declining in amounts of how much you are holding?

MR. BRISTOLL: I think that -- I think we reached our peak, and I think that there's -- that it will go down as people --

MR. QUESNELLE: All things being equal.

MR. BRISTOLL: Payment history, yes. I can't guarantee it. I won't do that, but I --

MR. QUESNELLE: No, I just wanted to capture whether or not there was something unusual about this program, that it wouldn't have the normal curve.

MR. BRISTOLL: This is not a financing program or anything like that. It is just us trying to put a policy -

- to put the policy in place so that the shareholders and the ratepayers are protected. I think we have done that.

MR. QUESNELLE: Well, and you catch my point of the questions is to establish a normal pattern and whether or not you see that as a normal pattern. I am not making any -- obviously not offering an opinion on the quantum --

MR. BRISTOLL: Right.

MR. QUESNELLE: -- but in any -- if your security deposit captured a half-month on average over the last 12 months, irrespective of that characteristic, it would have a normal pattern ramping up and then --

MR. BRISTOLL: Yes, it would, yes. I think we have, yes, to answer your question.

MR. QUESNELLE: Thank you.

MR. KAISER: Mr. Bristoll, you mentioned, in response to Mr. Millar, this business -- this is point number 4 in schedule A of the town's conditions -- that they want, as you have heard, the consumer deposits put in a trust fund.

And as I understand it now, that trust fund could be administered by you. And the reason they want it there, as I understand it, is, given the financial situation of the company, they don't want those funds being seized by some debtor like Union. They want it to be clear that those are, in fact, trust funds for the benefit of the customers.

You said, Well, I don't know how that would work. What's the problem if the funds are in a trust fund down the hall? It really just classifies them for accounting purposes. You would have the same ability to realize the

amount if you followed the rules, which would presumably be in the trust agreement, if the customers skip town or whatever the condition was. What's the practical problem you were alluding to?

MR. BRISTOLL: Well, I guess part of it is I don't really know what it is the requirement of the trust fund would be. It is fairly broad. I mean, some trust funds have very strict in and outs on them, and some don't.

MR. KAISER: So is it just a question of the mechanics? You understand why they want it. It really has nothing to do with you. It is they want these funds classified clearly, so if somebody else steps in to seize your assets, they are clearly identified as being the property of a trustee for the benefit of the residents. They're not your assets.

MR. BRISTOLL: Right. I don't know the mechanics.

MR. KAISER: So it's a mechanical issue?

MR. BRISTOLL: No, two issues. I don't know the mechanics of a proper trust fund that actually segregates the funds. I mean, to put the moneys in a separate bank account and say they're a trust fund doesn't necessarily make them a trust fund. Do you know what I mean?

MR. KAISER: Let's suppose you can find a lawyer who knows how to set up a trust fund properly.

MR. BRISTOLL: Right.

MR. KAISER: What's the practical problem?

MR. BRISTOLL: I guess just administration, but, you know...

MR. KAISER: Okay. Then a question which may be right off in left field, but I have just been looking at your financial statements for the first time, and financial -- page 15, and it is item number 6 in the notes of the financial statements.

You earned interest of $27,000 on a note that you gave to a related company. That didn't exist before. As a matter of interest, what is that?

MR. THACKER: Just give us a second.

MR. KAISER: It's page 15 of the financial statement?

MR. BRISTOLL: It's a promissory note to a related company.

MR. KAISER: I know that's what it says, but who is the related company?

MR. BRISTOLL: NRG Corp.

MR. KAISER: NRG what?

MR. BRISTOLL: Corp.

MR. KAISER: What's that for? Why are you loaning them money?

MR. BRISTOLL: We did our initial -- we lent them money so it would assist them in doing the drilling of natural gas wells so that they could then -- within the community of Aylmer and elsewhere, so that they could then drill the wells; we could take the gas pay royalties to local citizens, and then use that gas to supply to Limited.

MR. KAISER: That's the company you buy this 30 percent of your gas from?

MR. BRISTOLL: That's correct, yes.

MR. KAISER: All right. Thank you.

MR. BRISTOLL: You're welcome.

MR. THACKER: Mr. Bristoll, I am going to show you a letter that was produced in appendix A of your answers to interrogatories. It is a letter dated February 14th, 2006 from Peter Budd of Budd Law.

Can you tell me, firstly, what that letter is and how it impacts your belief and understanding about the consequences of a three-year renewal for your lenders?

MR. BRISTOLL: When we went through the exercise of replacing the Imperial Life financing with funds from the Bank of Nova Scotia, one of their concerns was the renewal of the franchises, and they wanted to acquire some comfort that the renewal process was a relatively simple process that didn't go through huge gyrations and conflicts, and all of that kind of thing.

And they required this letter or this opinion from our legal counsel at the time in order to put together the final pieces that would allow them to provide us with the funding.

MR. THACKER: Okay, thank you. Those are my questions.

MR. KAISER: Just on that question, again, this is at page 16 of your financial statements. This is with respect to the existing notice as of the date of these financials, which is September 30th, 2008. There is some $6.2 million still outstanding on the Scotia note.

You set out there the payments that are due over the

next three years, 2009, 2010, and 2011, and of course the big payment comes at 2011 of 6 million.

So this lender doesn't care about the three-year term, because on this deal he's getting paid out before that, anyway. Am I reading that right?

MR. BRISTOLL: No, it doesn't quite work that way. There needs to be an ability to pay it out. Normally, you would go for a refinancing and you would continue the loan.

This loan is being amortized over 25 years, not five years.

MR. KAISER: But in your financials it says you have to pay 6 million off in 2011.

MR. BRISTOLL: Right. That's because that is the end of the five-year term. So at that point you would either renegotiate -- or they would start an advance, or you refinance with another institution.

MR. KAISER: All right. Thank you.

MR. BRISTOLL: You're welcome.

MR. THACKER: Those are my questions.

MR. KAISER: All right. Thank you, Mr. Thacker. We will come back in an hour, Mr. Millar?

MR. MILLAR: Yes.

--- Luncheon recess taken at 12:35 p.m.

--- Upon resuming at 1:47 p.m.

MR. KAISER: Please be seated. Mr. Tunley?

MR. TUNLEY: Mr. Kaiser, I would ask that Ms. Adams be sworn.

MR. KAISER: Yes.

MR. THACKER: Just before we start, I had asked Mr. Tunley a question, I think, about his position with respect to the three years, if everything else could be dealt with.

MR. KAISER: Yes.

MR. THACKER: And I spoke to my clients to try to answer the question from my side. I am not sure you got a complete answer from Mr. Tunley, but I thought I would try to lay out for you, because it seems to me that some of these issues may be -- we may be able to take them away, if you would be interested in hearing what our, sort of our position is.

MR. KAISER: What's your pleasure, Mr. Tunley? Do you want to hear from Mr. --

MR. TUNLEY: I am in the Board's hands. I think it is useful.

MR. KAISER: All right. Go ahead, Mr. Thacker.

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. We're reluctant to go as early as six months, because it could commit us to a schedule that is difficult to meet and costly to meet in the short-term, because of the uncertainties that we are facing, but we could certainly agree to file by the end of the calendar year, which would be about ten months from now.

We would agree to implement the proposed GDAR rule. This is all conditional upon Mr. -- upon a satisfactory renewal term, but we would agree to implement the proposed

GDAR rule, notwithstanding that it is not being imposed on any other gas company.

And to help you follow along, if you can turn to NRG's evidence, tab D-1, last page.

MR. KAISER: Yes, go ahead.

MR. THACKER: So I have dealt with item 1. With respect to item 2, I have dealt with that. We would agree to implement the proposed GDAR amendments regarding customer service, regardless of whether or not the OEB imposes them on anyone else.

With respect to 3-A, we would set out a written policy. With respect to 3-B, we would do that also. With respect to 3-C, we would agree to set out a policy regarding new customers, excepting the last five words, dealing with "rate".

With respect to the deposit issue, our position is this: We're not prepared to consent to doing so, because if we do that, to put the money in trust, it will cost money. We'll have to have a trust fund set up. We'll have to have it administered and audited, and we'll at least have to have some labour to administering it over time. And that will cause the costs to go up, and that will therefore cause the rate to go up.

But if you impose it upon us, we're happy to carry it out. We just, we're not prepared to agree, because we don't want to be stuck with the cost. But if it is the town who is demanding this, and the town is prepared to accept the effect that it may have on the rates -- it may

be negligible, but as a point of principle we're not prepared to consent. But we have no difficulty doing it if you order us to do so. It is neutral to us.

With respect to item 5, I think we're already required to do that under the October order, but we will if we're not required, and we are already doing it anyway.

With respect to item 6, we're not prepared to agree to that. Our position is that's unreasonable and something that is guaranteed to cause trouble in the future. There is a regime for interested parties to get notice. It's a statutory regime, and it's adequate.

And as a practical matter, the town knows what's going on anyway. We don't want another excuse for a rate hearing -- or for an emergency hearing on something that is really a make-work project.

So we are not prepared to agree to that. We think it is it unreasonable. They get the notice that they are entitled to and that legislative scheme recognizes they need.

And with respect to item 7, we have already done it, and we'll continue to do so.

Now, all of that is conditioned on renewal of the franchise for the customary term of 20 years, which will allow us to obtain financing and continue to operate. And that's sort of -- to answer the question from -- from our side, essentially we can deal with all of these other issues, it seems to me, and then the issue with respect to the length of renewal should fall away.

And if it doesn't fall away, and if the town still insists on a three-year, it couldn't be any clearer that they have an inappropriate motive for what they're seeking, and it has nothing to do with customer service or improving relations, because we're willing to do all of that, and they would still have a remedy for breach of the things that we have agreed to do if we do not comply with them.

MR. KAISER: And those terms would be in the franchise agreement?

MR. THACKER: Yes.

MR. KAISER: The ones you agree to.

MR. THACKER: Yes.

MR. KAISER: I just have one reaction, which I think, in fairness, I should let you know, is with respect to this rate-hearing issue. We had a hearing here, as you know, in connection with Union Gas.

MR. THACKER: Yes.

MR. KAISER: And as a result of that, we tightened up on the reporting requirements --

MR. THACKER: Yes.

MR. KAISER: -- which happily your client has complied with. But quite aside from anything going on in this proceeding, speaking from the Board's perspective, I think we have a responsibility to review these financials in a public manner. It has nothing to do with this, it has to do with Union's concerns. So we didn't put these reporting requirements in just because we had nothing else to do. We intend to act on them.

So I think it is highly unlikely that we're going to wait around for a year. The reports are in. We have our people looking at them. And that was why I suggested to you that six months might be a better compromise, as opposed to the immediate filing that Mr. Tunley was requesting.

But that is just the Board's perspective. It has nothing to do with this. And of course, the Board can order the applicant to come in, in any event --

MR. THACKER: At any time.

MR. KAISER: -- if we are forced to do that. But I just ask you to consider that request in light of those remarks.

The other thing which, quite frankly, I don't understand, Mr. Thacker -- and I don't know what your business strategy is, but you had a huge asset that is about to go into rate base which you're entitled to earn a rate of return on. And I would have thought the minute that asset is used and useful, which it clearly is, as of September -- I don't know when gas started flowing, but it was at least by September, wasn't it, if not a little bit earlier? You know, you are giving up on a rate of return.

MR. THACKER: Oh, we're not suggesting we don't want to file until the end of the calendar year. We don't want needless procedures. This is costing us an incredible amount of money, because we have --

MR. KAISER: Well, I am laying all my cards on the table.

MR. THACKER: Fair enough.

MR. KAISER: You know, we are capable of being quite suspicious when we have nothing else to do. And, you know, you say, well, why wouldn't these boys want to put this in the rate base and start earning a -- you've doubled your rate base, more or less, give or take, so -- anyway, I just --

MR. THACKER: We just --

MR. KAISER: -- add that for your consideration when you decide whether you -- when you will file.

MR. THACKER: Let me try to answer. We just don't want to be stuck having to do it in the next three months and having to pay the lawyers on a rush basis and consultants extra time, and having to leave some issue or the evidence --

MR. KAISER: Mr. King is happy with that.

[Laughter]

MR. THACKER: Yes. So we have -- what I can say is -- I don't know much about energy, but from what I have determined, the rate always goes up, almost always, and that is likely to happen --

MR. KAISER: It is a question of when it starts, though.

MR. THACKER: So --

MR. KAISER: Generally, your client wants that increase earlier, rather than later.

MR. THACKER: Right. Generally speaking, if we can do it orderly, we will do it sooner.

MR. KAISER: Right.

MR. THACKER: Now, to answer the first question, though, the point you raised on the financial statements, we can give you the most recent financial statements. We've got nothing to hide.

MR. KAISER: No, I think we have them.

MR. THACKER: Oh, you've got them.

MR. KAISER: They're here.

MR. THACKER: Okay. So you've got the most recent ones.

MR. KAISER: Well, we've got the latest audited financials. I guess your first-quarter reports aren't out yet. We haven't hit the first quarter. We have the September 30th audited statements.

MR. BRISTOLL: No, they haven't done the quarterlies yet, no.

MR. THACKER: But there seems to be a suggestion that -- or a concern, at least, that NRG is somehow financially unstable. And we've had the hearing, and we know what your findings are. But remember the evidence. They have never missed a payment.

MR. KAISER: No, no, I am not making any --

MR. THACKER: Okay.

MR. KAISER: I am not making any accusation. We made a ruling in that case. We did what we did for the reasons we said.

MR. THACKER: Right.

MR. KAISER: But we also put in place a filing

requirement, and you have complied with it. We appreciate that. But we have to act on it in order to protect Union's interests. We can't just be seen -- the Board can't be seen to be sitting around here and just letting it sit there. So we have some concerns and obligations, quite aside from what's going on here.

MR. THACKER: Sure.

MR. KAISER: We have some sympathy for Mr. Tunley's request, quite unrelated to any reason that he wants it. I am just --

MR. THACKER: And if you have concerns on the other issue --

MR. KAISER: Well, I can't repeat them. I've told you them. So...

MR. THACKER: No, but, I mean, after reviewing the financial statements, if there is some question or concern --

MR. KAISER: It is more than us reviewing them. I don't want to put it as high as this, but we made an undertaking to Union, to get them to quiet down and settle down, that we were going to look at this, and we will get the statements and everyone will have their opportunity to come back and visit this issue.

MR. THACKER: Fair enough.

MR. KAISER: Because the one thing the Board can never be seen to be doing is to have been put on notice by somebody that a utility is in a poor financial situation and do nothing about it. I am not making any judgment

about what the facts are, Mr. Thacker. We don't know. I just want you to understand our concern.

MR. THACKER: Thank you. I guess we have sort of laid our cards on the table.

MR. KAISER: We appreciate that.

MR. THACKER: And we tried to eliminate as many issues to try to help you.

MR. KAISER: Please go ahead, Mr. Tunley.

MR. TUNLEY: Thank you.

TOWN OF AYLMER - PANEL 1

Heather Adams, Sworn

EXAMINATION BY MR. TUNLEY:

MR. TUNLEY: Ms. Adams, I understand you're the chief administrative officer of the Town of Aylmer, you have held that position for four years and that you are here on their behalf; is that right?

MS. ADAMS: That's correct.

MR. TUNLEY: And you have prepared and, with my assistance, filed prefiled evidence at tab 1 of the binder of the Town of Aylmer's evidence. Can you just confirm that you have reviewed that, and that it is accurate to your best knowledge, information and belief?

MS. ADAMS: I do confirm that it is accurate to the best of my knowledge and belief.

MR. TUNLEY: And that includes the attachments to it, the tabs that are referred to in it? Those are properly identified?

MS. ADAMS: It includes all of the attachments.

MR. TUNLEY: Do you adopt the evidence that's been prefiled as your evidence in this proceeding under oath?

MS. ADAMS: I do adopt it as my evidence.

MR. TUNLEY: What I propose do is just highlight the key points. I think they have already been discussed to some degree, but I will ask you to, again, highlight for the Board, if you will, the town's perspective on some of the points that we have highlighted.

So, first, in paragraph 3, we have identified that the town is -- as a party to a franchise agreement with NRG, is one of five municipalities served. We have set out the dates of the various agreements.

Can I just ask you, have you met with, spoken to the other municipalities prior to developing your -- the town's position in this proceeding about the issues that are raised?

MS. ADAMS: First of all, the town's one of a total of six.

MR. TUNLEY: Sorry.

MS. ADAMS: Second of all, the position that the municipalities have put forward is the position that I articulated on behalf of our council, who adopted it.

We had discussions with the other municipalities, where we got information like when their franchises were due, and we asked -- we provided them with a copy of the reports that went to council and asked for their comments on those.

And my general understanding is they support the

notion of being able to deal with our franchise agreements in greater numbers than one, for a number of reasons.

One of those reasons would be, as small individual municipalities - for example, Aylmer is here - we have one out of eight franchises. We don't particularly perhaps have a lot of influence in getting things that are important to our customers, and if there were a group of us who could speak to it, that would be good.

From a resource perspective, instead of six municipalities having to go through the expensive and resource-consuming process of franchise renewal, and, if there's a hearing, if we were able to combine our resources, there would be some economies of scale.

And the third reason would be it gives all of us, as public agencies, including the Board resources, an opportunity to maybe have one or two hearings instead of eight hearings.

MR. TUNLEY: All right. Just to pick up on a couple of things you mentioned, you mentioned that the position you have developed and put forward to council for approval is the Town of Aylmer's own position.

Can I ask you just to refer to the report that you prepared at tab B of the binder, and then at tab C we have the council resolution adopting your report?

Am I right that's the basis for the issues and concerns and the position you are bringing forward to the Board in this proceeding with respect to franchise renewal?

MS. ADAMS: Yes. You will see, in the background to

my October 8th, that concerns were raised through a significantly large number of signatures on a petition that was brought to council. In recent history, we don't remember ever getting a petition that had that many signatures on it, and it was presented at a public council meeting asking council to do something.

We had a letter also from the township of Malahide, who had had complaints. And it was on the basis of the public coming to council that council asked staff to review the options and provide them with a report.

MR. TUNLEY: The specific question is: At the time you prepared and submitted this report to council in or about October 8th, had you had discussions with the other five municipalities in the area, and does your report reflect what you learned from them about any shared concerns?

MS. ADAMS: Yes.

MR. TUNLEY: All right.

Okay. If I could just turn to page 11 of tab 1, which is your -- tab 1 is your summary or outline of the evidence. At page 11, paragraphs 37 and 38 and following, you have responded in these paragraphs, to some degree, to suggestions in the NRG evidence about the process of meetings and negotiation with them about the franchise agreement from June 2008 onwards.

Can you just tell the Board, from your perspective, Ms. Adams: How did the town and you, on behalf the town, and the mayor, approach those meetings, and how did they

unfold from your perspective, just generally?

MS. ADAMS: We started with the consideration of the franchise agreement in around about June.

You understand that in a municipal setting, material is provided. It's given to council in a public setting. They respond. They might ask for more circumstances, but it has to go to council meeting.

So I can't necessarily answer a question without the direction of council and it has to wait until the meeting.

So we have set out here that we tried to respond to their letters as quickly as we could. And, in fact, as soon as council gave me direction, I would respond.

Second, in the process of doing that, of course, right in July, members of council, staff and myself had been getting calls from the public and communication from the public about their concerns, and then it culminated in the petition being put on the council table in July.

So that was something that was important to consider in the context of what we would do, in terms of renewing our franchise. We always approached it from the perspective of renewing the franchise. We wanted to renew, with some conditions, that would move towards reinstating at a level of confidence between our residents, who are customers of NRG.

MR. TUNLEY: I just want to take you quickly to the petition that you have mentioned a couple of times. You will find it, I believe, in tab H, at the back of tab H. It's the last document.

MS. ADAMS: Yes.

MR. TUNLEY: Is that the petition that you are referring to, and you have referred to it a couple of times?

MS. ADAMS: Yes. The notes there are the written presentation that the petitioners provided to council and read into the record. There's a copy there of an online petition and a copy of the -- well, not -- well, there's a copy of the entire contents of the written petition, and there's a copy of the ad the group put in the paper.

MR. TUNLEY: All right. So all of the documents at this tab relate to the petition, the process of forming it, the online and the handwritten portion?

MS. ADAMS: Yes.

MR. TUNLEY: Just explain to the Board, if you would, what was the significance of this petition of the event when it was presented in July 21st of 2008 to your council?

MS. ADAMS: First of all, we don't recall ever getting a petition with that many signatures on a topic in Aylmer. And council received the petition and requested staff to do a report with recommendations back to them. And certainly there was concern expressed about the level of unrest, in terms of the customers of NRG within the town.

MR. TUNLEY: You are well aware, one of the issues that arises from this petition and other considerations that you gave is the issue of how security deposits are treated. Can you just tell the Board, what are the key points that you brought forward, or your key concerns, in

relation to how NRG deals with security deposits?

MS. ADAMS: I think there were several concerns that were expressed to us by the public. Again, the concerns we're raising are those that have been brought to the attention of council and staff from the public.

Number one, there was a lot of concern expressed by the fact that people came forward and said they couldn't find a written policy. People brought in examples where one household would be charged $1,000, another household would be charged $500, and a third household would be charged $50. And they simply wanted to know how those calculations were made and why they were different.

The second piece of their complaint was that when they tried to phone, then -- and we are talking back in the spring of 2008 -- NRG, they only ever got an automated answering service, and there were varying complaints about the fact that no one returned their call. No one -- if they did, there was no information provided. If they asked who the manager was, they were told they weren't allowed to release that name, or they were given to another department called the credit department.

The next set of complaints was over when they would get their deposits back and under what circumstances. They wanted to see something written down so that it would be clear to them when and under what circumstances the deposit was returned.

And the last sort of circumstances that were related to us was the notion that some people got their deposits

back and others didn't, and it really -- they didn't understand what the terms were that made that conclusion. They basically wanted to see something in writing.

MR. TUNLEY: In the proposal, the process that you went through, as I understand it, is that you took to council again in December -- and this is at tab L of your material -- you took a second report to council, which included a draft franchise agreement with a schedule A, some terms that you were proposing to suggest for renewal with NRG; is that correct?

MS. ADAMS: Yes. That was our formal position being adopted by council at that point. Prior to that, the September 11th meeting being an example, we were having discussions with NRG.

MR. TUNLEY: And as a result of all those discussions, the proposal you developed and brought forward to council in December is the one we find at tab L?

MS. ADAMS: That's correct.

MR. TUNLEY: And it was approved by council on the 15th of December?

MS. ADAMS: It was.

MR. TUNLEY: Is that correct? And presented to NRG the next day, December 16th?

MS. ADAMS: That's correct.

MR. TUNLEY: Just looking at the attached proposal. We have had some reference to schedule A. The deposit issue that you have mentioned -- security-deposit issue is --

MS. ADAMS: I'm sorry, where are you?

MR. TUNLEY: I am at tab L. It's the second-last --

MS. ADAMS: Okay.

MR. TUNLEY: The schedule A document is the last page of the second-last item in tab L.

MS. ADAMS: Okay.

MR. TUNLEY: The proposal you have made to NRG, as I understand it, includes three components to address the security deposits. The first is in paragraph 2(a). Part of the proposed changes to the gas-distribution access rule changes includes measures with respect to security deposits; is that correct?

MS. ADAMS: That's correct.

MR. TUNLEY: And the second thing you asked is for NRG, in paragraph 3(a), is to adopt a written, publicly available, security-deposit policy so that customers will understand what the rules are; is that correct?

MS. ADAMS: That's correct. We don't comment on what the policy is. What we're asking for is that there be a written policy, and that policy be available in the widest public way, distributed to their customers, available at their front office, available on a website, whatever, as long as it was in writing.

MR. TUNLEY: All right. And then the third item in this list of terms in paragraph 4 is a suggestion that NRG keep the monies that they gain from consumers in security deposits in a trust fund or trust account.

MS. ADAMS: That's correct.

MR. TUNLEY: Can you just tell the Board, how did that suggestion come about, and what's the concern underlying it?

MS. ADAMS: Prior to the hearing that we have spoke about this morning with respect to Union, we did not have any copies of their financial statements, so we weren't quite sure what was happening with the money.

At the Union hearing, when we saw for the first time copies of the financial statements, two things came to light for me. One is that, in addition to the retractable shares, which are callable, they would take priority -- if someone was looking for calling their debt, they would take priority over our customer deposits.

And second, with the ruling that Union got also a priority, we now have the quarter million dollars that our customers have entrusted to NRG, would be available to those creditors to fulfil theirs, if there was some issue that they, rightly or wrongly, chose to exercise. The notion of having it in a trust of some description would protect our community residents' money, to be returned to them appropriately.

MR. TUNLEY: I believe we have seen in the financial statements the amount held in -- by NRG at the moment has risen in 2008 again to 750,000. Are you aware of that? And is that part of the concern that you are bringing forward?

MS. ADAMS: Yes, certainly when we saw those financial statements, the total value of the customer deposits held

were 100,000 in, I believe it was '06. And they were on the rise significantly.

And the other twig to that was the number of complaints we were getting at the town office about the requirements and the level of security deposits.

MR. TUNLEY: All right. Just going on some of the other provisions in schedule A, if you still have that in front of you as part of tab L.

Another thing you have asked for is a written complaint policy or process in paragraph 3(b). What is the background to that request?

MS. ADAMS: It was meant to ensure that the customers or whomever, who had complaints with NRG, were clear on how to make those complaints, then a process that would be in place.

When people came to complain to us, we would say, It's not our business. You have to deal with NRG. And they would say, 'But we don't know how to get a hold of them. They don't return our phone calls. They don't -- whatever.

So this was meant to have a written policy in place so people would know, When I want to complain, this is how I do it, and this is the information I would have to provide.

MR. TUNLEY: The third item in paragraph (c) -- sorry, paragraph 3, subparagraph (c) is a written policy that you are requesting regarding new and relocating retail, commercial, and industrial customers.

Can you just explain to the Board why you made that request and put it forward in this form?

MS. ADAMS: Yes. Prior to the fall of 2005 we had great experience with NRG management. They worked with the town when we had interested parties who might want to set up a business or an industry here. They came to the table, as did our other utilities. And we were able to provide all of the important information for a company or a business who wanted to come to our town.

On or about the summer or fall of 2005, we no longer got that support, and the first example that we saw of that was in the context of trying to do a deal with our ethanol plant to come to our community.

And, subsequent to that, I had complaints from other industries, one industry that was in the community and was looking to relocate, one industry that was in the community and was looking to switch from, sorry, propane to natural gas, and several concerns expressed by industries from outside the community who had read the press on the -- on the issues between our ethanol plant and NRG and were expressing their concern about coming to our community, if that was the circumstance they would have to deal with.

MR. TUNLEY: All right. You have asked, in paragraph 6, to be given notice of proceedings to which NRG is a party before the Board; not just applications that they may bring, but any proceeding that they become involved in.

Can you just explain to the Board why that request was made?

MS. ADAMS: I can give an example of their most recent

rate hearing. I believe the notices were given in 2005. And at that point, the town had nothing but positive relationships with NRG and we had no reason or desire to intervene in their rate hearing, although when the hearing did come to Aylmer, we were so pleased that the hearing was here. Our mayor went to show support and to bring forward his wishes that there be support for the ethanol plant.

After that hearing, notice was given -- we then began to have some concerns, but we weren't entitled to any notice -- further notices about that particular rate hearing. So because we didn't intervene in 2005, when we had no reason to, we didn't get notice of any of the other, whether they were paper hearings or otherwise.

MR. TUNLEY: All right. One of the issues, and perhaps the key contentious issue in the proceeding, is the town's request or suggestion to the Board that the term of any renewal be for a three-year period.

Can you just explain to the Board why the town has taken that position? What are the considerations behind that?

MS. ADAMS: The main set of concerns on behalf of the municipality, who is expressing them on the behalf of the public -- and I can't emphasize this enough. The public were concerned. They came to council. They asked council to do something.

Schedule A is the "something" council is doing for those people who live in our community.

The three-year term is about having an opportunity to

put these things in place, to rebuild a positive relationship, and to get back to the situation pre 2005 where we can all go forward together to make this community a place where people want to stay and want to come and visit.

One of the concerns, certainly our council watched, as we were intervenors in hearings, where the Ontario Energy Board gave direction to NRG and they ignored it. They were fined by the Board for ignoring Board orders, and we did not want to go for 20 years without having another opportunity to deal with those issues.

Our best hope, as a community, is that three years down the road we don't have to do any of this, that we would have a franchise agreement that went for 20 years and we would all live happily together for 20 years and not have to go to this resource.

I think it gives everyone an opportunity to strive to do better, to build the trust again, to build the trust with the public, and then we could proceed on the basis of the typical franchise agreement.

Now, we put forward agreement, support, endorse, whatever the model franchise agreement that our representative, MO, negotiated. We adopted all of the same terms. We simply added a schedule A and we asked that the renewal term be for three years.

The other -- the second thing is when we look at our sister municipalities, their franchises come -- three of them come due in three years. Another one comes due in

four years. So we believed there was an opportunity to work together to come to a franchise agreement that hopefully we would all be able to go forward on.

There are a lot of economies of scale, and we don't all have to duplicate resources if we can do some of these things together.

MR. TUNLEY: One of the concerns that have been raised by NRG in their response to your proposal is about their renewal of -- or ability to renew debt, longer-term debt, if the franchise renewal is only for a three-year period.

Do you have any perspective on that, or how do you deal -- how do you respond to that concern?

MS. ADAMS: The franchise we are dealing with today, the one we want to renew for three years, is one of eight franchises. Three of those do come due in three years.

I don't understand why Aylmer's franchise for three years would have any more impact than the existing ones. We are only one of six municipalities.

MR. TUNLEY: All right. Can you then -- just in closing, can you tell the Board, what is your -- there's been some suggestion about what your purpose is in bringing these forward, these proposals forward.

Can you tell the Board, in your own words, what is it you are trying to achieve by presenting this package of proposals for renewal --

MS. ADAMS: I can tell it in my words. You can read it in the words of council.

They would like the issues that our residents have

raised dealt with. They would like to renew this franchise agreement with this company.

If you look at the Town of Aylmer, we're in a very important and unique position, where we have small, local utilities in all of the sectors. We have a local-grown, bred and born telephone company, A&M Telecom. We have a local born and bred electric utility in Erie Thames, and we have a local born and bred gas company in NRG.

That's a really important future to sell to people, that it's a community that works together, that breeds good companies and supports good companies.

We would like to get back to the situation pre 2005 where we could be in that kind of a positive relationship with all three of our utility suppliers.

MR. TUNLEY: Thank you. Those are my questions.

QUESTIONS BY THE BOARD:

MR. QUESNELLE: Ms. Adams, I wonder if you could just help me out on the -- your comments on the combination -- or not the combination, but the combining of the timelines or synchronizing of the timelines in the agreements and, hypothetically, if they all came together at a particular time.

You mentioned the economies of scale that that would achieve. What mechanism would you suggest could be in place that would combine the parties, the municipal parties, into a common position?

What I am getting at is the synchronizing of timelines doesn't necessarily collapse agreements; that there would

still be all of the agreements in place. They're just all expiring at the same time.

Have you contemplated an arrangement in which all parties would have common issues to deal with and an agreement mechanism so that there are truly economies of scale?

MS. ADAMS: To be honest, sir, no, we haven't really contemplated that kind of mechanism.

What we did is go so far as to say, in other issues, local municipalities, we work together. If we have common interests and common grounds, we put together common positions so that five of us don't all go hire a specialist, a consultant, a lawyer or whatever; that we work together. We can hire one. We can approach it that way.

The other piece that I believe we felt was important is that the line for the customers is, you know, there are people who live in Aylmer and we have a boundary line. Their next door neighbour is in Malahide. The issues are the same for the customers. The boundary for their gas utility is much larger.

I think the third thing is that it really does give an opportunity to have one comprehensive discussion and hopefully go forward in a positive way.

I think there is much important support that they can be given from all of us municipalities as a group. And that would hopefully go a long way to building the reputation of NRG if they could stand and say, All our

municipalities are supporting us. Wouldn't that help improve their reputation?

MR. QUESNELLE: Thank you.

MR. KAISER: Mr. Thacker?

CROSS-EXAMINATION BY MR. THACKER:

MR. THACKER: You referred to concerns about customers, expressed to you by industrial customers, and one of them was IGPC, right?

MS. ADAMS: Yes.

MR. THACKER: And you read a press release issued in February of 2008, issued by IGPC. Remember that?

MS. ADAMS: Could you show me it?

MR. THACKER: I don't have a copy here. Do you not remember the press release?

MS. ADAMS: I couldn't say that I did, no.

MR. THACKER: I will see if I can get you a copy.

MS. ADAMS: Okay.

MR. THACKER: So these concerns that you say were expressed, they were expressed to you by IGPC?

MS. ADAMS: And others, yes.

MR. THACKER: Well, let's just focus on what you know. Who was it that expressed these concerns to you?

MS. ADAMS: Staff, and members of the board of directors, and some of the shareholders.

MR. THACKER: Okay. And you were relying on what IGPC told you, assuming that it was true, right?

MS. ADAMS: Not entirely, no.

MR. THACKER: Well, are you assuming that what IGPC

told you was false?

MS. ADAMS: I was present at some of the discussions. I witnessed some of them myself.

MR. THACKER: Right. You were present at the hearing February 28th, correct?

MS. ADAMS: Yes.

MR. THACKER: Right. And you will agree with me that the Board found at that hearing that the central issue was, first and foremost, IGPC's failure to deliver credit and the dispute as to the proper amount of that letter of credit. You can read that if you want.

MS. ADAMS: If you say so. I will agree.

MR. THACKER: All right. That was the central issue that day, right?

MS. ADAMS: Well, you just said so, yes.

MR. THACKER: Well, you will agree with me. You were there.

MS. ADAMS: I wouldn't necessarily agree that was the only issue, no.

MR. THACKER: Right. You will agree with me that's what the Board found --

MS. ADAMS: Yes.

MR. THACKER: -- despite what the parties wanted them to find.

MS. ADAMS: Yes.

MR. THACKER: Okay. Now, you also said, I think, that your concern about the security deposit arose when you became aware of the financial statements on October 18 as a

result of the Union application.

MS. ADAMS: That was the first time that we had all of the concerns that I expressed. But there were concerns expressed by members of the public to us prior to that.

MR. THACKER: No, I know, but you said it was the first time you saw the financial statements that you became concerned about the safety of this deposit money.

MS. ADAMS: Yes.

MR. THACKER: Right. And it was that application that made you concerned about the security of that deposit money.

MS. ADAMS: That's correct.

MR. THACKER: And so in effect, it was Union Gas through an application that woke you up to this concern about the deposit money and its safety?

MS. ADAMS: Yes.

MR. THACKER: And you had some other discussions with Union Gas around the time of that application on October 18, right?

MS. ADAMS: No.

MR. THACKER: No? So you just read about it for the first time in the application materials?

MS. ADAMS: Yes.

MR. THACKER: Okay. Are you sure about that?

MS. ADAMS: I am absolutely positive.

MR. THACKER: Right. Would you turn to your report of October 8th?

MS. ADAMS: Can you give me the tab number, please?

MR. THACKER: Sure. It is in your evidence, at tab 1-B.

MS. ADAMS: Okay.

MR. THACKER: This is your report of October 8th, correct?

MS. ADAMS: Yes.

MR. THACKER: You drafted it?

MS. ADAMS: Yes.

MR. THACKER: And you were careful when you drafted it?

MS. ADAMS: I'm always careful when I write something.

MR. THACKER: In fact, when you refer to council referring something to staff for consideration, isn't staff really just you?

MS. ADAMS: No. We have 35-odd staff.

MR. THACKER: Okay. And if you look at the last page, you will see your signature at the bottom.

MS. ADAMS: Yes.

MR. THACKER: And you will see that, if you go to the second-last page, this is where you set out the recommendations as at October 8, right?

MS. ADAMS: Yes.

MR. THACKER: And this reflects the concerns you had as at October 8.

MS. ADAMS: Yes.

MR. THACKER: And so one of them is to advise the OEB of some of the concerns about NRG, correct? That's the first one?

MS. ADAMS: Yes.

MR. THACKER: Right. And then you said at paragraph 2:

"Request the OEB consider the following regulatory and/or policy changes."

And the first one is requiring certain customer-service measures, right?

MS. ADAMS: Yes.

MR. THACKER: And you will agree with me that the fourth bullet point refers to requiring consumer security deposits be kept in a trust fund.

MS. ADAMS: Yes.

MR. THACKER: So it's not true that you woke up to this concern on October 18th.

MS. ADAMS: No. What I told you was that we had a concern about the monies that were brought forward by our customers. When in fact we had the benefit of the material produced at the Union hearing, we had additional concerns, those concerns being the fact that -- the ones that I outlined, the fact that the monies were secured before the customer deposits, and the fact that the customer deposits were on the increase.

MR. THACKER: You just told this Panel a moment ago that you woke up to the issue of the safety of the security deposit on October 18 or shortly before.

MS. ADAMS: Yes.

MR. THACKER: And I am suggesting to you that is not true. You in fact were concerned about it by October 8.

So is that your evidence now, that you in fact were aware of it before the October 18th application materials?

MS. ADAMS: Yes. I think I've been clear that the issue was raised with the town, with myself, and with others by members of the public. They were concerned with the deposit money, where the deposit money was, what was being done with it. That concern was reinforced at the Union hearing when we saw the financial statements for the first time.

MR. THACKER: Okay. So it's not that you --

MS. ADAMS: I've said that three times --

MR. THACKER: It is not that you woke up. It is now that your concern was reinforced. Is that what your evidence is?

MS. ADAMS: I don't understand the distinction.

MR. THACKER: Do you understand the distinction between being made aware of something for the first time and having a concern reinforced?

MS. ADAMS: Yes.

MR. THACKER: Okay. So when you said you woke up to it by the October 18 application materials, that's not correct. You're saying now that you just had a previous concern that was reinforced.

MS. ADAMS: Define "woke up". "Woke up" to me is, I get more information.

MR. THACKER: Well, you answered -- you answered the question when I put "woke up" to you. You didn't have any trouble understanding it the first time, right?

MS. ADAMS: Mr. Thacker, I think I answered the question --

MR. THACKER: Okay.

MS. ADAMS: -- very clearly.

MR. THACKER: And you also said that -- and I wrote this down too -- that this October 8 report is the basis of the concerns that bring you here today, sets out the basis of the concerns, correct?

MS. ADAMS: Would you repeat that, sorry?

MR. THACKER: Yes. The October 8 report sets out the basis of the town's position. That's what you said.

MS. ADAMS: In part, yes. There's a subsequent report on December 11th.

MR. THACKER: No, I understand. But what -- you didn't qualify it in your evidence-in-chief. You just -- your counsel asked you if this was the basis of the town's position, right?

MS. ADAMS: Yes.

MR. THACKER: I'm not trying to exclude the next report.

And you also said that you had had discussions with the municipalities before this report was prepared.

MS. ADAMS: Yes.

MR. THACKER: All right. And when did you first start talking with these other municipalities about their position?

MS. ADAMS: One of the first discussions would have been when the township of Malahide was present at the

hearing with respect to the ethanol plant.

MR. THACKER: So that would be as early as February --

MS. ADAMS: No, I believe it was in the summer -- I'm sorry, I can't answer the question on the dates.

MR. THACKER: I can tell you the hearing --

MS. ADAMS: That's the first recollection I have of any discussion.

MR. THACKER: Right. So the hearing on the ethanol plant was February 28 at the town hall? Remember that? A beautiful old building just down the road.

MS. ADAMS: No. There was one prior to that. There were several hearings on the ethanol plant --

MR. THACKER: Oh, so you'd be --

MS. ADAMS: -- sorry, I'm not sure which one you mean.

MR. THACKER: Okay. So the one you remember, where you first spoke to the town of Malahide or the communications with Malahide began? That's what you just said --

MS. ADAMS: Was at one of those hearings.

MR. THACKER: Right. So it was no later than February 28th, 2008, right?

MS. ADAMS: Okay. Yes.

MR. THACKER: Well, I just want your -- I don't want you to guess.

MS. ADAMS: I --

MR. THACKER: You would agree with me that it was at least --

MS. ADAMS: No, I guess I couldn't agree, because I am

guessing.

MR. THACKER: Okay. So now you don't remember when you first met with the town of Malahide?

MS. ADAMS: It was during one of those hearings.

MR. THACKER: Okay. And we know the most recent hearing was February 28, 2008.

MS. ADAMS: On what? There was one in the fall.

MR. THACKER: The hearing you just referred to. Oh, are you suggesting that your first communication with Malahide was October 18?

MS. ADAMS: No. I thought you were.

MR. THACKER: No. I'm trying to establish when you first had communications with these other municipalities that you now purport to speak for.

MS. ADAMS: First of all, I don't purport to speak for anyone but my own municipality.

MR. THACKER: Okay. Let me just stop you there, then. What you have told this Panel about what other municipalities desire is not true?

MS. ADAMS: What I said was I believe that this is the discussions we have had and what they wish to do. I look at their letters and see what they're doing. I never once said that I spoke for them.

MR. THACKER: Right. But they're not here to speak for themselves, right, so we don't have any evidence from them?

MS. ADAMS: I don't know if you have evidence from them. Not that I have seen, no.

MR. THACKER: Let me go back, though. I want to establish when you first started speaking to these other municipalities about this strategy.

MS. ADAMS: Well, there was no strategy.

MR. THACKER: When did you start speaking with Malahide about concerns about NRG and the renewal of the franchise?

MS. ADAMS: We started talking -- there were discussions about concerns that the municipality had with NRG in the context of the ethanol plant.

MR. THACKER: Right. That was as early as --

MS. ADAMS: There was never any strategy, or whatever words you're using, no.

MR. THACKER: No. I'm just using -- you said, in your evidence-in-chief, that you had discussions with the other municipalities all before October 8.

MS. ADAMS: Yes.

MR. THACKER: I am trying to determine when those discussions commenced. And so far, from what you have told me, they had to have started by no later than February 28, because that's the most recent ethanol hearing; correct?

MS. ADAMS: What I said was that we would have started having discussions with Malahide at that point.

MR. THACKER: Okay. And I think what you said is that this February 8 memo sets out -- sorry, the October 8 memo sets out the collective or your understanding of the collective views of these other municipalities, after all of your discussions; right?

MR. TUNLEY: I don't believe she said that.

MS. ADAMS: I don't think I said that, no.

MR. THACKER: Okay.

MS. ADAMS: I don't propose to speak for them. I am giving you my understanding.

MR. THACKER: That's what I'm trying to deal with. You understand what they -- what their position is; right?

MS. ADAMS: Yes, but I'm not presenting it on their behalf.

MR. THACKER: Okay. So your understanding of their position was known to you by October 8 when you set out this memo?

MS. ADAMS: My understanding is that they were supportive of looking at working together in terms of renewing the franchise as a group somewhere around 2012. That's all I'm saying.

MR. THACKER: Yes. And that understanding you had before you did your memo of October 8th? That's what you said.

MS. ADAMS: If somebody could read it back. I can't remember everything I said.

MR. THACKER: Can we read back the first few sentences? I hate to do this, but this is sort of an important point.

MR. KAISER: All right, go ahead.

MR. THACKER: There was a question when Mr. Tunley began - it was probably his third or fourth question - where he referred to the October 8 memorandum, and there's

a series of questions where my recollection is the evidence was that they had discussions before October 8 and those -- the results of those discussions are set out in the October 8 memorandum.

TECHNICIAN: It will take me a moment to find it.

MS. ADAMS: Why don't you just ask me what you want to know? Sorry, just ask what you want to know.

MR. KAISER: Why don't we take a 15-minute break to allow the reporter to get the material and let you have a look at it?

MR. THACKER: Thank you.

--- Recess taken at 2:42 p.m.

--- Upon resuming at 2:48 p.m.

MR. KAISER: Please be seated.

Did the reporter find what you were looking for, Mr. Thacker?

MR. THACKER: Yes. Just one question.

MR. MILLAR: Mr. Chair, the court reporter has e-mailed me the copy of the text, so I will just read that on to the record, with your permission.

MR. KAISER: All right. Thank you.

MR. MILLAR: "Mr. Tunley: A specific question is, at the time you prepared and submitted this report to council in or about October 8th, had you had discussions with the other five municipalities in the area, and does your report reflect what you learned from them about any shared concerns?

"Ms. Adams: Yes."

MR. THACKER: That was true when you gave that evidence, wasn't it?

MS. ADAMS: Yes.

MR. THACKER: All right. And so what we have in this October 8 report is your shared understanding of the view of the other municipalities.

MS. ADAMS: It's my understanding, yes.

MR. THACKER: Yes. Okay. And so if we look at this report...

MS. ADAMS: What page are you on, sir?

MR. THACKER: Let's look at page 5.

You will agree with me that that shared understanding is set out at pages 5 and 6, correct, of the report?

MS. ADAMS: No.

MR. THACKER: Well --

MS. ADAMS: This is the Town of Aylmer's understanding.

MR. THACKER: Right. All right. And are you suggesting that the other municipalities, to your knowledge, do not agree with what the town's understanding or proposal was, set out on pages 5 and 6?

MS. ADAMS: They were provided with this report, and they commented on it afterwards.

MR. THACKER: No, no. You just told us, under oath, that this report reflects your understanding of the shared concerns of the municipalities.

MS. ADAMS: Yes. Inasmuch as they're expressed here.

MR. THACKER: Yes. Right. And so -- and you wanted

this report to set out as accurately as possible, firstly, the Town of Aylmer's position, correct?

MS. ADAMS: Correct.

MR. THACKER: And as accurately as possible your understanding of the position of the other municipalities, correct?

MS. ADAMS: No. This position that's set out here is the Town of Aylmer's position. If there was anything that the other municipalities -- and we agreed to, it would have -- no, let me start again.

The position that is set out here is the Town of Aylmer's position. What we had spoke to the other municipalities was if there was any interest in going forward with a common franchise renewal date so that we could work together on that renewal. We did not talk about the details that are set out on pages 4 and 5.

MR. THACKER: Oh, I see. So you didn't actually tell -- you didn't discuss any of these recommendations with the other five municipalities?

MS. ADAMS: No.

MR. THACKER: No. So the one thing you did discuss with the other municipalities is the three-year renewal; is that right? Or the coordinated renewal? Is that your evidence?

MS. ADAMS: We discussed conceptually a coordinated renewal.

MR. THACKER: Right.

MS. ADAMS: I don't recall early in the discussions

that a time period was referenced.

MR. THACKER: Okay. So when you prepare your report of October 8, after your discussions conceptually, you deliberately omit any reference to this conceptual coordinated renewal, from all of the words of your October 8 report, didn't you?

MS. ADAMS: Not deliberately, no. What I am putting forward here are the recommendations that our council was considering.

MR. THACKER: Okay. So as of October 8, your council was not interested in a coordinated renewal, correct?

MS. ADAMS: The discussions were at a staff level.

MR. THACKER: You put in here what the town's position was at October 8, correct?

MS. ADAMS: Yes.

MR. THACKER: And there is nothing in this October --

MS. ADAMS: Well, but I was recommending the town's position be amended. Council adopted it. Sorry.

MR. THACKER: Right. Okay. And so as of October 8 you were not recommending any coordinated renewal at all, were you? Because I read it carefully, and there is not one reference.

MS. ADAMS: Mm-hmm. Not at that time, no.

MR. THACKER: Right. In fact, you weren't even recommending, as of October 8, a three-year renewal period, were you? Because that's not in the report either.

MS. ADAMS: No. We were still in discussions with NRG with respect to details of the renewal.

MR. THACKER: Are you sure you were in discussions with NRG?

MS. ADAMS: I'm positive.

MR. THACKER: You had one meeting in September, right?

MS. ADAMS: We had a series of off-the-record meetings, which Mr. Bristoll just brought to the table before lunch.

MR. THACKER: In all of the requests, which I am going to go through, that are set out in the evidence, the first meeting you had was in September, on September 11.

MS. ADAMS: Yes.

MR. THACKER: Right. And you had already been meeting with the other municipalities by then, we know, right?

MS. ADAMS: At least Malahide, yes.

MR. THACKER: Right. You actually can't remember, with respect to any municipality other than Malahide, right?

MS. ADAMS: I don't remember the exact dates.

MR. THACKER: But you know it was, I'm going to suggest to you, well underway throughout the summer, your discussions with all of the other five municipalities.

MS. ADAMS: No. I can honestly say I didn't have any discussions with them through the summer. I was on vacation.

MR. THACKER: Okay. So they commenced before you went on vacation.

MS. ADAMS: I think that I said we talked -- we

were -- we talked to Malahide --

MR. THACKER: I know.

MS. ADAMS: -- at the time of a previous hearing.

MR. THACKER: You said that. But now I'm suggesting to you you talked to the other municipalities before you went on summer vacation.

MS. ADAMS: I don't think so.

MR. THACKER: Well, do you know?

MS. ADAMS: I don't recall talking to them.

MR. THACKER: Okay. And you were on vacation until when the -- September 11, right, or thereabouts?

MS. ADAMS: I came back from vacation, I think it was the second week or third week of August, that weekend.

MR. THACKER: Oh, I see. So your discussions with these other municipalities would have happened at least throughout August?

MS. ADAMS: I don't recall meeting with them throughout August.

MR. THACKER: And they would have happened at least then in September?

MS. ADAMS: I would expect so, yes.

MR. THACKER: So when you meet with NRG on September 11, is it your evidence that you had had no discussions with anyone other than Malahide about their views?

MS. ADAMS: I only ever recall one meeting. There was no series of discussions. There was, like, one meeting where the administrators got together and talked about a whole number of things that had absolutely nothing to do

with the natural gas.

And there was a discussion about whether there would be some interest in working together, if we were able to have some type of a common franchise renewal, and talked about the things that I talked about, that there would be some efficiencies, in terms of being able to hire -- maybe share the costs of consultants or of lawyers or whatever it was we needed, and that we were all smaller municipalities, and that we would be able to have a stronger position if we had a common position, and that that would be a good thing for all concerned, the municipalities and NRG.

MR. THACKER: So you remember all of that from the meeting, right?

MS. ADAMS: Basically, yes.

MR. THACKER: Yes. And when was the meeting?

MS. ADAMS: If I can look at notes that aren't on record, I could probably come up with a date, but I don't know off the top of my head.

MR. THACKER: Sure. I would like to know when that meeting was.

MS. ADAMS: Okay. I'm sorry. I thought I had the -- that piece of my calendar in here, and I don't.

MR. TUNLEY: We may be able to give an undertaking to provide the date. There may be records that --

MR. THACKER: Thank you. I would like to have the date. That is the one meeting where all of these discussions took place; right?

MR. TUNLEY: I will give a transcript undertaking to

make best efforts, if we can, the date of that meeting.

MR. KAISER: All right. Thank you. Mr. Tunley, just while you are making notes, in the report that Mr. Thacker has been referring to, in the last page, there is an item number 3 on page 6. It says:

> "This is one of the recommendations that Ms. Adams made, a request that the OEB establish a process for review of the legislation and regulations which require the municipalities and natural gas distributors entering into franchise agreements. The realities of the current process for these agreements do not operate such that they improve the distribution of natural gas to its customers. The municipality has no real ability to negotiate even the minimum service delivery requirements, no realistic ability to enforce the provisions of the franchise agreement when a distribution company does not meet them, and no real ability to change the provisions of service. The legislation guiding franchises is outdated in its provisions, such as the requirement for public vote, and typically are replaced with the OEB approval process."

Now, I asked you earlier - and you said you would research it and comment on it in argument - as to what remedies you thought there were and what our power were in a case of an alleged breach of the franchise agreement.

And I am wondering how that squares with item number 3

in this report, which suggests that even if all of these conditions were in a franchise agreement, it wouldn't provide your client with much relief.

I am not asking you to deal with that now, but I am asking you to tell me whether this is still a position that you are advancing to us. That request hasn't been made in these proceedings by your client, as I understand it; rather, you seem to now take the view that if conditions are put in a franchise agreement, it can be a meaningful instrument. So I just want to know, just an elaboration on that earlier point.

MR. TUNLEY: Thank you. I will undertake to address that in our written submissions.

MR. MILLAR: Mr. Chair, there is also a separate undertaking, if I could give that a number J1.1, and that is to determine the date of a meeting, and Mr. Tunley or Ms. Adams, could you finish that sentence for me to make sure we have the right meeting?

MR. TUNLEY: Yes. Ms. Adams has referred to a meeting of all of the administrators of the six municipalities, which occurred at some point in the summer or early fall of 2008, where the issue of a coordinated approach, where all of the franchises agreements would renew on the same date was discussed, and I have given you a best efforts undertaking to try to provide Mr. Thacker with the date of that.

UNDERTAKING NO. J1.1: TO PROVIDE DATE OF MEETING WITH SIX MUNICIPALITIES IN SUMMER OR EARLY FALL OF 2008.

MR. MILLAR: Thank you.

MR. THACKER: Now, in any event, you will agree with me that in this report that you drafted, you were trying to give town council, on October 8, all of the information that you had available to you?

MS. ADAMS: I was trying to give town council the report that they requested, which is whatever -- they had referred the contents of the petition and the letter from Malahide to staff for a report.

You will see they're noted at page 1. I was providing a report on those topics.

MR. THACKER: You were trying to give the town council all of the information you had that was relevant to the issues concerning NRG?

MS. ADAMS: No, I was trying to deal with the issues council had referred to me, which is the Malahide letter and the petition.

MR. THACKER: So if we see concerns about IGPC in here, that was by accident?

MS. ADAMS: It was part of the background, I believe, and discussion about events.

MR. THACKER: Okay. So you were trying to give the town council all of the evidence you could, all of the information you had, about the background of NRG in the last two years, let's say.

The reason I ask is that you are quite specific on some things --

MS. ADAMS: Yes.

MR. THACKER: -- in your report. It seems very careful.

For example, you have a chronology on page 2 which sets out a number of events. Do you see that?

MS. ADAMS: Yes.

MR. THACKER: You will agree with me what is missing from that chronology are any of the dates, which we will go to, but are set out in NRG's evidence of the letters and requests from NRG to have a meeting with the town, or at least to learn what position the town actually had with respect to franchise renewal.

None of those things are set out in your chronology? You can see it at page 2.

MS. ADAMS: No. Whatever letters we had would have been provided to council at that time.

MR. THACKER: Are you sure?

MS. ADAMS: Yes.

MR. THACKER: Are you sure you didn't provide to council the appendices to this report?

MS. ADAMS: I provided the whole report and the appendices to council? I provided the whole report to council. If there were some attachments, then they were provided to council.

MR. THACKER: I understand. So if the letters are not attached, then -- the letters from Mr. Bristoll and from me and from NRG requesting your position, then town council never saw them; right?

MS. ADAMS: I couldn't speak to whether they saw them

or not. When the materials come into our office, they go to the clerk's department. They either get put on the agenda for council or they get copied and put in council's mailbox.

There are many ways that council could have saw the letters. I don't know.

MR. THACKER: You're not suggesting you distribute every letter that comes into the town hall to every council member, are you?

MS. ADAMS: If it's addressed to council, yes.

MR. THACKER: These aren't letters addressed to council. They would be letters addressed to you.

MS. ADAMS: If they're of interest to council to make a decision, we put it in their mailbox.

MR. THACKER: You can't swear under oath whether or not any of the letters addressed to you or the mayor were ever given to council, unless they're attached to this report?

MS. ADAMS: Yes, I don't know if they were given to them.

MR. THACKER: That's fine. Apart from what is attached to this report, you will agree with me that you don't refer in this detailed chronology at page 2 to any of those letters or the requests that NRG was making to have a meeting, or to determine the town's position on them?

MS. ADAMS: That's correct.

MR. THACKER: Okay. Now, on page 3, you are very specific about service rate increases. Do you see that?

You have three particular dates in there?

MS. ADAMS: Can you show me?

MR. THACKER: Yes, top third of page 3.

MS. ADAMS: Yes.

MR. THACKER: Second full paragraph. You will agree with me that you have -- at the second paragraph beneath that, it starts with, "In recent years a concern expressed about improvements", and your knowledge of the improvements or lack of knowledge?

MS. ADAMS: Yes.

MR. THACKER: You have a detailed -- just to be fair to you, you do refer at the last paragraph to the meeting on September 11; right?

MS. ADAMS: Yes.

MR. THACKER: But you don't refer, in any way, to any of the requests for a meeting that started in June?

MS. ADAMS: Not in this document.

MR. THACKER: Not in any document that you have actually produced in this record?

MS. ADAMS: That's correct.

MR. THACKER: Right. Then you make recommendations that set out your recommendation for how to proceed; right?

MS. ADAMS: Yes.

MR. THACKER: And there is no reference in here to any limitation or restriction on the term of renewal set out in this October 8 memorandum, is there?

MS. ADAMS: No.

MR. THACKER: No. You didn't want the town to know --

council to know that you were considering a restricted or shortened franchise term?

MS. ADAMS: I wasn't considering one. I don't have the authority to make a decision on term. That is entirely in council's hands.

MR. THACKER: Right. But you don't make a recommendation about it?

MS. ADAMS: Yes.

MR. THACKER: All right.

MR. KAISER: When was that recommendation first made, or was it made, by you?

MS. ADAMS: In the December -- I believe it is my December 8th report. It is in that report.

MR. KAISER: All right.

MR. TUNLEY: There is one at tab L, I believe.

MR. THACKER: I was just going to get to that. So the first time you told or made any recommendation to the town about a restricted renewal period was in your December 11 report; correct?

MS. ADAMS: That's the first time the report went to a council meeting, yes.

MR. THACKER: Right. So can we agree, then, that -- well, no. The real point is that is the first time you ever suggested to council there should be a restriction on the length of renewal?

MS. ADAMS: In a report context, yes.

MR. THACKER: Well, that's the first written record --

MS. ADAMS: Right.

MR. THACKER: -- you have produced of ever making that recommendation to council; right?

MS. ADAMS: That's the first written record.

MR. THACKER: There is no evidence that that was ever discussed with any municipality before October 8, is there?

MS. ADAMS: A three-year term, no.

MR. THACKER: Right. So when you talk about the position of other municipalities as you understood it as of as of October 8, it had nothing to do with a three-year term, did it?

MS. ADAMS: No.

MR. THACKER: Good. So then we get to this December report. And again, you will agree with me that, in drafting this report, you want to make sure that council has all of the relevant information on which to make a decision about NRG and how to proceed, right?

MS. ADAMS: I assume that they would also reference the previous reports.

MR. THACKER: Sure. But from October 8 up to December 11, you want to be sure that they have all relevant information.

MS. ADAMS: Yes.

MR. THACKER: And you are now making a recommendation, as I see it, starting at page 4, under the heading "staff recommendation", correct?

MS. ADAMS: Yes.

MR. THACKER: And you will agree with me that nowhere in all of these detailed recommendations is there any

reference to linking up the expiry dates for the other five municipalities to yours. Not a word.

MS. ADAMS: I thought the renewal dates were referenced in one of my reports, the tab for the October 8th report. No, it's not there, so, yes.

MR. THACKER: So the town council is being asked to accept a recommendation from you, and you don't even tell them that it has anything to do with linking up the expiry dates for the other five municipality franchises, right?

MS. ADAMS: Not in the context of the report, no.

MR. THACKER: You didn't tell the town council.

MS. ADAMS: I may have, in terms of questions. I don't know.

MR. THACKER: You may have. But you have no evidence that you actually did, do you?

MS. ADAMS: Don't recall one way or the other.

MR. THACKER: No. So from October 8 on to December, is it your evidence that you have the understanding of these other five municipalities, but you have omitted it from your two reports?

MS. ADAMS: The CEOs had had a discussion about the concept of having them renew at a similar time frame so we could work together.

MR. THACKER: I know.

MS. ADAMS: That is not in either report; that's correct.

MR. THACKER: Right. And you left it out.

MS. ADAMS: Yes.

MR. THACKER: Right. Now, I just want to go back and make sure that there is no dispute between us with respect to the history of the franchise agreements. And if you would turn to the evidence -- or negotiations towards the franchise agreement. And if you would turn to the pre-filed evidence of NRG, tab D-1.

And can we agree that --

MS. ADAMS: I'm sorry, I'm not quite there yet.

MR. THACKER: What we have, just to set the scene here, is -- is a narrative of four pages and then a series of backup documentation. I just want to make sure that we're not at issue on these requests.

Mark Bristoll made a request of you by way of voice-mail on June 6. And you will see an e-mail following up on that. It's the first document behind the narrative. Do you see that?

MS. ADAMS: Yes.

MR. THACKER: You received the voice-mails from Mark Bristoll on June 6th?

MS. ADAMS: Yes.

MR. THACKER: Right. And then you got this e-mail from Mark's secretary, Darlene Whitfield, on June 9. Yes?

MS. ADAMS: I got one on June 9th and June 11th. They're both on the same --

MR. THACKER: You knew that Mark was seeking to have a meeting with the mayor, and he suggests June 16, 17, or 18.

MS. ADAMS: Yes.

MR. THACKER: And you did not respond as of June 13, did you?

MS. ADAMS: I believe that I answered that question in my statement. If I could turn to that, please.

MR. THACKER: Sure.

MS. ADAMS: I think it is at number 38 I responded.

MR. THACKER: And did you or did you not respond to Mr. Bristoll by June 13th? The reason I suggest you didn't is that --

MS. ADAMS: I was first contacted on June 6th, got direction from the next council meeting on June 16th, and called Mr. Bristoll with the response on June 17th.

MR. THACKER: Okay. So as of June 13 you hadn't responded?

MS. ADAMS: Correct.

MR. THACKER: Right. And you did receive a letter from me on -- or you will know Mr. Habkirk received a letter, the mayor, on June 13. You will see it in the --

MS. ADAMS: Is that back in your documents?

MR. THACKER: Yes. If you just flip forward to the next letter.

MS. ADAMS: Yes.

MR. THACKER: And you will see that attached to that is a proposed franchise agreement.

MS. ADAMS: Yes.

MR. THACKER: And you knew that NRG was requesting an opportunity to meet with the town to determine what position the town was going to take.

MS. ADAMS: Yes.

MR. THACKER: And you knew they wanted to meet as soon as possible so they could understand the town's position.

MS. ADAMS: Yes.

MR. THACKER: And you knew that it was important because the sooner they understood the town's position, the sooner they could know whether or not they would have a contested hearing or not a contested hearing.

MS. ADAMS: No, I didn't know that part.

MR. THACKER: Okay. Then you responded eventually on June 17, correct? And if you flip forward, you will see a letter from you.

MS. ADAMS: I'm sorry --

MR. THACKER: June 17.

MS. ADAMS: Sorry. Yes.

MR. THACKER: And that's your signature?

MS. ADAMS: Yes.

MR. THACKER: Right. And you say that you would be pleased -- you and the mayor "would be pleased to meet with you to discuss the franchise agreement on a mutually convenient date", right?

MS. ADAMS: Yes.

MR. THACKER: Immediately after natural gas has been provided by NRG to IGPC.

MS. ADAMS: Yes.

MR. THACKER: So you are not prepared to meet with Mr. Bristoll or NRG at all until gas is being provided to IGPC.

MS. ADAMS: That's correct.

MR. THACKER: So you are linking the renewal of the franchise to the flow of gas to IGPC.

MS. ADAMS: Yes.

MR. THACKER: And you at that point didn't know when IGPC was going to be ready to receive gas, did you?

MS. ADAMS: I don't know if I knew.

MR. THACKER: Right. Well, I'm going to suggest to you that IGPC was delayed in its own construction. You know that, right?

MS. ADAMS: Yes.

MR. THACKER: Okay. So you know that the pipeline was completed by NRG by the agreed in-service date, right?

MS. ADAMS: No.

MR. THACKER: Nobody ever complained to you that the pipeline was not completed by the agreed service date, did they?

MS. ADAMS: Yes.

MR. THACKER: Who complained?

MS. ADAMS: It would have been staff at IGPC.

MR. THACKER: You don't remember who?

MS. ADAMS: Not off the top of my head. I know I heard it more than once.

MR. THACKER: Okay. You don't have any knowledge -- Mr. Bristoll tells you the pipeline was completed on the agreed in-service date. You wouldn't have any evidence to contradict that.

MS. ADAMS: I don't recall having that conversation

with Mr. Bristoll.

MR. THACKER: No. But if he were to testify, through evidence filed, that it was completed by the agreed in-service date, you wouldn't be able to contradict him.

MS. ADAMS: No.

MR. THACKER: Okay.

MR. KAISER: Ms. Adams, can I ask you, when you responded in this letter of June 17th that you weren't prepared to meet until gas was flowing to IGPC, did you do that on instructions from the mayor, or did you do that on your own?

MS. ADAMS: I had instructions from council as a whole.

MR. KAISER: Instructions from who?

MS. ADAMS: Council as a whole.

MR. KAISER: Oh, council as a whole.

MS. ADAMS: And if I can go back to my remarks. At line 38, I was first contacted on June 6th, got direction from the next council meeting on June 16th and called Mr. Bristoll with a response on June 17th, and so on. I had council direction.

MR. KAISER: And council said, We're not prepared to meet with these people until gas starts to flow to IGPC? That was their instruction to you?

MS. ADAMS: Yes.

MR. KAISER: Thank you.

MR. THACKER: And you at the time -- or council, at the time they made that recommendation, they had no

evidence as to when IGPC was going to be ready to receive gas; right?

MS. ADAMS: They had the original date that was part of the documentation.

MR. THACKER: That right. But we all know IGPC was behind in their end; right?

MS. ADAMS: I believe they were at that time, yes.

MR. THACKER: Behind? They were behind schedule?

MS. ADAMS: Yes.

MR. THACKER: Okay. So council makes a deliberate decision to not even speak to NRG until some undetermined point in the future; correct?

MS. ADAMS: They agreed to speak to council when the pipeline was completed -- sorry, to NRG until the pipeline was completed.

MR. THACKER: That date was undetermined at the time?

MS. ADAMS: That's correct.

MR. THACKER: Okay. They did so knowing that IGPC was anxious to meet -- sorry, that NRG was anxious to meet as soon as possible in order to find out what the town's position was?

MS. ADAMS: Yes.

MR. THACKER: Then you receive a letter from me on June 20; correct?

MS. ADAMS: Is it in here?

MR. THACKER: Yes. It is the next page.

MS. ADAMS: Hmm, yes.

MR. THACKER: Okay. And from my letter, you knew that

NRG wanted to move forward with the renewal process as soon as possible?

MS. ADAMS: Yes.

MR. THACKER: Right? And you will see that I say, in this letter, that NRG does not understand whether and, if so, why the town is linking the franchise renewal to the opening of the IGPC facility. Do you see those words?

MS. ADAMS: Yes.

MR. THACKER: So we now know the town deliberately was linking a meeting with NRG to the flowing of gas to IGPC?

MS. ADAMS: Yes, I believe we said that clearly in the letter.

MR. THACKER: Right. But you didn't explain it at all when I asked you why, did you?

MS. ADAMS: I'm sorry?

MR. THACKER: You didn't respond to this letter of June 20 for at least a week. We know that much.

MS. ADAMS: Oh, that's correct. I didn't respond to your letter. Yes, sorry.

MR. THACKER: Yes. So seven days later I write to you on June 27; do you see that?

MS. ADAMS: Yes.

MR. THACKER: You received that letter?

MS. ADAMS: Yes.

MR. THACKER: And then you still didn't respond as of June 3; right?

MS. ADAMS: To you, no.

MR. THACKER: To anybody. You didn't respond to NRG,

either?

MS. ADAMS: That's right. The response would have been the one that came from our solicitor on July 8th.

MR. THACKER: Right. On July 8, there is a letter and we see that, and that letter was written on the Town of Aylmer's instructions; correct?

MS. ADAMS: Yes.

MR. THACKER: You were the person responsible for conveying instructions to Mr. Tunley?

MS. ADAMS: Yes, I communicate with him.

MR. THACKER: So you saw this letter in draft?

MS. ADAMS: I did.

MR. THACKER: You approved it?

MS. ADAMS: I did.

MR. THACKER: Right. And you suggest at the last paragraph on the first page that:

> "NRG should provide the town with an outline of the steps that NRG believes will have to be taken to ensure that any renewal process will unfold in an orderly manner."

MS. ADAMS: Yes.

MR. THACKER: Were you genuinely curious as to what the steps were?

MS. ADAMS: Myself, yes.

MR. THACKER: You didn't know?

MS. ADAMS: Not in detail, no. I have never dealt with a franchise renewal.

MR. THACKER: You didn't ask Mr. Tunley to give you

some advice on the process?

MS. ADAMS: No.

MR. THACKER: Okay. So you thought it was NRG's job to give you that advice?

MS. ADAMS: Yes.

MR. THACKER: And you still refused to tell NRG whether or not you would be opposing the renewal, didn't you?

MS. ADAMS: We always said we wanted to renew.

MR. THACKER: No, you didn't.

MS. ADAMS: Yes, we did.

MR. THACKER: There is not one reference in any of this correspondence, up to July 8, where you say you want to renew the franchise.

MS. ADAMS: There is no reference where it says we don't want to.

MR. THACKER: That's fine. Let's just stick with what we do have. Nowhere in any of this correspondence have you answered NRG's request for the town's position up to July 8; right?

MS. ADAMS: That's correct.

MR. THACKER: In fact, you deliberately avoided answering that question at least up to July 8?

MS. ADAMS: No. We didn't have an answer, other than that we were going to renew.

MR. THACKER: Okay. You knew you were going to renew, but you refused to tell them that as of July 8?

MS. ADAMS: That's right. We didn't have our terms.

MR. THACKER: Right. So you did, then, receive a copy of the letter I sent back to Mr. Tunley on July 17; correct? That's the next letter.

MS. ADAMS: Yes.

MR. THACKER: And you see the second paragraph, third line, I say that we are pleased the town is now willing to meet with NRG and willing to meet at your earliest convenience. You knew that?

MS. ADAMS: Yes.

MR. THACKER: And you will see the next paragraph we explained that the pipeline was commissioned on July 3. Do you see that?

MS. ADAMS: Yes.

MR. THACKER: As far as you know, that is true?

MS. ADAMS: I don't know that it's not true.

MR. THACKER: Right. But you didn't have any evidence that it was not true on July 17?

MS. ADAMS: I don't believe so, no.

MR. THACKER: Okay. You will see that on July 17, NRG said it was ready, willing and able to deliver gas whenever IGPC's construction is completed?

MS. ADAMS: Correct.

MR. THACKER: And you see the next paragraph? It says that:

> "The steps that will have to be taken to renew the franchise depend entirely on the position to be taken by the Town of Aylmer. That is why NRG has requested repeatedly that the town provide

its position on whether or not it will support the renewal of the franchise."

MS. ADAMS: Yes.

MR. THACKER: So you knew, once again, that NRG needed an answer to the fundamental question of whether or not the town would support a renewal or not support a renewal?

MS. ADAMS: When I read this letter, I assumed we are always talking about a renewal, that that's what you were talking about.

MR. THACKER: Are you asking this Panel to believe that you do not understand the last paragraph to be a question by NRG for the town's position on whether it will or won't support --

MS. ADAMS: Oh, I see what you're saying. Yes.

MR. THACKER: So you knew NRG was still asking the question?

MS. ADAMS: I knew they were asking the question at this point, that you were asking the question, yes.

MR. THACKER: Right. And you still didn't answer it as of July 20, correct, because we know that there was a follow-up e-mail sent to you on July 20?

MS. ADAMS: I phoned Mr. Bristoll. I think that's what this says. I phoned Mr. Bristoll on the Friday evening --

MR. THACKER: Right.

MS. ADAMS: -- because I was leaving for vacation, to discuss your letter.

MR. THACKER: Oh, yes.

MS. ADAMS: I didn't get him, and so then I this e-mail. I came back from vacation on the Sunday. I sent the e-mail, and then I left on vacation until mid August.

MR. THACKER: Okay. So let's look at this e-mail, because it is a bit curious. The second line says you could be available Tuesday or Wednesday, but the mayor cannot; correct?

MS. ADAMS: That's correct. I was not leaving the local area until the next week. I was on vacation, but I was here in Aylmer.

MR. THACKER: Okay. So you then say you are on vacation until mid August after that?

MS. ADAMS: Correct.

MR. THACKER: So you put NRG off for another whole month?

MS. ADAMS: Yes.

MR. THACKER: And you knew you weren't going to be able to meet with them for a month?

MS. ADAMS: Well, I knew I was on vacation.

MR. THACKER: Well, right. And you knew they desperately wanted to know if the town would or would not support a renewal?

MS. ADAMS: I knew they wanted to know.

MR. THACKER: Right. And you put them off for at least a month?

MS. ADAMS: I took my vacation.

MR. THACKER: You didn't answer the question they were asking you, did you?

MS. ADAMS: I took my vacation.

MR. THACKER: You didn't answer the question as to whether or not the town would or would not support a renewal.

MS. ADAMS: Not until we came back and had the meeting.

MR. THACKER: Right. But you knew the town's position before you went away on vacation, didn't you?

MS. ADAMS: No. It wouldn't have been approved by council by then, no.

MR. THACKER: Okay. And then you received, through your counsel, a letter of August 11. Do you see that?

MS. ADAMS: Your letter?

MR. THACKER: Yes.

MS. ADAMS: Yes.

MR. THACKER: I'm assuming that if I sent it to Mr. Tunley, he would give it to you eventually.

MS. ADAMS: Right.

Now -- so you knew at least as of August 11th that NRG wanted to meet with you as soon as possible?

MS. ADAMS: I don't believe I was back from vacation until the 15th or 16th. That's when I would have got it.

MR. THACKER: Okay. And you will agree with me that despite the urgency that NRG had been expressing since June, the earliest date that you were willing to make available for a meeting was September 11th?

MS. ADAMS: Yes.

MR. THACKER: And at no time before September 11 did

you ever give NRG an answer to the fundamental question they had been asking you, as to whether or not the town would support a renewal?

MS. ADAMS: That's correct.

MR. THACKER: And you will agree with me that if you had answered the question, IGPC -- NRG could have brought on this hearing earlier than February.

MS. ADAMS: I don't know what they could have done.

MR. THACKER: Well, you will agree with me that until they had the town's position, they wouldn't know which hearing to bring on, right?

MS. ADAMS: I assume you can apply for a franchise renewal whenever you want, within a year.

MR. THACKER: Okay. Are you refusing to agree with me that you knew they were asking for the town's position so they could determine what next steps they had to take?

MS. ADAMS: I agree that they were asking for the town's position so they would know what our position was, but I didn't think that our -- giving them our position precluded them from making an application.

MR. THACKER: And so then you meet with them on September 11.

MS. ADAMS: Yes.

MR. THACKER: And you receive a follow-up letter from Mr. Bristoll dated September 12?

MS. ADAMS: Yes.

MR. THACKER: And then you receive another follow-up letter on September 16?

MS. ADAMS: Yes.

MR. THACKER: And you see the commitments made in that September 16 letter, that NRG is willing to work with the town on a number of issues? I won't go through them.

MS. ADAMS: Absolutely. It was great news.

MR. KAISER: Mr. Thacker, just stopping there, the one letter, one of the 12, Mr. Bristoll is writing in regard to Natural Resources Gas, and the next letter on the 16th he is writing as president of Ayerswood, saying, Please accept this letter as Natural Gas Limited's confirmation.

What is the relationship between these two companies?

MR. BRISTOLL: Ayerswood is a related party.

MR. KAISER: Well, I understand, but what's the relationship? Is Ayerswood the parent?

MR. BRISTOLL: No, that was a clerical mistake.

MR. KAISER: Sorry?

MR. BRISTOLL: That was a clerical mistake. We put it on the wrong letterhead.

MR. KAISER: Well, are you president of Ayerswood as well as president of NRG?

MR. BRISTOLL: I am not -- I am vice-president of Ayerswood.

MR. KAISER: So that is a clerical error as well?

MR. BRISTOLL: Yes, that is; that's correct.

MR. KAISER: Well, what is the relationship between the two companies, regardless of whether the letterhead got mixed up or not?

MR. BRISTOLL: They're just part of a greater group of

companies, so they're a related company.

MR. KAISER: What's the relationship? Do they supply gas? Are they shareholders? What's the relationship?

MR. THACKER: There is no relationship. I think there may be some -- they may have shareholders in common, but I am not sure, but they have no business relationship with each other, other than they share office space. They have -- they both operate out of the same premises? Is that true?

MR. BRISTOLL: I have an office at Ayerswood and --

MR. KAISER: You have an office in both places. You're vice-president of one company and president of the other.

MR. BRISTOLL: That's correct.

MR. KAISER: What's the business of Ayerswood?

MR. BRISTOLL: Property management.

MR. KAISER: All right. Nothing to do with natural gas.

MR. BRISTOLL: On occasion they will assist in large -- in pipe installations, just because we have more property -- we have more construction experience over there.

MR. KAISER: All right. Thank you.

MR. THACKER: And then you will agree with me that, after having received the September 16 letter, you prepare your October 8 report, correct?

MS. ADAMS: Yes.

MR. THACKER: Just going through the chronology.

And then you still don't communicate anything to NRG with respect to the question on renewal up to November 19.

MS. ADAMS: I believe that in our evidence there is notes of a meeting on September 11th, where we talked about the franchise. And if someone could get me the tab --

MR. THACKER: No, I'm past September 11 now. I am going from September 16 to November 19. And I am going to suggest to you that there was a telephone conversation on October 14.

MS. ADAMS: But we had a meeting on September 11th, where we talked about the franchise renewal.

MR. THACKER: Yes. I understand that.

MS. ADAMS: Was that not your question, when did we first talk about the franchise renewal?

MR. THACKER: No.

MS. ADAMS: Oh.

MR. THACKER: My understanding is that on September 11 you agreed to provide comments to NRG on the draft franchise agreement NRG gave you.

MS. ADAMS: That's correct.

MR. THACKER: Okay. That's what you said.

MS. ADAMS: No. I think we had quite a discussion about the issues that the town had --

MR. THACKER: No, no, I understand, but --

MR. HABKIRK: -- that needed to be resolved in the context of the franchise renewal.

MR. THACKER: Right. And you had a conversation on October 14th. That was your next conversation with NRG.

MS. ADAMS: Sorry, where are you now in the documents?

MR. THACKER: Well, if you look at the November 19 letter...

MS. ADAMS: Okay. Oh, yes, mm-hmm.

MR. THACKER: So firstly, the page before that is a September 16 letter, right?

MS. ADAMS: Yes.

MR. THACKER: And this is NRG's response to a number of the issues you raised on September 11.

MS. ADAMS: Okay.

MR. THACKER: And then you had a conversation on October 14. I am going to suggest to you that you advised that comments on the draft franchise agreement would be forthcoming shortly.

MS. ADAMS: Yes.

MR. THACKER: And then over a month later NRG follows up by a letter of November 19, right?

MS. ADAMS: Yes.

MR. THACKER: So between September 16 -- or between October 14 and November 19, you still hadn't provided comments on the draft franchise agreement.

MS. ADAMS: Not formally and publicly, no.

MR. THACKER: You hadn't provided them in any way --

MS. ADAMS: Yes.

MR. THACKER: -- between October 14 and November 19 to NRG.

MS. ADAMS: We were in the process of off-the-record discussions that Mr. Bristoll referenced this morning.

MR. THACKER: Right. You hadn't given the comments on the franchise agreement.

MS. ADAMS: Yes, we had.

MR. THACKER: Well, when he writes to you on November 19 and asks for comments, you don't suggest that you have already given him comments, do you?

MS. ADAMS: We were having verbal discussions with him. MR. THACKER: And you knew --

MS. ADAMS: We did not give -- one of the things to understand is that when you want formal comments from a municipality, it comes from its council, and council adopts it. Council adopted its formal position on December 15th and gave them to NRG on December 16th.

MR. THACKER: You will see that in November 19 NRG was asking for an opportunity to discuss with the town by November 30, right?

MS. ADAMS: Yes.

MR. THACKER: Okay. And you see the next paragraph, that NRG says it is committed to the Town of Aylmer?

MS. ADAMS: Yes.

MR. THACKER: And would make every effort possible to work with the Town of Aylmer to resolve any outstanding matters.

MS. ADAMS: Right.

MR. THACKER: And then you received that November 19 letter, correct?

MS. ADAMS: Yes.

MR. THACKER: And then you responded on November 26th,

right?

MS. ADAMS: Yes.

MR. THACKER: And on November 26th, you suggested a meeting on December 16.

MS. ADAMS: Yes.

MR. THACKER: Right. And I am going to suggest to you that the reason you picked December 16 out of all possible dates, a month later, or three weeks later, is that you knew there would be a council meeting on the 15th.

MS. ADAMS: That's correct. And that's when they would adopt their position.

MR. THACKER: Right. And you didn't want to speak to NRG before then.

MS. ADAMS: We needed -- I assume they wanted council's formal position, and that is when it would -- the decision would be made, is on the 15th.

MR. THACKER: And so you didn't want to give NRG any chance to respond to the concerns before the town considered its position, even though NRG --

MS. ADAMS: We did, on September 11th, we -- that's when we discussed what our concerns were, and did it at that date in order to give them an opportunity to respond, which Mr. Bristoll did and said he was willing to resolve them.

MR. THACKER: On November 19 you knew that NRG was asking for an opportunity to meet with you and resolve any outstanding matters. That's what he says on November 19.

MS. ADAMS: Yes.

MR. THACKER: And you didn't want to give him that opportunity until after December 15, when the council made their decision.

MS. ADAMS: I couldn't give him a position until then.

MR. THACKER: You didn't want to give him an opportunity to resolve any outstanding concerns. That's why --

MS. ADAMS: Off the record, we were having opportunities to resolve them. We were having off-the-record discussions --

MR. THACKER: You keep saying "off the record".

MS. ADAMS: During that period.

MR. THACKER: He is asking you for a chance to resolve anything, and I am suggesting to you that you didn't give him a chance until you knew town council had committed its position.

MS. ADAMS: We were having off-the-record negotiations in the hope of resolving this before council -- and a resolution could be put on the table for council to adopt.

MR. THACKER: All right. And then you put forth your December 11 report; correct?

MS. ADAMS: That's correct.

MR. THACKER: And that is the basis on which council made a decision, the information that is set out in the December 11 report?

MS. ADAMS: That, and any other prior information they had been given, yes.

MR. THACKER: Right. For example, the October 8

report?

MS. ADAMS: Yes.

MR. THACKER: And you never showed to council any of the letters that Mr. Bristoll or I were sending to you throughout this six-month period, unless we know they're attached to one of those two reports; right?

MS. ADAMS: When we were having the off-the-record discussions, council was giving me direction in those discussions. So they did know that.

MR. THACKER: Was it town council's idea to refuse to meet with Mr. Bristoll or anyone at NRG between November 19 and December 15, or was that your idea?

MS. ADAMS: The date of December 16th was offered because that's when we knew we would have a formal position to provide to NRG.

MR. THACKER: Was the decision to refuse to meet with Mr. Bristoll between November 19 and December 15 your decision or the decision of council?

MS. ADAMS: I was the one that suggested the date, yes.

MR. THACKER: Yes. So it was your decision?

MS. ADAMS: It was my suggestion, yes.

MR. THACKER: I'm going to suggest you were the decision maker.

MS. ADAMS: If Mr. Bristoll wanted council's formal position, I needed them to have one before I could present it to them. In the meantime, I am talking to Mr. Bristoll and other staff at NRG on a regular basis, on an off-the-

record basis, trying to reach a deal.

MR. KAISER: Did you tell them about the three years in any of those off-the-record discussions?

MS. ADAMS: We said that we were -- yes, we did.

MR. THACKER: I'm going to suggest to you that at no time before December 16 did you ever say anything to Mr. Bristoll about any restriction on the length of renewal outside the ordinary course. And I want you to think very carefully, because this is a serious matter.

You never told Mr. Bristoll, until December 16, that the town was going to seek a short-term renewal?

MS. ADAMS: We were having off-the-record discussions, and I believe we talked about council's wish to have a shorter renewal term.

MR. THACKER: There is not one piece of documentary evidence that you can produce that would evidence that you ever told Mr. Bristoll anything about a restriction on the renewal period before December 16?

MS. ADAMS: Yes. It was off the record.

MR. THACKER: Well, I will make it on the record. You don't have a single piece of paper, record, note, memo, that would confirm what you are now trying to say?

MS. ADAMS: I might. I don't know the answer to that. I have some notes.

MR. THACKER: Yes. You certainly don't have any pieces of paper from Mr. Bristoll that would prove he ever heard it from you, do you?

MS. ADAMS: I might have an e-mail. I don't know. I

would have to look.

MR. THACKER: Would you agree with me that after you -- how did you convey to Mr. Bristoll on November 16 the position of town council -- December 16th?

MS. ADAMS: We met and the letter that is in here, dated December 16th, was provided to him.

MR. THACKER: This is quite a detailed letter?

MS. ADAMS: Yes.

MR. THACKER: You had told us that you didn't want to meet with him because you assumed he wanted the town's formal position; correct?

MS. ADAMS: Yes.

MR. THACKER: That's why you waited until December 16th for scheduling the meeting?

MS. ADAMS: Yes, yes.

MR. THACKER: And it wasn't until December 15 that the town formally requested three years for approval?

MS. ADAMS: Formally, yes.

MR. THACKER: You didn't want to say anything to Mr. Bristoll until the town had determined its formal position about three years?

MS. ADAMS: We had the discussion about three years off the record.

MR. THACKER: You will agree with me that within several days of hearing the town's position on December 16, NRG proceeded to file its application?

MS. ADAMS: Yes, I believe it was on the 19th.

MR. THACKER: And you never disclosed, in this

December 16 letter, any notion of linking the expiry dates for the other five franchises, did you?

MS. ADAMS: It was part of our explanation in the off-the-record discussions.

MR. THACKER: You kept it off the record from the council, too, didn't you?

MS. ADAMS: No. Council knew.

MR. THACKER: You didn't put it in your report?

MS. ADAMS: That's right, but they knew, as they gave me instructions off the record. They had to do that in camera.

MR. THACKER: Council didn't want to put that in writing, did they?

MS. ADAMS: I don't they expressed an opinion one way or the other.

MR. THACKER: You didn't want to put it in writing?

MS. ADAMS: I didn't put it in writing until it was formally adopted by council.

MR. THACKER: No, no, you didn't even refer to it in any of your reports to council, even though you say it was council instructing you about this linkage. So which is it?

MS. ADAMS: We had this public process happening, and, at the same time, we had off-the-record discussions with NRG.

I took instruction from council in both instances.

MR. THACKER: Is it your evidence that you took instructions from council that included omitting any

reference to the linkage idea?

MS. ADAMS: No. I was never told to omit it.

MR. THACKER: So you made the decision to omit any reference to linking up the renewal dates; you made that decision yourself?

MS. ADAMS: I'm not sure it was a decision. It just wasn't written there. I'm not sure it was a conscious decision, though.

MR. THACKER: Are you suggesting that was the -- something you just accidentally left out in all of the detail that you put in those reports?

MS. ADAMS: Yeah.

MR. THACKER: Okay.

So do we now have it that since well before October 8, you and five other municipalities were discussing this idea of linking the renewal periods for the expiry dates of the franchise agreements?

MS. ADAMS: We had at least one meeting about it, yes.

MR. THACKER: Right. And that you refused to say anything to NRG about that until December 16?

MS. ADAMS: There were discussions with NRG about that off the record.

MR. THACKER: And you omitted from any official record or public document --

MS. ADAMS: Yes, that's right.

MR. THACKER: -- any reference to a time-limited renewal until December 16; right? There is not --

MS. ADAMS: Again, it was off the record, so it wasn't

in the record.

MR. THACKER: Yes, you keep saying that. You omitted it from any public document?

MS. ADAMS: Right, because it was off the record.

MR. THACKER: Then even on December 16, in your December 11 report, you omit any reference to the linkage strategy. All you say in the December --

MS. ADAMS: It's not in there, no. That's correct.

MR. THACKER: That's correct?

MS. ADAMS: Yes.

MR. THACKER: Okay. The only thing you say is a three-year renewal?

MS. ADAMS: Right.

MR. THACKER: You say the three-year renewal - and I tried to write your words down - is all about working together, I think you said, "about opportunity to put things in place and rebuild the relationship"?

MS. ADAMS: Yes.

MR. THACKER: So you will -- and you said build trust again, and so forth; right?

MS. ADAMS: Yes.

MR. THACKER: You will agree with me that takes some time?

MS. ADAMS: Yes.

MR. THACKER: You will agree with me that if you had told NRG about your concerns back in June, they would have had six months to rebuild your trust?

MS. ADAMS: Yes.

MR. THACKER: But you didn't tell them, did you?

MS. ADAMS: That's correct.

MR. THACKER: Okay. And now you will agree with me that if we were to put in the franchise agreement clear written obligations to do the things the town wants, then you would have achieved the goals that a time period would otherwise allow. In other words, NR --

MS. ADAMS: I'm sorry, I don't understand the question.

MR. THACKER: Sure. NRG is -- if they were prepared to commit to do the things the town wants --

MS. ADAMS: If they agreed to the schedule A? Is that what you're saying?

MR. THACKER: No.

MS. ADAMS: Oh.

MR. THACKER: If they agreed to all of your conditions except for the three-year renewal.

MS. ADAMS: Okay. The schedule A conditions?

MR. THACKER: Everything -- that's right, everything -

MS. ADAMS: Okay.

MR. THACKER: Let's -- what I want to do, just to be quite frank with you, is I want to separate out the three years from everything else. I'm going to suggest to you that this three years has nothing to do with rebuilding trust. I'm suggesting to you it is part of a strategy to make it easier to replace NRG, okay?

MS. ADAMS: That's not correct.

MR. THACKER: And that's a strategy that was discussed

with the other municipalities, correct?

MS. ADAMS: Never.

MR. THACKER: Okay. But you have no explanation for why you deliberately refused to acknowledge the linkage of the other franchise agreements in any public document, ever.

MS. ADAMS: It wasn't deliberate. There was no sort of -- I didn't sit down and scheme and say, This is what I will tell them and not tell them. Reports were written. Information was shared to the best of my ability. There was at no time, no time, a discussion about Union Gas.

MR. THACKER: I didn't mention Union Gas.

MS. ADAMS: Yes, you did.

MR. THACKER: You had discussions with Union Gas representatives.

MS. ADAMS: We did not.

MR. THACKER: Never?

MS. ADAMS: Never.

MR. THACKER: Not once?

MS. ADAMS: Not once.

MR. THACKER: Okay. And so you're suggesting it was just an accident that out of all the details in your October 8 and December 11 report, the one thing you omitted, twice, is any reference to this coincidental expiry date? Just an accident?

MS. ADAMS: What we were looking for is a set of conditions that are -- they're set out in the report. We were looking to rebuild the relationship. We were looking

for this -- we were suggesting this set of conditions that council believed would deal with the issues that had been brought to them by the members of the public.

We would like to have an opportunity to see those things happen, to certainly continue the good experience we have had in the last few months of working with NRG to resolve the issues. That's all that was going on.

MR. THACKER: There is not a single public document issued by the Town of Aylmer until the day before yesterday that references this idea of linking the renewal periods, other than Mr. Tunley's letter of January 9, correct?

MR. TUNLEY: I think that is a public document.

MR. THACKER: Yes.

MR. TUNLEY: It was to the Board.

MR. THACKER: Yes, that is the first time anyone ever acknowledged this strategy.

MS. ADAMS: In writing, yes.

MR. THACKER: That's what I thought. And then we have the Town of Bayham, who sends a letter on January 29, correct? That's in your materials --

MS. ADAMS: Where are you?

MR. THACKER: -- at tab D.

MS. ADAMS: Yes.

MR. THACKER: And you see at paragraph 1 that this strategy is intended to create -- and now I will quote -- "the ability to offer a combined larger, more populous consumer base for the consideration of any potential supplier".

MS. ADAMS: Yes.

MR. THACKER: And so the objectives of rebuilding trust are not the only objectives the town is here trying to achieve, and rebuilding customer service and so forth. There is another agenda here.

MS. ADAMS: No, there is not.

MR. THACKER: So when the Town of Bayham sets out this notion of making it more attractive to any potential supplier, are you suggesting the Town of Bayham is acting on its own, without the support of Aylmer? Or does the Town of Bayham have a position that's consistent with the Town of Aylmer?

MS. ADAMS: Their position is set out in their letter.

MR. THACKER: No, I know. I'm asking you about the Town of Aylmer's position. You have --

MS. ADAMS: Our position is set out in our documents.

MR. THACKER: Yes, but you didn't write them down. That's the problem, you see.

MS. ADAMS: We only have a written position.

MR. THACKER: Okay. So the position we have is the one that is written?

MS. ADAMS: Yes.

MR. THACKER: And we see that in the December -- okay.

Now, you've talked about some other industrial businesses, that you said -- I think you said that there was one business that wanted to relocate, and another one that was -- wanted to move from propane to natural gas?

MS. ADAMS: Yes.

MR. THACKER: Okay. When you received these complaints, you never once told NRG of these complaints, did you? At the time you received them.

MS. ADAMS: That's correct.

MR. THACKER: You never gave NRG a chance to address any of those issues at the time you received these alleged complaints.

MS. ADAMS: That's correct.

MR. THACKER: And we know that none of these people are here today to give any evidence.

MS. ADAMS: That's correct.

MR. THACKER: There appear to be only three people -- four people in the room that are not obviously associated with NRG as spectators, right?

MS. ADAMS: Are you asking me to count them?

MR. THACKER: Yes.

MS. ADAMS: Okay.

MR. THACKER: You can ignore Mr. Grat and Mr. Howland back there.

MS. ADAMS: I only see three, actually.

MR. THACKER: Thanks. So of all these people that you say signed a petition, nobody has come here today to express their views?

MS. ADAMS: I have no idea why other people came.

MR. THACKER: Maybe I could just have a few minutes. I'm nearly finished. I just want to collect my thoughts and see if I can shorten --

MR. KAISER: All right. We'll take our afternoon

break. I think the reporter might need a little break.

MR. THACKER: Yes.

--- Recess taken at 3:56 p.m.

--- Upon resuming at 4:07 p.m.

MR. KAISER: Please be seated. Mr. Thacker.

MR. THACKER: Would you turn, Ms. Adams, to the NRG evidence, tab C-1?

MS. ADAMS: Yes.

MR. THACKER: There is an outline of the history of NRG in this area, and can I just get you to agree with me that this accurately sets out NRG's history?

MS. ADAMS: Only having lived here for five years, it is my understanding, but I wasn't here then.

MR. THACKER: So you will know that the current owners purchased it in or about 1979 out of receivership?

MS. ADAMS: Hmm-hmm.

MR. THACKER: And at the time, it was, it's fair to say -- let's just say very old and primitive?

MS. ADAMS: Okay.

MR. THACKER: In the intervening 30 years, the customer base has gone from about 2,000 to about 7,000?

MS. ADAMS: Okay.

MR. THACKER: And the pipeline has been largely replaced with modern systems?

MS. ADAMS: Is that a question?

MR. THACKER: Yes. Do you have any evidence to dispute that?

MS. ADAMS: No.

MR. THACKER: You do know about the new office building that was built?

MS. ADAMS: I do.

MR. THACKER: And you do know that NRG employs 16 to 18 full-time people in the Town of Aylmer?

MS. ADAMS: I do.

MR. THACKER: And just by the way, the Town of Aylmer does not have a full-time complaints person, do they?

MS. ADAMS: No.

MR. THACKER: Okay. It wouldn't be cost-effective to employ somebody to just do nothing but take in complaints for the Town of Aylmer?

MS. ADAMS: We don't.

MR. THACKER: Okay, fair enough. You will agree with me that we have had a fairly cold winter this past winter?

MS. ADAMS: We have.

MR. THACKER: In fact, it's been one of the coldest I can certainly remember, and I am 43 years old. Would you agree with me?

MS. ADAMS: Hmm-hmm.

MR. THACKER: One of the coldest you can remember?

MS. ADAMS: Yes.

MR. THACKER: And you are not aware of even one instance where NRG was unable to provide gas to a customer all winter long?

MS. ADAMS: I am not aware of any such -- no.

MR. THACKER: You are not aware of any instance where NRG has been technically unable to provide service to any

of its customers?

MS. ADAMS: No, that's correct.

MR. THACKER: In 30 years?

MS. ADAMS: Well, I couldn't speak to 30 years, but in the last five, yes.

MR. THACKER: You are not aware of NRG being in default of any payment obligations to the town; correct?

MS. ADAMS: Not that I am aware of, no.

MR. THACKER: Those are my questions.

MR. KAISER: Thank you. Mr. Millar?

MR. MILLAR: I don't have any questions, Mr. Kaiser. I think Mr. Stoll may have one question, if I am not mistaken. Maybe he doesn't.

MR. STOLL: I don't have any questions, no.

MR. KAISER: Thank you. Mr. Tunley, any re-examination?

MR. TUNLEY: Thank you, Mr. Kaiser. I don't have any questions.

MR. KAISER: That's it, Mr. Millar, for any evidence, I assume?

PROCEDURAL MATTERS:

MR. MILLAR: Yes, that's right, Mr. Chair. There are a couple of little things. There's been some discussions about a schedule for the proposal for written argument. I think we could deal with those now.

MR. KAISER: All right.

MR. MILLAR: There is probably the issue of what to do about the fact that the existing franchise agreement will

expire likely before a final decision is arrived at in this case.

MR. KAISER: Yes.

MR. KING: The schedule we have spoken about for written argument is as follows. NRG would file its argument-in-chief next Friday; that is the 20th.

Then other parties would file their submissions the following Friday, the 27th, and then we would reply on the following Tuesday; that's March 3rd.

Obviously that runs past the franchise expiry date. We have in our original application requested an interim order to extend the franchise in the event that no decision was rendered by February 29th so we wouldn't have to amend the relief requested. We would just be asking for that interim order to be issued.

MR. MILLAR: This is fairly routinely done when it looks like all of the paperwork will not get done in time for a renewal to happen.

MR. KAISER: I assume, given that counsel discussed this schedule for argument, that you are all agreeable to the Board issuing an interim order?

MR. TUNLEY: Yes.

MR. KAISER: Thank you.

MR. STOLL: Yes.

MR. MILLAR: Yes.

MR. TUNLEY: I think under the terms of section 10, all it need do is to extend the term of the existing agreement until such time as the Board is ready to render a

decision.

MR. KAISER: All right.

Well, we will do that in a moment.

Just one additional matter, Mr. Thacker, that we would like you to address in your submissions.

It's not an evidentiary issue at all, but while we are doing a little house-cleaning here with respect to NRG for setting the course for the next number of years, however number of years that turns out to be, we have this matter of the outstanding fine. You referred to the decision earlier.

I understand that it is sitting in the court, although neither of the parties, either your client or the Board, has pressed it.

I would like to make a suggestion to you, which you can consider and you can deal with in submissions. It really doesn't concern any of these other parties, but, as I say, housekeeping. It isn't that any of the Panel members get a bonus if we collect it. We have to do something about it.

MR. THACKER: I can tell you what the status of it is. I perfected an appeal of that decision. The Board has not responded, and IGPC has not yet perfected. I could have been more aggressive about moving to strike out their opposition or setting it down for a hearing, but I have not done that.

MR. KAISER: I just want to offer you a proposal from the Board's perspective, and of course you can proceed with

the appeal if you wish.

MR. THACKER: Sure.

MR. KAISER: -- I am sure we can find some lawyers to get our filing completed.

MR. THACKER: I am happy to have your suggestion.

MR. KAISER: But one of the things that has happened recently in the gas industry is both Union and Consumers received a windfall gain, as it were, from this Garland class action, and of course in Union's case, as it called something else.

MR. THACKER: Yes.

MR. KAISER: In any event, they devoted these monies under the settlement approved by the court to what is called the Winter Warmth Program. I have discussed this with the Chairman and other Board members, and our proposal to you is that we would be prepared - when I say "we", I mean the Board - to withdraw that fine, or whatever the proper term is, provided your client made a contribution in that amount to the Winter Warmth Program.

You can find out from Union how that works. It is basically run by the United Way Agency in the territory the gas company operates in, and they use those funds to help out people in the franchise territory who require assistance paying their bill.

Of course you have so many security deposits you probably don't need that, but there may be people in Aylmer in these difficult economic times that require that assistance. Just give this some consideration.

MR. THACKER: We will do so.

MR. KAISER: -- in your submissions.

MR. THACKER: Thank you.

MR. KAISER: Any other -- Mr. Tunley, I am going to, in this order in a minute, suggest that the interim order be for a period of 90 days from today's date. Is that okay with you?

MR. TUNLEY: I am in the Board's hands entirely. It can be, as far as I am concerned, until the Board renders a decision.

MR. KAISER: Well, it will be the earlier of.

MR. TUNLEY: Yes.

MR. KAISER: Obviously. And the Board will certainly issue a decision before that, but...

MR. TUNLEY: That's fine.

MR. KAISER: All right. Well, let's proceed with the interim order, then.

INTERIM ORDER:

MR. KAISER: The Board has heard today an application by Natural Resource Gas Limited pursuant to section 10 of the Municipal Franchises Act of Ontario. In that application, which was filed back on December 19th of 2008, the applicant sought to renew the term of its existing franchise agreement. That existing franchise agreement dates back to February 27th, 1984 and was for a period of 25 years. It, accordingly, expires on February 27th, 2009.

The parties have been in negotiations since at least September of this year with respect to the terms of that

renewed franchise agreement and are unable to agree.

It's not necessary at this point to go into the disagreement in detail, but we can say that the Town of Aylmer is seeking additional conditions, not all of which are agreeable to the applicant.

The Board has heard evidence today from both NRG and the town with respect to that disagreement. We will receive written argument on the schedule agreed to, and we will issue a decision as soon as possible.

We will, however, issue an interim order today. That Interim Order will order that the rights of NRG to construct and operate works and to extend and add to the works of the distribution gas system in the Town of Aylmer continue on the terms and conditions as set out in the existing franchise agreement, until 90 days after today's date or until the renewal of that franchise agreement is granted under the Municipal Franchises Act, whichever comes first.

Anything further, gentlemen? Thank you.

MR. THACKER: Thank you.

--- Whereupon the hearing concluded at 4:19 p.m.

EB-2008-0413

ONTARIO ENERGY BOARD

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

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

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NATURAL RESOURCE GAS LIMITED
ARGUMENT-IN-CHIEF
February 20, 2008

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A. LEGAL TEST FOR FRANCHISE RENEWAL AND ESTABLISHMENT OF FRANCHISE TERMS AND CONDITIONS

1. Section 10 of the *Municipal Franchises Act* (the "MFAct") governs situations in which a municipality and gas utility cannot reach agreement on the renewal of a franchise agreement.

> 10.(1) Where the term of a right referred to in clause 6(1)(a), (b) or (c) that is related to gas or of a right to operate works for the distribution of gas has expired or will expire within one year, **either the municipality or the party having the right** may apply to the Ontario Energy Board for an **order for a renewal** of or an extension of the term of the right.
>
> (2) The Ontario Energy Board has and may exercise jurisdiction and power necessary for the purposes of this section and, if **public convenience and necessity** appear to require it, may make an order **renewing or extending the term** of the right for such period of time and **upon such terms and conditions as may be prescribed by the Board,** or if public convenience and necessity do not appear to require a renewal or extension of the term of the right, may make an order refusing a renewal or extension of the right.

2. The Board has sole jurisdiction when it comes to determining: (a) whether or not to grant a franchise renewal; and (b) if a renewal is granted, the terms and conditions that it may establish in a franchise agreement.

> *Re City of Peterborough and Consumers Gas* (1980), 111 D.L.R. (3d) 234 (Div. Ct.).

3. At issue in the current proceeding is **not** whether or not to renew the franchise agreement between the Town of Aylmer ("Aylmer" or the "Town") and Natural Resource Gas Limited ("NRG"). Rather, the issue is the **term** of the franchise agreement, and to a lesser extent, the imposition of certain **conditions** requested by Aylmer in the renewed franchise agreement.

4. What is not at issue in this proceeding is: (a) the form of the renewed franchise agreement (both NRG and Aylmer are satisfied with the form of the Board's Model Franchise

Agreement); and (b) certain of the conditions sought by Aylmer which NRG has agreed to include in the renewed franchise agreement.

5. Thus, the only four issues outstanding, and for determination by this Board are:

(a) Term: Whether to renew the franchise agreement for a term of 20 years (as requested by NRG) or three years (as requested by Aylmer), or another term as determined by the Board.

(b) Rate Application Filing: Whether to require NRG to file a comprehensive rate application by December 31, 2009 (as requested by NRG) or "immediately upon the execution of [a renewed franchise agreement]" (as requested by Aylmer), or by some other date determined by the Board.

(c) Security Deposit Trust Fund: Whether to require NRG to keep all monies from consumer security deposits in a trust fund and not use such monies as working capital (as requested by Aylmer) or reject this condition (as requested by NRG).

(d) Provide Notice to Aylmer: Whether to require NRG to give notice to Aylmer of "any proceeding before the OEB that [NRG] is a party to" (as requested by Aylmer) or reject this condition (as requested by NRG).

6. In coming to a determination on the above four issues, the legal test set out in the MFAct is whether "the public convenience and necessity appear to require it." In other words:

- Does the public convenience and necessity require a shorter than normal term for the renewed franchise agreement?
- Does the public convenience and necessity require that it be a condition of the renewed franchise agreement that NRG file a rate application before the end of 2009?
- Does the public convenience and necessity require that it be a condition of the renewed franchise agreement that NRG's security deposit monies be held in a separate trust fund, and not be used as working capital?

- Does the public convenience and necessity require that it be a condition of the renewed franchise agreement that NRG provide notice to Aylmer of any OEB proceeding that NRG is a party to?

7. Before addressing each of these four questions further, it is necessary to examine the "public convenience and necessity" test as set out in the MFAct.

B. LEGAL PRINCIPLES TO GUIDE THE INTERPRETATION OF "PUBLIC CONVENIENCE AND NECESSITY"

8. The MFAct does not offer any guidance as to the interpretation of, or criteria to guide the interpretation of, the "public convenience and necessity". As a result, the matter is left entirely to the Board's discretion.

9. However, the decision of the Supreme Court of Canada in *Baker v. Minister of Citizenship and Immigration* and that Court's earlier decision in *Re Athabasca Tribal Council* makes it clear that two key legal principles govern the exercise of administrative discretion such as the one entrusted to the Board in this case: (a) the exercise of a tribunal's discretion should be made **within the context of its governing statutes**; and (b) the exercise of a tribunal's discretion **should be consistent and governed by the purposes and interests which the statutes seek to protect.**

> *Baker v. Minister of Citizenship and Immigration* (1999), 174 D.L.R. (4th) 193, at pp. 224, 226, 229-230, and 232
>
> *Re Athabasca Tribal Council and Amoco Canada* (1981), 124 D.L.R. (3d) 1 (S.C.C.)

10. A contextual approach to the MFAct and the *Ontario Energy Board Act, 1998* ("OEB Act") requires that the Board take into account the following factors when exercising its discretion to determine whether the public convenience and necessity requires a franchise renewal:

(a) the purpose of section 10 of the MFAct;

(b) the objectives of the Board vis-à-vis the gas industry in Ontario, as set out in section 2 of the OEB Act;

(c) previous OEB decisions under section 10 of the MFAct; and

(d) previous judicial decisions regarding section 10 of the MFAct.

(a) <u>The Purpose of Section 10 of the *Municipal Franchises Act*</u>

11. Section 10 was added to the MFAct in 1969. Prior to that time a municipality had a common law right to terminate a franchise upon the expiry of the franchise agreement. The provision was introduced in the legislature by The Honourable Darcy McKeough, Minister of Municipal Affairs. In answer to opposition questions regarding the provision, The Honourable Mr. McKeough indicated that section 10 was specifically intended to allow the Board to implement a renewal of a franchise where there is no agreement between the municipality and the utility, and that the Board would have authority over the terms of the franchise being renewed.

Hansard, November 26, 1969, at p. 8936

12. Thus, the purposes of section 10 of the MFAct are to:

(a) provide a mechanism for the resolution of a franchise dispute when the relationship between the municipality and the utility has broken down and the parties cannot agree on a franchise renewal;

(b) ensure that the municipality's wishes are not paramount or determinative of when a franchise should be renewed; and,

(c) ensure that franchise renewal determinations are made in the broad public interest.

13. These purposes have been acknowledged and accepted by the Board and Courts in franchise renewal matters.

> *Kingston/Pittsburgh*, OEB Decision with Reasons, E.B.A. 825 (2000), paras. 4.0.2 to 4.0.5 (inclusive).
>
> *Union Gas* v. *Township of Dawn* (1977), 76 D.L.R. 613 at pp.621-622.

14. The importance of section 10's incorporation into the MFAct cannot be overlooked. The establishment of section 10 meant that franchise renewal and franchise terms and conditions were no longer to be decided based on the whims and wishes of an individual municipality, or the status of the municipality-utility relationship at any given point in time.

15. Instead, the Ontario Legislature recognized that the Board should determine contested franchise issues based on a public interest test (i.e. the public convenience and necessity), grounded in the Board's statutory objectives.

(b) <u>The Objectives of the Ontario Energy Board</u>

16. Section 2 of the OEB Act sets out the objectives that are to guide the Board in carrying out its responsibilities in relation to gas. The objectives of relevance to this proceeding include:

(a) protecting the interests of consumers with respect to prices and the reliability and quality of gas service (section 2(2), OEB Act);

(b) facilitating the rational expansion of transmission and distribution systems (section 2(3), OEB Act); and

(c) facilitating the maintenance of a financially viable gas industry for the transmission, distribution and storage of gas (section 2(5), OEB Act).

17. These objectives are aimed at protecting the interests of both gas utilities and gas consumers in respect of the distribution and transmission of natural gas in Ontario.

(c) **Previous Board Decisions under Section 10 of the *Municipal Franchises Act***

18. Contested franchise applications are not common. Of the two most recent, notable franchise renewal proceedings before the Board (i.e,. Sudbury and Kingston/Pittsburgh), the most on-point is the Board's Decision and Order in the Kingston/Pittsburgh case (E.B.A. 825).

19. The Kingston/Pittsburgh case set out the following basic criteria to guide Board decision-making on franchise renewal applications:

(a) the Board has sole jurisdiction when it comes to determining "public convenience and necessity" under section 10 of the MFAct;

(b) the Board is to be guided by the objectives of the OEB Act relating to the rational development of the supply, distribution and transmission of natural gas, including the maintenance of just and reasonable rates for the transmission, distribution and storage of gas and the facilitation of rational expansion of natural gas transmission and distribution systems;

(c) "public convenience and necessity" is broader than local, parochial interests and the Board is required to consider matters affecting provincial gas distribution as a whole and not just local interests;

(d) the Board must balance the specific interests of all stakeholders, including ratepayers, the municipality and the utility shareholder, against the broader public interest; and

(e) while the views of the municipality should be taken into account by the Board, they are not determinative of the issue of determining where public convenience and necessity lie (E.B.A. 825, Decision with Reasons, sections 4.0.2 to 4.0.5).

20. Thus, in its most recent comprehensive examination of a contested franchise renewal (and the "public convenience and necessity" test), the Board recognized that the views of the municipality are but one of a host of considerations that the Board must weigh, all against the backdrop of broader public interests in the energy sector.

(d) **Previous Court Decisions under Section 10 of the *Municipal Franchises Act***

21. Court decisions under section 10 of the MFAct have focused primarily on the scope of the Board's jurisdiction.

22. The Divisional Court has held that the Board has the jurisdiction to impose the terms of the franchise in situations where the municipality and the utility cannot agree on the terms.

> *Re City of Peterborough and Consumers Gas* (1980), 111 D.L.R. (3d) 234 (Div. Ct.)

23. The Board's jurisdiction to impose the terms of a franchise arrangement contrary to a municipality's wishes demonstrates that just because a municipality wants a particular outcome does not mean that it is in the pubic interest.

> Ontario Energy Board, Decisions in EBA 304 at pp. 10 and 28; and EBA 767,768, 769, 783 at pp. 15-16.

(e) **Summary: The Public Interest**

24. The "public convenience and necessity" test in section 10 of the MFAct is a public interest test, requiring the Board to balance the interests of all stakeholders in furtherance of the Board's statutory objectives.

25. In the *Township of Dawn* case, the Divisional Court held that the "public interest" is broader than the local, parochial interest:

> I have stressed these points to illustrate firstly how insignificant are the local problems of the Township of Dawn when viewed in the perspective of the need for energy to be supplied to those millions of residents of Ontario beyond the township borders, and to call to mind the potential not only for chaos but the total frustration of any plan to serve this need if by reason of powers vested in each and every municipality by the *Planning Act*, each municipality were able to enact by-laws controlling gas transmission lines to suit what might be conceived to be local wishes... (at p. 619)

> These are all matters that are to be considered in light of the general public interest and not local or parochial interests. The words "in the public interest" which appear, for example, in s. 40(8), s. 41(3) and s. 43(3), which I have quoted, would seem to leave no room for doubt that it is the broad public interest that must be served. (at p. 622)
>
> *Union Gas v. Township of Dawn* (1977), 76 D.L.R. 613

26. The Supreme Court of Canada expressed similar views in *The Corporation of the District of Surrey v. British Columbia Electric.* In that case involving the British Columbia Public Utilities Commission, the Supreme Court held that the whole tenor of the legislation showed clearly "that the safeguarding of the interests of the public...was a duty vested in the Commission", and in discharging its duties the Commission was "required to consider the interest not merely of single municipalities but of districts as a whole and areas including many municipalities".

> *The Corporation of the District of Surrey v. British Columbia Electric Company Limited*, [1957] S.C.R. 121

27. In previous decisions the Board has made it clear that in considering the issue of "public convenience and necessity", it will have regard to matters affecting provincial gas distribution as a whole and not just local interests.

> Ontario Energy Board, Decision in *Cardinal Power*, E.B.R.O. 477 at para. 5.0.34
>
> Ontario Energy Board, Decision in *Village of Eireau*, E.B.C. 208, at par. 3.1.8 to 3.1.11

28. In deciding the four key issues in this proceeding, NRG submits that the Board must consider each issue in relation to:

- gas customers in Aylmer and in other franchise areas served by NRG,
- all other gas consumers in Ontario,
- the impact upon the shareholders of NRG,
- the impact upon Aylmer,

- the promotion of rational expansion of transmission and distribution systems in the Province, and

- the maintenance of just and reasonable rates in Aylmer, and in the other franchise areas serviced by NRG.

C. ISSUE 1: LENGTH OF TERM OF FRANCHISE RENEWAL

29. The first issue to be determined by the Board is: Does the public convenience and necessity require a shorter than normal term for the renewed franchise agreement?

30. In the Board's review proceeding on franchise renewals, the Board recommended that first-time franchise agreements should be of a duration of not less than 15 years and no longer than 20 years. For renewals, the Board determined that the duration need not be as long as an initial agreement because the risk to the utility is substantially lower, since the plant has been depreciated to a large extent during the initial term of the agreement. In the case of renewals, the Board considered that a term of 10 to 15 years would seem adequate.

> Ontario Energy Board, Decision in *Review of Franchise Agreements*, E.B.O. 125 (1986).

31. NRG has requested 20 years (longer than the minimum the Board considered adequate in E.B.O. 125) because the risk to NRG has not decreased over the initial term of the franchise agreement with Aylmer. NRG has vastly expanded the asset base of the utility in the initial franchise period. As a result, the risk to NRG has not decreased, because its undepreciated capital assets have increased.

32. As the evidence in this proceeding demonstrates, almost all of NRG's pipelines are new, and since 1979 NRG has grown its customer base from 2,000 customers to nearly 7,000 customers.

> NRG Evidence, Exhibit C, Tab 1, p.1, lines 26 to 28.

33. As noted in NRG's response to Aylmer Interrogatory #2, during the fifteen year period from 1991 to 2005, the gross assets of NRG nearly tripled as a result of capital

investment in NRG's franchise areas. NRG's rapid recent growth and massive asset expansion was explained at length in RP-2002-0147 (NRG Rates for Fiscal 2003/04) and at the Public Forum held as part of NRG's last rate case, and this explanation was accepted by the Board (see NRG Response to Aylmer Interrogatory #2).

34. This makes NRG unique among gas distributors in Ontario. The fact is that during the term of its franchise agreement with Aylmer, NRG did not start with an extensive system that merely depreciated over the term of the franchise agreement. Rather, NRG has spent the past twenty or so years improving and developing what was essentially a gathering system for local production into a true gas distribution utility.

35. As a result of its rapid expansion and increased capital asset base, NRG submits that NRG warrants a renewal term longer than the typical 10 to 15 years.

36. As noted above, facilitating the rational expansion of natural gas distribution systems in Ontario is a statutory objective of the Board.

37. To impose a franchise renewal term on NRG that is shorter than the typical term would not be consistent with the Board's stated rationale for determining the length of a renewal period.

38. In addition, there are several other important reasons for establishing a franchise renewal period that is within the normal range of renewal terms, including:

    (a) the Town is not arguing for a three-year term on any public interest grounds;

    (b) an abnormally short renewal term puts NRG at risk of losing its financing;

    (c) an abnormally short renewal term would leave NRG with no choice but to amortize its remaining asset base over the shortened period, which would cause rates to increase significantly;

    (d) Aylmer is seeking a short renewal term for improper purposes;

(e) nearly all of Aylmer's issues with NRG (i.e., Aylmer's proposed conditions to the renewed franchise agreement) have been agreed to by NRG, and could be enforced under a long-term franchise renewal agreement; and

(f) a three-year term would not provide any incentive to NRG to spend any money on capital assets, which the Town seeks to have happen.

(a) **Town's Motives for a Short-Term Renewal are Not in the Public Interest**

39. The overwhelming weight of the evidence establishes that:

(a) Aylmer has acted in bad faith in its negotiations with NRG and, more importantly, is not pursuing any valid public interest in opposing a standard franchise renewal; and

(b) from June 2008, NRG made at least 14 requests that Aylmer advise NRG as to whether it would approve or oppose a renewal of the NRG franchise. Notwithstanding NRG's requests and Aylmer's understanding of why NRG wanted to know Aylmer's position, Aylmer refused to disclose its position or have any substantive discussion about franchise renewal until December 16, 2008.

40. At the hearing, Aylmer revealed for the first time that it had formulated a plan to oppose a long-term renewal, and insist on a three year renewal term. However, Aylmer deliberately refused to disclose this information to NRG, and even deliberately concealed it from any public document including the reports that Heather Adams prepared for Aylmer Council.

41. The chronology of NRG's request for Aylmer's position on franchise renewal is indicative. On June 6, 2008, NRG requested a meeting with Aylmer by voicemail from Mr. Bristol to Heather Adams. Ms. Adams received Mr. Bristol's voicemail. On June 9, 2008, Mr. Bristol's secretary, Darlene Whitfield, sent an email and resent the same email on June 11, 2008. Mr. Bristol's email request was a follow up to his previous voicemail requesting a meeting with the Town. Ms. Adams received those emails. Ms. Adams knew that NRG was seeking a meeting with the Town.

42. By June 13, 2008, Ms. Adams had not responded to Mr. Bristoll.

43. On June 13, 2008, NRG's counsel sent a letter to the Town proposing a new franchise agreement for a term of 20 years. NRG attached a draft franchise agreement that was based on the Board's Model Franchise Agreement with a term of 20 years. Ms. Adams admitted that Mayor Bob Habkirk received that June 13 letter and provided it to Ms. Adams.

44. Ms. Adams knew that NRG was requesting an opportunity to meet with the Town to determine what position the Town was going to take. Ms. Adams also knew NRG wanted to meet with the Town as soon as possible so they could understand the Town's position.

45. On June 17, 2008, the Town finally responded to NRG and stated that the Town would not meet with NRG until "after natural gas is being provided by NRG to site of the Town's newest business, IGPC Ethanol Inc." Ms. Adams admitted that the Town was linking the renewal of the franchise to the flow of gas to IGPC. Ms. Adams also admitted that when the Town made its decision to refuse to meet with NRG, it did so without knowing when IGPC would be capable of receiving natural gas, and did so knowing that NRG was anxious to meet as soon as possible to ascertain the Town's position.

46. The evidence at the hearing established that NRG had completed its construction tasks on IGPC's facility by the agreed in-service date of July 15, while IGPC's construction delays resulted in it being behind schedule and unable to receive gas by July 15.

47. More importantly, the Town has now admitted to deliberately linking its position on franchise renewal and its willingness to meet with NRG to the flow of gas to IGPC, notwithstanding that IGPC's own construction delays and failures prevented it from receiving gas.

48. On June 20, 2008, NRG responded by letter from its counsel to Ms. Adams. NRG explained again that it wanted to move forward with the renewal process and needed to understand the Town's position as soon as possible. NRG also questioned whether and, if so, why the Town wanted to link franchise renewal to the opening of the IGPC facility.

Although Ms. Adams has admitted that the Town was linking franchise renewal to the IGPC facility opening, it again concealed its position and intentions from NRG. Ms. Adams admitted that, as of June 20, 2008, she had not made any response to NRG.

49. On June 27, 2008, NRG followed up on its June 20, 2008 letter requesting the Town's position and a meeting with the Town to satisfy any concerns the Town might have.

50. Despite the urgency and the repeated requests from NRG, the Town refused to respond to NRG at all until July 8, 2008 when the Town, through counsel, sent a letter. The essence of the letter was to refuse to disclose the Town's position, conceal the Town's agenda, and stall. Ms. Adams admitted that, throughout all of the correspondence and requests from NRG, the Town never told NRG, up to July 8, 2008, that it would approve a renewal of the franchise. In fact, Ms. Adams said that although the Town knew it would renew, the Town deliberately refused to tell NRG what it had already decided about renewal.

51. On July 17, 2008, NRG, through counsel, sent a letter to Mr. Tunley. Ms. Adams admitted she received that letter. Ms. Adams also admitted that she had no evidence to dispute that on the agreed IGPC in-service date of July 15, 2008, NRG was and remained ready, willing and able to deliver gas to IGPC. Ms. Adams also admitted that she understood NRG again to be asking, as it had done many times in the past, that the Town provide its position on whether or not it would support the renewal of the franchise.

52. The Town's only response was Ms. Adams' email of July 20, 2008 in which she suggested that because she would be on vacation for one month, the Town could not possibly meet with NRG until after mid-August. Ms. Adams was aware NRG desperately wanted to know if the Town would or would not support a renewal, but instead, she delayed answering that question for another month using her one-month vacation as an excuse.

53. On August 11, 2008, NRG, through counsel, requested that the meeting be scheduled as soon as possible so that NRG could finally learn whether or not the Town would support a renewal of the franchise.

54. Ms. Adams admitted that despite her understanding of the urgency and NRG's repeated requests which the Town had refused to answer, the earliest meeting date she was willing to agree to was September 11, 2008. Ms. Adams also admitted that at no time before September 11 did the Town ever provide an answer to NRG's numerous requests as to whether or not the Town would support a renewal.

55. On September 11, 2008, a meeting was held between NRG and the Town. At that time, NRG provided the Town with the Model Franchise Agreement and asked for the Town's comments. The Town advised NRG that it would provide comments on the Model Franchise Agreement shortly. Despite this assurance, the Town refused to provide any comments.

56. NRG sent follow up letters on September 11 and 16 thanking the Town for the meeting and stressing its willingness to work together with the Town on many initiatives including NRG's attendance at pre-construction meetings, NRG's involvement at Emergency Planning Committee meetings, and participating in business development opportunities.

57. The Town failed to respond.

58. On October 14, 2008, Mr. Bristoll telephoned the Town to again advise that NRG was eagerly anticipating the Town's comments on the Model Franchise Agreement. Yet again, the Town failed to respond.

59. Finally, on November 19, 2008, NRG wrote to Mayor Habkirk and Ms. Adams once again requesting that Aylmer provide its comments on the Model Franchise Agreement, as it had agreed to do nine weeks earlier on September 11.

60. On November 26, 2008, Ms. Adams responded stating that Aylmer would not meet with NRG until December 16, 2008.

61. Ms. Adams admitted that she knew, on November 19, 2008, that NRG was asking for an opportunity to meet with the Town and resolve any outstanding concerns. However, she refused to meet until December 16, 2008.

62. The December 16, 2008 meeting was set by Ms. Adams knowing that the Town Council would be meeting on December 15, and would be considering Ms. Adams' December 11 report to the Town Council.

63. Ms. Adams also admitted that despite the detailed chronology in her December 11 report to Town Council, there is no reference to any of the many letters and verbal requests by NRG for an opportunity to meet with the Town and to know whether or not the Town would support a renewal of the franchise. Ms. Adams admitted that the Town's refusal to meet with NRG between November 19 and December 16 was her decision.

64. NRG learned for the first time on December 16, 2008 that the Town would be opposing a renewal of the franchise for the ordinary term of 20 years. Immediately upon discovering this, NRG filed its application for a hearing.

65. Ms. Adams made vague references to "off the record discussions". However, Mr. Bristoll testified that NRG's evidence is clear and unequivocal that it had no knowledge that the Town would be demanding a three-year renewal term or any other shortened renewal term until December 16. NRG learned about the Town's three-year renewal demand for the first time on December 16.

66. There is not a single written record, note, or memo that would evidence any disclosure by the Town to NRG of its position prior to December 16, 2008. Moreover, the actions of NRG confirm that immediately upon becoming aware of the Town's three-year renewal demand, it filed its application with the OEB.

67. Mr. Bristoll's evidence was not challenged on cross-examination. In the circumstances, the specific unequivocal, unchallenged evidence of Mr. Bristoll should be accepted, and this Board should find as a fact that the Town never disclosed to NRG that it would be demanding a three-year or other shortened renewal term until December 16, 2008.

68. The Town has never alleged that NRG has breached the existing franchise agreement. The conditions being sought by NRG have either been agreed to by NRG or are easily resolvable by other means. In any event, they do not rise to the level of materiality to warrant a short-term renewal. If the Town had valid public interest reasons about the

franchise renewal, it would not have stonewalled NRG over the entire latter half of 2008. It would have negotiated in good faith with NRG to attempt to resolve the issues.

(b) **Financial Risk of a Short Renewal Term**

69. In the past, the Board has recognized that the length of a franchise term is of critical importance to a utility's ability to finance.

> Ontario Energy Board, Decision in *Northern and Central Gas Corporation Limited*, E.B.A. 194 (December 3, 1976).

70. NRG will have to re-finance the bulk of its debt on or before early 2011. Given that the Town of Aylmer is the main urban centre in NRG's franchise area, an abnormally short renewal period would not be viewed favourably by any potential lenders to NRG.

71. NRG's existing financing is in the form of third-party demand loans. Those loans can be called at any time and would have to be repaid in full immediately. No breach of any term of the loan is required. It is NRG's view, based on its experience with the lender during the main financing, that the lender would view an abnormally short renewal period as a significant new risk to the utility. NRG believes that the financing could be called by the bank.

> NRG Response to Board Staff IR #2(ii)
>
> NRG Response to IGPC IR#1(d)

72. As noted in Appendix A to IGPC Interrogatory #1, the Bank requested (from NRG's counsel) information about the Board's franchise renewal process prior to NRG's last main financing. Intuitively, this only makes sense. Why would a bank lend money to a utility if that utility's right to carry on business, and ability to generate any renewal, was uncertain, and out of the control of the utility?

73. Aylmer has pointed to the fact that NRG's recent financing was arranged at a point in time when a few of its franchise agreements were coming up for renewal. However, as Mr. Bristoll confirmed, the bank(s) renewed on the belief that franchise renewals were

routine, and that there would be no risk of non-renewal or a "probationary" renewal term (which is what Aylmer is requesting).

NRG Response to Board Staff IR #2

(c) **NRG's Would Have to Amortize its Assets Over a Much Shorter Term**

74. If the NRG franchise with Aylmer were renewed for an abnormally short period of time (e.g., three years), NRG would likely have to amortize its assets (at least those in Aylmer) over that period of time in its next rate application.

75. The rationale for this is straightforward. If the Board were to establish an abnormally short renewal period, it would likely be viewed by NRG's existing financing institution and other potential lenders as a truly unprecedented step, and would clearly send the signal that any further renewal was clearly at risk. Consequently, NRG would have to treat an abnormally short renewal period as a *de facto* final franchise term and file a rate application on that basis.

76. The rates applied for by NRG would be materially higher than they are currently.

77. Such an outcome is not in the interests of NRG's gas customers (both within the Town of Aylmer and outside Aylmer).

(d) **Aylmer's Term Proposal is Based on Improper Purposes**

78. Aylmer has offered two reasons for requesting a three year renewal term. First, Aylmer seeks a three year term:

(a) "to allow NRG an opportunity in this time frame to regain the confidence of its customers within [Aylmer] as their incumbent gas supplier"; and

(b) "to permit the next renewal to come up in 2012, at a time to coincide with the pending renewals of NRG's Franchise Agreements with the Township of Malahide, the Municipality of Thames Centre, and the Municipality of Bayham."

79. With respect to regaining the confidence of NRG's customers, the alleged lack of confidence would seem to stem from NRG's decision in 2005 to implement its security deposit policy. Previous management at NRG had not been diligent about implementing the policy.

80. First, NRG's view is that there are no outstanding complaints. Second, any complaints made to outside sources (i.e., the OEB or Aylmer Police) about the security deposit were either resolved, or investigated and determined to be without merit.

NRG Response to Aylmer IR No. 5(vii).

81. Third, as Mr. Bristoll outlined in his responses to questions by Board Member Quesnelle, it is likely the case that security deposit levels may level off or start to decline somewhat, because the implementation of the policy is now complete and sufficient time has passed for some customers to see returns on their security deposits.

82. Finally, and most importantly, NRG agreed (at the oral phase of this proceeding in Aylmer) to implement the security deposit policy that is currently proposed by the Board as an amendment to the Gas Distribution Access Rule. Thus, NRG is agreeing to establish a highly prescriptive, Board-approved security deposit policy. This settles the matter.

83. With respect to Aylmer's desire to align its franchise expiry dates with other municipalities, NRG notes that no other municipality sought to intervene in this proceeding. Further, all but one of Aylmer's "letters of support" pre-date NRG's franchise renewal application.

84. Aylmer does not speak for the other municipalities.

85. Even if the other municipalities were on-side with Aylmer, the Board should reject the notion that aligning expiry dates is a valid criteria to be weighed in exercising the Board's public interest discretion to determine a franchise renewal term.

86. The issue of aligning franchise expiry dates was contemplated by the Board in its franchise renewal proceeding (on the basis that smaller municipalities would have more

negotiating power with utilities if franchise renewals expired at the same time). The issue was not dealt with in the decision but ultimately sent to a committee, where the step taken appears to be not to align expiry dates but rather to standardize the form of franchise agreement (i.e., the Model Franchise Agreement).

87. Ms. Adams has told two contradictory stories. On the one hand she has testified under oath that her October 8 Report contains her understanding of the views of the other municipalities. However, there is no reference whatsoever in the October 8 Report to any limitation on the standard renewal term. There is no reference to any concern at all about the length of the franchise agreement to be renewed and no mention of any desire or reason to link the expiry of the franchise renewal to other franchise agreements. On the other hand, Ms. Adams testified that she had only one meeting at which she learned this understanding, and has now confirmed that this meeting occurred on October 1.

> MR. MILLAR: "Mr. Tunley: A specific question is, at the time you prepared and submitted this report to council in or about October 8th, had you had discussions with the other five municipalities in the area, and does your report reflect what you learned from them about any shared concerns?
>
> "MS. ADAMS: Yes."
>
> MR. THACKER: That was true when you gave that evidence, wasn't it?
>
> MS. ADAMS: Yes
>
> MR. THACKER: All right. And so what we have in this October 8 report is your shared understanding of the view of the other municipalities.
>
> MS. ADAMS: It's my understanding, yes.

88. There are only two possibilities. Either:

(a) the other five municipalities had no concerns about the length of the Town franchise renewal and no desire to link the next Town franchise expiry to any other NRG franchise; or

(b) the Town had formulated a plan with other municipalities to undermine NRG and make it easier to replace NRG with another service provider, that the Town deliberately concealed that hidden agenda from NRG, refused to negotiate fairly and in good faith with NRG, and even created an extensive record of public documentation that deliberately omitted this hidden agenda.

> MR. THACKER: So the town council is being asked to accept a recommendation from you, and you don't even tell them that it has anything to do with linking up the expiry dates for the other five municipality franchise, right?
>
> MS. ADAMS: Not in the context of the report, no.
>
> MR. THACKER: You didn't tell the town council.
>
> MS. ADAMS: I may have, in terms of questions. I don't know.
>
> MR. THACKER: You may have. But you have no evidence that you actually did, do you?
>
> MS. ADAMS: Don't recall one way or the other.
>
> MR. THACKER: No. So from October 8 on to December, is it your evidence that you have the understanding of these other five municipalities, but you have omitted it from your two reports?
>
> MS. ADAMS: The CEOs had had a discussion about the concept of having them renew at a similar time frame so we could work together.
>
> MS. THACKER: I know.
>
> MS. ADAMS: That is not in either report; that's correct.
>
> MR. THACKER: Right. And you left it out.
>
> MS. ADAMS: Yes.

89. Ms. Adams' evidence about the other municipalities was not credible. In her testimony she presented a lengthy rationale for what she claimed to be the mutual desire of all of the Town and five other municipalities to restrict NRG to a three-year renewal so that all franchise agreements would come up for renewal at the same time.

90. However, on cross examination she revealed that the Town had had only one meeting with other municipalities, and that she could not remember when that meeting occurred (although she later confirmed it was October 1). Ms. Adams prepared her detailed lengthy October 8 Report to Town Council which contains her recommendations on how to proceed yet Ms. Adams deliberately omits any reference to any limitation or restriction on the term of renewal.

> MR. THACKER: Right. Okay. And so as of October 8 you were not recommending any coordinated renewal at all, were you? Because I read it carefully, and there is not one reference.
>
> MS. ADAMS: Mm-hmm. Not at that time, no.
>
> MR. THACKER: Right. In fact, you weren't even recommending, as of October 8, a three-year renewal period, were you? Because that's not in the report either.
>
> MS. ADAMS: No. We were still in discussions with NRG with respect to details of the renewal.

91. Eventually, under cross examination, Ms. Adams admitted that her understanding of the position of other municipalities as of October 8 had nothing to do with the three year term:

> MR. THACKER: I was just going to get to that. So the first time you told or made any recommendation to the town about a restricted renewal period was in your December 11 report; correct?
>
> MS. ADAMS: That's the first time the report went to a council meeting, yes.
>
> MR. THACKER: Right. So can we agree, then, that – well, no. The real point is that is the first time you ever suggested to council there should be a restriction on the length of renewal?
>
> MS. ADAMS: In a report context, yes.
>
> MR. THACKER: Well, that's the first written record --
>
> MS. ADAMS: Right.
>
> MR. THACKER: -- you have produced of ever making that recommendation to council; right?

MS. ADAMS: That's the first written record.

MR. THACKER: There is no evidence that that was ever discussed with any municipality before October 8, is there?

MS. ADAMS: A three-year term, no.

MR. THACKER: Right. So when you talk about the position of other municipalities as you understood it as of October 8, it had nothing to do with a three-year term, did it?

MS. ADAMS: No.

92. NRG submits that the Town failed to negotiate with NRG in good faith. Moreover, the Town's insistence on a three year renewal period is not based in any legitimate public interest concern or any desire to allow NRG to rebuild trust where NRG had been requesting an opportunity to understand the Town's position and rectify any of the Town's concerns since June. The Town instead refused to meet with NRG, refused to advise whether or not it would support a renewal of the franchise and most importantly refused to allow NRG an opportunity to rectify any customer service or other concerns the Town might have.

93. The Town was actively trying to prevent NRG from addressing any concerns and was preventing NRG from having time to address these issues in a productive manner and satisfy any public interest concerns. Instead, the Town was advancing its own interests to the detriment of NRG and NRG's customers.

94. There is no public interest served by the Town's demand for a three year renewal period. Moreover, the Town's well-established history of refusing to disclose its position to NRG and refusing to allow NRG any opportunity to rectify any customer service or other concerns establishes that the Town was acting in bad faith and not in any public interest.

(e) <u>Nearly All of Aylmer's Conditions Have Been Agreed To By NRG</u>

95. Prior to, and during the course of, this proceeding, NRG has agreed to most of Aylmer's conditions. The remaining conditions will be decided upon by this Board, and complied with by NRG.

96. Counsel for Aylmer stated that even if NRG and Aylmer agreed on the conditions, Aylmer would still insist on a three-year term because it would allow the Board to "check-in" on whether NRG is complying with those conditions. With respect, a three-year check-in with the Board is not the best way to ensure compliance with the Model Franchise Agreement.

97. The Model Franchise Agreement has no provisions dealing with non-compliance or dispute settlement. It is silent on this point.

98. The existing franchise agreement states that in the event of a dispute or disagreement, either NRG or the Town could refer the matter to arbitration.

NRG Evidence, Exhibit C, Tab 2, section 9.

99. The Model Franchise Agreement is a contract, and in the absence of anything to the contrary in the agreement, any contractual dispute could be resolved in Court. In the alternative, dispute resolution provisions could be inserted in the renewed franchise agreement making binding arbitration or the OEB the forum for hearing alleged non-compliance matters.

(f) <u>No Incentive to Add Capital Assets</u>

100. If NRG were granted a three-year renewal, it would have no incentive to add to, or improve, its capital assets.

101. This incentive runs contrary to: (a) the Town's stated wish that NRG be an active participant in trying to attract new industry to Aylmer; and (b) the Board's statutory objective to facilitate the rational expansion of the gas distribution system in Ontario.

D. ISSUE 2: TIMING OF RATE APPLICATION

102. The second issue to be determined by the Board is: Does the public convenience and necessity require that it be a condition of the renewed franchise agreement that NRG file a rate application before the end of 2009?

103. NRG has stated on the record in this proceeding that it would be prepared to file an application by December 31, 2009. The rationale for this date is to allow NRG to: (a) understand any rate implications arising from the Board's decision in this case; and (b) allow sufficient time for NRG to properly prepare a comprehensive application.

104. The preparation of a cost-of-service rate application (and pre-filed evidence) by a smaller utility such as NRG involves a significant financial and personnel commitment on the part of the utility. A decision in this case would, it seems, come out no later than early April 2009, and potentially as late as the beginning of June 2009.

105. NRG will obviously comply with whatever the Board orders in terms of a rate filing deadline, but simply requests that the Board keep in mind the significant work and time involved in the preparation of a rate application.

E. ISSUE 3: TRUST ACCOUNT FOR SECURITY DEPOSITS

106. The third issue to be determined by the Board is: Does the public convenience and necessity require that it be a condition of the renewed franchise agreement that NRG's security deposit monies be held in a separate trust fund, and not be used as working capital?

107. As mentioned at the hearing, NRG does not support holding security deposits in a separate trust fund, for three reasons:

(a) NRG does not believe that its financial well-being warrants holding security deposit monies in a segregated account;

(b) at present, the security deposits held by NRG (and by the other two gas utilities) reduce the utility's rate base, but placing these funds in a trust account would increase NRG's rate base; and,

(c) there are other costs associated with managing and auditing a trust account that are currently do not have to be incurred by NRG.

Obviously, the concern with items (b) and (c) is that they result in higher rates for NRG's customers.

108. The security deposits held by NRG reduce NRG's rate base through working capital. The same is true for Enbridge and Union.

109. NRG's rate base is comprised of:

Net Book Value of NRG's Assets
plus Inventory
plus Working Cash Allowance (i.e., lead-lag)
minus Average Value of Security Deposits

110. The Board treats security deposits for the three gas utilities in this manner because it has always been considered a source of operating funds (i.e., they are funds that do not have to be returned immediately, so can be used for short-term financing).

111. If the funds were to be held in a trust account, and not accessible by NRG, they obviously would not be used to reduce rate base.

112. The result would be increased rates for NRG customers because NRG would still need those funds.

113. In addition to the cost implications of removing the security deposit funds from the rate base calculation, there will be operating expenses associated with the maintenance of a trust account (e.g., auditing costs) that are currently do not form part of NRG's budget.

114. It is NRG's submission that there is no good reason to incur these additional costs (which are ultimately borne by the customers). NRG's view is that the most recent financial statements filed with the Board reflect a financially healthy utility. It is also NRG's position that to the extent the change in GAAP reporting of NRG's retractable shares was cause for any concern, the Board has evaluated it and dealt with it by ensuring the shares are postponed: (a) to NRG's creditor; and (b) to Union Gas.

F. ISSUE 4: MANDATORY NOTIFICATION OF AYLMER

115. The fourth and final issue to be determined by the Board is: Does the public convenience and necessity require that it be a condition of the renewed franchise agreement that NRG provide notice to Aylmer of any OEB proceeding that NRG is a party to?

116. NRG believes this condition is unnecessary, and should not be inserted as a special condition to a renewed franchise agreement.

117. The Board's long-established practices and procedures for managing regulatory proceedings ensure that adequate notice of all proceedings is provided to the general public, and particularly to stakeholders who would reasonably be expected to have a particular interest in a given proceeding.

118. As the Board is aware, upon receipt of an application or upon commencing a proceeding on its own initiative, prior to holding a public hearing, the Board publishes a Notice of Application or a Notice of Public Hearing that describes the subject matter of the proceeding and the steps that interested persons can take in order to participate. Such notices are typically published in those newspapers within Ontario that have the highest levels of readership or circulation for the community or communities most likely to have an interest in the particular proceeding. The basis for this process is enshrined in the Board's Rules of Practice and Procedure (Rule 21).

119. All NRG applications typically get published in the Aylmer Express. For NRG rate applications, the Board always requires (in addition to publication) that NRG serve the Aylmer Town Clerk, and NRG has always done so.

120. Only recently has the Town started to participate in NRG proceedings (e.g., related to the Ethanol plant, Union's application to discontinue service, and the franchise application). Now that the Town has formally begun to participate in NRG proceedings, it will likely receive automatic notice of any applications to the Board by NRG (since the Board's normal practice is to notify past intervenors of any new applications for a particular utility).

121. NRG is not opposed to Aylmer participation in any OEB proceedings, but believes that the condition as drafted by the Town: (a) is too broad (in that it requires notification of any proceeding NRG participates in, not only those where NRG is the applicant); (b) can be met via the Board's traditional notification procedures (as explained above); and (c) is minor in nature, and not significant to warrant inclusion as a special condition to a franchise agreement.

122. On this last point, part of NRG's concern is that it is the type of condition that could easily be overlooked or "fall between the cracks", ultimately have little consequence to Aylmer, but nevertheless be a breach of the franchise agreement. For example, it would not be in anyone's interest for NRG to be in breach of its franchise agreement merely because NRG inadvertently failed to notify Aylmer about a generic proceeding that NRG was only tangentially involved in.

123. For these reasons, NRG submits that the inclusion of this condition in a renewed franchise agreement is not in the public interest.

G. COSTS

124. NRG submits that this hearing was necessary only because of the Town's failure to negotiate with the Town in good faith, and the Town's insistence on advancing a private agenda at the expense of the public interest and NRG and its stakeholders.

125. Since June 2008, NRG has been requesting that the Town advise them as to whether or not it would approve a renewal of the franchise. The evidence has established beyond any doubt that the Town deliberately refused, over a period of six months, to tell NRG whether or not it would approve a renewal of the franchise. Moreover, the Town concealed from NRG its hidden agenda and the position it would eventually take concerning a demand for a three-year renewal term.

126. Finally, the Town deliberately allowed time to run and did not disclose its position until the latest possible moment, which required NRG to commence this application for a contested hearing.

127. NRG submits that, in these circumstances, any presumption that the applicant should be responsible for the costs of the hearing does not apply. Instead, this Board should determine costs liability by examining the degree of success in the outcome of the hearing and the conduct of the parties prior to and during the hearing.

128. Applying these criteria, NRG submits that, given the Town's conduct, NRG could simply have done nothing and stopped supplying gas at the expiry of the franchise agreement. This would certainly have been disastrous for NRG's customers and the Town. However, the Town refused to take any proactive steps to deal with the impending expiry of the franchise agreement, and refused to cooperate with NRG when NRG attempted to deal with this matter in a proactive and reasonable manner.

129. As a result of the Town's conduct, NRG has incurred significant legal expenses, and this Board has been put to the expense of a contested hearing, under the pressure of an imminent expiry of the NRG franchise agreement. This was all unnecessary, and was caused by the Town's conduct, including its refusal to negotiation with NRG in good faith.

130. As a result, NRG respectfully submits that the Towns should bear its own costs of this hearing. NRG also submits that the Town should pay the costs of NRG and the Board.

H. MISCELLANEOUS ISSUES

131. With respect to the matter raised by the Chair at the conclusion of the oral phase of the proceeding, NRG is reviewing the Chair's proposal concerning the pending appeal (and administrative fine which has been stayed pending the appeal). Specifically, NRG is examining the tax and other financial implications for NRG and its stakeholders.

All of which is respectfully submitted this 20th day of February, 2008,

NATURAL RESOURCE GAS LIMITED

By its Counsel, Ogilvy Renault LLP
Per: Richard J. King

per

By its Counsel, Lenczner Slaght Royce Smith Griffin LLP
Per: Lawrence E. Thacker

EB-2008-0413

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

AND IN THE MATTER OF the application by Natural Resource Gas Limited ("NRG") for a Franchise Agreement Renewal with the Town of Aylmer.

TOWN OF AYLMER

FINAL WRITTEN SUBMISSIONS

The Legal Regime for Establishing and Renewing a Gas Distribution Franchise

1. The "right" of any person to distribute or to operate works for the distribution of natural gas in any municipality in Ontario is one that derives from the electors of that municipality. Any such right can only be acquired from or granted by that municipality under a by-law that has been assented to by the municipal electors. Any such by-law must set forth both "the terms and conditions upon which" and "the period for which" such right is granted or acquired.

Reference: *Municipal Franchises Act*, R.S.O. 1990, c. M.55, ss. 3(1) ("*MFA*")
Franchise Agreement, February 27, 1984, ss. 1 and 11: NRG Ev. Tab C2
OEB "Model" Franchise Agreement, s. 2, 3, and 4: Town Ev., Tab L

2. That is the source of the right, term and conditions at issue in this case. That is also the interest that the Town of Aylmer seeks to represent in this intervention.

3. The essentially contractual nature of such right and relationship is maintained in the current legislative regime governing gas franchises, despite recent, fundamental changes to the broader regime of gas regulation. It is maintained despite the practical reality that, historically and over time, the scope of all gas distribution undertakings in Ontario have outgrown any one

municipality and expanded to encompass several or many municipalities and franchise agreements. As a result, the relationship is typically no longer one between parties of comparable size and bargaining power, nor even one of shared geographical area and responsibility.

4. Also, the contractual right and relationship between the parties is now subject to the powers given to this Board set out in the *MFA* and in other statutes relating to the functions of this Board. Over time, this Board has assumed many of the oversight responsibilities for the gas distribution system, including responsibility for rate-setting and for the terms and conditions of access to and provision of gas service. In terms of its oversight of the contractual relationships between municipalities and gas distributers, specifically, the Board's powers under the *MFA* now include the powers:

(a) under ss. 9(1), to approve the terms and conditions and term of any new by-law granting a franchise *before* it is submitted to the electors for approval;

(b) under ss. 10(2), if "public convenience and necessity appear to require it", to make an order "renewing or extending the term of" any such right "for such period of time and upon such terms and conditions" as the Board determines;

(c) under ss. 10(2), "if public convenience and necessity do not appear to require" such extension or renewal, to make an order refusing such renewal or extension; and

(d) under ss. 9(4) and 10(5), after holding a public hearing, to dispense with the requirement for assent of the electors to any such order.

5. The Town fully adopts the "public convenience and necessity" test set out in the *MFA* and in the decisions of this Board and of the courts that are referred to by NRG, as being

consistent with and supportive of its position in this proceeding. The Town's position is not, and has never been, based upon any "local" or "parochial" interests of the Town, itself, as a municipal corporation, as NRG implies. It has always been based on the broader public interests in the financial viability, service reliability, quality of service to customers, communication and responsiveness of NRG, as an essential partner in the economic recovery and development of Aylmer and surrounding communities.

6. Moreover, the Town accepts that any rights or powers it may have had or might wish to have to acquire NRG's gas distribution undertaking within its area have been diminished by the repeal of s. 62 of the *Public Utilities Act* in 1979, and by the decision in *City of Sudbury v. Union Gas Ltd.* (2001), 54 O.R. (3d) 439 (C.A.) which makes even such express rights in a Franchise Agreement subject to this Board's power to renew or extend under ss. 10(2) of the *MFA*. In effect, the Board's discretion under ss. 10(2) of the *MFA* to renew or extend, or to refuse renewal or extension of a right in a Franchise Agreement, are now the only effective legal means to replace an incumbent gas distributer that is defaulting in its responsibilities to customers and to the electors of a municipality which it serves.

7. The Town also agrees that the decision to renew or extend, the decision to refuse such renewal or extension, the period of time of any such renewal, and the terms and conditions imposed, are all matters "entirely within the Board's discretion".

Reference: *Re City of Peterborough and Consumers Gas*, (1980), 111 D.L.R. (3d) 234 (Div. Ct.)

8. Given this scheme, NRG's suggestion that a dispute with respect to terms in the Franchise Agreement be resolved before the courts is untenable. The Board has full authority to address those issues now, when the Franchise Agreement is due for renewal, and it can hear a grievance with respect to a breach of that agreement at any time. Both considerations of judicial

economy and the relevant statutes require that the Board's jurisdiction in that regard be exclusive, just as most other powers and responsibilities that the Board exercises are exclusive.

9. The issues in this case relate to the factors that should affect the Board's exercise of that discretion, both generally, and in the particular circumstances reviewed at the hearing. As the evidence shows, circumstances have arisen in which NRG has been in default in its responsibilities to customers and to the electors of the Town. These circumstances have raised concerns about both the financial viability of NRG and the quality and reliability of its service to customers. They have severely shaken the Town's confidence, and that of the Town's constituents, in NRG as their incumbent gas supplier and distributer.

10. The Town submits that these circumstances warrant the inclusion of additional terms and conditions in the current franchise renewal under s. 10(2) of the *MFA*.

11. This is not, however, because the inclusion of service-related terms and conditions in a Franchise Agreement would in any way add to this Board's already broad regulatory powers and remedies in respect of its oversight of NRG's monopoly gas distribution business. That is not the Town's intent. What the Town intends is:

(a) to ensure that in the event of any continued breach by NRG of these added terms and conditions, the Town will have the same right and status to complain directly to this Board as it currently has under s. 7 of its existing Franchise Agreement; and

(b) to ensure that any such continued breach will also be relevant to this Board's discretion under s. 10(2) of the *MFA*, if appropriate, to make an order refusing any further renewal or extension.

12. The Town agrees with NRG that the circumstances today do **not** give rise to considerations of public convenience and necessity that warrant an order refusing any renewal or extension, at least at the present time. The Town does not seek that relief. Customers have to be supplied with gas.

13. Rather, the Town is simply asking this Board, in these specific circumstances, to put NRG on probation. The Town is pleased that NRG has agreed to several of the specific terms and conditions it has sought in that regard. However, the following issues remain:

(a) **Renewal Term:** What are the appropriate considerations regarding the renewal term, and specifically:

(i) Is there any "normal", "typical" or presumptive renewal period of 10-years, 15-years, or 20-years to which an incumbent supplier is somehow entitled regardless of its conduct, as NRG suggests, or

(ii) is a shorter renewal period of approximately 3-years appropriate in this case, in order to give NRG a probationary period in which to rebuild its customers' confidence; and

(iii) is a shorter renewal period of approximately 3-years appropriate in this case, in order to align the renewal period of the Town's Franchise Agreement with those in neighbouring municipalities?

(b) **Rate Application Filing:** As a term and condition of renewal, should the Board require NRG to file a new rate application within 6 months (as proposed by the Board), or not before the 2009 year-end (as proposed by NRG)?

(c) **Security Deposit Policy Issues:** As a term and condition of renewal, should the Board require NRG to implement the Board's proposed revisions to its customer deposit policy, and in addition to hold all security deposits in a trust account?

(d) **Notice of Proceedings:** Whether, as a term and condition of renewal, to require NRG to give the Town notice of any proceedings before the Board in which NRG is involved, whether as an applicant, respondent, intervenor or otherwise?

14. The Town will also respond, albeit briefly, to the extravagant allegations made by NRG in its written submissions suggesting bad faith, improper purposes and other misconduct by the Town. Those allegations are entirely without merit.

15. These issues are addressed in turn.

A. The Renewal Term

(i) No Presumptive Minimum Renewal Term

16. The Town submits there is, no "normal", "standard" or presumptive renewal period, to which an incumbent gas distributer is somehow entitled, as NRG argues. That is so, whether it be for 10, 15, or 20 years or otherwise.

17. Nothing in this Board's prior decisions supports any such presumption. To the contrary, as noted, the matter is "entirely" one of discretion.

18. Nor does the evidence led by NRG support any finding by this Board, or even any concern, that a shorter renewal period would in any way jeopardize NRG's ability to re-finance its long term debt. In fact, NRG has no debt over a 5-year term, and even that is on a demand basis. NRG recently refinanced that debt in 2006 and again in 2008, in each case with less than

5-years remaining on its Franchise Agreement with the Town, and in the latter case with less than 5-years remaining on each of its four largest Franchise Agreements. NRG's purported evidence on this issue is speculative, self-serving, and refuted these admitted facts.

19. In fact, the recent findings by this Board with respect to NRG's financial viability and conduct, as detailed in the evidence and below, are far more likely to affect the terms on which NRG is able to re-finance its debt than is the position advanced by the Town herein with respect to renewal of one of its Franchise Agreements.

20. Nor does NRG's alleged investment in new distribution infrastructure justify any lengthy renewal of the Town's Franchise Agreement, as it suggests. There is no evidence that any such investment has been in the Town's franchise area, as opposed to those of other municipalities served by NRG. Indeed, the Town Administrator, Heather Adams has reported to Council that:

> "In recent years, the Town has not been advised of any distribution system improvements in the pipelines within the Town's boundaries." (Town Ev., Tab B, page 3)

That evidence was not challenged in cross-examination.

(ii) The Need for a Probationary Period

21. The recent conduct by NRG in respect of its regulated gas supply business is clearly relevant to this Board's discretion with respect to the length of any renewal term.

22. As the Board and all interested parties well know, since 2005 circumstances and concerns have arisen which have severely shaken the confidence of the Town and its constituents in NRG as the incumbent supplier of natural gas to customers within the municipal area of the Town. That fact is, however, nowhere acknowledged in NRG's written submissions.

23. These concerns, relating both to the financial viability of NRG and to the quality and

reliability of its service to customers, have largely arisen in recent proceedings before this Board and are a matter of public record as follows.

24. **EB-2006-0243 IGPC Ethanol Plant, Compliance Order dated June 29, 2007:** The Town intervened in this proceeding to support the request of a major new industrial customer for emergency Orders of this Board, requiring NRG to sign Board-approved documentation necessary to complete the financing for this vital regional economic development project. Prior to the hearing, (and contrary to NRG's response to Board Staff IR #1 herein), the Town's solicitor had written to NRG advising that their failure to execute the documents would be a breach of its Franchise Agreement with the Town (Transcript, June 29, 2007, at p. 29-30). NRG ignored that letter, and maintained its refusal. This Board found NRG to be in beach of its Franchise Agreement with the Town, and ordered that NRG remedy that breach (at p. 66). Yet NRG ignored that Order as well, and maintained its refusal. The project was delayed for some further time, before NRG at last relented.

25. The Town's consideration with legal counsel of its rights and remedies under the Franchise Agreement began immediately following this extraordinary demonstration by NRG.

26. **EB-2006-0243 IGPC Ethanol Plant, Review Order dated March 12, 2008**: The Town had to intervene again in this proceeding, initiated on the Board's own motion to review alleged irregularities and non-compliance by NRG with the terms of the now-signed agreements respecting this same project. NRG had demanded a letter of credit from IGPC in an amount of some $30 million, as well as other payments. IGPC alleged these demands were unreasonable, and a hearing was convened because, again, these disputes were threatening to delay and even derail the project. The Town took no position on the merits of the disputes, except with respect to keeping the project alive and on schedule. NRG's demands were substantially dismissed by

the Board at the hearing on February 28, and in its subsequent decision of March 12, 2008. The Board also made an order on consent establishing a schedule for completion of the project.

27. **Customer concerns Regarding NRG Security Deposit Policy:** At its meeting on July 7, 2008, Council received a letter to all municipalities within NRG's service area from the Township of Malahide, advising of concerns it had received about NRG's security deposit policy and practices, inquiring whether other municipalities had similar concerns, and raising the question whether municipalities might work together to pursue these concerns through their franchise agreements (Town Ev. Tab B, page. 1 and Attachment A 1-6)

28. Then, at its July 21 meeting, Council received a petition with 457 written and 65 on-line signatures, complaining about NRG's customer deposit policy and practices (Town Ev. Tab B, page 1 and Attachment B, and Tab H). The comments by petitioners described NRG's practices as "unfair", "stealing", "robbery", "fraud", "rip off", "scandalous", "disgraceful", "disgusting", and even "criminal". A police investigation launched in response to these complaints was deflected by NRG claiming, unjustifiably, that its security deposit policy had been approved by the Board at NRG's most recent rate hearing (NRG IR Responses, Appendix "F").

29. In fact, Mr. Bristoll admitted that NRG in that rate proceeding had projected no change in the level its security deposits taken from customers from 2005, at some $105,000, to the test year of 2007 (Transcript, February 12, 2009, page 40, and EB-2005-0544, Decision with Reasons, September 20, 2006, at Appendix "A" page 3 of 5). NRG did not disclose to this Board during that proceeding that, after filing its submission, NRG had in fact embarked upon a major "ramp up" of its security deposit holding, or that by September 2006, when the Board released its decision, NRG was in fact holding almost three times that amount, or $280,000. Rather, NRG continued to claim allowance for a projected bad debt expense based on its lower 2005 security

deposit levels, which Mr. Bristoll admitted at p. 91 of the Transcript would have the effect of increasing its 2007 rates. In addition, of course, NRG also had the use of more of its customers' money as working capital, which if disclosed to this Board ought properly to have reduced NRG's rate base and its 2007 rates still further, as NRG effectively admits in its written submissions at paras. 110-113.

30. This situation continued, with NRG admittedly increasing its security deposit holdings still further to some $603,000 by the end of its test year in September 2007, and further again to $757,000 by September 2008. This 650% increase in the security deposits demanded by NRG from its customers within a 3-year period obviously gave rise to the widespread customer complaints it received in June of 2008. Yet, Mr. Bristoll could barely acknowledge any connection between the two (Transcript, p. 40 and 54-56).

31. Despite this initiative by NRG, it appears there is no cash available on NRG's most recent audited balance sheet (Town Ev., Tab E, page 2). Rather, the Town and this Board have learned in this proceeding that all of NRG's excess capital in 2008 has been used to make a sizeable loan to a related company, on which NRG earned some $27,000 in interest in the year (Transcript, p. 96 and Town Ev., Tab E, page 15 Note 6). That interest income is surely due in part to NRG's customers who have been required to post security deposits.

32. These admitted facts simply do not square with any claim by NRG that its recent security deposit policies and practices are just a normal or prudent part of its gas distribution business.

33. On October 8, 2008, this Board initiated a consultation under EB-2008-0313 on proposed amendments to its Gas Distribution Access Rule ("GDAR") provisions on the collection and administration of customer deposits. The Town's response enclosed a complete copy of the written and on-line petition it had received. Incredibly, despite its public filing with Council in

July, and with the Board in November 2008, Mr. Bristoll claimed not to have seen this petition until it was filed by the Town in this proceeding in February, 2009 (Transcript, page 11).

34. **EB-2008-0273 Union Gas and NRG, Decision and Order dated November 27, 2008:** Further concerns about NRG were raised in August, 2008, when Union Gas commenced this Application, seeking relief including permission to cease gas supply to NRG, based on allegations that NRG was in breach of contract and financially insecure, and that Union's efforts to resolve these issues had been stone-walled by NRG. Again, the Town intervened, taking no position on the merits of the contractual dispute. Again, the Board's Decision and Order substantially upheld Union's claim, and granted relief against NRG short of terminating gas supply. Of specific concern to the Town are:

(a) the qualified Auditors' Report on NRG's September 30, 2006 and subsequent financial statements, indicating that the presentation of some $13,461,418 in retractable Class C shares as equity, rather than as a liability as required by GAAP, did not fairly present the financial position of NRG (see for example, Town Ev., Tab E, p. 2);

(b) this Board's findings, at p. 4, that this reduction in equity and increase in liability means that "NRG is now in a negative equity position" and "significantly increases the financial risk associated with NRG";

(c) this Board's findings, at p. 5, that Union's concerns were serious, that NRG's financial reporting was "invariably late", and that this suggested that NRG faces financial difficulties which had to be carefully addressed by the Board in its Order;

(d) this Board's apparent acknowledgement, at pages 4 and 5, that its Order requiring NRG to provide Union with a Postponement Agreement relating to the redemption of the Class C shares "is of little assistance to an unsecured creditor" who does not have any such protection, such as those of NRG's customers who have been required to post security deposits; and

(e) this Board's findings at p. 7 that NRG "did not act in a timely manner" in response to Union's concerns, "essentially stone-walled Union", and engaged in unhelpful "brinksmanship" where customer interests were involved.

35. The Town has emphasized that none of these concerns originated with the Town or its own municipal or corporate interests. Rather, they are concerns raised by NRG's own customers, both individual and industrial/commercial, who have requested that the Town bring them to the attention of the Board forcefully and urgently.

36. The Town's concerns up to October 8, 2008 were documented in a comprehensive Report by Ms. Adams to Council, and the recommendations set out in that Report were adopted by Resolution of Council dated October 14, 2008 (Town Ev., Tabs B and C). The concerns were summarized, at p. 3, as:

- Quality of infrastructure
- Rates not competitive
- Reluctance to serve new commercial/industrial customers
- Significant customer service issues
- Financial issues raised by customers and suppliers are troubling
- Deterrent to local economic development.

(Town Ev., Tab B, page 3 and Recommendation 1)

37. That Report made recommendations, focussed upon bringing these concerns to the attention of this Board, and also including a recommendation to circulate the Report among other municipalities served by NRG "for their consideration and endorsement". Ms. Adams testified she had already met with the CAOs of these other municipalities on October 1, which included a discussion of having the Franchise Agreements renew at the same time, so that they could work together (Transcript, p. 150). Her evidence confirms that her October 8 Report reflected her understanding of concerns that were generally shared to varying degrees by the other municipalities served by NRG based on discussions with them since 2007 (Transcript, pp. 109-110 and 130-138). The Town has received letters reflecting that general support by other municipalities with respect to the matters set out in that Report (Town Ev., Tab D).

38. Subsequently, the Town's position and proposal specifically with respect to renewal of its Franchise Agreement was developed, based on these concerns, in a further Report to Council dated December 11, 2008, and approved by Council on December 15 (Town Ev., Tab L). That Report, as adopted by Council, recommended that its representatives meet with NRG and offer a renewal of the Franchise Agreement for 3 years, "with the addition of a list of conditions Council wants to have NRG commit to undertake during that 3 years". It attached a Draft Franchise Agreement, on the Board's Model form, but with the 3 year term and with those additional conditions proposed in Schedule "A".

39. The conditions proposed are relevant to address the concerns with NRG's conduct and performance identified by the Town, by other surrounding municipalities, and by their respective electors and constituents.

40. Indeed, in the course of this proceeding, the Town has confirmed or learned of additional concerns about NRG that are relevant to, and support its position herein, as follows.

(a) Mr. Bristoll admitted that NRG's current practices do not comply even with this Board's existing GDAR requirements, and specifically the requirements in s. 2.3.1 that it maintain records documenting compliance with all aspects of the GDAR, and the requirements of ss. 7.3.1 and 7.3.6 dealing with customer complaint response (Response to Board Staff IR #4, Transcript, pp. 64-66); and

(b) Despite admitting that NRG's customer complaint process "is not documented or verifiable in any fashion", and despite reviewing the customer petition submitted to the Town, Mr. Bristoll continued to insist even at the hearing under oath that NRG has received "very few" complaints (Transcript, p. 61-64).

41. All of these concerns, from June 2007 through to today, individually and collectively, are **very** serious. They indicate that NRG, repeatedly and in a variety of ways, is or has recently been defaulting in significant areas of its responsibilities to its customers and to the electors of the Town. They indicate that NRG is and has been in significant breach of its Franchise Agreement with the Town. They also indicate that NRG is still and ever in denial of these facts.

42. That is why the Town submits that a 3 year term is an appropriate "probationary" period, in all the circumstances. It is to require NRG to commit to and implement those remedial conditions (both those which it has agreed to and those it has not) which may enable NRG to show some improvement on the concerns that have been identified.

43. The suggestion by NRG that this position is punitive, rather than remedial, or is motivated by improper considerations rather than the broader public interest, is completely without merit. In particular, the suggestion that the Town is already secretly determined to replace NRG with Union or some other provider is pure speculation, contrary to all the evidence.

44. All of those suggestions are refuted by the "goals" of the proposal set out in Ms. Adams' December 11 Report, and adopted by Council (Town Ev., Tab L, page 3). Those goals are as follows:

- Ensure the continued supply of cost-effective natural gas to Aylmer
- Ensure that the customer service and security deposit concerns expressed by the residents of Aylmer are dealt with effectively and efficiently
- Respect the role of the Ontario Energy Board as the regulator of monopoly natural gas distributors in Ontario
- Ensure that the economic development opportunities for the community are enhanced by having **a supportive natural gas distributor** who supplies a cost-effective alternative source of energy
- **Repair the negative image of Aylmer in the context of our natural gas distributor**
- **Restore confidence in and respect for the natural gas distributor by their consumers, other residents and the Town as they put in place a permanent acceptable customer relations policy** (Emphasis added)

45. They are refuted by the history and goals of the community as outlined by Ms. Adams in her testimony, at p. 122:

> "If you look at the Town of Aylmer, we're in a very important and unique position, where we have small, local utilities in all of the sectors. We have a local bred and born telephone company, A&M Telecom [*sic*]. We have a local born and bred electric utility in Erie Thames, and we have a local born and bred gas utility in NRG.
>
> That's a really important [*sic* feature] to sell to people, that it's a community that works together, that breeds good companies and supports good companies.
>
> And we would like to get back to the situation pre 2005 where we could be in that kind of a positive supportive relationship with all three of our utility suppliers."

46. Indeed, even Mr. Bristoll admitted this point in cross examination, as follows.

> "MR. TUNLEY: Okay. Again, you understand that the Town isn't – doesn't want to go back and revisit past grievances, we are only interested in a go-forward commitment where these issues disappear. That's what Schedule A is about.
>
> MR. BRISTOLL: I know. And I agree with you." (Transcript, p. 66)

47. The Town also notes that IGPC, a significant new industrial customer, specifically supports the Town's proposal for a 3 year renewal, in terms that reflect a similar, conciliatory, forward-looking focus (Transcript, p. 79-80).

48. The Town commends this proposal to the Board's discretion in the public interest.

(iii) Alignment of the Various Franchise Agreements with NRG

49. The second factor underlying the Town's request for a 3 year renewal is to align the next term of its Franchise Agreement with those of other municipalities in NRG's service area.

50. As the first of the six municipalities served by the gas distribution system of NRG to have a Franchise Agreement come up for renewal since these concerns have arisen, the Town has taken note of the degree to which its own concerns and interests are shared by the other five.

51. It is obvious, both as a matter of legal analysis and of common sense, that all municipalities would be better able to address those concerns and interests before this Board if they could act together. However, the current legislative regime and process for renewal of franchise agreements actually prevent any such concerted action.

52. Thus, practically speaking and as a matter of jurisdiction, the Board has no power under s. 10 of the *MFA* or otherwise actually to do anything with respect to the Franchise Agreements between NRG and the other five municipalities at this time, or at any time until the year before they expire. That will not arise until 2011, in the case of the next earliest to come up for renewal, and not until 2015 in the case of the last (Town Ev., Tab 1, para. 3).

53. This misalignment in the renewal dates of related Franchise Agreements is a natural result of the historical development of local gas distribution systems, which typically have their

origins in a more urbanized centre (such as Aylmer), and then grow outward as an integrated system into surrounding areas. Renewal thereafter, particularly for a "standard" term to 10, 15 or 20 years as advocated by NRG, simply perpetuates that status quo.

54. Again practically speaking, given this integrated nature of a distribution system such as NRG's throughout the six municipalities, it then becomes actually impossible for this Board to refuse a renewal or extension of one municipality's Franchise Agreement, despite its powers under ss. 10(2) of the *MFA*, without adversely affecting all the others. Both the franchise rights of those other municipalities, and the supply of gas to their electors and other constituents, would potentially be affected. These impediments, and potential challenges, to any real exercise of the Board's jurisdiction to refuse renewal, only serve to contribute to the sense that the system is outdated and ineffective, and to resulting inaction by municipalities.

55. These considerations, and the legislative history referred to in paragraphs 3, 4 and 6 of these submissions, are the legal and practical realities experienced by the Town in this case, that lie behind the third recommendation in its Report of October 8/14, 2008:

> "3. Request that the OEB establish a process for a review of the legislation and regulations which require that municipalities and natural gas distributors enter into franchise agreements. The realities of the current process for these agreements do not operate such that they improve the distribution of natural gas to its customers. The municipality has no real ability to negotiate even the minimum of service delivery requirements, and no realistic ability to enforce the provisions of a franchise agreement when a distribution company does not meet them and no real ability to change who provides the service. The legislation guiding franchises is outdated and its provisions such as the requirement for a public vote typically are replaced with the OEB approval process." (Town Ev., Tab B, p. 6: Transcript, p. 142)

56. These systemic impediments, together with the cost of these proceedings and highly adversarial posture of NRG, fully explain why the other five municipalities have not intervened – this Board can do nothing with respect to any of their Franchise Agreements until 2011 at the

very earliest, without the consent of NRG.

57. These realities also lie behind the Town's second reason for requesting a 3-year renewal term, in effect to coincide with the renewal of the next three Franchise Agreements up for renewal in 2012, with the Township of Malahide, and the Municipalities of Bayham and Thames Centre. As expressed in the letter dated January 9, 2009 from counsel for the Town to the Board, parties and intervenors herein, the purpose is as follows:

> "The Town believes that, in order to allow all affected municipalities to consider the full range of alternatives for the future supply of gas in these areas, **including the option of renewal with NRG for a longer term**, it is important to make provision for these Franchise Agreements to have the same renewal terms." (Emphasis added, Town Ev. Tab D)

58. The Town cannot and does not purport to speak for other municipalities in this proceeding. They can and will speak for themselves when, inevitably, their agreements come up for renewal.

59. However, Ms. Adams has testified that, at least at the staff level among the CAOs she deals with, there has been discussion about the concept of having these agreements renew at the same time so that municipalities can work together, and they generally support that concept for a number of reasons (Transcript pp. 108-109, 120-121, 134 and 150). Indeed, that concept was raised long before these proceedings by Malahide in its letter of June 23, 2008 (Town Ev., Tab B, Attachments pp. A-2 to A-3), and is supported by the letter from Bayham dated January 29, 2009, the resolutions of Malahide Township Council and from the South-West Oxford Township Council dated February 5, 2009 (Town Ev., Tab D, last three items).

60. Contrary to NRG's submissions, the reasons supporting this approach are entirely consistent with this Board's broader public interest mandate, and with the municipalities'

interests in representing the interests and concerns of their electors and other constituents in this kind of proceeding. They are:

(a) the hope that this would enable the municipalities together to exercise greater collective influence upon NRG, particularly with respect to the quality and reliability of its service to customers;

(b) the efficiencies and economies of scale in having one hearing before the Board, rather than six;

(c) the ability to focus on issues of broader, common concern rather than more particular, local issues;

(d) the ability to canvas those interests over a broader and more representative group of the affected stakeholders;

(e) [others?]; and

(f) in any event, if there were any merit NRG's concern about franchise terms and debt renewal or investment in its operations, it would surely be preferable even from NRG's perspective to have all of these renewals occurring at one time.

61. Further, it is respectfully submitted that the current *mis*alignment of the franchise renewal dates actually operates as an improper fetter on the Board's discretion under ss, 10(2) of the *MFA* to *refuse* renewal in proper circumstances. As noted above, the status quo actually leaves the Board in the position of being unable to exercise a discretion that the legislature *clearly* intended it should have, *even if* the circumstances were such as to fully warrant and require such an Order in the public interest.

62. NRG's position, in effect, asks this Board to perpetuate this unsatisfactory situation.

63. Practically speaking, if this Board *orders* a 3 year extension of the Town's Franchise Agreement, as it requests, to align with those of Malahide, Bayham and Thames Centre in 2012, then it would be open to NRG to *consent* to have those with South-West Oxford and Central Elgin renewed at the same time. The case for a 20 year renewal, as requested by NRG, could then be fully canvassed at that time.

64. The Town submits that this is outcome is in the best possible interests of all parties, including NRG, and in the interests of this Board, and the effectiveness of its process, and all of the public interests it serves.

B. Requiring NRG to Apply to the Board for a Comprehensive Rate Hearing

65. The second aspect of the Town's proposal that is opposed by NRG is that in paragraph 1 of Schedule "A" to its proposed Draft Franchise Agreement, asking that NRG immediately apply to the Board for a comprehensive rate hearing.

66. All parties and the Board appear to agree that a rate hearing is required, shortly. The Town seeks such a hearing primarily in order to address:

(a) whether NRG is currently receiving an excessive rate of return on some $4 million of its capital represented by the Class C retractable shares, on the basis that they should be considered a liability for rate-making purposes, and not "equity";

(b) whether the increased financial risk associated with this disclosure since 2007, which results from its capital structure and not from its underlying gas distribution business, should disentitle NRG to the 50-basis point risk premium it was allowed in the prior rate case;

(c) whether NRG's new customer security deposit policies and practices since 2005 should reduce both the allowance it received for projected bad debt expense, and its rate base requirements, below the levels accepted by this Board in the prior rate case;

(d) whether NRG's affiliate loan and shared cost arrangements are fair and appropriate as between NRG's regulated gas distribution business and its affiliates' non-regulated business, including the treatment of intercompany loans for purposes of NRG's capital structure, the treatment of any interest income to NRG on those loans, and the allocation of senior management staff costs;

(e) whether any reductions in rates resulting from these or other issues that may be raised and entertained in such proceeding should be applied to NRG's 2007, 2008 and 2009 rate years, as well as future years; and

(f) whether the resulting rates are competitive.

67. These are substantive issues. A proceeding to address them should be commenced as soon as possible, certainly before the end of NRG's current fiscal year in September 2009. The Town accepts the Board's suggestion (Transcript, p. 52-53) that filing within 6 months, rather than immediately, would be reasonable. The Town is not aware of any reason, including matters relating to the IGPC Ethanol Plant development, why that time frame cannot be met.

C. Security Deposit Policy Issues

68. The Town's concerns in this regard are not fully met by requiring NRG to comply with the proposed revisions to the GDAR made by this Board in its consultation under EB-2008-0313, although that does go some way. The Town understands those changes will limit deposits to one

month's gas supply, rather than two and a half months as provided in NRG's current policy, calculated based on an annual average monthly gas charge, rather than the average of the highest three months. That will moderate the amounts of these deposits, and the associated hardships to customers.

69. In addition, however, these customers' funds are not held in secure, segregated trust accounts, but rather are used as working capital in NRG's day-to-day business.

70. This is of concern, because the Board's Decision and Order dated November 27, 2008 in the Union Application (Town Ev., Tab F) which specifically found that Union was justified in its concerns that NRG's creditworthiness had become unsatisfactory, and that a significant increase in the financial risk associated with NRG had been disclosed. The Town is concerned that, in the default scenario entertained by this Board in giving relief to Union, after repayment of the Bank and Union, there will be no assets within NRG with which to repay these customer deposits.

71. The Town notes that provincial legislation routinely requires businesses, including small family business such as real estate brokers and travel agencies in which individual amounts in issue are small, to hold customer funds in a separate trust account. As these businesses can routinely and cost-effectively administer trust accounts, there is absolutely no good reason why a substantial regulated monopoly like NRG cannot do the same.

72. Again, the Town itself has no wish to hold these deposits, itself. It is content that NRG do so.

73. The Town commends this to the Board's discretion on these particular facts, recognizing that the Board may at this time choose not to impose a similar requirement on other gas utilities.

D. Notice of Proceedings

74. The Town simply does not understand the reluctance of NRG to give it notice of any proceeding before this Board in which it seeks to participate, as an applicant, respondent, intervenor or otherwise. What is the problem?

75. The purpose is simply so that the Town can more effectively monitor any proceedings before this Board that may affect its rights or those of its electors and constituents. The Town believes that should be encouraged

*E. **Response to NRG's Allegations of Misconduct by the Town***

76. There is absolutely no merit whatsoever to NRG's allegations of bad faith, improper purposes and other misconduct by the Town.

77. Indeed, these allegations are farfetched and overblown, almost to the point of clinical paranoia.

78. More important, these allegations simply continue the extremely adversarial posture and gamesmanship that NRG has unfortunately adopted, not only before this Board but seemingly in its daily dealings with customers and stakeholders, since 2007. That posture is inappropriate. It is designed to intimidate, and to discourage resort to and participation in this Board's processes.

79. Unfortunately, particularly when it comes to public participation, this tactic is all too effective.

80. Ms. Adams has responded in detail to NRG's allegations as to the sequence of events in paragraphs 37-44 of her pre-filed evidence, and has expanded on that account consistently in her oral testimony. There is no mystery, contradiction, or implausibility anywhere in that account.

81. Leaving aside its fanciful elements, NRG's interpretation and critique of that sequence of

events demonstrates, first, a complete lack of understanding about how decision-making occurs within a democratically accountable municipality, let alone of the sensitivities involved in properly reflecting the discussions that have occurred among the six such municipalities.

82. NRG's account is also frankly unfair to Ms. Adams. Her evidence is clear that from September 11, 2008, when she first met with NRG, to December 16, when Council's decisions arising from her second Report were presented to NRG, she and other representatives of the Town were having "off the record", without prejudice, discussions with NRG on a regular basis. The purpose of those meetings was to present, and provide an opportunity to respond to all of the Town's concerns and proposals, including the Town's proposal for a 3 year renewal. They were "trying to reach a deal" (Transcript, p. 168-175). Those discussions were not just with Mr. Bristoll, but with other NRG staff such as Mr. Howley, who were not called to testify (Transcript, para. 172-173, and see NRG Ev. Tab D2, letter dated September 16, 2008). It is also quite clear counsel for both NRG and the Town had been involved in the arrangements for these meetings since at least July (NRG Ev. Tab D1, letter dated July 8, 2008).

83. This is all actually quite normal.

84. There is also no suggestion of any prejudice of any kind to NRG. It had the right to apply at any time to the Board under s. 10 of the *MFA*, and it chose the moment for doing so.

85. The Town is completely satisfied that the process it has followed with respect to this matter was entirely proper, and that the attack on Ms. Adams is misplaced and gratuitous.

Conclusion

86. For the reasons outlined, the conditions which the Town has proposed for renewal of its Franchise Agreement with NRG are all consistent with this Board's broad, public interest

mandate, and they involve no material difficulty for NRG. Public convenience and necessity weighs heavily in the Town's favour. The Town's position is supported by its constituents and electors, and by the customers and rate payers of NRG, and by the other affected municipalities, to the extent that any of those stakeholders have been able to express a view.

F. Costs

87. In the circumstances, the Town will request an order for payment of its costs of this proceeding, to be paid by NRG's shareholder and not passed on to the NRG rate payers.

Date: February 27, 2009

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Counsel for The Corporation of the Town of Aylmer

EB-2008-0413

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.

ARGUMENT OF IGPC ETHANOL INC. AND INTEGRATED GRAIN PROCESSORS COOPERATIVE INC. ("IGPC")

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Overview

1. IGPC is the largest ratepayer within the Natural Resources Gas Ltd. ("NRG") franchise area and has been involved in a number of proceedings in front of the Ontario Energy Board (the "Board") over the last three years while IGPC struggled to get NRG to complete the pipeline for the ethanol facility.

2. The natural gas distribution utility obtains the right to construct and operate its system within the public rights of way through a franchise agreement entered into with the local municipality. The utility and the municipality thereby become linked in the ongoing development of the municipality. However, over the past few years, NRG has failed to carry its weight and meet its obligations in dealing with the Town, its residents, IGPC and Union Gas Ltd. ("Union Gas").

3. IGPC is supportive of the Town of Aylmer's (the "Town") position for a three year renewal of the franchise agreement and the imposition of certain conditions upon NRG in addition to the standard terms and conditions found in the Board's Model Franchise Agreement.

4. The Board should require NRG to bring forth a full cost of service rate hearing within 6 months and should take steps to ensure that customer security deposits are adequately protected. The Board may use either the franchise agreement or the Board's power under the *Ontario Energy Board Act, 1998*. Further, the Board should require NRG to comply with the requirements, as proposed, in the amendments to the Gas Distribution Access Rule ("GDAR") to help ensure that customers are adequately protected.

5. NRG has demonstrated a pattern of conduct that is not acceptable in a publicly regulated utility. In fact the conduct has been so extreme that this Board ordered NRG to pay the costs of the Town and IGPC for participating in the Union Gas Application to discontinue service, EB-2008-0273.

6. During the last two years, NRG has admitted that it has: (a) failed to comply with its obligations under the GDAR, (b) been the subject of an administrative penalty for contravening an order of the Board; (c) been the subject of an application to discontinue service; and (d) the subject of an unprecedented number of complaints to the Board

such that the Board commenced a review of its security deposit policies. NRG has failed to complete the cost reconciliation required by the Pipeline Cost Recovery Agreement ("PCRA"), which was to be completed within 45 Business Days of commencing gas service to IGPC. Finally, there are still unanswered questions about NRG's financial well-being.

7. Prior to discussing the appropriate test to be applied by the Board in its consideration of this matter, IGPC will provide a brief summary of the stormy history of NRG over the past 3 years. It is against this backdrop that the Board must apply the "public convenience and necessity" test.

8. If ever there was a situation so unique that it warranted the Board departing from its traditional practice, this is such a situation. A three year renewal is appropriate – if not generous. However, to the extent that this Board determines that the conditions requested by the Town are appropriate for and should govern NRG's conduct, IGPC submits that the Board may proceed by way of condition in the franchise agreement as suggested by the Town or by way of an enforceable order of the Board.

2006 Rate Case – EB-2005-0544

9. IGPC first participated in an OEB proceeding involving NRG during the 2006 Rates proceeding, EB-2005-0544. During that proceeding, the Board heard from the Mayor of Aylmer as well as citizens unhappy about the current disparity between NRG and Union Gas in terms of rates. A citizen also raised an issue regarding the transfer of the account to the marketer which had taken an unnecessarily long time. NRG committed to improving its relationship with the customers.

10. This was the first hearing during which Mr. Bristoll, the new President, testified on behalf of NRG.

11. At the time NRG only applied for rates for a one year term. The Board had requested NRG to bring forward a multi-year application. NRG had indicated that uncertainty in the tobacco industry made it difficult to bring forward a multi-year rate case. NRG's rate

base was set at $9,693,286.[1] Three years later, the Board is now asking if NRG can make an application within the next six months.

12. During the rate proceeding, NRG filed evidence in respect of its financing with the Bank of Nova Scotia. There was considerable discussion about the propriety of using over $1million of the proceeds from the loan as a payment to the NRG shareholder. NRG indicated that the shareholder had gone without a dividend for several years and that such payment merely was allowing the shareholder to catch up.

13. The capital spending plan put into evidence by NRG did not include any plant expansion within the Town of Aylmer.

14. NRG did not provide any indication that it was about to embark upon a dramatic change in the collection and retention of security deposits. As such, the rate base for NRG was approved by the Board based upon the lower amount of security deposits. NRG would earn its return on the rate base that would soon become overstated.

15. NRG indicated during the proceeding that it was doing better at servicing its customers and that it was going to continue to improve. As time has gone by, NRG has failed to meet this commitment.

Leave to Construct – EB-2006-0243

16. In 2006 NRG made an application to the Board in respect of an approximately 28.5km gas pipeline to connect the Union Gas distribution system to the proposed IGPC ethanol facility in Aylmer. This leave to construct predicted the pipeline would cost $9.1 million and would add approximately $5 million to NRG's rate base. This project represented a significant opportunity for the Town and for NRG's shareholders to earn significantly more revenue from the utility.

17. NRG was ultimately granted leave to construct the natural gas pipeline and customer station on February 2, 2007. This hearing required several appearances, which is unusual for a leave to construct proceeding.

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[1] EB-2005-0544, Rate Order Arising from the 2007 Test Year Decision with Reasons, dated September 28th, 2006.

18. During that hearing, the Board requested that NRG file the contracts, the Pipeline Cost Recovery Agreement (the "PCRA") and the Gas Delivery Contract ("GDC"), with the Board prior to rendering a decision on the granting of leave. IGPC, the commercial entity competing with other ethanol producers, readily agreed to the filing of such documents in confidence. However, NRG resisted and only agreed to submit the documents when it became clear that the Board would not render a favourable decision without having reviewed the PCRA and the GDC.

19. After the leave to construct, IGPC and NRG continued negotiations on the Bundled T Agreement and consent to assignment agreement for the PCRA and the GDC for financing purposes. The necessity of signing a Bundled T Agreement was made known to IGPC at the 2006 Rate hearing. During discussions with NRG, IGPC was repeatedly told this agreement was not controversial – essentially it dealt with upstream transportation and provided a contractual obligation for IGPC to pay NRG, at cost, if NRG incurred upstream transportation costs on behalf of IGPC. However, it took five months to get NRG's legal counsel to agree to this non-controversial agreement.

20. NRG then inexplicably refused to sign the Bundled T Agreement. As the funding for the entire ethanol project was coming to a head, NRG's deliberate actions jeopardized years of work, millions of dollars and the future economic growth of the community. IGPC had no option but to bring an emergency motion with the Board to compel NRG to sign the agreement. At the end of the emergency motion, NRG refused to sign the document and refused to shed any light on its actions.

21. This failure resulted in the Board levying an administrative penalty against NRG in the amount of $20,000/day. The largest penalty that the Board could impose. NRG subsequently signed after seven days. The penalty was $140,000. These actions nearly caused the failure of the ethanol facility and, but for the Board's strong condemnation of NRG's actions, it is likely the ethanol plant would not be up and operating today.

22. The words of the Board at the conclusion of the hearing deserve repeating:

> NRG has been franchised to provide natural gas service in this municipality, in the Town of Aylmer. This is an exclusive franchise. Natural gas is not available from anyone else. But that exclusivity carries with it certain responsibilities to act in the public interest. It

> is not apparent that NRG understands those responsibilities at all.
>
> The failure to comply with this Board's order signals a complete disregard for the Board and its processes. It also signals a complete disregard for the people of Aylmer, many of whom are out of work as a result of the decline in the tobacco industry. It looked like this ethanol facility would offer considerable relief in that regard.
>
> It is also a complete disregard for the federal government, the province of Ontario, and the investors, the farmers that have invested in this facility, and of course, IGPC, all of whom have invested considerable time over a considerable period to bring about the agreements which would result in the construction of this facility.
>
> This Panel is unable to understand what appears to be the capricious behaviour of this utility.[2]

23. In December 2007, the leave to construct was about to expire as construction of the pipeline had not yet started. However, NRG took no steps to seek an extension of the leave to construct prior to its expiry; rather IGPC initiated the process with the Board to arrange for the extension of the leave to construct.

24. Early in January 2008, IGPC received an invoice for over $400,000 from NRG. This amount included costs from NRG related to Mark Bristoll, legal costs (including costs for the emergency motion) and the administrative penalty. NRG had the audacity to charge its customer for NRG's non-compliance with an order of the Board. IGPC immediately disputed the costs. This dispute remains outstanding.

The Demand for $32million

25. In early 2008, NRG demanded that IGPC provide a letter of credit for an amount in excess of $32million despite no contractual basis for such a demand. IGPC having already paid almost $2 million and having commenced construction on the ethanol facility could not jeopardize the facility.

26. After once again trying, but failing to resolve the issues with NRG, IGPC was forced to again seek the aid of the Board. In response to IGPC's notice of motion, the Board convened a hearing on its own motion in the Town of Aylmer which was attended by many of the local residents.

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[2] Transcript, Emergency Motion date June 29, 2007, page 28 and 29.

27. Over $30million in claims lacked merit and were quickly cast aside. However, in the end, the Board considered four issues worthy of comment. Three issues were decided in favour of IGPC. In the remaining issue, IGPC was required to provide additional financial assurance beyond the contracted amounts to Union Gas.

28. As a result of this hearing, IGPC was required to provide financial assurance to Union Gas for the construction of approximately 1.6 km of pipeline and custody transfer station to connect to the NRG pipeline and for 2 months of gas delivery service.

29. Pursuant to the terms of the GDC, IGPC was required to provide $232,000 to NRG as financial assurance to cover the distribution service provided by NRG. However, approximately one quarter of this amount was to protect Union Gas in respect of the Union Gas delivery service. NRG has never acknowledged that its failure has resulted in IGPC providing financial assurance twice in respect of Union Gas' distribution service.

30. The issue of certain costs claimed by NRG was set aside for the parties to try and resolve without the further intervention of the Board. The issue remains outstanding to this day.

Union Application to Discontinue Service EB-2008-0273

31. During the summer of 2008, Union Gas brought forward an application to discontinue service to NRG for failing to negotiate a supply agreement despite several months of requests from Union Gas to discuss the appropriate financial assurance that NRG should provide to Union Gas in respect of the value that accumulates in the Banked Gas Account that Union Gas maintains for NRG.

32. NRG denied there was any issue even though the recording of the retractable shares were now appropriately considered debt for GAAP auditing purposes rather than equity as claimed by NRG. This was a significant factor in the credit risk assessment of NRG by Union Gas. Union Gas offered a couple of solutions which NRG never really addressed until the hearing wherein it stated that such solutions would have costs that ratepayers would have to bear if imposed. At no time prior to the hearing did NRG offer the postponement agreement that NRG had given the Bank of Nova Scotia.

33. In the end, the Board found Union Gas was justified to be concerned about the financial health of NRG and Union's exposure. The Board stated:

> The Board agrees that Union's concerns are serious. Any allegation that a utility faces financial difficulties must always be addressed carefully by the Board. In this connection, the Board is very concerned that NRG's financial reporting is invariably late. NRG's year end is September 30th. Under the Board's Rules, NRG is required to file its audited Financial Statements within four months of year end, i.e. by January 31st of the following year. In 2007 this filing did not occur until July 16th, almost six months late.

34. Tragically, the solution arrived at by the Board could have easily been offered by NRG had it wanted to engage in the discussion with Union Gas rather than taking an antagonistic approach. NRG's conduct was so reprehensible that the Board took the extraordinary step to order NRG to pay the costs of the Town and IGPC and further explicitly stated that such costs were not to be passed on to ratepayers.

35. Further evidence of NRG's combative attitude was evidenced during this proceeding. During this hearing, NRG again alleged a breach of the PCRA on the basis that IGPC did not provide a letter of credit to NRG. This was irrelevant to the proceeding. This argument was wrong at the time and continues to be wrong. NRG never requested a letter of credit prior to demanding $32 million dollars in financial assurance. IGPC provided cash payments for up-front soft costs in designing the pipeline, the steel for the pipe, Union Gas financial assurance and the customer meter station. The payment of cash reduced any obligation to provide a letter of credit and that is expressly provided in the PCRA.

36. Despite failing to negotiate in any meaningful way, NRG had the audacity to make an argument that it should be entitled to costs. Such a position was completely contrary to the ultimate decision of the Board

The Franchise Renewal Application

37. There are several issues that should be highlighted about NRG which are found in the evidentiary record of the Town and NRG.

    (a) The Audited Financial statements indicate that NRG had $0 cash and yet it is holding security deposits of over $750,000. Mr. Bristoll testified that "We have

strong financials. We have good cash reserves."[3] These two positions are inconsistent.

(b) The Audited Financial statements do not comply with the GAAP requirement to note the financing in October of 2008 despite a clear requirement that such a note be included.

(c) The Audited Financial statements contain the same qualification regarding the classification of the retractable shares that was the subject of the Union Gas financial assurance hearing.

(d) NRG lent money to an affiliated company. The terms of such loan, the use of the proceeds are not detailed.

(e) NRG has failed to put into place a proper complaints system to ensure that customer complaints were resolved in a proper manner and has failed to comply with GDAR as admitted during cross-examination:

> MR. TUNLEY: Isn't the problem, though, as I understand your response again to Board Interrogatory No. 4, is there is a GDAR at the moment as unamended and you are not even complying with that, as I read your answers?
>
> You don't comply with section 2.3.1. You don't comply with section 7.3.1.
>
> MR. BRISTOLL: Hmm-hmm.[4]

(f) NRG has not made any significant capital expenditure within the Town of Aylmer in the last two years. It should be noted the construction of the pipeline to serve the ethanol plant is over 95% outside the Town of Aylmer.

38. There has been significant discussion regarding NRG's security deposit policy and the difficulty that it has caused with customers. There were many letters printed in the Aylmer Express detailing customer troubles in dealing with NRG and security deposits. One particular item. An excerpt from one story, which was not challenged in any way by NRG, indicated the former Malahide Township "tried to establish five-year terms on the franchise agreements to ensure customer concerns were resolved but was forced into

[3] EB-2008-0413, Transcript, page 24, ll. 27-8.
[4] EB-2008-0413, Transcript, p. 66, ll. 1-8.

25-year terms by Ontario Energy Board."[5] It appears that customers and municipalities have been down this road before. A short leash is warranted.

39. NRG indicated that before the Union Gas Application, it was unaware of the petition circulated by customers regarding NRG and its security deposits. This is not credible as the existence of the petition was advertised in the local newspaper[6] and available in several public locations. Further, the petition was presented to Town Council in a public meeting, yet NRG remained oblivious to the customers' concern. NRG has 18 employees working in the Town of Aylmer; how could it not be aware of such a petition?

40. NRG criticized the Town for not acting sooner – for deliberately delaying the negotiations of the franchise renewal. However, NRG never responded to NRG's request for a description of the franchise renewal process and NRG never requested the opportunity to address Town Council.

41. NRG's main contention is the Town failed to negotiate in good faith – that it conspired with Union Gas and the other municipalities surrounding Aylmer to set the stage for Union to swoop in and take over the franchise in three years. However, the stories in the Aylmer Express indicate that area municipalities had concerns and that various municipalities would be discussing what could be done and what to do. This argument demonstrates the distrustful nature of NRG which lies at the heart of many of its troubled relationships with Union, the Town and the customers. Furthermore, NRG's position is untenable because:

    (a) There is no evidence the Town has ever discussed the possibility of Union Gas providing distribution service to the residents of Aylmer.

    (b) The Franchise is not exclusive – that is explicit and NRG has admitted such - so the Town could, if it desired, negotiate a franchise agreement with any third party. There is no act in bad faith on the part of the Town.

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[5] Evidence, Town, Tab G, Alymer Express, June 25, 2008, article "Malahide Council: Wants NRG policies looked at", page 2 of 2.
[6] Evidence, Town, Tab H, Advertisement of Citizen Meeting and Petition Signing from the Aylmer Express dated June 11, 2008.

(c) The Town has a long history of supporting locally owned utilities. Ms. Adams testified of the Town's support for the local electricity distribution company, Erie Thames and the telecommunications company.

(d) The Town has offered to renew the franchise. The Town has indicated that the three year timeframe is to permit NRG the opportunity to restore confidence. The three year timeframe also means that the NRG-Aylmer franchise agreement would expire at the same time as three other NRG franchise agreements (Township of Malahide, Municipality of Thames Centre, Municipality of Bayham).[7] Coincident renewal makes sense for the various municipalities.

42. The issue of the length of the franchise renewal is the primary contentious issue. NRG's argument is necessarily very carefully described. NRG complains that the "evidentiary record" does not disclose that the Town was going to seek a three year renewal. This was "an ambush" with the Town springing this crucial item on NRG at the last second, December 2008. Ms. Adams indicated that this condition was discussed during confidential negotiations between the Town and NRG. Negotiations are conducted in confidence. It can't be expected that Town Council will pass a public resolution about their final negotiating position during active negotiations.

43. NRG seeks to pressure the Board into granting a long-term renewal of the franchise agreement based upon the "dire ramifications" of a three year renewal. Again, each argument advanced by NRG lacks merit:

(a) NRG indicated that its debt would be called if only a three year renewal was granted. However, when asked about this statement, NRG indicated that this was its belief.[8] It had not raised the issue nor had NRG had any discussions with its lender about the consequences of a three year franchise renewal. So, despite closing a financing for more than $5million in October of 2008; well after the Union Gas application to discontinue service, and within 5 months of the end of the of Aylmer franchise agreement there is no evidence that the Bank has shown any concern about the status of the franchise.

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[7] Evidence of H. Adams, pp.1-2.
[8] EB-2008-0413, Transcript, pp 75-6, ll. 24-5, 1-6.

(b) Rates will increase as NRG will be forced to recoup the capital over the remaining life of the franchise. NRG provided no impact of such a rate increase. It provided no indication of the assets in the Town of Aylmer (over 95% of the IGPC pipeline lies outside the Town). It indicated that the assets would be worthless – ignoring any possibility of any salvage value. Most telling though, NRG never indicated that it had even considered the option of selling its assets to a new distributor to recover its investment. NRG has provided no precedent for such a rate-making methodology.

44. Over the past four years NRG has systematically increased the customer security deposits being held from approximately $105,000 to over $750,000. This represents a more than 6% reduction in the approved rate base. While NRG indicates that it is deeply concerned about ratepayers, NRG has not taken any steps to reduce rates as the rate base has decreased as a result of the security deposits. Nor has it taken any steps to reduce the amount of bad debt allowance included in rates. NRG has therefore been over recovering from the very ratepayers that it claims to be protecting.

45. NRG had committed to IGPC to bring forth a new rate. There is no evidence that NRG has taken even the smallest of steps to develop a new rate. It appears that NRG is in no hurry to bring forth a rate application as such an application may highlight that the current Rate 3 is inappropriately high for IGPC.

46. When asked by the Board Panel about bringing forward a rate application, NRG indicated that 6 months was an insufficient amount of time and it resisted any notion that it should file sooner than January 2010. Given that timing, it would be unlikely that new rates would be in place prior to June 2010 or four years since the Board last approved NRG's rates. Again, the delay indicates that NRG does not wish to disclose to the Board its true financial position and cost of service.

47. NRG has had difficulty in retaining employees to manage the NRG operations. The evidence is that since 2005, NRG has had 7 managers. Such an unusually high turnover rate indicates there may be a problem at NRG.

48. During the hearing, NRG admitted that it failed to comply with the requirements of GDAR. Compliance with GDAR is a legal requirement, not an option.

49. This litany of issues warrants close scrutiny and an ability to have NRG appear before the Board in the near future to ensure that NRG is conducting itself as promised.

The Municipal Franchises Act

50. The Municipal Franchises Act (the "MFA") governs the renewal process and test to be applied by the Board when considering the renewal of a franchise agreement. Section 10 of the MFA provides the following:

> 10.(1) Where the term of a right referred to in clause 6(1)(a), (b) or (c) that is related to gas or of a right to operate works for the distribution of gas has expired or will expire within one year, the municipality or the party having the right may apply to the Ontario Energy Board for an order for a renewal of or an extension of the term of the right.
>
> (2) The Ontario Energy Board has and may exercise jurisdiction and power necessary for the purposes of this section and, if public convenience and necessity appear to require it, may make an order renewing or extending the term of the right for such period of time and upon such terms and conditions as may be prescribed by the Board, or if the public convenience and necessity do not appear to require a renewal or extension of the term of the right, may make an order refusing a renewal or extension of the right.

51. Prior to considering the "public convenience and necessity" test, it is worth considering when and how often the Board is able to consider whether a utility has earned the right to have the franchise extended. The Board only becomes seized of the power to consider the issue of renewing a franchise agreement in the twelve month period prior the end of a franchise agreement. Therefore, if the Board were to award a 20 year franchise it would not have the opportunity to re-visit that decision for two decades. Based upon events of the past three years, IGPC submits that it is in everyone's interest to maintain a closer watch on NRG.

52. NRG unsuccessfully attempted to demonstrate a lack of support for the Town as no other municipality attended the hearing and only a few residents were in attendance. The Town provided letters of support from several municipalities and had a customer petition with over 450 signatures. There were several letters to the Aylmer Express complaining of the security deposit policy and NRG's customer service. NRG had no parties providing support for its position.

53. The Board's decision in this matter comes down to determining what does satisfying the "public convenience and necessity" test require? The interest of any single party, is not determinative of the issue.

54. IGPC agrees that the Board's consideration of the issue must be consistent with the statutory objectives of the Board found in the *Ontario Energy Board Act, 1998* and the MFA.

55. The MFA provides the Board with the exclusive authority to decide whether or not to renew or extend the franchise agreement, and if so, the terms and conditions (including term) that are to be imposed. These matters reside "entirely within the Board's discretion".[9]

56. The Board has broad powers to impose terms of renewal or extension of the franchise agreement. The Court of Appeal stated:

> "The section operates where a franchise agreement reaches the end of its term and the parties have been unable to agree on the conditions for extending it. It protects the interests of those who depend on the gas distribution system by allowing either the municipality or the gas utility company to seek a renewal or extension of the bundle of rights that is the franchise. The OEB may make the order on the terms it determines necessary to protect the public interest. In my view a purposive reading of the section gives to the OEB a broad power to impose the terms of renewal or extension of the franchise so that service to the public will not be interrupted...."[10]

57. These objectives include the protection of the utility consumer – the ratepayers of NRG – the residents of the Town – the very people who have requested the Town to come before this Board. The evidence is clear and compelling that these consumers need protection from NRG. Over the past three years, NRG has consistently chosen a path of confrontation and abused its monopolistic position with its customers, including IGPC.

58. The public interest is also served by public confidence that the Board is effectively regulating utilities in the delivery of distribution services. Granting a 20 year franchise may reduce public confidence in the effectiveness of the Board.

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[9] *Re City of Peterborough and Consumers Gas*, (1980), 111 D.L.R. (3d) 234 (Div. Ct.).
[10] *The Corporation of the City of Sudbury* v. *Union Gas Limited*, (2001) Docket: C34115, Ont. C.A.

59. NRG seeks to have the Board ignore the customer interests advanced by the Town on behalf of the more than 450 persons that signed a petition complaining about NRG's policies. Rather, NRG seeks to shift the consideration of the public interest from the residents of the Town to some other segment of society but there is no basis for such a change in focus.

60. The Board should be cautious in examining the facts of previous cases where franchise renewals have been disputed. The Sudbury[11] case was entirely different than the present situation. In that case the City of Sudbury sought to deny the renewal of the franchise of Union Gas and purchase the existing plant from Union pursuant to an alleged right to compel such a transaction. There the municipality sought to end the franchise where, in the present, the Town has been abundantly clear that it was willing to renew but that it wanted to ensure that NRG is truly committed to improvement and that it has the ability to follow through on its statements. Second, the motive of Sudbury was purely commercial; there were no significant consumer complaints as in the present case and there was no assertion that Union Gas had failed to work diligently with the City of Sudbury on the economic development of the municipality and expansion of the distribution system.

61. The *Dawn v. Union Gas*[12] was also very different and provided a clear case of the two interests to be balanced; the local interests of the Township of Dawn which would be impacted by the facilities and the interests of the thousands of consumers in the remainder of the province that would be able to benefit from the use of natural gas transported by the facilities. The Board and the courts were alive to the ability of a local municipality to place its interests ahead of the remainder of the province. This is not the case in the present circumstances.

62. IGPC agrees that in normal circumstances the Board's history has been to extend or renew a franchise agreement for a longer term. These are not normal circumstances.

63. NRG argues that these precedents substantiate a predisposition for the Board to grant a long-term franchise renewal. However, the circumstances in the present situation are "unique"; NRG has admitted it. The uniqueness should remove any predisposition and

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[11] *The Corporation of the City of Sudbury* v. *Union Gas Limited*, (2001) Docket: C34115, Ont. C.A.
[12] *Union Gas Limited* v. *the Township of Dawn* (1977), 76 D.L.R. (3d) 613 (Ont. Div. Ct.).

the Board should consider what terms should be included in the franchise agreement. The shorter term is appropriate for this specific situation.

Summary

64. NRG would have the Board believe that its alleged compliance with the terms of current franchise agreement is sufficient to grant a 20 year renewal without any additional conditions. However, the model franchise agreement is intended to provide the utility with the right to use the public rights of way for its plant in exchange for an obligation on the utility to ensure the property is repaired satisfactorily and the municipality is indemnified from the damages resulting from the utility. It is not intended as a comprehensive contract to ensure the municipality and utility are *ad idem* on pursuing economic growth, customer service standards or rates. Therefore, mere compliance is insufficient to guarantee a 20 year renewal. Other issues, compliance with Board orders and rules, customer satisfaction and financial viability are just some of the issues that must be considered.

65. The record over the past three years is clear. NRG has clashed with Union Gas, IGPC, the Town of Aylmer, its customers and this Board. It has abdicated its responsibility to work in concert with the Town and its customers and has chosen a path of confrontation and antagonism. NRG has failed to meet its legal obligations (compliance with a Board order, GDAR, filing requirements) and now wishes to obtain a 20 year pass from future review. Such failings do not justify a long-term renewal. The residents of Aylmer deserve better – the Board should demand more from this utility.

66. The public convenience and necessity require that the Board have the means to ensure NRG fulfills its obligations. A 20 year renewal removes the level of oversight of the Board that is necessary given the present circumstances.

67. There should be a high level of respect and trust between a municipality and the utility. Events of the past three years have dramatically reduced the level of respect and trust between NRG and its ratepayers and between NRG and the Town. Respect and trust must be earned. The Town is providing NRG with the opportunity to restore that trust and respect over the next 3 years

68. The Board should require NRG to bring forward a rate application within 6 months, either, by way of a condition in the franchise agreement or by way of an enforceable order of the Board. By the time such a proceeding is concluded it will be approximately 4 years since the last rate decision. The time has come for NRG to come before the Board to have "just and reasonable" rates established once again.

All of which is respectfully submitted.

Dated: February 27, 2009.

INTEGRATED GRAIN PROCESSORS CO-OPERATIVE INC.
By it Counsel

Scott Stoll

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February 27, 2009

BOARD STAFF SUBMISSION

NATURAL RESOURCE GAS LIMITED ("NRG")

APPLICATION FOR FRANCHISE AGREEMENT RENEWAL WITH THE TOWN OF AYLMER
(EB-2008-0413)

1.0 APPLICATION AND BACKGROUND

Natural Resource Gas Limited filed an application dated December 23, 2008, with the Ontario Energy Board (the "Board") under section 10(2) of the Municipal Franchises Act, R.S.O. 1990, c. M.55, as amended (the "Act"). NRG is seeking to renew its franchise rights with the Town of Aylmer (the "Town") by way of a new 20-year franchise agreement. NRG has an existing franchise agreement with the Town of Aylmer which expires on February 27, 2009. The NRG application is based on the Model Franchise Agreement established by the Board in 2000, which would grant NRG the right to construct and operate works for the distribution of gas in the Town's municipal boundaries and to supply gas to the Town's residents.

A letter filed with the Board on January 9, 2009, by the Town of Aylmer, states that to the best of the Town's knowledge, it is one of six municipalities that are served by the natural gas distribution system operated by the Applicant, NRG. According to that letter, NRG has one or more Franchise Agreements with each of these municipalities, each of which have different renewal dates. The years in which the existing terms of the franchise agreements end with the other municipalities which are served by NRG are as follows:

a. The Township of Malahide: 2012 and 2014
b. Corporation of the Municipality of Thames Centre: 2012
c. The Municipality of Bayham: 2012 and 2015
d. Corporation of the Township of South-West Oxford: 2013
e. Corporation of the Municipality of Central Elgin: 2016

NRG informed the Board as part of its December 23, 2008 application that it has been unable to reach agreement with Town of Aylmer on the terms and conditions of the franchise renewal.

NRG also requested that the Board grant interim relief under section 10(4) of Act to continue the right to operate works for the distribution of gas in accordance with the

existing franchise agreement until an Order is made under section 10(2) of the Act in respect of this application. In addition NRG is requesting consideration for further and other relief as the Board may deem necessary or appropriate.

A Notice of Application and Notice of Hearing was served on the Clerk of the Corporation of the Town of Aylmer on January 9, 2009 and was also published on January 14, 2009 in the Aylmer Express.

An oral hearing was held in the Town of Aylmer on February 12, 2009. The Town of Alymer and the Integrated Grain Processors Co-operative Inc. participated in the hearing.

At the conclusion of the oral hearing, the Board issued an oral decision granting, on an interim basis, NRG's rights as set out in the existing franchise agreement, to continue for 90 days or until the renewal of that franchise agreement is granted under section 10(2) of the Municipal Franchises Act, whichever comes first.

On February 13, 2009, the Board issued an Interim Order to allow the right of NRG to construct and operate works and to extend and add to the works for the distribution of gas in the Town of Aylmer, to continue on the terms and conditions set out in the existing franchise agreement until May 14, 2009 or until a renewal of the franchise agreement is granted under the Municipal Franchises Act, whichever comes first.

2.0 THE MUNICIPAL FRANCHISES ACT

Subsection 10 (2) of the Municipal Franchises Act states:

> The Ontario Energy Board has and may exercise jurisdiction and power necessary for the purposes of this section and, if public convenience and necessity appear to require it, may make an order renewing or extending the term of the right for such period of time and upon such terms and conditions as may be prescribed by the Board, or if public convenience and necessity do not appear to require a renewal or extension of the term of the right, may make an order refusing a renewal or extension of the right.

3.0 POSITION OF THE TOWN OF AYLMER

The Town of Aylmer is in favour of renewal of a Franchise Agreement with NRG for an initial term of three years[1]. The purpose of the three year term is to:

(a) allow NRG an opportunity during this time frame to regain the confidence of its customers within the Town as their incumbent gas supplier; and

[1] The Town of Aylmer Pre-filed Evidence of Margaret Heather Adams, dated February 10, 2009, Paragraph 13, page 4

(b) permit the next renewal to come up in 2012, which would coincide with the pending renewals of NRG's Franchise Agreements with the Township of Malahide, the Municipality of Thames Centre, and the Municipality of Bayham.

In addition, the Town of Aylmer submitted that in order to addresses various concerns related both to the financial viability of NRG, and to the quality and reliability of its service to customers, it requires the Model Franchise Agreement[2] to include seven additional conditions:.

A summary of the seven conditions are:

1) Following execution of the Agreement, NRG will apply to the OEB for a comprehensive rate hearing.

2) NRG will implement the proposed amendments to the Gas Distribution Access Rule (EB-2008- 0313) regarding customer service measures.

3) NRG will, by May 15, 2009: a) adopt and adhere to a written and publicly available consumer security deposit policy per the OEB proposed amendments to the GDAR (EB-2008-0313); b) adopt and adhere to a written and publicly available complaint process for its customers; and c) adopt and adhere to a written policy to new and relocating retail, commercial and industrial customers on a timely basis and at a competitive rate.

4) NRG will keep all monies from consumer security deposits in a trust fund and it will not use such monies as working capital.

5) NRG will make its annual audited financial statements available, each year for the next three years, to the public no later than 4 months following the close of NRG's fiscal year.

6) NRG will give notice to the Corporation of any proceeding before the OEB that the NRG is a party to, particularly, but not limited to, any application to the OEB made by NRG.

7) By no later than December 15 of each year, NRG will provide the Corporation with annual detailed and up-to-date maps of its system assets within and outside the Town of Aylmer as well as their age and condition.

[2] The Town of Aylmer Pre-filed Evidence of Margaret Heather Adams, dated February 10, 2009, Tab L including a new Appendix A containing seven conditions

3.1 Effect of the 3 year Term on NRG's Financial Position

The Town position[3] is that a 3-year term will not affect NRG's ability to refinance its long term debts in the interim. The Town notes that NRG itself has been arranging financing on a relatively short term (5-year on-demand) basis and not on a 20-year term.

The Town believes that as NRG's debt would be fully secured against assets regulated by the Board, this would remain the strongest assurance of repayment to any existing or new lender to NRG.

3.2 Requiring NRG to Apply to the Board for a Comprehensive Rate Hearing

The second aspect of the Town's proposal in paragraph 1 of Schedule "A" to its revised Draft 2000 Model Franchise Agreement is that NRG immediately apply to the Board for a comprehensive rate hearing.

According to the Town[4] this would address the issue of the $13,461,418 of "retractable" Class C shares currently classified as equity. The Town believes that these shares should be shown as a liability (debt). This is due to the fact that they are redeemable and retractable at the option of the shareholders at any time.

3.3 Unsecured and Rising Customer Security Deposits

The Town submitted[5] that customer security deposits held by NRG have risen dramatically recently, from approximately $105,000 in 2005, to $280,000 in 2006, and again to $603,000 in 2007. The Town stated that NRG's audited 2008 Financial Statement, attached at Tab "E" to NRG's pre-filed evidence dated February 10, 2009, it appears these deposits have risen yet again to $757,065 in 2008. This according to the Town[6] represents, as pointed out by the Town, a 650% increase over 3 years. It cannot, according to the Town, represent "business as usual", or be defended as such.

The Town is concerned that, after repayment of the Bank and Union, there may simply be no assets within NRG with which to repay these customer deposits.

[3] The Town of Aylmer Pre-filed Evidence of Margaret Heather Adams, dated February 10, 2009, Paragraph 15, page 5
[4] The Town of Aylmer Pre-filed Evidence of Margaret Heather Adams, dated February 10, 2009, Paragraphs 27-22, pages 5-6
[5] The Town of Aylmer Pre-filed Evidence of Margaret Heather Adams, dated February 10, 2009, Paragraphs 31-36, pages 10-11
[6] The Town of Aylmer Pre-filed Evidence of Margaret Heather Adams, dated February 10, 2009, Paragraphs 32, page 10

4.0 POSITION OF NRG

NRG acknowledges[7] that the Board has sole jurisdiction when it comes to determining: (a) whether or not to grant a franchise renewal; and (b) if a renewal is granted, the terms and conditions that it may establish in a franchise agreement.
NRG indicated[8] that the main issues are the **term** of the franchise agreement, and the imposition of certain **conditions** requested by Aylmer in the renewed franchise agreement.

NRG further indicated that both the Town of Aylmer and NRG are satisfied with the form of the Board's 2000 Model Franchise Agreement); and that certain of the conditions sought by the Town have been agreed to by NRG.

NRG indicated[9] that, there are only four issues that are outstanding, and require determination by this Board. The four issues are:

(1) Term: 20 years (as requested by NRG) or 3 years (as requested by Aylmer), or another term as determined by the Board.

(2) Rate Application Filing: NRG to file a comprehensive rate application by December 31, 2009 (as requested by NRG) or "immediately upon the execution of [a renewed franchise agreement]" (as requested by Aylmer), or by some other date determined by the Board.

(3) Security Deposit Trust Fund: NRG to keep all monies from consumer security deposits in a trust fund and not use such monies as working capital (as requested by Aylmer) or reject this condition (as requested by NRG).

(4) Provide Notice to Aylmer: NRG to give notice to Aylmer of "any proceeding before the OEB that [NRG] is a party to" (as requested by Aylmer) or reject this condition (as requested by NRG).

NRG submitted[10] that in coming to a determination on the above four issues, the legal test set out in the Act is whether "the public convenience and necessity appear to require it." In other words:

- Does the public convenience and necessity require a shorter than normal term for the renewed franchise agreement?
- Does the public convenience and necessity require that it be a condition of the renewed franchise agreement that NRG file a rate application before the end of 2009?

[7] Argument-In-Chief by Natural Resource Gas Limited (NRG), February 20, 2008, paragraph 2, page 1
[8] Argument-In-Chief by Natural Resource Gas Limited (NRG), February 20, 2008, paragraph 3, page 1
[9] Argument-In-Chief by Natural Resource Gas Limited (NRG), February 20, 2008, paragraph 5, page 2
[10] Argument-In-Chief by Natural Resource Gas Limited (NRG), February 20, 2008, paragraph 6, page 2

- Does the public convenience and necessity require that it be a condition of the renewed franchise agreement that NRG's security deposit monies be held in a separate trust fund, and not be used as working capital?

- Does the public convenience and necessity require that it be a condition of the renewed franchise agreement that NRG provide notice to Aylmer of any OEB proceeding that NRG is a party to?

4.1 Issue 1: Length of Term of Franchise Renewal[11]

NRG submitted[12] that it has requested 20 years (longer than the minimum the Board considered adequate in E.B.O. 125) because the risk to NRG has not decreased over the initial term of the franchise agreement with Aylmer. NRG has vastly expanded the asset base of the utility in the initial franchise period. As a result, the risk to NRG has not decreased, because its undepreciated capital assets have increased.
NRG noted that the evidence in this proceeding demonstrates, almost all of NRG's pipelines are new, and since 1979 NRG has grown its customer base from 2,000 customers to nearly 7,000 customers[13].

NRG indicated that it is unique among gas distributors in Ontario. The fact is that during the term of its franchise agreement with Aylmer, NRG[14] did not start with an extensive system that merely depreciated over the term of the franchise agreement. Rather, NRG has spent the past twenty or so years improving and developing what was essentially a gathering system for local production into a true gas distribution utility.

In addition, NRG pointed out that there are several other important reasons[15] for establishing a franchise renewal period that is within the normal range of renewal terms, including:

a) the Town is not arguing for a three-year term on any public interest grounds;
b) an abnormally short renewal term puts NRG at risk of losing its financing or to amortize its remaining asset base over the shortened period, which would cause rates to increase significantly;
c) nearly all of Aylmer's issues with NRG (i.e., Aylmer's proposed conditions to the renewed franchise agreement) have been agreed to by NRG, and could be enforced under a long-term franchise renewal agreement; and

d) a three-year term would not provide any incentive to NRG to spend any money on capital assets, which the Town seeks to have happen.

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[11] Argument-In-Chief by Natural Resource Gas Limited (NRG), February 20, 2008, paragraphs 29 -101, pages 9-23
[12] Argument-In-Chief by Natural Resource Gas Limited (NRG), February 20, 2008, paragraphs 31, page 9
[13] Argument-In-Chief by Natural Resource Gas Limited (NRG), February 20, 2008, paragraphs 32, page 9 and NRG Pre-filed Evidence Exhibit C/Tab 1/p.1/lines 26 to 28.
[14] Argument-In-Chief by Natural Resource Gas Limited (NRG), February 20, 2008, paragraphs 34-35, page 10
[15] Argument-In-Chief by Natural Resource Gas Limited (NRG), February 20, 2008, paragraphs 38, pages 10-11

4.2 Issue 2: Timing of Rate Application[16]

NRG stated that the second issue to be determined by the Board is: Does the public convenience and necessity require that it be a condition of the renewed franchise agreement that NRG file a rate application before the end of 2009?

NRG has stated[17] that it would be prepared to file an application by December 31, 2009. The rationale for this date is to allow NRG to: (a) understand any rate implications arising from the Board's decision in this case; and (b) allow sufficient time for NRG to properly prepare a comprehensive application.

NRG pointed out[18] that the preparation of a cost-of-service rate application (and pre-filed evidence) by a smaller utility such as NRG involves a significant financial and personnel commitment on the part of the utility. NRG submitted that it would obviously comply with whatever the Board orders in terms of a rate filing deadline, but asked that the Board be mindful of the significant work and time involved in the preparation of a rate application.

4.3 Issue 3: Trust Account for Security Deposits[19]

The third issue to be determined by the Board, as identified by NRG is: Does the public convenience and necessity require that it be a condition of the renewed franchise agreement that NRG's security deposit monies be held in a separate trust fund, and not be used as working capital?

As mentioned at the hearing, NRG[20] argued that it does not support holding security deposits in a separate trust fund, for three reasons:

a) NRG does not believe that its financial well-being warrants holding security deposit monies in a segregated account;

b) at present, the security deposits held by NRG (and by the other two gas utilities) reduce the utility's rate base, but placing these funds in a trust account would increase NRG's rate base; and,

c) there are other costs associated with managing and auditing a trust account that currently do not have to be incurred by NRG.

NRG notes that, the concern with items b) and c) is that they result in higher rates for NRG's customers, since the security deposits held by NRG reduce NRG's rate base

[16] Argument-In-Chief by Natural Resource Gas Limited (NRG), February 20, 2008, paragraphs 102-105, pages 23-24
[17] Argument-In-Chief by Natural Resource Gas Limited (NRG), February 20, 2008, paragraph103, page 24
[18] Argument-In-Chief by Natural Resource Gas Limited (NRG), February 20, 2008, paragraphs 104, page 24
[19] Argument-In-Chief by Natural Resource Gas Limited (NRG), February 20, 2008, paragraphs 106-114, pages 24-25
[20] Argument-In-Chief by Natural Resource Gas Limited (NRG), February 20, 2008, paragraphs 107, page 24

through working capital. In addition NRG submitted that there will be operating expenses associated with the maintenance of a trust account (e.g., auditing costs) that currently do not form part of NRG's budget.

4.4 Issue 4: Mandatory Notification of Aylmer[21]

NRG stated that the fourth and final issue to be determined by the Board is: Does the public convenience and necessity require that it be a condition of the renewed franchise agreement that NRG provide notice to Aylmer of any OEB proceeding that NRG is a party to?

NRG argued that it believes this condition is unnecessary[22], and should not be inserted as a special condition to a renewed franchise agreement.

NRG submitted that part of its concern[23] is that it is the type of condition that could easily be overlooked or "fall between the cracks", ultimately have little consequence to Aylmer, but nevertheless be a breach of the franchise agreement. For example, it would not be in anyone's interest for NRG to be in breach of its franchise agreement merely because NRG inadvertently failed to notify Aylmer about a generic proceeding that NRG was only tangentially involved in.

For these reasons, NRG submits that the inclusion of this condition in a renewed franchise agreement is not in the public interest.

5.0 POSITION OF BOARD STAFF

Board staff recognizes that the Town of Aylmer continues to have concerns in regard to the financial viability of NRG, and to NRG's lack of transparent procedures in dealing with its customers e.g., lack of a written and publicly available complaint process for its customers. The Town is seeking that the Board address these concerns by imposing conditions on NRG as part of the franchise renewal process.

A fundamental question in Board staff's view is whether the municipal franchise approval is the appropriate regulatory instrument to address these concerns. The 2000 Model Franchise Agreement was developed following significant discussion and negotiation between municipalities and the gas utilities. It has been applied uniformly across the Province for each franchise renewal since the year 2000. Any departure from the Model, in Board Staff view, requires careful consideration by the Board.

Board staff submits that the conditions sought by the Town of Aylmer should not simply be added as additional terms and conditions which serve to amend the Model Agreement. Should the Board choose to address the concerns raised by the Town it is

[21] Argument-In-Chief by Natural Resource Gas Limited (NRG), February 20, 2008, paragraphs 115-123, pages 26-27
[22] Argument-In-Chief by Natural Resource Gas Limited (NRG), February 20, 2008, paragraphs 116-119, page 26
[23] Argument-In-Chief by Natural Resource Gas Limited (NRG), February 20, 2008, paragraphs 122, page 27

Board staff's position that this should be done outside the gambit of the Board approved Model Agreement or alternatively, if the Board sees fit to address these concerns as part of this proceeding that any proposed conditions be attached to the Board's Decision and Order, which would serve to keep them separate and apart from the Model Franchise Agreement.

5.1 Use of 2000 Model Franchise Agreement and the Twenty Year Term

The Board initiated a generic proceeding on November 1, 1999 with the intent of developing a new Model Franchise Agreement for use across the Province. Participants[24] in that proceeding included the gas companies, associations representing municipalities and industrial users as well as individual cities, municipalities and towns. The Board saw merit in applying a consistent approach to franchise renewals given the hundreds of municipalities which have agreements with gas utilities. The proceeding culminated in a Report to the Board, dated December 29, 2000 (the "Report") and an approved 2000 Model Franchise Agreement.

One of the issues considered by the Board in developing the 2000 Model Agreement was the term of the Agreement. A summary of the aspects related to the length of the term of the Agreement is summarized in Appendix A to this submission. Board staff submit that a fundamental consideration is the length of time required by a utility to recover the cost of its investments of expanding and replacing its assets within a franchise territory. Board staff is of the view that a 20-year term is a reasonable period to recover the costs of capital investment in the distribution system. Shorter periods could be a disincentive for a gas distributor to make such capital investments. This is true especially where the cost recovery period for a typical expansion project involving a mix of commercial and residential customers can be over many years and the 20 year terms afford a reasonable assurance for that cost recovery.

Board staff is of the view that the 2000 Model Franchise Agreement should be used without changes for renewal of NRG's Franchise Agreement with the Town of Aylmer. This view is consistent with the historical development of Franchise Agreement leading to the 2000 Model Franchise Agreement in use today. The 2000 Model Franchise Agreement sets out the obligations of the Franchisee in regard to all aspects covering technical, construction, safety, and operations of the system. It does not deal with the important aspects of policies and procedures between the Franchisee and its customers, as these aspects are covered by other regulatory tools and procedures.

5.2 Town of Aylmer's Request for Notification

Board staff recognizes the Town of Aylmer's desire to participate in any proceeding involving the supply of natural gas to its constituents.

[24] Association of Municipalities of Ontario ("AMO"), The Gas Companies, The City of Toronto, The Regional Municipality of Ottawa-Carleton, The Industrial Gas Users Association ("IGUA"), The Township of Hay, The Township of Sarawak, The Ontario Good Roads Association, The Town of Oakville

Board staff points out that Rule 21 of the Board's Rules of Practice and Procedure covers all aspects of notification. Unless the Board initiates a proceeding under its own motion, notification of a proceeding is carried out by the Applicant, under direction from the Board via a letter of direction. Such a letter of direction requires either publication or service to specific parties, or both, which depends on the type of proceeding e.g., rate applications by natural gas distributors versus licensing applications by generators. The letter of direction also requires that notification, whether by publication, service or both, be followed by corresponding affidavits to proof publication, service, or both as the case may be. Although the procedural aspects of issuing notice are typically handled by the applicant, it is the Board that determines who is entitled to notice based on the particular circumstances of the application. In any case where the Board determines that the Town's interests may be affected, it will require that the Town receive notice.

Board staff further notes that staff of the Town of Aylmer can access the Board's website, http://www.oeb.gov.on.ca, where in the first page under "What's New", there is a daily update of summary listings of important new applications, such as rate applications, and milestones events for them until completion.

For these reasons Board staff is of the view the condition requested by the Town of Aylmer is not necessary.

5.3 The Rate Hearing to Address Customer Related Concerns

NRG has agreed[25] to comply with whatever the Board orders in terms of a rate filing deadline. It is Board staff view that rate application is the appropriate procedure under which some of the customer related concerns raised by the Town can be adequately addressed. Staff points out that as NRG's rate year commences October 1, any application filed by NRG should take into consideration the necessary time for the application's review without having retrospective adjustments. Should the Board decide to address the Towns proposed conditions as part of this franchise renewal proceeding, Board staff submit that this should done outside the gambit of the terms and conditions of the 2000 Model Franchise Agreement.

[25] NRG's Argument in Chief filed with the Board on February 20, 2009, paragraph 105, page 24

APPENDIX A

SUMMARY OF REPORT TO THE BOARD DATED DECEMBER 29, 2000 [THE 2000 MODEL FRANCHISE AGREEMENT]

A generic proceeding was initiated on November 1, 1999 to deal with various issues related to the terms included in a Franchise Agreement, in response to a letter sent on December 1998 by the Association of Municipalities of Ontario ("AMO") to the Chair of the Board, requesting that the Board consider amendments to the 1987 Municipal Franchise Act. The proceeding included an oral presentations, and culminated with a Report to the Board, dated December 29, 2000 (the "Report") and a 2000 Model Franchise Agreement ("2000 MFA") attached as Appendix A to that same Report.

Duration of the Agreement

During the proceeding[26] the issue of duration of the agreement was debated. As discussed above, AMO was originally prepared to accept the ten to fifteen-year renewal term provided the Board accepted its proposal for allowing the franchise agreement to be amended if there is a legislative change. If this is not the case, AMO requested a maximum ten-year term for renewal of franchise agreements.

Position of Parties regarding a Model Agreement

The Gas Companies felt that franchise agreements and renewals should not be shorter than they were (20 and 15 years respectively). The Gas Companies pointed out that they evaluate the economic feasibility for system expansion to recover the costs of an investment in the distribution system to provide service to residential customers over a period of 40 years or more. For a typical expansion project involving a mix of commercial and residential customers, the costs of the project will generally be greater than the revenue for at least 15 years. Therefore, the Gas Companies contended that they do not typically realize a return on the original investment until well beyond the 15-year mark.

AMO and the Gas Companies negotiated and came to an agreement referred to in section 3.2.7 of the Report stating in part that:

> *"A 20-year term would provide stability for both parties with respect to the duration of the franchise agreement. The ability to modify the franchise agreement in years 7 and 14 of any renewal term, in order to incorporate all model franchise agreement changes other than term, would provide some opportunity to update the terms and conditions of the franchise agreement on a regular basis."*

[26] Section 3.2, pages 27-30, of the Report to the Board, dated December 29, 2000 (the "Report")

Board Panel Recommendations for the 2000 Model Franchise Agreement (2000 MFA)

In Section 3.2.10 the Report, the Panel recommends that
The Panel therefore recommends that Paragraph 4 - Duration of Agreement and Renewal Procedures- of the 2000 MFA should read as follows:

(a) If the Corporation has not previously received gas distribution services, the rights hereby given and granted shall be for a term of 20 years from the date of final passing of the By-law.

or

(b) If the Corporation has previously received gas distribution services, the rights hereby given and granted shall be for a term of 20 years from the date of final passing of the By-Law; provided that if, during the 20-year term of this Agreement the Model Franchise Agreement is changed, then on the 7th anniversary and on the 14th anniversary of the date of the passing of the By-Law, this Agreement shall be deemed to be amended to incorporate any changes in the Model Franchise Agreement in effect on such anniversary dates. Such deemed amendments shall not apply to alter the 20-year term.

EB-2008-0413

ONTARIO ENERGY BOARD

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

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

---

NATURAL RESOURCE GAS LIMITED
REPLY ARGUMENT
March 3, 2009

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A. RESPONSE TO THE SUBMISSIONS BY THE TOWN OF AYLMER

1. The Town of Aylmer ("Aylmer" or "the Town") makes submissions with respect to the four outstanding issues in this matter, namely: (a) the appropriate term of a new franchise agreement; (b) the timing for filing NRG's next rate application; (c) whether security deposits from NRG's customers should be held in trust; and (d) whether NRG should be required to provide the Town of notice of any proceeding to which NRG is a party.

2. We will reply to each in turn, as well as to the Town's submissions regarding its conduct during the latter half of 2008 when NRG was seeking to meet with the Town to discuss franchise renewal matters.

(a) Town's Submissions on Appropriate Term of the New Franchise Agreement

3. The Town is of the view that NRG ought to be put "on probation" (paras. 13 and 14, Aylmer Argument) by the Board by limiting the franchise renewal to three years. In support of its position, the Town makes the following arguments:

   (a) there is no "normal", "standard" or "presumptive" renewal period for a franchise agreement (para. 16, Aylmer Argument);

   (b) a shorter renewal period would not jeopardize NRG's ability to re-finance its long-term debt (para. 18, Aylmer Argument); and,

   (c) "circumstances have arisen in which NRG has been in default in its responsibilities to customers and to the electors of the Town" (para. 9, Aylmer Argument);

   (d) the Board should align Aylmer's franchise agreement with other municipality's franchise agreements with NRG.

"Normal" or "Standard" Renewal Term

4. With respect to the Town's argument that there is no "normal" or "standard" renewal term, the Town states that the Board cannot have such a "standard" or "normal" renewal

term because the Board has complete discretion when it comes to renewal terms. With respect, this argument makes no sense.

5. Just because a tribunal is relatively consistent in how it decides a particular issue does not mean that the tribunal cannot have full discretion (if such discretion is granted by statute). Statutes grant tribunals broad discretion, but tribunals (for obvious reasons) seek to decide issues in a consistent manner.

6. The Board has full discretion to decide the length of a franchise renewal under section 10 of the *Municipal Franchises Act* (Ontario) ("MFAct"), but its past practice and decisions have demonstrated relative consistency when it comes to terms of franchise renewals. In fact, part of the rationale behind the Board's generic proceeding into franchise renewals (E.B.O. 125) was to develop norms and standards for the Board on franchise renewals.

7. In E.B.O. 125, the Board recommended that first-time franchise agreements should be of a duration of not less than 15 years and no longer than 20 years. For renewals, the Board determined that the duration need not be as long as an initial agreement because the risk to the utility is substantially lower, since the plant has been depreciated to a large extent during the initial term of the agreement. In the case of renewals, the Board considered that a term of 10 to 15 years would seem adequate. The precise quote from the Board's decision is as follows:

> The Board is of the opinion that a first time agreement should be of a duration of not less than fifteen years and no longer than twenty years. The minimum duration seems adequate to give security to the utility whereas a maximum term has been established by the Public Utilities Act (sections 24 and 60) which sets the upper limit of a contract to a twenty-year term.
>
> The duration of a renewal agreement may not necessarily need to be the same as the initial agreement; the risk of the utility is substantially lower since the plant has been depreciated to a large extent during the initial term of the agreement. In the case of renewals a ten to fifteen-year term would, therefore, seem to be adequate.
> Ontario Energy Board, Decision in *Review of Franchise Agreements*, E.B.O. 125 (1986), paras. 7.36 and 7.37.

8. So, contrary to what the Town argues, there is in fact a "standard" or "normal" term that the Board has articulated in E.B.O. 125 (a proceeding convened by the Board itself in order to deal with generic franchise issues).

9. There is a benchmark – and a three-year renewal would be a marked departure from the Board's standard when it comes to a franchise renewal term.

10. NRG has requested 20 years (longer than the minimum the Board considered adequate in E.B.O. 125) because the risk to NRG has not decreased over the initial term of the franchise agreement with Aylmer. NRG has vastly expanded the asset base of the utility in the initial franchise period. As a result, the risk to NRG has not decreased, because its undepreciated capital assets have increased.

11. As the evidence in this proceeding demonstrates, almost all of NRG's pipelines are new, and since 1979 NRG has grown its customer base from 2,000 customers to nearly 7,000 customers.

NRG Evidence, Exhibit C, Tab 1, p.1, lines 26 to 28.

12. As noted in NRG's response to Aylmer Interrogatory #2, during the fifteen year period from 1991 to 2005, the gross assets of NRG nearly tripled as a result of capital investment in NRG's franchise areas. NRG's rapid recent growth and massive asset expansion was explained at length in RP-2002-0147 (NRG Rates for Fiscal 2003/04) and at the Public Forum held as part of NRG's last rate case, and this explanation was accepted by the Board (see NRG Response to Aylmer Interrogatory #2).

13. Despite this evidence, the Town takes the position that NRG's "alleged" investment in new distribution infrastructure should not justify a lengthy franchise renewal because [t]here is no evidence that any such investment has been in the Town's franchise area, as opposed to those of other municipalities served by NRG." That is simply absurd. The Town appears to be suggesting that of NRG's approximately $10 million invested in its distribution system in the past 15 years, NRG has deliberately spent this money outside of the most populous of all its franchise areas (i.e., Aylmer). NRG has made

improvements across its distribution areas, and the Board has essentially approved NRG's capital plans at every NRG rate case.

14. As a result of its rapid expansion and increased capital asset base, NRG submits that NRG warrants a renewal term longer than the typical 10 to 15 years.

15. As noted above, facilitating the rational expansion of natural gas distribution systems in Ontario is a statutory objective of the Board.

16. To impose a franchise renewal term on NRG that is shorter than the typical term would not be consistent with the Board's stated rationale for determining the length of a renewal period.

Abnormally Short Renewal and Impact on Re-Financing

17. With respect to the Town's argument that an abnormally short renewal term would not impact NRG's ability to re-finance, the Town simply repeats its reliance on the fact that NRG refinanced towards the end of its current franchise agreement terms.

18. As explained by NRG, there is no analogy between: (a) re-financing towards the end of a typical, lengthy franchise agreement term (as NRG did); and (b) re-financing during an abnormally short "probationary" period.

19. The Town is explicitly asking the Board "to put NRG on probation" (para. 13, Aylmer Argument), yet somehow comes to the conclusion that NRG's lender would not be troubled by such a finding by the Board.

20. On its face, that is an unrealistic position, particularly in light of the fact that the evidentiary record shows that NRG's lender sought to understand the nature of the Board process regarding franchise renewals prior to lending to NRG.

NRG Response to IGPC Interrogatory #1 (Appendix A)

21. NRG should make it clear, as well, that it is not simply a concern about re-financing the bulk of NRG's debt (which will have to be done on or before early 2011), but is also

concerned about NRG's existing debt being called by NRG's lender if it is granted an abnormally short renewal period. As stated in the evidence, NRG's existing financing is in the form of third-party demand loans. Those loans can be called at any time and would have to be repaid in full immediately. No breach of any term of the loan is required.

NRG Response to Board Staff IR #2(ii)
NRG Response to IGPC IR#1(d)

NRG's "Default" in its "Responsibilities" to Customers and Electorate

22. At paragraph 9 of their Argument, the Town states "circumstances have arisen in which NRG has been in default in its responsibilities to customers and to the electors of the Town". The Town does not at that point in its Argument elaborate on the specific "defaults" committed by NRG, but does pick up this point at pages 7 through of its Argument. Here, Aylmer outlines what it believes to be past cases/concerns which evidence (according to Aylmer) the "need" for a probationary franchise term.

23. First, Aylmer refers to the Board's proceeding in EB-2006-0243 (IGPC Pipeline – Compliance Order of June 29, 2007), and asserts at paragraph 24 of its Argument that "[t]his Board found NRG to be in breach of its Franchise Agreement with the Town, and ordered that NRG remedy that breach (at p.66)." That is a serious statement for the Town to make, and it is completely false. At page 66, counsel for IGPC is making his submissions to the Board and asking that NRG be found in breach of its franchise agreement with Aylmer. That is not the same as a Board determination. NRG has never been found by this Board to be in breach of its franchise agreement.

24. Second, Aylmer cites the subsequent Board proceeding in EB-2006-0243 (IGPC Pipeline – Amendment to Leave to Construct Order of March 12, 2008). Aylmer asserts here that "NRG's demands were substantially dismissed by the Board at the oral hearing on February 28, and in its subsequent decision of March 12, 2008". It is clear that the Town still does not comprehend what fully happened at this proceeding. The Board's Decision, after outlining the background facts, states:

> The central issue is, first and foremost, IGPC's failure to deliver credit and the dispute as to the proper amount of that letter of credit.
>
> OEB Decision, p.138 of Transcript, lines 20 to 22

25. The outcome of that proceeding was for the Board to establish a Schedule for completion of the IGPC pipeline project, the key item being that IGPC was required in that Schedule to supply the letter of credit during the week of March 10, 2008 (i.e., the week following the Board Order). This outcome can hardly be described as NRG having its demands substantially dismissed. NRG got substantially what it asked for – an Order of the Board compelling IGPC to pay the Letter of Credit essentially immediately.

26. A detailed chronology of the defaults and delays caused by IGPCs conduct is set out in Schedule A hereto.

27. Yet Aylmer's position is that this outcome supports their position that an abnormally short-term renewal is warranted.

28. Not only does this not support their position, but NRG's subsequent actions in relation to this Order demonstrate NRG's commitment to this franchise. Despite being ordered by the Board to provide the letter of credit in the week of March 10, 2008, IGPC did not provide NRG with a letter of credit until April 2008. Nonetheless, NRG proceeded with the design and construction of the pipeline throughout that period, despite having an absolute contractual right to terminate the pipeline. This was a $3 million exposure that NRG took in order to keep IGPC's project moving forward.

29. The Town's reference to the February 2008 hearing in no way supports a shorter renewal period. If anything, that hearing and subsequent actions of NRG support a standard franchise renewal.

30. Third, the Town cites its concerns with NRG's security deposit policy as support for its "need" for a probationary franchise renewal term to be placed on NRG. This issue was canvassed at the oral hearing, and NRG agreed to abide by the Board's security deposit

policy that is decided upon in the context of the GDAR proceeding (EB-2008-0313). The security deposit "issue" should be a non-issue going forward.

31. Further, NRG believes that the issue has been substantially dealt with. As the record in the proceeding shows:

- NRG's security deposit policy had always been filed and scrutinized in NRG's past rate applications to the Board.
- NRG only began actively implemented its long-standing security deposit in 2005. NRG did so as prudent business practice, to ensure that bad debts in NRG's franchise areas did not accrue to customers in good standing.
- Since then, the absolute dollar amount of monies held as security deposits has increased significantly, but it appears (as per questioning by Board Member Quesnelle) that this amount may now be in decline because sufficient time has passed that security deposits are starting to be returned.
- Any complaints about NRG's security deposit policy to external sources (the Ontario Energy Board or the Aylmer Police) were investigated and NRG was never found to be at fault.
- NRG has not received a written complaint since November 2008.

32. Moreover, this issue could have been dealt with a lot sooner had the Town been willing to work with NRG on the Town's issues of concern. When the Town finally agreed to meet with NRG on September 11, 2008 (after repeated requests from NRG dating back to the beginning of June 2008), NRG provided a copy of its security deposit policy to the Mayor and Ms. Adams and requested the Town to provide comments to NRG on the policy. The Town never did.

Pre-filed Evidence of NRG, EB-2008-0273, para. 42.

33. Finally (on the security deposit policy issue), Aylmer states in its Argument that despite collecting large amounts of security deposits, that NRG's last audited financial statements

indicate that NRG has no cash on hand (para. 31, Aylmer Argument). There are two responses to this: First, the reason why there was no cash on hand at the end of September 2008 is that NRG was essentially self-financing the ethanol pipeline work at that point in time via NRG's cash-on-hand, operating line and accounts payable. NRG was forced to self-finance because IGPC was slow in getting certain consents to NRG to enable the loan facility associated with the pipeline to flow. So, Aylmer's position seems to be that NRG should be punished with a short renewal term because NRG was using its own cash to keep the pipeline project on time. The second response is that since September 2008, the loan facility with respect to the ethanol pipeline has been funded, and as a result, the last quarterly financial statements that NRG filed with the Board indicate that NRG has in excess of $3 million in cash.

NRG is Financially Stable and Reliable

(a) Similarly, the Town's allegations about the financial viability or the quality and reliability of NRG's serve to its customers are unfounded. First, since being purchased by its current owners out of bankruptcy in 1979, NRG has operated continuously for 30 years. During that time, NRG has not ever missed a payment or even been late on a payment owing to its natural gas supplier, Union Gas. This was admitted by Union Gas at the October 2008 hearing, which the Town now relies extensively. For thirty years NRG has never missed or been linked with even a single payment.

(b) Second, the Town admitted that it cannot identify even one instance where NRG was unable to supply natural gas to a customer. Its reliability is not disputed by the Town in evidence. Any argument by the Town to this effect is completely contradicted by the admission of the Town, as well as the 30 year history. The Town has not presented any evidence, not even one example, of an instance in which NRG failed to provide natural gas service to its customers.

(c) Third, Union Gas brought an application seeking additional financial security alleging that NRG's financial position was less stable than it had previously been.

The Board rejected Union Gas' request and refused to order NRG to provide any additional security. The Board did require NRG to provide periodic financial statements, which NRG has done in accordance with the Board's order. Union Gas has never complained since that the financial statements of NRG indicate any deterioration in NRG's financial position. Once again, the Town has presented no evidence that NRG's financial position is any different than it has been in the past 30 years.

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Once again, the Town has presented no evidence that NRG's financial position is any different than it has been in the past 30 years.

37. The fourth issue cited by Aylmer as evidence of NRG "defaulting" in its responsibilities to its customers and the electorate is the recent Union Application to Discontinue Service to NRG (EB-2008-0273), which dealt with the matter of NRG's retractable Class C shares.

38. First of all, there is no "default" to customers or the "electorate" associated with this issue.

39. Further, from NRG's perspective, the issue has been dealt with to the satisfaction of the Board. NRG was required to provide a Postponement Agreement to Union, to cover of any financial risk concerns created by the retractable nature of NRG's Class C shares. NRG offered to provide this Postponement Agreement to Union, but Union declined insisting on a letter of credit as financial assurance.

40. NRG's basis for declining to provide the letter of credit was that it would have cost consequences to NRG's ratepayers, whereas the Postponement Agreement would not. For some reason, the Town's position appears to be that NRG should have simply agreed to provide financial assurance to Union. NRG certainly could have, and passed the costs associated with the financial assurance on to its ratepayers. From a corporate perspective, NRG had nothing to gain by arguing for a Postponement Agreement as opposed to simply providing the financial assurance. NRG took this position solely for the benefit of its customers – to keep rates lower. For this, the Town thinks that NRG ought to be "put on probation".

Proposed GDAR Security Deposit Policy

41. NRG's security deposit must as a matter of fundamental fairness be considered in the context of the security deposit policies utilized by other natural gas utilities, including Union Gas and Enbridge. Union Gas and Enbridge have essentially identical security deposit policies. These policies are in the evidence of NRG and its answers to

interrogatories and were provided by NRG in response to an inquiry about NRG security deposit policy.

42. NRG has at all times said that it would comply with the GDAR security deposit policy that was anticipated to be approved by the OEB. It is well-known that the OEB has been considering a new security deposit policy that would be implemented and approved by the OEB and would be mandatory for all utilities. NRG has at all times said that it will comply with the new GDAR security deposit policy as soon as it is finalized and approved by the OEB.

43. By contrast, Union Gas and Enbridge have opposed the proposed GDAR security deposit policy and have even challenged the jurisdiction of the OEB to impose a new security deposit policy.

44. Mr. Bristoll was clear in his explanation of the purpose of the security deposit. Mr. Bristoll testified as follows:

> MR. BRISTOLL: I do agree with that, yes. The security deposits are not intended to be a cash grab of any sort. They're intended to ensure that none of the ratepayers are harmed by those ratepayers that show cracks in their financial armour, if I could put it that way.
>
> The policy is designed to return security deposits to those who should have them returned to them.
>
> I would like to point out that in 2008 we collected $292,000 in security deposits and refunded $138,000 in security deposits. I would like to point out that in 2009 year to date, we have collected $40,000 in security deposits and have refunded $83,220 in security deposits.
>
> We are only doing it to protect everybody's interest. Prior to that point in time, when you saw the number of 105 and 280, security deposits weren't taken as seriously as they should be, but we ran into a few circumstances with tobacco farmers, in particular, who had quite large bills who did not pay those bills for significant periods of time, and those bills ran up to really large sums of money.
>
> And it dawned upon us that in a community that unfortunately is finding itself in somewhat of an economic downturn, that it was incumbent upon us to ensure that the rest of our ratepayers did not suffer as a result of those ratepayers that could not afford to pay their bills.

45. Moreover, Mr. Bristoll explained the unique exposure faced by NRG as a result of credit risk and customers who default on payments.

> MR. BRISTOLL: Our exposure with security deposits actually lies with the gas commodity more than anything. With the price of natural gas at times being very high, what has happened – or what we experienced was, is that one-third of our bill would be distributed and two-thirds of our bill would be commodity-based.
>
> But we earn no return on natural gas itself. It's a pass-through. We pay a dollar for gas. We pass through a dollar to the customer, effectively.
>
> And if there's a bad debt associated with a bill, the lion's share of that debt has to be recouped, which – so the lion's share of that debt would be non-profit-producing receivable. It would have to be recouped from a very small percentage of our business that runs profits.
>
> So the risk for us is a lot higher than it actually appears to be on the surface, as a result of that relationship between the commodity and the distribution on the bill.

46. There is no basis whatsoever for NRG to be held to a different standard than Union Gas and Enbridge. Moreover, to do so would be to require NRG's ratepayers to bear a greater risk of their rates increasing due to credit losses than the ratepayers of Union Gas and Enbridge are expected to bear. The security deposit policy protects NRG ratepayers who pay their bills by ensuring that those who default do not cause NRG to suffer losses that other customers will ultimately pay.

47. There is no reason why NRG or its ratepayers should be required to expose itself to credit risk and the resulting increased rates that Union Gas and Enbridge are permitted to eliminate.

48. In any event, the Town's conduct with respect to the security deposit demonstrates a clear lack of good faith. First, the Town relies on a petition that it admits it never disclosed to NRG. The one page that was made available to NRG only because it was filed in evidence with the OEB in October 2008 was analyzed by NRG and determined to be riddled with inaccuracies, including:

- there are several instances where there is more than one signatory per account;

- some of the 12 customers have a recent late payment history; and
- some of the 12 customers have had their security deposit policy refunded.

Alignment of Franchise Renewal Periods with Other Municipalities

49. Despite Aylmer's contention that aligning franchise renewal periods is only one of a few issues that warrant a three-year franchise renewal period, NRG submits that this is the true motive to a three-year renewal request by the Town.

(a) Counsel for the Town of Aylmer effectively admitted the true motive and strategy behind Aylmer's demand for renewal term restricted to three years. In response to a question from the Chair about the purpose of the Town in selecting a 3-year renewal term, Mr. Tunley was candid in admitting the true motive behind the Town's strategy.

> MR. TUNLEY: It's not. The three years takes us to 2012, when the township of Malahide, Corporation of Municipality of Thames Centre, and Bayham all come up.
>
> MR. KAISER: So are those the big ones? I mean, if you are trying to coordinate them – I am just trying to understand the proposition there. If the deal is that we want to have them all terminate at the same date, three years isn't going to get us there anyway, right? As this is set out. But it will get some of them there.
>
> MR. TUNLEY: Right.
>
> MR. KAISER: So is your logic that, well, awe at least want the big ones to come up at the same date, or what?
>
> MR. TUNLEY: The problem is that if you go past 2012, then you are going to have to have three applications from three municipalities, because of the wording of section 10 of the Municipal Franchises Act, which requires an application with the year preceding or prior – at the time of expiry.
>
> So we are trying to pick a date that would bring the first group in, and then presumed that the Board would take it forward from there, a step at a time. That's the thinking. But –
>
> MR. KAISER: so the first year was to get you to 2012.
>
> MR. TUNLEY: Yes.

MR. KAISER: The three years –

MR. TUNLEY: Three years is to get us to 2012 –

MR. KAISER: All right.

MR. TUNLEY: when three other municipalities come available.

MR. KAISER: All right.

(b) The Town's attempt to maintain that the three years was selected to allow NRG to "regain the trust" of the Town is simply false, and is now admitted to be false by the Town's own counsel. The only purpose for the three year renewal term is to ensure that the expiry of the next renewal coincides with the expiry of the franchise agreements for each of Malahide, Thames Centre and Bayham.

(c) Mr. Tunley confirmed this again as follows:

> MR. KAISER: And as I understand it, it is to, if I can use the vernacular, put NRG on a short leash, number one, to see if some of these matters can be dealt with to your satisfaction, the satisfaction of your client. And the other is, you've said, to coincide – to line up some of these renewal dates.
>
> And my question simply was, the three years that you have proposed would do that, I guess, at least with respect to two of the additional ones. They may decide to join with you or not join with you, but at least on the face of it, three of the six on a three-year renewal would be on the same timeline, more or less.
>
> MR. TUNLEY: Yes. Can I just comment on a couple of things? One that Mr. Thacker said, which I think is not correct, and I would like to just be clear, the letter from the township of Malahide, February the 5th, clearly – it's in tab D, second from the back – clearly does endorse the position in my letter to the Board –

50. The other "issues" raised by Aylmer as justification for a three-year period are either past issues or resolvable by other means.

51. Moreover, the issue of uniform expiry rates was raised in the Board's generic proceeding on franchise agreements in E.B.O. 125. The Board considered arguments that uniform expiry dates might provide municipalities with a better negotiating position with the utility, and appears to have weighed that against the practicality of utilities having to negotiate many renewals all at once. Ultimately, what has transpired since then (through

the MFA Committee) is not a move to uniform termination dates for franchise agreements but instead a Model Franchise Agreement as the means by which to "level the playing field" in negotiations between municipalities and utilities.

52. That is why the Board does not, in NRG's submission, easily deviate from standard renewal terms or the specific terms and conditions in the Model Franchise Agreement. The Model Franchise Agreement was developed with a great deal of input and consideration of the balance of obligations to be placed on utilities and municipalities in such arrangements.

53. This historical context to franchise agreements and renewals (and the issues that sometimes arise on franchise renewals) ought to given substantial weight. The Board has previously put their mind to these issues in a very direct way, and made determinations. The Town would have us re-litigate all of these issues at every franchise renewal.

54. That this is the case is evident in the Town's role in Union's recent renewal of its franchise agreement in the County of Elgin. Since the close of the oral phase of this proceeding, the Elgin County councillors voted to approve Union's franchise agreement in the County of Elgin for a twenty year term. The only councillors opposed were Aylmer's Mayor Habkirk and Malahide's Mayor John Wilson. According to an article in the Aylmer Express (attached as Appendix A to this Reply Argument), Mayor Habkirk's position was that 20 years was "far too long", especially concerning the current "economic dip".

55. It is clear that Aylmer has its own unique views as to standard terms for franchise agreements, that have no regard to the fact that these issues have been dealt with by the Board in a comprehensive, generic hearing.

56. Aylmer contextualizes its Argument by asserting that its position has never been based upon any "local" or "parochial" interests of the Town. With respect, the position of the Town vis-à-vis NRG and subsequently Union (in the County of Elgin renewal) suggests otherwise. It suggests that Aylmer has a very specific, local view of how franchise arrangements should be dealt with in the province, which runs contrary to how the

Board's determinations in E.B.O. 125 (a proceeding that took a far broader, public interest approach to generic franchise renewal issues).

Conduct of Aylmer During Renewal "Negotiations"

57. For over six months, NRG made many requests that the Town provide its position on the renewal of the NRG franchise. The chronology of those requests are set out in paragraphs 41-68 of the IGPC Written Submissions. On no less than 11 separate occasions, NRG requested that the Town advise whether or not it would oppose a renewal of NRG's franchise and requested an opportunity to address any concerns that the Town might have.

58. The Town over a period of six months refused to provide its position to NRG. It was not until December 16, 2008 that the Town advised NRG that it would oppose the renewal of the franchise agreement for the usual 20 year term and would be insisting on a three year term with additional conditions. The Town has now admitted that it had taken this position since at least October 1 but deliberately refused to disclose its position to NRG.

59. The Town's conduct demonstrates a lack of good faith and transparency in negotiating with NRG that falls far below the standard required of a municipal government.

60. The factual evidence is not in dispute. On cross-examination, Ms. Adams confirmed each of the 11 written requests made by NRG and the truth of their contents. She also confirmed that throughout all of that period of time, the Town never disclosed to NRG its position, despite knowing that NRG was requesting the Town to do so, and knowing why it was important for NRG to know.

61. Mark Bristoll testified that the Town at no time ever told NRG that they would not renew the Franchise Agreement in the standard form. The Town told NRG they would provide comments but they failed to do so until December 16. Mr. Bristoll was clear in his testimony that any qualifications as to the length of the renewal term were never raised by Aylmer until December 16.

MR. TUNLEY: Right.

> And the other thing that they were going to talk to you about was about the length of the term of the contract, right, of the renewal term?
>
> MR. BRISTOLL: That was never brought forward.
>
> MR. TUNLEY: That was never brought forward?
>
> MR. BRISTOLL: No.
>
> MR. TUNLEY: Never brought forward to you, then?
>
> MR. BRISTOLL: It was not.
>
> MR. TUNLEY: Did you bring it up?
>
> MR. BRISTOLL: I had assumed that we would go with a standard renewal term.

62. Mr. Tunley at no time confronted Mr. Bristoll with Heather Adams' allegations that she had about "off the record" discussions prior to December 16 in which she disclosed to NRG that the Town would be seeking a three year renewal term.

63. Having failed to confront Mark Bristoll on cross-examination with this allegation, it would be contrary to the evidentiary rule in *Browne v. Dunn*, as well as unfair to Mr. Bristoll, to ask for a finding that the three year renewal strategy was disclosed to NRG at any time before December 16.

64. Mr. Bristoll was clear and forthright in his evidence. Moreover, the conduct of NRG at the time supports the conclusion that NRG was never advised until December 16 that the Town would insist on the three year renewal term. As soon as the Town revealed its position on December 16, NRG moved immediately to commence this application.

65. By contrast, Heather Adams' evidence was evasive and frequently self-contradictory. Moreover, Ms. Adams' allegation of "off the record" discussions were raised only when the history of refusing to deal with NRG openly and in good faith was proved. It was merely an attempt by Ms. Adams to justify the Town's improper conduct. There is not one email, note or any other documentary evidence to suggest that the Town's three year renewal strategy was ever disclosed to NRG before December 16.

66. NRG submits that the Board should prefer the evidence of Mark Bristoll over the evidence of Heather Adams and find as a fact that the Town at no time disclosed to NRG before December 16 that it would be seeking a three year renewal term.

(b) Timing for Filing of NRG's Nest Rates Application

67. Aylmer takes the position that NRG should file a rate application within six months, although it is not clear as to whether this is six months from the date of Aylmer's Argument or from a final decision of the Board in this proceeding. Either way, this is a change from its earlier position, which asked for a filing "immediately".

68. NRG's preference, as stated at the oral hearing, would be to file an application by December 31, 2009. This would allow NRG to: (a) understand any rate implications arising from the Board's decision in this case; and (b) utilize its existing rates consultant (Mr. Randy Aiken) to properly prepare a comprehensive application.

69. NRG has made inquiries of its rate expert, Randy Aiken. Mr. Aiken has been NRG's rate consultant and witness for NRG for many years. As a result, Mr. Aiken has extensive knowledge of NRG's business, cost structure and customer demographics. NRG believes that Mr. Aiken is the most experienced and effective rate consultant available, and, because of his previous work with NRG, he is in a position to provide expert advice to, and evidence on behalf of, NRG at a lower cost than any other rate consultant.

70. Mr. Aiken has advised NRG that due to previously scheduled commitments, including a number of OEB rate hearings, he is not able to complete the work necessary for NRG to have a rate hearing before December 31, 2009. Accordingly, if NRG is required to proceed with a rate hearing before then, it would not be able to fully utilize Mr. Aiken, and would be required to retain a new rate consultant which would significantly increase NRG's costs of the rate hearing. The effect of that would ultimately be to increase NRG's rate base and the rates charged to NRG's customers.

71. Finally, the gap between the two positions is not significant – six months from now is September, and obviously six months from a Board decision would likely be October or November.

(c) **Holding Security Deposits in a Trust Account**

72. Aylmer continues to request that security deposit monies be held by NRG in a trust account, because the Town considers NRG's financial risk to have increased (in light of the Union Gas Application to discontinue service). Specifically, the Town now states:

> The Town is concerned that, in the default scenario entertained by this Board in giving relief to Union, after repayment of the Bank and Union, there will be no assets within NRG with which to repay these customers.

73. Thus, Aylmer's argument on this point is based on customer protection in the highly unlikely event that NRG has to liquidate its assets in priority to the Bank, followed by Union.

74. Yet what Aylmer is proposing (holding these deposits in a trust fund) will mean that these security deposits will no longer be able to reduce NRG's rate base through working capital. The Board has always treated security deposits as a reduction in utility rate base on the basis that it is a source of operating funds.

75. So if accepted, Aylmer's position will absolutely result in increased rates for its customers. Yet Aylmer is justifying their position on a remote scenario. Aylmer did not address this issue in their Argument.

76. NRG's position is that Aylmer's position converts a remote, potential harm (financial loss to NRG's customers) to actual harm (higher rates for NRG's customers). On this basis, NRG took the position at the oral hearing that it would not voluntarily consent to establishing a trust account to hold security deposit monies.

NRG is Financially Stable and Reliable

77. Similarly, the Town's allegations about the financial viability or the quality and reliability of NRG's serve to its customers are unfounded. First, since being purchased by its current owners out of bankruptcy in 1979, NRG has operated continuously for 30

years. During that time, NRG has not ever missed a payment or even been late on a payment owing to its natural gas supplier, Union Gas. This was admitted by Union Gas at the October 2008 hearing, which the Town now relies extensively. For thirty years NRG has never missed or been linked with even a single payment.

78. Second, the Town admitted that it cannot identify even one instance where NRG was unable to supply natural gas to a customer. Its reliability is not disputed by the Town in evidence. Any argument by the Town to this effect is completely contradicted by the admission of the Town, as well as the 30 year history. The Town has not presented any evidence, not even one example, of an instance in which NRG failed to provide natural gas service to its customers.

79. Third, Union Gas brought an application seeking additional financial security alleging that NRG's financial position was less stable than it had previously been. The Board rejected Union Gas' request and refused to order NRG to provide any additional security. The Board did require NRG to provide periodic financial statements, which NRG has done in accordance with the Board's order. Union Gas has never complained since that the financial statements of NRG indicate any deterioration in NRG's financial position. Once again, the Town has presented no evidence that NRG's financial position is any different than it has been in the past 30 years.

(d) <u>Mandatory Notification of Aylmer</u>

80. Aylmer's submissions are very brief on this point. The Town appears to be saying that this is a relatively easy condition to agree to, so why won't NRG agree?

81. NRG's answer is simple. A franchise agreement is the most important agreement that any utility enters into, and so conditions in franchise agreements are important.

82. This particular condition being requested by the Town is not sufficiently material to be included as a special condition to a renewed franchise agreement, for the following reasons: (a) the Board has existing notice procedures that operate to ensure that stakeholders who would reasonably be expected to have a particular interest in a given proceeding actually get notice; (b) all NRG applications typically get published in the

Aylmer Express, and NRG rate applications are required to be served on the Aylmer Town Clerk; and (c) such a condition is so minor that it could easily be overlooked or "fall between the cracks", ultimately have little consequence to Aylmer, but nevertheless be a breach of the franchise agreement.

83. This last point is significant. It would not be in anyone's interest for NRG to be in breach of its franchise agreement merely because NRG inadvertently failed to notify Aylmer about a generic proceeding that NRG was only tangentially involved in.

B. RESPONSE TO THE SUBMISSIONS BY IGPC

NRG is Financially Stable and Reliable

84. Similarly, the Town's allegations about the financial viability or the quality and reliability of NRG's serve to its customers are unfounded. First, since being purchased by its current owners out of bankruptcy in 1979, NRG has operated continuously for 30 years. During that time, NRG has not ever missed a payment or even been late on a payment owing to its natural gas supplier, Union Gas. This was admitted by Union Gas at the October 2008 hearing, which the Town now relies extensively. For thirty years NRG has never missed or been linked with even a single payment.

85. Second, the Town admitted that it cannot identify even one instance where NRG was unable to supply natural gas to a customer. Its reliability is not disputed by the Town in evidence. Any argument by the Town to this effect is completely contradicted by the admission of the Town, as well as the 30 year history. The Town has not presented any evidence, not even one example, of an instance in which NRG failed to provide natural gas service to its customers.

86. Third, Union Gas brought an application seeking additional financial security alleging that NRG's financial position was less stable than it had previously been. The Board rejected Union Gas' request and refused to order NRG to provide any additional security. The Board did require NRG to provide periodic financial statements, which NRG has done in accordance with the Board's order. Union Gas has never complained since that

the financial statements of NRG indicate any deterioration in NRG's financial position. Once again, the Town has presented no evidence that NRG's financial position is any different than it has been in the past 30 years.

C. COSTS

87. The Town makes no argument as to the basis for its request that NRG's shareholder pay the costs of this proceeding.

88. NRG re-iterates its submission that this hearing was necessary only because of the Town's failure to negotiate with the Town in good faith.

89. As the record shows, since June 2008, NRG had repeatedly requested that the Town provide NRG with its position on franchise renewal. The evidence in this proceeding established beyond any doubt that the Town deliberately refused, over a period of six months, to tell NRG whether or not it would approve a renewal of the franchise. Moreover, the Town concealed from NRG its hidden agenda and the position it would eventually take concerning a demand for a three-year renewal term.

90. Finally, the Town deliberately allowed time to run and did not disclose its position until the latest possible moment, which required NRG to commence this application for a contested hearing.

91. NRG submits that, in these circumstances, any presumption that the applicant should be responsible for the costs of the hearing does not apply. Instead, this Board should determine costs liability by examining the degree of success in the outcome of the hearing and the conduct of the parties prior to and during the hearing.

92. As a result, NRG respectfully submits that the Towns should bear its own costs of this hearing. NRG also submits that the Town should pay the costs of NRG and the Board.

All of which is respectfully submitted this 3rd day of March, 2009,

NATURAL RESOURCE GAS LIMITED

By its Counsel, Ogilvy Renault LLP
Per: Richard J. King

By its Counsel, Lenczner Slaght Royce Smith Griffin LLP
Per: Lawrence E. Thacker

SCHEDULE A

FINANCING THE PIPELINE

1. Pursuant to the Pipeline Cost Recovery Agreement dated as of January 31, 2007 ("PCRA") (Appendix E) among NRG and IGPC, NRG and IGPC agreed to construct the Pipeline on certain terms and conditions. The OEB approved the PCRA and granted NRG leave to construct by Decision and Order dated February 2, 2007.

2. As a regulated utility whose stakeholders include commercial and industrial consumers, customers and municipalities, NRG has an obligation to ensure that any transaction it enters into does not expose it to inappropriate financial liabilities and/or other unacceptable risks. Accordingly, the purpose and intent of the PCRA was to ensure that NRG would at all times be fully secured for all costs related to the construction of the Pipeline. Acknowledging this fundamental principle, the OEB approved the PCRA and other documents necessary to enable NRG and IGPC to work together to construct the Pipeline.

Letter of Credit

3. The PCRA provides for NRG to be fully secured for all costs, obligations and risks by way of letters of credit. There are two letters of credit required:

(a) Customer Letter of Credit (Section 7.1); and

(b) Delivery Letter of Credit (Section 7.3).

4. Article 7.1 of the PCRA provides that IGPC will, prior to NRG ordering the pipe and stations, provide NRG "an irrevocable letter or letters of credit ("Customer Letter of Credit") in an amount equal to the quoted cost of the pipe and the stations minus any payments made by the Customer to the Utility in respect of the pipe and the stations."

5. IGPC failed to comply with its obligations under Article 7.1. IGPC never delivered a Customer Letter of Credit.

6. IGPC's failure to provide the Customer Letter of Credit caused numerous delays with construction. For example, NRG was unable to order components and materials from Lakeside Controls Process Controls Ltd. ("Lakeside Controls") for the stations, and IGPC refused to pay Lakeside Controls directly the amounts it required to deliver components and materials according to the construction schedule.

7. Article 7.3 of the PCRA provides that prior to the award of the construction agreement by NRG, IGPC will provide to NRG an irrevocable Letter of Credit ("Delivery Letter of Credit") in an amount equal to the difference between the Revised Estimated Capital Cost and the Revised Estimated Aid-to-Construct.

8. As of February 28, 2008, despite repeated requests by NRG, IGPC continued to refuse to provide NRG with the Delivery Letter of Credit.

9. The failure to provide the Delivery Letter of Credit put NRG and its ratepayers at risk. It was fundamentally unfair to place the risk of this project on the shoulders of NRG customers.

10. By letter dated February 15, 2008, counsel for NRG pointed out that an earlier January 31, 2008 letter – outlining the proposed terms and conditions of the proposed Delivery Letter of Credit – was intended to "form the basis for good faith negotiations towards mutually acceptable terms and conditions for a letter of credit".

11. Instead of responding to NRG's February 15 proposal, which was provided by NRG at IGPC's specific request, IGPC delivered a 3 volume "Motion Record" to the OEB that contained numerous false and misleading statements. On February 28, 2008, the OEB held a hearing in Aylmer.

The February 28, 2008 OEB Hearing

12. The OEB stated in its Decision rendered on February 28, 2008 (EB-2006-0243) that IGPC had failed to deliver the required Delivery Letter of Credit. The OEB defined the central issue as follows:

> "The central issue is, first and foremost, IGPC's failure to deliver credit and the dispute as to the proper amount of that Letter of Credit" (Transcript of Proceedings of OEB Hearing held February 28, 2008, page 138, line 20)."

13. Despite the OEB's ruling, it was not until April 2008 that IGPC provided the required Delivery Letter of Credit to NRG. IGPC had been in default of its obligations owed to NRG continuously until April 2008. Nonetheless, NRG proceeded with the design and construction of the Pipeline throughout that period, despite having an absolute contractual right to terminate the Pipeline due to IGPC's ongoing default and breach of its contractual obligations owed to NRG.

14. Notwithstanding IGPC's failure to provide security, NRG contracted for and started construction on the Pipeline (in the amount of $3 million) to keep the project moving forward. This was a $3 million exposure that NRG took for IGPC's project.

Union Gas

15. As a result of IGPC's failure to provide the required Delivery Letter of Credit to NRG, NRG was unable to pay amounts demanded by Union as aid-to-construct for a 1.6 kilometre extension that was an integral part of the Pipeline located in the Union franchise area. This was recognized by the OEB. When NRG demonstrated that the complaints of Union Gas were caused solely by IGPC's default, the OEB directed IGPC to pay the required amount to Union directly. That solution was suggested by NRG, because NRG did not wish to have its progress impaired by IGPC's default of its financial obligations.

16. Subsequently, after being ordered to do so by the OEB, IGPC paid Union $736,000 as an Aid-To-Construct and delivered a Letter of Credit to Union in the amount of $73,100. The uniqueness of the situation was caused solely by IGPC's default and breach of its contractual obligation to provide NRG with the Delivery Letter of Credit. IGPC simply refused or failed to comply with its financial obligations.

Union Gas and Lakeside

17. Despite IGPC's failure to provide NRG with the Customer Letter of Credit and the consequent breach of the PCRA, NRG continued to move forward with construction of the Facility. NRG obtained quotes from both Union Gas and Lakeside Process Controls for essential components of the pipeline construction that were required to be purchased in advance to ensure timely delivery. NRG forwarded details about the quotes to IGPC as it acquired that information, and conveyed the requests for payment as well.

18. The PCRA does not specifically contemplate a system whereby NRG makes arrangements with subcontractors and asks IGPC for payment to fulfill the contracts. That is because under the PCRA, NRG was required to have received, by that stage, the Customer Letter of Credit from IGPC, thus enabling NRG to remit the payments directly to the subcontractors without delay. However, because IGPC refused to deliver the Customer Letter of Credit, NRG was required to seek ad hoc financing or security from IGPC for each advance payment or liability that it incurred to keep the construction on the required timeline.

19. These delays and frustrations were exacerbated by IGPC's refusal to cooperate with NRG. NRG initially asked IGPC to pay directly to Union the $700,000 it required. IGPC refused to do so. It was not until after the OEB's February 28 decision that IGPC finally made the required payments to Union.

20. The inefficiency inherent in such a process was evident in the inevitable delays in reviewing invoices, requisitioning payments and remitting those payments through multiple parties. Despite NRG's best efforts to relay information as soon as possible, all parties ended up feeling that they were not accorded sufficient time to deal with the demands placed upon them. However, these delays were all caused by IGPC's refusal to provide the Letters of Credit it was contractually bound to deliver.

IGPC Fails to Pay Security Deposit

21. A history of negotiations between NRG and IGPC about the security deposit IGPC is required to pay to NRG was set out in detail in a letter dated August 15, 2008.

22. By letter dated July 8, NRG issued an invoice to IGPC for the security deposit required pursuant to the Gas Delivery Agreement dated January 30, 2007 ("GDA").

23. By letters dated July 10 and 17, NRG advised IGPC that the security deposit was required to secure amounts payable by IGPC to NRG. The pipeline was completed and fully commissioned by July 10 and NRG had performed all of its obligations relating to the construction of the pipeline.

24. To accommodate IGPC, NRG had previously agreed with IGPC that the in-service date would be July 15. As a result, IGPC was required to pay NRG all delivery charges commencing July 15. For that reason, IGPC was required to pay the security deposit to NRG by July 15 regardless of whether IGPC was ready to receive gas on that day.

25. NRG again requested that IGPC pay the security deposit. IGPC again refused to pay the security deposit.

26. On July 17, NRG again repeated its request that IGPC pay the security deposit required under the GDA. NRG and IGPC had several discussions subsequently about the form and timing of the delivery of the security deposit. IGPC advised NRG that it was financially unable to pay the security deposit due to limitations on its ability to draw down cash due to the terms and conditions of its credit facility.

27. July 28, IGPC told NRG that it would provide a letter of credit that could be cashed immediately so that NRG would be in the same position as if IGPC had paid a cash deposit.

28. Subsequently, IGPC demanded that any security paid by IGPC be segregated in a special account and not be accessed by NRG for any purpose until IGPC defaults. On August 13, before NRG could respond to IGPC, IGPC delivered a letter of credit in the amount of $232,666.84.

29. At no time between July 8 and August 13 did IGPC ever provide NRG with a copy of the proposed letter of credit so that NRG could review its terms and conditions. To the contrary, IGPC had advised that it was prepared to pay a cash deposit, but simply could not do so until the next regularly scheduled draw down against its credit facility at the end of July.

30. If NRG had known IGPC was refusing to pay the security deposit in cash, it would have demanded an opportunity to review the proposed letter of credit.

31. The letter of credit delivered by IGPC on August 13 contains numerous deficiencies. For example, the letter of credit expires in December 2008. Clearly, the amounts required to be secured will be owing for many years beyond 2008. Accordingly, the current form of letter of credit is not acceptable to NRG.

32. August 14, 2008, IGPC, through counsel, responded.

33. By letter dated August 15, 2008, NRG responded to the new allegations raised by IGPC. As mentioned earlier, NRG was ready to commission the IGPC facility throughout July, but was unable to do so due to technical problems that are the fault of IGPC's (failure to purge lines, water contamination of lines, and non-complaint equipment). IGPC is still not ready to be commissioned.

34. On September 17, 2008, NRG provided IGPC with a proposed form of Letter of Credit.

35. On September 24, 2008, IGPC, through counsel provided its comments on NRG's proposed draft Letter of Credit.

36. On September 24, 2008, NRG provided its response to IGPC on the draft Letter of Credit, and provided a revised draft Letter of Credit.

37. IGPC did not provide NRG with the required security deposit until late October 2008. Despite being in a position to terminate service, NRG continued to provide service to IGPC continuously since the agreed in-service date of July 15, except where specifically directed by IGPC not to deliver gas.

Delay/Moving Forward

38. IGPC was in breach of the PCRA from October 2007 to April 2008. Despite this continuing failure, NGR did everything possible to continue with the project, and ensured that the project could proceed. By letter dated February 22, 2008, NRG described the continuing and deliberate breaches of the PCRA by IGPC:

> "IGPC has absolutely failed to comply with its obligations under Article 7.1 and, as a result, IGPC is in breach of the PCRA. Moreover, IGPC's failure to comply with Article 7.1 has caused delays with construction, and may cause additional delays in the future. For example, despite repeated warnings, IGPC has not provided the letter of credit to NRG, so that NRG can order components and materials from Lakeside Process

Controls Ltd. ("Lakeside") for the stations, and has failed to pay Lakeside directly the amounts required by Lakeside to deliver components and materials in time to allow construction to proceed in a timely manner.

As you know, under Section 3.7 of the PCRA, given IGPC's failure to make payments required and failure to provide the letter of credit required under Section 7.1, NRG has the right to elect not to proceed further with any of its obligations under the PCRA. Moreover, if NRG elects to exercise this right, the PCRA expressly provides that NRG "shall not be liable for any liabilities, damages, losses, payments, costs or expense that may be incurred by [IGPC] as a result".

To date, NRG has been proceeding with its obligations under the PCRA and moving forward with construction, despite IGPC's failure to comply with its obligations under the PCRA. NRG is doing so in order to cooperate with IGPC and move the project forward as fast as possible. However, NRG has obligations to all of its stakeholders and ratepayers and cannot continue with this process indefinitely, given IGPC's continuing and deliberate failures to comply with its obligations under the PCRA."

39. The Pipeline was completed by NRG as agreed by July 3, 2008.

IGPC Fails to Complete Construction by the Agreed Date

40. Throughout the design and tendering stages, IGPC repeatedly alleged that NRG was incapable of completing the project on time. As a result, at the February 28, 2008 hearing, IGPC demanded that NRG commit to a fixed date for the completion of the Pipeline. NRG was willing to do so, provided that IGPC commit to a fixed date to complete its ethanol facility, or agree to pay for the delivery of gas commencing on the fixed date. IGPC agreed.

41. Accordingly, NRG and IGPC agreed at the February 28, 2008 hearing that the in-service date would be July 15, 2008. Based on that agreement, IGPC was required to commence making payments to NRG for gas on July 15, 2008 whether or not IGPC had completed its ethanol facility.

42. NRG demanded a commitment to a fixed in-service date, because NRG was very concerned based on IGPC's past defaults, delays and failures that IGPC would not complete its ethanol facility by the agreed date. NRG would then be in the position of having incurred unnecessary costs to ensure completion by a specific date, only to face a loss of revenue due to IGPC's failure to complete the ethanol facility by that same date.

43. NRG completed and commissioned the Pipeline on July 3, 2008, well before the agreed in-service date of July 15, 2008. By contrast, IGPC failed to complete the construction and commissioning of its ethanol facility by July 15, 2008.

44. Pursuant to the agreement, NRG delivered an invoice to IGPC for the minimum quantity of natural gas commencing on July 15, 2008.

45. IGPC's liability to pay for the minimum quantity of natural gas commencing on the in-service date was caused solely by IGPC's inability to complete the construction and commissioning of its own ethanol facility in a timely and competent manner, and by July 15, 2008.

46. NRG performed all of its obligations relating to the construction of the pipeline servicing the IGPC facility. The agreed-upon in-service date was initially July 1, 2008 and NRG had its work completed by July 3, 2008, but IGPC was not ready to accept delivery then. NRG has since July 3, 2008 been ready to deliver to IGPC, but IGPC has consistently been the source of delay for several reasons including:

- on August 20, the commissioning of the facility could not proceed because IGPC had not purged its system;

- on August 25, the commissioning could not proceed because NRG's inspection of the IGPC facility revealed Code infractions for virtually all of IGPC's equipment (including their hot water heater and furnace)(see Appendix D hereto);

- on September 4, IGPC requested inspection of their hot water heater but NRG's inspection on September 5th revealed it still to be non-compliant;

- NRG was asked to visit IGPC's facility on September 15 because of water in the gas line (to determine whether the source was from IGPC or NRG), and it was determined that IGPC had connected a water line to their gas line; and

- due to IGPC's construction delays, Lakeside could not install the permanent custody transfer station until October 25.

47. IGPC seems to expect NRG and ultimately NRG's ratepayers to pay for its own lack of adequate financing, construction mismanagement, and commissioning failures. NRG was simply trying to ensure that the interests of all of its ratepayers are protected by insuring that NRG did not suffer a revenue shortfall due to IGPC's conduct.

NATURAL RESOURCE GAS LIMITED

NATURAL GAS SERVICE

RULES & REGULATIONS

Effective August 1, 1995

Revised October 1, 2009

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1. INITIATION OF SERVICE

1.1 APPLICATIONS

The Company may, at its discretion, accept applications for gas service on existing service laterals or new service laterals. Each applicant must complete an Application for Gas Service in the form attached as Schedule 1A. Any business or company making application must also complete a Credit Application in the form attached as Schedule 1B. The applicant must complete both sides of the blue copy and will receive the yellow copy for their records after approval.

The only exception to the above shall be in the case of contract rate customers. Contract rate customers are required to execute a contract for a specified term of not less than one year.

The Company will charge a $30.00 transfer/connection charge, plus applicable taxes, on all approved applications, which will be charged on the first gas billing.

1.2 SECURITY DEPOSITS (as per EB 2008-0413)

General:
After an application for Gas Service is completed, the Credit Department will run a credit check and determine if a security deposit is required (outlined further below).The Security Deposit must be paid before connection can occur.

Determination of Security Deposit (All Residential & Commercial Customers)
The security deposit is determined based on the average monthly consumption of gas during the last 12 consecutive months, within the past two years, at the specific address in which the gas service is installed or will be installed. Note this is for new customers or for customers who no longer have a good payment history (defined below).

The maximum amount of a security deposit NRG may require a consumer to pay shall be calculated as follows:

> Billing cycle factor 2.5 X average annual consumption over past 12 consecutive months or consumers estimated consumption, or a reasonable estimate made by NRG.

Security deposits will not be required:

- If a consumer is residential or general service, and a satisfactory credit check has been conducted, at the time of application. A beacon score of 680 + and a credit utilization of less than 50% will be required.

- If a consumer can provide a letter from another gas/ electricity distributor in Canada confirming good payment history.

- A good payment history (definition below): 1 year residential/ 5 years general service/ 7 years for other

- Definitions: "general service consumer" means a consumer that is not a residential consumer and that annually consumes no more than 100,000m^3 of gas.

- The time period that makes up a good payment history is the most recent period of time, and must have occurred in the past 24 months

  Unconditional "Letters of Credit" from a customer's banker in an appropriate amount or a personal guarantee from the owners may be accepted in lieu of cash security on commercial and industrial accounts.

Definition of Good Payment History:

- If a consumer has received more than one disconnection notice from NRG, or another gas vendor in the past 12 months

- If a consumer has more than one NSF cheque: returned by reason of insufficient funds.

- If a consumer has more than one NSF cheque from a pre- authorized payment plan

- If a consumer has had at least one visit, from NRG, to the consumer's premises, for purpose of payment of an overdue amount, or to shut off or limit the gas supply to the consumer's premises for non-payment.

Security Deposit Refunds

- Annual reviews are conducted on all accounts to determine if consumer is entitled to a refund, or an adjustment is required.

- Requests for a refund of security deposits can be made after 1 year of service (residential) / 5 years (General accounts) 7 years (Other accounts) must be made in writing to our Credit department.

- Security deposit will not be refunded if the customer does not have a good payment history (as defined above).

- Security deposit will either be given by a cheque or a credit to the customer.

Interest on Security Deposits

Interest accrued on security deposits will be credited to the customers' account on an annual basis. The interest rate shall be the Prime Business Rate published on the Bank of Canada Website less 2 % updated quarterly.

For any quarter that the PBR is 2 percent or less the interest rate will be 0.

Security Deposits and Cancellation of Service

When a customer discontinues service, a Cancellation Service form is filled out. After the final billing period has been processed, and the account is settled in full, the Security Deposit will be refunded to the customer.

If the customer's account is not settled in full prior to requesting the refund, the Security deposit will be applied to unpaid balance and any remaining Security Deposit will be refunded to the customer.

Transfer of Security Deposits

If a customer should move to another location that is serviced by Natural Resource Gas Limited the Security Deposit is reviewed, and adjusted according to the for Security Deposits requirements
A Security Deposit may increase or decrease depending on the consumption of the new location, and past history of the consumer's account.

Third Party Security Deposits

As per The Ontario Energy Board amendments to the gas distribution access rule (GDAR IN EB) 2008-0413 APPENDIX B MAY5/2009

Where all or part of a security deposit has been paid by a third party on behalf of a consumer, NRG shall return the amount of the security deposit paid by the third party, including interest where applicable, to the third party. This obligation shall apply where and to the extent that:

(a) The third party paid all or part (as applicable) of the security deposit **directly**, to NRG;

(b) The third party has requested, at the time the security deposit was paid or within a reasonable time thereafter, that NRG return all or part (as applicable) of the security deposit to them rather than to the consumer; and

(c) There, is not then any amount overdue for payment by the consumer, that, NRG is permitted by this Rule to off set using the security deposit.

1.3 MAIN EXTENSIONS

The Company will make extensions of its mains to some applicants when, in the sole discretion of the Company, the main extension is economically feasible.

When the extension is not economically feasible, the applicant will be required to pay an "Aid to Construction" in an amount determined by the Company to make the project economically feasible.

1.4 SERVICE LATERAL INSTALLATIONS

Service laterals will only be installed provided that:

(i) an application (contract) has been properly completed and approved,
(ii) any deposit required has been collected,
(iii) any main extension can be justified in accordance with the Company's line extension practice, and
(iv) any charges for service lateral installation in accordance with the following have been paid

All Customers - A gas service lateral extending from the property line to the meter location selected by the Company will be installed for a fee of $ 100.00 for the first 20 meters plus an additional charge of $ 10.00 per meter thereafter.

Meter Set Locations are determined as follows:

a) For residential customers, meters may be located on the front or on either side of the dwelling in which it serves. If the meter is located along one of the sides of the dwelling, the distance from the front corner to the meter location cannot exceed 10 feet.

b) All meter set locations must comply with the Technical Standards and Safety Act and Codes and Standards Adopted by Regulation.

c) When the distance from the property line to a dwelling or building requiring the gas service exceeds 100 meters, it may be required that the meter be located near the property line. In these cases, a cost estimate must be done to determine the outlet cost of underground piping from the meter set to the building.

1.5 CUSTOMER PIPING

Applicants for service shall, at their own expense, equip their premises with all piping and attachments from the meter to the appliances or equipment served. It is the customer's responsibility to maintain the piping and equipment beyond the outlet side of the meter. Such piping and attachments shall be installed and maintained in accordance with the rules of the Company and the Technical Standards and Safety Act and Codes and Standards Adopted by Regulation.

Meters will not be connected with customer's piping when that piping and/or appliances or heating equipment attached thereto are known by the Company to be defective or not in accordance with applicable rules and regulations, ordinances or codes. The Company reserves the right to discontinue service at any time it finds the piping, venting, appliances or other gas-fired equipment on customer's premises defective or in an unsafe condition.

The customer is expected to immediately notify the Company of any leakage or escape of gas on his premises.

1.6 INSPECTION OF NEW AND EXISTING INSTALLATIONS

All inspections shall conform to the "Ontario Energy Act" and the "Technical Standards and Safety Act and Codes and Standards Adopted by Regulation" and amendments in force at the time of inspection.

All new installations of supply piping and gas appliances on premises served with gas for the first time require inspection to ensure that they are in accordance with legislative requirements.

A general inspection will be made of gas appliances and installations:

(a) whenever a meter is initially installed,
(b) whenever a meter is changed,
(c) whenever a meter is physically reset on an inactive service or account, or
(d) in accordance with the requirements of the Ontario Energy Act

A modified inspection will be made of vented gas appliances:

(a) whenever a previously inactive account is reactivated,
(b) when a meter is turned on after credit lock offs, seasonal turn offs or routine repairs to mains or services, or
(c) when vented equipment is lit up after component replacement

2. MAINTENANCE OF SERVICE

2.1 MAINTENANCE

The Company and its authorized representatives shall have the right to enter upon the premises of the customer at all reasonable times, upon reasonable notice, to read, inspect, test, repair, replace or remove meter and regulator equipment.

2.2 TESTING METERS

Meters will be tested at the Company's option or at the request of the customer or when required by legislative requirements. When a meter is tested at the customer's request, the Company will collect from the customer any cost involved in the removal, testing, Government inspection and meter replacement where it is determined that the meter was within acceptable tolerances.

2.3 SERVICE DEPARTMENT CHARGES

The Company provides regular service during the normal working hours, and emergency service 24 hours per day.

(i) ***Charge for Service to Customer Owned Appliances***

Repairs will be performed on a time and material basis in accordance with the Company's prevailing parts and labour prices, except when covered by Company or manufacturer's warranties.

(ii) ***Charge for Service to Company Owned Appliances***

The Company agrees to supply such maintenance as in the judgement of the Company is required for the proper use of the appliance at no charge to the customer.

(iii) The Company does not charge for leak complaints, insufficient gas supply, and inspection of appliances in accordance with Government Regulations. Repairs required to remedy gas leaks and insufficient supply of gas from causes downstream of the meter will be charged on a time and material basis.

2.4 CUSTOMER SERVICE WORK

The following are the rates currently in effect by the company. These rates are subject to

amendment from time to time.

Regular Hours

Minimum charge (up to 60 minutes)	$67.00
each additional half hour (or part thereof)	$30.00

After Hours

Minimum charge (up to 60 minutes)	$110.90
each additional half hour (or part thereof)	$58.10

Disconnection- Non Payment or Discontinuance of Service (i.e. seasonal)

Flat Fee	$78.00

Customer Transfer/Connection Charge

Flat Fee	$30.00

Applicable taxes will also be added to the above charges.

3. RENTAL EQUIPMENT

3.1 MONTHLY RENTALS

The Company rents water heaters. Water softeners are also rented on a rent to own basis. The rates for water heaters are as indicated below:

Conventional Models	
40 US Gallon	$ 10.75 monthly
50 US Gallon	$ 12.50 monthly
60 US Gallon	$ 15.00 monthly
Power Vented or Direct	
40 US Gallon	$19.00 monthly
50 US Gallon	$21.00 monthly
60 US Gallon	$22.00 monthly
50/65 US Gallon	$23.00 monthly
50 DV US Gallon	$21.00 monthly
Tankless Water Heater	$34.50 monthly

The rental for water heaters other than those listed above will be calculated by the General Manager.

3.2 INSTALLATION COSTS

The customer bears the initial installation cost of all equipment. Such installation done by NRG is generally done on a quoted basis. NRG may, from time to time, offer installation assistance through its marketing and promotion efforts. The cost of installing replacement units still under warranty is borne by the Company.

3.3 RENTAL AGREEMENT

Prior to installation of a rental water heater, or removal from inventory for rental, a Rental Agreement form must be completed by the customer in the form attached as Schedule 2. The blue copy remains in the office, the yellow copy is returned to the customer after insertion of the installation and contract dates, and serial and Company numbers.

A Rental Agreement must also be completed by an applicant who is moving into a property where a rental water heater exists. The form can be fully completed at the time of application, and the yellow copy may be given to the customer at that time for his records.

4. BILLINGS & COLLECTIONS

4.1 BILLINGS & COLLECTIONS

Bills will be issued and payable monthly and must be paid at or mailed to the office of the Company, an established collection agency of the Company, or at any chartered bank authorized by the Company.

Bills for gas service furnished by the Company are due when rendered. For customers paying their bill after sixteen days from the billing date, a late payment charge will apply (see section 4.2).

Bills will be mailed to the customer at the last known address as shown on the Company records, unless the customer has directed the Company to send the bill to another address.

Gas consumed will be based on meter readings, or estimates with an estimated bill issued for interim months, and will be computed on the applicable rate schedule approved by the Ontario Energy Board. Any necessary adjustments due to estimated bills will be made on the next regular billing.

A claim for an error in billing should be made by the customer as soon as discovered. If in the opinion of the Company the claim is valid, the Company will make a proper adjustment to the bill.

Where billing errors have resulted in overbilling, the customer will be credited with the amount erroneously paid for a period not exceeding six years.

Where billing errors have resulted in under-billing, the customer shall be charged with the amount erroneously not billed for a period not exceeding:

(a) two years, in the case of an individual residential customer who was not responsible for the error, and

(b) six years, in other cases.

The timing for billings and notices etc., will be as follows. The days represent the days after the end of a billing cycle (e.g. if a normal billing cycle ended on the 14th of the month, day one would commence on the 15th).

Day	1	to 3	Reading, billing and mailing of invoices
Day	13	to 15	Bills due
Day	30		Final Disconnection Notices are mailed for past due accounts. See comments in section 5.1 Disconnection & Reconnection – non-payment.

Day 45 Credit department determines if customer is to be disconnected. See section 5 Disconnection & Reconnection of Service.

4.2 DELAYED PAYMENT

Payments made after sixteen days after the billing date will be considered late and those accounts will have their balances increased by 1.5% of the amount unpaid after sixteen days. Payments made at any chartered bank will be considered paid on the date payment is made to the bank. Any amounts unpaid for subsequent months will be increased by a further 1.5% for each billing cycle that the balance remains unpaid. The minimum increase will be $1.00.

4.3 PAYMENT BY MAIL

When payments are made by mail, bills will be considered to have been paid one day prior to the postmark date.

4.4 BUDGET BILLING PLAN

The budget plan for payment of gas bills is designed to equalize the monthly payments for gas service of residential customers using gas for heating purposes and is available to any heating customer who can establish satisfactory credit with the Company.

New residential heating customers and existing heating customers with satisfactory credit and no balance outstanding may be enrolled in the plan at their request. Customers may withdraw from the plan at any time upon notification to the Company.

The Company will estimate the aggregate amount of the customer's bill for gas service for a normal year's operation from June to April. Such estimated amount will then be divided by eleven, rounded up to the next $5.00 or $10.00 amount, and shall be the monthly budget instalment the customer will pay in lieu of the regular monthly billing

Bills for the month of May will be computed for settlement of the account either by the customer paying the excess of actual charges incurred over the sum of budget payments made, or by the Company crediting to the customer any credit balance then existing. This budget to actual difference will be added or subtracted, as the case may be, to the actual gas charges incurred on bills for the month of May.

Any estimate furnished by the Company in connection with such payment plan shall not be construed as a guarantee or assurance that the total actual charges will not exceed the estimates. The Company may at any time submit a revised estimate to the customer and require that the customer pay the revised monthly budget instalment as a condition to the continuation of the budget payment plan for that customer.

Such estimates shall apply only to the premises then occupied by the customer. If the customer

vacates such premises, the budget payment plan with respect to those premises, and for that customer, shall immediately terminate and any amount payable by the customer shall be paid or any amount due to the customer by the Company shall be refunded.

Non-payment of budget will result in the customer receiving a disconnection notice and possibly removed from the budget plan. The account will be reconciled on the following billing cycle, and the customer will be responsible to bring the account up to-date.

4.5 GROUP BILLINGS

Combinations of reading from several meters may be done at the Company's sole discretion.

Group billing will be permitted only in special situations at the discretion of the Company.

5. DISCONNECTION & RECONNECTION OF SERVICE

5.1 DISCONNECTION & RECONNECTION - NON PAYMENT

Disconnection notices are mailed on Day 34 after the end of billing cycle. The customer is given until Day 45 to pay balance due before they are disconnected. In addition, Credit Department will call all customers 2 days before disconnection date if payment has not been received. If customer can still not pay by due date or no effort to work out a repayment plan can be made the customer will be disconnected.

DISCONNECTION OF SERVICE FOR NON PAYMENT

- If it has been determined that a customer will not pay and the account must be locked for non payment.
- A lock form is prepared and authorized by the Credit Department and Approved by the General Manager.
- A copy of the Lockout form is given to service to set the call to lock the account.
- Customers receive a hand delivered notice at time of locking the meter explaining the disconnection of service

If a customer should be disconnected for non-payment and then reconnected, the following charges will be added to the account

- Disconnection charge 78.00
- Reconnection charge 78.00

plus Applicable taxes

Payment of the reconnection charge must be made before reconnection can occur and an increase in security deposit or a security deposit may be required before reconnection of service is made. Amount is determined as outlined in section 1.2.

Non-Payment of Accounts

Definition of Accounts = past work orders, accounts locked for non-payment and customers that have moved and have a balance outstanding.

If the customer is unresponsive, or refuses to pay further collection action may take place, which is outlined below:

- If a customer refuses to pay on the account or does not follow a payment schedule legal action will commence.
- Customers will be notified that a claim has been issued for small Claims court.
- Court Documents will be filed, and Court procedures used to collect money owing
- Any court costs, incurred by Natural Resource Gas Limited, for the collection of money will be added to the customer's debt, as allowed by Small Claims Court.
- Will be forwarded to the Credit Bureau of St. Thomas for collections and the debt will be reported to Equifax on the customers credit file.

5.2 DISCONTINUANCE FOR CAUSE OTHER THAN NON-PAYMENT

Service may be discontinued by the Company at any time to prevent fraudulent use or to protect its property.

The Company further reserves the right upon discovery of any condition of the customer's appliance or piping which is, in the opinion of the Company, immediately hazardous to life and property, to discontinue gas service until such time as the hazardous conditions shall be remedied.

5.3 DISCONTINUANCE ON CUSTOMER'S ORDER

The agreement between the customer and the Company created by the acceptance of the customer's request for gas service, where no contract for a main extension or term of service is involved, shall continue in full force and effect until terminated by the customer (except as provided under Sections 5.1 and 5.2) giving sufficient notice to a Company business office relative to the intent to discontinue service. The customer shall be liable for all gas supplied to the premises and safe custody of the Company's property until service is discontinued in accordance with the customer's instructions. When a customer requests disconnection of service within 90 days of connection, a disconnection charge of $78.00 plus applicable taxes will be applied to the final billing.

5.4 TEMPORARY DISCONTINUANCE OF SERVICE

Customers who temporarily discontinue service during any twelve consecutive months without payment of a monthly fixed charge for the months, in which the gas is temporarily disconnected, shall pay for disconnection and reconnection.

SCHEDULE 3

SERVICE POLICY

Regular Hours Calls

See section 2.4 for rates to be charged.

All service calls to be done on a time and material basis except for the following:

1. New equipment sold by NRG, no charge for the first year except for parts that are not guaranteed for one year.
2. No charge for service of any kind on any call due to failure of Company equipment.
3. After hours calls (see section 2.4 for rates).
4. All charges to be collected at time of call, unless otherwise authorized.

MISCELLANEOUS CHARGES

1. **Returned Cheques**

Account Closed Cannot Trace Funds Not Cleared More Than One Signature Required No Chequing Privileges Not Sufficient Funds Present Again Refer to Drawer Signature Required Signature Irregular Body & Figures Differ	$ 20.00/each + taxes

2. **Lawyer's Letters**

Reply to request for account information	$ 20.00 + taxes

NATURAL RESOURCE GAS LIMITED

FINANCIAL STATEMENTS

SEPTEMBER 30, 2009

NPT+ LLP
CHARTERED ACCOUNTANTS
Adding value. Finding balance.

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AUDITORS' REPORT

To the Directors of Natural Resource Gas Limited

We have audited the balance sheet of Natural Resource Gas Limited as at September 30, 2009 and the statements of income (loss), deficit, and cash flows for the year then ended. These financial statements are the responsibility of the company's management. Our responsibility is to express an opinion on these financial statements based on our audit.

Except as explained in the following paragraph, we conducted our audit in accordance with Canadian generally accepted auditing standards. Those standards require that we plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

The company has issued and outstanding Class C shares with a redemption value of $13,461,418. Canadian generally accepted accounting principles require that the company present and classify shares that are retractable at the option of the shareholder as a liability on the balance sheet. The company has presented these shares as part of Shareholders' equity. If the shares were classified as liabilities, then the total liabilities would increase by $13,461,418 and share capital would decrease by $13,461,418.

In our opinion, except that the Class C shares of the company have been presented as part of Shareholders' equity rather than as a liability, these financial statements present fairly, in all material respects, the financial position of the company as at September 30, 2009 and the results of its operations and its cash flows for the year then ended in accordance with Canadian generally accepted accounting principles.

NPT LLP

London, Canada
December 11, 2009

NPT LLP
Chartered Accountants
Licensed Public Accountants

NATURAL RESOURCE GAS LIMITED

Balance Sheet

As at September 30

	2009	2008
Assets		
Current assets:		
Cash	$ 66,593	$ -
Temporary investments	2,751,130	-
Accounts receivable (note 6)	785,770	1,612,745
Inventory	143,457	89,856
Prepaid expenses	87,660	54,959
Income taxes recoverable	-	60,377
Due from related company (note 6)	-	492,505
	3,834,610	2,310,442
Property, plant, and equipment (note 2)	14,043,851	14,080,608
Other assets:		
Franchises and consents (note 3)	253,775	97,261
Deferred finance costs (note 4)	18,978	23,896
Deferred charges (note 5)	63,986	106,636
	336,739	227,793
	$ 18,215,200	$ 16,618,843

See accompanying notes to the financial statements.

NATURAL RESOURCE GAS LIMITED

Balance Sheet

As at September 30

	2009	2008
Liabilities and Shareholders' Equity		
Current liabilities:		
Bank indebtedness	$ -	$ 217,422
Line of credit (note 7)	-	806,763
Accounts payable and accrued liabilities (note 6)	1,772,182	3,013,533
Income taxes payable	31,532	-
Deferred revenue	-	120,193
Customer deposits	409,851	757,065
Due to related company (note 6)	-	795,264
Term notes payable (note 8)	10,870,177	6,257,192
	13,083,742	11,967,432
Shareholders' equity:		
Share capital (note 11)	13,461,439	13,461,439
Deficit	(8,329,981)	(8,810,028)
	5,131,458	4,651,411
Contingent liability (note 12)		
	$ 18,215,200	$ 16,618,843

See accompanying notes to the financial statements.

NATURAL RESOURCE GAS LIMITED

Statement of Deficit

Year ended September 30

	2009	2008
Balance, beginning of year	$ (8,810,028)	$ (8,707,085)
Net income (loss) for the year	480,047	(102,943)
Balance, end of year	$ (8,329,981)	$ (8,810,028)

See accompanying notes to the financial statements.

NATURAL RESOURCE GAS LIMITED

Statement of Income (Loss)

Year ended September 30

	2009	2008
Gas commodity revenue	$ 7,226,938	$ 6,548,084
Gas commodity cost	7,193,028	6,509,145
Gross margin on commodity	33,910	38,939
Distribution revenue	5,357,493	3,991,759
Distribution costs	970,246	446,710
Gross margin on distribution	4,387,247	3,545,049
Other sales	955,610	1,113,891
Other costs	486,167	716,277
Gross margin on other sales	469,443	397,614
Other revenue	92,577	133,415
Total gross margin	4,983,177	4,115,017
Expenses	4,275,518	3,790,127
Income from operations	707,659	324,890
Decline in value of natural gas well	(177,612)	(439,833)
Income (loss) before provision for income taxes	530,047	(114,943)
Provision for (recovery of) income taxes (note 10)	50,000	(12,000)
Net income (loss) for the year	$ 480,047	$ (102,943)

Included in expenses are the following:		
Amortization of deferred financing costs	$ 10,718	$ 9,550
Amortization of deferred charges	$ 42,650	$ 42,650
Amortization of franchises and consents	$ 65,474	$ 7,259
Amortization of property, plant and equipment	$ 913,222	$ 753,187
Interest on term notes payable	$ 603,854	$ 476,110

See accompanying notes to the financial statements.

NATURAL RESOURCE GAS LIMITED

Statement of Cash Flows
Year ended September 30

	2009	2008
Cash flows from operating activities:		
Net income (loss) for the year	$ 480,047	$ (102,943)
Items not affecting working capital:		
Amortization	1,032,064	812,646
Decline in value of natural gas well	177,612	439,833
Changes in non-cash working capital:		
Accounts receivable	826,977	(506,351)
Inventory	(53,601)	39,008
Prepaid expenses	(32,701)	9,467
Income taxes recoverable (note 16)	60,377	(60,377)
Accounts payable and accrued liabilities	(1,241,351)	1,392,120
Income taxes payable (note 16)	31,532	(90,712)
Deferred revenue	(120,193)	(97,520)
Customer deposits	(347,214)	154,205
	813,549	1,989,376
Cash flows from investing activities:		
Additions to property, plant, and equipment	(1,054,078)	(5,723,722)
Additions to franchises and consents	(221,990)	(39,974)
Additions to deferred charges	(5,800)	-
Advances from (advances to) related company (net)	(302,758)	971,106
	(1,584,626)	(4,792,590)
Cash flows from financing activities:		
Proceeds on issuance of term note payable	5,200,000	-
Advances from (repayments of) line of credit	(806,763)	806,763
Repayments of term notes payable	(587,015)	(102,346)
	3,806,222	704,417
Increase (decrease) in cash and cash equivalents during the year	3,035,145	(2,098,797)
Cash and cash equivalents, beginning of year	(217,422)	1,881,375
Cash and cash equivalents, end of year	$ 2,817,723	$ (217,422)
Represented by:		
Cash	$ 66,593	$ -
Temporary investments	2,751,130	-
Bank indebtedness	-	(217,422)
	$ 2,817,723	$ (217,422)

See accompanying notes to the financial statements.

NATURAL RESOURCE GAS LIMITED

Notes to the Financial Statements

September 30, 2009

Summary of significant accounting policies:

These financial statements have been prepared in accordance with Canadian generally accepted accounting principles, the more significant of which are summarized below.

Regulation:

The utility operations of the company is a rate regulated, natural gas distribution utility and operates within a limited area of Southwestern Ontario under franchise agreements that are approved by the Ontario Energy Board (OEB).

The utility operations are subject to regulations under The Ontario Energy Board Act and The Energy Act (Ontario). Revenue rate schedules are approved periodically by the OEB and are designed to permit a fair and reasonable return to the Company on the utility investment. Realization of the allowed rate of return is subject to actual operating conditions experienced during the year.

The Company follows Canadian generally accepted accounting principles. Such accounting principles may differ for regulated entities from those otherwise expected in non-regulated entities. These differences occur when the regulatory agencies render their decisions on the Company's rate applications and generally involve the timing of revenue and expense recognition to ensure that the Company has achieved a proper matching of revenues and expenses, and as a result the Company records assets and liabilities that would not have been recorded under GAAP for non-regulated entities.

In addition to defining certain accounting requirements, the regulatory agencies have jurisdiction over a number of other matters, which include the rates to be charged for the distribution of gas and approval and recovery of costs for major construction and operations.

Temporary investments:

Temporary investments consist of a bank issued Guaranteed Investment Certificate, and is valued at cost which equals fair market value.

Inventory:

Inventory is valued at the lower of cost and net realizable value, with cost being determined on a first-in, first-out basis. Net realizable value is defined as replacement cost.

Deferred charges:

Certain costs, required or permitted by the OEB, have been deferred for recovery from future revenues. The period of recovery for these deferrals has been or will be determined by decisions of the OEB, and will determine the classification of these charges in the financial statements.

Property, plant, and equipment:

Property, plant and equipment is recorded at cost, including associated labour and overhead costs. Expenditures which substantially increase the useful life of existing pipeline installations and additions to the pipeline are capitalized. Such expenditures include material, labour and overhead. Maintenance and repairs which do not extend the useful life of pipeline installations are charged to income.

Pursuant to the regulations of the OEB on the disposal of property, plant, and equipment, excluding major disposals, the company transfers the original cost of the retired assets, plus any related removal costs and net of any proceeds on disposition, to accumulated amortization. Proceeds from disposition are credited to accumulated amortization. This effectively credits gains, or charges losses on disposition to accumulated amortization. For major disposals, gains or losses are included in current earnings.

For natural gas wells, the successful efforts method is used to account for oil and gas exploration and development costs. Under this method, acquisition costs of oil and gas properties and costs of drilling and equipping development wells are capitalized. Costs of drilling exploratory wells are initially capitalized and, if subsequently determined to be unsuccessful, are charged to exploration and development expense. All other exploration costs, including geographical and geophysical costs and annual lease rentals, are charged to exploration and development expense when incurred. Producing properties and significant unproven properties are assessed annually, or more frequently as economic events dictate, for potential impairment. Any impairment loss is recognized when the carrying value of the asset is not recoverable and exceeds its fair value.

The company has reviewed its long-lived assets and determined there exists no asset retirement obligation as of September 30, 2009.

Amortization:

Pursuant to the periodic review and approval by the OEB of amortization rates, amortization is calculated on the total gross cost of each asset category at the end of the year, rather than on an asset specific basis. All categories are amortized using the straight-line method, except for computer equipment and computer software which are amortized using the declining-balance method, at the following annual rates for the property, plant and equipment categories listed below:

Automotive equipment	17 %
Buildings	2 %
Computer equipment	33 %
Computer software	20 %
Furniture and fixtures	7 %
Machinery and equipment	6 % to 9 %
Meters and regulators	3 % to 4 %
Pipeline installations	3 % to 13 %

Amortization of deferred finance costs (related to the issue of debt) is calculated at the annual rate of 20% using the straight-line method over the life of the related debt issuance.

Amortization of franchises and consents is calculated using the straight-line method over the term of the applicable franchise and consent.

Pursuant to the approval of the OEB, the company changes its amortization rates for the various categories of property, plant and equipment as well as for franchises and consents based upon OEB Rate Case filings. The last change was made at the start of the fiscal 2005 year and any such changes in estimate are applied on a prospective basis.

Capitalized costs of proven oil and gas properties are depleted using the units of production method.

Income taxes:

The company's regulated billing rates as established by the OEB, allow for the recovery of income taxes as calculated on a basis which differs from the amount as determined under the asset and liability method, but approximates the taxes payable method. Accordingly, the company accounts for income taxes using the taxes payable method. This basis does not provide for future income taxes which may be payable in future years as a result of the difference between current financial reporting and reporting for income tax purposes. This method is followed for accounting purposes as there is a reasonable expectation that all such taxes will ultimately be recovered through rates when they become payable. Future income taxes not provided in these financial statements would amount to a provision of $144,000 for the year ended September 30, 2009 (2008 - recovery of $55,000) and an accumulated future liability of $476,000 at September 30, 2009 (2008 - $332,000).

Revenue recognition:

The Company recognizes revenues when gas has been delivered or services have been performed. Gas distribution revenues are recorded on the basis of regular meter readings and estimates of customer usage since the last meter reading to the end of the reporting period.

A significant portion of the Company's operations are subject to regulation and accordingly there are circumstances where the revenues recognized do not match the amounts billed. Revenue is recognized in a manner consistent with the underlying rate setting mechanism as mandated by the OEB. This may give rise to regulatory deferral accounts on the balance sheet pending disposition by a decision of the OEB.

Gas commodity costs:

Gas commodity costs are recorded using prices approved by the OEB in the determination of customers sales rates. Differences between the OEB approved reference prices and those costs actually incurred are deferred in accounts receivable or accounts payable for future disposition subject to the approval of the OEB, usually within a maximum timeframe of the next fiscal year. In a non-regulated environment periodic variances between gas commodity sales rates and costs would be reported through the income statement annually without the use of deferral accounts.

Use of estimates:

The preparation of financial statements in accordance with Canadian generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amount of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amount of revenues and expenses during the reported period. These estimates are reviewed periodically and, as adjustments become necessary, they are reported in earnings in the period in which they become known.

NATURAL RESOURCE GAS LIMITED

Notes to the Financial Statements - continued

September 30, 2009

1. Accounting policy change:

Effective October 1, 2008, the company adopted Canadian Institute of Chartered Accountants (CICA) Handbook Section 3031, "Inventories", which supersedes Section 3030. The new standard introduces significant changes to the measurement and disclosure of inventory and provides guidance on the determination of cost and its subsequent recognition as an expense, including any write-down to net realizable value. In addition, in certain circumstances, write-downs of inventory previously recognized may be reversed.

Effective October 1, 2008, the company was also required to adopt Section 1400, "General standards of financial statement presentation", which is effective for years, beginning on or after January 1, 2008. This Section now includes requirements to assess and disclose an entity's ability to continue as a going concern.

The adoption of this new recommendations had no material impact on the opening retained earnings or on the company's financial statements for the year ended September 30, 2009.

NATURAL RESOURCE GAS LIMITED

Notes to the Financial Statements - continued

September 30, 2009

2. Property, plant, and equipment:

			2009	2008
	Cost	Accumulated Amortization	Net Book Value	Net Book Value
Land	$ 71,700	$ -	$ 71,700	$ 71,700
Buildings	682,331	137,285	545,046	560,194
Furniture and fixtures	69,176	40,211	28,965	19,586
Machinery and equipment	2,836,947	1,257,617	1,579,330	1,477,426
Computer equipment	230,548	179,684	50,864	38,671
Computer software	106,519	90,629	15,890	15,890
Automotive equipment	521,483	337,393	184,090	214,829
Meters and regulators	3,274,774	1,704,137	1,570,637	1,629,445
Pipeline installations	14,667,268	4,669,939	9,997,329	5,688,461
Pipeline under construction	-	-	-	4,364,406
	$ 22,460,746	$ 8,416,895	$ 14,043,851	$ 14,080,608

During the year, the company completed construction of a 28.5 kilometre natural gas pipeline between London and Aylmer to service a new customer. The company entered into a Pipeline Cost Recovery Agreement with the customer, whereby the company and the customer share in the construction cost of the pipeline under defined terms and conditions.

As of September 30, 2009, a final cost reconciliation has not yet been agreed upon between the two parties. While the net cost to the company of the pipeline constructed cannot be determined with complete accuracy until a cost reconciliation is agreed upon, it is management's opinion that the amount capitalized during the year is a reasonable estimate of the final cost given current information available.

NATURAL RESOURCE GAS LIMITED

Notes to the Financial Statements - continued

September 30, 2009

3. Franchises and consents:

		2009		2008
Franchises and consents	$	413,057	$	191,068
Less: accumulated amortization		159,282		93,807
	$	253,775	$	97,261

4. Deferred finance costs:

		2009		2008
Deferred finance costs	$	53,593	$	47,793
Less: accumulated amortization		34,615		23,897
	$	18,978	$	23,896

5. Deferred charges:

		2009		2008
Total deferred charges - other assets	$	213,253	$	213,253
Less: accumulated amortization		149,267		106,617
	$	63,986	$	106,636

The company has been given approval by the OEB to recover the above costs already incurred from rate payers over future periods. The remaining balance will be recovered over future years as noted below:

2010	$	42,651
2011		21,335
	$	63,986

6. Related party transactions:

Due from related company consists of the following:

	2009	2008
Demand promissory note receivable, bearing interest at 4.59% payable monthly	$ -	$ 492,505

Due to related company consists of the following:

	2009	2008
Non interest bearing with no set repayment terms	$ -	$ 795,264

Included in accounts receivable are amounts receivable from related companies of $544,657 as at September 30, 2009 (2008 - $287,594).

Included in accounts payable and accrued liabilities are amounts payable to related companies of $99,095 as at September 30, 2009 (2008 - $864,725).

During the year, rent of $nil (2008 - $9,600) and management fees of $457,020 (2008 - $457,000) were paid to a related company.

During the year, the company purchased gas in the amount of $1,508,369 (2008 - $2,011,482) from a related company.

6. Related party transactions (continued):

During the year, the company earned interest of $nil (2008 - $27,505) on the demand promissory note receivable to a related company.

During the year, maintenance charges of $12,000 (2008 - $58,200) were charged to a related company.

Related companies are companies controlled, directly or indirectly, by trusts, where the beneficiaries of the trusts are common to both trusts, but the trustee or group of trustees which exercise control over any of the related parties are different than the group of trustees of the trust which controls Natural Resource Gas Limited.

These transactions are in the normal course of operations and are measured at the exchange amount, which is the amount of consideration established and agreed to by the related parties.

7. Operating line of credit:

The company has credit facilities in the amount of $2,000,000 which it obtained in conjunction with the term note, consisting of:

a) Operating line of credit in the amount of $1,000,000 with interest at the Bank's Prime Rate on any advances, and
b) Revolving line of credit in the amount of $1,000,000 to be used for financing capital expenditures with interest at the Bank's Prime Rate plus 0.25% on any advances.

The continuation of the above credit facilities is subject to annual review by the Bank. These credit facilities are secured by the security agreement in place as disclosed in note 8.

8. Term notes payable:

	2009	2008
Bank of Nova Scotia term note payable, 7.52% interest, repayable in blended monthly installments of $48,201, due March 2011	$ 6,146,844	$ 6,257,192
Bank of Nova Scotia term note payable, interest at prime plus 0.25%, repayable in monthly payments of $43,333 plus interest, due October 2017	4,723,333	-
	$ 10,870,177	$ 6,257,192

Although the above loans are due on demand, the company expects to make installments as per the amortization schedule that forms part of the loan agreement. The aggregate amount of principal payments required in each of the next five years to meet minimum retirement provisions is as follows:

2010	$ 638,963
2011	6,547,881
2012	520,000
2013	520,000
2014	520,000
Thereafter	2,123,333
	$ 10,870,177

The company has pledged the following as security against the term notes payable, the operating line of credit, and the revolving line of credit (note 7):

a) General assignment of book debts
b) General Security Agreement over all of the present and future personal property and undertaking of the company
c) Security under Section 427 of the Bank Act with appropriate insurance coverage assigned to the Bank
d) Demand Debenture for $15,000,000 secured by a first fixed and floating charge over all assets including, but not limited to, the Certificate of Public Convenience and Necessity and all Municipal Franchise Agreements, with replacement cost fire insurance coverage, loss if any, payable to the Bank as mortgagee.

NATURAL RESOURCE GAS LIMITED

Notes to the Financial Statements - continued

September 30, 2009

9. Capital management:

The Company defines capital as debt and shareholders' equity. As at September 30, 2009, the company had debt consisting of: bank indebtedness, line of credit, due to related company, and term notes payable.

The company's objectives in managing capital are to:

a) Ensure financial capacity to meet current obligations is maintained and continue as a going concern;
b) Ensure financial capacity to maintain and expand the distribution pipeline infrastructure of the utility as determined necessary by the company; and
c) Ensure financial capacity to execute strategic plan is maintained.

In order to manage capital, the company regularly identifies and assesses risks that threaten the ability to meet the company's capital management objectives, and determines the appropriate strategy to mitigate these risks.

The Company is subject to externally imposed capital requirements related to the term note payable (note 8). Specifically, the company must meet the following conditions:

a) maintain a ratio of EBITDA (Earnings before interest, taxes, depreciation and amortization) to interest expense plus current portion of long term debt of 1.25:1 or better;
b) maintain a ratio of current assets to current liabilities (excluding term note payable) of 1:1 or better; and
c) maintain a ratio of total debt to tangible net worth of less than 3:1.

At September 30, 2009, the company was not in violation of any of the above conditions.

NATURAL RESOURCE GAS LIMITED

Notes to the Financial Statements - continued

September 30, 2009

10. Income tax expense:

Income tax expense differs from the amount that would be computed by applying the federal and provincial statutory income tax rates to income before income taxes. The reasons for the difference and the related tax effects are as follows:

		2009		2008
Income (loss) before provision for income taxes	$	530,047	$	(114,943)
Statutory tax rate		33.13 %		34.16 %
Tax on net income at statutory rates		175,605		(39,265)
Amortization on financial statements in excess of Capital Cost Allowance for tax purposes		56,802		35,328
Ontario Small Business Deduction utilized		(6,741)		(2,884)
Non-deductible expenses		-		2,525
Charitable donations carried forward (carry forward utilized) for tax purposes		(41,553)		33,555
Charges deferred on financial statements deductible on a cash basis for tax purposes		(134,113)		(41,259)
Provision for (recovery of) income taxes	$	50,000	$	(12,000)

NATURAL RESOURCE GAS LIMITED

Notes to the Financial Statements - continued

September 30, 2009

11. Share capital:

	2009	2008
Authorized:		
Unlimited Class A shares, non-voting, redeemable and retractable at the paid up amount, with non-cumulative dividends		
Unlimited Class B shares, participating, non-voting, with non-cumulative dividends ranking pari passu with common shares on dissolution		
Unlimited Class C shares non-voting, with preferential 7% non-cumulative dividends redeemable and retractable at $100 per share		
Unlimited Class Z shares voting, redeemable and retractable at $1 per share, with no dividend entitlement		
Unlimited number of common shares		
Issued and outstanding:		
Retractable shares:		
50,000 Class A shares	$ 1	$ 1
10 Class B shares	10	10
134,614.18 Class C shares	13,461,418	13,461,418
10 Class Z shares	10	10
	$ 13,461,439	$ 13,461,439

12. Contingent liability:

The company is aware of a potential regulatory liability in an amount of a maximum of $140,000. The matter is currently under appeal, and in the opinion of management, and its external legal counsel, the company will be successful in its appeal. The OEB and its counsel have made no attempt to defend the appeal and these proceedings, as the company's external counsel believes there to be no precedent in the OEB regulations for the regulator to levy such amounts against the company. As such, no liability has been accrued in these financial statements.

13. Gas imbalances:

The Company, in the normal course of its operations experiences imbalances in the quantity of gas purchased and the quantities of gas sold and provides the gas balancing services to customers. The company records the net liability (or net asset) associated with gas imbalance volumes.

Accounts payable and accrued liabilities include $899,509 (2008 - $936,466) related to gas imbalances. Natural gas volumes owed from the Company are valued at the natural gas reference price as approved by the OEB as of the balance sheet dates.

14. Regulatory matters:

The Company has rates that are approved by the OEB. The fiscal year 2007 was a one year Cost of Service Rate filing. The company received the OEB decision dated September 28, 2006 and the rate order was effective September 28, 2006. The company did not make a submission for the fiscal year 2009 which left rates unchanged from 2007 and 2008.

Rates for the sale of gas commodity are adjusted quarterly to reflect updated commodity price forecasts. The difference between the approved and the actual cost of gas incurred in the current period is deferred for future recovery subject to approval by the OEB. These differences are directly flowed through to customers and, therefore, no rate of return is earned on the deferred balances. The OEB's approval for recovery of these gas purchase costs primarily considers the prudence of costs incurred.

15. Financial instruments and risk:

The carrying values of the company's financial current assets and liabilities, including cash, accounts receivable, bank indebtedness, line of credit, and accounts payable and accrued liabilities approximate their values due to their short-term maturity.

The fair value of the term notes payable is estimated using a discounted cash flow calculation that uses market interest rates currently charged for similar debt instruments at September 30, 2009 to expected maturity dates.

Based upon the above calculation the carrying value of $ 10,870,177 of term notes payable has a fair value of approximately $ 12,415,000.

Natural gas prices:

The Company has entered into several material contracts for the supply of natural gas. The Company employs established policies and procedures in order to manage the risk associated with the market fluctuations of natural gas prices. The Company, through the rate regulations imposed by the OEB, is effectively allowed to fully recover its costs, reasonably incurred, and as such the ratepayers, and not the Company, are ultimately exposed to the risk of these market fluctuations.

Interest rate risk:

One of the term notes payable bears a fixed interest rate and, as such, the company is exposed to the interest rate risk of having a fixed rate, but has the security of a fixed rate for operational management purposes.

The other term note payable and the line of credit (when utilized) bears interest at a fluctuating bank prime related interest rate and, as such, the company is exposed to interest rate risk.

Credit risk:

Credit risk arises from the potential that a trade customer will fail to pay its account. The company is exposed to credit risk from its customers. However, the company has a large number of diverse customers, which minimizes concentration of credit risk.

16. Additional cash flow statement information:

	2009	2008
Interest paid	$ 603,854	$ 476,110
Income taxes paid (recoveries received)	$ (5,785)	$ 183,050

17. Future accounting changes:

(a) International Financial Reporting Standards (IFRS)

In May 2009, the Accounting Standards Board (AcSB) re-confirmed that Canadian public companies will have to adopt International Financial Reporting Standards (IFRS) effective for years beginning on or after January 1, 2011. Therefore these standards will be effective for the Company's fiscal year ended September 30, 2012 with appropriate comparative IFRS financial information to be presented for the fiscal year ended September 30, 2011. While IFRS uses a conceptual framework similar to Canadian GAAP, there are significant differences in accounting policies that will need to be addressed as part of the conversion analysis. The Company is currently evaluating the impact of this new framework.

(b) Future Income Taxes

Section 3465 - Income Taxes has been amended to include the requirement for rate-regulated enterprises to recognize future income tax assets or liabilities in accordance with the asset and liability method, rather than the taxes payable method as the company is currently using, and is effective for year end beginning on or after January 1, 2009. The impact on the financial statements is currently being assessed by management.

18. Comparative figures:

Certain of the comparative balances have been reclassified to conform to the presentation adopted for the current year.

NPT+ LLP
CHARTERED ACCOUNTANTS
Adding value. Finding balance.

P: 519-432-3534
F: 519-432-6544
300-633 COLBORNE ST.
LONDON, ONTARIO N6B 2V3
www.nptca.com

ADDITIONAL COMMENTS OF AUDITORS

The accompanying schedule of expenses is presented as supplementary information only. In this respect, it does not form part of the financial statements of Natural Resource Gas Limited for the year ended September 30, 2009 and hence is excluded from the opinion expressed in our auditor's report dated December 11, 2009 to the Directors on such financial statements. The information in this schedule has been subject to audit procedures only to the extent necessary to express an opinion on the financial statements of the company and, in our opinion, are fairly presented in all respects material to those financial statements.

NPT LLP

London, Canada
December 11, 2009

NPT LLP
Chartered Accountants
Licensed Public Accountants

NATURAL RESOURCE GAS LIMITED

Unaudited Schedule of Expenses

Year ended September 30

	2009	2008
Advertising	$ 9,873	$ 38,006
Automotive and maintenance	155,229	146,979
Bad debts	51,982	37,239
Bank charges and other interest	626,316	509,089
Capital tax	36,180	21,200
Consulting fees	55,332	117,549
Donations and community sponsorships	13,953	201,720
Dues and fees	19,424	23,088
Employee benefits	148,883	146,885
Insurance	197,396	180,659
Legal and audit	63,049	11,628
Management fees - related company	457,020	457,000
Miscellaneous	15,322	13,560
Office	154,293	183,042
Ontario Energy Board hearings	32,211	4,345
Promotional rebates	14,437	5,978
Property taxes	390,404	334,612
Rent - related company	-	9,600
Salaries and wages	923,983	624,883
Telephone	59,776	61,698
Travel and promotion	3,371	7,062
Utilities	12,658	13,879
Amortization - Automotive equipment	86,566	70,635
Buildings	15,148	15,148
Computer equipment	10,145	13,543
Computer software	11,615	6,867
Deferred finance costs and charges	49,815	52,200
Franchises and consents	69,027	7,260
Furniture and Fixtures	4,669	3,721
Machinery and equipment	52,974	46,113
Meters and regulators	119,159	116,968
Pipeline installations	447,343	323,164
	4,307,553	3,805,320
Equipment expenses capitalized to pipeline installations	(17,956)	(11,436)
Interest expense (income)	(6,661)	2,827
Amortization capitalized to pipeline installations	(7,418)	(6,584)
	$ 4,275,518	$ 3,790,127

OGILVY RENAULT

Direct Dial: (416) 216-1927
Direct Fax: (416) 216-3930
jbeauchamp@ogilvyrenault.com

Toronto, January 28, 2010

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, Suite 2700
Toronto, ON M4P 1E4

Dear Ms. Walli:

RE: Natural Resource Gas Limited
Application for Exemption from Certain Sections of GDAR

We are counsel to Natural Resource Gas Limited ("NRG"). Please find the enclosed Application for an Order or Orders exempting NRG from certain sections of the Gas Distribution Access Rule ("GDAR").

Please do not hesitate to contact me should you have any questions or concerns.

Yours very truly,

John Beauchamp

JB/mnm

Encl.

cc. Jack Howley (*Natural Resource Gas Limited*)

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Act, 1998* R.S.O. 1998, Chapter 15;

AND IN THE MATTER OF an Application by Natural Resources Gas Limited to the Ontario Energy Board for an Order or Orders exempting Natural Resource Gas Limited from certain sections of the Gas Distribution Access Rule ("GDAR")

APPLICATION

1. The Applicant is Natural Resource Gas Limited ("NRG"). The Applicant is an Ontario corporation with its main office in the Town of Aylmer, Ontario. NRG carries on the business, among other things, of selling and distributing natural gas within Ontario.

2. The Board has granted NRG a number of exemptions in the past relating to reporting of certain sections of Natural Gas Reporting and Record Keeping Requirements for Gas Utilities (EB-2003-0117).

3. Section 7.3.1 (Telephone Answering Performance) of GDAR is based on the utility telephone service being on an automated answering system. The technology and system implementation costs associated with automating the answering system would presently exceed the benefits for NRG. The Applicant is a small utility and all calls are currently answered by two live operators.

4. NRG, therefore, requests an exemption from Section 7.3.1 of GDAR, including subsections 7.3.1.1 and 7.3.1.2, pursuant to subsection 44(6) of the *Ontario Energy Board Act, 1998.*

5. NRG will continue to monitor its customer service level in this area and also review available systems that might enhance our service at a cost effective level in the future.

6. In order for NRG to perform the necessary data collection under the Service Quality Requirements, the Applicant's existing systems required a number of program modifications. NRG has made extensive efforts to implement the required changes, some of which were only employed in late 2009 (they were successfully completed and implemented at a nominal added cost). As a result, NRG has been unable to collect Service Quality Requirement data for the year 2009, with the exception of that data required under 7.3.6.1 of GDAR (Number of Days to Provide a Written Response), With these modifications, NRG will collect information during the year 2010 in preparation for reporting SQR performance standards and measurements to the Board on January 30, 2011.

7. NRG thus seeks an exemption from the obligation to file Service Quality Requirement data for the year of 2009, as required under GDAR, with the exception of that data required under Section 7.3.6.1, which will be filed with the Board on or before January 31, 2010.

8. NRG is making every effort to accommodate the Board's requests, which includes filing its Action Plan (in compliance with GDAR reporting requirements) on January 27, 2010.

9. NRG requests that, pursuant to Section 34.01 of the Board's *Rules of Practice and Procedure*, this proceeding be conducted by way of written hearing.

10. The Applicant and its representative may be reached at the following addresses:

(a) The Applicant

Mr. Jack Howley
Natural Resource Gas Limited
39 Beech Street East
Aylmer, ON N5H 2S1

Telephone: (519) 773-5321
Facsimile: (519) 773-5335
Email: howley@nrgas.on.ca

(b) The Applicant's Counsel

Mr. John Beauchamp
Ogilvy Renault LLP
Royal Bank Plaza, South Tower
Suite 3800, 200 Bay Street
Toronto, ON M5J 2Z4

Telephone: (416) 216-1927
Facsimile: (416) 216-3930
Email: jbeauchamp@ogilvyrenault.com

Dated at Toronto, Ontario this 28th day of January, 2010.

NATURAL RESOURCE GAS LIMITED

By their Counsel,

OGILVY RENAULT LLP
John Beauchamp

000660

January 28, 2010

Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, Suite 2700
Toronto, Ontario M4P 1E4

Re: Natural Resource Gas Limited
Compliance with Gas Reporting & Record Keeping Requirements (RRR)

Natural Resource Gas Limited (NRG) wish to confirm that it has been working together with the Board's Regulatory Audit and Accounting in order for NRG to establish an Action Plan outlining procedures necessary to complying with the Service Quality Requirements as per Chapter 7 of the Gas Distribution Access Rule ("GDAR").

Please see NRG's Management Action Plan together with associated Timeline for Implementation and Reporting (attached Appendix A).

In order to provide the Board with an update on the implementation of its' Action Plan, NRG will provide the Board with an interim report on performance measurements, to be submitted by June 30, 2010.

NRG will also file with the Board a copy of its' Quality Assurance ("QAP") referring to S.7.3.2.1 of GDAR and G.2.1.6 B.1 of the SQR, as well as NRG's "Emergency Procedures Manual" as per GDAR S.7.3.5.2 and Section G.2.1.9 E.2 of SQR by February 15, 2010.

Yours truly,

J. Howley.

Jack Howley
General Manager
Natural Resource Gas Limited

Phone: 519-773-5321
Fax: 519-773-5335
Email: howley@nrgas.on.ca

Natural Resource Gas Limited

Management Action Plan
Compliance with Gas Reporting and Record Keeping Requirements

Management Action Plan

We have set out below NRG's Action Plan for each of the designated GDAR Sections. The effective date of commencement of each of these activities is also indicated together with the corresponding anticipated reporting dates as attached in this plan. NRG has made certain changes and a number of these activities have been implemented in late 2009.

In order for NRG to perform the required data collection for analysis and reporting, our existing systems required program modifications. These modifications have been successfully completed and were implemented at a nominal added cost. With these modifications, NRG will collect information during the year 2010 in preparation for reporting SQR performance standards and measurements to the Board on January 30, 2011. In the meantime, NRG will submit an application to the Board by January 29, 2010 to request an exemption from requirement of all SQRs except Section 7.3.6.1 for 2009 reporting data.

Section 7.3.1 - Telephone Answering Performance

7.3.1.1 Call Answering Service Level

7.3.1.2 Abandon Rate

This Section is based on the utility telephone service being on an automated answering system. NRG is a small utility and all calls are presently answered by one of two live operators. NRG will continue to monitor its' customer service level in this area and also review systems available that might enhance its' customer service at a cost effective level in the future. NRG will submit an application to the Board by January 29, 2010 to request an exemption from this requirement under GDAR Sections 7.3.1, 7.3.1.1 and 7.3.1.2.

Section 7.3.2 - Billing Performance

7.3.2.1 Audits

The billing department utilizes a program called 'Comet' for the purpose of collecting data. All manual checks for high and low usage are given to the service department for further action and data collection is gathered utilizing a Microsoft Access Database program called CIS (Customer Information System). Information in this database is collected and stored for viewing or

exporting into Excel for analyzing and validation. Included with the call sheet created by the service department is a form to be returned to the billing department. The billing department collects this data and reports it in an Excel spreadsheet for the purpose of RRR for a Gas Utility.

Manual audits of 68 meter readings from the approximate 6800 billings per month will be performed to validate data quality and accuracy. Data will be recorded and stored in CIS (Customer Information System) for viewing and analyzing. Manual audits will also be reported in the Excel spreadsheet for the purpose of RRR for a Gas Utility on a monthly basis.

NRG will submit to the Ontario Energy Board a copy of our Quality Assurance Program ("QAP") referring to S 7.3.2.1 of GDAR and G 2.1.9. B.1 of the SQR by February 15, 2010.

Section 7.3.3 - Meter Reading Performance

7.3.3.1 Meter Reading Performance Measurement

For the application Section of the SQR's G2.1.9.C.1, the billing department generates a report for estimated meter reads using the Comet program. Each estimated account is reported in an Excel database for sorting and analyzing for the purpose of Reporting and Record Keeping for Meter Reading Performance Measurement (MRPM).

$$\frac{\text{Number of meters with no read for 4 consecutive months or more}}{\text{Total number of active meters read}}$$

This measurement is not to exceed 0.5% on a yearly basis

Section 7.3.4 - Service Appointment Response Time

7.3.4.1 Appointment Met within the Designated Time Period

Using the CIS (Customer Information System) database program, NRG can take every service call from any given month to determine the percentage of appointments met on time. As per Section 7.3.4 of the Gas Distribution Access Rule, only appointments that require the customer's presence will be used in this measurement. NRG will be able to determine, using the 'AM' and "PM' fields in CIS, the number of appointments met within the 4 hour designated time period and those that are not met by comparing the 4 hour scheduled window with the actual time of arrival.

As per Section 7.3.4.1 of the GDAR, the following equation will be used to determine the percentage of appointments met within the designated time period.

$$\frac{\text{Appointments met within 4 hour designated time period}}{}$$

NRG will endeavor to exceed the 85% minimum standard as set by the Ontario Energy Board.

7.3.4.2 Time to Reschedule a Missed Appointment

NRG has installed a field in CIS (Customer Information System) for tracking such occurrences. A "Reschedule" checkbox has been added into CIS to track any missed calls. NRG will be able to sort calls in a month by this field to determine the percentage of appointments rescheduled within 2 hours of the appointment time. The Standard for this measurement is 100% of customers with a missed appointment will receive a call to reschedule within 2 hours of the end of the missed appointment time.

Section 7.3.5 - Gas Emergency Response

7.3.5.1 Percentage of Emergency Calls Responded to Within 1 Hour

The installation of the "Emergency Call" field in CIS allows NRG to sort emergency calls in any given time period. The figure required will be obtained by determining the amount of time between the "customer call time" and the "arrival time" of the technician. As per Section 7.3.5.1 of the GDAR, the following equation will be used to determine the percentage of emergency calls responded to within one hour:

$$\frac{\text{Number of emergency calls responded to within 60 Minutes}}{\text{Total number of emergency calls in the Year}}$$

The Minimum performance standard for this measurement set out by the Ontario Energy Board is 90% (calculated on an annual basis).

7.3.5.2 Documentation of Emergency Response

NRG documents emergency procedures in our "Emergency Procedures Manual" to ensure that responders to emergencies follow NRG's approved emergency procedures. As per Section G.2.1.9.E.2 of the SQR's, NRG will mail a copy of our Emergency Procedures to the Ontario Energy Board. This will be forwarded by February 15, 2010.

Section 7.3.6 - Customer Complaint Written Response

7.3.6.1 Number of Days to Provide a Written Response

Upon receipt of a written customer complaint either by email, regular mail, or in person, it is immediately recorded in NRG's customer complaint log with the

date received, name, address, and account number. The original correspondence is retained in the log book.

The customer is then provided with the written response within 10 days. At this time, if no further action is required, the date of the final resolution is to be confirmed in writing to the customer and entered in the Customer Complaint Log.

Should the grievance require further investigation, NRG will continue to log the interim dates and correspondence that is sent to the customer until a final resolution is reached.

As per Section 7.3.6.1 of the GDAR, the following equation will be used to determine the percentage of customers receiving a written response within the 10 days:

$$\frac{\text{Number of complaints requiring a written response responded to within 10 days}}{\text{Number of complaints requiring a written response}}$$

The minimum of performance standard shall be that 80% of customers will receive a written response in 10 days of the distributor receiving the customer complaint.

NRG will report the number of days to provide written response by January 29, 2010.

Section 7.3.7 - Reconnection Response Time

7.3.7.1 Number of Days to Reconnect a Customer

Using CIS (Customer Information System) database, NRG can sort the number of reconnections due to non-payment for each month. Furthermore, copies of all "Unlock Request Forms" from the Credit department will be stored in the service department for validation purposes.

As per Section 7.3.7.1 of the GDAR, the following equation will be used to determine the percentage of customers who are reconnected within 2 days of bringing their account into good standing:

$$\frac{\text{Number of reconnections completed within 2 business days}}{\text{Total number of reconnections completed}}$$

NRG's service department will meet the minimum performance standard of 85% for customers getting reconnected within 2 business days of bringing their accounts into standing (on a monthly basis) as set by the Ontario Energy Board.

Timeline for Implementation & Reporting

GDAR Section	SQR Performance & Measurement	Date Implemented	Reporting Date
7.3.1	**Telephone Answering Performance**		
7.3.1.1	Call Answering Service Level	NRG will apply for an exemption request by January 29, 2010	
7.3.1.2	Abandon Rate	NRG will apply for an exemption request by January 29, 2010	
7.3.2	**Billing Performance**		
7.3.2.1	Audits	Nov 1, 2009	Jan 31, 2011
7.3.3	**Meter Reading Performance**		
7.3.3.1	Meter Reading Performance Measurement	Nov 1, 2009	Jan 31, 2011
7.3.4	**Service Appointment Response Time**		
7.3.4.1	Appointment Met within the Designated Time Period	Nov 1, 2009	Jan 31, 2011
7.3.4.2	Time to Reschedule a Missed Appointment	Nov 1, 2009	Jan 31, 2011
7.3.5	**Gas Emergency Response**		
7.3.5.1	Percentage of Emergency Calls Responded to Within 1 Hour	Nov 1, 2009	Jan 31, 2011
7.3.5.2	Documentation of Emergency Response	Nov 1, 2009	Jan 31, 2011
7.3.6	**Customer Complaint Written Response**		
7.3.6.1	Number of Days to Provide a Witten Response	Oct 1, 2008	Jan 29, 2010
7.3.7	**Reconnection Response Time**		
7.3.7.1	Number of Days to Reconnect a Customer	Nov 1, 2009	Jan 30, 2011

February 12, 2010

Office of the Chief Regulatory Auditor
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto, Ontario M4P 1E4

Forwarded by courier: February 12, 2010

RE: Natural Resource Gas Limited
Compliance with Gas Reporting & Record Keeping Requirements (RRR)

Enclosed, please find, a copy of NRG's Quality Assurance Program (QAP) referring to S.7.3.2.1 of GDAR and G.2.1.6 B.1 of the SQR, as well as NRG's Emergency Procedures as per GDAR S.7.3.5.2 and Section G.2.1.9 E.2 of the SQR.

Regards,

J. Howley.

Jack Howley
General Manager
Natural Resource Gas Limited

Phone: 519-773-5321
Fax: 519-773-5335
Email: howley@nrgas.on.ca

Natural Resource Gas Limited
Quality Assurance Program

S.7.3.2.1 GDAR

G.2.1.9.B - Billing Performance

G.2.1.9.B.1 – SQR Audits

The following outlines Natural Resource Gas Limited's practice for verifying billing data and accuracy for the Quality Assurance Program under section S.7.3.2.1 of the Gas Distribution Access Rule.

Each billing cycle generates a Proof Listing of meter reads for each account.

The Proof Listing report provides the current meter reading as well as the previous month's meter reading and the difference in mcf's, indicating the consumption for the month in which it is billed.

The Proof Listing Report compares the current month's consumption with that of the same monthly time period last year.

The meter reader shall report any meters that he is unable to obtain a meter reading – i.e. condensation, meter is buried in snow, dog on property, etc. A Trouble Code Report is generated, with a copy given to the Service Department to schedule a service call. All accounts with trouble codes have the consumption verified on the Proof Listing for variances.

All accounts with a variance of 100% are audited using the following methods:

- Checking the mcf's by location for the last three years
- Checking the Customer database for type of equipment on site
- Heating Degree days for the same period are compared and analized

If a meter read falls outside of the criteria for high or low usage, the service department will schedule a check reading for that location within a 3 day period of the Billing Department issuing notification.
The Service Department reports the findings to the Billing Department to complete the monthly Meter Reading Results Report.

Natural Resource Gas Limited completes a minimum of 68 random audits of meter readings on a monthly basis. The audits are documented on a QAP Audit Form. The QAP Audit Form compares the actual reading with the random audit reading, the number of days between the two readings, and the meter difference in mcf's, in order to verify the billing accuracy.

NATURAL RESOURCE GAS LIMITED

EMERGENCY PROCEDURES MANUAL

01/02/10	Revisions	JS
22/10/09	Revisions	JS
24/04/08	Revisions	JS
Date	Revision	Approval

09/15/06	Revisions	DL
11/04/03	Revisions	WB
23/09/02	Revisions	WB
15/05/98	Complete Re-issue of Manual	LJJ
09/10/97	TSSA pilot project	LJJ
18/05/95		
Date	Revision	Approval

1.0 GENERAL

The steps and procedures outlined in this document are intended to serve as a guide in the event of an operational emergency.

Each Company person involved in an emergency situation is required to act in accordance with his/her training and experience to keep the effect of the emergency to a minimum. The following will serve as basic requirements during all emergency conditions:

(a) **NRG & Staff will respond in 60 minutes**

(b) Safeguard the life and property of the public.

(c) If at all practical, maintain supply to NRG customers.

(d) Minimize the effect of such a disruption.

(e) Restore normal operations as quickly as possible.

Each emergency situation must be judged in the light of actual conditions and these procedures therefore should not be construed as the only acceptable means of handling emergencies. They will, however, provide a basis for consideration when an emergency arises. **See descriptions of types of Emergencies on schedule A.**

SCHEDULE A

Description of type of emergencies

Asphyxiation or Injury
* A call from any source where a person has been injured, or overcome with fumes

Blowing Gas
* Any reports of blowing gas. Hit lines to be treated as the same as blowing

Carbon Monoxide
* CO symptoms are identified and the appropriate emergency provider called.

Emergency Provider Assistance
* Any calls from emergency provider (fire, police another utility)

Evacuation
* Any time a building or area has been evacuated for known or unknown odour

Fire or Explosion
* Call received from any source pertaining to fire or explosion

Flooding
* To shut down gas flow where flooding and or Ice could affect the system and safety

Iced over regulator
* Reported ice over regulator where safety and operation is at risk

Low or High Pressure
* Reports of pilots or main burners flames being larger or smaller than normal.

Main & Service damage
* Any hit line (even without gas blowing)

Natural Gas/ Methane Detector Alarms
* All call requesting assistants due to an alarm

Other Combustibles
* Call regarding leaks or spill where we are requested by another group

Outdoor gas leaks / odours
* Strong odours or gas blowing or odour where source is unknown
*Any A leak from a survey

Strong Indoor Odour
* Any indoor odour or sound of gas escaping and unknown odours

All cases a report to be done and filed

2.0 DAMAGE TO DISTRIBUTION PLANT

Damage to Distribution Plant by Company or outside forces, such as Contractors, etc., should be classified as emergency and must be repaired immediately.

The operator or qualified technical personnel shall be available to deal with emergency calls both during normal working hours and on a standby basis outside of normal working hours. An emergency co-coordinator shall be appointed within NRG.

When responding to hazardous and/or emergency situations, the concerns should be as follows:

(1) Protection of the public, Company personnel and property.

(2) Prevention or minimization of loss of service to customers.

(3) Safe shut-down and return to safe operating conditions.

2.1 RECORDS

All emergency repairs must be recorded and these records shall be kept for the life of the pipeline.

These records may consist of maps or suitable forms. Records must be signed and dated by the employee responsible for the emergency repairs.

3.0 NOTIFICATION

3.1 GENERAL

In the event of an emergency, such as fire, explosion or threat thereof, the following shall be notified immediately:

NRG Emergency Co-ordinator
Fire Department
Police Department
Technical Standards and Safety Authority

All notifications should be recorded, stating time, date, who called, emergency and any other pertinent information.

The notification of the Technical Standards and Safety Authority is in accordance with the Ont. Reg. 210/01 Gaseous Fuels which dictates that an inspector of the Technical Standards and Safety Authority must be notified as follows:

Accident or Occurrence

12.(1) *Where it appears that carbon monoxide poisoning, asphyxiation, explosion or fire has occurred because of the use, storage or handling of gas, a certificate holder, ROT holder, contractor or distributor shall forthwith notify an inspector of the occurrence by telephone, fax or any other form of electronic transmission, and a contractor or distributor shall have in place procedures for such notification.*

12.(2) *No person shall interfere with or disturb any wreckage, article or thing at the scene of an occurrence that is connected with it except in the interest of public safety, saving a life, relieving human suffering, continuity of service or preservation of property.*

12. (3) *where it is permitted to interfere with or disturb wreckage, an article or a thing under subsection (2); no person shall carry away or destroy any wreckage, article or thing unless an inspector gives permission to do so.*

The TSSA shall be notified where it appears the following has occurred:

a) Carbon Monoxide poisoning
b) Hospitalized due to exposure
c) Asphyxiation
d) Explosion or Fire
e) An accidental release, vent, leak or spill

GENERAL continued...

Line Breaks

Pipeline strikes must be reported to Spills Action Centre (SAC) immediately if

- Caused an evacuation
- Caused an injury
- Caused media attention
- Caused a substantial number of homeowners interrupted with the supply of natural gas

For all other pipeline strikes not included in the above list must be reported to TSSA within two weeks of the occurrence by

- E-mail to *fs_incidents@tssa.org*
- Fax attention to TSSA at 416-231-7366

The telephone numbers of the preceding departments, together with those of all system employees, appear in Appendix A.

3.2 NOTIFICATION OF EMERGENCY CO-ORDINATOR

The Emergency co-coordinator, as defined in Appendix A, is to be informed immediately of the following:

1. Fire or Explosion
   a) Where the Technical Standards and Safety Authority must be informed.
2. Gas Escapes
   a) Where it has been found necessary to evacuate a building.
   b) Where large accumulations of gas have been found which may make evacuation necessary.

The Emergency Co-ordinator, where possible, should be notified prior to evacuation of buildings. However, such notification should not preclude what is deemed to be necessary prompt action.

3. Damaged Services
   A) In accordance with item 2 above.
4. Damaged Mains
   a) All medium pressure and intermediate pressure main breaks where the customer may have to be shut down.
   b) All high pressure main breaks.
   c) Low pressure main breaks in accordance with item 2 above.
5. Customer Outages
   a) All instances where customer outage has been or may be caused by any type of distribution failure.
   b) Instances where a system overpressure is experienced.
6. Injury
   a) All instances where personnel are injured through any exposure to Company facilities.

4.0 RESPONSIBILITIES DURING AN INCIDENT

Emergency Co-ordinator

The Emergency Co-ordinator will assume overall responsibility during all emergency situations which arise. Specific areas of responsibilities shall include the following:

1. The movement and activities of all on-the-site crews.
2. The gathering of all records and legal data which may be necessary.
3. The decision to close any valves on the distribution lines.
4. The recording and passing of information to other Company supervisors.
5. The logging of all activity on the radio.
6. System operating pressures and gas supply.
7. Contacting the Technical Standards and Safety Authority if applicable

Field Co-ordinator

The Emergency Co-ordinator may appoint a Field Co-ordinator as assistant. The Field Co-coordinator's responsibilities would include the following:

1. The direction of field crews and all field personnel on the orders of the Emergency Co-ordinator.
2. Maintaining radio or telephone contact with the Emergency Co-ordinator.
3. Gathering field information and passing it on to the Emergency Co-ordinator.
4. The logging of all field activity.

Other Personnel

The Planning Department must be prepared to supply information for the locations and details of valves, mains and other pertinent details as requested by the Co-coordinators. This department must also gather all data on the emergency area such as plates, maps, construction drawings, miscellaneous orders, as-laid drawings, utility's records and/or records pertinent to the particular emergency, such as field notes, etc., and be prepared to supply this information to the Emergency Co-ordinator.

5.0 GENERAL EMERGENCY POLICY

1. CO-ORDINATOR

The Emergency Co-ordinator shall be notified immediately.

2. BASEMENTS

All basements in the immediate area shall be checked for gas indications and (only on the orders of the Emergency Co-ordinator) vented accordingly.

3. SERVICES

All gas services to the damaged property shall be rendered inactive.

4. STREET OPENINGS

All street openings in the immediate area shall be checked for gas indications and (only on the orders of the Emergency Co-ordinator) vented accordingly.

5. BARHOLE TESTING

For any emergency situation, barhole testing should be performed to assist in determining if gas was a contributing factor to the incident. Before barholing or any excavation begins, other utilities must be contacted for locations of their underground plant. As soon as possible, barhole testing should be done in the following locations in a sequence consistent with good judgment.

a) Completely around the affected building or buildings near or at the foundation wall.
b) On any service or services entering the affected building.
c) Other locations deemed desirable by the Field Co-ordinator.

Records should be kept of all tests performed.

6. REPORTS

All personnel involved in an incident shall complete a report to indicate;

> The date, time, place of incident, what was observed and done, what was requested to be done by others, time of arrival and departure from the site, the results of any work undertaken, names of all police, fire, and Fuel Safety Board officials on the site.

These reports should be given to the Emergency Co-ordinator only.

Particular attention should be given to recording Combustible Gas Indicator calibration accuracy and serial numbers if such equipment was used.

Note: No Company employee shall remove equipment from the scene of an Incident without approval from the supervising authority.

If the incident fits the third party damages protocol for contacting the Technical Standards and Safety Authority the following information will be required by the Representative of the Fuels Safety Division:

a) What is the location?
b) Who was working in the area?
  i) Name of Contractor or Contractors
  ii) What equipment was used - marking/number/make, if applicable?
  iii) What were they doing?
  iv) What equipment/person made contact with the gas line?
  v) Was anyone injured?
c) Time/ date of occurrence / notification /arrival.
d) What did the site look like on arrival - written description / drawing / pictures?
e) What damage was visible on arrival?
f) Based on what is observed, what appears to have happened?"[1]

The Technical Standards and Safety Authority directive on this matter also Warns:

> *"You are not a representative of Fuels Safety. If people on the scene do Not cooperate, or challenge you - back off, call your co-workers attention To the problem, and document the situation."*[1]

[1] Caption from Third Party Pipeline Damage Criteria and Process for TSSA Involvement - Pilot Program paper presented to Ontario Natural Gas Association

APPENDIX A

** ALL AREAS USE 911 FOR POLICE AND EMERGENCY SERVICES **

FIRE DEPARTMENTS – DIRECT TELEPHONE NUMBERS [ ] Denotes Fire Chief

Town of Aylmer [Sam Taylor] 519-773-3164

Municipality of Bayham

Municipality of Bayham (Paul Groeneveld) Chief 519-866-5521
Fax 519-866-3884

Municipality of Central Elgin

Municipality of Central Elgin [Don Crocker] Head Chief 519-631-4860 x249
..... Pager 646-1842
..... Cell 871-2500
Village of Belmont [Mike Mortensen] 519-644-1028
..... Cell 494-1860
Yarmouth Centre [Murray Decorte] District Chief 519-633-6379
..... Cell 878-1805
Union [Mac Ward] 519-633-2228

Township of Malahide

Township of Malahide [Pete Barbour] Head Chief 519-773-5344
..... Cell 521-7504
No. 1 Mt. Salem (South) [Mark Tribe] 519-773-3319
No. 2 Summers Corners (North) [Randy Laur] 519-773-9000
No. 3 Village of Springfield [Jeff Spoor] 519-773-5130
No. 4 Lyons [Jim Legg] 519-644-1597

Township of Norfolk [Denys Provost] 519-426-4115 x400

Township of S.W. Oxford

Brownsville [Dirk Verboom] 519-688-3905
..... Cell 688-9914
Mt. Elgin [Eric Johnson] 519-485-3489
Beachville [Wayne Lillywhite] 519-423-6975

POLICE DEPARTMENTS - EMERGENCY NUMBERS

Aylmer Police Department	911
Ontario Provincial Police (O.P.P.) (London)	911
General Inquiries	
OPP Detachments	
London	519-681-0300
St. Thomas	519-631-2920
Tillsonburg	519-842-3633
Aylmer Police	519-773-3144
Communications Centre – 24 Hour Service	
Detachments	
London, St. Thomas	1-888-310-1122

TECHNICAL STANDARDS AND SAFETY AUTHORITY - FUELS SAFETY DIVISION

Inspector	- John Parker	(Office)	519-451-0704
		Facsimile	519-451-0285
		Toronto	877-682-8772
Toronto Office		(business hours)	416-234-6030
			416-325-2000
Inspector	- Ian McMillan	(Office)	519-471-0013
		Facsimile	519-471-0017
		Cellular	519-281-6905
		Toronto	877-682-8772
Spills Action			800-268-6060

EMERGENCY TELEPHONE NUMBERS - FOR EMPLOYEES

Natural Resource Gas Limited		(24 hours)	519-773-5321
	After hours	(Pager)	519-435-6511
Jim Smith		(Home)	519-875-2271
(Emergency Co-coordinator)		(Cellular)	519-808-0893
1901 10th con. Norfolk		(2nd cell)	519-983-0325
Bob Nesbitt		(Home)	519-765-4405
(Alternate Emergency Co-coordinator)		(Cellular)	519-808-3157
111 Rutherford Ave Aylmer			
Mark Mc Cord		(Home)	519-874-4760
(Alternate Emergency Co-coordinator)		(Cellular)	519-808-0801
RR1 Port Burwell			
Sean Elliot		(Home)	519-842-6536
23 Walnut st. ST Thomas		(Cellular)	519-808-0895
Doug Benner		(Home)	519-765-2073
383 John St. South, Aylmer		(Cellular)	519-808-3505
Kerri Rule		(Home)	519-765-3317
3580 Imperial road Port Bruce			
Keith Teall		(Home)	519-874-1406
R.R.2, Vienna		(Cellular)	519-808-0807
Mark Tribe		(Home)	519-773-3319
RR2 Aylmer		(Cellular)	519-808-0803
Eric Young		(Home)	519-842-9987
258 Tillson Ave., Tillsonburg		(Cellular)	519-808-0862

OTHER EMERGENCY NUMBERS

Hospitals

St. Thomas-Elgin General Hospital	519-631-2020
Tillsonburg District Memorial Hospital	519-842-3611

Union Gas	Natural Gas Emergencies	1-877-969-0999

News Media/Radio

CFPL Radio (London)	519-438-8391
CKOT Radio (Tillsonburg)	519-842-4281
Aylmer Express	519-773-3126
Tillsonburg News	519-688-6397

Contractors/Installers

Firby Heating		519-866-5566
Gerodo Construction – George Jacobs		519-426-2593
	(Cellular)	519-428-8430
Herm's Propane & Natural Gas Service		519-773-8413
Cameron Thompson		519-765-1121
T.W. Johnstone		519-652-5271
Plantation – Paul		519-521-3597
McKeegan Vac Truck		519-864-1037
Markus Trucking		519-695-3734

Gas Well Operators

Doug Benner		519-765-2073
Mark McCord		519-874-4760
Rose Resources (Craig)		519-983-5988
Hemlock Explorations		
George Jonckheere		519-875-4896
	(Cellular)	519-842-1101
Greentree		
Brian Bain	(Cellular)	519-983-7072
Metalore		
George Chilian		519-428-2464
	(Home)	519-425-1553
John Chilian	(Home)	519-426-8027