

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 pursuant to Section
90(1) of the *Ontario Energy Board Act, 1998*, granting leave
to construct a natural gas pipeline and ancillary facilities in
the Township of Malahide, Municipality of Thames Centre
and the Town of Aylmer.

**NOTICE OF MOTION
MOTION BY INTEGRATED GRAIN PROCESSORS
CO-OPERATIVE INC. AND IGPC ETHANOL INC.**

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TO:

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Tab 1

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 an Application by Natural Resource
Gas Limited for an Order pursuant to Section 90(1) of the
Ontario Energy Board Act, 1998, granting leave to construct
a natural gas pipeline and ancillary facilities in the Township of
Malahide, Municipality of Thames Centre and the Town of Aylmer.

NOTICE OF MOTION MOTION BY INTEGRATED GRAIN PROCESSORS CO-OPERATIVE INC. AND IGPC ETHANOL INC.

1. IGPC Ethanol Inc. and Integrated Grain Processors Co-operative ("**IGPC**") request a motion to be heard at a date, time and location to be set by the Board, to finally resolve the actual reasonable cost of construction of the 28.5 km pipeline (the "**Pipeline**") and related issues between IGPC and Natural Resource Gas Ltd. ("**NRG**") pertaining to the construction of the Pipeline. NRG is currently seeking approval for distribution rates commencing October 1, 2010 for a period of five years (Board file number: EB-2010-0018). The outcome of this Motion will aid in the establishment of the proper capital cost of the Pipeline to be included in NRG's rate base in EB-2010-0018. Therefore, IGPC would request this Motion be heard and a decision rendered, prior to the hearing in EB-2010-0018.

2. IGPC owns and operates an ethanol facility (the "**Facility**") in the Town of Aylmer, Ontario. In the Decision dated February 2, 2007 (the "**Decision**", see Exhibit 2) the Board granted NRG leave to construct the Pipeline to supply the Facility. As part of that proceeding,

and in keeping with well established regulatory principles, NRG was only entitled to recover its actual reasonable costs of constructing the Pipeline and any dispute regarding such cost was subject to Board review and approval. To date, IGPC and NRG have not been able to resolve the cost and require the Board's assistance to achieve a resolution of these matters.

RELIEF SOUGHT:

3. This motion seeks a determination from the Board and the necessary Order or Orders to implement such decisions, including:

- (a) a determination of the Actual Capital Cost of the Pipeline, in accordance with the Pipeline Cost Recovery Agreement ("**PCRA**", see Tab 3);
- (b) a determination of the Actual Aid-to-Construct, as defined in the PCRA, that IGPC was obligated to pay to NRG and the resulting net payment required to be made IGPC;
- (c) the amount of the financial assurance that IGPC is obligated to provide to NRG as financial security for the Pipeline and for the delivery of gas as set out in the PCRA and the Gas Delivery Agreement ("**GDC**", see Tab 4);
- (d) a determination of the appropriate awarding of costs:
 - (i) related to the emergency motion held in June 2007 to deal with NRG's refusal to execute certain agreements to permit the Facility and the Pipeline to be built;

- (ii) related to a second motion conducted in the Town of Aylmer during February 2008 held by the Board on its own motion regarding NRG's demand for \$32 million in financial assurance; and
- (iii) the costs of IGPC in this motion;
- (e) a determination of the ability of IGPC to recover costs related to the improper nomination of gas by NRG that occurred prior to start-up of the Facility in 2008;
- (f) an Order relating to the filing of certain information pursuant to the Board's Rules for the treatment of confidential information;
- (g) the establishment of a schedule for the filing of submissions and presentation of evidence required to properly consider this Motion; and
- (h) such other relief as the Board may determine is appropriate.

Background

4. On February 2, 2007, the Ontario Energy Board ("**Board**") issued its Decision in this proceeding EB-2006-0243 granting NRG leave to construct an NPS6 high pressure steel pipeline to supply gas from the Union Gas Ltd. ("**Union Gas**") distribution system to the Facility. As part of the initial hearing that led to the granting of the Decision, the Board reviewed two agreements between IGPC and NRG: (i) the PCRA and (ii) the GDC. It was understood by IGPC and NRG that a third agreement, the Bundled T-Service Receipt Contract ("**Bundled T**", see Tab 5) would be required in respect of the nomination of gas and upstream transportation arrangements.

5. Both the PCRA and the GDC contemplated on their respective terms that such agreements would be assignable to IGPC's lenders upon receiving the consent of NRG, such consent not to be unreasonably withheld. Assignment to IGPC's lenders for the purposes of financing was deemed to be reasonable.

6. Both the PCRA and the GDC appointed the OEB as the arbitrator of disputes under the PCRA and GDC recognizing the OEB's jurisdiction and authority.

Reasonable Capital Cost of the Pipeline

7. In entering the PCRA with NRG to build the Pipeline, IGPC committed to pay only the reasonable capital costs of NRG incurred in the planning and construction of the Pipeline. The PCRA provided a mechanism where the Initial Estimated Capital Cost was used for the purpose of determining an estimated aid to construct ("**Initial Estimated Aid-to-Construct**") and an estimated amount of financial assurance that would be provided by IGPC. The Initial Estimated Capital Cost, filed with the Board of the Pipeline was \$9,100,000.00 which incorporated a payment to Union Gas Ltd. of \$180,000.00 (PCRA, section 3.1) as an aid to construct for the Union Gas facility expansion. The Initial Estimated Aid to Construct was \$3,790,000.00.

8. Following award of the construction contract, the PCRA contemplated a second calculation to replace the initial estimates. This calculation would establish the Revised Capital Cost and the Revised Aid-to-Construct and would utilize reasonable actual incurred costs to date and the projected costs to complete construction.

9. IGPC has paid \$3,538,792.47 plus GST in respect of Revised Aid-to-Construct, see table below, and provided a Letter of Credit in the amount of \$5,214,173.00 to NRG as financial assurance for the construction of the Pipeline.

Item	Amount
Pipe	\$863,420.21
Customer Station	\$884,002.79
Senes Consultant	\$37,483.26
NRG monthly	627,903.21
NRG Lump Sum	\$389,983.00
Union Gas Aid	\$736,000.00
Total	<u>\$3,538,792.47</u>

10. The PCRA, section 3.13, required NRG to complete a cost reconciliation of the actual costs incurred in the development of the Pipeline after the completion of the construction and such reasonable actual costs became known to NRG:

"3.13 Within forty-five (45) Business Days or some other mutually agreeable timeframe of the pipeline being put into service, the Utility shall provide the Customer with the Actual Capital Cost and Actual Aid-To-Construct, along with a summary of the information provided pursuant to Section 4.3 and copies of any invoices and supporting documentation not previously provided to Customer. If the Customer agrees with the Actual Capital Cost and Actual Aid-To-Construct, and

(a) if the Actual Aid-To-Construct is greater than the Revised Estimated Aid-To-Construct, then the Customer shall pay to the Utility the difference between the Actual Aid-To-Construct and the Revised Aid-To-Construct within five (5) Business Days; and

(b) if the Revised Estimated Aid-To-Construct exceeds the Actual Aid-To-Construct then the Utility shall pay to the Customer the difference between the Actual Aid-To-Construct and the Revised Aid-To-Construct within five (5) Business Days."

11. While IGPC has agreed to many of the costs claimed by NRG, the reconciliation required by section 3.13 of the PCRA has not yet been completed to the satisfaction of the Parties. NRG has insisted on including over \$1.1 million of costs which IGPC submits are not reasonable costs to be included in the Actual Capital Cost of the Pipeline including: (i) inappropriate direct costs (such as contingency costs); (ii) inappropriate indirect costs (e.g. administrative penalty, excessive fees); (iii) costs without documentation (e.g. land rights, bank

fees, legal costs); and (iv) unreasonable costs (e.g. excessive project management fees and interest). The schedule at Tab 6 summarizes the costs claimed by NRG and identifies specific items for which IGPC disputes the amount claimed.

12. Section 3.14 of the PCRA provides illustrative examples of costs to be incorporated into the Capital Cost of the Pipeline. Regulatory principles and the PCRA dictate that IGPC should not bear excessive costs but only those capital costs that were reasonably necessary for the construction of the Pipeline. Administrative penalties, contingencies and unreasonable costs should not be borne by IGPC, but rather should be the responsibility of NRG

13. The Pipeline, as NRG has noted, was operational in early July 2008. IGPC received invoices from NRG in respect of distribution service commencing July 15, 2008, based upon NRG's Rate 3 and the contractual volumes specified in the GDC, even though IGPC was not yet taking gas. NRG delayed providing cost information to support its claims. IGPC does not dispute the fact that gas delivery charges commenced July 15, 2008. However, once NRG started to charge IGPC the distribution rate, financing and other charges related to the construction of the Pipeline should be determinable as of such date, and NRG's right to include costs related for the allowance for funds used during construction should have crystallized as of July 15, 2008. Further, the Pipeline should be placed its Rate Base as of July 15, 2008 not October 2008 (Fiscal 2009).

14. Despite the passage of almost two years, IGPC has not yet been able to reach agreement with NRG in respect of the actual reasonable costs of the Pipeline. As part of the rate proceeding, EB-2010-0018 Response to IGPC I.R. #18 and Board Staff I.R. #11, NRG filed different numbers than those claimed by NRG in its discussions with IGPC. As part of the

Technical Conference EB-2010-018 agreed to remove certain interest charges on the cost of its employee, M. Bristoll, that had been allocated to the Pipeline.

15. As such, there is no ability to reach reconciliation with NRG in regards to the Actual Capital Cost and Actual Aid-to-construct. At this point, IGPC submits that NRG has failed to substantiate approximately \$1.1 million in capital costs that it has claimed in respect of the cost of the Pipeline. Detailed supporting documentation regarding the cost information where IGPC disputes NRG's claimed costs may be found in Tab 7. The contents of Tab 7, are being submitted separately in compliance with the Board's Rules for the treatment of confidential information.

The June 2007 Emergency Motion

16. In late June 2007, IGPC requested and the Board granted, on an emergency basis, an order that NRG execute the Bundled T and the assignment in respect of the PCRA and the GDC. NRG had provided no explanation for not executing such documents. Included in this motion record are a copy of the transcript and oral decision on the 2007 emergency motion (see Tab 8), the Order (see Tab 9) and the transcript (see Tab 10) of motion hearing addendum.

17. At the conclusion of the emergency motion, the Board commenced its own proceeding in which the Board issued an administrative penalty in the amount of \$20,000 per day against NRG for its failure to comply with the Order of the Board. The administrative penalty reached \$140,000 when NRG finally complied with the Board's order. This proceeding was appealed by NRG to Divisional Court but has not been scheduled to be heard.

18. The need for, and significant costs incurred by IGPC should not have been necessary in a leave to construct. The cost of a utility's non-compliance with its Regulator's order is not a

reasonable capital cost that should be forced upon the ratepayer. Further, as IGPC was successful in obtaining relief from the Board as against NRG, IGPC requests: (i) the Board state the administrative penalty and NRG's legal costs are not to be included in the reasonable costs of the Pipeline and that IGPC's legal costs of this emergency motion are to be paid by NRG.

19. IGPC would note that this hearing was the result of NRG's improper conduct and therefore should be the sole responsibility of the shareholder of NRG, The Wilsher Trust. Not only should NRG not be permitted to claim the costs it incurred, but IGPC should be permitted to claim costs in respect of this motion. Any payment by NRG to IGPC should be added on to any monies owed by NRG to IGPC resulting from the reconciliation.

February 2008 Motion

20. In January 2008, NRG demanded IGPC provide \$32 million as security for the estimated \$9.1 million Pipeline. The Board, on its own motion, ordered a hearing to be held in Aylmer, Ontario. Included with this notice of motion is a copy of the Board's decision on the motion (see Tab 11).

21. At the conclusion of the hearing, the Board dismissed NRG's demands for \$32 million in security as the issues had either been dealt with at the leave to construct or were without merit in the circumstances. NRG has identified over \$135,000 in legal costs claimed in respect of the two motions in EB-2010-0018.

22. NRG should not be permitted to recover any legal or other costs associated with this motion as such costs are properly the responsibility of the shareholder of NRG. IGPC was successful in reducing the demand for the requested \$32 million and should be entitled to its

reasonable costs. As IGPC was successful in the motion, it should have costs awarded against NRG.

23. IGPC is claiming \$100,000.00 for its cost of the Emergency Motion and the February 2008 proceeding, much less than the \$135,000 claimed by NRG.

Improper Nomination of Gas

24. NRG and IGPC had entered into the Bundled T in relation to the nomination of gas and upstream transportation. Prior to the completion of the Pipeline, Mr. J. Grey, Chief Executive Officer of IGPC attempted to contact Mr. Mark Bristoll on several occasions through May and June 2008, to discuss the commissioning and schedule for completion of the Pipeline, including the nomination schedule for gas to be used during commissioning. NRG did not acknowledge or respond to these multiple requests.

25. On June 30, 2008 at approximately 5:00 p.m., a message was left on the voicemail of Mr. Jim Grey, indicating that NRG had, without any authorization from IGPC, nominated in respect of IGPC a volume of gas to be delivered by Union Gas to NRG for the entire month of July at the full amount stated in the GDC. This was done in spite of Mr. Grey's attempts to discuss the issue with Mr. Bristoll, the terms and conditions of the GDC and the Bundled T and the fact that NRG knew the Pipeline was not able to deliver gas.

26. As a result, IGPC and its energy services company, Blackstone Energy, were forced to make several last minute arrangements to avoid the significant penalties that would have resulted if IGPC failed to deliver the natural gas to Union Gas in accordance the unauthorized NRG nomination to Union Gas.

27. After several days, a new nomination schedule was negotiated among IGPC, NRG and Union Gas. The natural gas that had been delivered pursuant to the improper NRG nomination was sold in the market. Because of the timing of the transaction, IGPC ended up selling the gas at a loss of \$77,529.59.

28. The improper nomination by NRG was without authorization and therefore contrary to the requirements of the GDC and Bundled T Agreement.

29. NRG should be required to pay losses and expenses of IGPC that resulted from NRG's improper nomination of natural gas. IGPC is entitled to be compensated for the damages suffered.

Additional Security provided to Union Gas – NRG over secured

30. The GDC provides a formula for calculating the financial assurance required in respect of the delivery services to be provided by NRG. The amount of security in respect of delivery charges provided to IGPC to NRG is \$232,666.84. Embedded within the determination of the amount contained in the GDC was the fact that NRG would be obligated to provide security to Union Gas in respect of the Union Gas delivery charge for the IGPC delivery charge.

31. As a result of the decision of the OEB in the February 2008 motion, IGPC was required to provide certain financial assurance directly to Union Gas in respect of the construction by Union Gas. The amount of financial assurance provided by IGPC to Union Gas corresponds with the monthly delivery charge determined under the M9 rate for the contracted volume related to the Facility. IGPC has provided and continues to provide to Union Gas financial assurance in the amount of \$72,397.00. However, the GDC was not modified to reflect this change.

32. Therefore, IGPC is in effect providing redundant financial security in respect of the costs related the Union Gas delivery. As such, IGPC would request the Board reduce the amount of security to be provided by IGPC to NRG to net out the security provided to Union Gas in respect of the deliveries to IGPC. In the alternate, the Board could require NRG to replace the financial assurance provided by IGPC to Union Gas in order that Union Gas could return the financial assurance IGPC has provided in respect of the M9 agreement.

Costs Incurred by IGPC for the Reconciliation

33. The PCRA provides that NRG is to provide a detailed breakdown of the actual capital cost of the Pipeline within a specific number of days of the completion of the Pipeline unless the parties agree otherwise. As a result of NRG's inexplicable inclusion of costs not related to the Pipeline, overstatement of the reasonable cost of the Pipeline and inclusion of expenditures not made, NRG gas forced IGPC to bring a motion to have this matter considered by the Board. Such costs are not reasonable costs to be borne by IGPC in the circumstances. These costs should be borne by NRG and the Board should require NRG to pay such costs forthwith.

35. IGPC is therefore requesting that NRG be ordered to pay \$25,000.00 to IGPC for the costs incurred by IGPC for the costs of this Motion including those costs associated with discussions with NRG regarding the reasonable capital cost of the Pipeline.

MATERIALS TO BE RELIED UPON:

36. IGPC intends to rely upon the following:

- (a) All documents filed as part of this proceeding, being EB-2006-0243, including the Emergency Motion and the February 2998 Motion;

- (b) The Board's Rules of Practice and Procedure;
- (c) Report of the Board, E.B.O. 188, dated January 30, 1998;
- (d) The invoices and payment records claimed by regarding the construction of Pipeline; and
- (e) Such other material as IGPC may request and this Board may permit.

August 3, 2010

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Lawyers for the Respondent, Integrated
Grain Processors Co-operative Inc.

Tab 2



EB-2006-0243

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 pursuant to Section 90(1) of the *Ontario Energy Board Act, 1998*, granting leave to construct a natural gas pipeline and ancillary facilities in the Township of Malahide, Municipality of Thames Centre and the Town of Aylmer.

BEFORE: Gordon Kaiser
Presiding Member and Vice Chair

Ken Quesnelle
Member

Cathy Spoel
Member

DECISION AND ORDER

Introduction

Natural Resource Gas Limited ("NRG") has filed an application with the Ontario Energy Board (the "Board") dated October 13, 2006, under section 90(1) of the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15. NRG has applied for an Order of the Board granting leave to construct approximately 28.5 kilometres of 6 inch diameter steel natural gas pipeline and ancillary facilities (the "Proposed Facilities").

The construction of the Proposed Facilities will allow NRG to meet the natural gas distribution requirements of an ethanol plant proposed by Integrated Grain Processors Co-operative Inc. ("IGPC"), to be located in Aylmer, Ontario, within NRG's franchise area.

Proposed Facilities

The Proposed Facilities will interconnect with facilities, to be constructed by Union Gas Limited, north of Highway 401 on Bradley Avenue where the NRG franchise area abuts the Union Gas Limited franchise area. The pipeline of approximately 28.5 km in length, runs in southeasterly direction and traverses sections of the Township of Malahide, the Municipality of Thames Centre and ends in the Town of Aylmer.

A map of the proposed natural gas pipeline route and the ethanol plant is attached as Schedule "A", to this decision.

Proceeding

The Board held an oral hearing in this matter on December 18, 2006, at which four intervenors, the Integrated Grain Processors Co-operative ("IGPC"), Union Gas Limited ("Union"), the Municipality of Thames Centre and the County of Middlesex ("the Municipalities"), participated. All parties support the application. On January 19, 2007 the Board held an oral hearing in order to review the status of the contracts between NRG and IGPC. The Board reiterated its position that it wished to review the final executed contracts prior to rendering its decision.

On January 31, 2007, the Board received and reviewed two final executed contracts between IGPC and NRG - the Gas Delivery Contract ("GDC"), and the Pipeline Cost Recovery Agreement ("PCRA").

Economics of the Proposed Facilities

An economic evaluation of the project was completed in accordance with the requirements of the Board's Guidelines set out in the E.B.O. 188 report on Natural Gas Systems Expansion. The results indicate that the Proposed Facilities have a net present value of \$8.5 million and without any capital contribution, the profitability index of the Proposed Facilities would be 0.55. To protect the ratepayers of NRG, a capital contribution of approximately \$3.8 million is required from IGPC to achieve a profitability index of 1.0. The PCRA between NRG and IGPC provides for this capital contribution.

This project represents a significant net capital expenditure by NRG of approximately 5.3 million dollars. The GDC covers delivery of natural gas for a period of 7 years and

corresponds to of the economic evaluation horizon that was used to calculate the \$ 3.8 million capital contribution.

The GDC establishes the minimum volume of gas that IGPC is required to accept and pay for in any contract year as well as the price at which that gas is to be supplied. NRG has committed to developing a new rate for the customer to be included in its fiscal 2008 rate application which is anticipated to be filed with the Board in April, 2007.

Prior to the commencement of the delivery of gas pursuant to the GDC, the customer is required to provide a security deposit to NRG in the amount of one month's delivery using the appropriate rate at the commencement date. NRG is entitled to draw upon the security deposit in the event that IGPC does not pay the invoice within the time frame that is provided in this GDC.

The PCRA requires IGPC to provide an irrevocable delivery letter of credit in the amount of \$5.3 million, which IGPC must maintain for as long as it continues to receive service. This letter of credit will be reduced annually to an amount equal to the net book value of the assets of this project. This aspect of the PCRA will ensure that NRG can draw on this letter of credit in the event of either a default by IGPC or its ceasing operation prior to the assets are fully depreciated, thereby avoiding the potential for stranded assets. This protects NRG and its ratepayers.

Environmental

Based on the environmental report filed as Exhibit C, Schedule 3, NRG indicates that it is not expected that there will be any significant environmental impacts from the Proposed Facilities, as they will be constructed on existing road allowances. NRG also indicated that it will mitigate any such environmental impacts. There will, however be minor temporary impacts resulting from construction activities.

Landowner Issues

The Proposed Facilities will be constructed within existing road allowances. Accordingly no easements will be required except for temporary workspace. A list of abutting landowners is found at Exhibit C, Schedule 2 of NRG's application. NRG's evidence indicates that all affected landowners were made aware of the project both in their consultation and by way of the Boards Notice of this proceeding. There were no objections raised by landowners in this proceeding.

Board Finding

The Board is satisfied that the terms and conditions of the two agreements, the GDC and the PCRA, adequately protect the interests of NRG and its ratepayers against anticipated risks. In making its finding to grant the requested leave to construct, the Board is placing significant reliance on the terms and conditions of both the PCRA and GDC that protect the interest of NRG's ratepayers.

The Board finds that the Proposed Facilities are in the public interest and grants the requested leave to construct. The Board notes that this is a significant expansion of NRG's facilities and will increase its rate base by approximately 50 per cent

The Board appreciates that a project of this magnitude has not been without its complexities and appreciates the co-operation of all parties involved.

IT IS THEREFORE ORDERED THAT:

1. Natural Resources Gas Limited is granted leave pursuant to subsection 90 (1) of the *Ontario Energy Board Act, 1998* to construct approximately 28.5 kilometers of 6 inch natural gas pipeline and related facilities, commencing near the City of London, and running in southeasterly direction and traverses sections of the Township of Malahide, the Municipality of Thames Centre and ends in the Town of Aylmer.
2. The granting of leave is subject to the Conditions of Approval set forth in Appendix "B".

DATED at Toronto, 2007 February 02.

ONTARIO ENERGY BOARD

Original signed by

Gordon Kaiser

Signed on behalf of the panel

SCHEDULE "A"

to the Decision and Order

BOARD FILE NO. EB-2006-0243

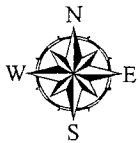
February 2, 2007

Proposed NRG Ltd. Gas Pipeline Route

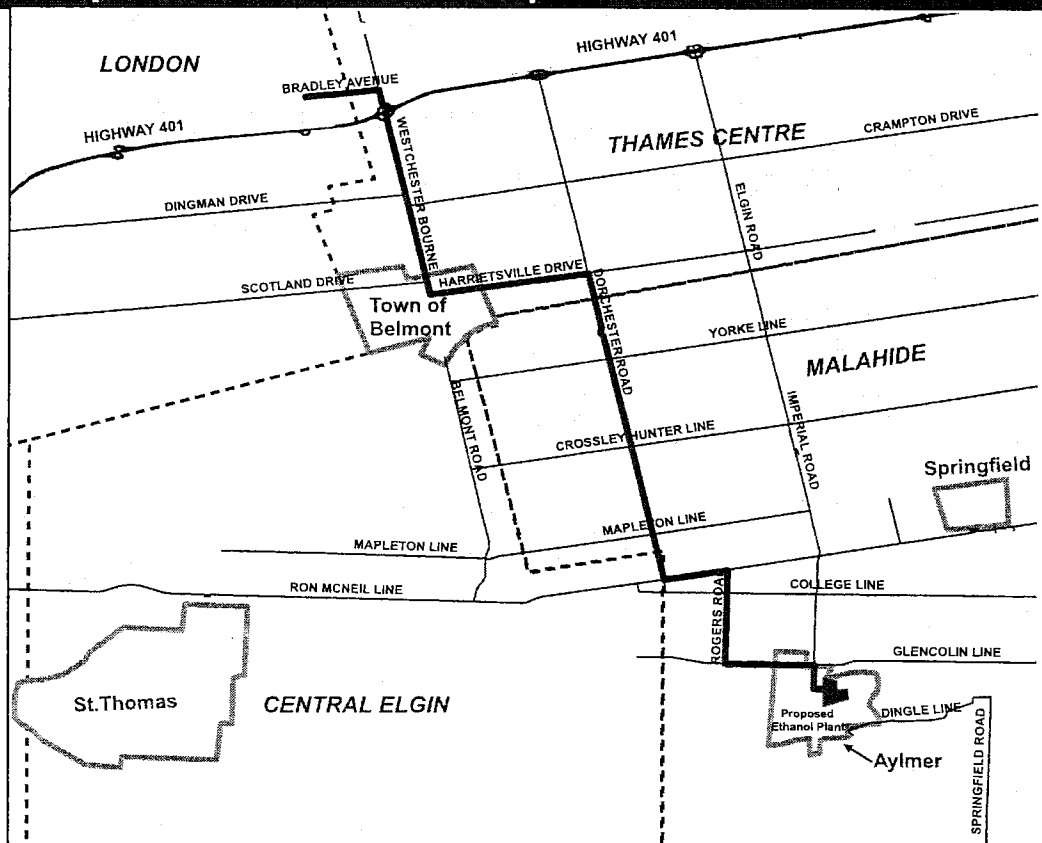
Proposed NRG Ltd. Gas Pipeline Route

Legend

- City/Town
- Municipal Boundaries
- Proposed Gas Pipeline Route



0 3,400 6,800 Meters



SCHEDULE "B"

to the Decision and Order

BOARD FILE NO. EB-2006-0243

February 2, 2007

Conditions of Approval

Schedule "B"

CONDITIONS OF APPROVAL EB-2006-0243

Natural Resources Gas Limited–Proposed Pipeline to IGPC Project

1 General Requirements

- 1.1 Natural Resources Gas Limited (NRG) shall construct the facilities and restore the land in accordance with its application and evidence, except as modified by this Order and these Conditions of Approval.
- 1.2 Unless otherwise ordered by the Board, authorization for Leave to Construct shall terminate December 31, 2007, unless construction has commenced prior to then.
- 1.3 Except as modified by this Order, NRG shall implement all the recommendations of the Environmental Study Report filed in the pre filed evidence, and all the recommendations and directives identified in the Ontario Pipeline Coordinating Committee ("OPCC") review.
- 1.4 NRG shall advise the Board's designated representative of any proposed material change in construction or restoration procedures and, except in an emergency, NRG shall not make such change without prior approval of the Board or its designated representative. In the event of an emergency, the Board shall be informed immediately after the fact.

2 Project and Communications Requirements

- 2.1 The Board's designated representative for the purpose of these Conditions of Approval shall be the Manager, Facilities Applications.
- 2.2 NRG shall designate a person as project engineer and shall provide the name of the individual to the Board's designated representative. The project engineer will be responsible for the fulfilment of the Conditions of Approval on the construction site. NRG shall provide a copy of the Order and Conditions of Approval to the project engineer, within seven days of the Board's Order being issued.
- 2.3 NRG shall give the Board's designated representative and the Chair of the OPCC ten days written notice, in advance of the commencement of the construction.

- 2.4 NRG shall furnish the Board's designated representative with all reasonable assistance for ascertaining whether the work is being or has been performed in accordance with the Board's Order.
- 2.5 NRG shall file with the Board's designated representative notice of the date on which the installed pipelines were tested, within one month after the final test date.
- 2.6 NRG shall furnish the Board's designated representative with five copies of written confirmation of the completion of construction. A copy of the confirmation shall be provided to the Chair of the OPCC.

3 Monitoring and Reporting Requirements

- 3.1 Both during and after construction, NRG shall monitor the impacts of construction, and shall file four copies of both an interim and a final monitoring report with the Board. The interim monitoring report shall be filed within six months of the in-service date, and the final monitoring report shall be filed within eighteen months of the in-service date. NRG shall attach a log of all complaints that have been received to the interim and final monitoring reports. The log shall record the times of all complaints received, the substance of each complaint, the actions taken in response, and the reasons underlying such actions.
- 3.2 The interim monitoring report shall confirm NRG's adherence to Condition 1.1 and shall include a description of the impacts noted during construction and the actions taken or to be taken to prevent or mitigate the long-term effects of the impacts of construction. This report shall describe any outstanding concerns identified during construction.
- 3.3 The final monitoring report shall describe the condition of any rehabilitated land and the effectiveness of any mitigation measures undertaken. The results of the monitoring programs and analysis shall be included and recommendations made as appropriate. Any deficiency in compliance with any of the Conditions of Approval shall be explained.
- 3.4 Within fifteen months of the in-service date, NRG shall file with the Board a written Post Construction Financial Report. The Report shall indicate the actual capital costs of the project and shall explain all significant variances from the estimates filed with the Board.

4 Easement Agreements

- 4.1 NRG shall offer the form of agreement approved by the Board to each landowner, as may be required, along the route of the proposed work.

5 Other Approvals and Contracts

- 5.1 NRG shall obtain all other approvals, permits, licences, and certificates required to construct, operate and maintain the proposed project, shall provide a list thereof, and shall provide copies of all such written approvals, permits, licences, and certificates upon the Board's request.
- 5.2 NRG shall not, without the prior approval of the Board, consent to any alteration or amendment to the Gas Delivery Contract or the Pipeline Cost Recovery Agreement as those agreements were executed on January 31, 2007, where such alteration or amendment has or may have any material impact on NRG's ratepayers.

Tab 3

This **PIPELINE COST RECOVERY AGREEMENT** ("Agreement"), made as of the 31st day of January, 2007.

BETWEEN:

NATURAL RESOURCE GAS LIMITED,
a corporation formed under the laws of Ontario.

(the "Utility")

- and -

INTEGRATED GRAIN PROCESSORS CO-OPERATIVE INC.,
a co-operative corporation formed under the laws of Ontario.

(the "Customer")

(collectively the "Parties")

RECITALS:

WHEREAS the Customer is developing an ethanol facility (the "Customer Facility") in the Town of Aylmer, Ontario;

AND WHEREAS the Utility must expand its current natural gas distribution infrastructure to deliver natural gas to the Customer Facility to meet the volume, pressure and delivery requirements of the Customer;

AND WHEREAS the Utility has a franchise agreement to distribute natural gas in the Town of Aylmer;

AND WHEREAS the Utility has entered or will enter into an agreement with Union Gas Limited to install new facilities or modify existing facilities to supply the Utility with natural gas, such that Union Gas Limited will be capable of meeting the total supply requirements of the Utility, including the supply needs of the Customer;

AND WHEREAS the Utility and Union Gas Limited have reached an understanding regarding the Utility Connection Facilities crossing the Union Gas Limited franchise area;

AND WHEREAS the Customer has paid to the Utility a deposit of \$130,000.00 against any Aid-to-Construct that may be owed to the Utility;

AND WHEREAS the Utility and the Customer have entered into an agreement dated January 31, 2007, as the same may be amended, modified, supplemented or restated (the "Gas Delivery Contract") providing for the Utility to deliver natural gas to the Customer Facility, among other things;

AND WHEREAS the Customer, or its representative, will be purchasing the Customer's gas directly and arranging for transportation, and the Utility and the Customer will enter into a Bundled T-Service Receipt Contract;

AND WHEREAS the Utility has determined that approximately 28.53km of NPS 6 steel pipeline and related facilities are required to be installed to deliver natural gas to the Customer Facility;

AND WHEREAS the Customer has requested and the Utility has agreed to construct approximately 28.53km of NPS 6 steel pipeline and related facilities (the "Utility Connection Facilities") and to arrange with Union Gas Limited for the construction by Union for facilities required to complete the connection between the Utility Connection Facilities and the Union Gas Limited system (the "Union Gas Connection Facilities"), to deliver natural gas from the Union Gas Limited system to the Customer Facility, on the terms and conditions set forth in this Agreement; and

IN CONSIDERATION of the mutual covenants contained herein, the receipt and sufficiency of which is hereby acknowledged and accepted, the Parties to this Agreement agree as follows:

ARTICLE I – ATTACHMENTS AND INTERPRETATION

1.1 The following are hereby incorporated into and form part of this Agreement:

- (a) Schedule A - Pipeline Work
- (b) Schedule B - Project Map

1.2 For the purpose of this Agreement:

- (a) "Actual Aid-To-Construct" means the Aid-To-Construct calculated by the Utility using the Actual Capital Cost, as provided for in Article III;
- (b) "Actual Capital Cost" means the reasonable actual Capital Cost, as provided for in Article III;
- (c) "Aecon" means Aecon Utilities - A Division of Aecon Construction Inc., or any successor thereto;
- (d) "Aid-to-Construct" means the amount by which the Capital Cost exceeds the revenue recovered by the Utility through rates, as calculated in accordance with EBO 188;
- (e) "Applicable Law" means all federal, provincial, county, municipal or local laws, by-laws, statutes, rules, regulations ordinances, directives, or any decisions of a Governmental Authority.
- (f) "Business Day" means a day, other than a Saturday or Sunday or statutory holiday in the Province of Ontario or any other day on which banking institutions in Ontario are not open for the transaction of business;

- (g) "Capital Cost" means the total capital cost of the Utility Connection Facilities and the Union Gas Aid-to-Construct;
- (h) "Construction" means construction and installation of the Utility Connection Facilities;
- (i) "Construction Agreement" means the agreement between the Utility and a contractor for the completion of the Construction;
- (j) "Cubic metres" or "m³" means the volume of gas which at a temperature of 15 degrees Celsius and at an absolute pressure of 101.325 kilopascals ("kPa") occupies one cubic metre;
- (k) "Customer Facility" means the ethanol facility proposed to be built and operated by the Customer in the Town of Aylmer with an output capacity of approximately 150 million litres of ethanol annually;
- (l) "Customer Meter Facility" means the Utility's equipment to measure the gas consumed by the Customer, located at the Customer Facility, and includes but is not limited to all meters, pressure regulators, valves, fittings and communications equipment, and forms part of the Utility Connection Facilities;
- (m) "EBO 188" means the Final Report of the Board, dated January 30, 1998 regarding the economic evaluation of the expansion of natural gas systems;
- (n) "Event of Default" means either a Customer Event of Default or a Utility Event of Default;
- (o) "Governmental Authority" means any federal, provincial, municipal or local government, parliament or legislature, or any regulatory authority, agency or tribunal, commission, board or department of any such government, parliament or legislature or any court or other law, regulation or rule-making entity having jurisdiction in the relevant circumstances;
- (p) "GST" means the goods and service tax exigible pursuant to the *Excise Tax Act* (Canada) as amended from time to time;
- (q) "Initial Estimated Aid-To-Construct" means the Aid-To-Construct calculated in accordance with EBO 188 using the Initial Estimated Capital Cost;
- (r) "Initial Estimated Capital Cost" means the estimated Capital Cost provided by Aecon, including the Union Gas Aid-to-Construct;
- (s) "In-Service Date" means the later of November 1, 2007 and the date on which the pipeline is able to deliver the full amount of the gas contemplated by the Gas Delivery Contract;
- (t) "Insolvency Legislation" means the *Bankruptcy and Insolvency Act* (Canada), the *Winding Up and Restructuring Act* (Canada) and the *Companies' Creditors*

Arrangement Act (Canada) and the bankruptcy, insolvency, creditor protection or similar laws of any other jurisdiction (regardless of the jurisdiction of such application or competence of such law), as they may be amended from time to time.

- (u) "Leave-to-Construct" means the application, decision, order or approval as the context requires pursuant to section 90 of the *Ontario Energy Act, 1998* as amended;
- (v) "MMBTU" means one million British Thermal Units;
- (w) "NPS" means nominal pipe size;
- (x) "OEB" means the Ontario Energy Board or any successor organization;
- (y) "Overhead" shall, to the extent not included in other consulting costs, include the reasonable engineering, supervision, administrative salaries and expenses, construction engineering and supervision, legal expenses, taxes and other similar items allocated to the Utility Connection Facilities;
- (z) "Pipeline Work" means the work required to plan, design, construct, install, test and commission the Utility Connection Facilities and the Union Gas Connection Facilities;
- (aa) "Prime Rate" means the prime rate of interest of the Bank of Nova Scotia;
- (bb) "Revised Estimated Aid-To-Construct" means the estimated Aid-To-Construct calculated in accordance with EBO 188 using the Revised Estimated Capital Cost;
- (cc) "Revised Estimated Capital Cost" means the estimated Capital Cost, using the most current information available, in accordance with Article III;
- (dd) "Utility Connection Facilities" means the pipeline and ancillary facilities to be completed by the Utility to serve the Customer;
- (ee) "Union Gas Aid-To-Construct" means the Aid-To-Construct payable to Union Gas Ltd. by the Utility in respect of the Union Gas Connection Facilities, calculated in accordance with EBO 188;
- (ff) "Union Gas Connection Facilities" means the pipeline and ancillary facilities to be completed by Union Gas Limited upstream of the Utility Connection Facilities, that are necessary to serve the Customer.

ARTICLE II – REPRESENTATIONS AND WARRANTIES

2.1 The Customer represents and warrants to the Utility that:

- (a) it is duly incorporated, formed or registered (as applicable) under the laws of its jurisdiction of incorporation, formation or registration (as applicable);

- (b) it has all the necessary corporate power, authority and capacity to enter into this Agreement and to perform its obligations under it;
- (c) the execution, delivery and performance of the Agreement by it has been duly authorized by all necessary corporate action and does not result in a violation, a breach or a default under: (i) its charter or by-laws; (ii) any contracts or instruments to which it is bound; or (iii) any Applicable Law;
- (d) any individual executing this Agreement, and any document in connection herewith, on its behalf has been duly authorized by it to execute this Agreement and has the full power and authority to bind it;
- (e) this Agreement constitutes a legal and binding obligation on it, enforceable against it in accordance with its terms; and,
- (f) no proceedings have been instituted by or against it with respect to bankruptcy, insolvency, liquidation or dissolution.

2.2 The Utility represents and warrants to the Customer that:

- (a) it is duly incorporated, formed or registered (as applicable) under the laws of its jurisdiction of incorporation, formation or registration (as applicable);
- (b) it has all the necessary corporate power, authority and capacity to enter into this Agreement and to perform its obligations under it;
- (c) the execution, delivery and performance of this Agreement by it has been duly authorized by all necessary corporate action and does not result in a violation, a breach or a default under: (i) its charter or by-laws; (ii) any contracts or instruments to which it is bound; or (iii) any Applicable Law;
- (d) any individual executing this Agreement, and any document in connection herewith, on its behalf has been duly authorized by it to execute this Agreement and has the full power and authority to bind it;
- (e) this Agreement constitutes a legal and binding obligation on it, enforceable against it in accordance with its terms;
- (f) no proceedings have been instituted by or against it with respect to bankruptcy, insolvency, liquidation or dissolution; and,
- (g) the calculation of the Initial Estimated Aid-To-Construct has been completed in accordance with EBO 188.

ARTICLE III – CAPITAL COST AND AID-TO-CONSTRUCT

- 3.1 The Initial Estimated Capital Cost is estimated at \$9,100,000.00, comprised of approximately \$8,920,000.00 for the Utility Connection Facilities and \$180,000.00 for the Union Gas Aid-To-Construct. The Initial Estimated Capital Cost is included in the Leave-to-Construct application filed by the Utility with the OEB.
- 3.2 Based upon the Initial Estimated Capital Cost and applying the Utility's current OEB-approved Rate 3 to a minimum annual volume of 33,416,618 m³ and a firm contract demand of 108,188 m³/day over a seven year period, the Initial Estimated Aid-to-Construct is \$3,790,000.00, to be paid by the Customer.
- 3.3 The Customer shall make payments toward the Initial Estimated Aid-to-Construct, as follows:
- (a) \$130,000.00 on or before October 16, 2006, payment of which has been received and acknowledged;
 - (b) Prior to the award of the Construction Agreement, the amount of the monthly invoices provided by the Utility for reasonable internal, consulting and third party expenses incurred in the prior calendar month within fifteen (15) Business Days of receiving such invoice; and
 - (c) Payment, in advance as required by the Utility, of an amount equal to any required payment to be made by Utility for procuring the station material and pipe;
- the total of which payments shall not exceed the Initial Estimated Aid-to-Construct.
- 3.4 Prior to the execution of the Construction Agreement, the Utility shall provide the Customer with a Revised Estimated Capital Cost and a Revised Estimated Aid-to-Construct, based on the most current information available at the time, including the successful bid for the Construction Agreement, calculated in accordance with EBO 188, and:
- (a) The Customer shall pay the Utility an amount equal to the amount, if any, by which the Revised Aid-To-Construct exceeds the total of all payments made by the Customer to the Utility under Section 3.3. In the event that the amount paid by the Customer pursuant to Section 3.3 exceeds the Revised Estimated Aid-To-Construct then the Utility shall forthwith pay to Customer an amount equal to the payments made less the Revised Estimated Aid-To-Construct; and
 - (b) The Utility shall provide the Customer with a detailed written breakdown of the Revised Estimated Capital Cost including, but not limited to Overhead, engineering, surveying, consultant, legal, major materials (pipe, meters, major equipment, heating equipment costs), easement, internal and external construction and commissioning costs when it is available to the Utility and a copy of the cost

breakdown for the Union Gas Connection Facilities as provided to the Utility by Union Gas Limited.

- 3.5 In the event that the Commencement Date under the Gas Delivery Contract is later than the In-Service Date, the Utility shall invoice and the Customer shall pay an amount equal to the Utility's reasonable debt financing costs incurred in each month between the In-Service Date and the Commencement Date under the Gas Delivery Contract.
- 3.6 The contingency amount to be included in the Revised Estimated Capital Cost shall be limited to a maximum of ten percent of the Construction Agreement cost.
- 3.7 The Utility, in its sole discretion, may elect not to proceed any further with any of its obligations under this Agreement if the Customer fails to make any payment or provide any letter of credit required under this agreement until such payment or letter of credit is delivered by the Customer to the Utility and the Utility shall not be liable for any liabilities, damages, losses, payments, costs, or expense that may be incurred by the Customer as a result.
- 3.8 From the date required for any payment required by this Agreement, all unpaid amounts will bear interest at the rate of the Prime Rate plus 1.00% per annum payable quarterly on the last day of each calendar quarter.
- 3.9 The Utility shall use best efforts to minimize the actual Capital Cost, and shall advise the Customer of actual costs as incurred, in accordance with Article IV. At a minimum, the Utility shall ensure the award of the Construction Agreement is completed through a competitive tender process unless otherwise agreed to in writing by the Customer. The Utility shall ensure that the procurement of pipe, major equipment and appliances is done using a competitive quotation process wherever possible. The Utility shall inform the Customer where a competitive process is not utilized and provide an explanation as to why a competitive process is not required. Prior to committing to any expenditure in excess of \$100,000.00, the Utility shall obtain the written consent of the Customer, such consent not to be unreasonably withheld.
- 3.10 The Utility shall request Union Gas Limited to provide it with the actual capital cost of the Union Gas Connection Facilities and the actual Union Gas Aid-to-Construct within 30 Business Days or other mutually agreeable timeframe of the pipeline being put into service.
- 3.11 The Customer and the Utility acknowledge that the Initial Estimated Capital Cost and the Revised Estimated Capital Cost may be different from the Actual Capital Cost incurred and the parties agree that the Actual Aid-to-Construct and Delivery Letter of Credit (as defined in Article VII) shall be adjusted based on an economic evaluation carried out in accordance with EBO 188.
- 3.12 The Customer reserves its rights to dispute the reasonableness of costs incurred in completing the Pipeline Work, provided that the Customer does so within 5 Business Days when such costs are provided by the Utility to the Customer.

- 3.13 Within forty-five (45) Business Days or some other mutually agreeable timeframe of the pipeline being put into service, the Utility shall provide the Customer with the Actual Capital Cost and Actual Aid-To-Construct, along with a summary of the information provided pursuant to Section 4.3 and copies of any invoices and supporting documentation not previously provided to Customer. If the Customer agrees with the Actual Capital Cost and Actual Aid-To-Construct, and
- (a) if the Actual Aid-To-Construct is greater than the Revised Estimated Aid-To-Construct, then the Customer shall pay to the Utility the difference between the Actual Aid-To-Construct and the Revised Aid-To-Construct within five (5) Business Days; and
 - (b) if the Revised Estimated Aid-To-Construct exceeds the Actual Aid-To-Construct then the Utility shall pay to the Customer the difference between the Actual Aid-To-Construct and the Revised Aid-To-Construct within five (5) Business Days.
- 3.14 If the Customer does not agree with the Actual Capital Cost and Actual Aid-To-Construct, the Parties shall negotiate in good faith for a period of 20 Business days to establish an Actual Capital Cost. If the Parties are unable to agree after such negotiations then either party may refer the matter to the OEB for resolution. In determining reasonable costs attributable to the Capital Cost, the following considerations will be taken into account:
- (a) Legal costs will include the reasonable legal costs of the Utility to establish gas distribution service for the Customer, including the reasonable legal cost to prepare and obtain the Leave to Construct from the OEB; acquire any temporary or permanent land rights required to complete the Pipeline Work; review any procurement or tendering documentation, and draft and negotiate this Agreement and any other agreement required to provide gas distribution service to the Customer;
 - (b) Consultant costs will include the reasonable cost of consultants incurred by the Utility to provide gas distribution service to the Customer, including the reasonable cost to complete the economic analysis to determine the Initial Estimated Aid-to-Construct, the Revised Estimated Aid-to-Construct and the Actual Aid-to-Construct; to carry out title searches to identify adjacent landowners and others with interests in adjacent lands that may be impacted by the Utility Connection Facilities; and the estimated cost of a Surveyor in the amount of \$52,400;
 - (c) The Capital Cost will include the cost of services provided to the Utility by Aecon and any sub-contractors to Aecon, to complete the design of the Utility Connection Facilities, obtain all permits and approvals, , prepare and complete the request for quotation documents for the Construction Agreement and all other competitive processes for services and materials, and the cost estimated by Aecon to be in the range of \$30,000 to \$50,000 for the third party borehole drilling sub-contractor for the completion of boreholes used in the preparation of the Tender Package;

- (d) Utility costs shall include the reasonable cost of interest during construction calculated in accordance with the OEB approved methodology and Overhead related to the Pipeline Work. Internal utility costs will include reasonable administrative and supervisory costs; and technician and field personnel required for the testing and commissioning of the Utility Connection Facilities.
 - (e) The reasonable costs of non-destructive testing of the welds and third party inspection of the Construction.
 - (f) The reasonable cost of the completion of as-built drawings for the Utility Connection Facilities.
 - (g) All consulting and third party costs include reasonable disbursements made by the third party or consultant unless such disbursements are included in a fixed fee quotation.
- 3.15 The Utility shall calculate and provide a partial refund of the Actual Aid-To-Construct, using the same methodology used to calculate the Actual Aid-To-Construct, if available capacity is assigned to another customer within seven years of the date on which the Utility Connection Facilities come into service, provided that the Utility is permitted by the Board to obtain any financial contribution that might be required from the subsequent customer to cover the amount of the refund. The calculation will be carried out once a year, based on the aggregate customer additions for the year. The calculation for the refund will be based on the same inputs used for the original calculation of the Actual Aid-To-Construct, except for the Capital Cost of the facilities which shall be prorated on the basis of the total capacity of the Utility Connection Facilities minus the capacity assigned to any subsequent customers.

ARTICLE IV – CONSTRUCTION

- 4.1 Prior to awarding of the Construction Contract, the Customer shall enter into a seven year gas delivery agreement as mutually agreed to by the Parties with a minimum annual volume of 33,416,618 m³ and a firm contract demand of 108,188 m³/day (Gas Delivery Agreement).
- 4.2 The timely completion of the Utility Connection Facilities is in the interest of the Parties. As part of the Construction Agreement, the Utility shall require the contractor to post a performance bond, including a liquidated damages provision, or other performance assurance measures acceptable to the Customer acting in a reasonable manner.
- 4.3 Prior to the termination of this Agreement, the Utility shall provide the Customer with weekly updates in writing as to costs incurred, costs committed to but not yet incurred and projected costs associated with the Pipeline Work. The Utility shall provide all supporting documentation (quotations, estimates, invoices, bills of lading, receipts, timesheets, etc.) for all costs incurred. As part of the updates, the Utility shall provide the Customer with a description of upcoming work; the anticipated procurement method and

a recommended course of action. The Customer and the Utility shall discuss significant upcoming expenditures prior to committing to such expenditures and shall work co-operatively to meet all timelines and to minimize the costs in the circumstances. The Customer shall consent to such significant expenditures prior to the Utility committing to such expenditures, such consent to be given in a timely manner and not to be unreasonably withheld.

- 4.4 The Parties acknowledge that any change in the scope of the Pipeline Work may result in a change to the Capital Cost, the Aid-to-Construct, the Customer Letter of Credit and the Construction schedule. A change in scope of the Pipeline Work may come about as a result of any of the following:
- (a) a Customer-initiated scope change;
 - (b) a requirement or condition imposed by a Governmental Authority, including without limitation, the OEB;
 - (c) unplanned delays on the part of the Customer or Subcontractor; or
 - (d) an event of Force Majeure (as determined in accordance with Article VI).
- 4.5 In the event of a change in the scope of the Pipeline Work, as contemplated in Section 4.4, in excess of \$25,000, the Utility shall inform the Customer immediately of the nature of the change and the corresponding impact on the cost of the Pipeline Works. In the event such change will cause an increase in the Actual Capital Cost, the Utility shall obtain the Customer's consent to such increase prior to incurring such cost, such consent not to be unreasonably withheld and to be provided within 3 Business Days of receiving the information. In the event the Customer's consent has not been given within 3 Business Days, the Customer shall be deemed to have given consent to complete such work.
- 4.6 The Utility shall use all reasonable efforts to have the Pipeline Work (as described in Schedule A) completed by November 1, 2007 provided that:
- (a) the Customer executes and returns this Agreement to the Utility by no later than February 1, 2007 (the "Execution Date");
 - (b) the Pipeline Work is completed in accordance with Schedule A of this Agreement;
 - (c) the Customer is in compliance with its obligations under this Agreement;
 - (d) there are no delays associated with third parties, including but not limited to Union Gas Limited, the Utility's lender and any companies selected to carry out Construction;
 - (e) the Utility is granted Leave-to-Construct by March 1, 2007; and,

- (f) the Utility does not have to use its employees, agents and contractors performing the Pipeline Work elsewhere on its system due to an emergency, or an event of Force Majeure. For the purposes of this paragraph, an emergency means a line-break, leak, fire or similar event requiring an immediate response from the Utility.

4.7 As soon as the Utility becomes aware of any delay that may prevent the Utility from achieving the November 1, 2007 deadline, the Utility shall provide the Customer with notice in writing of such potential delay, the length of the anticipated delay and the reasons for such potential delay.

ARTICLE V – DEFAULT AND REMEDIES

5.1 Each of the following will constitute an Event of Default by the Customer (“Customer Event of Default”):

- (a) The Customer fails to make any payment when due, if such failure is not remedied within ten (10) Business Days after written notice of such failure from the Utility.
- (b) The Customer fails to deliver or maintain the Customer Letter of Credit or the Delivery Letter of Credit when due.
- (c) The Customer fails to perform any material covenant or obligation set forth in this Agreement if such failure is not remedied within fifteen (15) Business Days after written notice of such failure from the Utility.
- (d) Any representation made by the Customer in this Agreement is not true or correct in any material respect when made and is not made true or correct in all material respects within thirty (30) Business Days after receipt by the Customer of written notice of such fact from the Utility.
- (e) An effective resolution is passed or documents are filed in an office of public record in respect of, or a judgment or order is issued by a court of competent jurisdiction ordering, the dissolution, termination of existence, liquidation or winding up of the Customer, unless such filed documents are immediately revoked or otherwise rendered inapplicable, or unless there has been a permitted and valid assignment of this Agreement by the Customer under this Agreement to a person which is not dissolving, terminating its existence, liquidating or winding up and such person has assumed all of the Customer’s obligations under this Agreement.
- (f) The Customer makes an assignment for the benefit of its creditors generally under any Insolvency Legislation, or consents to the appointment of a receiver, manager, receiver-manager, monitor, trustee in bankruptcy, or liquidator for all or part of its property or files a petition or proposal to declare bankruptcy or to reorganize pursuant to the provision of any Insolvency Legislation, or otherwise seeks the protection of Insolvency Legislation regardless of whether a proposal or plan is proposed.

- (g) A receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy of the Customer or of any of the Customer's property is appointed by a Governmental Authority or pursuant to the terms of a debenture or a similar instrument, and such receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy is not discharged or such appointment is not revoked or withdrawn within thirty (30) days of the appointment.
- (h) By decree, judgment or order of a Governmental Authority, the Customer is adjudicated bankrupt or insolvent or any substantial part of the Customer's property is sequestered, and such decree continues undischarged and unstayed for a period of thirty (30) days after the entry thereof.
- (i) A petition, proceeding or filing is made against the Customer seeking to have the Customer declared bankrupt or insolvent, or seeking adjustment or composition of any of their respective debts pursuant to the provisions of any Insolvency Legislation, and such petition, proceeding or filing is not dismissed or withdrawn within thirty (30) days.

5.2 Each of the following will constitute an Event of Default by the Utility ("Utility Event of Default"):

- (a) The Utility fails to perform any material covenant or obligation set forth in this Agreement if such failure is not remedied within fifteen (15) Business Days after written notice of such failure from the Customer.
- (b) Any representation made by the Utility in this Agreement is not true or correct in any material respect when made and is not made true or correct in all material respects within thirty (30) Business Days after receipt by the Utility of written notice of such fact from the Customer.
- (c) An effective resolution is passed or documents are filed in an office of public record in respect of, or a judgment or order is issued by a court of competent jurisdiction ordering, the dissolution, termination of existence, liquidation or winding up of the Utility, unless such filed documents are immediately revoked or otherwise rendered inapplicable, or unless there has been a permitted and valid assignment of this Agreement by the Utility under this Agreement to a person which is not dissolving, terminating its existence, liquidating or winding up and such person has assumed all of the Utility's obligations under this Agreement.
- (d) The Utility makes an assignment for the benefit of its creditors generally under any Insolvency Legislation, or consents to the appointment of a receiver, manager, receiver-manager, monitor, trustee in bankruptcy, or liquidator for all or part of its property or files a petition or proposal to declare bankruptcy or to reorganize pursuant to the provision of any Insolvency Legislation, or otherwise seeks the protection of Insolvency Legislation regardless of whether a proposal or plan is proposed.

- (e) A receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy of the Utility or of any of the Utility's property is appointed by a Governmental Authority or pursuant to the terms of a debenture or a similar instrument, and such receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy is not discharged or such appointment is not revoked or withdrawn within thirty (30) days of the appointment.
- (f) By decree, judgment or order of a Governmental Authority, the Utility is adjudicated bankrupt or insolvent or any substantial part of the Utility's property is sequestered, and such decree continues undischarged and unstayed for a period of thirty (30) days after the entry thereof.
- (g) A petition, proceeding or filing is made against the Utility seeking to have the Utility declared bankrupt or insolvent, or seeking adjustment or composition of any of their respective debts pursuant to the provisions of any Insolvency Legislation, or such petition, proceeding or filing is not dismissed or withdrawn within thirty (30) days.
- (h) A failure to maintain in good standing any franchise agreement or any other approval, permit or license from any Governmental Authority required for the construction and operation of the Pipeline Works and the supply of natural gas to the Customer Facility.

ARTICLE VI – FORCE MAJEURE

- 6.1 In the event that either the Customer or the Utility is rendered unable, in whole or in part, by Force Majeure, to perform or comply with any obligation or condition of this Agreement, then the obligations (other than the obligations to make payment of money then due and to provide or maintain any letter of credit) of both parties so far as they are directly related to and affected by such Force Majeure, shall be suspended during the continuance of the Force Majeure.
- 6.2 The party claiming Force Majeure shall give notice in writing, with full particulars, to the other party as soon as possible after the occurrence of Force Majeure.
- 6.3 The party claiming Force Majeure shall also give notice to the other party as soon as possible after the Force Majeure is remedied in whole or part.
- 6.4 Force Majeure means:
 - (a) Acts of God, landslides, lightning, earthquakes, fires, storms, floods, washouts, explosions, breakage or accident to its machinery or equipment or lines of pipe;
 - (b) freezing or failure of wells or lines of pipe; curtailment of firm transportation or firm storage by other natural gas service providers;
 - (c) strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections, civil disturbance, acts of terrorism, wars, arrests or restraint of governments and people;

- (d) any laws, orders, rules, regulations, acts of any government body or authority, civil or military;
- (e) any act or omission by parties not controlled by the party claiming Force Majeure; and
- (f) any other similar causes not within the control of the party claiming Force Majeure

which by the exercise of due diligence such party is unable to prevent or overcome. The party claiming Force Majeure shall make reasonable efforts to avoid, or correct the Force Majeure and to remedy the Force Majeure once it has occurred in order to resume performance.

6.5 Neither party shall be entitled to claim Force Majeure if any of the following circumstances prevail:

- (a) the failure resulting in Force Majeure was caused by the negligence of the party claiming suspension;
- (b) the failure was caused by the party claiming suspension where such party failed to remedy the condition by making all reasonable efforts (short of litigation, if such remedy would require litigation);
- (c) the party claiming suspension failed to resume the performance of such conditions or obligations with reasonable dispatch;
- (d) the failure was caused by lack of funds; and
- (e) the party claiming suspension did not give to the other party the required notice as soon as possible after determining or within a period within which it should have determined, acting reasonably, that the occurrence was in the nature of Force Majeure and would affect its ability to observe or perform any of its conditions or obligations under the Agreement.

ARTICLE VII – SECURITY AND PERFORMANCE ASSURANCE

- 7.1 Prior to the Utility ordering the pipe and the stations, the Customer shall provide to the Utility 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. The Customer shall be entitled to reduce the Customer Letter of Credit by the amount of any subsequent payments by the Customer to the Utility in respect of the pipe and the stations, upon making such payments. The Utility shall be entitled to draw upon the Customer Letter of Credit in the following circumstances:
- (a) Subject to (b), if the Customer fails to make a payment of the Aid-to-Construct in accordance with Article III, such draw not to exceed the amount owed by the Customer to the Utility.
 - (b) Notwithstanding (a) the Utility shall not be entitled to draw upon the Customer Letter of Credit within any cure periods established in Article V, in which the Customer may make payment to the Utility.
- 7.2 The Utility shall return the Customer Letter of Credit upon receipt of any payment required from the Customer in accordance with section 3.4 and delivery of the Delivery Letter of Credit required under section 7.3.
- 7.3 Prior to the award of the Construction Agreement by the Utility, the Customer shall provide to the Utility 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.
- 7.4 The Utility shall be entitled to draw upon the Delivery Letter of Credit if:
- (a) The Customer terminates this Agreement prior to the In-Service Date and fails to pay any amount owing to the Utility within 30 Business Days of receiving the invoice for monies owed for actual reasonable costs incurred prior to Termination; or
 - (b) The Customer terminates this Agreement and the Gas Delivery Contract after the In-Service Date but prior to the seventh anniversary of the Commencement Date under the Gas Delivery Contract;
 - (c) For any year, the Customer fails to take receipt of the Minimum Annual Volume under the Gas Delivery Contract and the Customer fails to pay the invoice for such failure to take the Minimum Annual Volume within 15 days of receiving such invoice;
 - (d) For reasons other than Force Majeure, the Customer ceases taking service for a period of 30 days during the term of the Gas Delivery Contract or at any time after that where service has continued past the end of the term of the Gas Delivery Contract;

- (e) the Delivery Letter of Credit will not be maintained and the Customer fails to provide a substitute acceptable to the Utility and its lender; or
 - (f) The Customer commits a Customer Event of Default listed in 5.1 (e), (f), (g), (h) and (i).
 - (g) The Customer fails to restore the balance of the Delivery Letter of Credit as required by 7.5.
- 7.5 The Customer shall maintain the Delivery Letter of Credit for as long as the Customer continues to receive service from the Utility. In the event that the Utility draws on the Delivery Letter of Credit pursuant to 7.4(c), the Customer shall restore the Delivery Letter of Credit to the balance that existed immediately prior to the draw, within 10 Business Days from the date of the draw.
- 7.6 Subject to section 7.7, the Customer shall be entitled to reduce the amount of the Delivery Letter of Credit on each anniversary of the commencement of deliveries under the Gas Delivery Agreement to an amount equal to the net book value of the Utility Connection Facilities allocated to the Customer at the time, as determined by the Utility in accordance with OEB-approved methodology.
- 7.7 Any letter of credit shall be in a form acceptable to the Utility and its lender. The Utility shall have its lender provide a draft form of letter of credit for review and comment by the Customer's lender.
- 7.8 The costs and expenses of establishing, renewing, substituting, cancelling, increasing and reducing the amount of (as the case may be) any letter of credit required under this Agreement shall be borne by the Customer.
- 7.9 The Utility shall return any letter of credit held by the Utility to the Customer, if the Customer is substituting a letter of credit with another letter of credit or such other financial assurance, where that substitute is acceptable to the Utility and its lender.

ARTICLE VIII – TERMINATION

- 8.1 This Agreement terminates upon the placing into service of the Utility Connection Facilities and the Union Gas Connection Facilities and the commencement of the delivery of natural gas to the Customer Facility. All payment obligations and all obligations in relation to the Customer Letter of Credit and Delivery Letter of Credit shall survive termination of this Agreement until they are fulfilled.

- 8.2 In the event that the Utility is unable to secure all necessary permits, approvals, licenses certificates necessary to complete the Pipeline Work and supply natural gas to the Customer Facility, or obtains such permits, approvals, licenses or certificates on terms and conditions that are unacceptable to the Customer, acting in a commercially reasonable manner, then the Customer has the option to terminate this Agreement. The Customer shall, however, be responsible for all actual or committed to costs incurred by the Utility and Union Gas Limited up to and including the date of termination.
- 8.3 The Utility may terminate this Agreement if a Customer Event of Default has occurred and the Utility has given notice to the Customer of such Customer Event of Default and such default is not remedied within the applicable cure period upon receiving such notice of default. Termination pursuant to this section shall not be permitted where such default has been submitted to a dispute resolution process under Article IX.
- 8.4 Subject to Section 8.5, in the event the Revised Estimated Aid-To-Construct has been paid, in full or in part, by the Customer to the Utility and the Agreement is terminated prior to completion of the Pipeline Work, then the Utility shall return to the Customer any amount of the Revised Estimated Aid-To-Construct paid by the Customer that is in excess of the actual reasonable cost incurred by the Utility up to and including the date of termination. In the event the actual reasonable cost incurred by the Utility exceed the amount of the Revised Estimated Aid-To-Construct, the Customer shall pay that amount, upon receipt of which the Utility shall forthwith return the Delivery Letter of Credit.
- 8.5 In the event Utility invokes Force Majeure and the event of Force Majeure or the aggregate duration of all such Utility events of Force Majeure exceeds 60 days in any 12 consecutive month period, then the Customer shall have the right to terminate this Agreement upon fifteen (15) Business Days written notice. Upon termination of this Agreement pursuant to this section, the Utility shall return all security and financial assurance provided by Customer, and an amount, if any, equal to any Aid-To-Construct paid by the Customer to the Utility less the Utility's reasonable costs incurred prior to the event of Force Majeure.

ARTICLE IX – DISPUTE RESOLUTION

- 9.1 In the event of any dispute arising between the Parties regarding the subject matter of this Agreement, then the Parties shall negotiate in good faith to resolve such matters.
- 9.2 In the event the Parties are unable to resolve a dispute, then either Party may refer the matter to the OEB for resolution.

ARTICLE X – INDEMNIFICATION

- 10.1 The Utility agrees to indemnify, defend, and hold harmless the Customer in respect of all actions, causes of action, suits, proceedings, claims, demands, losses, damages, penalties,

finances, costs, obligations and liabilities ("Damages") arising out of the construction, installation, testing, commissioning and operation of the Utility Connection Facilities, other than any Damages caused by the negligence or wilful misconduct of the Customer.

- 10.2 The Customer agrees to indemnify, defend and hold harmless the Utility in respect of all Damages arising out of the construction, installation, testing, commissioning and operation of the Utility Connection Facilities caused by the negligence or wilful misconduct of the Customer.

ARTICLE XI – GENERAL

- 11.1 Any written notice required by this Agreement shall be deemed properly given only if either mailed or delivered to:

- (a) To the Utility:

Natural Resource Gas Limited
P.O. Box 307
39 Beech Street East
Aylmer, Ontario N5H 2S1

Tel: (519) 773-5321

Fax: (519) 773-5335

Attention: Steve Millar, General Manager
c.c. Mark Bristoll, President

- (b) To the Customer:

Integrated Grain Processors Co-operative Inc.
701 Powerline Road
Brantford, Ontario N3T 5L8

Tel: (519) 752-0447

Fax: (519) 752-1887

Attention: Chair

A faxed notice will be deemed to be received on the date of the fax if received before 4 p.m. or on the next Business Day if received after 4 p.m. Notices sent by courier or

registered mail shall be deemed to have been received on the date indicated on the delivery receipt. The designation of the person to be so notified or the address of such person may be changed at any time by either party by written notice.

11.2 This Agreement:

- (a) constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior oral or written representations and agreements concerning the subject matter of this Agreement;
- (b) shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the Province of Ontario and the laws of Canada applicable therein, and the courts of Ontario shall have exclusive jurisdiction to determine all disputes arising out of this Agreement;
- (c) may be executed in counterparts, including facsimile counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same agreement; and
- (d) shall not be assigned without the prior written consent of the other party, such consent not to be unreasonably withheld. For greater certainty an assignment by way of security to the Customer's lenders shall be considered reasonable.

11.3 No modification of or amendment to this Agreement will be valid or binding unless set forth in writing and duly executed by both of the parties hereto and no waiver of any breach of any term or provision of this Agreement will be effective or binding unless made in writing and signed by the party purporting to give the same and, unless otherwise provided, will be limited to the specific breach waived.

11.4 If any provision of this Agreement is determined to be invalid or unenforceable or in breach of any Applicable Law in whole or in part, such invalidity or unenforceability will attach only to such provision or part thereof which provision or part shall be severed from the Agreement and the remaining part of such provision and all other provisions hereof will continue in full force and effect.

- 11.5 Notwithstanding the termination or expiration of this Agreement:
- (a) Section 3.15 shall survive for the period of time provided in which a refund is to be calculated.
 - (b) The obligation to make any payment shall survive until all such payments are determined and paid.
 - (c) Article 7 shall survive until the Utility no longer requires financial assurance from the Customer.
 - (d) Article IX shall survive until the final resolution, including all appeals, of any dispute arising out of this Agreement.
- 11.6 Each Party shall from time to time execute and deliver all such further documents and instruments and do all acts and things as the other party may reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.
- 11.7 This Agreement will enure to the benefit of and be binding upon the respective successors and permitted assigns of the Parties hereto.
- 11.8 Time is of the essence in the performance of the Parties' respective obligations under this Agreement.
- 11.9 Any reference to funds is a reference to Canadian currency.
- 11.10 This Agreement is subject to the consent of the Customer's Lenders. The Customer agrees to use reasonable efforts to secure such consent in a timely manner. This paragraph is entirely for the benefit of the Customer. The Customer shall waive this condition in writing.
- 11.11 This Agreement is subject to the consent of the Utility's Lenders. The Utility agrees to use reasonable efforts to secure such consent in a timely manner. This paragraph is entirely for the benefit of the Utility. The Utility shall waive this condition in writing.
- 11.12 In the event of a change of law affecting any of the rights or obligations of one Party to the other Party, the Utility shall continue to deliver gas and the Customer shall continue to pay for the delivery of gas as if the change had not occurred unless prohibited by law. In such event the Parties shall negotiate in good faith to preserve the original intent of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by the signatures of their proper officers, as of the day and year first written above.

NATURAL RESOURCE GAS LIMITED

Mark Bristoll
Per: Mark Bristoll
Title: President

I have authority to bind the corporation.

INTEGRATED GRAIN PROCESSORS CO-OPERATIVE INC.

Tom Cox
Per: Tom Cox
Title:

I have authority to bind the corporation.

Brent McBlain
Per: Brent McBlain
Title:

I have authority to bind the corporation.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by the signatures of their proper officers, as of the day and year first written above.

NATURAL RESOURCE GAS LIMITED

Per: Mark Bristoll
Title: President

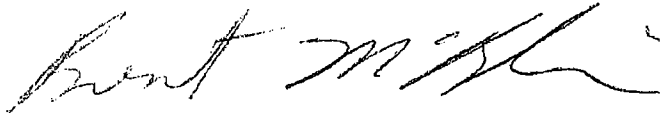
I have authority to bind the corporation.

INTEGRATED GRAIN PROCESSORS CO-OPERATIVE INC.



Per: Tom Cox
Title:

I have authority to bind the corporation.



Per: Brent McBlain
Title:

I have authority to bind the corporation.

Schedule A - Pipeline Work

In carrying out the Pipeline Work (as depicted in the figure attached as Schedule B to this Agreement), the Utility or a subcontractor to the Utility will need to complete the following:

Pipeline Work Planning

Utility Connection Facilities

1. The Utility shall design, construct, install, commission and operate the Utility Connection Facilities in accordance with all Applicable Laws and good utility practice.
2. The Utility shall be responsible for making applications to all Governmental Authorities for all permits, approvals, licenses and certificates necessary to undertake and complete the Utility Connection Facilities, including without limiting the foregoing, the Leave-to-Construct from the OEB. The Utility shall be responsible for maintaining all such permits, approvals, licenses in good standing.
3. The Utility shall only contract with suppliers and contractors competent to perform their tasks and shall undertake to secure competitive bids from competent suppliers and contractors for the Utility Connection Facilities.
4. The Utility and the Customer shall agree to a suitable location at the Customer Facility for the Customer Meter Facility.
5. The Utility shall coordinate the design, construction, testing and operation of the Utility Connection Facilities with Union Gas Limited such that Union Gas Limited will be able to supply the Utility with sufficient quantities of natural gas to meet the Customer's requirements by the In-Service Date.
6. The Utility shall furnish the Customer with a complete set of engineered stamped drawings of the Utility Connection Facilities before tendering for the Construction Agreement. The engineer shall be qualified to practice engineering in Ontario.
7. The Utility shall provide a flanged connection at the outlet of the Customer Meter Facility to which the Customer may connect the house-piping for the Customer Facility. In the event the Customer installs the house-piping with flanged connection prior to the Utility, the Utility shall be responsible for completing the connections. The flanged connection shall be adequately protected to prevent the entry of dirt, water or other extraneous materials from entering the Customer Meter Facility or the house-piping.
8. The Utility shall ensure the Customer Meter Facility is properly insulated from the Customer Facility.
9. The Utility shall furnish the Customer the required communications specifications for the Customer Meter Facility with the stamped drawings.

Access To Customer Facility

10. The Customer shall provide the Utility and its contractor with reasonable access to the Customer Facility to construct, install, test, commission and operate the Customer Meter Facility.
11. The Utility shall ensure that all employees of the Utility or its contractor obey all safety requirements of the Customer while on the Customer Facility.

Pipeline Work Testing and Commissioning

12. The Utility shall coordinate hydrotesting or any other testing, including non-destructive testing of welds, of the Utility Connection Facilities with the Customer and the Utility shall not interfere with the construction, installation, testing or commissioning of the Customer Facility.
13. The Utility shall ensure that the Utility Connection Facility is completely dewatered. Dewatering shall not occur on the Customer Facility.

Union Gas Connection Facilities

14. The Utility shall coordinate the construction of the Utility Connection Facilities with Union Gas Ltd. to facilitate the completion of the Union Gas Connection Facilities by or before November 1, 2007.

SCHEDULE B - PROJECT MAP

[To be inserted]

[illegible]

Legend

Proposed Gas Pipeline Route



0 3,000 6,000

81100
Joseph Numbur

81100
Joseph Numbur

Tab 4

NATURAL RESOURCE GAS LIMITED

GAS DELIVERY CONTRACT

TYPE OF SERVICE:

- ☒ Firm Demand and Commodity
☐ Interruptible Demand and Commodity
☐ Combined Firm and Interruptible Demand and Commodity

DATE OF CONTRACT: January 30, 2007

RATE CLASS: 3

PARTIES TO CONTRACT:

NATURAL RESOURCE GAS LIMITED, (the "Utility"),

and

INTEGRATED GRAIN PROCESSORS CO-OPERATIVE INC. (the "Customer"),

PART 1 - PURCHASE AND SALE

The Customer agrees that it will receive from the Utility all of the gas that it uses for the processes described below and which is delivered at the Delivery Points (except during periods of curtailment, discontinuance or force majeure as set out in this Contract) up to the maximum daily and hourly maximum volumes set out in Part 2. This gas supply will be delivered in accordance with Rate BT1 (a copy of which is attached) for the Customer's share of the transportation costs associated with supplying its own gas.

Subject to the provisions of this Contract and the Rate 3 schedule in Schedule A and any subsequent amendments approved by the Ontario Energy Board during the term of this Contract, the Customer shall purchase its own gas to be delivered by the Customer to Union Gas Limited, by Union Gas Limited to the Utility, and by the Utility to the Customer (including any gas in excess of the Customer's minimum annual volume which the Customer requests and which the Utility has agreed to deliver) and the Utility shall deliver such gas to the Customer.

Delivery Point (to Customer) - Ethanol Facility, Aylmer Industrial Park

Processes: Ethanol production, grain drying and space heating

Firm Delivery Rate: \$ 0.037310 per m³

Firm Demand Rate: \$ 0.255904 per m³ of Firm Contract Demand

If the Utility, pursuant to Part 5 of this Contract, or due to Force Majeure as described in the General Terms and Conditions, fails or is unable to deliver the amount of firm gas which the Customer desires to take during any one or more days in a month, up to the Customer's Firm Contract Demand in effect on such days, then the minimum bill for that month shall be reduced by an amount equal to the Firm Delivery Rate applied to the volume by which the Firm Contract Demand exceeds the volume of gas delivered to the Delivery Point on such a day, for each day in the month in which the inability to deliver continues.

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

PART 4 - POINT OF DELIVERY

The point of delivery of all gas by the Utility is at the outlet of the Utility's metering equipment at the Customer's Ethanol Facility. The Utility shall at no time assume title to the gas that the Customer is supplying into the Utility's distribution system. The Utility agrees to deliver gas at the outlet of its metering equipment at a minimum pressure of 60 psig or 420 kPa.

PART 5 - PRIORITY OF SERVICE

In the event of actual or threatened shortage of natural gas due to circumstances beyond the control of the Utility, or when curtailment or discontinuance of supply is ordered by an authorized government agency, the Customer shall at the direction of the Utility, curtail or discontinue use of gas during the period specified by the Utility so as to safeguard the health and safety of the public. Such curtailment or discontinuance shall be made on a prorated basis as may be ordered by a government agency among all industrial Rate 3 customers. The Utility shall not be liable for any loss of production or for any damages whatsoever by reason of any such curtailment or discontinuance or because of the length of advance notice given directing such curtailment or discontinuance.

PART 6 - CURTAILMENT OR DISCONTINUANCE OF SERVICE

Firm service under this Contract will be provided up to the Firm Contract Demand.

Notice of curtailment or discontinuance of service may be conveyed by telephone, in person, by mail, facsimile or email. If notice is conveyed by telephone or in person then the Utility shall at the earliest possible time thereafter confirm in writing the details of notice and provide the

reasons for the curtailment or discontinuance and the anticipated duration of the curtailment if the curtailment or discontinuance is continuing at the time of the written notice.

Service will be resumed as soon as possible when these conditions cease to be operative.

PART 7 - TERM

Unless deemed to commence otherwise, this Contract shall commence upon Commercial Operation of the Customer's ethanol facility (the "Commencement Date") and terminate the day immediately prior to the seventh anniversary of the Commencement Date.

Commercial Operation shall mean the date upon which a professional engineer duly qualified to practice engineering in Ontario procured by the Customer provides a certificate that the Customer's ethanol facility has been completed in all material respects excepting punch list items that do not materially and adversely affect the ability of the Customer to operate the ethanol facility. In the event that Commercial Operation has not been achieved prior May 1, 2008 then the Commencement Date shall be deemed to be May 1, 2008. In the event Commercial Operation is prior to April 1, 2007, the Commencement Date shall be deemed to be April 1, 2007.

The Customer shall notify the Utility of the Commencement Date at least 30 days in advance of the Commencement Date.

The Utility's Rate 1 shall apply to any gas volumes delivered prior to the Commencement Date.

PART 8 - RE-OPENER

In the event the market for ethanol or dried distillers grains is materially and adversely impacted the Customer may give written notice to Utility that it wishes to renegotiate this Contract. Upon the written request of the Customer, the Parties shall within ten (10) Business Days enter into good faith negotiations to amend this agreement to preserve the original intent of the bargain of providing economical delivery service to the Customer without undue burden or risk to the Utility or the other ratepayers of the Utility and recognizing the need for the Customer to maintain satisfactory financial assurances with the Utility. The term of any renegotiated agreement would only commence on an anniversary date of this Contract, unless otherwise agreed.

PART 9 - GENERAL TERMS AND CONDITIONS

The General Terms and Conditions attached as Schedule B form part of this Contract.

PART 10 - SECURITY DEPOSIT

Prior to the commencement of delivery of gas pursuant to this Agreement, the Customer shall provide a security deposit to the Utility in the amount of one month's delivery charge using the applicable Rate at the Commencement Date. The security deposit may be in the form of a letter of credit, guarantee or other mutually agreeable method of providing financial assurance. The amount of any security deposit shall be subject to adjustment on an annual basis on the anniversary of the Commencement Date using the applicable rate on such date.

The maximum amount of the security deposit will be equal to:

$$\text{Security Deposit} = \text{Monthly Customer Charge} + \text{Demand Charge} + \text{Delivery Charge}$$

Where:

$$\text{Monthly Customer Charge} = \text{amount specified in Part 3}$$

$$\text{Demand Charge} = \text{Firm Contract Demand} \times \text{Firm Demand Rate}$$

$$\text{Delivery Charge} = \text{Firm Delivery Rate} \times \text{Firm Contract Demand} \times 48$$

The Utility shall not be entitled to draw upon the security deposit while the Customer is in compliance with the terms of this Agreement and shall not be entitled to draw upon security deposit during any dispute, unless such dispute has been finally resolved and the Buyer has not made payment within ten (10) Business Days of the final resolution of such dispute.

PART 11 – INVOICING & PAYMENT

All invoices from Utility to Buyer will be delivered to Customer's address as noted below. Monthly invoices will be prepared and in accordance with the General Terms and Conditions and the Customer shall pay such invoices within the time frames provided in the General Terms and Conditions.

In the event the Customer does not pay the invoice within the timeframes provided, then the Utility shall provide notice to the Customer that the Customer is not in compliance and the Customer shall have three (3) Business Days to remedy such non-payment. In the event the Customer does not make payment within three (3) Business Days of receiving notice then Utility shall be entitled to draw upon the security deposit for the amount owed.

In the event of a dispute regarding the amount of any invoice delivered by the Utility to the Customer, the Customer shall pay the undisputed portion within the time required in the General Terms and Conditions. The Customer shall at the time of payment of the undisputed portion of the invoice give notice to the Utility of the dispute and the reasons it is disputing such amount. Upon receipt of such notice of disputed amount, the Parties shall enter into good faith discussions to resolve the dispute. In the event the Parties are unable to resolve the dispute within fifteen (15) Business Days then the Customer may refer the matter for dispute resolution. Disputes relating to metering will be subject to the dispute resolution mechanisms established pursuant to the *Electricity and Gas Inspection Act*. Disputes within the jurisdiction of the Ontario Energy Board will be referred to the Ontario Energy Board for resolution. The Customer may refer all other disputes for arbitration under the Arbitration Act 1991 (Ontario).

before a single arbitrator. If the Customer has not given written notice that the Customer is referring the dispute for resolution within five (5) Business Days, the Customer will be deemed to have abandoned the dispute and shall pay any amount still owing within three (3) Business Days.

Monies found to be owing to the Utility at the resolution of the matter shall be paid by the Customer within five Business Days of such final resolution. If upon resolution of the matter, the amount owed by the Customer is less than the amount originally withheld by the Customer, then interest will not be calculated during the time period prior to the resolution of the dispute.

The Utility shall also be entitled to recover its Ontario Energy Board approved late payment charge for any late payment, including any payment that is unsuccessfully disputed by the Customer.

This Agreement is subject to the consent of the Customer's Lenders. The Customer agrees to use reasonable efforts to secure such consent in a timely manner. This paragraph is entirely for the benefit of the Customer. The Customer shall waive this condition in writing.

PART 12 - NOTICE OF COMMUNICATION

Except for the notice for curtailment of service set out in Part 6 above, any notice or other communication required to be given by either party to this Contract to the other shall be deemed to have been given 72 hours after such notice of communication shall have been mailed in a postage prepaid envelope addressed, in the case of notice to the Utility, to it at:

Natural Resource Gas Ltd.
39 Beech St. E.,
P.O. Box 307,
Aylmer, Ontario N5H 2S1

Telephone: 519-773-5321

Facsimile: 519-773-5335

Or in the case of notice to the Customer, to it at:

Integrated Grain Processors Co-operative Inc.
701 Powerline Road
Brantford, Ontario N3T 5L8

Telephone: (519) 752-0447

Facsimile: (519) 752-1887

or in each case to such other address as the particular party may furnish to the other from time to time during the term of this Contract, provided that any such notice or other communication may be given by delivery at the above addresses and shall be deemed to have been given at the time

of such delivery. All invoices from Utility to Customer will be hand delivered to Customer's address as noted above.

IN WITNESS WHEREOF, the parties hereto have executed this Contract.

NATURAL RESOURCE GAS LIMITED

By:

Mark J. Bristoll

Name: Mark J. Bristoll

Title: President

I have authority to bind the corporation.

**INTEGRATED GRAIN PROCESSORS CO-
OPERATIVE LTD..**

Per:

Tom Cox
Name: Tom Cox

Title:

I have authority to bind the corporation.

**INTEGRATED GRAIN PROCESSORS
CO-OPERATIVE INC.**

Per:

Brent McBlain
Name: Brent McBlain

Title:

I have authority to bind the corporation.

of such delivery. All invoices from Utility to Customer will be hand delivered to Customer's address as noted above.

IN WITNESS WHEREOF, the parties hereto have executed this Contract.

NATURAL RESOURCE GAS LIMITED

By:

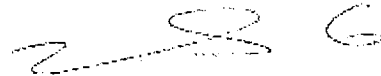
Name: Mark J. Bristoll

Title: President

I have authority to bind the corporation.

**INTEGRATED GRAIN PROCESSORS CO-
OPERATIVE LTD..**

Per:



Name: Tom Cox

Title:

I have authority to bind the corporation.

**INTEGRATED GRAIN PROCESSORS
CO-OPERATIVE INC.**

Per:



Name: Brent McBlain

Title:

I have authority to bind the corporation.

Schedule A

OEB APPROVED RATE SCHEDULE

[TO BE INSERTED]

NATURAL RESOURCE GAS LIMITED

RATE 3 - Special Large Volume Contract Rate

Rate Availability

Entire service area of the company.

Eligibility

A customer who enters into a contract with the company for the purchase or transportation of gas:

- a) for a minimum term of one year;
- b) that specifies a combined daily contracted demand for firm and interruptible service of at least 700 m³, and
- c) a qualifying annual volume of at least 113,000 m³.

Rate

1. Bills will be rendered monthly and shall be the total of:

- a) A Monthly Customer Charge:

A Monthly Customer Charge of \$150.00 for firm or interruptible customers; or
A Monthly Customer Charge of \$175.00 for combined (firm and interruptible) customers.

- b) A Monthly Demand Charge:

A Monthly Demand Charge of 25.5904 cents per m³ for each m³ of daily contracted firm demand.

- c) A Monthly Delivery Charge:

- (i) A Monthly Firm Delivery Charge for all firm volumes of 3.7310 cents per m³,

- (ii) A Monthly Interruptible Delivery Charge for all interruptible volumes to be negotiated between the company and the customer not to exceed 9.2249 cents per m³ and not to be less than 6.0992 per m³.

- d) Gas Supply Charge (if applicable)

See Schedule A.

- e) Overrun Gas Charges:

Overrun gas is available without penalty provided that it is authorized by the company in advance. The company will not unreasonably withhold authorization.

If, on any day, the customer should take, without the company's approval in advance, a volume of gas in excess of the maximum quantity of gas which the company is obligated to deliver to the customer on such day, or if, on any day, the customer fails to comply with any curtailment notice reducing the customer's take of gas, then,

- (i) the volume of gas taken in excess of the company's maximum delivery obligation for such day, or
- (ii) the volume of gas taken in the period on such day covered by such curtailment notice (as determined by the company in accordance with its usual practice) in excess of the volume of gas authorized to be taken in such period by such curtailment notice,

as the case may be, shall constitute unauthorized overrun volume.

Any unauthorized firm overrun gas taken in any month shall be paid for at the Rate 3 Firm Delivery Charge in effect at the time the overrun occurs. In addition, the Contract Demand level shall be adjusted to the actual maximum daily volume taken and the Demand Charges stated above shall apply for the whole contract year, including retroactively, if necessary, thereby requiring recomputation of bills rendered previously in the contract year.

Any unauthorized interruptible overrun gas taken in any month shall be paid for at the Rate 1 Delivery Charge in effect at the time the overrun occurs plus any Gas Supply Charge applicable.

For any unauthorized overrun gas taken, the customer shall, in addition, indemnify the company in respect of any penalties or additional costs imposed on the company by the company's suppliers, any additional gas cost incurred or any sales margins lost as a consequence of the customer taking the unauthorized overrun volume.

2. In negotiating the Monthly Interruptible Commodity Charge referred to in 1(c)(ii) above, the matters to be considered include:

- a) The volume of gas for which the customer is willing to contract;
- b) The load factor of the customer's anticipated gas consumption, the pattern of annual use, and the minimum annual quantity of gas which the customer is willing to contract to take or in any event pay for;
- c) Interruptible or curtailment provisions;
- d) Competition.

3. In each contract year, the customer shall take delivery from the company, or in any event pay for it if available and not accepted by the customer, a minimum volume of gas as specified in the contract between the parties. Overrun volumes will not contribute to the minimum volume. The rate applicable to the shortfall from this minimum shall be 3.3853 cents per m³ for firm gas and 5.7536 cents per m³ for interruptible gas.

4. The contract may provide that the Monthly Demand Charge specified in Rate Section 1 above shall not apply on all or part of the daily contracted firm demand used by the customer during the testing, commissioning, phasing in, decommissioning and phasing out of gas-using equipment for a period not to exceed one year (the transition period). In such event, the contract will provide for a Monthly Firm Delivery Commodity Charge to be applied on such volume during the transition of 6.3515 cents per m³ and a gas supply commodity charge as set out in Schedule A, if applicable. Gas purchased under this clause will not contribute to the minimum volume.

Bundled Direct Purchase Delivery

Where a customer elects under this rate schedule to directly purchase its gas from a supplier other than NRG, the customer or their agent, must enter into a Bundled T-Service Receipt Contract with NRG for delivery of gas to NRG. Bundled T-Service Receipt Contract rates are described in rate schedule BT1. The gas supply charge will not be applicable to customers who elect said Bundled T transportation service.

Unless otherwise authorized by NRG, customers who are delivering gas to NRG under direct purchase arrangements must obligate to deliver said gas at a point acceptable to NRG, and must acquire and maintain firm transportation on all pipeline systems upstream of Ontario.

Delayed Payment Penalty

When payment is not made in full by the due date noted on the bill, which date shall not be less than 16 calendar days after the date of mailing, hand delivery or electronic transmission of the bill, the balance owing will be increased by 1.5%. Any balance remaining unpaid in subsequent months will be increased by a further 1.5% per month. The minimum delayed payment penalty shall be one dollar (\$1.00).

Effective: April 01, 2007

Implementation: All bills rendered on or after April 01, 2007

EB-2007-0048

NATURAL RESOURCE GAS LIMITED GAS DELIVERY CONTRACT

SCHEDULE B - GENERAL TERMS AND CONDITIONS

PART 1 – RATES

1.1 Bills are issued monthly, being due when rendered in accordance with the provisions of the gas delivery contract and the approved rate schedule. If payment in full is not received within 15 days of rendering the bill, any amount owing shall be increased by 1.5% on the next bill.

1.2 In the event of any increase,

- (a) in the cost of gas to the Utility under its gas purchase contracts;
- (b) in the cost of gas to the Utility resulting from the application of any valid law, order, rule or regulation of any legislative body or duly constituted authority now or hereafter having jurisdiction;
- (c) in the costs of the Utility resulting from any changes in, or the imposition of any taxes, excises or duties by any governmental authority during the lifetime of this contract, on the importation, transmission, storage, purchase or sale of gas; or
- (d) in the charges or rates approved or fixed by the Ontario Energy Board for the delivery or sale of gas by the Utility to the Customer, including retroactive rate increases authorized by the Ontario Energy Board.

then to the extent that such increases in the case of (a), (b) or (c) above are paid by the Utility on the gas delivered to the Customer, or such increase in the case of (d) above is ordered by the Ontario Energy Board to be charged to the Customer, the rates to be paid by the Customer to the Utility, pursuant to the gas delivery contract, shall be increased accordingly for all gas delivered subsequent to that increase in costs or charges, provided that the increased rates shall not exceed rates fixed by order of the Ontario Energy Board from time to time.

1.3 In the event the terms and conditions of the agreement between Utility and Customer are changed by Order of the Ontario Energy Board, such changed terms and conditions shall be deemed to be in effect between the Utility and the Customer.

PART 2 – UNAUTHORIZED OVER-RUN GAS PENALTY

- 2.1 If, on any day, the Customer takes without the Utility's advance approval, a volume of gas in excess of the maximum hourly or daily quantity of firm or interruptible gas which the Utility is obligated to deliver to the Customer on such day, or if, on any day, the Customer fails to comply with any curtailment order of the Utility reducing either the Customer's hourly or daily take of gas, the volume of gas taken in excess of the Utility's maximum delivery obligation or curtailed maximum delivery obligation shall constitute unauthorized over-run gas.
- 2.2 In the event the Customer on any day takes a volume of gas constituting unauthorized over-run gas:
- (a) the Utility may curtail gas service to the Customer during such a day when required to avoid adverse impacts to the Utility's distribution system;
 - (b) the Customer shall pay the Utility a penalty as stipulated in the Rate 3 rate schedule.

PART 3 – METERING AND SERVICE

- 3.1 The Utility agrees to install, operate and maintain measurement equipment of suitable capacity and design to measure the gas supplied.
- 3.2 The measurement and regulating equipment shall be installed on the Customer's premises at a site located as near as possible to the point of utilization in accordance with safety regulations.
- 3.3 Each party shall have the right to enter the measurement and regulating location at any reasonable time and shall have the right to be present at the time of installing, reading, cleaning, changing, repairing, inspecting, testing, calibrating or adjusting of measurement equipment.
- 3.4 The Utility's measurement equipment shall be examined by the Utility at least once every nine months and, if requested, in the presence of a representative of the Customer, but the Utility shall not be required as a matter of routine to examine such equipment more frequently than once in any nine month period.
- 3.5 All natural gas delivered to the Customer shall be measured utilizing equipment and procedures that conform to the *Electricity and Gas Inspection Act* and regulations, and specifications authorized by the Act and regulations.

PART 4 – EQUIPMENT

- 4.1 The title to all service pipes, meters, regulators, attachments and equipment placed on the Customer's premises and not sold to the Customer shall remain with the Utility, with right of removal, and no charge shall be made by the Customer for use of premises occupied thereby, and the Customer agrees to be responsible for any loss or damage thereto resulting from wilful or negligent acts of the Customer or its agents or employees or persons acting under the authority of or with the permission of the Customer.

PART 5 – FORCE MAJEURE

- 5.1 In the event that either the Customer or the Utility is rendered unable, in whole or in part, by Force Majeure, to perform or comply with any obligation or condition of this Contract, then the obligations (other than the obligations to make payment of money then due) of both parties so far as they are directly related to and affected by such Force Majeure, shall be suspended during the continuance of the Force Majeure.
- 5.2 The party claiming Force Majeure shall give Notice, with full particulars, to the other party as soon as possible after the occurrence of Force Majeure.
- 5.3 The party claiming Force Majeure shall also give Notice to the other party as soon as possible after the Force Majeure is remedied in whole or part.
- 5.4 Force Majeure means:
- (a) Acts of God, landslides, lightning, earthquakes, fires, storms, floods, washouts, explosions, breakage or accident to its machinery or equipment or lines of pipe;
 - (b) freezing or failure of wells or lines of pipe; curtailment of firm transportation or firm storage by other natural gas service providers;
 - (c) strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections, civil disturbance, acts of terrorism, wars, arrests or restraint of governments and people;
 - (d) any laws, orders, rules, regulations, acts of any government body or authority, civil or military;
 - (e) any act or omission by parties not controlled by the party claiming Force Majeure; and
 - (f) any other similar causes not within the control of the party claiming Force Majeure

which by the exercise of due diligence such party is unable to prevent or overcome. The party claiming Force Majeure shall make reasonable efforts to avoid, or correct the Force Majeure and to remedy the Force Majeure once it has occurred in order to resume performance.

- 5.5 Neither party shall be entitled to claim force majeure if any of the following circumstances prevail:
- (a) the failure resulting in a condition of force majeure was caused by the negligence of the party claiming suspension;
 - (b) the failure was caused by the party claiming suspension where such party failed to remedy the condition by making all reasonable efforts (short of litigation, if such remedy would require litigation);
 - (c) the party claiming suspension failed to resume the performance of such conditions or obligations with reasonable dispatch;
 - (d) the failure was caused by lack of funds; and
 - (e) the party claiming suspension did not give to the other party the required notice as soon as possible after determining or within a period within which it should have determined, acting reasonably, that the occurrence was in the nature of force majeure and would affect its ability to observe or perform any of its conditions or obligations under the Contract.
- 5.6 During a Force Majeure declared by the Utility, the Customer will be responsible for any commodity charges and will only be relieved of the demand charges applicable to that part of the services not available to the Customer as a result of the Force Majeure. The Utility will not be responsible for any charges by any other natural gas service providers.
- 5.7 During a Force Majeure declared by the Customer, all demand charges and all commodity charges otherwise payable under this Contract will continue to be payable. The Minimum Annual Volume shall be reduced in the same proportion as the number of days of Force Majeure the number of days in a contract year.
- 5.8 The term of the Gas Delivery Contract shall be extended by the length of any Force Majeure event.

PART 6 – AGREEMENTS OF INDEMNITY

- 6.1 The Utility and the Customer shall save harmless and indemnify the other from any injury, loss or damages to persons or property caused by its negligence or wilful misconduct or by the negligence or wilful misconduct of its agents or employees or persons acting under its authority or with its permission.

PART 7 – MISCELLANEOUS

- 7.1 No waiver by either party of any one or more defaults by the other in the performance of any provisions of the contract shall operate or be construed as a waiver of any future default or defaults, whether of a like or different character.
- 7.2 This contract shall be interpreted, performed and enforced in accordance with the laws of the Province of Ontario.
- 7.3 No additions, deletions or modification of the terms and provisions of this contract shall be effective except by the execution of a new contract.
- 7.4 This contract shall be binding upon, and inure to the benefit of the parties hereto and their respective successors and assigns but shall not be assigned or be assignable by the Customer without the prior written consent of the Utility. The Utility agrees that such consent shall not be unreasonably withheld. For greater certainty an assignment by way of security to the Customer's lenders shall be considered reasonable.
- 7.5 Any gas purchased by the Customer hereunder shall not be resold or otherwise used by a third party.

Tab 5

BUNDLED T-SERVICE RECEIPT CONTRACT

BETWEEN:

NATURAL RESOURCE GAS LIMITED ("NRG"), a company
duly incorporated under the laws of the Province of Ontario,

- and -

IGPC ETHANOL INC.
("Customer"), a company duly incorporated under the laws of Ontario,

WHEREAS the Customer has entered an agreement with NRG, dated January 31, 2007 for the delivery of Gas ("Gas Delivery Agreement") to the Customer's ethanol facility in NRG's franchise area;

AND WHEREAS the Customer owns or controls Gas which it has requested NRG to receive and to deliver to certain facilities;

AND WHEREAS NRG owns and operates an integrated gas transportation and distribution system in the Province of Ontario and agrees to accept delivery of Gas from the Customer and to redeliver quantities of Gas to the Facilities.

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the premises hereto and the mutual covenants herein contained, the exchange of one (\$1.00) dollar of lawful Canadian money, the receipt and sufficiency of which is conclusively acknowledged by each of the Parties, and for other good and valuable consideration the Parties agree and covenant as follows:

I. ATTACHMENTS

1.01 Schedules Form Part of Contract

The General Terms and Conditions contained in Schedule A, and the Definitions contained in Schedule B are hereby incorporated in and form part of this Contract.

II. CONDITIONS PRECEDENT

2.01 Conditions Precedent Applicable to all Points of Receipt

The obligations of the Customer and NRG hereunder shall not arise prior to the satisfaction of the following conditions precedent.

- (a) Customer shall have provided all financial assurance required by NRG pursuant to the Gas Delivery Agreement;
- (b) Customer shall have given to NRG and Union at least ninety days notice of the first date of Gas flow to be nominated pursuant to Clause 2.01 of Schedule "A" attached;
- (c) NRG shall have nominated for the first date of Gas flow pursuant to Clause 2.01 of Schedule "A" attached and Union shall have accepted such nomination; and
- (d) The Customer shall have made all necessary arrangements to transport Gas to the Ontario Point of Receipt, including having obtained any necessary licenses, permits, regulatory approvals and pipeline transportation capacity.

III. DELIVERY

3.01 Commencement Date

The Customer's and NRG's respective obligations to deliver and receive Gas under this contract shall commence, subject to satisfaction of the conditions precedent, on the date specified in Customer's first nomination pursuant to Clause 2.01 in Schedule "A" (the "Date of First Delivery") and shall continue until this Contract is terminated.

3.02 Quantity

The estimated volume to be delivered during the Contract Year is 1,274,497 GJ.

The estimated volume to be delivered during the Contract Year under DCQ is 3492 GJ/day.

On days when requested by Customer and Authorization Notice by NRG is given, the above quantity parameters shall be deemed to be amended in accordance with such Authorization Notice.

The volume of to be delivered during the First Contract Year shall be determined by prorating the annual volumes specified above by dividing the number of days in the First Contract Year by 365.

3.03 Delivery Location

The following Facilities are subject to this Contract:

Integrated Grain Processors Co-operative Inc. - Ethanol Facility
Progress Drive

Aylmer, Ontario

The Customer may add additional delivery points within NRG's franchise area with the commencement of such delivery to be agreed to by Customer and NRG, acting in a commercially reasonable manner.

IV. CONTRACT TERM

4.01 Contract Term

This Contract shall be effective from the date hereof. This Contract, subject to the provisions hereof, shall continue in full force until the end of the Contract Year. This Contract shall automatically renew on the same terms for the subsequent Contract Year unless either Party has provided notice of termination prior to the date specified in Clause 6.02 of Schedule "A".

The first Contract Year shall commence on the date of first delivery and end October 1 at 10:00 a.m. local time in Aylmer, Ontario of such calendar year. Each subsequent Contract Year shall commence October 1 at 10:00 a.m. and end at 10:00 a.m. of October 1 of the immediately following calendar year.

V. OBLIGATIONS TO DELIVER AND TO ACCEPT

5.01 General Obligation to Deliver and Accept

Subject to the provisions of this Contract and commencing on the Date of First Delivery hereunder, NRG agrees to receive on the Union Gas system a volume of gas equal to the Obligated DCQ. Customer accepts the obligation to deliver the Obligated DCQ to NRG on the Union Gas system on a Firm basis. On days when an Authorization Notice is given, the DCQ parameters are as defined in the Authorization Notice. NRG shall use reasonable commercial efforts to make arrangements with Union, as required, to ensure delivery of the Obligated DCQ from Customer to Union and redelivery from Union to NRG based on Customer's contracted demand set out in the Gas Delivery Contract.

VI. BANKED GAS ACCOUNT ("BGA")

6.01 General

The Banked Gas Account ("BGA") will be used to accumulate the monthly differences between the total volume of Gas received by NRG for the Customer hereunder, and the total volume of Gas redelivered by NRG to the Customer's Facilities plus any BGA transactions permitted by Authorization Notice. Where the cumulative volumes received exceed the volumes redelivered, the resulting BGA balance shall be deemed positive, where the cumulative volumes redelivered exceed the volumes received, the resulting BGA balance shall be deemed negative.

Customer shall plan and operate in a manner that will achieve a BGA balance of zero at the end of each Contract Year. In addition, Customer shall take balancing actions early in the winter to

ensure the BGA balance is not less than the Winter Checkpoint Quantity as of the Winter Checkpoint.

Maximum Positive Variance (End of Contract Year)	50,980 GJ
Maximum Negative Variance (End of Contract Year)	-50,980 GJ
Winter Checkpoint Quantity (February 28)	0 GJ

6.02 Right to Refuse Deliveries

If NRG forms the opinion that the BGA balance will exceed Customer's Maximum Positive Variance at the end of the current Contract Year, NRG in its sole discretion shall have the right to refuse acceptance of Gas receipts in excess of such Maximum Positive Variance. NRG's refusal under these circumstances however does not relieve the Customer of its obligation to deliver pursuant to Article V. NRG agrees to act in a reasonable and responsible manner when interpreting the relevant data for determining the forecasted Contract Year end balances. NRG shall not be liable for any damages, losses, costs or expenses incurred by the Customer as a consequence of refusing acceptance of receipts hereunder.

6.03 Monitoring BGA Balances

The Customer agrees to monitor its BGA balance on a monthly basis with the intention of maintaining its BGA balance at Contract Year end within the range of the Maximum Variance. NRG agrees to monitor the Customer's BGA balance on a monthly basis and will provide such monthly BGA balance to Customer. If the Customer anticipates a balance in excess of the Maximum Variance, the Customer shall notify NRG promptly. Any costs incurred by NRG as a result of the Customer exceeding their Maximum Variance shall be charged to the Customer.

If during February, the BGA balance will be less than the Winter Checkpoint Quantity the Customer will advise NRG of the additional quantity of Gas to be delivered. Customer must make a request for such balancing transaction prior to the 15th Business Day of February.

If NRG is required to pay a charge by Union as a result of non-compliance with the balance with the balancing obligations as between NRG and Union, then NRG shall only be permitted to charge Customer such portion of the charge for which Customer is directly responsible.

6.04 Year End BGA Adjustments

The BGA balance will be adjusted at the end of each Contract Year in accordance with the following provisions:

- (a) The BGA balance will be carried forward to the next Contract Year as the opening balance in the BGA. Such balance being carried forward shall not exceed an amount equal to the Maximum Variance, except at NRG's sole discretion.

- (b) A positive BGA balance being carried forward to the next Contract Year shall be deemed to be the first Gas redelivered under any subsequent NRG Redelivery Contract. A positive BGA balance in excess of the positive Maximum Variance may result in additional charges being imposed on NRG by Union. Such charges shall be deemed to be the responsibility of the Customer. Such charges shall be billed to the Customer monthly, until the balance carried forward has been reduced to the Maximum Variance. The Customer acknowledges that storage will be obtained by NRG on a "best efforts" basis only as restrictions may be imposed on storage availability by Union.
- (c) If the Customer does not have a Contract in place with NRG for the period following the current Contract Year then, except at NRG's sole discretion, no positive or negative BGA balance will be permitted to be carried over at the end of the Contract Year.

VII. SERVICE AFTER EXPIRY OF CONTRACT

7.01 Deliveries on a Reasonable Efforts Basis

If this Contract terminates for whatever reason in circumstances where NRG is not able to retain or recover pipeline capacity from Union at reasonable prices and under reasonable terms and conditions, for a volume equal to the daily volumes associated with this Contract, then at NRG's option the Gas Delivery Agreement shall be deemed to be amended to relieve NRG of any obligation, other than on a reasonable efforts basis, to deliver Gas to the Facilities and this Article VIII shall constitute an agreement to the contrary within the meaning of Section 42 of the Ontario Energy Board Act, 1998.

VIII. GENERAL

8.01 Non-Waiver and Future Default

No waiver by a Party hereto of any one or more defaults by the others in the performance of any obligations under this Contract shall operate or be construed as a waiver of any future default or defaults, whether of a like or a different character.

8.02 Gender, Number and Internal References

Unless the context otherwise requires, words importing the singular include the plural and vice-versa and words importing gender include all genders. The words "herein", "hereunder" and words of similar import refer to the entirety of this Contract, including the Schedules incorporated into this Contract, and not only to the Section in which such use occurs.

8.03 Industry Usage

Words, phrases, and/or expressions which are not defined herein and which, in the usage or custom of the business of the exploration, production, transportation, distribution or sale of Gas have an accepted meaning shall have that meaning.

8.04 Amendment

Except as provided herein, no amendment, supplement, renewal or restatement of this Contract shall be effective or binding upon the parties hereto unless set forth in writing and signed by each of the parties hereto by its respective proper officers or authorized representatives in that behalf.

8.05 Confidentiality

Unless the Parties to this Contract otherwise expressly agree in writing, the terms of this Contract will remain strictly confidential except as required by applicable law or by any competent regulatory body or court of competent jurisdiction. Notwithstanding, the Customer may disclose the terms of this Contract to its lenders, consultants, financial and other advisors and legal representatives who shall agree to keep this Contract confidential as contemplated herein.

8.06 Further Assurances

The Customer will do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents (including certificates, declarations, affidavits, reports, and opinions) and things as NRG may reasonably request for the purpose of establishing compliance with the representations, warranties, and conditions of this Contract.

8.07 Laws, Regulations and Orders

This Contract and the respective rights and obligations of the Parties hereto are subject to all present and future laws, orders, rules and regulations of any competent legislative body or duly constituted authority now or hereafter having jurisdiction. Further, this Contract shall be varied and amended to comply with or conform to any valid order or direction of any board, tribunal, or administrative agency of competent jurisdiction which affects any of the provisions of this Contract.

8.08 Law of Contract

This Contract shall be exclusively governed by and construed in accordance with the laws of the Province of Ontario and Canada therein.

8.09 Time of Essence

Time shall be of the essence hereof.

8.10 Successors and Assigns

This Contract shall be binding upon and shall inure to the benefit of the Parties hereto and their legal representatives, agents and their respective successors and permitted assigns, but no assignment of this agreement by any Party shall be valid without the prior written consent of the other Party; provided however that such consent may not be unreasonably withheld; except that with respect to an assignment by a Party to an Affiliate, the Party shall not be relieved of any of

its obligations under this Contract. For greater clarity, the assignment of this Contract by Customer to its lender by way of security shall be deemed to be reasonable.

8.11 Headings

The division of this Contract into Articles and Sections and the Article and Section headings are for convenience of reference only and shall not effect the interpretation or construction of this Contract.

8.12 Counterparts

This Contract may be executed in counterparts, including facsimile counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same agreement.

IN WITNESS WHEREOF this Contract has been properly executed by the Parties hereto by their duly authorized officers as of the date first above written.

NRG:
Natural Resource Gas Limited
PO Box 307, 39 Beech Street East
Aylmer, Ontario
N5H 2S1
Telephone: 519-773-5321
Fax: 519-773-5335

NATURAL RESOURCE GAS LIMITED

By: Mark Bristol
Name: Mark Bristol
(I have the authority to bind the Corporation)

IGPC ETHANOL INC.

By: Brent McBlain
Name: Brent McBlain
(I have the authority to bind the Corporation)

Joe Hla

SCHEDULE "A"

**BUNDLED T-SERVICE RECEIPT CONTRACT
GENERAL TERMS AND CONDITIONS**

L TOLLS AND ADDITIONAL CHARGES

1.01 Administrative Charges

The Customer agrees to pay NRG such amounts as specified in NRG's current rates, subject to change from time to time. NRG agrees to provide the Customer with 30 days notice of any changes in NRG's rates.

Should NRG become subject to any charges imposed by Union Gas Limited, or any other similar party, as a result of the Customer's transfer of natural gas into or out of NRG's banked gas account, all such charges will be paid by NRG and rebilled by NRG to the Customer.

II. NOMINATIONS AND PROVISIONS

2.01 Nominations for Gas Receipt

Prior to such time as NRG may specify, the Customer shall notify NRG as to the amount of Gas to be received by NRG for the following Day(s). Such nomination shall remain in effect and apply to subsequent Days until a new nomination request is received by NRG, and accepted by Union, on behalf of the Customer.

III. FAILURE TO DELIVER

3.01 Failure to Deliver Volumes Nominated

If on any Day, for any reason, including an instance of Force Majeure, the Customer fails to deliver the specified Contract volumes as nominated, or fails to nominate pursuant to Article II of Schedule "A" herein, then:

- (a) Each Party hereto shall advise the other by the most expeditious means available as soon as it becomes aware that such failure has occurred or is likely to occur, Clause 6.01 shall not apply to this obligation and such notice may be oral, followed by written notice pursuant to Clause 6.01;
- (b) For the purpose of this Section, the Obligated volumes nominated shall be considered the first Gas delivered, the Non-Obligated volumes nominated shall be considered the second Gas delivered, and any volumes delivered under any other basis when authorized by NRG shall be considered the last Gas delivered.
- (c) NRG shall not be liable for any damages, losses, costs or expenses incurred by the Customer as a consequence of NRG exercising its rights under this Section.

3.02 Duty to Advise

The Customer shall promptly advise NRG of any material adverse change in its ability to deliver the volume parameters specified in Schedule "B" of the Contract, the Compressor Fuel

and Excess Gas in accordance with the terms of this Contract and of any material adverse change in Customer's Gas supply or Gas transportation arrangements.

IV. FORCE MAJEURE

4.01 Force Majeure Defined

Neither party shall have any claim against the other for damages sustained as a result of interruption or cessation of gas deliveries caused by force majeure which shall include but is not limited to, acts of God, extreme wind, ice, lightening or other storms, earthquakes, tornados, hurricanes, cyclones, landslides, drought, floods, washouts, crop failures or infestations, labour disputes, strikes, lockouts, fire, accidents, breakage or repair of pipeline or machinery, depletion or shortage of gas supply or other required inputs, order of any legislative body or duly constituted authority, or other causes or contingencies beyond the control of and occurring on the part of such other party. The parties shall resume delivering and receiving gas when and if such causes or contingencies cease to be operative. It is understood and agreed that the settlement of labour disruptions, strikes or lockouts shall be entirely within the discretion of the party affected. If any curtailment or discontinuance of service resulting from any such cause continues for any period in excess of 24 hours, the minimum charge payable by the Customer shall, upon the request of the Customer, be correspondingly adjusted.

4.02 Not Entitled to Benefit of Force Majeure

Neither party shall be entitled to the benefit of the provisions of the force majeure hereunder if any or all of the following circumstances prevail: the failure resulting in a condition of force majeure was caused by the negligence of the party claiming suspension; the failure was caused by the party claiming suspension where such party failed to remedy the condition by making all reasonable efforts (short of litigation, if such remedy would require litigation); the party claiming suspension failed to resume the performance of such obligations with reasonable dispatch; the failure was caused by lack of funds; the party claiming suspension did not as soon as possible after determining or within a period within which it should acting reasonably have determined that the occurrence was in the nature of force majeure and would affect its ability to observe or perform any of its conditions or obligations under the Contract give to the other party the notice required hereunder.

4.03 Effect of Force Majeure

Notwithstanding anything herein contained, it is agreed that no Party hereto shall be liable in damages under this Contract to the others or deemed to be in default in respect of any of the terms and provisions of this Contract, if and so long as such damages and/or defaults are occasioned by or in consequence of any Force Majeure.

Force majeure shall not relieve any Party from its obligation to make payments of amounts due hereunder.

During a period of force majeure, NRG shall not draw on the letter of credit or any other security of the Customer and the Customer shall maintain the letter of credit or other security for an additional period of time equal to the duration of the force majeure event. The Minimum

Annual Volume shall be reduced on a pro rata basis by the duration of the force majeure event dividing the length of the force majeure event by the length of the contract year.

The party claiming suspension shall likewise give notice as soon as possible after the force majeure condition is remedied, to the extent that the same has been remedied, and that such party has resumed or is then in a position to resume the performance of the obligations and conditions of the Contract.

V. DEFAULT AND TERMINATION

5.01 Events of Default

In the event of the breach or non-observance or non-performance on the part of either Party hereto of any covenant, provision, condition, restriction or stipulation herein contained (but not including failure to take or make delivery in whole or in part of the gas delivered hereunder occasioned by any event of Force Majeure) which ought to be observed or performed by such Party and which has not been waived by the other Party, then such last mentioned Party may give written notice to the Party first mentioned requiring it to remedy such default. In the event of such first mentioned Party failing to remedy the same within a period of thirty (30) Days from the sending of such notice, the other Party may at its sole option declare this Contract to be terminated and thereupon this Contract shall become and be terminated and be null and void for all purposes other than and except as to any liability of the first mentioned Party under the same incurred before and subsisting at the Day when this Contract is declared by the other Party to be terminated as aforesaid. The right hereby conferred upon each Party shall be in addition to, and not in derogation of or in substitution for, any other right or remedy which the parties respectively at law or in equity shall or may possess.

VI. NOTICE PROVISIONS

6.01 Notices

Subject to the express provisions of this Contract, all communications provided for hereunder shall be in writing and delivered to an officer or other responsible employee of the addressee, or sent by mail (charges prepaid) except in the event of a strike or pending strike or similar labor dispute of the postal service, or by telex, telecopy, telegram or other similar means of recorded communication (charges prepaid) to the address of the applicable party on the execution pages of this Contract or to such other address as the recipient thereof may from time to time designate to the other in such manner. Any communications hand delivered shall be deemed to have been validly and effectively given on the date of such delivery. Communications so sent by telex, telecopy, telegram or other means of recorded communications shall be deemed to have been validly and effectively given on the business Day following the Day on which it is sent. Communications so sent by mail shall be deemed to have been validly and effectively given on the third business Day following the Day on which it is postmarked.

6.02 Contract Renewal Notice

Both Parties acknowledge that under the Transportation Contract, NRG or the Customer respectively must provide Union with not less than six (6) Months notice prior to the termination of such Contract as to the type and level of service, if any, required for the next Contract Year.

In the event that Union requires less than ninety (90) Days notice, the Customer shall provide notice to NRG at least one hundred (100) Days prior to the end of the applicable Contract Year. If no notice of change is received by NRG, the Customer shall be deemed to have requested a one Year renewal of this Contract. If based upon the Customer's notice or deemed notice, NRG is committed to Union for a Transportation Contract, then, subject to Clause 1.02 of Schedule "A", the Customer shall be liable to NRG for all demand charges and/or minimum bill provisions for the term of such Transportation Contract.

NRG hereby agrees to provide notice of termination to the Customer at least six (6) Months plus ten (10) business Days prior to the expiry date of the applicable Contract Year herein for gas delivered at the Ontario Point of Receipt. In the event Union requires less than ninety (90) Days notice, NRG shall provide notice to the Customer at least one hundred (100) Days prior to the end of the applicable Contract Year.

6.03 Notice Regarding Facilities

The Customer hereby acknowledges and represents to NRG that each of the Facilities are either owned by the Customer or the Customer has authority to secure Gas supplies for the facility.

If, for any reason, the Customer no longer retains responsibility for Gas supply for such Facilities, then unless agreed to in writing by NRG for the purpose of balancing volumes received by NRG herein against volumes redelivered by NRG, any volumes redelivered to the Facilities for which the Customer no longer has responsibility for securing Gas supplies shall not be used in the volume balancing.

VII. MISCELLANEOUS

7.01 Quality and Measurement

The quality of the Gas delivered by the Customer to NRG pursuant to this Contract shall conform to TCPL's General Terms and Conditions (as they may be amended, supplemented, renewed or restated from time to time). Measurement of the Gas delivered by the Customer to NRG pursuant to this Contract shall be in accordance with established practices of TCPL and NRG where applicable. Where Gas is delivered by the Customer to NRG where TCPL's facilities are not involved, measurement of such Gas shall be in accordance with agreed upon practices between NRG and such delivering pipelines system.

Where the measuring equipment for Gas redelivered is not equipped to determine daily volume figures, the meter reading on the Date of First Delivery and on the termination date shall be deemed to be the reading determined by interpolation between the preceding bill and the next bill following such Day.

NRG shall have the right to commingle Gas received under the Contract with Gas owned by NRG or others and redeliver commingled volumes on a volumetric basis. No adjustment shall be

made by NRG for any variation between the Gross Heating Value of the Gas received hereunder and the Gross Heating Value of the Gas redelivered.

NRG as transporter, shall not be responsible to either Facility and/or Customer for any discrepancy in energy content delivered into or out of any of TCPL, Union or NRG's delivery systems.

7.02 Energy Conversion

The balancing of deliveries into the NRG system with consumption, as well as the provision of other services, will continue on a volumetric basis until the industry fully converts to an energy basis.

7.03 Warranty of Title to Gas

The Customer represents and warrants to NRG that it will at the time of delivery have good and marketable title to all Gas delivered by the Customer to NRG under the Contract, free and clear of all liens, encumbrances and claims whatsoever, that it will at such time of delivery have good right and title to said gas as aforesaid, and that it will indemnify NRG and save NRG harmless from all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any or all persons to said Gas or to royalties, taxes, license fees or charges thereon which are applicable to the Gas.

In the event any adverse claim of any character whatsoever is asserted against NRG in respect of any of said Gas, NRG may, at NRG's option, transfer a quantity of Gas from Customer's BGA to NRG's inventory and the title and ownership of such Gas shall automatically vest in NRG. The quantity of Gas transferred will be determined by dividing the Customer's indebtedness or monies owed to NRG, by NRG's average cost of Gas paid to Ontario producers from time to time. NRG shall retain title to such Gas until such claim has been finally determined, as security for the performance of Customer's obligations with respect to such claim under this Clause, or until the Customer shall have furnished a bond to NRG in the amount of such claim and with sureties satisfactory to NRG conditioned for the protection of NRG with respect to such claim.

7.04 Representation, Warranty and Covenant

The Customer covenants and agrees with NRG that it will ensure throughout the term of this Contract that it will maintain in place, adequate Gas supply arrangements which will be sufficient to enable the Customer to fulfill its obligations hereunder. The Customer will ensure throughout the term of this Contract that all arrangements with any transporter of the Customer's Gas provides for sufficient Firm transportation for delivery of the Obligated DCQ on a Firm basis.

SCHEDULE B

DEFINITIONS

I. DEFINITIONS

1.01 Definitions

In this Contract and in the Schedules hereto, unless the context otherwise requires, each of the following words, phrases and expressions shall have the meaning set forth after it:

- (a) "10³m³" means 1000 cubic meters of Gas;
- (b) "Affiliate" means with respect to the relationship between corporations that one of them directly and beneficially owns voting securities representing direct and beneficial ownership of not less than fifty-one percent (51%) of the equity capital of the other;
- (c) "Authorization Notice" means the written Authorization Notice provided by NRG in response to the Customer's request or the contractual requirement for the deemed amendment to any or all of the following: Obligated DCQ; Non-Obligated DCQ; Ontario Point of Receipt; a request to deliver Gas on some other basis. Such Authorization Notice shall specify the term for the deemed amendment and the authorized volume parameter changes and/or the new Point of Receipt and/or the terms and conditions whereby NRG will accept delivery of Gas on some other basis;
- (d) "Business Day" means any day other than a Saturday, Sunday or a statutory holiday in the Province of Ontario;
- (e) "Contract" means the Bundled T-Service Receipt Contract including all schedules as attached thereto as such Contract may be amended, supplemented, renewed, or restated from time to time;
- (f) "Cubic Meter" means the volume of Gas which occupies one cubic meter when such Gas is at a temperature of 15 degrees Celsius, and at a pressure of 101.325 kilopascals absolute;
- (g) "Day" means a period of 24 consecutive hours, beginning and ending at 10:00 a.m. local standard time in Aylmer, Ontario (9:00 a.m. Central Time). The reference date for any Day shall be the calendar date upon which the 24-hour period shall commence;
- (h) "Delivery Arrangements" means the execution and delivery to NRG (when applicable) of a Transportation Contract and the satisfactory completion of all necessary regulatory requirements (including obtaining all necessary approvals and authorizations);

- (i) "DCQ" means the daily volume of Gas which the Customer delivers to NRG;
- (j) "Firm" means transportation service not subject to curtailment or interruption except under Clause 4.01 of Schedule "A";
- (k) "Force Majeure" shall have the meaning specified in Clause 4.01 of Schedule "A";
- (l) "Gas" means Gas as defined in the *Ontario Energy Board Act*, 1998, as amended, supplemented or re-enacted from time to time;
- (m) "Gross Heating Value" means the total Joules, expressed in megajoules per Cubic Meter (MJ/m³) produced by the complete combustion at constant pressure of one Cubic Meter of Gas with air, with the Gas free of water vapor and the temperature and all water formed by combustion reaction to be condensed to the liquid state;
- (n) "Joule" means (J) means the work done when the point of application of a force of one newton is displaced a distance of one meter in the direction of the force. The term "megajoule" or "MJ" means 1,000,000 Joules;
- (o) "Maximum Variance" means the maximum allowable difference in volume between the aggregate volume of Gas received by NRG on behalf of the Customer hereunder during the Contract Year and the aggregate volume of Gas sent by the Customer as specified in Schedule "B";
- (p) "Month" means the period beginning at 10:00 a.m. local standard time in Aylmer, Ontario on the first Day of the calendar month and ending at the same hour on the first Day of the next succeeding calendar month;
- (q) "Non-Obligated" means that volume of Gas which the Customer is delivering to NRG but which the Customer is not obligated to deliver on any Day;
- (r) "NRG" means Natural Resource Gas Limited;
- (s) "Obligated" means that volume of Gas which the Customer is obligated to deliver to NRG on a Firm basis;
- (t) "OEB" means the Ontario Energy Board;
- (u) "Ontario Point of Receipt" means, unless otherwise specified in the Contract or by Union, the junction of Union's and TCPL's facilities at Parkway, Sheridan, all in the Province of Ontario as specified by Union. For Gas delivered on some other basis, the Ontario Point of Receipt will be as specified in the Authorization Notice. Unless otherwise specified in the Contract, the Ontario Point of Receipt for all Gas to be delivered hereunder shall be on the outlet side of the measuring stations located at or near the points of connection specified herein, where Union receives the Gas;

- (v) "Removal Arrangements" means the approvals and authorizations of all regulatory authorities required to permit the removal of the Gas from the province or country of origin required to satisfy the Customer's obligations hereunder until the expiry of the Contract;
- (w) "Transportation Contract" means any one of:
 - (i) the transportation contract entered into between NRG and either of, Union or TCPL, or the Customer and TCPL, for delivery of the DCQ to the pipelines facilities of Ontario Point of Receipt; or
 - (ii) an order of the National Energy Board with like effect; or,
 - (iii) the transportation contract applicable for Gas to be delivered on some other basis as authorized by NRG pursuant to an Authorization Notice.
- (x) "Union" means Union Gas Limited;
- (y) "Winter Checkpoint" means February 28;
- (y) "Year" means a period of 365 consecutive Days, provided, however, that any Year which contains a date of February 29 shall consist of 366.

Tab 6

Name	NRG Claimed Amount	Inappropriate Direct Cost	Inappropriate Indirect Cost	Costs Without Documentation	Unreasonable Costs	Cost Denied or Not yet Agreed by IGPC	Agreed to Costs
Prime Contract							
Prime Contractor (Somerville)	\$ 3,180,642.00					0 \$	\$ 3,180,642.00
Bell Canada	\$ 2,576.00					- \$	\$ 2,576.00
Black & McDonald	\$ 823.00					- \$	\$ 823.00
Wellmaster	\$ 11.00					- \$	\$ 11.00
Fastenal	\$ 141.00					- \$	\$ 141.00
Union Gas Ltd. (IGPC)	\$ 736,000.00					- \$	\$ 736,000.00
Subtotal	\$ 3,920,193.00	-	-	-	-	- \$	\$ 3,920,193.00
Custody Transfer Station							
Prime Contract (Lakeside Controls)	\$ 884,003.00						\$ 884,003.00
Subtotal	\$ 884,003.00	-	-	-	-	- \$	\$ 884,003.00
Pipe and Materials							
Lakeside Steel	\$ 863,420.00					- \$	\$ 863,420.00
CR Wall	\$ 34,539.00					- \$	\$ 34,539.00
Comco	\$ 35,696.00					- \$	\$ 35,696.00
KTT	\$ 22,587.00					- \$	\$ 22,587.00
Fastenal	\$ -					- \$	\$ -
Subtotal	\$ 956,242.00	-	-	-	-	- \$	\$ 956,242.00

IGPC - NRG PIPELINE COST RECONCILIATION
 SUMMARY TABLE

Name	NRG Claimed Amount	Inappropriate Direct Cost	Inappropriate Indirect Cost	Costs Without Documentation	Unreasonable Costs	Cost Denied or Not yet Agreed by IGPC	Agreed to Costs
Regulatory Costs							
Administrative Penalty	\$ 140,000.00		\$ 140,000.00			\$ 140,000.00	\$ -
Alken & Associates	\$ 7,718.00						\$ 7,718.00
Harrison Pensa	\$ 25,609.21		\$ 6,425.77			\$ 6,425.77	\$ 19,183.44
Lobsenzateur	\$ 1,935.00						\$ 1,935.00
Martin Malette	\$ 292.00						\$ 292.00
London Free Press	\$ 7,585.00						\$ 7,585.00
Viva Voce Reporting	\$ 2,195.00						\$ 2,195.00
ASAP Reporting	\$ 7,476.00						\$ 7,476.00
Lenzner Slaght	\$ 440,517.00	\$ 56,088.00	\$ 72,348.00	\$ 89,045.00		\$ 217,481.00	\$ 223,036.00
Ogilvey Renault	\$ 335,304.00	\$ 30,000.00	\$ 125,000.00	\$ 49,064.00		\$ 204,064.00	\$ 131,240.00
Mantoulin Transport	\$ -						\$ -
Helix Courier	\$ 198.00						\$ 198.00
Purulator	\$ 498.00						\$ 498.00
Neal, Pallett & Townsend Audit Fees	\$ 9,681.00		\$ 9,681.00			\$ 9,681.00	\$ -
EB-2006-0243	\$ 12,562.00			\$ 12,562.00		\$ 12,562.00	\$ -
Subtotal	\$ 991,570.21	\$ 86,088.00	\$ 353,454.77	\$ 150,671.00	\$ -	\$ 590,213.77	\$ 401,356.44
Design, Drafting & Procurement							
AUE (AECOM)	\$ 474,856.00						\$ 474,856.00
TSSA	\$ 750.00						\$ 750.00
NRG Corp.	\$ 1,046.00						\$ 1,046.00
Ayerswood Development	\$ 402.00						\$ 402.00
Corrosion Protection	\$ 3,714.00						\$ 3,714.00
Subtotal	\$ 480,768.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 480,768.00
Environmental							
Stanlec	\$ 26,329.00						\$ 26,329.00
Senes	\$ 13,547.00						\$ 13,547.00
Senes (IGPC)	\$ 37,483.00						\$ 37,483.00
Canadian Pacific Railway	\$ 650.00						\$ 650.00
Middlesex County Engineers Office	\$ -						\$ -
Calish Creek CA	\$ 100.00						\$ 100.00
Kettle Creek CA	\$ 500.00						\$ 500.00
Elgin County	\$ 800.00						\$ 800.00
Malahide Township	\$ 1,160.00						\$ 1,160.00
Upper Thames CA	\$ 800.00						\$ 800.00
Thames Centre	\$ 150.00						\$ 150.00
Sub-total	\$ 81,519.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 81,519.00
Lands							
Land Rights (Union Gas)	\$ 12,105.00			\$ 12,105.00		\$ 12,105.00	\$ -
Subtotal	\$ 12,105.00	\$ -	\$ -	\$ 12,105.00	\$ -	\$ 12,105.00	\$ -

IGPC - NRG PIPELINE COST RECONCILIATION
 SUMMARY TABLE

Name	NRG Claimed Amount	Inappropriate Direct Cost	Inappropriate Indirect Cost	Costs Without Documentation	Unreasonable Costs	Cost Denied or Not yet Agreed by IGPC	Agreed to Costs
Other							
Surveying (FKS)	\$ 72,118.00					\$ -	\$ 72,118.00
Harrison Pensa (Financing)	\$ 29,295.00					\$ -	\$ 29,295.00
Belanger, Cassino & Coulston	\$ 1,929.00					\$ -	\$ 1,929.00
Bank of Nova Scotia	\$ 10,400.00			\$ 10,400.00		\$ 10,400.00	\$ -
Societe Generale	\$ 6,518.00					\$ -	\$ 6,518.00
MIG Non-destructive testing (x-ray)	\$ 211,809.00					\$ -	\$ 211,809.00
Ayerswood Development	\$ 9,360.00				\$ 9,360.00	\$ 9,360.00	\$ -
Project Management (M. Bristoll)	\$ 388,585.00		\$ 13,300.00	\$ 84,870.00	\$ 251,439.50	\$ 349,609.50	\$ 38,975.50
MIG Engineering (1)	\$ 199,673.00					\$ -	\$ 199,673.00
MIG Engineering (2) Change Orders	\$ 115,135.00					\$ -	\$ 115,135.00
Interest	\$ 190,605.00				\$ 140,605.00	\$ 140,605.00	\$ 50,000.00
Sub-total	\$ 1,235,427.00	\$ -	\$ 13,300.00	\$ 95,270.00	\$ 401,404.50	\$ 509,974.50	\$ 725,452.50
Total	\$ 8,561,827.21	\$ 86,088.00	\$ 366,754.77	\$ 258,046.00	\$ 401,404.50	\$ 1,112,293.27	\$ 7,449,533.94

Tab 7

TAB 7

‘Documentation Regarding Capital Costs’ is submitted separately in compliance with the Board’s Rules for the treatment of confidential information

Tab 8



ONTARIO ENERGY BOARD

FILE NO.: EB-2006-0243

VOLUME: MOTION HEARING

DATE: June 29, 2007

BEFORE:	Gordon Kaiser	Presiding Member and Vice Chair
	Ken Quesnelle	Member
	Cathy Spoel	Member

THE ONTARIO ENERGY BOARD

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

AND IN THE MATTER OF an Application by Natural Resource Gas Limited for an Order pursuant to Section 90(1) of the *Ontario Energy Board Act, 1998*, granting leave to construct a natural gas pipeline and ancillary facilities in the Township of Malahide, Municipality of Thames Centre and the Town of Aylmer.

Hearing held at 2300 Yonge Street, 25th Floor,
Toronto, Ontario, on Friday,
June 29, 2007, commencing at 8:32 a.m.

Motion Hearing

B E F O R E:

GORDON KAISER

PRESIDING MEMBER and VICE CHAIR

KEN QUESNELLE

MEMBER

CATHY SPOEL

MEMBER

A P P E A R A N C E S

KRISTI SEBALJ

Board Counsel

NABI MIKHAIL

Board Staff

DENNIS O'LEARY
MARTIN KOVNATS
BERNIE McGARVA
SCOTT STOLL

Integrated Grain Processors
Co-Operative

LAWRENCE THACKER

Natural Resource Gas Limited

ALSO PRESENT:

JOEL CRAWFORD
BRENT McBLAIN

Integrated Grain Processors Co-
Co-Operative

GEORGE ALKALAY

ROBERT HABKIRK
HEATHER ADAMS

Mayor, Town of Aylmer
Chief Administrative Officer,
Town of Aylmer

I N D E X O F P R O C E E D I N G S

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Whereupon the hearing adjourned at 2:45 p.m.	90

E X H I B I T S

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EXHIBIT J1.3*: GAS DELIVERY CONTRACT (EXECUTED COPY)	41
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EXHIBIT J1.8: AGREEMENT WITH THE DEPARTMENT OF NATURAL RESOURCES	40
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U N D E R T A K I N G S

Description

Page No.

NO UNDERTAKINGS WERE FILED DURING THIS HEARING

1 Friday, June 29, 2007

2 --- Upon commencing at 8:32 a.m.

3 MR. KAISER: Please be seated.

4 The Board is sitting today in connection with the
5 notice of motion filed with the Board yesterday by counsel
6 for Integrated Grain Processors Co-Operative. This matter
7 relates to a proposed ethanol facility in Aylmer, Ontario
8 and relates to a decision of this Board granting a leave to
9 construct to Natural Resources Gas, on February 2nd.

10 Can we have the appearances, please?

11 **APPEARANCES:**

12 MR. O'LEARY: Good morning, Mr. Chair, Dennis O'Leary
13 for the IGPC. I am joined this morning by my partners, Mr.
14 Martin Kovnats and Mr. Bernie McGarva, my colleague Scott
15 Stoll, and we have here with us also, as well, several of
16 the directors of IGPC, Mr. Joel Crawford and Mr. Brent
17 McBlain, who is the vice chair and director, and the
18 consultant working with IGPC, which is George Alkalay.
19 Just behind me is His Worship, Mayor Robert Habkirk, and
20 the chief administrative officer, Heather Adams, all here
21 representing the Town of Aylmer.

22 MR. KAISER: Anyone else? Is counsel NRG for here?

23 MR. THACKER: I am here. I have been contacted by NRG
24 in order to appear, but my retainer is not confirmed at
25 this stage, so I just wanted to...

26 MR. KAISER: Sir, your name is?

27 MR. THACKER: Lawrence Thacker.

28 MR. KAISER: Thank you.

1 MS. SEBALJ: I believe that I am the only other
2 counsel in the room, Kristi Sebalj, Board counsel, and I'm
3 accompanied by Nabi Mikhail.

4 Mr. Thacker, you may not be familiar with the hearing
5 room, but the green button in front of you is your mic, and
6 if you don't press it, the court reporter can't hear you.

7 MR. THACKER: Can you now? Thank you.

8 MR. KAISER: Mr. O'Leary.

9 MR. O'LEARY: Mr. Chair, thank you for convening this
10 panel on such short notice and on the eve of a long
11 weekend. I apologize for the inconvenience that it has
12 undoubtedly caused you and Board Staff.

13 May I request that you identify the documents that I
14 will be referring to in our submissions today? We have
15 attempted to consolidate all of the documents into two
16 briefs. One is the motion record. Perhaps we can have
17 these marked as an exhibit, as well, sir.

18 MR. KAISER: Yes.

19 MR. THACKER: I have objections to the hearing
20 proceeding today and would like to make them before we get
21 into the --

22 MR. KAISER: Yes, certainly.

23 MR. THACKER: Is now the time?

24 MR. KAISER: Yes.

25 **SUBMISSIONS BY MR. THACKER:**

26 MR. THACKER: I was retained -- or contacted at 7
27 o'clock last night. My clients have asked me to attend
28 today and to seek a short adjournment of this hearing on

1 the basis that they have not had adequate time to -- the
2 material was served yesterday, as I understand it, late in
3 the day on my clients through their previous solicitors.

4 They have not had time to consider their position.
5 They have certainly not had any time to retain and properly
6 instruct counsel. They have not had adequate time to
7 prepare a responding evidentiary record, and they have not
8 had time to consider what position they want to take and
9 instruct me to take that position.

10 In the circumstances, my submission is this hearing
11 should be adjourned to allow my client time to consider the
12 evidence against them, prepare a responding evidentiary
13 record and properly instruct counsel after considering
14 their position as to how to proceed in this hearing.

15 So I am seeking a short adjournment to enable them
16 adequate time to do that.

17 I am aware of the notice of hearing that was issued
18 yesterday by this Board. I am also aware it was done
19 without hearing from my client with respect to whether the
20 hearing should or should not proceed on an expedited basis
21 and my client's position and the merits of whether or not
22 it is appropriate to abbreviate the notice requirements
23 that are set out in the Act.

24 Having said all of that, the fact you have issued the
25 notice of hearing, we object in the most strenuous terms to
26 the hearing proceeding on its merits today and would object
27 to the basis on which the notice of hearing was issued and
28 the basis on which the time limits that are normally

1 available to my client were abbreviated without hearing
2 from them.

3 MR. KAISER: Thank you. Well, Mr. O'Leary, let's deal
4 with that threshold question. You have brought this motion
5 on on short notice. What is the urgency here?

6 **SUBMISSIONS BY MR. O'LEARY:**

7 MR. O'LEARY: Well, sir, I did intend to address that,
8 and we thought that would be self evident from the
9 materials. I don't know whether the Panel has had an
10 opportunity to look at it, but, in a nutshell, the urgency
11 of the matter is this, is that if ultimately the two
12 outstanding agreements are not executed by NRG this
13 morning, then the deal will be lost and the ethanol plant
14 will not proceed.

15 The financing that is required for this project,
16 including the 28 kilometre pipeline which this Panel
17 approved in February, is dependent upon the financing and
18 the agreements being signed. And there is a requirement
19 that monies that are committed to this project be returned
20 if the matter does not close on or before June 30th, 2007.

21 MR. KAISER: Where is that in the evidence, that
22 everything falls apart if this isn't executed by --

23 MR. O'LEARY: It is in the affidavit, sir.

24 MR. KAISER: Can you point me to it?

25 MR. O'LEARY: Yes. If you go to the motion record --

26 MR. THACKER: I don't have a motion record. I have
27 electronic copies of the affidavits and the notice of
28 application.

1 MR. KAISER: Make sure that counsel has copies of all
2 of the material.

3 MS. SEBALJ: In fact, it looks like Mr. O'Leary has
4 prepared an actual motion record. I know I provided you
5 with the materials. I know, Mr. Thacker, you have an
6 objection to this being marked at this time. I am not
7 sure --

8 MR. KAISER: We will mark it for identification.

9 MR. O'LEARY: I don't have a problem marking it for
10 identification. I have seen it now and it appears to be
11 different from the affidavits that I saw last night.

12 MS. SEBALJ: I am going to mark it, then, as J1.1, and
13 provide copies to the panel.

14 **EXHIBIT NO. J1.1: MOTION RECORD.**

15 MR. O'LEARY: There is now a document brief which I
16 have not seen and my clients haven't read. We can mark it
17 for identification purposes, but I want to make it clear
18 that I have not read any of that.

19 MR. KAISER: Fine. Well, we haven't read it either.

20 MR. O'LEARY: I can't speak for what Mr. Thacker has
21 or has not read, but what was sent to their counsel, and
22 the counsel that has been representing NRG throughout this
23 entire affair, is exactly what is in the motion record.

24 The only thing in addition to that is an affidavit
25 that was forwarded to the Board electronically last night
26 from the chief administrative officer of the Town of
27 Aylmer, Ms. Adams.

28 MR. KAISER: Does counsel for NRG have that?

1 MR. O'LEARY: It would have been served on counsel for
2 NRG. We would not have known of Mr. Thacker's involvement.

3 MR. KAISER: I understand. I am not alleging
4 anything, but accommodate counsel and give him the
5 material.

6 MR. O'LEARY: You should find on your dais, Mr. Chair,
7 a confirmation of service. Last night, through Lerner and
8 Associates, we made service on Mark Bristoll, who is the
9 chairman of NRG, and copies of the materials were also left
10 with a Wes Suchard, who we understand to be one of the
11 trustees of NRG.

12 We would assume, and I think it is only appropriate,
13 that you accept that service was made on counsel, Pat
14 Moran, for NRG, and that Mr. Moran would have dutifully
15 sent the materials on to Mr. Bristoll.

16 It was yesterday that Mr. Moran advised, through one
17 of his colleagues, that NRG would not proceed with the
18 signing. They are aware of this proceeding. They are
19 aware of the urgency, and I intended to walk you through,
20 as much as possible and as much as required, the history of
21 this to confirm the urgency that Mr. Bristoll is aware of,
22 and to ultimately lead to the conclusion that this is just
23 a deliberate attempt to frustrate this project and nothing
24 short of that.

25 MR. KAISER: All right. All right. Slow down a
26 second here. We have an objection to the motion
27 proceeding. I want to understand what the urgency is. You
28 have made a statement that the deal falls apart if things

1 aren't signed by June 30th, and you were about to show us
2 where that is in the material.

3 MR. O'LEARY: If you go to tab 1 of the motion record,
4 sir.

5 MS. SEBALJ: Can I just -- I only have two copies of
6 the motion record. Are there others for the Panel?

7 MR. KAISER: We have it. Mr. O'Leary, does Mr.
8 Thacker have everything that you have?

9 MR. THACKER: I don't yet have -- I did receive
10 electronic copies of the material that is in the motion
11 record. I gather there is a third affidavit, but I still
12 haven't seen it and I don't know when it was ever served on
13 lawyers --

14 MR. KAISER: We're not going to argue about that.
15 Just make sure that everything the Panel has Mr. Thacker
16 has.

17 MR. O'LEARY: I'm not sure whether he has a copy of
18 Heather's affidavit yet.

19 MR. THACKER: Do you have an extra copy I can look at
20 now?

21 MR. KAISER: In the motion record, Mr. O'Leary, we
22 have two affidavits.

23 MR. O'LEARY: Correct, sir.

24 MR. KAISER: Then there is a third affidavit?

25 MR. O'LEARY: There is, by Ms. Adams.

26 MR. KAISER: By Ms. Adams. Is that right?

27 MR. O'LEARY: Yes.

28 MR. KAISER: Any other affidavits?

1 MR. O'LEARY: No, sir. Those are the three.

2 MR. KAISER: And then the document brief?

3 MR. O'LEARY: And the document brief.

4 MR. KAISER: There is three documents that Mr. Thacker
5 should have?

6 MR. O'LEARY: Correct, sir.

7 MR. KAISER: And we should have.

8 MR. THACKER: Are we missing a photocopy of the third
9 affidavit? Can I anyone lend me theirs for a moment so I
10 can read it?

11 MR. KAISER: Mr. O'Leary, why don't you give Mr.
12 Thacker this one, or Mr. Stoll? All right.

13 Mr. O'Leary, back to the motion record. Where is the
14 June 30th drop dead claim?

15 MR. O'LEARY: If you turn to the affidavit of Mr.
16 Kovnats, you will see, beginning at paragraph N, the
17 description of the financial conditions that are required
18 and then you will see in paragraph 13 on page 4:

19 "Specifically the escrow provides that all monies
20 held in escrow must be returned to the
21 subscribers of shares if, on or before June 30th,
22 IGPC has not arranged sufficient funds to
23 complete the ethanol facility."

24 MR. KAISER: Who are the subscribers to the shares?

25 MR. O'LEARY: They are...

26 MR. KOVNATS: Mr. Chairman, the subscribers for the
27 shares are 840 members of IGPC, who are members of the
28 community. There are some corporate subscribers who are

1 involved in the project, but the vast majority have been -
2 more than 40 million that was raised - is from the local
3 people.

4 MR. KAISER: Who is acting for them?

5 MR. KOVNATS: IGPC is representing their shareholders
6 or members, and we are on -- Aird & Berlis is on for IGPC.

7 If I may explain the structure of financing?

8 MR. KAISER: Here is my point, you are raising a
9 condition that says that the escrow provides that the money
10 has to be returned to the shareholders, 840 shareholders.

11 I want to know, practically, are they 840 shareholders
12 going to enforce that covenant? And who is acting for
13 them?

14 MR. KOVNATS: Sir, the way the agreements are
15 structured is, it was a condition to the raising of the
16 money under the Cooperatives Act, that a public disclosure
17 document similar to a prospectus is filed, submitted,
18 reviewed and is used to help raise the funds. It was a
19 condition imposed by the Cooperatives Branch that 94
20 percent of the amount of money raised is held in escrow and
21 cannot be used by the cooperative until they are relatively
22 certain that the facility will be used.

23 Six percent could be used for working capital and
24 development purposes.

25 The escrowed money is deposited with Canada Trust,
26 pursuant to an escrow agreement that was reviewed and
27 approved by the Cooperatives Branch. That escrow agreement
28 cannot be amended without the consent of the Cooperatives

1 Branch and all of the members and Canada Trust, the members
2 being the beneficiaries of the escrow arrangements that
3 have been set up. That agreement was amended once a year
4 ago to get an extension from June 30, 2006 to June 30,
5 2007. The amendment process required the consent of each
6 member, which required holding meetings, town hall
7 meetings, going out to peoples' homes and getting consent
8 documents signed.

9 MR. KAISER: So you're saying without an amendment in
10 the manner you described, Canada Trust has to send this
11 money back?

12 MR. KOVNATS: That's correct.

13 MR. KAISER: On June 30th?

14 MR. KOVNATS: That's correct.

15 MR. KAISER: Unless the agreements have been amended.

16 MR. KOVNATS: That's correct.

17 MR. KAISER: It takes a long time to get the agreement
18 amended?

19 MR. KOVNATS: That is correct.

20 MR. KAISER: All right. Go ahead.

21 MR. ALKALAY: Mr. Chairman, can I also add to that
22 point that under the conditions of our federal government
23 funding the ethanol expansion program, we have \$11.9
24 million. The final date for receiving those funds, we have
25 to have financial close by July 5th, 2007. That date has
26 already been extended a couple of times. July 5th is the
27 absolute deadline for that. Even if we were to attempt to
28 amend the provisions of our escrow agreement, we would not

1 be able to amend the provisions of the ethanol expansion
2 program funds.

3 MR. KAISER: All right. July 5th date, let me
4 understand that better. That is imposed by, who?

5 MR. ALKALAY: That is by NRCan, Natural Resources
6 Canada.

7 MR. KAISER: Federal government.

8 MR. ALKALAY: Federal government, under the ethanol
9 expansion program.

10 MR. KAISER: And that can't be extended?

11 MR. ALKALAY: That cannot be extended. It has already
12 been extended and they have told us that it is the absolute
13 --

14 MR. KAISER: Anyone here for NRCan? All right.

15 If you were to able to get consent from the
16 shareholders, would Canada Trust not agree to retain the
17 funds the funds?

18 MR. KOVNATS: Mr. Chairman, if we had the consent of
19 the 840 members who are the beneficiaries, I am sure we
20 could get Canada Trust to consent.

21 MR. KAISER: It's just a practicality of getting that
22 done in a short frame.

23 MR. KOVNATS: Tomorrow, yes.

24 MR. KAISER: You're assuring us that if that is not
25 done, this money is going back.

26 MR. KOVNATS: Yes.

27 MR. KAISER: Because Canada Trust is obligated legally
28 to send it back and they will send it back?

1 MR. KOVNATS: Yes, sir.

2 MR. KAISER: All right. Mr. O'Leary, how did things
3 get to this desperate state so late in the day?

4 MR. O'LEARY: Well, sir, we have been trying to come
5 up with a reason for the non-responses that --

6 MR. KAISER: Well, the refusal to sign this agreement,
7 it just came out of the blue? You had no idea there was a
8 problem?

9 MR. O'LEARY: We believed in good faith that the deal
10 was proceeding on a commercially reasonable basis. And I
11 intended to walk you through it, but in the affidavit
12 materials there is a statement to the effect that, from
13 both Mr. Kovnats and the lawyer for the syndicated lenders,
14 out of McCarthy, Tetrault to the effect that there was
15 delay in receiving responses from counsel for NRG, which --
16 there were repeated requests; perhaps we should have seen
17 it coming, but I would submit that what has happened is NRG
18 has simply strung parties along, believing that they were
19 going to abide by their obligations, and complete the
20 transaction, and we are here today simply because it is
21 fulfilling their attempt to frustrate the project by not
22 allowing it to be completed on time, knowing the urgency of
23 the June 30th date.

24 So I don't think there is any fault that can be placed
25 on any of the parties that are present today. This is a
26 deliberate attempt, we submit, by Mr. Bristoll to avoid
27 proceeding with this proceeding.

28 There are literally dozens of e-mails that were sent

1 to Ogilvy Renault requesting a response to the several
2 issues that were outstanding. The affidavit materials
3 which I will walk you through will indicate that these
4 issues were resolved this week, and that NRG was advised,
5 on those documents, and that we have been informed -- Aird
6 & Berlis -- and McCarthy, Tetrault has been informed by Mr.
7 Moran that they had recommended that you proceed on the
8 basis of the documents in their current form.

9 MR. KAISER: Who does McCarthy represent?

10 MR. O'LEARY: They represent the lenders.

11 MR. KAISER: The lenders, all right.

12 MR. O'LEARY: That's in the affidavit of material,
13 sir. So the evidence before you, which is uncontradicted,
14 is that NRG has been advised by its legal counsel to
15 proceed --

16 MR. KAISER: When did you find out that Ogilvy Renault
17 was no longer on the file?

18 MR. O'LEARY: In fact, we have not been told that
19 Ogilvy Renault was no longer on the file. The fact that
20 Mr. Thacker is here is absolutely pristine news to us. All
21 we were advised is that, at the middle of the afternoon
22 yesterday -- and this is in the affidavit of materials as
23 well -- by Ogilvy Renault, is that NRG would not be signing
24 the two remaining documents. They did not say they were no
25 longer counsel for NRG.

26 One of my submissions to you today in response to the
27 request for an adjournment is, in fact, we don't accept
28 that Mr. Thacker has any standing. Ogilvy Renault, as far

1 as we are concerned, remains counsel for NRG.

2 MR. KAISER: Well, he is a member of the bar. He says
3 he represents NRG. We believe him.

4 MR. O'LEARY: He has not said that Ogilvy Renault has
5 been discharged.

6 MR. KAISER: No. Maybe they're not. That's not the
7 issue.

8 MR. KAISER: All right. So I think where we stand,
9 leaving aside the July 5th date, we have the June 30th
10 date. The practicality suggests that that can't be amended
11 over the long weekend, and if I am understanding counsel,
12 if it is not amended the money goes back?

13 MR. KOVNATS: That is correct, sir.

14 MR. KAISER: Does that mean the end of the deal? Or
15 can the 840 shareholders send the money back the next day?

16 In other words, I'm trying to get to the
17 practicalities here. If you're telling me that this deal
18 legally is going to fall apart, that's one thing. If it's
19 just an annoyance, and no doubt you are entitled to be
20 annoyed, that's another thing.

21 MR. O'LEARY: Sir, we don't believe it is an
22 annoyance. We believe the deal is in real peril and
23 jeopardy.

24 MR. KOVNATS: Mr. Chairman, to just add another level
25 of complexity. In order for a cooperative to raise any
26 money, it has to file a public offering document similar to
27 a prospectus, which is reviewed and accepted by the
28 Cooperatives Branch. That is as complex a document as any

1 public-offering document under the Securities Act.

2 A public offering document by a cooperative has a
3 limited life. It automatically expires. The last document
4 we had expired on June 15th, 2007. We do not have a live
5 offering document. In order for us to go back to the
6 members and ask them to make a new investment decision, we
7 would have to prepare, file, review and have accepted a new
8 offering document, which is not a small undertaking in its
9 own right.

10 In addition, we need to get all 840 people to make a
11 new investment decision. Further, we have contracts for
12 all of our material agreements, some of which are very
13 price sensitive, and delay will change pricing or will --
14 may change pricing.

15 Further, as Mr. Alkalay pointed out, we have the
16 federal government who said there are no more extensions.
17 We have --

18 MR. KAISER: Let me stop you there. Where is that in
19 the record? Where is the evidence that the federal
20 government says no more extensions? I mean, you have said
21 that, but is there a document to that effect.

22 MR. THACKER: It's not in there. It's not there. I
23 don't want to...

24 MR. KAISER: We will come to you in a minute, sir. Is
25 there anything in the record that supports this claim that
26 --

27 MR. ALKALAY: There isn't anything in the record. We
28 can certainly provide that documentation.

1 MR. KAISER: Let me just jump ahead, Mr. O'Leary.
2 Let's suppose we decide to hear this on an urgent matter.
3 Without getting into the facts, what relief are you
4 seeking?

5 MR. O'LEARY: We're asking for an order to be issued
6 by this Panel directing NRG to execute the remaining
7 documents --

8 MR. KAISER: What's our authority for that?

9 MR. O'LEARY: Our submissions are that you have the
10 authority under subsection 42(3). If you go to the
11 documents brief, at tab 6 you will see there is a copy of
12 section 42 and 42(3). First of all, we state there is a
13 number of areas, but this is the first. 42(3), which is
14 the second page in, sir, states that:

15 "Upon application the Board may order a gas
16 distributor" -- NRG -- "to provide any gas sale
17 distribution service."

18 It is quite clear from that section you have the
19 authority.

20 Does the Act specifically state that the Board may
21 order someone to sign a document? I cannot point you to a
22 section that says that, but clearly, the powers that you
23 have been entrusted with allow you to exercise your
24 authority in a way that allows you to make good on that
25 particular provision.

26 MR. KAISER: Let's suppose we did that, we granted
27 that order in the form that you wanted. How is that going
28 to help this June 30th problem?

1 MR. O'LEARY: If the order was that Mr. Bristoll was
2 required to execute the documentation on behalf of NRG this
3 morning --

4 MR. KAISER: Oh, you say part of that order would be
5 he should execute the documents? In other words, it is
6 just not an order to supply. It is an order to execute the
7 documents --

8 MR. O'LEARY: It is an order requiring him --

9 MR. KAISER: -- with respect to the supply?

10 MR. O'LEARY: Correct. Well, we are saying that that
11 is a necessary implication. For this Board to have any
12 teeth, to actually enforce the order, to make good on the
13 authority that it has under subsection 42(3), by necessary
14 implication this Panel has the jurisdiction to order a
15 regulated utility to do certain activities.

16 So I was going to take you to the words of the Board
17 in its interpretation of its powers from the LIEN decision,
18 which was recently issued.

19 There should be a copy on your desk.

20 MR. KAISER: I saw it. I thought it was up here by
21 mistake. I wasn't sure you were going to refer to it.

22 MR. O'LEARY: This is the decision of the Board in
23 respect to the application by LIEN, you may recall, about
24 rate affordability programs that they were proposing at the
25 time. And the Board considered the issue before the panel
26 was: What jurisdiction did the Board have to actually
27 entertain that application?

28 And while the issues relating to rate affordability

1 have no relevance to today, the Board's comments about its
2 jurisdiction, we submit, are the best articulation of your
3 powers under the Act.

4 If I could turn you to page 5 of that decision, in the
5 second paragraph, this is the Board's findings. It states:

6 "The Board was created and made operational
7 through legislation. The Board has a
8 responsibility to operate to the full depth and
9 breadth of the authority granted in its governing
10 statute. The limits or boundaries of its
11 authority need not nor should be a bright line.
12 This would require near unachievable foresight by
13 the legislatures to consider all of the possible
14 eventualities."

15 Let me stop there. That is why we don't see language
16 in the Act which says the Board may order somebody to sign
17 a document, because you would require inhuman abilities to
18 recognize that is a specific requirement in the Act.
19 Therefore, it is there by necessary implication.

20 I continue:

21 "The objectives provided in the Act are intended
22 to be broad enough to allow the Board to operate
23 with discretion in an ever-changing environment
24 and focussed enough to ensure that the Board
25 operates within the government's policy
26 framework."

27 Let's stop there for a second. This plant is
28 consistent with the government's policy framework. This

1 ethanol plant is intended to be used to reduce, ultimately,
2 emissions from automobiles as a result of their reliance on
3 gasoline.

4 I continue:

5 "Determinations on jurisdiction should be guided
6 solely by the question of what can reasonably be
7 considered to have been intended by the
8 legislatures in the scoping and crafting of the
9 Board's mandate. There should be no predestining
10 bias based on a desire by the regulator to
11 include or exclude any particular issue."

12 If I could then turn you to --

13 MR. KAISER: I think we get the clear picture. You
14 don't have a draft order, I suppose, that you're asking us
15 to...

16 MR. O'LEARY: I do not, sir, but that could be done in
17 a matter of seconds.

18 MR. KAISER: So here is the problem, again, without
19 getting into the facts. We will come back to the facts,
20 possibly, but I am just trying to deal with the
21 practicalities.

22 You want us to issue an order directing this utility
23 to sign these agreements which commits them to building the
24 facility that we approved back on February 2nd?

25 MR. O'LEARY: It ultimately will result in that, but
26 in terms of the impact on NRG, the evidence in the
27 affidavits is that it has no adverse impact on NRG.

28 MR. KAISER: All right. That's what I'm looking for.

1 Maybe I interrupted you. Can you take me to that? I want
2 to know what the impact on NRG is going to be if we sign
3 this order that you want us to sign.

4 MR. O'LEARY: I take you, sir, to the affidavit of Mr.
5 Kovnats, which is tab 2 of the motion record.

6 Oh, sorry. Yes, paragraph 18. If you look at
7 paragraph 18 of Mr. Kovnats' affidavit, it talks about the
8 agreements, and it states in that affidavit that:

9 "Parties to this agreement include IGPC and NRG,
10 and it will have no adverse economic effect on
11 NRG or its other customers."

12 Sir --

13 MR. KAISER: Well, that doesn't help me. The
14 agreement that you want them to sign and you want us to
15 order them to sign commits them to do, what?

16 MR. KOVNATS: Mr. Chairman?

17 MR. KAISER: I take it that agreement is not before
18 us?

19 MR. THACKER: It's not in the record.

20 MR. O'LEARY: We have and can make copies available,
21 but our submission -- just one second. Our submission on
22 that, sir, is that as I walk you through the evidence and
23 we establish the fact that Ogilvy Renault has actually made
24 a recommendation and --

25 MR. KAISER: That doesn't help us.

26 MR. O'LEARY: Sir, it means that what this Board
27 should not be doing is reviewing on a line-by-line basis
28 the agreements that NRG's counsel have already reviewed and

1 suggested be executed.

2 MR. KAISER: Well we have to make an independent
3 judgment here. We need to make a determination of what the
4 impact on NRG is going to be if we order them to sign this
5 agreement, regardless of what Ogilvy Renault may think.
6 You were going to add something?

7 MR. KOVNATS: Yes, sir. Mr. Chairman there are, in
8 essence, four material agreements between NRG and IGPC, and
9 for these purposes IGPC includes its wholly-owned
10 subsidiary.

11 One is an agreement for the design, build and
12 operation of a pipeline, which was signed before the
13 previous hearing, which does require IGPC to pay cash and
14 to put up a letter of credit, all of which it is prepared
15 to do.

16 There was a second agreement dealing with the supply
17 of gas, which was signed before the hearing that was held
18 with respect to this matter and was signed last January.

19 We're not here discussing those two agreements.

20 There are two remaining agreements that we wish to
21 have considered and which have been reviewed extensively by
22 McCarthy on behalf of the lenders, ourselves, on behalf of
23 IGPC, and Ogilvy Renault on behalf of NRG, all of which
24 agreements were -- both agreements were satisfactory to all
25 counsel involved and resolved this week, in which Ogilvy
26 Renault has recommended NRG sign, so they have advised us.

27 The purpose of these two agreements - we'll call one
28 the bundled T agreement and the other we will call the

1 consent and assignment agreement. The consent and
2 assignment agreement is an agreement that is designed for
3 the benefit of the secured lender so in the event there is
4 a default by IGPC with the secured lending group, who will
5 be advancing approximately \$100 million, the lending group
6 can then step into the shoes of IGPC and take over the
7 agreements relating to the pipeline, the supply of gas, and
8 the bundled T agreement.

9 There is an acknowledgement in the agreement, and the
10 major purpose of that agreement is to get an
11 acknowledgement from NRG to the lending syndicate that in
12 the event of that financial calamity for IGPC, that the
13 bank can then step in and have a plant that will work and
14 they will have good security.

15 MR. KAISER: So just stopping you there, sir. That
16 doesn't affect NRG in any sense.

17 MR. KOVNATS: That is correct.

18 MR. KAISER: Somebody else just walks into their shoes
19 and continues operating the plant.

20 MR. KOVNATS: That is correct. The second agreement
21 is the bundled T agreement.

22 On the completion of this facility, IGPC will be, I
23 think, the largest single customer NRG has in its area,
24 buying a significant amount of natural gas to run its
25 facility. It is a material concern to everybody that NRG
26 has the source and pricing and the flexibility on pricing
27 and source, to be able to allow IGPC to manage its costs of
28 input -- its input production costs.

1 There have been many conversations with other gas
2 suppliers for us to be able to buy gas from others, and use
3 it through the pipeline, creating a handling charge to NRG
4 for this. That requires sourcing, pricing, delivery, flow
5 measurement and flow allocation. And I am not an energy
6 lawyer, so forgive me, I am going way beyond where I need
7 to go.

8 MR. KAISER: You're doing very well.

9 MR. KOVNATS: But that bundled T agreement manages
10 that flexibility for the supply of natural gas through the
11 facility.

12 MR. KAISER: So do I understand that that agreement,
13 the bundled T agreement allows you or the lenders, I guess
14 --

15 MR. KOVNATS: No. IGPC. It's one of the --

16 MR. KAISER: IGPC to go and source their gas
17 elsewhere?

18 MR. KOVNATS: Yes.

19 MR. KAISER: And have NRG merely distribute it as
20 opposed to purchasing your gas from NRG?

21 MR. KOVNATS: That is correct.

22 MR. KAISER: And is NRG objecting to that?

23 MR. KOVNATS: We are not sure why NRG hasn't signed
24 these agreements. They have gone -- they have not been
25 responsive in any manner whatsoever.

26 We understand -- no, we understand from Ogilvy Renault
27 that the concepts were not adverse to them, and from the
28 business discussions among the business people, we've had

1 understood this was a matter that was going forward.

2 MR. KAISER: Well, NRG simply passes the gas through
3 at cost, don't they?

4 MR. KOVNATS: With a handling charge, sir.

5 MR. KAISER: With a handling charge.

6 MR. KOVNATS: Yes, sir.

7 MR. KAISER: So if you went elsewhere to get your gas,
8 they would lose the handling charge?

9 MR. KOVNATS: No. They would get the handling charge
10 for using the pipeline.

11 MR. STOLL: I think the terminology between the
12 distribution charge and handling charge is what Mr. Kovnats
13 is referring to.

14 NRG, because of the way it is embedded within Union,
15 is subject to the M9. It provides certain services, re-
16 balancing to all its customers. The bundled T is an
17 agreement that NRG would use with any of the large
18 industrials who purchase gas on their own and have it
19 delivered to Union for redelivery to NRG, for redelivery to
20 the customer, and it covers off some of the balancing and
21 transportation limits that would be agreed to. It also
22 sets the parameters for NRG to bookend their agreement with
23 Union, and then obligates for the upstream delivery to
24 either Union at Parkway or Dawn or to the western point of
25 delivery, depending on what the parties choose.

26 So the bundled T is a customization of the -- a
27 similar type arrangement that NRG would have in place with
28 a gas marketer, or with another large industrial.

1 MR. KAISER: All right.

2 MR. STOLL: And the financial prospective, if there is
3 a balancing charge, or other charge, the agreement provides
4 for how the parties would pay for that. So if IGPC causes
5 NRG to be charged a balancing cost by Union, IGPC will pay
6 that charge.

7 So that is the intent of that agreement. So it
8 basically provides protection.

9 MR. QUESNELLE: Does the bundled T rate fit within the
10 existing approved rate schedule? Or is this something that
11 would be requiring approval at a later date?

12 MR. STOLL: The bundled T is contemplated in the
13 existing rate structure for NRG.

14 MR. QUESNELLE: So no further approval would be
15 required. It is contemplated within the parameters?

16 MR. STOLL: Yes. We're just talking about the
17 existing agreement under that.

18 MR. KAISER: How long have you been discussing this
19 agreement with NRG?

20 MR. STOLL: The original discussions, we were told
21 back in the summer of 2006, that we would require three
22 agreements, cost recovery agreement, the gas delivery
23 agreement and the bundled T.

24 The focus had been on gas delivery, so we could do the
25 economics, to do the pipeline cost recovery. From our
26 understanding, because of the nature of the bundled T and
27 the fact that NRG had with other marketers, et cetera for
28 similar type arrangements, this would be not controversial.

1 As of June 15th, my understanding, in dealings with
2 Mr. Moran, were that all of the issues related to that
3 agreement had been resolved between us.

4 MR. KAISER: I will come back to Mr. Stoll, the
5 question I asked you. Let's suppose we ordered NRG to --
6 let's assume we have the jurisdiction, let's assume we
7 decided to order NRG to sign that bundled T agreement.
8 What conceivable harm could result to NRG? Being as
9 neutral as you can in your comments. Is there an adverse
10 revenue impact in any shape, or form?

11 MR. STOLL: Not that I would be aware of. Because NRG
12 has not bookended the agreement and made any contractual
13 commitments to Union. At this point, there would be no
14 commercial -- like there would be no harm from them signing
15 it.

16 Afterwards, I don't think there would be any risk to
17 NRG from this arrangement. From the way NRG operates, the
18 bundled T is something that is contemplated. It was a
19 document that they told us was required.

20 It obligates us to deliver a minimum amount of gas to
21 Union, so they can undertake the balancing and the delivery
22 arrangements from a physical standpoint. I don't know that
23 there is any adverse impact on NRG from signing this
24 document.

25 MR. KAISER: Then did you say they had these
26 agreements with others?

27 MR. STOLL: That's my understanding.

28 MR. ALKALAY: Mr. Chairman, can I just interject for a

1 moment. On a commercial basis, we spent a lot of time with
2 NRG talking about the capital cost recovery agreement.
3 That was negotiated very intensely.

4 From the beginning, the bundled T-service agreement
5 was viewed fairly much as a standard agreement. There were
6 very few changes that we were even discussing on a business
7 level. It was not an agreement that was really subject to
8 much discussion. It was considered to be a formality.

9 MR. KAISER: All right.

10 MR. O'LEARY: Sir, if I could just add to those
11 comments. An observation is that the fact that Mr.
12 Bristoll is not here should be viewed with some skepticism
13 by this Panel.

14 There is no response before you from NRG and they did
15 have the opportunity. Mr. Bristoll could have made it down
16 here today, just like the mayor of Aylmer made it, and
17 could be responding to these questions. So we would submit
18 that you should draw an adverse inference from the fact
19 that he is not here and instead they have sent a counsel
20 that knows nothing about the matter; and, in fact, Mr.
21 Moran who has been handling the matter who should be here
22 today has, presumably been told not to show up.

23 MR. THACKER: I would like to say one thing, and I
24 don't want to interrupt, but I think I have to at some
25 point. These agreements, which clearly are at the focus of
26 all of this and the rationale for my client's choosing not
27 to sign them at the same time, aren't in the record and I
28 haven't read them, and that's a fundamental flaw.

1 MR. KAISER: I agree. We're going to get them in the
2 record. We haven't read them either. We'll come to that.

3 Mr. Mayor, this utility has a franchise agreement with
4 your municipality. Do you have any views on this issue?

5 MR. HABKIRK: Well certainly, I view this...

6 MR. QUESNELLE: Mr. Mayor, could you try again.
7 Sometimes it goes on and off.

8 MR. HABKIRK: The whole thing is moving. Can you hear
9 me?

10 I view this as a win for NRG and the community as a
11 whole. In fact, it meets all of the criteria for
12 environmental, service supply, community cooperation and
13 relation with their other customers, and enhance their
14 service delivery. So I view this as a win for them and for
15 everyone else involved in this. And I cannot fathom why
16 they would wait until the 11th hour and then refuse to
17 return phone calls, for reasons why? But that's why we
18 have legal teams.

19 MR. KAISER: All right. Thank you.

20 MR. O'LEARY: And, sir, if I could direct you to, and
21 this document has -- I don't believe been marked as an
22 exhibit yet, but it is the document brief. There is one
23 piece of evidence in that. Simply with the speed that this
24 matter was brought forward, we were unable to include it in
25 the affidavits, but it is a letter from counsel for the
26 Town of Aylmer, Mr. David Woodward of Lerner.

27 MR. KAISER: Where is that?

28 MR. O'LEARY: That is at tab 7, sir. At page 2 of

1 that letter, you will see that Lerner's has advised Mr.
2 Bristoll of NRG that, in its view, by their failure to
3 execute the documents, they will view NRG to be in breach
4 of the franchise agreement and has, again, stressed the
5 urgency and requested that they execute the documents.

6 MR. KAISER: Mr. Thacker, do you know if Mr. Bristoll,
7 your client, has received a copy of the Lerner's letter? I
8 see it went to Mr. Moran.

9 MR. THACKER: I don't know if he received it. I
10 received it from -- he didn't mention to me that he had
11 heard anything from Lerner's or was aware of any material
12 being delivered, at all. What did come to me is this
13 material to me through Ogilvy Renault, but my client didn't
14 refer to anything. The letters are here from Lerner's.

15 MS. ADAMS: Mr. Chairman, Heather Adams, administrator
16 for the Town of Aylmer. I spoke with Mr. Bristoll
17 yesterday on the telephone. I advised him that this letter
18 from the town's solicitor was being sent to Mr. Moran.

19 He asked for a copy of it and I sent an e-mail to Mr.
20 Bristoll, with a copy of this letter from the town.

21 MR. KAISER: All right, thank you. That is helpful.

22 Mr. Thacker, we have this situation here where, at
23 least on the evidence as presented, this deal is going to
24 fall apart. I understand your request for an adjournment,
25 but there is certainly some urgency here.

26 Before we hear from you, which we certainly will, I
27 want to make sure that you and we have these agreements
28 which are at issue, so you will provide us with copies, Mr.

1 O'Leary.

2 MR. O'LEARY: Yes. Yes, sir.

3 MR. KAISER: Over the break. And over the break, I
4 would be grateful if you would get in touch with your
5 client. You can tell him this: That this is a serious
6 matter. He has been put on notice by the municipality
7 that, in effect, they are going to allege a breach of the
8 franchise agreement and seek remedies from the Board. The
9 Board is very concerned.

10 And it is not our interest to get into the question of
11 who did what wrong at this point. I think you want to have
12 a very direct conversation with your client and tell him
13 this is a serious matter, and then we will hear from you
14 after the break.

15 MR. THACKER: One other thing I might ask for this,
16 although there is discussion about the terms of financing
17 and the terms of the escrow, none of those documents are
18 there, either.

19 MR. KAISER: I understand. We're going to cure that
20 right now.

21 MR. THACKER: So apart from the other two
22 agreements...

23 MR. KAISER: We have the two agreements which are
24 outstanding that you want signed.

25 MR. O'LEARY: Yes, sir. And I have just -- my
26 understanding is that -- we do have copies to share with
27 you -- is that there may be a need or a request for
28 confidential treatment of the documents.

1 MR. KAISER: We will deal with that. Anything else
2 you need, Mr. Thacker?

3 MR. KOVNATS: Mr. Chairman, Mr. Kovnats. The terms of
4 the escrow are on the public record. NRG has seen them, as
5 has Ogilvy's. They are they are attached to the escrow
6 agreement as a schedule to the public offering document
7 that was filed over a year ago. So it is very much on the
8 public record and we will try and get you copies right
9 away.

10 MR. ALKALAY: I have a copy of that here.

11 MR. KAISER: Over the break, Mr. O'Leary, if you and
12 your team would assemble the necessary documents, make
13 copies available to the Board and the counsel for NRG

14 And I am going to adjourn this now for half an hour to
15 give you a chance to do that. We will hear from you, sir,
16 when we come back.

17 MR. THATCHER: Thank you.

18 --- Recess taken at 9:16 a.m.

19 --- On resuming at 9:45 a.m.

20 **PROCEDURAL MATTERS:**

21 MR. KAISER: Please be seated. Ms. Sebalj, let's mark
22 the four contracts that we have. We have the gas delivery
23 agreement, which was executed between the ethanol plant and
24 NRG on, I don't know the date was.

25 MS. SEBALJ: I believe you're speaking about the
26 Natural Resources Gas Limited natural gas delivery
27 contract; is that the one?

28 MR. KAISER: The one I have is not executed by NRG.

1 Do we have an executed copy?

2 MS. SEBALJ: Interestingly, the one that I have also
3 isn't. In the -- did you provide copies of these contracts
4 in your materials, Mr. O'Leary?

5 MR. O'LEARY: No, we didn't.

6 MS. SEBALJ: I'm assuming it was signed in
7 counterparts and we're missing the signature page of Mr.
8 Bristoll. Does anyone have a final executed copy?

9 MR. KAISER: The same is true of the Pipeline Cost
10 Recovery Agreement; at least the ones that we have are not
11 executed by NRG. I assume they have been executed, Mr.
12 Stoll?

13 MR. STOLL: That's correct. You will recall, as part
14 of the pipeline hearing, these were submitted by e-mail by
15 Mr. Moran on January 31st. There were two versions
16 submitted with that e-mail of each document; one with the
17 signatures from IGPC, one with the signatures of Mr.
18 Bristoll for NRG. So they're executed in counterparts.

19 MS. SEBALJ: I do now have copies of them executed in
20 counterparts.

21 MR. KAISER: What number are those two agreements?

22 MS. SEBALJ: For the record, can I just mark the
23 document brief first of Integrated Grain Processors Co-
24 Operative Limited. That should have been J1.2.

25 **EXHIBIT NO. J1.2: DOCUMENT BRIEF OF INTEGRATED GRAIN**
26 **PROCESSORS CO-OPERATIVE LIMITED**

27 MS. SEBALJ: Just so that we can go in sequence the
28 gas delivery contract will be J1.3.

1 **EXHIBIT NO. J1.3: GAS DELIVERY CONTRACT**

2 MS. SEBALJ: And the Pipeline Cost Recovery Agreement,
3 dated January 31st, 2007 as J1.4.

4 **EXHIBIT NO. J1.4: PIPELINE COST RECOVERY AGREEMENT,**
5 **DATED JANUARY 31ST, 2007**

6 MR. KAISER: All right.

7 MR. O'LEARY: If I might, just for the record, in the
8 decision which is at tab 1 of the production brief that has
9 been presented today on page 2, the Board decision confirms
10 that it had received and reviewed two final executed copies
11 of the gas delivery contract and the Pipeline Cost Recovery
12 Agreement.

13 MR. KAISER: Yes.

14 MR. THACKER: Can I just -- I'm sorry to interrupt,
15 but before the break I was given two documents that are not
16 the documents that anyone has spoken about so far. So I
17 haven't even read the ones we're now going to get to. I
18 have a bundled T service receipt contract.

19 MR. KAISER: We're going to come to those next.

20 MR. THACKER: The one we've talked about, those are
21 the only two I have seen.

22 MR. KAISER: Do you have the gas delivery agreement
23 and the pipeline cost recovery?

24 MR. THACKER: No.

25 MR. KAISER: Can we obtain that? Here, I have an
26 extra copy.

27 MS. SEBALJ: Actually, we do as well.

28 MR. KAISER: These were, Mr. Thacker, executed during

1 the prior hearing.

2 MR. THACKER: Thank you.

3 MR. KAISER: Ms. Sebalj, let's go next to the bundled
4 T service contract. That will be J1.5.

5 MS. SEBALJ: J1.5, the bundled T service receipt
6 contract.

7 **EXHIBIT NO. J1.5: BUNDLED T SERVICE RECEIPT CONTRACT**

8 MS. SEBALJ: And I note for the record that this is an
9 unexecuted and my understanding is, draft.

10 MR. O'LEARY: Just for the record, it is not
11 considered draft. Our position is that it is in final form
12 and was accepted by counsel for NRG, but it is unexecuted
13 by NRG.

14 MR. KAISER: Has it been executed by your client?

15 MR. KOVNATS: Mr. Chairman, we do have copies executed
16 by our client, if it would be useful for the Panel.

17 MR. KAISER: All right. Then the next one would be
18 the, it's called bundled T service agreement contract,
19 Pipeline Cost Recovery Agreement, Gas Delivery Consent and
20 Acknowledgement Agreement. I take it it's really just the
21 consents and acknowledgement agreement. We have the other
22 three.

23 MR. O'LEARY: Yes, sir.

24 MR. KAISER: That will be J1.6.

25 MS. SEBALJ: Correct.

26 **EXHIBIT NO. J1.6: BUNDLED T SERVICE AGREEMENT**
27 **CONTRACT, PIPELINE COST RECOVERY AGREEMENT, GAS**
28 **DELIVERY CONSENT AND ACKNOWLEDGEMENT**

1 MR. KAISER: Now, I have a question for you, Mr.
2 O'Leary. If you had come before us today and said your
3 client wants a bundled T service agreement and it's a
4 standard form agreement that NRG offers to customers in its
5 service area, we could presumably rule as to whether that
6 was a service that the utility should be offering to the
7 customer. Is that right?

8 MR. O'LEARY: Yes, sir. I think that would be fair.

9 MR. KAISER: And would I be right that, I have heard
10 it said but just to confirm, that this is a standard form
11 agreement offered by this utility to other customers?

12 MR. STOLL: It's a slight variation. The customers in
13 particular would be the industrial customers.

14 MR. KAISER: Yes.

15 MR. STOLL: And the gas marketers. People who buy
16 their own gas and make their own -- can make their own
17 delivery arrangements.

18 MR. KAISER: You're telling us there is nothing
19 unusual about this agreement compared to others you have
20 seen?

21 MR. STOLL: No, there is not.

22 MR. KAISER: This utility, to your knowledge, has
23 granted to other customers in its territory?

24 MR. STOLL: It has been granted on other occasions,
25 yes. This has just been tailored to the specific
26 requirements that NRG had put -- NRG's counsel made to us,
27 i.e., delivery at Dawn, delivery at Parkway, some details
28 like that.

1 MR. KAISER: Okay. Now then, Mr. O'Leary, we have two
2 contracts which the Board has approved which we have now
3 marked, that's the gas delivery contract, J1.3, and the
4 Pipeline Cost Recovery Agreement, J1.4. This panel has
5 found those to be in the public interest, previously.

6 MR. O'LEARY: Correct, sir.

7 MR. KAISER: If you came before us and you said, We
8 want to amend these two agreements to include the consent
9 and assignment rights, which are in this latest agreement,
10 that would simply be a modification of the agreements that
11 we have already approved.

12 MR. O'LEARY: Sir, that is, in fact, another way of
13 restating the relief that we were seeking today, which is a
14 review on variance of your facilities application decision,
15 and our request was going to be that you make such an
16 order.

17 MR. KAISER: And our concern in this case, as you well
18 know, was the Pipeline Cost Recovery Agreement, to ensure
19 that this activity by NRG would not harm other ratepayers
20 in any shape or form.

21 MR. O'LEARY: Correct, sir.

22 MR. KAISER: And that agreement protected them --

23 MR. O'LEARY: Yes.

24 MR. KAISER: -- by making sure that they would receive
25 the complete monies contracted for throughout the term of
26 this agreement.

27 MR. O'LEARY: Correct, sir.

28 MR. KAISER: But we recognize that financing was

1 required and is, in fact, referred to in these agreements.
2 And this latter agreement, as we read it - I am going to
3 ask Mr. Thacker's views - merely allows the lender to step
4 into the shoes of your client in the event there is a
5 default.

6 MR. O'LEARY: That's correct, sir.

7 MR. KAISER: And therefore could be argued, would in
8 fact protect the ratepayers.

9 MR. O'LEARY: Absolutely, sir. And the affidavit
10 materials makes it clear, we explicitly state that it has
11 no adverse impact on the security of NRG and its
12 ratepayers.

13 MR. KAISER: All right.

14 MR. KOVNATS: Mr. Chairman, Mr. Kovnats again. I
15 would like, if I may, I would like the way you're going,
16 but let me clarify something for you. Under the Pipeline
17 Cost Recovery Agreement, specifically section 11.2,
18 subsection D for David, and in the Natural Resource Gas
19 Limited, both provisions are similar with section 7.4, they
20 both provide that:

21 "These agreements may not be assigned without the
22 prior written consent of the party, such consent
23 not to be unreasonably withheld. For greater
24 certainty, an assignment by way of security to
25 the customers' lenders shall be considered
26 reasonable."

27 The challenge that we have been facing is that the
28 lenders wish to receive the consent, which they have

1 already agreed to give under the consent and
2 acknowledgement agreement, and NRG has declined to sign
3 their consent even though, under the existing agreements,
4 they're obligated to do so.

5 MR. KAISER: Right. I was going to go to that. That
6 is what seemed to be my reading of it, as well.

7 MR. KOVNATS: Excuse me, sir. It is the Pipeline Cost
8 Recovery Agreement.

9 MR. THACKER: Is that in the record? I don't see that
10 one either.

11 MR. KOVNATS: It's right here.

12 MR. THACKER: I'm sorry. The provision you're
13 referring to.

14 MR. KAISER: Let's go through that a little more
15 slowly.

16 MR. KOVNATS: It's the pipeline --

17 MR. THACKER: Thank you. I have it now.

18 MR. KOVNATS: A similar provision is in the natural
19 resource -- in the gas delivery contract, in section 7.4.
20 It's the last sentence of section 7.4.

21 MR. THACKER: Thank you.

22 MR. KAISER: The gas delivery contract? 7.4? Do you
23 have a different ...

24 MR. KOVNATS: Wait a minute. I'm sorry, it is in
25 Schedule B, general terms and conditions, section 7.4. I
26 apologize.

27 MR. THACKER: I don't have those.

28 MR. KAISER: Our schedule B is blank. I think we

1 better get current copies of these agreements, gentlemen.

2 I think this is an important point.

3 MS. SEBALJ: I think he is referring to the wrong
4 agreement, the gas delivery contract as opposed to the
5 Pipeline Cost Recovery Agreement. Our copy of the executed
6 agreement doesn't have schedule B.

7 MR. KAISER: All right. Gentlemen, we're going to
8 take 15 minutes and get these contracts in proper form. It
9 is too important an issue to be juggling --

10 MR. KOVNATS: Mr. Chairman, before we do that, may I
11 give you then, the public offering statement for the
12 raising of funds by the Co-op, which has attached to it the
13 escrow agreement that you asked for previously?

14 MR. KAISER: All right. What number is that, Ms.
15 Sebalj?

16 MR. KOVNATS: Mr. Chairman, if I could draw your
17 attention to page 91, that is where you will find the
18 conditions for the release of the monies from the escrow.

19 MR. KAISER: All right. Thank you.

20 [Mr. Kovnats distributes documents]

21 MR. O'LEARY: Ms. Sebalj, could we get an exhibit
22 number for that, as well?

23 MS. SEBALJ: It will be J1.7.

24 **EXHIBIT NO. J1.7: PUBLIC OFFERING STATEMENT FOR**
25 **RAISING FUNDS BY INTEGRATED GRAIN PROCESSORS CO-**
26 **OPERATIVE LTD.**

27 MR. KAISER: All right. Gentlemen, we will come back
28 in 15 minutes.

1 MR. O'LEARY: Mr. Chair, if I might ask. There is one
2 additional document we would wish to file, and that is the
3 agreement with the Department of Natural Resources, and
4 this is the document that --

5 MR. KAISER: This is the one on the July 5th drop
6 dead?

7 MR. O'LEARY: Correct, sir, at paragraph 2. All I
8 wish to add is that a request will be made that these
9 agreements be treated pursuant to the Board's filing-in-
10 confidence guidelines and that in the event that we get
11 into any sort of commercial details, that it may be
12 necessary to take this proceeding in camera.

13 MR. KAISER: The first two agreements -- well, I guess
14 the ones that we had on the record weren't the file
15 agreements, in any event. Were they filed in confidence?
16 Remind me.

17 MR. O'LEARY: I don't believe so, sir. Oh, they were.
18 I stand corrected.

19 MR. KAISER: All right. Let's get copies of the
20 correct agreements and distribute them.

21 MR. O'LEARY: The final document is?

22 MS. SEBALJ: J1.8.

23 **EXHIBIT NO. J1.8: AGREEMENT WITH THE DEPARTMENT OF**
24 **NATURAL RESOURCES.**

25 MR. O'LEARY: Okay, thank you.

26 --- Recess taken at 10:00 a.m.

27 --- On resuming at 10:20 a.m.

28 MR. KAISER: Please be seated. All right. Let's

1 start over with the agreements. Do you have any other
2 agreements to file?

3 MS. SEBALJ: I have left copies on the dais, I have
4 marked them J1.3 and 1.4 I put an asterisk beside them so
5 you can distinguish them from the earlier copies.

6 **EXHIBIT NO. J1.3*: GAS DELIVERY CONTRACT (EXECUTED**
7 **COPY)**

8 **EXHIBIT NO. J1.4*: PIPELINE COST RECOVERY AGREEMENT,**
9 **DATED JANUARY 31ST, 2007 (EXECUTED COPY)**

10 MR. KAISER: In the gas delivery contract, the section
11 we were referred to regarding the assignment is, where?

12 MR. O'LEARY: It is under schedule B, the very last
13 page, section 7.4.

14 MR. THACKER: Can I have a copy of schedule B that is
15 not blank? Do you have one for me?

16 MR. KAISER: That's 7.4, Mr. Thacker, last page of
17 that. And in the case of the Pipeline Cost Recovery
18 Agreement, Mr. O'Leary, where do we find that clause?

19 MR. O'LEARY: Page 19, sir. It is section 11.2,
20 clause (d).

21 MR. KAISER: All right.

22 Now, the -- I'm going to call it the assignment
23 agreement that you have put before us, Mr. O'Leary, does it
24 do anything more than that contemplated in 7.4 of the Gas
25 Supply Agreement and 11.2 (d) of the Pipeline Recovery
26 Agreement?

27 MR. O'LEARY: It does nothing more than what Mr.
28 Kovnats described in respect to this agreement earlier.

1 MR. KAISER: All right. So Mr. Thacker, here is where
2 we are. The Board has approved two agreements as being in
3 the public interest. And the project is a major project
4 for the town, a town that has lost the tobacco industry;
5 one would have thought it is important to the utility, your
6 client, as well.

7 We approved and granted a leave to construct based on
8 these contracts. And these contracts contemplated the
9 assignment of the rights to a lender, as is now being
10 requested, and we see no reason why your client is refusing
11 to do that. Can you help us?

12 MR. THACKER: Well, I just got the agreements.

13 MR. KAISER: Yes.

14 MR. THACKER: They just became part of the evidentiary
15 record about five or ten minutes ago so I have to object.
16 My client -- I have not had a chance to speak to them about
17 the question you are raising, and I'm not in a position to
18 answer it; certainly haven't had the chance to take
19 instructions or review it with my client and discuss it
20 with him.

21 So a procedural matter I have to object.

22 You asked the question of my friends, who were adverse
23 to me, whether or not these detailed agreements do anything
24 different than the one-line provision in the agreements
25 that this Board approved. And it would be an error, in my
26 submission, to take their word that they're identical, when
27 I have not had a chance to read them or discuss that issue
28 with my client.

1 So I'm not really able to answer your question because
2 of the time constraints, but I appreciate your asking me.

3 They are different. There are many pages and words
4 are different than the one liner. So it might well be that
5 you have or that -- it might well be that the agreements
6 you have approved contain the relief that they're seeking,
7 but the many pages of the other agreements are different.
8 They have more words in them than the minimum.

9 To take their word there is nothing different about
10 the many, many words seems implausible and procedurally
11 unfair.

12 MR. KAISER: Well, that is true. But the situation --
13 we have a strange situation here where this -- at least on
14 the evidence and having looked at the documents filed this
15 morning, there is no reason to doubt the evidence -- that
16 if this matter is not concluded by June 30th, the entire
17 project could be in jeopardy.

18 So we come down to in the Board's view a very narrow
19 question which is what I have just stated. I have asked
20 counsel here whether there is anything in the, I'm calling
21 it the "assignment agreement," that is over and above what
22 is already contemplated in the executed agreements and they
23 say not. But I would like you to phone your client and ask
24 him that question.

25 MR. THACKER: I will do that.

26 MR. KAISER: With respect to the bundled T agreement,
27 just to give you a heads-up, we treat this as a service
28 request by a customer for what appears to be a standard

1 form service offered in the territory being and we see no
2 reason why, at this juncture, unless we hear something
3 further from you, that NRG shouldn't be required to provide
4 that service. So those are the two narrow questions that
5 we need to hear from you on and of course we do want to
6 hear you from you and we want to offer you as much time as
7 you can to take instructions from your client. So we will
8 take a break for another half an hour to allow you to do
9 that. Thank you.

10 MR. THACKER: Thank you.

11 --- Recess taken at 10:30 a.m.

12 --- Upon resuming at 1:01 p.m.

13 MR. KAISER: Please be seated.

14 Mr. O'Leary, where are we?

15 MR. O'LEARY: Sadly, sir, we have not moved matters
16 forward, and I apologize for that. I am sure everyone
17 would like to have heard different, and I believe that
18 leaves us in the position of hearing from Mr. Thacker as to
19 NRG's concerns in respect of -- in response to your
20 questions in respect of the two agreements that have been
21 identified as requiring execution by NRG.

22 MR. KAISER: All right. Mr. Thacker.

23 **SUBMISSIONS BY MR. THACKER:**

24 MR. THACKER: Well, as I said, the bulk of the
25 documents that form the evidentiary foundation for this
26 hearing were admitted into the record in the middle of the
27 hearing. They were not served. They're not sworn. We
28 have not had an opportunity to read them. We have not had

1 an opportunity to review them with our clients. We have
2 not had an opportunity to determine whether we wish to
3 cross-examine and to conduct cross-examinations, and we
4 have not had any opportunity to prepare a responding
5 evidentiary record.

6 The decision is to proceed with this hearing the
7 absence of my client, without hearing from my client.

8 And so we are here in a situation where the
9 evidentiary foundation for the ruling that you are being
10 asked to make was introduced in the middle of the hearing,
11 and I have not had any opportunity, other than the lunch
12 break, to try to explain things with my client.

13 So we are seeking an adjournment on the basis that we
14 have not had adequate time. There is no basis to
15 abbreviate the time requirements that are otherwise set out
16 in the Act.

17 I am happy to try to -- to answer the first question,
18 which was is there any difference between the two
19 provisions in the agreements that had been approved, and
20 the detailed agreements that this court is -- or that my
21 friends are asking you to order an individual on behalf of
22 the corporation to execute, there is obviously a
23 difference. One is two lines. One is about -- well, many,
24 many pages.

25 For you to rely simply on their assurance that they're
26 exactly the same thing, they're clearly not, because if
27 they were exactly the same thing, they would be relying on
28 the agreements that have already been signed and already

1 approved. So they're different things.

2 With respect to the bundled T agreement, our
3 submission is that this is not a service request. There is
4 not a question here of whether or not my client will supply
5 or provide service. The question is whether or not this
6 Board should make an order compelling an individual to sign
7 a piece of paper binding a corporation that is governed by
8 a board of directors.

9 My submission is that you do not have the jurisdiction
10 to order a corporation to sign an agreement. You may have
11 other remedies that you can impose against a distributor or
12 a regulated entity, but to make an order purporting to
13 compel an individual to sign a contract, where the board of
14 directors of the corporation has chosen not to sign, would
15 be an error of law, in my submission, and in excess of your
16 jurisdiction.

17 So I object to the hearing proceeding on the basis
18 that there's been a denial of procedural fairness and a
19 denial of natural justice with respect to the time
20 requirements. The evidentiary record was inadequate.
21 Clearly that was recognized and it was coopered up in the
22 middle of the hearing. My client hasn't had a chance to
23 read them and to consider them and to respond.

24 With respect to the bundled T agreement, the remedy
25 you are being asked to make -- and I am not sure if you're
26 now proposing to deal with the draft order or if you have
27 some other remedy that you are considering, but to order an
28 individual to sign a document on behalf of a corporation

1 that binds the corporation would be an error and would be a
2 significant error in my submission. There is no
3 jurisdiction under the Ontario Energy Act that would enable
4 this Board to make that order.

5 MR. KAISER: Well, Mr. Thacker, you would agree the
6 Board has jurisdiction to order your client to provide
7 service?

8 MR. THACKER: That is clear, yes. To characterize the
9 signing of a document that has contractual obligations as
10 the provision of service is strange, in my submission, not
11 correct and an error.

12 MR. KAISER: Well, it is generally the case that any
13 time the utility provides service to industrial customers,
14 they enter into a contract with them and we generally
15 approve those contracts. And that's what is before us as
16 J1.5.

17 MR. THACKER: I can understand the concept of
18 approving a contract that has been entered into by the
19 parties. It is a very different thing to order a party to
20 enter into a contract it doesn't wish to enter into.

21 MR. KAISER: On your basis, the utility could choose
22 when to provide service or when not to provide service,
23 regardless of the Board's decision, by simply not signing
24 an agreement. Is that your position?

25 MR. THACKER: No. The position is you could order the
26 entity to provide service. You can't order them to execute
27 a contract.

28 MR. KAISER: All right. Let me ask you a question,

1 Mr. O'Leary.

2 On this assignment question -- by the way, before I
3 come to you. I asked you, Mr. Thacker, to obtain an
4 explanation from your client, if you could, as to why he
5 was refusing to assign the agreement. The contract that he
6 has already executed - and there are two of them - provides
7 that he will assign and that that assignment cannot be
8 unreasonably withheld.

9 What's his explanation for not assigning as required
10 by the existing agreement approved by this Board?

11 MR. THACKER: The board of directors has not
12 authorized him to sign that agreement.

13 MR. KAISER: And how long is he going to continue
14 refusing to assign?

15 MR. THACKER: He didn't tell me how long he is going
16 to continue, but if he had time to review this evidentiary
17 record and consider his position, it may be there isn't a
18 refusal. But without having the opportunity to review
19 this, he hasn't read the agreements or at least the
20 evidentiary foundation in any real way.

21 I have not had a chance to sit with him. I have been
22 here since those agreements became part of this record.

23 MR. KAISER: All right. Mr. O'Leary, the point Mr.
24 Thacker is making, as I understand, is that you have
25 introduced this complex assignment agreement, which,
26 frankly, we haven't reviewed in detail, except to receive
27 your assurances that it essentially does no more than is
28 currently set out in the executed agreements.

1 If we leave aside the assignment agreement, is it
2 sufficient for your purposes, to finalize this financing,
3 to get a simple one-line letter from NRG that they are
4 prepared to assign the agreement within the terms of
5 section 7.4 and 11.4 of those agreements?

6 In other words, do you need this other agreement,
7 which has not been reviewed by Mr. Thacker, not been
8 reviewed apparently by his client and they don't feel
9 comfortable signing it?

10 What you are requesting, you told us, was a simple
11 assignment as currently provided for in the executed
12 agreements which this Board has approved. Why can't you
13 just get a simple assignment or a simple refusal to a
14 simple assignment? Does that meet your purposes?

15 **SUBMISSIONS BY MR. O'LEARY:**

16 MR. O'LEARY: The answer is, is that the assignment is
17 required by third parties that are providing the financing
18 for this document.

19 MR. KAISER: I understand.

20 MR. O'LEARY: And that letter, I couldn't at this
21 point say to you, would be satisfactory to meet their
22 requirements.

23 MR. KAISER: You're talking about the lenders?

24 MR. O'LEARY: The lenders, correct. So I can't sit
25 here and pretend to say that, yes, that would be
26 satisfactory or not. And if I was to say otherwise and
27 proceed on that basis, the deal may very well end, because
28 they would say that is unsatisfactory.

1 MR. KAISER: There is nobody here from the lenders, I
2 take it?

3 MR. O'LEARY: No, sir.

4 MR. KAISER: McCarthys is not here?

5 MR. O'LEARY: No, sir.

6 MR. KAISER: Well, here is the problem we have with
7 that. The objection is on the basis that you have
8 introduced a whole new document which NRG hasn't reviewed,
9 its counsel hasn't reviewed, and, frankly, we haven't gone
10 through it in any detail, although we have your assurances
11 that you have an existing right to an assignment which
12 cannot be unreasonably withheld in the agreements before
13 the Board and approved by the Board in a prior proceeding.

14 MR. O'LEARY: Correct, sir.

15 MR. KAISER: Why don't you find out from McCarthys if
16 there is some way that they can accept, without entering
17 into a whole new agreement, a simple assignment pursuant to
18 the existing agreements, pursuant to those exact sections,
19 saying nothing more or nothing less than is in the current
20 agreements?

21 MR. O'LEARY: I will take that back, sir, but if I may
22 respond to the submission made by my friend.

23 In respect of the documents which he is alleging have
24 been introduced at the eleventh hour, if I can put it that
25 way, that is simply incorrect and the evidentiary record
26 before you does not support that submission.

27 These documents were provided to their counsel, and
28 their counsel, through our affidavit evidence, have

1 indicated to us that they recommended, Ogilvy Renault
2 recommended, that these documents be executed.

3 There is no evidence before you that NRG or any board
4 of directors needs additional time to review this. This is
5 just a statement from someone that arrives today not
6 knowing anything about matters.

7 MR. KAISER: Just hold it there. When was the
8 proposed assignment agreement made available to NRG?

9 MR. KOVNATS: Mr. Chairman, if I may, I believe the
10 first draft was given to them in the month of May. The
11 next draft was given to them on June 14th.

12 The first time they responded in real terms was a week
13 ago last Friday. There was extensive negotiations
14 commencing at 9:30 p.m. on Tuesday evening this week which
15 went into the early hours of the morning on Wednesday, and
16 the form of agreement was finally resolved as between
17 McCarthys and Ogilvy Renault on Wednesday morning of this
18 week.

19 My understanding, from conversations with members of
20 my firm and members of McCarthys is that Mr. Bristoll was
21 kept current on all drafts and all e-mails as the time was
22 going on.

23 In addition from is evidence in the affidavits that
24 there were numerous requests made by e-mail and by
25 telephone by both McCarthys and our firm to Mr. Moran and
26 members of his firm to get a response to these draft
27 agreements over an extended period of time. All of which
28 were ignored.

1 MR. KAISER: All right.

2 MR. ALKALAY: Mr. Chairman could I just interject?

3 In the affidavit of Gordon Baird, from McCarthys, it
4 is stated at point number 3:

5 "The first draft of the consent and
6 acknowledgement agreement was forwarded from
7 McCarthy, Tetrault to Aird & Berlis on March
8 26th."

9 I understand Aird & Berlis subsequently forwarded it to
10 Ogilvy Renault and there is an e-mail attached to that.

11 There was a response from Ogilvy Renault on April
12 26th, 2006.

13 A further draft was forwarded from McCarthy, Tetrault
14 on May 14th, and there is a long discussion of the e-mails
15 back and forth and attachments.

16 So essentially, three months of going back and forth
17 with drafts. If I can also interject, in terms of -- I've
18 been one in terms of -- that's been the principal lead in
19 terms of dealing with bank itself, solicitation, et al.,
20 and they have certainly asked for consents and
21 acknowledgements from the counterparties to all of our
22 agreements. Those have all been extensively negotiated.

23 They were not comfortable; given this is project
24 financing, given that the total project finance is over
25 \$100 million, they want it very detailed consents from all
26 of the counterparties. They were not satisfied with one-
27 line agreements, and they have made it very clear to us
28 that they do need a consent and acknowledgement from NRG

1 that is essentially on the terms that was negotiated with
2 Mr. Patrick Moran from Ogilvy.

3 MR. O'LEARY: If you look specifically, sir, at
4 paragraph 7 of the affidavit, which is under tab 3 of the
5 motion record of Gordon Baird, who is a partner at
6 McCarthy --

7 MR. KAISER: Just slow down, Mr. O'Leary. Let me get
8 it.

9 MR. O'LEARY: Tab 3, sir, Mr. Alkalay took you to
10 paragraph 3 which confirms the consents and acknowledgement
11 agreement was forwarded on March 26th, 2007, and then
12 through our offices on to Ogilvy Renault. And it describes
13 the next several paragraphs what went on, what transpired
14 subsequent to that date. But at paragraph 7, subparagraph
15 A, you will see that Mr. Baird states that on June 27th,
16 2007, the major outstanding substantive issues were
17 settled.

18 So, sir, we submit this is just a pattern of conduct
19 on behalf of NRG and its chairman, Mr. Bristoll, that they
20 have deliberately not requested that counsel dealing with
21 these agreements be present today to respond to your
22 questions, to be able to confirm or deny that they had them
23 on the dates in question, and instead have sent my friend
24 here, who is not in a position to respond to your
25 questions, and the fact that Mr. Bristoll is not here is
26 further indication and evidences a pattern of trying to
27 avoid dealing with the agreement and, in our respectful
28 submission, to frustrate the construction of the pipeline.

1 MR. KAISER: Ms. Sebalj, I wonder if you could help us
2 on a point. Let's suppose we find that the consent being
3 requested of NRG, in the two agreements, is being
4 unreasonably withheld.

5 MS. SEBALJ: Yes.

6 MR. KAISER: What is our remedy?

7 MS. SEBALJ: Well, you are taking me to the crux of
8 some submissions that I am prepared to make to you. But I
9 am not sure that the -- and this Panel knows better than I
10 do what was intended when you referred to these two
11 agreements in your decision of February 2nd, 2007, and that
12 decision was with respect to a Section 90 leave to
13 construct application.

14 This is a private agreement between the two parties
15 and to the extent that the consent was required by that
16 agreement -- and I'm not necessarily, in my, in Board
17 Staff's opinion in agreement with the parties that that was
18 necessarily required of that agreement -- but leaving that
19 aside for a moment, if you were to make that finding, I am
20 not sure that the Panel has the ability to enforce the
21 signing by another party of a private commercial agreement.

22 MR. KAISER: Well, we have approved an agreement. The
23 agreement, and certainly the decision that we did make on
24 February 2nd was conditioned on those agreements.

25 MS. SEBALJ: Yes.

26 MR. KAISER: Albeit we were relying upon those
27 agreements to assure that the other ratepayers would not be
28 impacted adversely was the principal concern in the Board's

1 mind.

2 MS. SEBALJ: Yes.

3 MR. KAISER: But nonetheless there was an assignment
4 clause, and the assignment clause, it turns out, may have
5 been necessary to secure the financing, which would have
6 which would have been important.

7 If the assignment is not given, if the utility simply
8 refuses to execute the assignment, notwithstanding the fact
9 that it would appear that it's reasonable that it be given
10 -- at least on the record we have -- are you saying that we
11 have no remedy and this plant simply goes away?

12 MS. SEBALJ: The issue that I have is what this
13 Board's jurisdiction is with respect to the plant itself.
14 This Board's jurisdiction was grounded in a Section 90
15 leave to construct application for a pipeline.

16 The plant itself is, legally speaking, outside the
17 realm of the Ontario Energy Board's jurisdiction. And to
18 the extent that there was a peripheral requirement in an
19 agreement that we would otherwise want to see to satisfy
20 ourselves that the economic feasibility of the pipeline was
21 satisfactory, I am not sure that this Board now gets
22 involved in a financing transaction for an ethanol plant,
23 because our jurisdiction lies with the pipeline itself.

24 MR. KAISER: Our concern is to make sure the utility
25 serves this customer. You would agree we have jurisdiction
26 to ensure that service is provided?

27 MS. SEBALJ: Yes.

28 MR. KAISER: Gas service is provided.

1 MS. SEBALJ: Yes.

2 MR. KAISER: And the utility brought a leave to
3 construct and the Board approved it. The Board's relied
4 upon that.

5 MS. SEBALJ: Yes.

6 MR. KAISER: And these parties have relied upon that.

7 MS. SEBALJ: Yes.

8 MR. KAISER: And now, for no apparent reason, it is
9 all going up in smoke and you say there is nothing we can
10 do?

11 MS. SEBALJ: I understand the predicament that the
12 Board is in, because the balance is we don't have a
13 satisfactory understanding of why this deal is going up in
14 smoke.

15 I don't pretend to understand why NRG has not come to
16 the table to sign a consent, a consent to assignment. But
17 I would mention that you're absolutely correct that Section
18 42(2) is fairly clear that there is an obligation to serve,
19 but the obligation to serve is with respect to the
20 provision of gas distribution service. And gas
21 distribution service, I don't think, is in question at this
22 hearing.

23 The financing of an ethanol plant is in question at
24 this hearing. And I am sympathetic to Integrated Grain
25 Processors Co-Operative and the predicament that they're
26 in, and I don't begin to understand why Natural Resources
27 Gas hasn't come to the table.

28 But having said that, I am legal counsel for the Board

1 and I am working within the parameters of the Board's
2 jurisdiction, and the Board's jurisdiction is fairly
3 limited in these circumstances.

4 MR. O'LEARY: Sir, if I could perhaps try and help you
5 out and respond to my friend. The agreements that were
6 before you in which the Board reviewed and approved and are
7 found to be in the public interest and the interest of NRG
8 and its ratepayers are -- agreements that are necessary for
9 financing, including the pipeline. So it is completely
10 within the jurisdiction of this Board to consider those
11 agreements and the financing structures that were put into
12 place to ensure that the public interest is protected. And
13 the Board so found.

14 In fact, if we look at the agreements, we're talking
15 about gas delivery contract. That's clearly within the
16 jurisdiction of the Board. And the fact that there is a
17 requirement for a reasonable assignment in that contract is
18 within your jurisdiction.

19 Our submission, sir, is that if my friend's
20 submissions are accepted, that it basically means this
21 Board, in terms of section 42(3), does not have any real
22 power. It has no real jurisdiction to cause or force a
23 utility to proceed to provide the service pursuant to its
24 obligation.

25 MR. KAISER: Let me -- it seems to me what you're
26 suggesting is contrary to Ms. Sebalj's suggestion.

27 We have a contract before us that is a gas delivery
28 agreement --

1 MR. O'LEARY: Yes, sir.

2 MR. KAISER: -- which we have approved and nobody
3 would dispute is within our jurisdiction, and it is signed
4 by the utility.

5 MR. O'LEARY: Yes.

6 MR. KAISER: Now, we have a clause in that that
7 requires them to assign the agreement, which assignment
8 cannot be unreasonably withheld. So there is a term in
9 which there is a dispute. You say they're being
10 unreasonable. Mr. Thacker doesn't say whether they're
11 being unreasonable or not being unreasonable. He doesn't
12 know.

13 So if that contract is within our jurisdiction and we
14 make a finding that the utility is not complying with the
15 contract, which would be what we would be saying if we
16 found that the consent was being unreasonably withheld --

17 MR. O'LEARY: That's right.

18 MR. KAISER: -- what jurisdiction do we have to compel
19 them to act pursuant to the contract?

20 MR. O'LEARY: Well, our position, sir, is that under
21 your general powers, your inherent jurisdiction, the
22 necessary implication of you being provided with the
23 authority under subsection 42(3) is that absent you having
24 the ability to order a utility to take specific steps - in
25 this case, to execute the necessary contracts - then the
26 utility is able to defeat your authority.

27 It is not required to comply. Therefore, you are not
28 exercising the authority that is necessary to give support

1 for the supply obligation.

2 I should add, sir, that we have put together a draft
3 order, and in that we go one step further. It is our view
4 under the compliance sections -- and if I could turn you to
5 tab 6 of the production materials, the documents brief,
6 which are sections of the Energy Board Act. At subsection
7 112.1, this is the definition of an enforceable provision.

8 You have to find that there is an enforceable
9 provision which has been contravened for the purposes of
10 exercising your jurisdiction under 112.3.

11 We submit that there has been a contravention of
12 several of those sections, and that is -- you are capable
13 of making that finding on the basis of the record before
14 you.

15 The first is a provision of this Act or regulations.
16 My friend has admitted that there is a duty to provide
17 distribution services. Clearly, if they are not required
18 to sign these documents, they will be able to defeat that
19 duty.

20 Under D, an enforceable provision includes a provision
21 of the rules made by the Board under section 44. Well, the
22 Gas Distribution Access Rule is one of those rules. And
23 under tab 4 of those same materials, you will see a copy of
24 the relevant portions of the Gas Distribution Access Rule,
25 and at section 2, it states that:

26 "A gas distributor shall respond to all requests for
27 gas distribution services from a person in a timely
28 manner."

1 It is abundantly clear that that is not what is
2 happening in NRG's case.

3 The third area we say there is a contravention which
4 would flow from -- if you were to order NRG to execute the
5 agreements and they failed to do it, they would then be in
6 contravention of your order, and that would be a further
7 basis for you to go forward and to take the steps and
8 exercise the jurisdiction which you have under section
9 112.3.

10 If I could ask you to turn the page, sir, at the top -
11 - it's under tab 6. Again, we're back in the compliance
12 sections of the Energy Board Act. First we should look at
13 section 112.3:

14 "If the Board is satisfied that a person has
15 contravened or is likely to contravene an enforceable
16 provision..."

17 You don't even have to have the contravention. If you
18 believe it is going to take place, you have the authority
19 to take remedial action.

20 I continue --

21 MR. KAISER: What's the enforceable provision that
22 we're relying on here?

23 MR. O'LEARY: Under A.

24 MR. KAISER: Is it section 43?

25 MR. O'LEARY: Well, you would be relying on 42(3)
26 under GDAR, because that is a rule that has been approved
27 under section 44. And we submit that you also have --
28 because on the evidence before you and the pattern of

1 conduct exhibited by NRG, it's extremely likely that there
2 will be a contravention.

3 It's clear that they have no intention of going
4 through with this deal and do not want to proceed with the
5 pipeline.

6 Our submission, sir, is that the Board under 112.3
7 may:

8 "make an order requiring the person to comply with the
9 enforceable provision and to take such action as this
10 Board may specify to (a) remedy a contravention that
11 has occurred."

12 And that is very broad language, sir, and it doesn't
13 limit your powers only to a corporate person. It does not
14 say a utility. It specifically states "a person".

15 I might also draw to your attention, because Ms.
16 Sebalj will undoubtedly draw your attention to the fact,
17 that under this section an order under the subsection I
18 took you to requires that it be made on a motion brought by
19 the Board itself and that there are timing requirements
20 under those sections.

21 If I could take you to section 112.3, which states,
22 "An interim order", this is subparagraph 6 at the top of
23 the third page in under -- well, the second page of the
24 compliance section, just under 112.3(1). This is at
25 112.3(6):

26 "An interim order of the Board may be made under
27 section 112.3..."

28 Which is the one we just went through, which provides

1 you with that broad authority:

2 "... with or without a hearing and may take
3 effect before the time for giving notice under
4 section 4 has expired."

5 So you do not require a hearing. You do not have to
6 wait until the 15 days provided in the subsection before
7 has past. All that is required is that a motion on the
8 Board's own -- exercising on its own is brought forth.

9 Accordingly, in our draft order, we have suggested
10 language we would ask you to consider, which would find or
11 which would deem NRG to be on notice of such a motion if,
12 by 2 o'clock today, the agreements are not executed.

13 We would then ask for this Panel to be reconvened and
14 argument heard in respect of the applicability of a remedy;
15 namely, an order by this Panel directing Mr. Bristoll, on
16 behalf of NRG, to execute the necessary documents.

17 MR. KAISER: Let's see your draft order.

18 MR. O'LEARY: It should be on your dais, sir.

19 MS. SEBALJ: I don't think it is. It hasn't been
20 introduced, so...

21 [Document passed to Board Panel Members]

22 MR. THACKER: Might I have an opportunity to respond?

23 MR. KAISER: Yes, yes, you will certainly will. I
24 just want to understand Mr. O'Leary first.

25 So when you rely, Mr. O'Leary, under 112.3, I
26 understand the nature of the interim order and the
27 breaching of the time requirements.

28 Remedy of contravention that has occurred, you say

1 that NRG is contravening the gas delivery agreement by
2 refusing, unreasonably, to give the assignment contemplated
3 in that agreement; is that your position?

4 MR. O'LEARY: Specifically, sir. But, more broadly,
5 they're refusing to comply with their obligations under
6 42(2) to provide gas distribution services.

7 MR. KAISER: Well, Ms. Sebalj says that they're
8 agreeing to supply. They just don't want to assign this
9 agreement to some lenders to provide financing to a
10 pipeline in which she says -- rather, to an ethanol plant;
11 which she says is outside of our jurisdiction.

12 MR. O'LEARY: It is more than just to the ethanol
13 plant, sir, and that is why those agreements were part of
14 the facilities application, which you --

15 MR. KAISER: That's because these funds are being used
16 for the construction of the pipeline, as well?

17 MR. O'LEARY: In part, yes, sir.

18 MR. KAISER: The pipeline, I assume, is within our
19 jurisdiction, is it?

20 MR. O'LEARY: Last I heard, sir. In fact, you
21 approved it.

22 MR. KAISER: Before we hear from counsel for NRG, can
23 you take us through the draft order?

24 MR. O'LEARY: Certainly, sir.

25 Sir, if we come across as being somewhat presumptuous
26 in making findings on your behalf, that wasn't our intent.

27 MR. KAISER: No. This is what we wanted.

28 MR. O'LEARY: It was draft language.

1 MR. KAISER: We need as much help as we can get.

2 MR. O'LEARY: The first page we simply tried to
3 indicate and identify the materials that are before you
4 today. And the two agreements which remain unexecuted.

5 We have proposed -- there would be one other item, in
6 fact, sir, that we would add to that which has now been
7 sent to the Board. There is now I believe an affidavit of
8 service --

9 MR. KOVNATS: Yes.

10 MR. O'LEARY: -- of the materials that are before the
11 Panel today, on Mr. Bristoll personally and possibly one of
12 the trustees.

13 I do not have a copy. I believe it has been sent to
14 the Board electronically. But we would ask that be marked
15 as an exhibit and perhaps we could provide a placeholder
16 for that.

17 MS. SEBALJ: I would much rather have a look at the
18 document before we mark it as an exhibit.

19 MR. KAISER: What's the document in question, Mr.
20 O'Leary?

21 MR. O'LEARY: It is simply an affidavit of service of
22 the motion record on Mr. Bristoll.

23 MR. KAISER: All right. You don't have the affidavit
24 here?

25 MR. O'LEARY: It was done by a firm in London. That
26 has now been sent electronically, we believe, to the Board.

27 MR. KAISER: All right. When will get it from the
28 firm in London, we will put it in the record.

1 MR. O'LEARY: Thank you. At page 2, sir, we have
2 attempted to make or suggest certain findings that we
3 submit you are capable of making on the basis of the record
4 before you.

5 MR. KAISER: One of the things I want you to put in
6 here -- I'm going to hear from counsel for the other side -
7 - but you put on the record, or your associate has, your
8 partner has, when this assignment was first delivered to
9 NRG. So just turn your mind to that. I know it is in the
10 transcript. I don't have it in my head right now. I want
11 you to be clear on that because I am going to ask counsel
12 for NRG to respond. It may be that he doesn't know
13 anything about this, because this was all within the
14 province of Mr. Moran.

15 Anyway, continue on.

16 MR. O'LEARY: We will do that, sir. Paragraph 1, we
17 were suggesting that one of your findings be that the
18 ethanol facility, and we should add "and pipeline" will not
19 proceed in the absence of the execution of the agreements
20 which have been previously defined on the prior page, and
21 the failure of this is not in the public interest.

22 The second paragraph, were suggesting a finding that
23 NRG has a duty to provide natural gas distribution services
24 in accordance with the Act, Regulations, Code, Rules and
25 Orders, and my understanding my friend has already
26 acknowledged that that is, in fact, the case.

27 Three, the Board has determined that NRG is not
28 complying with its obligations in a timely fashion,

1 contrary to the Act and the Gas Distribution Access Rule,
2 which I referred you to at section 2.

3 Fourthly, that the Board has determined that the
4 bundled T agreement which is Exhibit J1.5, is a standard
5 service offering and required under NRG's obligation to
6 provide gas and distribution services.

7 We then suggest the meat of the order. The first
8 would be that NRG shall comply with all terms of the gas
9 delivery agreement which is one of the agreements which you
10 approved in the facilities application, and the Pipeline
11 Costs Recovery Agreement, which is the second agreement.
12 Those are the ones, of course, that contain the assignment
13 clauses, and shall comply with all terms of the bundled T
14 agreement, which is the exhibit here, and the consent and
15 acknowledgement also an exhibit here, as if both of the
16 latter two agreements had been executed.

17 And that Mr. Mark Bristoll shall execute on behalf of
18 NRG by no later than 2:00 p.m. today the bundled T
19 agreement and the consent and acknowledgement.

20 In the event that Mr. Bristoll on behalf of NRG fails
21 to comply with any portion of paragraph 1 above by 2:00
22 p.m., Mr. Bristoll and NRG are deemed to be put on notice
23 of the Board's intention to proceed on its own motion today
24 under section 112.3 of the Act to issue such orders as are
25 appropriate to remedy the breach. Including a
26 determination that NRG is in breach of its franchise
27 agreement dated February 27th, 1984 with the Corporation of
28 the Town of Aylmer, and an order remedying the breach by

1 the appointment of a trustee to be named to the
2 satisfaction of the Board to comply with the obligations
3 set out in paragraph 1 above.

4 Sir, in the materials before you, is a copy of the
5 franchise agreement which is found at tab 5 of our
6 production brief.

7 The final paragraph simply leaves, sir, the Board will
8 subsequently consider upon receiving submissions from the
9 parties any appropriate administrative penalties as against
10 NRG and/or Mr. Bristoll and the cost payable in respect to
11 this proceeding.

12 MR. KAISER: What jurisdiction do we have to award
13 administrative penalties?

14 MR. O'LEARY: Under the same section of the Part 7.1
15 of the Act, sir. Section 112.5. It is also reproduced
16 under tab 6 of our materials, sir.

17 MR. KAISER: Mr. Mayor, before I hear from counsel for
18 NRG, do you have anything to add, since this is your
19 community?

20 MR. QUESNELLE: Excuse me, Mr. Mayor, could you put
21 your microphone back on.

22 MR. HABKIRK: The long-range negative effect of this
23 not going ahead, to the community, the residents, and other
24 business customers would certainly be long-range and impact
25 negatively on the community. There is no doubt in my mind
26 it would stall economic development of other industries,
27 perhaps, requiring the same service.

28 Those are just a few of the quick things that I can

1 think of. But there would certainly be a negative effect
2 within the community and community relations, also, because
3 a lot of people are looking forward to this and we have
4 invested a lot of time and taxpayers' money to try to
5 ensure that this went ahead.

6 MR. KAISER: Yes, ma'am.

7 MS. ADAMS: If I may add. The town, its staff and its
8 counsel have worked with NRG from day one in support of
9 this project. They have been at the table since the
10 beginning. They have consistently told us, verbally and in
11 writing, that they can, and will, supply the necessary
12 natural gas for the project.

13 It is our only option, in order to provide natural gas
14 for the project, in a situation where you have a monopoly
15 delivering a product locally.

16 We have believed, we have -- did everything, in terms
17 of the municipality to facilitate their ability to deliver
18 this service, to meet what I believe is their moral and
19 legal obligation to the people that live in our community,
20 to deliver natural gas to them.

21 And on the level of the people in our community, they
22 expect that this company is going to deliver a product for
23 this project, the same as they expect that this company is
24 going to deliver natural gas to their door every morning so
25 they can turn their stoves on.

26 I believe that it was always their intention. And the
27 part that is going to be very difficult for anybody in our
28 community to understand is how one person failing to do

1 something can put an end to a project that will bring much
2 needed economic sustainability to a community that has
3 floundered over the last couple of years.

4 Those people, those 7,200 customers of NRG also voted
5 to elect our mayor and council and we're here to say: This
6 is important to our community. Every person on our council
7 is behind the mayor and I sitting here, and making this
8 plea for understanding; and I think, more importantly, to
9 prevent a single person, who has the authority under a
10 monopoly provision of service, from putting a stop to
11 something that many, many people have worked long hours in
12 support of.

13 MR. KAISER: Now, I read your letter that was filed by
14 Lerner's. Did I read that correctly, that if this, if NRG,
15 the utility, doesn't provide this facility, that the town
16 is going to take steps to terminate the franchise?

17 MR. HABKIRK: I think you could take that in exactly
18 the context it was written.

19 We have invested a lot of time and taxpayers' money
20 and we certainly will not sit back and let that just blow
21 off in the air somewhere, no.

22 MR. KAISER: All right.

23 MR. O'LEARY: May I just add one more comment. If we
24 had gone through all of the materials, I had intended to
25 direct your attention to a statement by Mr. Bristoll to
26 you, sir, at the public forum and it's under tab 2 of our
27 production brief.

28 My point was simply to indicate that this man appears

1 to be willing to say whatever is appropriate at the time.

2 If you go to tab 2, at page 10, and it's a discussion
3 -- I won't take you to all of the references, but he's
4 responding to submissions made by persons in attendance at
5 the public forum, you were the chair, Mr. Kaiser, about
6 whether NRG was going to be cooperative in respect of the
7 construction of this pipeline and the ethanol facility.

8 Mr. Bristoll says on page 10:

9 "I would like to talk to you. I would like you
10 to know that as a utility, we are a community-
11 based utility and that we are dedicated to the
12 growth of the community. So we look forward to
13 working with the community to make sure that
14 anything possible can happen provided it makes
15 sense for everybody. So I just want to give you
16 our assurance that, you know, we're all on the
17 same team."

18 Sir, you then relied on, in your decision with reasons
19 which are dated September 20th, 2006, at page 3, and I
20 quote from the bottom of your decision, which is at tab 3
21 of our materials:

22 "NRG promised full cooperation and stated that it
23 is a community-based utility dedicated to its
24 growth."

25 Mr. Bristoll made that statement to you, sir, and
26 we're now hearing something, we submit, entirely different.

27 MR. KAISER: All right, thank you. Please go ahead,
28 sir.

1 **SUBMISSIONS BY MR. THACKER:**

2 MR. THACKER: No, we're not hearing entirely
3 different. In this record, there is not one stitch of
4 evidence that my client, NRG, is refusing to provide
5 services, not one piece of evidence. And the reason it is
6 not in the record is there is no evidence. They have not
7 at all refused to provide services.

8 What NRG is under no obligation to do is sign a
9 contract that Société Générale would like to have because
10 it makes them feel better, and my submission is you have no
11 more jurisdiction to order NRG to sign a document to make
12 NRG -- to make Société Générale feel better than you have
13 jurisdiction over Société -- to order Société Générale to
14 advance the money in the absence of the agreement.

15 It is a private contract that you are being asked to
16 require a party to sign, and your own counsel is dead right
17 as to what your jurisdiction is and my friend is
18 misdirecting you, and you would be making a serious error.
19 I would urge you to consider what your counsel has told you
20 with respect to your jurisdiction. So that is my first
21 point.

22 My second point, my friends have failed to give you
23 any legal obligation upon my clients to sign the documents
24 they're asking you to order my client to sign. There is no
25 contractual obligation to sign that particular piece of
26 paper.

27 It may be that they have an enforceable right to
28 compel my client to comply with the obligations in the two

1 agreements that contain those provisions, but the right
2 place to go is a court, not here, because you don't have
3 the jurisdiction, in my submission, to compel a corporation
4 to enter into a contract. They're in the wrong place, and
5 they're trying to shoehorn the remedy they ought to be
6 seeking from a court from you and they're leading you down
7 the wrong path.

8 There is no obligation under the Ontario Energy Act
9 for my client to sign contracts. They have an obligation
10 to provide service in certain circumstances. They have
11 never denied it and there is no evidence that they're
12 denying to provide service today.

13 There is not any order here that requires them to
14 provide service. You are being asked to order them to sign
15 a contract that makes the lenders to the builders of the
16 plant feel better. They're not required to do that under
17 the Ontario Energy Act. My submission is this Board
18 doesn't have jurisdiction to compel them to.

19 The Board's Counsel's conclusions as to your
20 jurisdiction are correct. My friend, when you asked the
21 question, told you that your jurisdiction came from your
22 inherent jurisdiction. That is not correct. That is just
23 legally wrong. My submission is you don't have any
24 inherent jurisdiction.

25 You are a creature of statute. You have a mandate and
26 your jurisdiction is prescribed in the statute that creates
27 you. There is no inherent jurisdiction in this Board and
28 he is telling you the wrong thing.

1 Your counsel is correct as to your jurisdiction.

2 You have jurisdiction if a distributor is refusing to
3 provide service, but there is no evidence of that here.

4 That is not what is in issue here, and the reason you are
5 being asked to shoehorn this remedy into this provision is
6 that there is no other basis for you to compel a
7 corporation to sign it and this isn't about providing
8 service.

9 Even if the form of the agreements has been negotiated
10 -- and clearly it was. There is a long record. There is a
11 thin record, but there is evidence of e-mails that drafts
12 were passed back and forth over a period of time. I don't
13 suggest there wasn't.

14 But that is not the same thing as agreeing to sign.
15 Two parties can negotiate the form of a contract over and
16 over again for many, many months and choose, for economic
17 reasons, not to conclude the deal. That's the essence of
18 an agreement. Until there is a meeting of the minds, until
19 they're ad idem, there isn't a contract. And there is no
20 enforceable obligation to sign a contract.

21 A contract -- an agreement to agree is not
22 enforceable. There may be an agreement to assign, and that
23 comes from a different place, from contracts that are
24 already signed and already executed, and those should be
25 the subject of litigation, if that is what my friends are
26 seeking.

27 But they have chosen not to do it. They have got a
28 different kind of proceeding here and they have done it the

1 wrong way, and they're leading you down the wrong path.

2 They can negotiate proposed financing documents back
3 and forth until they're blue in the face, but my clients,
4 until they choose to accept those terms, are under no
5 obligation to enter into them.

6 With respect to the compliance order you're being
7 asked to make, there is a number of serious deficiencies in
8 it and you would be making serious error, in my submission,
9 if you made the order. You have no jurisdiction over a
10 trustee, or over anything, under the Ontario Energy Act,
11 and it would be a serious error if you were to do that.

12 There is no trustee here who has indicated they're
13 willing to act as trustee, and so you can't appoint
14 anybody, anyway. So the order is deficient and has to be
15 changed.

16 You only have jurisdiction under the provisions you're
17 being urged to employ if there is, in fact, a breach of an
18 enforceable provision, and there isn't one. The only
19 provision you are pointed to, other than some assertion of
20 inherent jurisdiction, which is just dead wrong, is this
21 jurisdiction to compel the provision of service.

22 There is no indication here that there is a failure or
23 refusal to provide service. So my submission is you don't
24 have any basis on which to compel an individual to sign a
25 piece of paper on behalf of a corporation that isn't
26 properly governed by a board of directors.

27 You may have other supervisory powers, but what you
28 can do is require someone to provide services, a

1 distributor to provide services. That is not what this
2 proceeding is about. So you can't issue a compliance
3 order, because there is no breach under the enforceable
4 provision and the compliance order isn't seeking to compel
5 an enforceable -- compliance with an enforceable provision.
6 It is seeking to compel an officer of a corporation to sign
7 a piece of paper the corporation doesn't want to enter
8 into.

9 It is unfortunate, but why is the blame laid at the
10 feet of NRG rather than Société Générale? Why are we not
11 blaming Société Générale for placing this project in
12 jeopardy? Why is it my client's problem because they
13 choose not to accept the terms of a contract that is
14 offered to them? Why not make an order against the
15 lenders?

16 Nobody would suggest you could do that. And my
17 submission is although you have jurisdiction over NRG in
18 certain areas by virtue of it being a distributor, you
19 don't have jurisdiction to compel it to enter into
20 commercial contracts when it chooses not to.

21 Unless you have questions, those are my submissions.

22 MR. KAISER: I just have one question, sir.

23 You would agree -- or let me ask you: Do you agree
24 that we have jurisdiction to enforce the Gas Delivery
25 Contract and the Pipeline Cost Recovery Agreement that your
26 client has executed and has been approved by this Board?

27 MR. THACKER: I think the right place to go to enforce
28 private contracts between private contracting parties is

1 the courts. I don't think you should get involved in that.

2 MR. KAISER: All right.

3 MR. THACKER: You have jurisdiction to compel the
4 delivery of services; there is no refusal to provide
5 services here. My friends are in the wrong place.

6 MR. KAISER: Thank you.

7 [Board Panel confers]

8 MR. KAISER: One thing before we retire to consider
9 this, which I think is important, I have looked again at
10 7.4, the gas delivery agreement, and 11.2, the Pipeline
11 Cost Recovery Agreement. I think it is worth reading it.
12 They're identical.

13 It says:

14 "The contract shall be binding on and enure to
15 the benefit of the parties hereto and their
16 respective successors and assigns, but shall not
17 be assigned or be assignable by the customer
18 without the prior written consent of the utility.
19 The utility agrees that such consent shall not be
20 unreasonably withheld. For a greater certainty,
21 an assignment by way of security to the
22 customer's lenders shall be considered
23 reasonable."

24 Now, that tells me that the parties contemplated
25 exactly this situation we have before us today and that the
26 utility, which has an obligation to serve and is subject to
27 the jurisdiction of this Board, agreed that they would
28 assign to the benefit of the customers' lenders, which is

1 being requested now.

2 So leaving aside your argument, which -- that we don't
3 have any jurisdiction and it should all be dealt with in
4 court, but assuming for the moment we have jurisdiction to
5 enforce contracts by utilities to supply service to
6 customers, you have not been able to offer us any reason
7 that I see as to why the assignment contemplated by this
8 agreement to the benefit of the customers' lenders is not
9 reasonable.

10 MR. THACKER: If my friends had put that agreement in
11 the evidentiary record they served last night, I might have
12 had a chance to prepare an answer to that question, but
13 they delivered it in the middle of the hearing. Just like
14 they did with the financing agreement.

15 Instead of putting the escrow provisions in the record
16 so they could be examined, they put a paragraph in the
17 affidavit that says the whole deal falls apart. But when
18 you ask a couple of questions, what you find out is that
19 the people who have contributed the money are the people
20 who are going to benefit from the project going through,
21 which would suggest they agree to an extension like they
22 already have once or, if this expired, they would
23 contribute the money again. And there might be
24 administrative costs involved in doing so, and
25 administrative time. That is something my friends can seek
26 as a remedy against my client if they are in breach of a
27 contractual obligation to assign.

28 But the suggestion baldly placed, without even putting

1 agreements in so they can be examined that this whole deal
2 falls apart, it is just unfounded. It is already -- the
3 time deadlines have expired more than once. You weren't
4 told that, but that is the case, and the deal didn't fall
5 apart. So it is a false urgency, in my submission.

6 Even if it is a real urgency the record wasn't
7 properly delivered and we haven't had a chance to consider
8 the question you've just raised.

9 MR. KAISER: Well, we'll deal with the issue of
10 whether it's a false urgency.

11 But we have heard that your client has had this draft
12 assignment agreement for over a month.

13 MR. THACKER: They've been forms of it, yes, passing
14 back and forth, and my friends made changes at my client's
15 solicitor's request and the changes were made. I don't
16 dispute that. My point is that the agreement to the form
17 of a contract is the agreement to enter into a contract in
18 that form, if the party chooses to do so.

19 In other words, you can negotiate the terms of a
20 purchase of a sale of a car back and forth, extra snow
21 tires, free undercoating, but until you put your pen and
22 sign the document, you're not -- the fact that you like the
23 terms doesn't mean you're obligated to enter into it.

24 MR. KAISER: Well, just on that point. Your client
25 has agreed, in a contract, to assign agreements or at least
26 to not unreasonably withhold such assignment, and
27 furthermore, has agreed that for greater certainty an
28 assignment by way of security to the customer's lenders

1 shall be considered reasonable.

2 I read that, the plain meaning of that, that the
3 client has already agreed to assign the agreements, if
4 necessary, the two agreements that are before us, to the
5 benefit of the company's lenders.

6 MR. THACKER: It may be. What happens here --

7 MR. KAISER: You don't think that commitment is
8 binding on your client?

9 MR. THACKER: I think it is binding on the client, but
10 it is a question of interpreting what those words mean, and
11 figuring out which forum is the right place to get the
12 remedy.

13 MR. KAISER: I understand the forum issue, that is a
14 different issue.

15 MR. THACKER: If it's a question of construction of
16 those words in a contract my client has already signed, I'm
17 with you on that. I don't dispute you.

18 **REPLY SUBMISSIONS BY MR. O'LEARY:**

19 MR. O'LEARY: Mr. Chair, I just -- two reply
20 submissions. One is if this matter had ended up in the
21 courts, as certain as today is a Friday before the long
22 weekend, we would have heard that we should have been here
23 first.

24 But more importantly, if you go to --

25 MR. KAISER: Just on that. Does this Board have
26 exclusive jurisdiction over this issue?

27 MR. O'LEARY: It has jurisdiction which the parties
28 have agreed to in respect of any dispute arising out of

1 these agreements.

2 If I could turn you to page 17 of the Pipeline Cost
3 Recovery Agreement, 9.2, it states that:

4 "In the event the parties are unable to resolve a
5 dispute, then either party may refer the matter
6 to the OEB for resolution."

7 So the parties have put their minds to the very
8 possibility that a dispute will arise and had determined
9 that you are the appropriate forum for that disputes to be
10 resolved.

11 MR. KAISER: All right. Thank you.

12 [Board Panel confer]

13 MR. KAISER: Do you have anything further, Mr.
14 O'Leary?

15 MR. O'LEARY: No, sir.

16 MR. KAISER: Anything further, Ms. Sebalj?

17 MS. SEBALJ: I did want to make available the
18 affidavit of service that was referred to by IGPC's
19 counsel. It was delivered to my inbox and we have made
20 copies of it now.

21 Here are the Panel's copies.

22 We will mark that as J1.9.

23 **EXHIBIT NO. J1.9: AFFIDAVIT OF SERVICE**

24 MS. SEBALJ: I have no further submissions on the
25 substantive issues.

26 MR. KAISER: Thank you. We will take 20 minutes,
27 gentlemen.

28 --- Recess taken at 1:55 p.m.

1 --- Upon resuming at 2:25 p.m.

2 MR. KAISER: Please be seated.

3 **DECISION**

4 MR. KAISER: The Board, this afternoon and this
5 morning, has heard a motion filed yesterday on an urgent
6 basis by Integrated Grain Processors Co-Operative, an
7 Ontario cooperative, known as IGPC.

8 IGPC, together with its wholly owned subsidiary, IGPC
9 Ethanol Inc., has completed the financing necessary to
10 design, develop and build and operate an ethanol production
11 in Aylmer, Ontario.

12 This motion was supported by affidavit evidence by
13 Gordon Baird, a partner at McCarthy, Tetrault, counsel for
14 the syndicate of lenders to IGPC; Martin Kovnats, a partner
15 with the law firm of Aird & Berlis acting for the
16 applicant; and Heather Adams, the chief administrative
17 officer for the Corporation of the Town of Aylmer.

18 NRG, the utility that serves in this jurisdiction, was
19 represented by counsel, but no witness was provided from
20 the company or evidence filed.

21 This matter relates to an earlier decision of this
22 Board on February 2nd, 2007, at which time NRG filed an
23 application for a leave to construct approximately 28.5
24 kilometres of 6-inch-diameter steel pipe which was
25 necessary to meet the natural gas distribution requirements
26 of the proposed ethanol facility.

27 That leave to construct was granted by the Board, and
28 in that decision the Board relied on two executed

1 contracts, one known as the Gas Delivery Contract dated
2 January 30th, 2007, the other the Pipeline Cost Recovery
3 Agreement dated January 31st, 2007.

4 The gas delivery contract ensured revenues to the
5 utility over the term of the agreement sufficient to ensure
6 the Board that there would be no adverse consequences to
7 ratepayers.

8 With respect to the Pipeline Cost Recovery Agreement,
9 the Board found that to protect the ratepayers of NRG, a
10 capital contribution of approximately \$3.8 million was
11 required from IGPC to achieve the required profitability.
12 The PCRA agreement, or the pipeline recovery agreement,
13 between NRG and IGPC provided for such a capital
14 contribution.

15 The financing that has been put in place for this
16 pipeline is provided by a number of sources. Approximately
17 11.9 million is from the federal government under its
18 Ethanol Expansion Program administered by Natural Resources
19 Canada. The project is also receiving a \$14 million
20 capital grant and ongoing operating grants from the Ontario
21 Ethanol Growth Fund. The Co-Op, through its 840 farmer and
22 rural community members, have invested over 45 million of
23 their own funds in this project.

24 The dispute before us today relates to certain terms
25 of the escrow arrangement that relate to those funds.

26 The financing which IGPC has arranged is subject to
27 certain conditions in the escrow arrangement, which is
28 being administered by Canada Trust.

1 One of the terms is that IGPC will contribute a
2 combination of cash and value of at least \$42.5 million, to
3 be fully utilized before any advance is made under the
4 credit facilities. IGPC intends to satisfy, in part, this
5 contribution by assessing approximately 27.3 million of
6 cash currently held in escrow, being part of the proceeds
7 that have been raised from the sale of shares to the
8 public.

9 The terms of this escrow agreement under the Co-
10 Operatives Act provide that the escrow agreement cannot be
11 amended without consent of members of IGPC. The escrow
12 agreement provides, as it currently states, that all monies
13 held in escrow must be returned to the subscribers of
14 shares if, on or before June 30th, 2007, IGPC has not
15 arranged sufficient funds to complete the ethanol facility
16 and satisfied all conditions precedent to the first draw
17 under the credit lines.

18 NRG has apparently refused to consent to an assignment
19 contemplated in both of the agreements referred to, and, as
20 a result, IGPC will not be able to satisfy the conditions
21 precedent for the release of the escrow funds.

22 I want to turn next to the actual agreements. First,
23 the question of whether the Board has jurisdiction, was
24 raised by counsel for NRG.

25 Section 9.1 and 9.2 of the Pipeline Cost Recovery
26 Agreement provides that:

27 "In the event of any disputes arising between the
28 parties regarding the subject matter of this

1 agreement, then the parties shall negotiate in
2 good faith to resolve such matters. In the event
3 the parties are unable to resolve a dispute, then
4 either party may refer the matter to the OEB for
5 resolution."

6 The Pipeline Recovery Agreement, which was the basis
7 by which the funding was made available for the pipeline.
8 I referred you to the Board's decision with respect to the
9 aid of construction that was necessary and mandated by this
10 Board in order to allow the leave to construct to be
11 granted. That agreement contains certain terms and
12 conditions, one of which was in 11.2(d):

13 "Provide this agreement will not be assigned
14 without the prior written consent of the other
15 party, such consent not to be unreasonably
16 withheld. For greater certainty, an assignment
17 by way of security to the customers' lenders
18 shall be considered reasonable."

19 A similar section exists in the Gas Delivery Contract,
20 also approved by the Board as part of the February 2nd
21 decision. There section 7.4 says:

22 "This contract shall be binding on and enure to
23 the benefit of the parties hereto and their
24 respective successors and assigns, shall not be
25 assigned or be assignable by the customer without
26 the prior written consent of the utility. The
27 utility agrees that such consent shall not be
28 unreasonably withheld. For greater certainty, an

1 assignment by way of security to the customers'
2 lenders shall be considered reasonable."

3 We have heard evidence that the assignment in the form
4 contemplated by the applicant has been in the hands of
5 NRG's lawyers for over a month. To date, NRG has
6 apparently refused to execute that consent to assignment.

7 This Board believes it has jurisdiction to enforce the
8 two contracts before us. Section 42(3) of the Ontario
9 Energy Board Act provides that:

10 "Upon application, the Board may order a gas
11 transmitter, gas distributor or storage company
12 to provide any gas sale, transmission,
13 distribution or storage service or cease to
14 provide any gas sales service."

15 What we have are two linked agreements. One is a Gas
16 Distribution Agreement in favour of the applicant. The
17 other is a Pipeline Cost Recovery Agreement by which the
18 applicant has agreed and NRG has accepted certain funding
19 which will make the pipeline viable.

20 While we may or may not have jurisdiction over an
21 ethanol plant, the Board certainly has jurisdiction over
22 this pipeline and has rendered a decision with respect to
23 it; namely, a leave to construct, and has approved the very
24 funding that is at issue.

25 It is now apparent this funding will not flow through
26 and the transaction cannot be completed unless the
27 requested consent is executed in the form requested by the
28 applicant.

1 There is no basis in this record to conclude that a
2 refusal to execute the consent is reasonable. The
3 agreement specifically contemplated and the parties agreed
4 that a consent would be executed to the benefit of the
5 company's lenders and, as such, would be considered
6 reasonable.

7 We see no basis for this refusal and hereby order NRG
8 to execute the consent in the form provided by the
9 applicant.

10 Objection has been made by counsel for NRG as to the
11 lack of notice. The Board's rules in section 7 clearly
12 provide that the Board can abridge time. That is section
13 7.01 and 7.2, and we have done so. The urgency of the
14 matter is clear.

15 In conclusion, we should add that various parties to
16 this proceeding, include the Town of Aylmer as well as
17 IGPC, have invested substantial sums in the expectation
18 that this contract would proceed and this plant would be
19 built. We are aware, from the main case, that the economic
20 base of the Town of Aylmer is disintegrating, as a result
21 of the problems in the tobacco industry. It was the
22 expectation of all parties as well as the Board's that the
23 parties would proceed expeditiously to develop this
24 facility within the expected timelines. As stated, we see
25 no reason for the refusal by NRG to execute the requested
26 agreement. It was clearly provided for in the contracts
27 which are binding on NRG and subject to the jurisdiction of
28 this Board.

1 That completes the Board's rulings with respect to the
2 consent.

3 We have a collateral matter. There is a second
4 agreement before us that is unexecuted, and to which a
5 dispute arises. That is called the bundled T service
6 receipt contract, which is Exhibit J1.5.

7 The evidence before us suggests that this is a
8 standard form agreement, and not unique to this particular
9 proceeding. We also note, and this is of some moment, that
10 the contract to which the parties have agreed and executed
11 namely J1.3, the Gas Delivery Agreement, specifically
12 contemplates the bundled direct purchase delivery. That is
13 set out in Schedule A, section 4.

14 This, again, is a service agreement, an agreement to
15 provide service which the Board has clear jurisdiction
16 over. The Board orders NRG to provide the service
17 contemplated in that agreement.

18 That completes the Board's rulings with respect to the
19 second agreement at issue.

20 With respect to costs and administrative penalties, we
21 have heard certain submissions from counsel for the
22 applicant. On those, we intend to reserve.

23 That completes the Board's ruling in this matter.

24 Any questions?

25 MR. THACKER: Do you want to hear submissions from me
26 on costs?

27 MR. KAISER: Yes.

28 Please go ahead.

1 **SUBMISSIONS BY MR. THACKER:**

2 MR. THACKER: I guess I would submit that in the
3 nature and manner in which this matter proceeded was served
4 on short notice, and the manner in which the record was a
5 bit of a moving target, there ought to be no order as to
6 costs. We have done our best to respond under very trying
7 circumstances. The evidentiary record was thin, and indeed
8 it was fundamentally inadequate as it was served even on
9 the abridged notice period. It was coopered-up throughout
10 the proceeding and we have objected to the manner in which
11 that was done, but it would be compounding unfairness to
12 order costs against my client. That would be my
13 submission.

14 MR. KAISER: Thank you, Mr. Thacker.

15 MR. THACKER: There should be no order as to costs.

16 MR. KAISER: Any submissions on costs, Mr. O'Leary?

17 MR. O'LEARY: Yes. Mr. Chair, I would be very brief
18 in that regard.

19 **SUBMISSIONS BY MR. O'LEARY:**

20 Before I get to that, there is one question we have in
21 respect to your order. That was in the draft we provided,
22 we were looking for a specific time today by which time the
23 agreements would be executed, because if it does not occur
24 today, then this deal is in jeopardy. So we're wondering
25 if you are in a position now to amend your order to require
26 that it be executed forthwith and no later than 3 o'clock.

27 MR. KAISER: Well, let's make it 4:00. That gives Mr.
28 Thacker some time to contact his client.

1 MR. O'LEARY: Yes. And in respect of costs, sir, I
2 will not repeat my comments earlier, but I ask you to
3 consider the record and the pattern of conduct exhibited by
4 NRG, and in particular Mr. Bristoll, and the fact that
5 we're here today and the costs have been incurred by the
6 town, not only in respect to this litigation but in all of
7 the attempts that it has made through its counsel to get
8 NRG's attention to deal with these documents and to sign
9 them, knowing that they have, as a utility, an obligation
10 to execute these documents.

11 We submit that it is an appropriate time to send a
12 message to this utility that it needs to wake up and start
13 to run itself in accordance with the appropriate standards
14 as a good utility.

15 MR. KAISER: Thank you. Mr. Mayor, any submissions on
16 costs?

17 MR. HABKIRK: Well, we would certainly like to see
18 them -- we would certainly like to see those costs come
19 from NRG. In regards to the stumbling blocks, the time we
20 have invested as a community, the assessment base that we
21 may lose in the future by people hearing such things as
22 this, but the fact of the matter is we have invested a lot
23 of time and effort and legal fees to make sure that this
24 deal came about for the benefit of our community and our
25 residents. So, yes.

26 MR. KAISER: Thank you, sir. Anything further, Mr.
27 O'Leary?

28 MR. O'LEARY: No, sir.

1 MR. KAISER: Thank you, gentlemen, ladies.

2 MR. THACKER: Sorry, I should have asked this earlier.

3 Are you approving the order in the manner in which it was
4 delivered, or is the order going to be driven by your
5 reasons as read?

6 MR. KAISER: The latter.

7 MR. THACKER: Thank you.

8 --- Whereupon hearing concluded at 2:45 p.m.

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Tab 9

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 Integrated Grain Processors Co-Operative Inc. for an Order compelling Natural Resource Gas Limited to provide gas distribution services to IGPC Ethanol Inc. and construct the natural gas pipeline and ancillary facilities approved by the Board by Decision and Order dated February 2, 2007, in Application EB-2006-0243;

AND IN THE MATTER OF a motion for review and variance of the Application for an Order varying the Decision(s) and Order(s) of the Board in Application EB-2006-0243 and/or EB-2005-0544 directing Natural Resource Gas Limited to provide gas distribution services to IGPC Ethanol Inc. and to construct the natural gas pipeline and ancillary facilities approved in Application EB-2006-0243;

AND IN THE MATTER OF an application for an Order finding that Natural Resource Gas Limited is in contravention of Enforceable Provisions as defined under Subsection 112.1 of the *Ontario Energy Board Act, 1998*, and an Order requiring Natural Resource Gas Limited to comply and remedy its contravention, pursuant to Subsection 112.3 of the Act.

COMPLIANCE ORDER

On June 28, 2007 Integrated Grain Processors Co-Operative Inc. ("IGPC") filed a Notice of Motion/Application with the Ontario Energy Board (the "Board"), under the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15 (Schedule B) (the "Act").

The Board had previously granted Natural Resource Gas Limited (NRG) leave to construct a pipeline to serve a proposed ethanol facility in Aylmer, Ontario. In that proceeding, the Board approved two agreements, a gas delivery agreement and a pipeline cost recovery agreement. The agreements contemplated that the parties execute consents to the assignment agreement to the benefit of the lenders to IGPC, the operator of the proposed ethanol facility.

NRG refused to execute the necessary consents and as a result IGPC was not able to complete its financing. The Board ordered NRG to execute the consents by 4:00 p.m. on June 29, 2007 in order that the financing could proceed. The

Board also ordered NRG to execute a Bundled T Service Receipt Contract as requested by IGPC.

The Board was advised by counsel for NRG after the 4:00 p.m. deadline had passed that NRG refused to execute the agreements. The Board immediately constituted a compliance hearing under section 112.2 of the Act. The Board determined on its own motion that NRG was in contravention of an enforceable provision under the Act because it had failed to execute the agreements as required by the Board's earlier order. Due to the urgency of the financing requirements, the Board determined that it should act under the authority given to it under section 112.2(6) to issue an interim order under section 112.3.

THE BOARD THEREFORE ORDERS THAT:

NRG shall pay an administrative penalty of \$20,000.00 Canadian dollars per day to be lifted when the Board's orders regarding the execution of the required consents and Bundled T agreements have been complied with by NRG.

DATED at Toronto, June 29, 2007

ONTARIO ENERGY BOARD

A handwritten signature in black ink, appearing to read 'Gordon Kaiser', is written over a horizontal line.

Gordon Kaiser

Vice-Chair and Presiding Member

Tab 9

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 Integrated Grain Processors Co-Operative Inc. for an Order compelling Natural Resource Gas Limited to provide gas distribution services to IGPC Ethanol Inc. and construct the natural gas pipeline and ancillary facilities approved by the Board by Decision and Order dated February 2, 2007, in Application EB-2006-0243;

AND IN THE MATTER OF a motion for review and variance of the Application for an Order varying the Decision(s) and Order(s) of the Board in Application EB-2006-0243 and/or EB-2005-0544 directing Natural Resource Gas Limited to provide gas distribution services to IGPC Ethanol Inc. and to construct the natural gas pipeline and ancillary facilities approved in Application EB-2006-0243;

AND IN THE MATTER OF an application for an Order finding that Natural Resource Gas Limited is in contravention of Enforceable Provisions as defined under Subsection 112.1 of the *Ontario Energy Board Act, 1998*, and an Order requiring Natural Resource Gas Limited to comply and remedy its contravention, pursuant to Subsection 112.3 of the Act.

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DATED at Toronto, June 29, 2007

ONTARIO ENERGY BOARD

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Gordon Kaiser

Vice-Chair and Presiding Member

Tab 10



ONTARIO ENERGY BOARD

FILE NO.: EB-2006-0243

VOLUME: MOTION HEARING
ADDENDUM

DATE: June 29, 2007

BEFORE:	Gordon Kaiser	Presiding Member and Vice Chair
	Ken Quesnelle	Member

THE ONTARIO ENERGY BOARD

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

AND IN THE MATTER OF an Application by Natural Resource Gas Limited for an Order pursuant to Section 90(1) of the *Ontario Energy Board Act, 1998*, granting leave to construct a natural gas pipeline and ancillary facilities in the Township of Malahide, Municipality of Thames Centre and the Town of Aylmer.

Hearing held at 2300 Yonge Street, 25th Floor,
Toronto, Ontario, on Friday,
June 29, 2007, commencing at 4:29 P.m.

Motion Hearing - Addendum

B E F O R E:

GORDON KAISER

PRESIDING MEMBER and VICE CHAIR

KEN QUESNELLE

MEMBER

A P P E A R A N C E S

KRISTI SEBALJ Board Counsel

NABI MIKHAIL Board Staff

DENNIS O'LEARY Integrated Grain Processors
MARTIN KOVNATS Co-Operative
BERNIE McGARVA
SCOTT STOLL

LAWRENCE THACKER Natural Resource Gas Limited

ALSO PRESENT:

JOEL CRAWFORD Integrated Grain Processors
BRENT McBLAIN Co-Operative

GEORGE ALKALAY

ROBERT HABKIRK Mayor, Town of Aylmer
HEATHER ADAMS Chief Administrative Officer,
Town of Aylmer

I N D E X O F P R O C E E D I N G S

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Upon commencing at 4:29 p.m.	1
Submissions by Mr. O'Leary	2
Submissions by Mr. Thacker	8
Submissions by Ms. Sebalj	13
Submissions by Mr. Kovnats	17
Submissions by Mr. Thacker	17
Recess taken at 4:58 p.m.	18
On Resuming at 5:14 p.m.	19
Submissions by Mr. O'Leary	19
Submissions by Mr. Kovnats	20
DECISION	22
Whereupon the hearing adjourned at 5:23 p.m.	23

E X H I B I T S

<u>Description</u>	<u>Page No.</u>
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NO EXHIBITS WERE FILED DURING THIS HEARING

U N D E R T A K I N G S

<u>Description</u>	<u>Page No.</u>
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NO UNDERTAKINGS WERE FILED DURING THIS HEARING

1 Friday, June 29, 2007

2 --- Upon commencing at 4:29 p.m.

3 MR. KAISER: Mr. O'Leary.

4 **SUBMISSIONS BY MR. O'LEARY:**

5 MR. O'LEARY: Thank you, Mr. Chair, for reconvening at
6 what is now 4:15 on Friday, the 29th and you're probably
7 tired of hearing my apologies but please accept them for
8 requesting you to reconvene.

9 Unfortunately, we have been advised by counsel for NRG
10 who is here with us still in the room that his client will
11 not comply with the Board's order today.

12 Is that correct, Mr. Thacker?

13 MR. THACKER: My instructions are to advise that they
14 are not prepared to sign the [inaudible].

15 MR. KAISER: Thank you.

16 MS. SEBALJ: Can I just remind all parties, on behalf
17 of the court reporters - we don't have a court reporter
18 here - you need to speak directly into the mike and as
19 clearly as possible and if you could identify yourselves,
20 because we don't have anyone to identify you for purpose of
21 the future transcript.

22 MR. O'LEARY: So in light of that, sir, we have a
23 number of requests that we would ask that you receive on
24 the record.

25 Before I begin to review those, I thought a comment
26 would be in record.

27 I will not belabour the point but it is quite apparent
28 that we were correct in our submission that there is a

1 pattern of conduct by NRG and Mr. Bristoll which is not
2 worthy of a utility in the province of Ontario.

3 His effort to hijack, may I dare say, "extort" this
4 process by dragging matters on until this point where we
5 have to bring an emergency motion before this Panel should
6 be considered unacceptable by any measure in this province
7 and that if there was ever a clear opportunity and an
8 appropriate opportunity for this Board to exercise its
9 discretion under the compliance sections of the Act and to
10 penalize NRG, and we submit, the principal of NRG, Mr.
11 Bristoll, as a result of what is nothing short of his
12 contemptuous attitude towards this Board --

13 MR. KAISER: Do we know if he's a principal?

14 MR. O'LEARY: He is the chairman of NRG.

15 MR. KAISER: "Principal" generally means he has an
16 ownership interest.

17 MR. O'LEARY: He certainly is, to our understanding,
18 the controlling mind and the person that would ultimately
19 make the last decision and we're not aware of any trustees
20 or board of directors' approval that's required for him to
21 proceed to comply with the Board order.

22 There are five requests that we make which are
23 specific and taken from the Statute and the agreements.
24 And the last is one that we would ask, because we -- as you
25 can understand, have a desire to give some comfort to the
26 various lenders that are behind this transaction and we
27 were hoping we might receive a statement from you, sir,
28 which would be of some measure of comfort to

1 them.

2 Our first request, sir, is that the Board forthwith
3 put NRG and Mr. Bristoll on notice that it intends to
4 proceed with compliance proceedings under Part 7(1) of the
5 Act, and your intent to consider the application of
6 administrative penalties against the utility and/or Mr.
7 Bristoll.

8 Secondly, that we request that you consider proceeding
9 without a hearing to make such orders under section 112.3,
10 relying on the interim basis provision which is, I believe,
11 112(6) and to move expeditiously to do so.

12 Thirdly, that you reconsider our earlier suggestion
13 that under subsection 112.3 to remedy the contravention by
14 NRG that you appoint a trustee for the utility who at least
15 on an interim basis can undertake and comply with the
16 orders that the Board made today. And in that regard, we
17 are prepared to provide you with the names of people we
18 consider to be suitable candidates for your consideration.

19 MR. KAISER: What is the authority for us to appoint a
20 trustee?

21 MR. O'LEARY: It's our position, sir, that that
22 authority exists under subsection 112.3(1) which is the
23 action required to comply. So once you've made a
24 determination that there is a convention or a likely
25 contravention, you may issue an order that would result in
26 a remedy. And given that Mr. Bristoll has no
27 apparent intent on ever complying with your order, it is
28 apparent that someone else needs to be put in charge and to

1 execute the agreements as trustee for the utility and for
2 its ratepayers.

3 MR. KAISER: Has the Board ever appointed a trustee
4 before?

5 MR. O'LEARY: In a natural-gas situation, I am not
6 aware of one, sir. I believe with some research, we would
7 be able to determine that the Board has exercised
8 discretion in respect of electric utilities.

9 MR. KAISER: Those were specific situations where it
10 was clear the utility could not continue to operate.

11 MR. O'LEARY: Well, sir, our submission is that this
12 utility is refusing to operate in compliance with the Act
13 and in compliance with your decision today.

14 The fourth request, sir, is that under the Pipeline
15 Cost Recovery Agreement, which was one of the agreements
16 that you reviewed during the facilities application which
17 was marked as Exhibit J1.4 today, at section 3.3(b) -- you
18 don't really need to turn it up because it simply obligates
19 IGPC to pay NRG's reasonable costs incurred internally and
20 for external counsel.

21 We are simply requesting that the Board make an order,
22 make a determination that NRG's internal costs and its
23 external costs, both my friend and any costs of Ogilvy
24 Renault are not reasonable costs for the purpose of the
25 Pipeline Agreement and not recoverable under that
26 agreement from IGPC.

27 The fifth request, sir, is that under the Energy Board
28 Act, at section 112.6, which is the second last page under

1 tab 6 of the materials which provided, it's the restraining
2 order section, it states that:

3 "The Board may apply to the Superior Court of
4 Justice for an order directing a person not to
5 contravene an enforceable provision and the Court
6 may make that order or such order as it considers
7 just."

8 We respectfully suggest that the Board consider
9 forthwith applying to the Superior Court for an order
10 requiring NRG and/or Mr. Bristoll to not contravene your
11 order and to comply with it forthwith.

12 Mr. Chair, in terms of our request for your
13 consideration of really where we are, we would appreciate a
14 statement, if you are in a position to do so, that the
15 Board will assist, to the extent possible, IGPC in securing
16 the gas service that it requires to complete this ethanol
17 facility and to obviously build the pipeline.

18 Under the circumstances that are now apparent, we
19 would appreciate your view about the possible options that
20 are open to IGPC including coming forth with a bypass
21 application, perhaps in conjunction with Union Gas, and
22 that if this was a circumstance which you felt that you
23 were in a position to comment upon at this time, that you
24 would indicate to IGPC and our lenders that such an
25 application to be expeditiously entertained.

26 MR. KAISER: I don't know that we could comment on an
27 application that's not before us. You can make that
28 application, of course, and would it be considered

1 expeditiously; I'm sure it would be.

2 I don't think we can offer any comments.

3 It's obviously a remedy you have available to you.

4 MR. O'LEARY: Thank you, sir.

5 MR. KAISER: Have you thought of going to court
6 yourself to get this order enforced?

7 MR. O'LEARY: It is something that I will certainly
8 raise with our client and seek direction. We will probably
9 follow-up and forward a letter to the Board to specify
10 these requests if you thought that would be helpful, but
11 given the urgency of the matter, we were hoping that
12 perhaps the Board might have -- might be inclined to
13 indicate whether or not it was going to pursue any of those
14 potential remedies at the time and put Mr. Bristoll on
15 notice of a motion, perhaps, this evening.

16 MR. KAISER: Even if we were to convene a hearing on
17 Tuesday to deal with this, even if we were to subpoena Mr.
18 Bristoll, how is that going to help the practical situation
19 before us? That would be after June 30th.

20 MR. O'LEARY: I understand, sir.

21 MR. KAISER: Does it do any...

22 MR. O'LEARY: Can I dare to say "save the
23 transaction," no. Is it something that...

24 MR. KAISER: Well, I guess what I'm asking you is
25 leaving aside for a moment, just for a moment the question
26 of sanctions, have you turned your mind as to whether you
27 can save this deal by getting consents from the necessary
28 parties or is it...

1 MR. O'LEARY: There is an attempt being done at this
2 time --

3 MR. KAISER: All right.

4 MR. O'LEARY: -- but there is still this need for a
5 comfort level to be provided to lenders and to understand
6 that the process here cannot be hijacked by a utility that
7 is not prepared to follow the rules and that this Board
8 will stand behind its decisions and ensure that such --
9 that projects in the public interest are not hijacked.

10 MR. KAISER: Tell me this. Let's suppose for the sake
11 of argument that we set down a hearing for Tuesday, which
12 would be the first time we could do it, I would assume,
13 unless we held it over the weekend which is probably not
14 likely, and we issued the necessary subpoena to have the
15 necessary people attend. How does that help with the
16 comfort of your lenders?

17 MR. O'LEARY: My understanding is that with lenders
18 that are not resident in Canada, they do not fully
19 understand our regulatory process here. They have
20 concerns, given what has transpired. I believe at a
21 minimum it would lend some credibility to the process, give
22 them comfort that IGPC was not going to be left standing
23 high and dry.

24 I can't provide any assurances that it will save the
25 deal but it is at least something that we could say in
26 support of trying to seek the necessary consents for an
27 extension.

28 MR. KAISER: Do you have anything else?

1 MR. O'LEARY: No, sir.

2 MR. KAISER: Sir.

3 **SUBMISSIONS BY MR. THACKER:**

4 MR. THACKER: [Microphone not activated] I'm not sure
5 I understand the point of sanctions. We were told earlier
6 that at 5 o'clock today Canada Trust would return the money
7 because [inaudible] legal required to do that.

8 If it does what you are told Canada Trust is legally
9 required to do, and there is no reason that Canada Trust
10 won't do what it legally required to do --

11 MS. SEBALJ: Mr. Thacker, I really apologize for
12 ruining your train of thought but if your mike is not on,
13 can you turn it on and can you speak up a bit.

14 MR. THACKER: Sorry, here we go.

15 All right. You were told that Canada Trust was
16 legally required to return the money at the end of today
17 and I'm not sure yet if my friends are telling me that
18 wasn't true or is something has changed or that Canada
19 Trust is returning the money at the end of today. But if
20 they do return the money, which they are apparently
21 required to do, compliance hearings are not going to
22 achieve of objective. There will be no urgency as of 5:00
23 today and there's no basis on which to grant any of the
24 relief that you're being asked to grant, leaving apart the
25 issue of whether or not you have jurisdiction to do so.

26 If they went to a court and sought injunctive
27 relief, they'd have to give an undertaking as to damages,
28 so there's a good reason why they're here and not in a

1 court because they're not prepared to expose themselves to
2 that undertaking. They certainly may have a claim for
3 damages if they suffer a loss as a result of my client's
4 non-compliance with a valid order, and that's a significant
5 damages claim based on the numbers that are being tossed
6 around here.

7 But it seem to me like what you're really being told,
8 without anybody admitting it, is that this deal is not dead
9 as of 5:00. And it is of not a good reason to order
10 compliance hearings to satisfy the curiosity of foreign
11 lenders if the deal is already dead. That's no interest
12 that we should be concerned with.

13 If it's to satisfy the curiosity of foreign lenders
14 because they're still prepared to lend the money then what
15 you were told earlier today about urgency wasn't correct.
16 So I would ask, I think, to know the foundation upon which
17 compliance proceedings are being requested because we are
18 now at 4:30 and we are -- you were told the money would be
19 returned and there was no suggestion that there's any basis
20 for any extension to that. So I raise that issue.

21 You're being asked to proceed without a hearing for an
22 interim order, but the interim order you're being asked to
23 make is the same as the final order. There's no other
24 interim step that could plausibly be made, and those are
25 not the circumstances under which it's prepared to proceed
26 without a hearing, particularly where, on the evidence you
27 were told to accept, and the arguments of my friend, there
28 is no longer a basis for any urgency and, therefore, no

1 basis for an interim proceeding, particularly one made
2 without a hearing.

3 Thirdly, there's absolutely no jurisdiction to appoint
4 a trustee, and there is certainly no basis, even if there
5 were jurisdiction, no basis to exercise the discretion, if
6 it were a discretion you did in fact have, to do so where
7 there is no urgency any more.

8 And I would submit that you would be acting
9 irresponsibly to appoint a trustee without being able to
10 know who the proposed trustee is and consider their
11 worthiness and ensure that they're prepared to take on the
12 assignment and on what terms. And we don't have a proposed
13 trustee here.

14 With respect to section 112.3, when read together with
15 112.6, it suggests that if there is a need for an order to
16 direct a person to do or not do something, it should be an
17 order of the Superior Court made upon request by this
18 Board.

19 When you read the two statutes -- the two provisions
20 together, it suggests that this Board does not have the
21 jurisdiction to make that order, and that's why section
22 112.6 is there because it is the Superior Court that does
23 have inherent jurisdiction to make such an order. That is
24 -- the submission that I made earlier to you today is that
25 what my friend should have been to obtain the order that
26 they asked you to make.

27 When you read the Act together, the only implication
28 that can be drawn reasonably from section 112.6 is that

1 this Board doesn't have the power to order specific
2 performance of the nature you, in fact, did grant and are
3 now being asked by way of compliance proceedings to order;
4 but rather it is properly done by the Superior Court under
5 the rules for seeking injunctive relief, a mandatory
6 injunction which would include an undertaking as to
7 damages, in my submission.

8 So my submission is that -- and in the situation which
9 I think the Board has highlighted which I think there is no
10 longer an urgency, the horse is out of the barn. There is
11 no reason for you to put yourselves, in my submission, in a
12 precarious jurisdictional position and expose yourself to
13 an argument that you've exceeded your jurisdiction.

14 There's no benefit to be gained, there's no urgency,
15 and therefore, even if you had the jurisdiction, no basis
16 to exercise that discretion. And it should be my friends'
17 next step, if they wish to take this further, and if
18 there's a reason to do so, to go to the Court or to ask you
19 to make that order in request of the Court.

20 Those are my submissions.

21 MR. KAISER: Thank you, sir.

22 Well, Mr. O'Leary, the Board has issued an order and
23 the order is not being complied with.

24 The statute does provide, in the case of
25 restraining orders, that the Board may apply to the
26 Superior Court, as suggested by counsel for NRG. You can
27 probably make the same application.

28 I took it that one of your submissions was that the

1 Board should -- you would like the Board to advise whether
2 it intends to do that.

3 MR. O'LEARY: Yes, sir.

4 MR. KAISER: So that's one point. That's certainly
5 open to the Board via the statute. That would likely be
6 something, Mr. O'Leary, that this Panel couldn't decide on
7 its own. It was something likely that the full Board would
8 have to make a decision on. So it would be very hard for
9 us, I think, currently sitting here to make a decision
10 whether we would do that or not do that. But your request
11 is noted with respect to that.

12 MR. O'LEARY: Thank you, sir.

13 MR. KAISER: And a decision can be rendered on that
14 issue in due course, likely fairly quickly. But I'm not
15 comfortable that the Panel of two of us should be making
16 this at this moment without consulting with the Chairman
17 and the full Board.

18 With respect to the trustee issue, there's nothing in
19 this statute that specifically allows us to appoint a
20 trustee. To my knowledge, it has never been done. It's a
21 pretty extraordinary remedy and would likely require more
22 evidence than we have before us, in fairness to the
23 utility.

24 We don't know, by way of example, whether Mr. Bristoll
25 is the directing mind of this corporation or not. We don't
26 know whether he's a mere employee, whether he owns it,
27 whether he's a member of the board of directors. It may be
28 that he doesn't have any authority. Maybe this isn't his

1 decision. Maybe it's being made by people who own this
2 utility who might be different from Mr. Bristoll. So the
3 record just isn't as sufficient as it should be.

4 We certainly could create a proceeding, whenever that
5 might be; maybe it's urgent, maybe it's not urgent. We
6 could issue subpoenas. We could continue this matter.
7 And again, that's something that we can give consideration
8 to. I don't know whether we make this decision right now
9 is going to make a large difference to you.

10 We do have the ability to institute administrative
11 penalties which I guess should not exceed \$20,000 for each
12 day in which the contravention continues.

13 Do you take a position that applies to the
14 contravention of this order?

15 MR. O'LEARY: Yes, sir, it is an enforceable
16 provision.

17 MR. QUESNELLE: Your microphone, Mr. O'Leary.

18 MR. O'LEARY: Oh, I'm sorry.

19 Yes, sir, we do take the position that your order is
20 specifically an enforceable provision and that NRG has
21 deliberately contravened it and refused to comply.

22 MR. KAISER: Do you have anything, Ms. Sebalj?

23 **SUBMISSIONS BY MS. SEBALJ:**

24 MS. SEBALJ: Just a few notes to assist the Panel from
25 a legal perspective.

26 The first that procedurally speaking, an order under
27 any of these sections, under 112, may only be made on the
28 Board's own motion. So if the Board were to proceed this

1 way, it would be a request, if you will, by IGPC, but
2 ultimately on the Board's own motion.

3 The second thing that I wanted to note is that I
4 believe Mr. O'Leary mentioned at some point in his
5 submissions proceeding personally against Mr. Bristoll or
6 putting Mr. Bristoll on notice. I think this is a fairly
7 unusual -- section 112 is used only in the most
8 extraordinary of circumstances and to use it personally
9 against someone from the company would be even more unusual
10 and that it would be more likely with respect to NRG as a
11 whole, if at all.

12 Thirdly, there's really two procedures set out. One
13 is, I think, the procedure whereby we would go through the
14 step-wise notice procedures and the ability of the company
15 to then -- who has notice, to then give notice to the Board
16 requiring the Board to hold a hearing. And given the
17 unusual nature of the use of section 112 of our Act, I
18 think it would be prudent for the Panel to consider using
19 that -- if it wants to use it at all, using the step-wise
20 procedure and giving due process to NRG with respect to
21 this matter.

22 I also wanted to mention that I think Mr. O'Leary
23 referred to section 112.3(1) as somehow implying, because
24 the Board could make an order, implying that that order can
25 include an order with respect to appointing a trustee.
26 That section specifically says:

27 "... make an order requiring the person to comply
28 with the enforceable provision."

1 And I have scoured the Act and cannot find any
2 authority for this Board to appoint a trustee, nor am I
3 aware of any history where we have done so in the past.

4 I was going to mention something on the restraining
5 order but it doesn't sound to me as though you need my
6 submissions on that matter.

7 I just wanted to provide those submissions with
8 respect to procedure.

9 MR. KAISER: We made an order under section 42. And
10 under section 112.1, a provision of an order of the Board
11 is an enforceable provision. Under 112.3, we can make an
12 interim order. Under 112 -- I should say under 112.6, we
13 can make an interim order under 112.3 with or without a
14 hearing, and it may take effect before giving the time for
15 notice has expired under subsection 4.

16 We have a specific remedy of an administrative penalty
17 not to exceed \$20,000 a day for each day that the
18 contravention continues.

19 So is there anything, in terms of the jurisprudence,
20 that would prevent us right now from making an order that
21 the company would pay an administrative penalty of X
22 amount, provided it's not greater than \$20,000 a day for
23 each day in which the contravention of this order
24 continues?

25 Is there any legal reason why we can't do that?

26 MS. SEBALJ: I would suggest that there is isn't. You
27 do have the ability to grant an interim order, but I do
28 continue to emphasize that I think that that would be

1 highly unusual to not go through the process, especially
2 because we know that the company's represented but we don't
3 have a representative of the company before us; and
4 therefore, proper notice and the ability of the company to
5 speak to this is at issue.

6 I also want to mention, just while I'm speaking, that
7 there is a regulation, an administrative penalties
8 regulation which outlines that when the Board is making
9 these determinations, that it should determine whether it's
10 a major, moderate or minor deviation from the requirements
11 and that based on that, it does provide a scale of the
12 penalties and the Board may wish to have reference to that
13 regulation. The penalties range from \$1,000 to \$20,000
14 depending on the -- whether the violation is major,
15 moderate or minor and whether the contravention has a
16 major, moderate or minor potential to adversely affect
17 customers, persons licensed under the Act or other persons.

18 In this situation, I tend to agree that it seems that
19 the urgency with respect to this matter has passed
20 such that the Board could offer at least some notice,
21 perhaps not the full 15 days, but some form of notice to
22 NRG allowing it to have an opportunity to respond before
23 proceeding with the section 112.

24 [Board Panel confers]

25 MR. KAISER: Just on that question, Mr. O'Leary, I
26 think you told us you were attempting to get an extension
27 or whatever relief. What relief do you need? Do each of
28 the shareholders have to notify Canada Trust that they're

1 waiving their right to get their money back? What's the
2 procedure?

3 MR. O'LEARY: Things haven't changed.

4 **SUBMISSIONS BY MR. KOVNATS:**

5 MR. KOVNATS: Sorry, Mr. Chairman, we have until
6 midnight tomorrow before the beneficial ownership of the
7 money will revert back to the members. There is no way
8 we're going to get 840 people to sign off on that at this
9 time. We are working with the lenders to try and find if
10 there's some way we can manage it through the credit
11 facility. The problem we're having now is all the bankers
12 are gone, of course, and it's a long weekend, and I
13 appreciate you spending the time and attention.

14 We're really working at wit's end at this stage, to
15 know what we can do. And you saw the troop of people come
16 back. We've been on with the lenders this whole time and
17 their counsel trying to find a solution. We're really very
18 much having a difficulty.

19 MR. KAISER: All right. Anything further, Mr.
20 Thacker?

21 **SUBMISSIONS BY MR. THACKER:**

22 MR. THACKER: Only that I don't think the
23 answer has been given as to whether or not the urgency
24 continues to exist. You asked the question; you didn't get
25 a real answer.

26 I would take your counsel's suggestion and my
27 submission that it would appear the urgency isn't there and
28 therefore, if you have the jurisdiction to make the order

1 you're being requested to make, there's certainly no basis
2 to exercise your discretion to do so without any notice and
3 on an abbreviated basis and without an opportunity to
4 respond.

5 If you are of a mind to order a financial penalty of
6 an administrative nature and to do so without a hearing and
7 without the notice requirements being followed, I would
8 urge you to review the scale and consider, although the
9 effect, perhaps, of the infraction here, the non-compliance
10 may be significant, it is a condition of my friends'
11 lenders that makes it significant and not necessarily
12 something that should be visited entirely upon my client's
13 head.

14 And secondly, given the timing, we should, at a
15 minimum, impose the penalty, if it's going to be imposed at
16 all without notice, and without an opportunity to respond,
17 after the holidays have passed, given that we're late in
18 the day on Friday and the banks don't open again until
19 Tuesday morning.

20 MR. ALKALAY: Mr. Chairman, I won't respond to my
21 friend to my left, but I would seek the indulgence of this
22 panel for five minutes to be able to brief my counsel as to
23 what I have learned and so we can then better answer you.

24 I apologize for asking for further delay, but may I
25 have the five minutes?

26 MR. KAISER: 15 minutes.

27 MR. KOVNATS: Thank you, sir.

28 --- Recess taken at 4:58 p.m.

1 --- On resuming at 5:14 p.m.

2 MR. KAISER: Please be seated.

3 **SUBMISSIONS BY MR. O'LEARY:**

4 MR. O'LEARY: Thank you, Mr. Chair. There is nothing
5 that I could advise you has changed which would make the
6 situation any less urgent than that it was. There is
7 nothing but a faint hope, and therefore the evidence that
8 you have heard today remains true to this point.

9 I just have several brief submissions and -- in
10 response to my friend and counsel for the Board. While I
11 can understand Ms. Sebalj's desire, we support due process,
12 particularly where administrative penalties or any sort of
13 a punitive sanction is being sought.

14 This is an exceptional circumstance, and it is not
15 that we have a potential victim that is not aware of what
16 has transpired. Mr. Bristoll has deliberately not attended
17 today. There has not been any explanation given for his
18 non-attendance. It is not like he is tied up in some other
19 more important proceeding; he is undoubtedly on notice of
20 your decision to reserve on costs and an administrative
21 penalty. I would be shocked if his counsel did not report
22 on the full extent of your decision.

23 So he is aware that it is being considered. I am sure
24 he is aware of our submissions a few moments ago.

25 It is our submission, sir, respectfully, that NRG and
26 its chairman are on notice of the Board's consideration of
27 this matter and that you are entertaining the provision
28 that allows you to proceed without a hearing and on short

1 notice.

2 On that basis, sir, we would submit and request that
3 you do in fact apply an administrative penalty for every
4 day that the non-compliance continues, if only to show that
5 the Board will not accept and condone this sort of conduct
6 by a utility.

7 MR. KAISER: Thank you.

8 MR. THACKER: I think you still didn't get an answer
9 to your question. It's 5:20; the money has either been
10 returned or it has not been returned. We still don't know
11 if there is any urgency remaining and any basis upon which
12 you should, if you have jurisdiction, exercise the
13 extraordinary discretion you are being asked to exercise.
14 There is no urgency. There's no basis to do that.

15 And I don't think my friend has answered your
16 question, with respect. It is an important evidentiary
17 point, in my submission, for -- that things as they may go
18 forward as to whether or not what you were told about this
19 deal dying at the end of the business day today it was in
20 fact true, or if true then, has in fact been amended such
21 that there is a hope of keeping it alive and under what
22 mechanism has that transpired.

23 **SUBMISSIONS BY MR. KOVNATS:**

24 MR. KOVNATS: Mr. Chairman, I'm wondering if I could
25 address that, since I am the one that has been involved in
26 all the regulatory filings of the cooperative with the
27 Financial Services Commission of Ontario.

28 The terms of that offering statement and the terms of

1 that escrow agreement are such that if we do not meet the
2 conditions for release of funds from escrow by June 30,
3 2007 we have to return the funds.

4 So even though we have talked about July -- the 29th
5 as being the last date, we have made it very clear. The
6 date is June 30. The question is what kind of business can
7 we conduct on a Friday night and a Saturday of a long
8 weekend.

9 I think that's where I think we spoke earlier, counsel
10 spoke earlier of the faint hope clause. Is there some --
11 we are still working with our banks. Our banks said they
12 will be there all night. The issue, very bluntly, right
13 now is that if we do get all of the bundled T service
14 agreement and the consent and acknowledgment executed
15 before midnight tomorrow night, we would technically meet
16 the conditions for closing.

17 I think I have to be very candid with the Board in
18 saying that our lenders have lost confidence in NRG's
19 ability to build this pipeline or to operate the pipeline,
20 and what they are asking us for is, on a very short
21 timeline, to come back to them and show them that we can
22 find an alternative to NRG for getting gas there.

23 I think, quite frankly, what would be of value to our
24 lender is to get some sort of a commitment that we can have
25 comfort that given that NRG has shown itself unable and/or
26 unwilling to provide natural gas, that we have an
27 alternative and that this Board will support us in helping
28 to find an alternative.

1 MR. KAISER: Thank you.

2 **DECISION:**

3 MR. KAISER: There may be hope, or slim hope, or no
4 hope at all; but it is fair to say that the Board
5 understands the urgency of the situation on the basis of
6 the submissions today.

7 One thing we do know for sure is that the Board has
8 today issued two orders, and those orders are being
9 disregarded. The utility, NRG, does not intend to comply
10 with them and has not complied with them.

11 These orders are enforceable provisions under section
12 112.1. The Board does have the authority to make interim
13 orders under this section, with or without a hearing, and
14 an order can take effect without granting the time for
15 notice required in the subsection.

16 The statute does provide in section 112.5(3) that an
17 administrative penalty for contravention of these
18 provisions can be awarded by the Board, in an amount not to
19 exceed \$20,000 a day for each day that the contravention
20 continues.

21 NRG has been franchised to provide natural gas service
22 in this municipality, in the Town of Aylmer. This is an
23 exclusive franchise. Natural gas is not available from
24 anyone else. But that exclusivity carries with it certain
25 responsibilities to act in the public interest. It is not
26 apparent that NRG understands those responsibilities at
27 all.

28 The failure to comply with this Board's order signals

1 a complete disregard for the Board and its processes. It
2 also signals a complete disregard for the people of Aylmer,
3 many of whom are out of work as a result of the decline in
4 the tobacco industry. It looked like this ethanol facility
5 would offer considerable relief in that regard.

6 It is also a complete disregard for the federal
7 government, the province of Ontario, and the investors, the
8 farmers that have invested in this facility, and of course,
9 IPGC, all of whom have invested considerable time over a
10 considerable period to bring about the agreements which
11 would result in the construction of this facility.

12 This Panel is unable to understand what appears to be
13 the capricious behaviour of this utility.

14 Accordingly, we order that an administrative penalty
15 will go into effect immediately in the amount of \$20,000 a
16 day for each day in which the contravention continues.

17 The penalty will be lifted when the orders are
18 complied with.

19 Any questions?

20 Thank you, gentlemen.

21 --- Whereupon the hearing concluded at 5:23 p.m.

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Tab 11



EB-2006-0243

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 pursuant to
Section 90(1) of the *Ontario Energy Board Act, 1998*,
granting leave to construct a natural gas pipeline and
ancillary facilities in the Township of Malahide,
Municipality of Thames Centre and the Town of
Aylmer.

AND IN THE MATTER OF Section 19 of the *Ontario*
Energy Board Act, 1998.

BEFORE: Gordon Kaiser
Presiding Member and Vice Chair

Ken Quesnelle
Member

Cathy Spoel
Member

DECISION

March 12, 2008

Background

This Decision relates to a Decision of the Board dated February 2, 2007 which granted Natural Resource Gas Limited ("NRG") authority to construct 29 km of 6 inch diameter steel pipeline to supply natural gas to a new ethanol plant (the "Facility") being constructed by Integrated Grain Processors Co-operative Inc. ("IGPC"), in Aylmer, Ontario.

That Decision also approved a Gas Delivery Contract ("GDC") and the gas Pipeline Cost Recovery Agreement ("PCRA") which requires IGPC to provide certain security to underwrite the cost of constructing the pipeline.

Subsequently disputes arose with respect to those agreements and the amount of the security. On February 15, 2008 IGPC filed a notice of Motion seeking an Order establishing a timetable for completion of the pipeline by NRG, an Order requiring NRG to pay all third party suppliers on a timely basis, and an Order confirming that IGPC is required to provide NRG a delivery Letter of Credit in the amount of \$ 5.3 million. NRG filed certain correspondence in response to this notice of Motion. On February 22, 2008 the Board issued a Notice of Review on the Board's Motion to review matters related to the Board's Order granting leave-to-construct as amended on December 28, 2008 (the "Motion").

The Motion was heard in Aylmer, Ontario on February 28, 2008. A number of the issues were determined that day, and in a supplemental written Decision was issued on March 4, 2008.

Four cost items were not resolved at the time: M9 Delivery Costs of \$422,217.00; Operations & Maintenance (O &M) expenses of \$50,000.00; Capital Taxes of \$25,935.00; and Property Taxes of \$58,405.00. NRG claims that these annual costs will be incurred for each of the seven years of the contract regardless of whether or not IGPC is still a customer of NRG. NRG also argued that the amount of the letter of credit should be increased to reflect these costs.

At the February 28, 2008 Hearing the parties agreed that these matters could be dealt with in writing without further evidence, and that the Decision of the Board with respect to these four matters would be binding on the parties.

The M9 Delivery Costs

The M9 contract is a gas delivery agreement between Union and a counter party to secure the upstream gas transportation that will be necessary to supply the Facility.

When the Board heard the Motion on February 28, 2008, NRG claimed it would incur a liability for M9 delivery costs in the amount of \$422,217.00 annually for each of the seven years of the contract. NRG sought security from IGPC for these amounts.

The estimated cost of the pipeline is \$9.1 million of which \$3.8 million is to be covered by a capital contribution from IGPC, and \$5.3 million is to be covered by a letter of credit by IGPC. The letter of credit is essentially to guarantee NRG the revenues required from the sale of gas to the ethanol plant to cover the remaining cost of the pipeline. Accordingly the amount of the letter of credit is reduced annually as the depreciation on the capital costs are recovered through rates.

The complication is that there are two sections of pipe that need to be constructed;

- (a) an extension pipeline of approximately 1.5 km to be built by Union Gas including a custody transfer station which will permit the Union Gas extension pipeline to connect to the new pipeline to be built by NRG, and
- (b) a 28.5 km pipeline to be built by NRG commencing at the connection with Union Gas and ending at the ethanol facility being built by IGPC in Aylmer, Ontario.

In the executed Pipeline Cost Recovery Agreement, Article III section 3.1, states that the amount of \$180,000.00 is for the Union Gas Aid-to-Construct and is included in the total capital cost of the project of \$ 9.1 million. There is no indication that any of that amount or any separate amount is included in the agreement to cover a security required by Union related to the revenues it expects to receive as a result of specified gas volume sales. The capital contribution of \$3.8 million and the letter of credit of \$5.3 million deals primarily, but not completely, with the NRG portion.

The purported need for adjustment in the security arrangements results from:

- (a) an increase in the capital cost of the Union portion from that estimated with a resulting increase in the aid to construct; and
- (b) an absence of security required by Union to cover the loss of revenue from the annual volume charges (Minimum Annual Volume Charges) and for security covering the first two months of Monthly Demand Charges.

The \$3.8 million capital contribution which IGPC agreed to pay NRG, included a capital contribution that NRG would have to pay Union. That amount was \$180,000.00 It is now agreed that that the new amount is \$343,000, a difference of \$163,000.00. Accordingly it is necessary to adjust that element of the security arrangement. There appears to be no dispute with respect to this.

The issue to be determined relates to the purported absence of security to cover Union's total exposure costs related to the provision of the pipe and delivery service and whether or not the \$5.3 million letter of credit is intended to cover these costs. The Union submission in this regard states:

"Upon NRG signing an M9 Contract for the ethanol plant, Union would ordinarily require that NRG provide a letter of credit (or other Financial Assurance) to Union to secure the full amount of the capital costs of the project and the first two months of Monthly Demand Charges and Minimum Annual Volume charges. The total amount of Financial Assurance required by Union (regardless of whether NRG signs a one year or a seven year contract) is \$881, 497."

Taking into account the \$343,000 which the parties have agreed to pay to Union by way of the aid-to-construct, leaves a letter of credit that Union is demanding, with respect to the balance of the capital cost of the Union project plus the Minimum Annual Volume Charges and the first two months of Monthly Demand charges, in the amount of \$538,497.

Union acknowledges that this letter of credit would be less if it is a one year contract. In that event, the aid to construct would be \$736,000 instead of the \$343,000 under a seven year contract.

The IGPC position is that the \$5.3 million letter of credit is established in the PCRA and should not and cannot be increased by the Board. IGPC further argues that NRG is in effect seeking a review of the Board's Decision of February 2, 2007 without meeting any of the statutory tests.

The Board does not accept this argument. First, the Board is considering this matter as a result of the Motion which it initiated in response to various submissions by IGPC and NRG. The notice specifically states: "The examination will include a review of the PCRA." In the IGPC submission dated February 15, 2008 IGPC sought an Order confirming that the proper amount of the letter of credit was \$5.3 million. That, in the Board's view, raises the question as to the proper amount of the letter of credit. Moreover as IGPC pointed out in its submitted material, the contract between IGPC and NRG provides that the Board act as an arbitrator in the event of disputes.

Accordingly, the Board believes it has the necessary jurisdiction to deal with this dispute. Moreover it is in the public interest that this dispute be resolved. The fact is that Union is not going to provide service unless they receive financial assurance that they are entitled to in the amount of \$881,497. Some of this assurance has already been provided or agreed to, however an amount of \$538,497 is not covered by the \$5.3 million letter of credit (nor in the agreed to capital contribution) that IGPC has agreed to provide NRG.

The reason for the omission may be that NRG was not aware of the exact terms of the M9 contract at the time the original Hearing. Regardless of the reasons for the omission, it must be dealt with now. These agreements do reflect a recognition that actual costs may turn out to be different from the estimated costs. Indeed the parties agree that given the increased capital costs of the Union portion the aid-to-construct should increase from \$180,000 to \$343,000. The same principle should apply in this situation where it appears that a real and tangible liability was not considered.

With respect to the NRG claim that it is entitled to security to indemnify the utility for M9 delivery costs of \$ 422, 217 annually over a period of seven years, it is the Board's view is that these costs will not be incurred by NRG in the event that NRG provides Union with an additional letter of credit in the amount of \$538, 497.

This letter of credit of course must be backed by a letter of credit in favour of NRG from IGPC in the same amount. The amount of the letter of credit will of course decline annually in the same fashion as the letter of credit of \$5.3 million in favour of NRG declines annually.

The overriding principle where a utility is incurring capital costs for an individual customer such as IGPC is that in the event the project fails, the other ratepayers should not be responsible for those capital costs.

Union has indicated that the amount of security required to secure the full amount of the capital cost of its project is \$881,497. This is to be made up by an aid to construct of \$343,000 and the letter of credit of \$538, 497 which in effect relates to the loss of income which Union would receive on the flow of revenue from the annual volume charges (Minimum Annual Volume Charges) and for security covering the first two months of Monthly Demand Charges.

Union does, however, state;

“to be clear although Union does not ask for security for the Demand Charge and the minimum annual volume (MAV) Deficiency Charges for the full term of the M9 contract, the M9 Contract still requires NRG to pay those charges for the full term of the contract”

This presumably leads to NRG's claim in this Motion that IGPC must indemnify NRG for the annually delivery charges of some \$422,217.00 for the term of the contract.

The Board does not believe that Union is entitled to guaranteed revenues or guaranteed profits. It is, however, entitled to complete security on the full amount of the capital cost, and the first two months of the Monthly Demand Charge and the Minimum Annual Volume Charges. Union states that the amount of that security is \$881,497. Accordingly, the Board believes that if either NRG or IGPC posts a letter of credit for that amount, there should be no further liability to Union.

IGPC in its submission states that it should not be responsible for providing any amount of Union's letter of credit. IGPC is however prepared to provide the Union aid-to-construct. IGPC argues that in the event the Facility ceases operation, the new pipe will be integrated into the NRG system. It will still be used and useful, and accordingly the ratepayers should incur the cost.

On the Motion IGPC argued that NRG had stated that if the ethanol plant ceased operation, the pipe could be integrated into the NRG system at a cost of \$600,000, that those costs would form part of the rate base, and that the cost to ratepayers would be insignificant. The Board accepted that argument and ruled that NRG was not entitled to security for decommissioning costs.

The same argument could apply to Union. However, that does not remove the need for Union's letter of credit with respect to minimum annual volumes. That is totally a separate issue.

The letter of credit relates to the cost of the Union construction, not the cost of decommissioning. These gas volumes are being provided to one customer and one customer only. If the revenues from the gas volumes supplied are being used to underwrite part of the capital cost of construction, those revenues need to be secured by a letter of credit. Otherwise the other ratepayers will be at risk.

In short, there is no reason why NRG or IGPC should not provide the necessary letter of credit to Union with respect to the volumes of gas that IGPC wishes Union to supply.

There is, however, no need for NRG to enter these discussions. These arrangements can proceed directly between IGPC and Union. However the same principle will apply. The Union rate payers must be protected in the event there is a failure on the part of IGPC. There will need to be a letter of credit in the amount of \$538,497 with respect to the gas volumes, unless of course IGPC wishes to underwrite the entire cost of the Union construction with an aid-to-construct.

The Board recognizes the importance of this project to the Community and the substantial financial commitment of the Co-operative, the Government of Canada and the Province of Ontario.

At the same time we recognize that this project is unusual in the sense that this one customer doubles the rate base of the utility. That situation has never risen before.

It is clear from the number of emergency motions the Board has heard on this manner that a project of this size has placed significant demands on the management resources of NRG. In these circumstances the Board believes it is best that IGPC deal separately with the two utilities with respect to the two separate sections of the pipeline. The same principles will apply in terms of security and follow long established Board principles.

O & M Expenditures, Capital Taxes and Property Taxes

No utility has guaranteed revenues. There are risks of running a utility and shareholders bear those risks. The profits they receive reflect those risks.

However, where there is substantial capital investments for the benefit of one customer, there must be security to at least cover the capital cost of that project, to ensure that there are not stranded assets that will impose costs on rate payers. This principle applies to both NRG and Union.

This principle also applies to the other costs which NRG is claiming in this Motion namely \$50,000.00 a year in O & M expenses; \$ 25,935.00 in Capital Taxes; and \$58,405.00 in Property Taxes. These are expenses which NRG may incur as part of a plan to secure this important new customer. NRG however is not guaranteed recovery. These are matters that can be dealt with in a rate case in the event of failure of the ethanol plant. At that time they will be dealt with on actual facts and an analysis whether NRG was prudent in making these decisions. The Board does not find it necessary to deal with them at this time.

There is little new with respect to these costs. These costs were recognized by NRG at the time it filed this initial application with the Board and are set out in Mr. Aiken's analysis in Tab 4 of Exhibit C of the pre-filed evidence.

The Board sees no need to increase the letter of credit to reflect these cost items. They were fully considered by the Board previously and the evidence that NRG filed reflected these costs. If the letter of credit should have reflected these costs, which the Board doubts, the matter should have been raised by NRG at that time. In any event, these costs are minor.

The Board agreed to deal with these four issues on the basis of written submissions and agreement by the parties that no further evidence was required and that the Decision would be binding on the parties. Further evidence has been submitted by NRG. The Board has not relied upon this in making its Decision. We believe there is sufficient evidence currently on the record on these matters, and we have proceeded on that basis.

Costs of the Motion

IGPC has raised an additional issue which the Board is not prepared to entertain at this time. This is the matter of costs incurred by IGPC relating to this dispute.

At the time of the Aylmer Motion, there were a number of invoices that NRG had submitted to IGPC that were unpaid. The parties agreed to deal with matters separately and not involve the Board at this time. It was further agreed that even if there was a failure to resolve these matters, they would not hold up the pipeline construction. The Board expects that IGPC will follow the same process with respect to any costs that IGPC believes should be borne by NRG.

DATED at Toronto March 12, 2008.

ONTARIO ENERGY BOARD

Signed on behalf of the panel

Original signed by

Gordon Kaiser

Presiding Member and Vice Chair