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August 27, 2010

BY COURIER AND RESS

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: Natural Resource Gas Limited
2011 Rate Proceeding
Board File: EB-2010-0018
Submissions of Integrated Grain Processors Co-operative Inc.
in Respect of Motion**

Pursuant to the Board's Notice of Hearing and Procedural Order No. 5 in the above-noted proceeding, please find enclosed two copies of the Submissions of Integrated Grain Processors Co-operative Inc. in Respect of its Motion.

An electronic version of the enclosed Submissions has been filed through the Board's Regulatory Electronic Submission System.

Yours truly,

AIRD & BERLIS LLP



Scott A. Stoll

SAS:ct
Enclosures

cc Applicant and Intervenors (EB-2010-0018 and EB-2006-0243)

7118381.1

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 or Orders approving or
fixing just and reasonable rates and other charges for the
sale, distribution and storage of gas commencing October
1, 2010.

SUBMISSIONS OF INTEGRATED GRAIN PROCESSORS CO-OPERATIVE INC. AND IGPC ETHANOL INC. IN RESPECT OF MOTION

1. IGPC Ethanol Inc. and Integrated Grain Processors Co-operative ("**IGPC**") filed a notice of motion on August 3, 2010 in respect of several unresolved issues related to IGPC and Natural Resource Gas Ltd. ("**NRG**") in EB-2006-0243. On August 9, 2010 the Ontario Energy Board (the "**Board**") issued Procedural Order 5 (the "**Procedural Order**") indicating that responding materials to the Notice of Motion should be filed no later than August 27th, 2010. The Procedural Order joined the motion under EB-2006-0243 with the current rate proceeding. More specifically, the Procedural Order requested parties to address how such issues differed from those being considered in the rate case and the appropriateness of the Board to deal with contract disputes that do not impact rates.

2. It is IGPC's position that the Board has the exclusive authority to determine the issues raised in the motion and that the issues should proceed as part of EB-2010-0018. Most of the issues in the motion are the same issues that need to be determined for the purposes of setting the rates NRG is permitted to charge. Finally, the relief requested is consistent with the Board fulfilling its statutory objectives of consumer protection and rational expansion of the gas distribution system.

3. IGPC submits that NRG bears the onus in its rate application (EB-2010-0018) of demonstrating that its costs are appropriate and that it has failed to provide convincing evidence to support its application. IGPC, as the largest ratepayer within NRG's franchise and as an intervenor in this rate proceeding, has contested the costs claimed by NRG in its Application.

THE ISSUES RAISED BY THE MOTION

4. This motion raised the following issues:

- (a) a determination of the Actual Capital Cost of the Pipeline, in accordance with the Pipeline Cost Recovery Agreement ("**PCRA**");
- (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 to 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**");
- (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; and
- (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.

The Broad and Exclusive Jurisdiction of the Board

5. The Board's authority is set out by section 19 of the *Ontario Energy Board Act, 1998*, S.O. 1998 Chapter 15, Schedule B, (the "**OEB Act**") which provides, "*The Board has in all matters within its jurisdiction authority to hear and determine all questions of law and of fact.*"

6. The Ontario Court of Appeal recently considered the authority of the Board in a contractual dispute between certain landowners and Union Gas Ltd. ("**Union**"). Union was successful when it brought a motion for summary judgment on the basis the issues were within the exclusive jurisdiction of the Board. The decision was appealed to the Ontario Court of Appeal which confirmed the Board's exclusive authority over matters within its jurisdiction.

Section 19 provides that, in the exercise of its jurisdiction, the Board has "in all matters within its jurisdiction authority to hear and determine all questions of law and of fact." This generous and expansive conferral of jurisdiction ensures that the Board has the requisite power to hear and decide all questions of fact and of law arising in connection with claims or other matters that are properly before it. This includes, *inter alia*, the power to rule on the validity of relevant contracts and to deal with other substantive legal issues.

Snopko v. Union Gas Ltd. [2010] O.J. No. 1335, (2010) 317 D.L.R. (4th) 719 (On. C.A.) at para. 27 (hereinafter "**Snopko**"). (See **Tab A**)

As the appeal must be resolved on the basis that the Board has exclusive jurisdiction to determine all issues of law and of fact arising from the appellants' claim against Union, it is unnecessary for me to deal with the alternative grounds for dismissal of the claim advanced by Union.

Snopko at para. 31.

7. The Court of Appeal acknowledged the Board's exclusive authority where the dispute is within the Board's jurisdiction. Therefore, the issue becomes whether the OEB Act, expressly or impliedly, grants the Board with jurisdiction over the subject matter. The Board's jurisdiction has been interpreted broadly as noted by the courts:

"It is clear that the legislature intended to vest in the Ontario Energy Board the widest powers to control the supply and distribution of natural gas to the people of Ontario....."

"In my view the statute makes it crystal clear that all matters relating to or incidental to the production, distribution, transmission or storage of natural gas, including the setting of rates, the location of lines and appurtenances, expropriation of necessary lands and easements, are under the exclusive jurisdiction of the Ontario Energy Board."

Union Gas Ltd. v. Dawn (Township) (1977), 76 D.L.R. (3d) 613 (Ont. H.C.J.) at p. 625 and 622. (see **Tab B**)

The jurisdiction of the Ontario Energy Board is very broad. It is charged with the regulatory and quasi-judicial functions covering the entire field of energy within the Province of Ontario.

Ontario Energy Board Re: (1985), 51 OR (2d) 333 at page 336. (see **Tab C**)

8. Where the Board determines the issue to be within its jurisdiction, which is exclusive to the Board, the Board must decide the issue as the parties have no recourse to other venues in such matters. As the Board has exclusive jurisdiction, the Board must have the power to determine the appropriate remedy and the ability to enforce the remedy. The Board characterized the nature of its role as:

The third factor upon which the Board's ability to compel service and approve contracts is based upon the inherent role of a regulator. This underlies the invocation of the doctrine of jurisdiction by necessary implication to ensure the Board has the power to approve contracts and compel service. This doctrine attempts to ensure that a regulator with a broad mandate will have the tools to fulfill that mandate.

Re Contract Carriage Arrangements for the Consumers Gas Company Ltd., ICG Utilities Ltd. and Union Gas Limited, Ontario Distribution Systems, E.B.R.O. 410-II/411-II/412-II. (1987) at para. 4.74 (see **Tab D**)

9. Where there is a contractual dispute, the Board is neither bound by the terms of the agreement nor is it precluded from effectively adding terms to the agreement. In a recent dispute between Union Gas Ltd. and NRG, Board proceeding EB-2008-0273, the Board ordered NRG to provide unaudited quarterly financial statements to Union as part of the agreement between Union and NRG. The Board stated:

It is a condition of this Order that NRG file its 2008 Audited Financial Statements within the four month deadline. And the Board further orders NRG to provide Union with unaudited quarterly statements within 60 days of the end of each quarter and to provide a copy to the Board. This is to begin with the quarter ended December 31, 2008. The Board will carefully monitor NRG's financial performance on an ongoing basis.

NRG should understand that these filing requirements will form part of the contract with Union and a failure to provide these Statements to Union in the timeframe specified would constitute a breach of the Agreement in which case Union would be entitled to pursue any remedies under the Contract related to the breach including an application under Section 42 of the Act.

EB-2008-0273, Union Gas Limited, Decision and Order, page 5, November 27, 2008 (see **Tab E**).

10. The Board then went on to reiterate the inherent power of the Board to amend contracts and to require service to be provided upon specified terms. It specifically referred to the quotation above from *Re Contract Carriage*.

11. IGPC submits that for the reasons discussed below, the Board has exclusive authority over all matters raised in the motion. The following paragraphs will address how the issues are within the Board's exclusive jurisdiction and how the issues relate to the EB-02010-0018 rate case.

Capital Cost and Just and Reasonable Rates

12. The determination of the Actual Capital Cost of the Pipeline and the determination of the Actual Aid to Construct are directly related to the establishment of the proper rate base of NRG

and for the proposed Rate 6 Customer Classification. It also factors into the calculation of the total rate base of the utility and the shareholder return.

13. One of the primary functions of the Board is the determination of rates charged by regulated utilities to their ratepayers. For the natural gas industry, section 36 expressly provides the Board with authority to establish just and reasonable rates while precluding utilities from charging anything other than a rate determined by the Board.

36. (1) No gas transmitter, gas distributor or storage company shall sell gas or charge for the transmission, distribution or storage of gas except in accordance with an order of the Board, which is not bound by the terms of any contract.

(2) The Board may make orders approving or fixing just and reasonable rates for the sale of gas by gas transmitters, gas distributors and storage companies, and for the transmission, distribution and storage of gas.

(3) In approving or fixing just and reasonable rates, the Board may adopt any method or technique that it considers appropriate.

(4) An order under this section may include conditions, classifications or practices applicable to the sale, transmission, distribution or storage of gas, including rules respecting the calculation of rates.

Ontario Energy Board Act, 1998, S.O. 1998, Chapter 15, Schedule B.

14. The amount of expenditures to be included in a utility's rate base is an important factor in determining its rates. As part of this rate hearing EB-2010-0018, the following issues were agreed to by all of the parties, including NRG, as the subject matter of the hearing:

2.6 Are amounts related to the IGPC pipeline added to rate base appropriate?

EB-2010-0018, Issues List, as modified by the Draft Settlement Agreement.

15. NRG has requested the inclusion of \$4,428,306 in its rate base for the 2011 Test Year attributable to the construction of the Pipeline. Further, the amount of the dispute is material to the parties and to ratepayers of NRG. NRG's claimed rate base is \$13,618,731 (Exhibit A2, Tab1, Schedule 2) so the Pipeline represents approximately 32% of NRG's total rate base. If

IGPC is successful, it could result in a reduction of 2% to 5% of the total rate base and as much as 10% of the rate base allocated to Rate 6. The ratio of the Pipeline cost in Rate 6 to the total rate base will impact the allocation of certain expenses among the various rate classes. Therefore, this issue will have an impact on all NRG ratepayers.

16. The proper amount to be included in the 2011 Test Year rate base is equal to the capital cost of the Pipeline properly put into rate base, less the accumulated depreciation since the time the Pipeline was put into rate base. Therefore, to determine the proper amount to be included in rate base for the 2011 Test Year, the Board must determine the cost of the Pipeline at the time of installation and the time at which the pipeline is to be included in rate base. IGPC has contested the amount claimed by NRG as the amount to be included and the year in which the Pipeline is to be included in rate base.

17. The capital cost to be included in rate base is equal to the reasonable capital costs actually incurred by the utility. The capital cost incurred by the utility equals the total reasonable capital cost less the amount of contribution in aid of construction paid by the customer. Further, the Board's decision in E.B.O. 188 prescribes the manner in which the contribution in aid of construction is to be determined. That economic analysis, using the Board prescribed formula, was integral to the Board granting NRG leave to construct the Pipeline and is a factor in the determination of the rate base claimed by NRG in its Application.

18. Therefore, the IGPC disputed costs and the contribution in aid of construction (Actual Aid to Construct) are directly related to the establishment of just and reasonable rates – the very issue in this proceeding - and are within the exclusive jurisdiction of the Board.

19. Even without the current rate proceeding the Board also has exclusive jurisdiction to determine the disputed costs as a result of the leave to construct process. NRG did not have

the ability to construct the pipeline and provide service to IGPC without the approval of the Board. Section 90 prohibits the construction of certain hydrocarbon lines without prior leave of the Board. The IGPC pipeline met both criteria (a) and (b) of section 90(1).

90. (1) No person shall construct a hydrocarbon line without first obtaining from the Board an order granting leave to construct the hydrocarbon line if,
(a) the proposed hydrocarbon line is more than 20 kilometres in length;
(b) the proposed hydrocarbon line is projected to cost more than the amount prescribed by the regulations;
(c) any part of the proposed hydrocarbon line,
(i) uses pipe that has a nominal pipe size of 12 inches or more, and
(ii) has an operating pressure of 2,000 kilopascals or more; or
(d) criteria prescribed by the regulations are met.

20. Prior to granting leave, the Board must determine whether the proposed work is in the public interest.

96. (1) If, after considering an application under section 90, 91 or 92 the Board is of the opinion that the construction, expansion or reinforcement of the proposed work is in the public interest, it shall make an order granting leave to carry out the work.

OEB Act, section 96(1).

21. The PCRA and GDC were extensively reviewed as part of the Board's granting leave to NRG to construct the Pipeline. Absent such agreements, and by necessary implication the Board's expectation that the parties would adhere to the terms of the agreements, leave to construct would not have been granted by the Board. In granting leave to construct, the Board stated:

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.

EB-2006-0243, Decision and Order, page 3, February 2, 2007.

22. The PCRA and GDC provided the economic foundation upon which the Board granted leave to NRG. Further, the protections afforded to NRG and its other ratepayers by the agreements permitted the Board to determine that granting leave was in the public interest.

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.

EB-2006-0243, Decision and Order, page 3, February 2, 2007.

23. The Board further restricted NRG from making an amendment to the agreements where such amendment could have a material adverse impact on NRG's ratepayers. Therefore, absent adherence to the terms of the agreements and the economic bargain contemplated, NRG would not have been granted leave and it would not have had any increase in its rate base.

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.

EB-2006-0243, Decision and Order, Conditions of Approval, February 2, 2007.

24. The Board has the jurisdiction over the agreements, the PCRA and GDC, that formed the basis upon which the utility became able to make an addition to rate base. Therefore, the Board has the jurisdiction to ensure the utility, NRG, complies with its obligations under such agreements and to determine the appropriate amounts to be included in rate base.

25. IGPC recognizes that the exercise of the Board's authority in the proceeding must be in keeping with the objectives of the Board as set out in Section 2 of the OEB Act, in particular:

2. The Board, in carrying out its responsibilities under this or any other Act in relation to gas, shall be guided by the following objectives:

2. To protect the interests of consumers with respect to prices and the reliability and quality of gas service.

3. To facilitate rational expansion of transmission and distribution systems.

26. Adherence to contracts that formed the foundation upon which NRG received leave to construct the Pipeline is directly related to two statutory objectives of the Board and related to a prior decision of the Board. Further, the costs of and the rates flowing from the installation of the Pipeline must also be determined in accordance with these objectives.

Cost of the Motions

27. In the unusual circumstances of the present dispute, two motions were conducted between the granting of leave to construct and the construction of the Pipeline. The issues in dispute were related to provisions in the PCRA and the GDC, which had been reviewed by the Board. Other issues in the motions were NRG's obligation to perform in accordance with such agreements and the obligations placed upon a natural gas utility by the applicable acts and regulatory framework. During the motions the Board exercised its jurisdiction over the contractual dispute.

28. NRG is seeking to recover their full legal costs, approximately \$135,279.38 (Response to IGPC I.R. 17), plus the costs of their employee, Mr. Mark Bristoll, for participating in such motions. In addition, NRG is seeking to recover an additional legal costs related to an appeal of the first motion. IGPC contends these costs should not form part of the Actual Capital Cost of the Pipeline for the purposes of the PCRA nor should such costs be included in the determination of NRG's rate base and rates.

29. To the extent such costs have been claimed as part of the reasonable capital cost of the Pipeline to be included in rate base, these issues are directly related to the rates proceeding. IGPC submits it is inappropriate for NRG to include the legal fees and other costs incurred by NRG in these motions in rate base or to permit NRG to recover such costs from other ratepayers.

30. It is clear the Board has the jurisdiction to make a costs award related to any proceeding held by the Board as set out in section 30 of the OEB Act below:

- 30. (1) The Board may order a person to pay all or part of a person's costs of participating in a proceeding before the Board, a notice and comment process under section 45 or 70.2 or any other consultation process initiated by the Board.
- (2) The Board may make an interim or final order that provides,
 - (a) by whom and to whom any costs are to be paid;
 - (b) the amount of any costs to be paid or by whom any costs are to be assessed and allowed; and
 - (c) when any costs are to be paid.
- (3) The rules governing practice and procedure that are made under section 25.1 of the Statutory Powers Procedure Act may prescribe a scale under which costs shall be assessed.
- (4) The costs may include the costs of the Board, regard being had to the time and expenses of the Board.
- (5) In awarding costs, the Board is not limited to the considerations that govern awards of costs in any court.

31. With respect to the costs claimed by IGPC, it is clear the Board has the authority to make an award in favour of IGPC, and it is clear that IGPC was successful in each motion. Therefore, it is appropriate that IGPC receive a cost award. IGPC has claimed \$100,000 in costs despite the fact that it incurred costs well in excess of that amount. Documentation in support of the costs incurred by IGPC may be found at **Tab F**. It should be noted that IGPC has not included costs related to the appeal, nor has it included costs related to the additional time spent by lender's counsel that were attributable to either motion.

32. Therefore, IGPC submits the Board has the exclusive jurisdiction to make a determination in respect of the costs related to the motions and that the Board should order NRG to pay \$100,000 to IGPC for costs. These costs should be to the account of the shareholder and not NRG's ratepayers.

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. Over 2 years have transpired since NRG commenced invoicing IGPC and NRG has yet to substantiate certain expenses and has maintained what IGPC submits is an unsupportable position.

34. NRG has steadfastly refused to admit prior to the rate proceeding that any of its claimed costs were in error or unreasonable. During the Technical Conference for this rate proceeding NRG admitted there were errors regarding the interest claimed for the costs of its employee, Mr. Bristoll and withdrew such costs. NRG also admitted during the technical conference that it had no anticipated activities related to the \$86,000 in contingency fees for legal expenses. The excerpt from the transcript is provided below:

MR. STOLL: Okay, but we are two years post putting that pipeline into service. I would have thought all contingencies with the construction of the pipeline would have been realized by now.
Are there specific items that are contingent, in the eyes of NRG, that have yet to occur related to the construction?

MR. COWAN: I can't point to any.

EB-2010-0018, Technical Conference, June 14, 2010, Transcript, page 27, line 6-13.

35. 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.

36. The Board has the authority, as noted above, to order NRG to pay the costs of IGPC.

37. IGPC requests the Board order NRG 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 Actual Capital Cost of the Pipeline.

Security provided by IGPC – NRG over secured

38. The PCRA and the GDC, the role and importance of which were highlighted earlier, include provisions related to the financial assurance to be provided by IGPC. The financial assurance provisions in the PCRA and the GDC were cited by the Board in the EB-2006-0243 Decision and Order for granting NRG leave to construct the pipeline.

39. IGPC would note the Board approves the security deposit policy of the regulated natural gas utilities. Therefore, any security deposit is an issue within the jurisdiction of the Board. Further, the issue of security deposits is an issue to be referred to in this proceeding.

Financial Assurance for Delivery

40. As a result of the February 2008 Motion, IGPC has provided directly to Union Gas financial assurance equal the monthly delivery charge determined under the M9 rate for the contracted volume related to the Facility for two months delivery. IGPC has provided and

continues to provide to Union financial assurance in the amount of \$72,397.00 and incurs costs related to providing this financial assurance. IGPC has provided a letter of credit in the amount of \$232,666.84 for distribution service as set out in the GDC. NRG is holding security for which it will have no corresponding obligation to Union and so NRG has effectively garnered excessive security beyond what was contemplated in the GDC.

41. Therefore, IGPC is in effect providing redundant financial security in respect of the costs related to the upstream Union delivery. As such, IGPC requests the Board reduce the amount of security be provided by IGPC to NRG to net out the security provided to Union in respect of the deliveries to IGPC.

Financial Assurance for the Pipeline

42. Pursuant to the terms of the PCRA, IGPC has provided a letter of credit to IGPC in the amount of \$5,214,173. NRG has added to rate base in October 2008, \$5,0730,000 related to the cost of the Pipeline. Despite the obligation in the PCRA to reduce the level of financial assurance with reductions in rate base from depreciation costs, NRG has yet to provide such a reduced amount. These amounts are related to the costs to be included in rate base described above and the Board approved depreciation rate for the Pipeline.

43. The mechanism for determining the appropriate amount of financial assurance to be provided for the Pipeline is provided in the PCRA and was relied upon by the Board in granting leave to construct. The financial assurance is referred to in the evidence filed in the rate proceeding (the NRG credit agreement, Response to I.R.#11, the McShane Report, Exhibit E2, Tab 1, Schedule 1, page 19) and provides significant protection to NRG and its ratepayers. These protections impact the conditions upon which capital is provided and the risk associated

with such capital. These provisions also impact the financial assurance customers are expected to provide a regulated utility. Therefore, this issue is relevant to the rates proceeding.

Improper Nomination of Gas

44. IGPC is a direct purchaser of natural gas. IGPC is a ratepayer of NRG which is embedded within the service territory of Union Gas. Included in Rate 3, approved by the Board, is the obligation to enter into a Bundled T Service Receipt Contract (the "**Bundled T**") with NRG where the customer is a direct purchaser of natural gas. Further, the Board approves a Bundled T Rate as part of the rate proceeding. The approved rate from EB-2005-0544 and the requested approved rates for this proceeding (Exhibit H3, Tab 1, Schedule 1, Updated) may be found at **Tabs G and H**.

45. As a result, IGPC is prohibited from nominating gas volumes on the Union system and must rely upon NRG to perform such tasks. Further, if IGPC failed to fulfill the nomination to deliver to Union the specified amount of gas at the specified location, then Union would have the ability to charge NRG for such failure, and NRG would be able to pass on such charge to IGPC. IGPC would be contractually bound to pay such charge. Therefore, IGPC purchased the gas required to be delivered to Union in accordance with the unauthorized nomination.

46. The obligation to enter the Bundled T is created by the Board's order and the proper performance by NRG of this monopoly service must be under the Board's exclusive jurisdiction.

47. IGPC had informed NRG in writing on June 24, 2008 (see **Tab I**) that it would not require gas until late August or early September.

48. On August 26, 2010 IGPC received the affidavit of Mr. Cowan from NRG via email at 4:16 p.m. in which NRG contests the Board's jurisdiction to hear such an issue. Attached to

these submissions, see **Tab J**, is a copy of the IGPC account summary with Blackstone Energy Services Inc. which confirms the buying and selling of the gas. In addition, IGPC has filed the NRG invoices totalling \$372,949.82 (see **Tab K**) for gas distribution service for the period July 15, 2008 through September 30, 2008. IGPC will make a witness available, if necessary, to address this issue. However, the record of the nomination made my NRG to Union is not within the possession or control of IGPC but is within the knowledge of NRG.

49. NRG lacked any authorization to make the nomination, and its actions directly and adversely impacted IGPC. This is a utility service quality issue as well as a contractual matter.

50. The issues are properly dealt with during the rate proceeding (EB-2010-0018). NRG's nomination of gas delivery may impact the Board's determination of when the IGPC pipeline should be included in rate base. As such, the issue is relevant to the rates proceeding as it will impact the accumulated depreciation and the amount to be included in rate base during the 2011 Test Year.

51. IGPC would note that:

- (a) the parties potentially impacted by the decisions raised by this issue are participating in this proceeding;
- (b) the issue involves rates that are currently before the Board;
- (c) the evidence and argument related to this issue will not unnecessarily delay the remainder of the proceeding.

52. Furthermore, IGPC would submit the rates proceeding is appropriate to avoid the cost, time and delay associated with a separate proceeding.

Summary

53. IGPC has disputed the prudence of certain expenditures made, and claimed, by NRG in respect of the largest single asset of NRG. Where the prudence of a transaction is called into question, the Board has an obligation to investigate the extent to which the utility's costs were prudently incurred. While IGPC has filed significant documentation regarding the costs claimed, IGPC has also stated that the concern relates to specific types of costs, costs that have been claimed but not incurred, and costs that have no documentary support.

54. The majority of the issues raised in this motion relate to the underlying costs that NRG is seeking to recover from IGPC through Board approved rates. Therefore, this rate proceeding is the proper venue for the determination of such issues.

55. The subject matter of the motion is within the exclusive jurisdiction of the Board and this rates proceeding is the right proceeding to resolve such issues.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

August 27, 2010

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Lawyers for the Moving Parties Integrated
Grain Processors Co-operative Inc. and
IGPC Ethanol Inc.

EB-2010-0018
Motion by IGPC
Filed: August 27, 2010

TAB A

Case Name:
Snopko v. Union Gas Ltd.

Between
Marie Snopko, Wayne McMurphy, Lyle Knight and Eldon Knight,
Plaintiffs (Appellants), and
Union Gas Ltd. and Ram Petroleums Ltd., Defendants
(Respondents)

[2010] O.J. No. 1335

2010 ONCA 248

317 D.L.R. (4th) 719

261 O.A.C. 1

100 O.R. (3d) 161

187 A.C.W.S. (3d) 110

Docket: C49977

Ontario Court of Appeal
Toronto, Ontario

R.J. Sharpe, J.L. MacFarland and D. Watt JJ.A.

Heard: January 22, 2010.

Judgment: April 7, 2010.

(32 paras.)

Civil litigation -- Civil procedure -- Disposition without trial -- Dismissal of action -- Lack of jurisdiction -- Judgments and orders -- Summary judgments -- Availability -- To dismiss action -- Appeal by Snopko and others from summary judgment dismissal of action dismissed -- Appellants contended their claim attacked validity of agreements relied upon by respondent and therefore fell outside ambit of section 38 of Ontario Energy Board Act or, at very least, there was a triable issue as to jurisdiction that should not have been decided on a motion for summary judgment -- Section 38 of Act conferred exclusive jurisdiction on Board to decide all issues pertaining to compensation

from operation of gas storage operation run by respondent, and various claims by appellants fell within that exclusive jurisdiction.

Natural resources law -- Oil and gas -- Royalties and rents -- Appeal by Snopko and others from summary judgment dismissal of action dismissed -- Appellants contended their claim attacked validity of agreements relied upon by respondent and therefore fell outside ambit of section 38 of Ontario Energy Board Act or, at very least, there was a triable issue as to jurisdiction that should not have been decided on a motion for summary judgment -- Section 38 of Act conferred exclusive jurisdiction on Board to decide all issues pertaining to compensation from operation of gas storage operation run by respondent, and various claims by appellants fell within that exclusive jurisdiction.

Appeal by Snopko and others from the summary judgment dismissal of their action against Union. The motion judge concluded that section 38 of the Ontario Energy Board Act conferred exclusive jurisdiction on the Board to decide all issues pertaining to compensation from the operation of the gas storage operation run by the respondent Union, and that the various claims by the appellants fell within that exclusive jurisdiction. On appeal, the appellants contended that as their claim attacked the validity of agreements relied upon by the respondent and alleged breach of contract, negligence, unjust enrichment and nuisance, it fell outside the ambit of section 38 or, at the very least, there was a triable issue as to jurisdiction that should not have been decided on a motion for summary judgment.

HELD: Appeal dismissed. In substance, all of the claims raised by the appellants fell within the language of section 38(2) as claims for "just and equitable compensation in respect of the gas or oil rights or the right to store gas", or for "just and equitable compensation for any damage necessarily resulting from the exercise of the authority given by the [designation] order". The position advanced by the appellants that the Board's jurisdiction could have been avoided by virtue of the legal characterization of the cause of action asserted would have defeated the intention of the legislature. As the issue of jurisdiction was an issue of pure law, the motion judge was correct in dealing with it by way of summary judgment.

Statutes, Regulations and Rules Cited:

Ontario Energy Board Act, S.O. 1998, c. 15, Sched. B, s. 19(1), s. 36.1(1), s. 36.1(2), s. 37, s. 38(1), s. 38(2), s. 38(3), s. 38(4)

Appeal From:

On appeal from the judgment of Justice John A. Desotti of the Superior Court of Justice, dated January 6, 2009.

Counsel:

Donald R. Good, for the appellants.

Crawford Smith, for the respondents.

The judgment of the Court was delivered by

1 R.J. SHARPE J.A.:-- This appeal involves a question as to the jurisdiction of the Ontario Energy Board (the "Board"), namely, the extent of the Board's exclusive jurisdiction to deal with legal and factual issues raised by a party claiming damages arising from the use of natural gas storage pools.

Facts

2 The appellants are landowners in a rural area near the Township of Dawn-Euphemia. Their lands form part of the Edys Mills Storage Pool, one of 19 natural gas storage pools operated by the respondent Union Gas Ltd. ("Union") as part of its integrated natural gas storage and transmission system. Natural gas storage pools are naturally occurring geological formations suitable for the injection, storage and withdrawal of natural gas.

3 In the 1970s, the appellants (to be read in this judgment where necessary as including the appellants' predecessors in title or interest) entered into petroleum and natural gas leases with Ram Petroleums Ltd. ("Ram"). Those leases granted Ram the right to conduct drilling operations on the appellants' properties in exchange for a monthly royalty payment on all oil produced. In October 1987, the appellants entered into Gas Storage Leases (the "GSLs") with Ram, which ratified the earlier gas and petroleum leases and provided the appellants with a 10% profit share of all of Ram's earnings from storage operations unless the leases were assigned to a third party. The GSLs required the appellants' consent before such an assignment could be made.

4 In August 1989, the appellants agreed to Ram's assignment of the GSLs to Union. The appellants assert that they consented to the assignment on the understanding, based on representations made by Ram, that they would receive significant crude oil royalty payments from Union under the earlier leases. However, shortly after the assignment, Union ceased oil production and all royalty payments ceased.

5 In 1992, the appellant Snopko entered into an Amending Agreement pursuant to which Union acquired the right to construct certain roadways on her property. In the Amending Agreement, Snopko acknowledged receipt of compensation in respect of these roadways while also reserving the right to make a future claim in relation to wells installed by Union.

6 On November 30, 1992, the Lieutenant Governor in Council issued a regulation designating the Edys Mills Storage Pool as a designated gas storage area. On February 1, 1993, the Board issued a Designation Order under the predecessor legislation granting Union's application for an order authorizing it to inject, store, and remove gas from the Edys Mills Storage Pool, and giving it permission to drill and construct the wells and other facilities necessary to connect the Edys Mills Storage Pool to Union's integrated natural gas storage and transmission system.

7 Between 1993 and 1999, Union paid the appellants compensation pursuant to the terms of their GSLs and, in the case of the appellant Snopko, pursuant to the 1992 Amending Agreement. Union also provided compensation to the appellants Lyle and Eldon Knight pursuant to a Roadway Agreement they had entered into, which provided for certain annual roadway payments.

8 The Lambton County Storage Association (the "LCSA"), of which the appellants were members at the relevant time, is a volunteer association representing approximately 160 landowners who own property within Union's storage system. In 2000, the LCSA brought an application before the

Board seeking "fair and equitable compensation" from Union pursuant to s. 38(3) of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Sched. B (the "Act"), which requires a party authorized to use a designated gas storage area to make "just and equitable compensation" for the right to store gas or for any damage resulting from the authority to do so.

9 Union argued that, in the light of the terms of their leases, the appellants had no standing to apply for compensation. In a Decision and Order dated September 10, 2003, the Board found that Snopko's standing was limited to issues not dealt with in the GSLs and that the appellant McMurphy had no standing.

10 Before the remaining issues were decided on the merits by the Board, the LCSA and Union settled on the question of just and equitable compensation for all claims arising between 1999-2008 that were or could have been raised at the hearing. On March 23, 2004, the Board approved this settlement by way of a Compensation Order.

11 Consistent with the terms of an undertaking given by Union to the Board, Union extended to all LCSA members who did not receive full standing an offer to be compensated on the same terms enshrined in the Compensation Order. Each of the appellants accepted. The agreements pertaining to the appellants Lyle and Eldon Knight extend to 2013.

12 On January 29, 2008, the appellants commenced this action in the Superior Court against both Ram and Union, alleging breach of contract, negligence, unjust enrichment and nuisance.

13 The appellants advance the following claims against Union:

- * *breach of contract* - the appellants claim that Union, in breach of their GSLs, has failed to properly compensate them for crop loss and other lost income arising from Union's storage operations (statement of claim, at paras. 26-27);
- * *unjust enrichment* - the appellants claim that Union has been unjustly enriched by storing gas on and in the appellants' land (statement of claim, at para. 28(b));
- * *nuisance* - the appellants claim that Union's storage operations, which have decreased the profitability of their land, caused damage to their land and decreased their enjoyment of the land, constitute a nuisance (statement of claim, at para. 36);
- * *negligence* - the appellants claim that due to Union's storage operations, oil has not been produced from the Edys Mills Storage Pool since 1993 and, as a result, the appellants have not received royalty payments since that time (statement of claim, at para. 37(c)); and
- * *termination of contract* - the appellants seek a declaration that their GSLs were terminated in 2006, along with compensation from Union on the basis that it is storing gas without a contract (statement of claim, at paras. 34-35).

14 The claim against Ram is framed in misrepresentation, negligence, breach of contract and unjust enrichment. More importantly, the appellants plead that the agreement permitting Ram to assign the GSLs should be set aside on grounds of unconscionability.

15 In September 2008, Union moved for summary judgment dismissing the action against it on several grounds, namely: (i) that the Superior Court has no jurisdiction to entertain the claim, as it falls within the exclusive jurisdiction of the Board; (ii) that the claims are statute-barred under the *Limitations Act, 2002*, S.O. 2002, c. 24, Sched. B (the "LTA"); and (iii) that the claims are barred by the doctrines of *res judicata* or abuse of process.

16 Ram took no part in the motion for summary judgment and the claims advanced against it by the appellants remain outstanding.

Legislation

17 The Act provides as follows with respect to the regulation of gas storage areas:

Gas storage areas

36.1(1) The Board may by order,

- (a) designate an area as a gas storage area for the purposes of this Act; or
- (b) amend or revoke a designation made under clause (a). 2001, c. 9, Sched. F, s. 2(2).

Transition

- (2) Every area that was designated by regulation as a gas storage area on the day before this section came into force shall be deemed to have been designated under clause (1)(a) as a gas storage area on the day the regulation came into force. 2001, c. 9, Sched. F, s. 2(2).

Prohibition, gas storage in undesignated areas

- 37. No person shall inject gas for storage into a geological formation unless the geological formation is within a designated gas storage area and unless, in the case of gas storage areas designated after January 31, 1962, authorization to do so has been obtained under section 38 or its predecessor. 1998, c. 15, Sched. B, s. 37; 2001, c. 9, Sched. F, s. 2(3).

Authority to store

38.(1) The Board by order may authorize a person to inject gas into, store gas in and remove gas from a designated gas storage area, and to enter into and upon the land in the area and use the land for that purpose. 1998, c. 15, Sched. B, s. 38(1).

Right to compensation

- (2) Subject to any agreement with respect thereto, the person authorized by an order under subsection (1),

- (a) shall make to the owners of any gas or oil rights or of any right to store gas in the area just and equitable compensation in respect of the gas or oil rights or the right to store gas; and
- (b) shall make to the owner of any land in the area just and equitable compensation for any damage necessarily resulting from the exercise of the authority given by the order. 1998, c. 15, Sched. B, s. 38(2).

Determination of amount of compensation

- (3) No action or other proceeding lies in respect of compensation payable under this section and, failing agreement, the amount shall be determined by the Board. 1998, c. 15, Sched. B, s. 38(3).

Appeal

- (4) An appeal within the meaning of section 31 of the *Expropriations Act* lies from a determination of the Board under subsection (3) to the Divisional Court, in which case that section applies and section 33 of this Act does not apply.

18 In addition, s. 19 of the Act provides as follows:

Power to determine law and fact

19.(1) The Board has in all matters within its jurisdiction authority to hear and determine all questions of law and of fact.

Disposition of the motion judge

19 The motion judge granted Union's motion for summary judgment and dismissed the claim on jurisdictional grounds. The motion judge followed the decision of Pennell J. in *Re Wellington and Imperial Oil Ltd.*, [1970] 1 O.R. 177 (H.C.J.), at pp. 183-84:

[I]n many cases where a dispute arises as to the amount of compensation, the first thing a board of arbitration has to do is to inquire what were the subsisting rights at the time the right to compensation arose; and that in some cases such inquiry would necessarily involve the interpretation of agreements in which the subsisting rights were embodied.

...

It is with reluctance that I conclude that the Legislature has taken away the *prima facie* right of a party to have a dispute determined by declaration of the Court.

20 The motion judge concluded that s. 38 conferred exclusive jurisdiction on the Board to decide all issues pertaining to compensation from the operation of the gas storage operation and that the appellants' claims fell within that exclusive jurisdiction. Accordingly, he dismissed the appellants' action.

Issue

21 While Union submits that the appellants' claims should be dismissed on several grounds, the central issue on this appeal is whether the motion judge erred in concluding that the Superior Court has no jurisdiction to entertain those claims against Union.

Analysis

22 Under the Act, the Board has broad jurisdiction to regulate the storage of natural gas, to designate an area as a gas storage area, to authorize the injection of gas into that area, and to order the person so authorized to pay just and equitable compensation to the owners of the property overlaying the storage area. Moreover, s. 38(3) provides that no civil proceeding may be commenced in order to determine that compensation.

23 The appellants concede that if their claim arose simply from an inability to agree with Union on the *amount* of compensation, s. 38(3) of the Act grants the Board exclusive jurisdiction. They submit, however, that as their claim attacks the validity of agreements relied upon by Union and alleges breach of contract, negligence, unjust enrichment and nuisance, it falls outside the ambit of s. 38 or, at the very least, there is a triable issue as to jurisdiction that should not have been decided on a motion for summary judgment.

24 I am unable to accept the appellants' submission that the legal characterization of their claims determines the issue of the Board's jurisdiction. It is the substance not the legal form of the claim that should determine the issue of jurisdiction. If the substance of the claim falls within the ambit of s. 38, the Board has jurisdiction, whatever legal label the claimant chooses to describe it. As Pennell J. stated in *Re Wellington and Imperial Oil Ltd.*, at p. 183, "whatever may be the form of the issue presented ... it is in substance a claim for compensation in respect of a gas right and damages necessarily resulting from the exercise of the authority given by virtue of the order of the Ontario Energy Board."

25 The claims advanced by the appellants in the statement of claim all arise from Union's operation of the Edys Mills Storage Pool. The claim for breach of contract asserts that Union has failed to compensate the appellants for crop loss and other lost income arising from Union's storage operations. The claim for unjust enrichment asserts that Union "is enriched by storing gas on and in the Plaintiffs' land and is enriched by having oil located in the Plaintiffs' land left in place." The nuisance claim asserts that "Union's gas storage operation unreasonably interferes with [the Plaintiffs'] enjoyment of their land." The negligence claim asserts that Union "was negligent in their gas storage operations", thereby causing harm to the appellants. Finally, the appellants alleged that Union has been storing gas without a contract.

26 In my view, in substance, these are all claims falling within the language of s. 38(2) as claims for "just and equitable compensation in respect of the gas or oil rights or the right to store gas", or for "just and equitable compensation for any damage necessarily resulting from the exercise of the authority given by the [designation] order."

27 Section 19 provides that, in the exercise of its jurisdiction, the Board has "in all matters within its jurisdiction authority to hear and determine all questions of law and of fact." This generous and expansive conferral of jurisdiction ensures that the Board has the requisite power to hear and decide all questions of fact and of law arising in connection with claims or other matters that

are properly before it. This includes, *inter alia*, the power to rule on the validity of relevant contracts and to deal with other substantive legal issues.

28 In response to the court's invitation to make written submissions on the jurisdictional issue, counsel for the Board advised us that the jurisprudence of the Board supports an expansive interpretation of its jurisdiction under its enabling statute, which would include the ability to determine the validity of compensation contracts. In *The Matter of certain applications to the Ontario Energy Board in respect of the Bentpath Pool* (1982), E.B.O. 64(1) & (2), the Board held, at p. 33, that it "does have the power, as part of its broader administrative function, to determine the validity of contracts" for the purpose of determining the appropriate compensation to be paid to a landowner under what is now s. 38 of the Act. I agree with the respondent that *Bentpath* and *Re Wellington and Imperial Oil Ltd.* supersede the Board's earlier decision in *The Matter of an Application by Union Gas Company of Canada and Ontario Natural Gas Storage to inject gas into, store gas in and remove gas from the designated gas storage area known as Dawn #156 Pool* (1962), E.B.O. 1.

29 By precluding other actions or proceedings with respect to claims falling within the ambit of s. 38(2) of the Act, s. 38(3) precludes the courts from, in effect, usurping the jurisdiction of the Board by entertaining claims that it is empowered to decide. I agree with Union's submission that, to endorse the appellants' position by holding that the Board's jurisdiction could be avoided by virtue of the legal characterization of the cause of action asserted, would defeat the intention of the legislature.

30 In my view, the motion judge did not err in concluding that this was a proper case for summary judgment. The issue of jurisdiction is an issue of pure law and the motion judge was correct in dealing with it by way of summary judgment.

31 As the appeal must be resolved on the basis that the Board has exclusive jurisdiction to determine all issues of law and of fact arising from the appellants' claim against Union, it is unnecessary for me to deal with the alternative grounds for dismissal of the claim advanced by Union.

Disposition

32 For these reasons, I would dismiss the appeal with costs to the respondent fixed at \$7306.73, inclusive of GST and disbursements.

R.J. SHARPE J.A.

J.L. MacFARLAND J.A.:-- I agree.

D. WATT J.A.:-- I agree.

cp/e/qllxr/qljxr/qljyw/qlhcs/qlced

EB-2010-0018
Motion by IGPC
Filed: August 27, 2010

TAB B

**Union Gas Ltd. v. Township of Dawn
Tecumseh Gas Storage Ltd. v. Township of Dawn**

[1977] O.J. No. 2223

15 O.R. (2d) 722

76 D.L.R. (3d) 613

2 M.P.L.R. 23

[1977] 1 A.C.W.S. 365

Ontario
High Court of Justice
Divisional Court

Keith, Maloney and Donohue, JJ.

February 22, 1977.

J. J. Robinette, Q.C., and L. G. O'Connor, Q.C., for appellant, Union Gas Limited.

P. Y. Atkinson, for appellant, Tecumseh Gas Storage Limited.

W. B. Williston, Q.C., and J. A. Campion, for respondent, Township of Dawn.

T. H. Wickett, for Ontario Energy Board.

The judgment of the Court was delivered by

1 KEITH, J.:-- Pursuant to leave granted by this Court on November 24, 1975, upon application made in accordance with s. 95(1) of the Ontario Municipal Board Act, R.S.O. 1970, c. 323, the following questions are submitted to this Court for its opinion:

- (a) Is section 4.2.3. of By-law 40 of the Township of Dawn as amended, ultra vires of the respondent municipality
- (b) Is the Ontario Municipal Board therefore without jurisdiction to approve the respondent's By-law 40 as amended including section 4.2.3. thereof

2 The Township of Dawn in the County of Lambton, a rural agricultural township in south western Ontario, passed its first comprehensive zoning by-law on June 18, 1973 (By-law 40), and amending By-law 52 on September 3, 1974.

3 These two by-laws came before the Ontario Municipal Board on April 16 and 24, 1975, for approval. In addition to the parties appearing in this Court, two other parties interested in the effect of these by-laws were represented at the Municipal Board hearings, but the Ontario Energy Board, one of the most vitally interested parties, inexplicably was not.

4 The relevant sections of the by-law, as amended, read as follows:

1.1 Section 1 -- Introduction

Whereas the Council has authority to regulate the use and nature of land, buildings and structures in the Township of Dawn by by-law subject to the approval of the Ontario Municipal Board and deems it advisable to do so.

1.2 Now therefore the Council of the Corporation of the Township of Dawn enacts as follows:

Title

2.1 This by-law shall be known as the "Zoning By-law" of the Township of Dawn.

Penalty

3.3.1. Every person who contravenes by-law is guilty of an offence and liable upon conviction to fine of not more than three hundred (300) dollars for each offence, exclusive of costs. Every such fine is recoverable under the Summary Convictions Act, all the provisions of which apply except that the imprisonment may be for a term of not more than twenty-one (21) days.

3.3.2. Where a person, guilty of an offence under this by-law has been directed to remedy any violation and is in default of doing such matter or thing required, then such matter or thing may be done at his expense, by the Corporation of the Township of Dawn and the Corporation may recover the expense incurred in doing it by action or the same may be recovered in like manner as municipal taxes.

Section 4 -- General Use and Zone Regulations

4.1 Uses Permitted.

4.1.1. No land, building or structure shall be used or occupied and no building or structure or part thereof shall be erected or altered except as permitted by the provisions of this by-law.

4.2.3 Except as limited herein nothing in this by-law shall prevent the use of any land as a right-of-way, easement or corridor for any oil, gas, brine or other liquid product pipeline and appurtenances thereto, but no appurtenances in the form of a metering, booster, dryer, stripper or pumping station, shall be constructed closer than 500 feet to any adjacent residential or commercial zone or rural residence, except as otherwise provided. All transmission pipelines to be installed from or to a production, treatment or storage site shall be constructed from or to such site to and along, in or upon a right-of-way, easement or corridor located as follows:

- (a) running northerly or southerly within 100 feet perpendicular distance from the centre line dividing the east and west halves of a concession lot;
- (b) running easterly and westerly within 100 feet perpendicular distance from a concession lot line not being a township, county or provincial road or highway;
- (c) across, but not along a township, county or provincial road or highway.

Nothing herein shall prevent the location of a local distribution gas service line upon any street, road or highway.

5 On May 20, 1975, the Ontario Municipal Board released its decision approving of By-law 40 as amended. The reasons are devoted almost exclusively to s. 4.2.3 as amended and the objections of the appellants thereto. To fully understand the approach taken by the Municipal Board, the following extracts from these reasons are quoted [4 O.M.B.R. 462 at pp. 463-6]:

The Township consists of flat agricultural land with soil rated in the Canada Land Survey as A2. The Board was advised by the representative of the Ministry of Agriculture and Food that the soil is of the Brookstone clay type which requires particular attention to drainage because the land is so flat and that this was the reason it was rated A2 rather than A1. The soil is very productive if properly drained and worked. As drainage is installed the soil responds to cash crops such as corn and soya beans. Drainage is accomplished generally by a grid system of tile drainage lines approximately 40 ft. apart throughout the whole of the Township. These feed into municipal drains which generally follow lot and concession lines and eventually drain to the south-west into the Sydenham River. An example of this method of drainage in the Township is shown on ex. 9, filed. This also indicates the position of the Union Gas Company pipeline which runs in a diagonal direction across the tile drains referred to above. Because the pipeline runs across the drains, a header line is required to direct the flow of the water into the municipal drain.

The evidence indicates that in respect of the pipeline installation on a right of way that may be 60 ft. wide or more, and the header line parallel to it, the farmer in using his equipment must gear down each time before crossing these installations rather than continuing in the usual sweep of the farm land. This time-consuming and inconvenient operation is necessary every time the farmer crosses the pipeline easement area. In addition, the evidence clearly indicated

that upon excavation for the pipeline, the soil composition is disturbed and impacted so that growth is hampered for several years until the soil is returned to its normal state. The company indicated in evidence that a new method for laying lines and conserving the topsoil for future development had been devised. This may alleviate the problems, but only time will tell.

.

The Union Gas Limited (hereinafter to be referred to as "the Company") operates in the south-west part of the Province and has important connections with Consumers Gas Company of Toronto and other systems for whom it stores gas in the summer months for delivery in the winter. The relationship of the Union Gas Limited operation to other systems in the Province are well illustrated on ex. 33, filed. The hub of their system is in Dawn Township from which all the distribution and transmission lines radiate. The importance of the Company to the municipality is illustrated by ex. 26 filed, which shows that for the years 1970 to 1974 inclusive, the Company paid taxes which formed a significant portion of the total Township levy varying from 24.3% to 30.6% in those years.

The by-law provides that transmission lines are to be laid in corridors 200 ft. wide running along the half lot lines in a north-south direction and along concession lines in an east-west direction, "across but not along a township, county or provincial road or highway", s. 4.2.3.

This corridor concept was the chief source of objection registered by the Company which in evidence indicated that the corridor method of laying their lines would be very costly. This was particularly so when some of the existing lines are now laid in a diagonal direction. When new looping lines are required they are now planned to run generally parallel to the existing lines. If they were to follow the corridors the length of line would be increased, in some cases the diameter of the pipe would have to be greater, and perhaps they might also require additional compression facilities. The additional costs were shown to be large and would result in increased costs to the public.

The Board must weigh the possibility of incurring these increased costs against the need for protecting the farm industry against unnecessary and unplanned disturbance in future years. There was ample evidence to indicate that the need for pipeline installations would increase in the future. There was also evidence to indicate that about 50% of the existing lines are already built in a north-south and east-west direction and that the corridor concept has therefore in fact found practical use in the past (exs. 7 and 27). It was the argument of counsel for the applicant that once the corridors were established the extra cost for looping will not be as significant.

Argument of counsel for the Tecumseh Gas Storage Limited was that the use of land for pipelines was not in fact a use of land as envisaged under s. 35(1)1 of the Planning Act, R.S.O. 1970, c. 349. To bolster this argument counsel referred the Board to the case of *Pickering Twp. v. Godfrey*, [1958] O.R. 429, 14 D.L.R. (2d) 520, [1958] O.W.N. 230. The Board finds that the instant case can be distinguished from the quoted case which dealt specifically with the making of a quarry or gravel pit as a "land use". In addition, the Board finds that the use of land for installation of a pipeline fits the definition arrived at in the case above quoted [at p. 437] as meaning: "the employment of the property for enjoyment, revenue or profit without in any way otherwise diminishing or impairing the property itself."

The second major argument of counsel was that the municipality has no jurisdiction to deal with pipeline installation because of the existence of the Ontario Energy Board Act, R.S.O. 1970, c. 312, which creates the Ontario Energy Board and gives it jurisdiction to determine the route for a transmission line, production line, distribution line or a station (s. 40(1)). The Board was also referred to s. 57 of the Ontario Energy Board Act which reads as follows:

"57(1) In the event of conflict between this Act and any other general or special Act, this Act prevails.

(2) This Act and the regulations prevail over any by-law passed by a municipality."

In the opinion of the Board the above section provides only for the event of a conflict between the Ontario Energy Board Act and any other Act. It does not, nor can it be interpreted to mean that no other Act can be effective. It does not in the opinion of the Board prohibit the municipality from dealing with those matters referred to in s. 35 of the Planning Act.

The major considerations of the Ontario Energy Board are not directed towards planning. It is the responsibility and duty of Council to plan for the proper and orderly development of the municipality having regard to the health, safety, convenience and welfare of the present and future inhabitants of the municipality all within the framework of the Planning Act.

The Board is of the opinion that zoning by-laws must provide for all ratepayers a degree of certainty for reasonable stability. This can be accomplished by passing restricted area by-laws for land use on a planning basis with proper and responsible study and public input. The evidence indicates that the municipality has indeed acted in a reasonable and responsible manner to achieve this end. The consideration for the farming community which forms a large proportion of the

municipality is a proper and reasonable one. There is no certainty as to where the Ontario Energy Board may finally decide to place the pipelines required by the criteria they have and will develop. They will, however, have the legislative document before them giving the corporate expression of the municipality to indicate where, on the basis of planning considerations, the pipelines should go. The Ontario Energy Board will then, on the basis of its criteria and the evidence heard, be in a position to give its decision on the ultimate route chosen.

In the meantime, the municipality will by legislation inform all its ratepayers where the pipelines should be laid. The farmer will be able to proceed with the least amount of interference both during construction of pipelines on or near his lands and indeed in his everyday work. The pipeline companies will benefit from this as well. With less interference to the farmer there should be fewer difficulties experienced both in the installation of the pipelines and the servicing and maintenance of the pipelines and the tile drain systems.

6 By-law 40 as amended was enacted by the Council of the respondent in accordance with the powers given to municipal councils by s. 35 of the Planning Act, R.S.O. 1970, c. 349. The relevant portions of that section read as follows:

35(1) By-laws may be passed by the councils of municipalities:

1. For prohibiting the use of land, for or except for such purposes as may be set out in the by-law within the municipality or within any defined area or areas or abutting on any defined highway or part of a highway.
2. For prohibiting the erection or use of buildings or structures for or except for such purposes as may be set out in the by-law within the municipality or within any defined area or areas or upon land abutting on any defined highway or part of a highway.

7 Section 46 of the Planning Act is identical with s. 57(1) of the Ontario Energy Board Act, R.S.O. 1970, c. 312, quoted in the reasons of the Ontario Municipal Board. Fortunately, s. 46 of the Planning Act has no equivalent to s. 57(2) of the Ontario Energy Board Act or the Court might well have been forced to assert that its views prevailed over one or other or both of the statutes.

8 The appellant Union Gas operates an extensive network of natural gas transmission lines throughout south-western Ontario delivering this energy to customers, both wholesale and retail, extending from Windsor on the south-west, to Hamilton and Trafalgar on the east and Goderich and Owen Sound on the north.

9 It supplies scores of city, town and village municipalities in this extensive and heavily-populated area and its lines traverse 16 counties which contain upwards of 140 township municipalities. The municipal councils of each of these has the same power under the Planning Act to pass zoning by-laws.

10 The principal source of the supply of natural gas to Union Gas is the Trans-Canada pipeline which enters the southern part of Ontario in Lambton County just south of Sarnia and connects with a major compressor station of Union Gas in the Township of Dawn. There are four other major compressor stations operated by this appellant, one just west of London, another at Trafalgar between Hamilton and Toronto, one near Simcoe and the fourth south of Chatham. These stations are essential to maintain pressure throughout the pipeline network.

11 In addition, Union Gas lines serve as feeders for companies like the Consumers' Gas Company serving Metropolitan Toronto and another extensive area of Ontario.

12 In addition, a significant portion of the source of natural gas transmitted by Union Gas, comes from local wells found in south-western Ontario, a number of which are located in the Township of Dawn.

13 The company also maintains reserves of gas in natural underground storage fields, some but by no means all of which are also located in the Township of Dawn.

14 The local wells and the storage fields must all be connected to the distribution lines and the compressor stations.

15 The second appellant, Tecumseh Gas Storage Limited, is equally affected by the impugned by-law, but no detailed description of its operations was presented to the Court.

16 I have stressed these points to illustrate firstly how insignificant are the local problems of the Township of Dawn when viewed in the perspective of the need for energy to be supplied to those millions of residents of Ontario beyond the township borders, and to call to mind the potential not only for chaos but the total frustration of any plan to serve this need if by reason of powers vested in each and every municipality by the Planning Act, each municipality were able to enact by-laws controlling gas transmission lines to suit what might be conceived to be local wishes. We were informed that other township councils have only delayed enacting their own by-laws pending the outcome of this appeal.

17 At the conclusion of the argument of this appeal I informed counsel, on behalf of the Court, that the Appeal Book had been endorsed as follows:

The appeal will be allowed with costs. In view of the importance of the issue, which is raised in this appeal insofar as it relates specifically to the Energy Board's jurisdiction as challenged by a municipal council, and in deference to the lengthy reasons delivered by the Ontario Municipal Board, the Court will in due course, deliver considered reasons which will be the basis of the formal order of the Court.

18 It is not necessary for my purpose to trace the history and origins of the present Ontario Energy Board Act as amended. Reference to s. 58 of the present Act will suffice to show that this industry has developed over many years under provincial legislation. Section 58 reads as follows:

58. Every order and decision made under,

(a) The Fuel Supply Act, being chapter 152 of the Revised Statutes of Ontario, 1950;

(b) The Natural Gas Conservation Act, being chapter 251 of the Revised Statutes of Ontario, 1950;

(c) The Well Drillers Act, being chapter 423 of the Revised Statutes of Ontario, 1950;

(d) The Ontario Fuel Board Act, 1954;

(e) The Ontario Energy Board Act, 1960;

(f) The Ontario Energy Act, being chapter 271 of the Revised Statutes of Ontario, 1960; or

(g) The Ontario Energy Board Act, 1964.

that were in force on the day the Revised Statutes of Ontario, 1970 is proclaimed in force shall be deemed to have been made by the Board under this Act.

19 Pursuant to s. 2 [am. 1973, c. 55, s. 2] of the Act, the Ontario Energy Board is composed of not less than five members appointed by the Lieutenant-Governor in Council. It has an official seal, and its orders which must be judicially noticed are not subject to the Regulations Act, R.S.O. 1970, c. 410.

20 By s. 14, many of the powers of the Supreme Court of Ontario are vested in this Board "for the due exercise of its jurisdiction".

21 Section 18 is important having regard to the penalty provisions of the township by-law quoted above. That section reads as follows:

18. An order of the Board is a good and sufficient defence to any action or other proceeding brought or taken against any person in so far as the act or omission that is the subject of such action or other proceeding is in accordance with the order.

22 Section 19 [am. 1973, c. 55, s. 5(1)] vests power in the Board to fix rates and other charges for the sale, transmission, distribution and storage of natural gas.

23 Under s. 23 [am. *ibid.*, s. 8] the Board is charged with responsibility to issue permits to drill gas wells.

24 Section 25 prohibits any company in the business of transmitting, distributing or storing gas from disposing of its plant by sale or otherwise without leave, and such leave cannot be granted without, *inter alia*, a public hearing.

25 Section 30 provides that any order of the Board may be filed with the Registrar of the Supreme Court and is enforceable in the same way as a judgment or order of the Court.

26 Part II of the Act deals specifically with pipe lines and I quote s. 38(1), s. 39, s. 40(1), (2), (3), (8), (9) and (10), s. 41(1) and (3), and s. 43(1) and (3):

38(1) No person shall construct a transmission line without first obtaining from the Board an order granting leave to construct the transmission line.

.....

39. Any person may, before he constructs a production line, distribution line or station, apply to the Board for an order granting leave to construct the production line, distribution line or station.

40(1) An applicant for an order granting leave to construct a transmission line, production line, distribution line or a station shall file with his application a map showing the general location of the proposed line or station and the municipalities, highways, railways, utility lines and navigable waters through, under, over, upon or across which the proposed line is to pass.

(2) Notice of the application shall be given by the applicant in such manner as the Board directs and shall be given to the Department of Agriculture and Food, the Department of Municipal Affairs, the Department of Highways and such persons as the Board may direct.

(3) Where an interested person desires to make objection to the application, such objection shall be given in writing to the applicant and filed with the Board within fourteen days after the giving of notice of the application and shall set forth the grounds upon which such objection is based.

.....

(8) Where after the hearing the Board is of the opinion that the construction of the proposed line or station is in the public interest, it may make an order granting leave to construct the line or station.

(9) Leave to construct the line or station shall not be granted until the applicant satisfies the Board that it has offered or will offer to each landowner an agreement in a form approved by the Board.

(10) Any person to whom the Board has granted leave to construct a line or station, his officers, employees and agents, may enter into or upon any land at the intended location of any part of the line or station and may make such surveys and examinations as are necessary for fixing the site of the line or station, and, failing agreement, any damages resulting therefrom shall be determined in the manner provided in section 42.

41(1) Any person who has leave to construct a line or station under this Part or a predecessor of this Part may apply to the Board for authority to expropriate land for the purposes of the line or station, and the Board shall thereupon set a date for the hearing of such application, and such date shall be not fewer than fourteen days after the date of the application, and upon such application the applicant shall file with the Board a plan and description of the land required, together with the names of all persons having an apparent interest in the land.

.....

(3) Where after the hearing the Board is of the opinion that the expropriation of the land is in the public interest, it may make an order authorizing the applicant to expropriate the land.

.....

43(1) Any person who has leave to construct a line may apply to the Board for authority to construct it upon, under or over a highway, utility line or ditch.

.....

(3) Without any other leave and notwithstanding any other Act, where after the hearing the Board is of the opinion that the construction of the line upon, under or over a highway, utility line or ditch, as the case may be, is in the public interest, it may make an order authorizing the applicant so to do upon such terms and conditions as it considers proper.

27 Finally, with respect to the statute itself, it may not be amiss to again quote s. 57:

57(1) In the event of conflict between this Act and any other general or special Act, this Act prevails.

(2) This Act and the regulations prevail over any by-law passed by a municipality.

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

29 These are all matters that are to be considered in the light of the general public interest and not local or parochial interests. The words "in the public interest" which appear, for example, in s. 40(8), s. 41(3) and s. 43(3), which I have quoted, would seem to leave no room for doubt that it is the broad public interest that must be served. In this connection it will be recalled that s. 40(1) speaks of the requirement for filing a general location of proposed lines or stations showing "the

municipalities, highways, railways, utility lines and navigable waters through, under, over, upon or across which the proposed line is to pass".

30 Persons affected must be given notice of any application for an order of the Energy Board and full provision is made for objections to be considered and public hearings held.

31 In the final analysis, however, it is the Energy Board that is charged with the responsibility of making a decision and issuing an order "in the public interest".

32 While the result in the case of *Campbell-Bennett Ltd. v. Comstock Midwestern Ltd. and Trans Mountain Oil Pipe Line Co.*, [1954] S.C.R. 207, [1954] 3 D.L.R. 481, 71 C.R.T.C. 291, might perhaps be different today, having regard to the facts of that case and subsequent federal legislation, the principles enunciated are valid and applicable to the case before this Court.

33 In the *Campbell-Bennett* case, the defendant Trans Mountain Pipe Line was incorporated by a special Act of the Parliament of Canada to construct interprovincial pipe lines. During the course of construction of a pipe line from Acheson, Alberta to Burnaby, British Columbia, some work was done in British Columbia by the plaintiff for which it claimed to be entitled to a mechanics' lien on the works in British Columbia, and to enforce that lien under the British Columbia Mechanics' Lien Act by seizing and selling a portion of the pipe line.

34 At p. 212 S.C.R., p. 486 D.L.R., Kerwin, J. (as he then was), on behalf of himself and Fauteux, J. (as he then was), said:

The result of an order for the sale of that part of Trans Mountain's oil pipe line in the County of Yale would be to break up and sell the pipe line piecemeal, and a provincial legislature may not legally authorize such a result.

35 Then at pp. 213-5 S.C.R., pp. 487-9 D.L.R., Rand, J., on behalf of himself and the other three members of the Court, said:

The respondent, Trans Mountain Oil Pipe Line Company, was incorporated by Dominion statute, 15 Geo. VI, c. 93. It was invested with all the "powers, privileges and immunities conferred by" and, except as to provisions contained in the statute which conflicted with them, was made subject to all the "limitations, liabilities and provisions of any general legislation relating to pipe lines for the transportation of oil" enacted by Parliament. Within that framework, it was empowered to construct or otherwise acquire, operate and maintain interprovincial and international pipe lines with all their appurtenances and accessories for the transportation of oil.

The Pipe Lines Act, R.S.C. 1952, c. 211, enacted originally in 1949, is general legislation regulating oil and gas pipe lines and is applicable to the company. By its provisions the company may take land or other property necessary for the construction, operation or maintenance of its pipe lines, may transport oil and may fix tools therefor. The location of its lines must be approved by the Board of Transport Commissioners and its powers of expropriation are those provided by the Railway Act. By s. 38 the Board may declare a company to be a common

carrier of oil and all matters relating to traffic, tools or tariffs become subject to its regulation. S. 10 provides that a company shall not sell or otherwise dispose of any part of its company pipe line, that is, its line held subject to the authority of Parliament, nor purchase any pipe line for oil transportation purposes, nor enter into any agreement for amalgamation, nor abandon the operation of a company line, without leave of the Board; and generally the undertaking is placed under the Board's regulatory control.

Is such a company pipe line so far amenable to provincial law as to subject it to statutory mechanics' liens The line here extends from a point in Alberta to Burnaby in British Columbia. That it is a work and undertaking within the exclusive jurisdiction of Parliament is now past controversy:

Winner v. S.M.T. (Eastern) Limited, [1951] S.C.R. 887, affirmed, with a modification not material to this question, by the Judicial Committee but as yet unreported. The lien claimed is confined to that portion of the line within the County of Yale, British Columbia. What is proposed is that a lien attaches to that portion of the right of way on which the work is done, however small it may be, or wherever it may be situated, and that the land may be sold to realize the claim. In other words, an interprovincial or international work of this nature can be disposed of by piecemeal sale to different persons and its undertaking thus effectually dismembered.

In the light of the statutory provisions creating and governing the company and its undertaking, it would seem to be sufficient to state such consequences to answer the proposition. The undertaking is one and entire and only with the approval of the Board can the whole or, I should say, a severable unit, be transferred or the operation abandoned. Apart from any question of Dominion or Provincial powers and in the absence of clear statutory authority, there could be no such destruction by means of any mode of execution or its equivalent. From the earliest appearance of such questions it has been pointed out that the creation of a public service corporation commits a public franchise only to those named and that a sale under execution of property to which the franchise is annexed, since it cannot carry with it the franchise, is incompatible with the purpose of the statute and incompetent under the general law. Statutory provisions, such as s. 152 of the Railway Act, R.S.C. (1952) c. 234, have modified the application of the rule, but the sale contemplated by s. 10 of the Pipe Lines Act is sale by the company, not one arising under the provisions of law and in a proceeding in invitum. The general principle was stated by Sir Hugh M. Cairns, L.J. in *Gardner v. London, Chatham and Dover Railway* (1867), L.R. 2 Ch. 201 at p. 212:--

"When Parliament, acting for the public interest, authorizes the construction and maintenance of a railway, both as a highway for the public, and as a road on which the company may themselves become carriers of passengers and goods, it confers powers and imposes duties and responsibilities of the largest and most

important kind, and it confers and imposes them upon the company which Parliament has before it, and upon no other body of persons. These powers must be executed and these duties discharged by the company. They cannot be delegated or transferred."

In the same judgment and speaking of the effect of an authorized mortgage of the "undertaking" he said:--

"The living and going concern thus created by the Legislature must not, under a contract pledging it as security, be destroyed, broken up, or annihilated. The tolls and sums of money ejusdem generis--that is to say, the earnings of the undertaking--must be made available to satisfy the mortgage; but, in my opinion, the mortgagees cannot; under their mortgages, or as mortgagees--by seizing, or calling on this Court to seize, the capital, or the lands, or the proceeds of sales of land, or the stock of the undertaking--either prevent its completion, or reduce it into its original elements when it has been completed."

36 Several further and compelling submissions were made to the Court on behalf of the appellants, but having regard to the first submission which is irresistible and of fundamental importance, I do not think it necessary to deal with all of the arguments advanced.

37 Reference should be made, however, to two of them. First, attention should be directed to "An Act to regulate the Exploration and Drilling for, and the Production and Storage of Oil and Gas", 1971 (Ont.), c. 94, commonly referred to as the Petroleum Resources Act.

38 The objects of this legislation can be readily understood by reference to s. 17(1) of the statute, which reads as follows:

17(1) The Lieutenant Governor in Council may make regulations,

- (a) for the conservation of oil or gas;
- (b) prescribing areas where drilling for oil or gas is prohibited;
- (c) prescribing the terms and conditions of oil and gas production leases and gas storage leases or any part thereof, excluding those relating to Crown lands, and providing for the making of statements or reports thereon;
- (d) regulating the location and spacing of wells;
- (e) providing for the establishment and designation of spacing units and regulating the location of wells in spacing units and requiring the joining of the various interests within a spacing unit or pool;

(f) prescribing the methods, equipment and materials to be used in boring, drilling, completing, servicing, plugging or operating wells;

(g) requiring operators to preserve and furnish to the Department drilling and production samples and cores;

(h) requiring operators to furnish to the Department reports, returns and other information;

(i) requiring dry or unplugged wells to be plugged or replugged, and prescribing the methods, equipment and materials to be used in plugging or replugging wells;

(j) regulating the use of wells and the use of the subsurface for the disposal of brine produced in association with oil and gas drilling and production operations.

39 The importance of this Act is reflected in s. 18 which reads as follows:

18(1) In the event of conflict between this Act and any other general or special Act, this Act, subject only to The Ontario Energy Board Act [1964], prevails.

(2) This Act and the regulations prevail over any municipal by-law.

40 Similarly, although it was not referred to in argument, the Energy Act, R.S.O. 1970, c. 148 [since repealed by 1971, Vol. 2, c. 44, s. 32, and superseded by the Energy Act, 1971, and the Petroleum Resources Act, 1971], deals with other aspects of the natural gas and oil industry. The objects of the legislation are set out in s. 12(1) which I need not quote, but again s. 13 of this Act is identical in its wording to s. 18 of the Petroleum Resources Act, 1971, quoted above.

41 The second of the additional submissions to which reference should be made is based on a cardinal rule for the interpretation of statutes and expressed in the maxim *generalia specialibus non derogant*. For a discussion of the effect of this rule I will only refer to the case of *City of Ottawa v. Town of Eastview et al.*, [1941] S.C.R. 448 commencing at p. 461 [1941] 4 D.L.R. 65 at p. 75, 53 C.R.T.C. 193, and to the Dictionary of English Law (Earl Jowitt), at p. 862.

42 In the case before this Court, it is clear that the Legislature intended to vest in the Ontario Energy Board the widest powers to control the supply and distribution of natural gas to the people of Ontario "in the public interest" and hence must be classified as special legislation.

43 The Planning Act, on the other hand, is of a general nature and the powers granted to municipalities to legislate with respect to land use under s. 35 of that Act must always be read as being subject to special legislation such as is contained, for example, in the Ontario Energy Board Act, the Energy Act and the Petroleum Resources Act, 1971.

44 In the result, therefore, and in response to the questions with respect to which leave to appeal was granted, this Court certifies to the Ontario Municipal Board:

- (a) Section 4.2.3. of By-law 40 as amended, of the Township of Dawn is ultra vires the said municipality, and
- (b) The Ontario Municipal Board therefore is without jurisdiction to approve the said by-law as amended in its present form by reason of section 4.2.3. thereof.

45 This Court further certifies that should the Ontario Municipal Board see fit to exercise the powers vested in it by s. 87 of the Ontario Municipal Board Act, the said By-law 40, as amended, may be approved after deleting from s. 4.2.3. the words "Except as limited herein" at the commencement of the said section and all the words after the word "thereto" in the fourth line of the said by-law as printed down to and including the words "road or highway" in subcl. (c) of the said s. 4.2.3., so that s. 4.2.3. as so approved would read:

Nothing in this by-law shall prevent the use of any land as a right-of-way, easement or corridor for any oil, gas, brine or other liquid product pipeline and appurtenances thereto.

Nothing herein shall prevent the location of a local distribution gas service line upon any street, road or highway.

46 The appellants and the Ontario Energy Board are entitled to their costs of this appeal.

allowed.

Appeal

EB-2010-0018
Motion by IGPC
Filed: August 27, 2010

TAB C

1985 CarswellOnt 390, 2 C.P.C. (2d) 226, 51 O.R. (2d) 333, 15 Admin. L.R. 86 at 115, 19 D.L.R. (4th) 753, (sub nom. Ontario (Energy Board), Re) 11 O.A.C. 26, 15 Admin. L.R. 115

▷

1985 CarswellOnt 390, 2 C.P.C. (2d) 226, 51 O.R. (2d) 333, 15 Admin. L.R. 86 at 115, 19 D.L.R. (4th) 753, (sub nom. Ontario (Energy Board), Re) 11 O.A.C. 26, 15 Admin. L.R. 115

Reference re Ontario Energy Board Act

RE THE ONTARIO ENERGY BOARD ACT

Ontario Supreme Court, Divisional Court

Osler, J. Holland and Rosenberg JJ.

Heard: April 21 and 22, 1985

Judgment: June 28, 1985

Docket: No. 76/85

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Counsel: *Andrew J. Roman* and *David Grader, Q.C.*, for Ontario Energy Board.

David I. Poch, for Energy Probe, intervenor.

Jeffery Davies, for Association of Major Power Consumers, intervenor.

Joseph M. Steiner, for Northern Central Gas Corp., intervenor.

Bruce W. Cameron for Northern Ontario Municipalities, intervenor.

Burton Kellock, Q.C., Union Gas, intervenor.

Eva B. Ligeti, for Canadian Environmental Law Association, intervenor.

Benjamin Zarnett, for Ontario Municipal Electric Association, intervenor.

F.D. Cass, for Consumers Gas Co., intervenor.

Bruce Campbell and *Laura Formosa*, for Ontario Hydro, intervenor.

J.E. Sexton, Q.C., for Regional Municipality of Hamilton-Wentworth, intervenor.

H. Turkstra and *J. Grahek*, for Hamilton-Wentworth Save the Valley Ctee. and for Limeridge Property Owners Interest Group, intervenors.

1985 CarswellOnt 390, 2 C.P.C. (2d) 226, 51 O.R. (2d) 333, 15 Admin. L.R. 86 at 115, 19 D.L.R. (4th) 753, (sub nom. Ontario (Energy Board), Re) 11 O.A.C. 26, 15 Admin. L.R. 115

Subject: Civil Practice and Procedure; Public

Practice --- Parties --- Adding or substituting parties --- Adding party on own motion.

Parties --- Adding and substituting parties --- Application to intervene --- Appellate Court having jurisdiction to grant leave to intervene where Ontario Energy Board stated case to Court --- Ont. Rule of Civil Procedure, r. 13.01.

The Ontario Energy Board stated a case to the Court to ascertain whether the Ontario Energy Board Act would permit the Lieutenant Governor in Council to make regulations enabling the Board to grant costs in advance or to fund a proposed applicant or intervenor. A large number of persons and organizations applied to be added as parties. Energy Probe and the Canadian Environmental Law Association applied to intervene as friends of the Court. There was no lis between the parties but the question actually or potentially affected many people and organizations within Ontario.

Held:

The motions to be added as parties and to be heard as friends of the Court were granted.

On a matter of such obvious importance to all those who had occasion to appear before the Energy Board, it would be appropriate to add those parties who had applied. Ontario Rules of Civil Procedure, r. 13.01 permits the Court to take that step. Paragraph (2) of the Rule, with its reference to "pleadings and discoveries", gives both the trial and the appellate Courts the right to add persons as parties. The fact that a proceeding has gone beyond the stage of pleadings and discovery does not deprive an appellate Court of the right to add interested parties as provided in r. 13.01(1)(a).

Cases considered:

Hamilton-Wentworth v. Hamilton-Wentworth Save the Valley Ctee., (1985), 2 C.P.C. (2d) p. 117 ante.

Statutes considered:

Ontario Energy Act, R.S.O. 1980, c. 332.

Rules considered:

Ont. Rules of Civil Procedure, r. 13.01(1)(a), (2).

Additional reasons to MOTIONS to be added as parties and as friends of the Court.

Per curiam:

1 In this case, the Ontario Energy Board stated a case before us for the sake of ascertaining whether the Ontario Energy Board Act, R.S.O. 1980, c. 332, would permit the Lieutenant Governor in Council to make regulations enabling the Board to grant costs in advance, or, as sometimes put, to fund a proposed applicant or intervenor.

2 The stated case followed quickly upon a hearing at which the Board had invited submissions from interested persons and organizations on this subject. That hearing was apparently well attended, but, rather than seeking a consensus or relying upon its own judgment as to the views of the parties there represented, the Board decided to bring this application.

1985 CarswellOnt 390, 2 C.P.C. (2d) 226, 51 O.R. (2d) 333, 15 Admin. L.R. 86 at 115, 19 D.L.R. (4th) 753, (sub nom. Ontario (Energy Board), Re) 11 O.A.C. 26, 15 Admin. L.R. 115

3 In the result, quite a large number of persons and organizations applied to be added as parties or as friends of the Court.

4 Unlike the Hamilton-Wentworth case, there was, strictly speaking, no lis between parties in the present application. On the other hand, a question affecting, actually or potentially, many people and organizations within Ontario was directly addressed, and it appeared to us that, within whatever limits our discretion may have, it was desirable to hear from a wide range of interested parties.

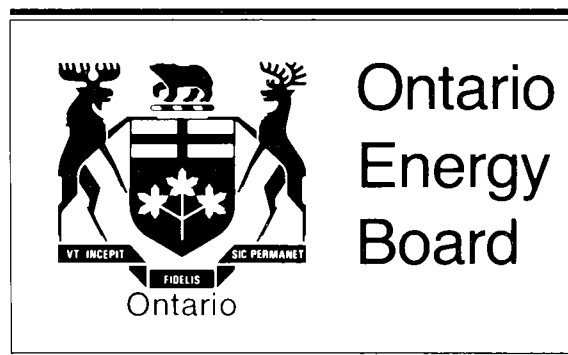
5 After hearing argument as to how we should proceed, we were persuaded that on a matter of such obvious importance to all those who had occasion to appear before the Energy Board it would be appropriate to give leave to those who had applied to become parties to be added, with the resulting rights, including the right to apply for leave to appeal. Notwithstanding the doubt referred to in our reasons in the Hamilton-Wentworth case, it seems to us that r. 13.01 permits this Court to take that step. We read para. (2) of that Rule, with its reference to "pleadings and discovery", as giving the Court, trial or appellate, the right to add persons as parties. The right to make an order respecting pleadings and discovery clarifies the Court's power to do whatever is necessary to deal with the matter. If a proceeding has gone beyond the stage of pleadings and discovery, no such order is necessary, but that fact does not, in our view, deprive an Appellate Court, the Divisional Court or the Court of Appeal, of the right to add interested parties, as provided in r. 13.01(1)(a). Accordingly, we gave leave to intervene as parties to all those who sought it and, in addition, we permitted Energy Probe and the Canadian Environmental Law Association to intervene and be heard as friends of the Court. These two organizations are frequently interested in matters that come on before the Ontario Energy Board and made knowledgeable submissions that were relevant to our deliberations.

Motions granted.

END OF DOCUMENT

EB-2010-0018
Motion by IGPC
Filed: August 27, 2010

TAB D



In the matter of
a hearing respecting
contract carriage arrangements
on
The Consumer's Gas Company Ltd.'s,
I.C.G. Utilities (Ontario) Ltd.'s,
and
Union Gas Limited's
Ontario Distribution Systems

E.B.R.O. 410 - 11

E.B.R.O. 411 - 11

E.B.R.O. 412 - 11

REASONS FOR DECISION

Volume I

REASONS FOR DECISION

E.B.R.O. 410-II
E.B.R.O. 411-II
E.B.R.O. 412-II

IN THE MATTER OF the Ontario Energy
Board Act, R.S.O. 1980, Chapter 332;

AND IN THE MATTER OF subsection 13(5)
and subsection 19 of the said Act;

AND IN THE MATTER OF a hearing to
inquire into, hear and determine certain
matters relating to contract carriage
arrangements on The Consumers' Gas
Company Ltd.'s, ICG Utilities (Ontario)
Ltd's and Union Gas Limited's Ontario
distribution systems.

BEFORE:

R.W. Macaulay, Q.C.
Chairman

J.C. Butler
Vice-Chairman

D.A. Dean
Member

M. Jackson
Member

C.A. Wolf, Jr.
Member

March 23, 1987

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TABLE OF CONTENTS

VOLUME I

	PAGE
1. INTRODUCTION	
Overview	1/ 1
The Hearings	1/ 2
Background	1/ 5
2. NATURAL GAS MARKET AND PRICES	
Introduction	2/ 1
A Competitive Market	2/ 2
The Board's Findings	2/ 4
Access to Gas Supply	2/ 5
Access to Transportation	2/ 5
The Board's Findings	2/ 6
Access to Market Information	2/ 7
The Board's Findings	2/ 7
Reregulation	2/ 8
The Board's Findings	2/10
3. ISSUES	
A. The Brokers	
Introduction	3/ 2
Definition of a Gas Brokers	3/ 2
Core/Non-Core	3/ 3
Contracting Directly with an LDC	3/ 3
Positions of the Parties	3/ 4
The Board's Findings	3/ 9
Broker Operation and Regulation	3/ 9
in Ontario	
Positions of the Parties	3/10
The Board's Findings	3/15
B. Bundled versus Unbundled Rates	
Introduction	3/16
Positions of the Parties	3/17
The Board's Findings	3/21

ISBN 0-7729-2239-X

	PAGE
C. Distance-Based/Postage Stamp/Value of Service Rates	
Introduction	3/23
Positions of the Parties	3/23
The Board's Findings	3/26
D. Group Billing and Multiple Location Billing	
Introduction	3/28
Positions of the Parties	3/28
The Board's Findings	3/31
E. Demand Charges	
Introduction	3/33
Positions of the Parties	3/34
The Board's Findings	3/39
F. T-Rate Criteria	
Introduction	3/41
T-Service Contracts	
Positions of the Parties	3/41
The Board's Findings	3/45
Minimum Volume	
Introduction	3/46
Positions of the Parties	3/46
The Board's Findings	3/48
Length of Contract Term	
Introduction	3/48
Position of the Parties	3/49
The Board's Findings	3/51
Customer's Obligation to Deliver	
Introduction	3/52
Positions of the Parties	3/53
The Board's Findings	3/56
Indemnification Provisions	
Introduction	3/56
Positions of the Parties	3/57
The Board's Findings	3/58
Capacity Interruptible Service	
Introduction	3/58
Positions of the Parties	3/58
The Board's Findings	3/59

	PAGE
Minimum Bill	
Introduction	3/60
Positions of the Parties	3/60
The Board's Findings	3/62
Delivery Points	
Introduction	3/62
Positions of the Parties	3/63
The Board's Findings	3/65
Classes of Service and Priority	
Introduction	3/65
Positions of the Parties	3/66
The Board's Findings	3/68
G. Diversions	
Introduction	3/69
Positions of the Parties	3/69
The Board's Findings	3/72
H. Security of Supply	
Introduction	3/74
Positions of the Parties	3/74
The Board's Findings	3/78
I. Storage	
Introduction	3/80
Positions of the Parties	3/80
The Board's Findings	3/84
J. Variation Accounts	
Introduction	3/85
Positions of the Parties	3/85
The Board's Findings	3/90
K. Separation of Marketing and Transportation Functions	
Introduction	3/91
Positions of the Parties	3/92
The Board's Findings	3/95
L. Affiliate Transactions	
Introduction	3/97
Positions of the Parties	3/97
The Board's Findings	3/99

	PAGE
4.	
LEGAL MATTERS	
A. The Board's Jurisdiction to Control the Operation of Brokers	
Introduction	4/ 2
The Legislative Scheme	4/ 2
A Broker is a Supplier of Gas	4/ 3
The Source of The Municipal By-Law Requirement	4/ 7
The Municipal By-Law Requirement	4/ 9
Certificate of Public Convenience and Necessity	4/12
Brokers and Section 54 of the Public Utilities Act	4/15
Are "Direct Purchasers" Suppliers	4/17
The Section 19 OEB Act Order Requirement	4/19
B. Compelling Service and Approval of Contracts	
Introduction	4/22
The Board's Opinion	4/23
Why the OEB May Compel Service and Approve Contracts	4/24
C. Assignment of Contracts	4/39
D. Conclusion and Proposals for Legislative Change	4/40
5.	
TIMING	
Introduction	5/ 1
Positions of the Parties	5/ 1
The Board's Findings	5/ 5
6.	
COSTS	
Introduction	6/ 1
Positions of the Parties	6/ 1
The Board's Findings	6/ 2
7.	
COMPLETION OF PROCEEDINGS	7/ 1

APPENDICES

VOLUME II

- A. Agreement on Natural Gas Markets and Prices
- B. Backgrounder to the Agreement
- C. News Release by the Honourable Vincent G. Kerrio on December 3, 1985
- D. Significance of Natural Gas to Ontario's Economy
- E. The Transmission and Distribution of Natural Gas
- F. Description of Natural Gas Systems
- G. The Public Interest and The Public Utility Concept
- H. List of Active Participants in the Main Hearing (Excluding the Bypass Portion) and the E.B.C. 177, 178, 179, 180 Hearing
- I. List of Intervenor in the Main Hearing and the E.B.C. 177, 178, 179, 180 Hearing
- J. Procedural Orders
- K. Glossary of Terms

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1. INTRODUCTION

Overview

- 1.1 This Decision, consisting of two volumes, deals with the common elements of contract carriage and direct purchase arrangements so that utility-specific rates and tolls can be designed. It addresses the manner in which natural gas will be sold and transported in Ontario. This Decision has been assigned docket numbers E.B.R.O. 410-II, 411-II and 412-II, since it is a continuation of the Decisions previously issued under Board docket numbers E.B.R.O. 410, 411 and 412 for The Consumers' Gas Company Ltd. (Consumers'), ICG Utilities (Ontario) Ltd (ICG), formerly Northern and Central Gas Corporation Limited, and Union Gas Limited (Union), respectively. The previous hearings and the Decisions are described below. The design of final rates and tolls, for each local distribution company (LDC), based on this

Decision, will be addressed in the utility-specific rate design proceedings during 1987.

The Hearings

- 1.2 On December 9, 1985, the Ontario Energy Board (OEB or the Board) called hearings, on its own motions, to inquire into matters relating to interim contract carriage arrangements on the distribution systems of Consumers', ICG and Union. The three hearings were combined. They commenced on January 27, 1986, and lasted for thirteen days. The Board issued its Reasons for Decision on April 4, 1986 (the Interim Decision) under docket numbers E.B.R.O. 410, 411 and 412.
- 1.3 The Board on its own motions, by Notices of Public Hearing dated July 24, 1986, called further hearings to inquire into, hear and determine certain matters relating to contract carriage arrangements on Consumers', ICG's and Union's distribution systems in Ontario. The three hearings were combined (the Main Hearing). The main hearing commenced on Monday, September 22, 1986 and lasted for thirteen days before being adjourned until November 12, 1986. The changes that have occurred, and the new issues that have arisen since the Interim Decision, as well as the design and feasibility of permanent contract carriage arrangements in Ontario, were

REASONS FOR DECISION

considered in this hearing and are the subject of this Decision.

- 1.4 The Board decided that the common elements of contract carriage and direct purchase arrangements would be dealt with before considering utility-specific rates. The bypass issue was differentiated from other generic issues because of jurisdictional concerns and its potential impact on Ontario. Bypass involves the total avoidance of the LDC's system for the transportation of gas. The bypass issue was heard first, and because of its significance, separate Reasons for Decision were issued on December 12, 1986 under Board Docket Nos. E.B.R.O. 410-I, 411-I and 412-I for Consumers', ICG and Union respectively.
- 1.5 The Board found in that Decision "... that the Province of Ontario and this Board, as its delegate, has jurisdiction over bypass within Ontario." The Board stated "that it is important to remove any uncertainty with respect to its jurisdiction and will, therefore, state a case to the Divisional Court of the Supreme Court of Ontario." The Divisional Court commenced hearing this matter on March 17, 1987.
- 1.6 The Board noted that "this jurisdiction is imperative in order for the Board to carry out its statutory duties and responsibilities to

regulate the transmission and distribution of natural gas and to approve and fix just and reasonable rates therewith in Ontario." The Board is of the opinion that "a general policy opposing bypass is not in the public interest. The Board will consider each application for bypass on the basis of its individual merits."

- 1.7 Applications for Certificates of Public Convenience and Necessity pursuant to the Municipal Franchises Act were filed with the Board by Northridge Petroleum Marketing, Inc. (Northridge), ATCOR LTD. (ATCOR), Brenda Marketing Inc. (Brenda), and Consoligas Management Ltd. (Consoligas). The Certificates requested were to allow these brokerage firms to supply gas in all municipalities in Ontario, with a term of the Certificates being that the brokers not be required to obtain franchises to supply gas in these municipalities.
- 1.8 The Board, through Procedural Orders, determined that all evidence in the Main Hearing applicable to the issues raised by the Certificate applications be incorporated into the Certificate hearings. These hearings were held on December 16, 1986, immediately following the Main Hearing. The Board will issue a separate Decision on this matter under Board docket numbers E.B.C. 177, 178, 179 and 180.

- 1.9 On October 22, 1986, the Board held a hearing with respect to paragraph 9.27 of the Interim Decision. This hearing was held to consider the necessity for the Board to continue to approve Competitive Marketing Programs (CMPs). It was ultimately decided to continue the practice on an interim basis. Those hearings dealt with memoranda of agreement between the LDCs and TransCanada PipeLines Limited (TCPL) with respect to gas costs. These Decisions are discussed later in this chapter.
- 1.10 The Main Hearing reconvened on November 12, 1986, and lasted seventeen days, ending on December 16, 1986. Final argument was received by January 26, 1987.

Background

- 1.11 The Governments of Canada, Alberta, British Columbia and Saskatchewan recognized, in the Western Accord of March 28, 1985, on Energy Pricing and Taxation, a need for a more flexible and market-oriented environment. Pursuant to this need the Agreement on Natural Gas Markets and Prices (the Agreement) was signed on October 31, 1985, by those governments. Although Ontario was not a signatory, the OEB supports the basic principles which underlie the Agreement. These include:

REASONS FOR DECISION

- o enhanced access for Canadian buyers to gas supply;
- o enhanced access for Canadian producers to gas markets;
- o protection for Canadian consumers for reasonable, foreseeable gas requirements; and
- o commitment to foster a competitive market for natural gas in Canada.

1.12 The Board supports the development of a competitive market for natural gas in Canada and believes that open access to different sources of natural gas supply is essential to the development of this competitive market.

1.13 The intent of the Agreement was to create the conditions necessary for market-oriented pricing. The implementation, however, was left to the affected parties:

It is the intention of the parties to the Agreement to foster a competitive market for natural gas in Canada, consistent with the regulated character of the transmission and distribution sectors of the industry ...

REASONS FOR DECISION

- 1.14 The Agreement also recognized the importance of the pipeline link between the producer and consumer when it stated:

Effective November 1, 1985, consumers may purchase natural gas from producers at the negotiated prices, either directly or under buy-sell arrangements with distributors, provided distributor contract carriage arrangements are available in respect of such purchases. This provision is in no sense intended to interfere with provincial jurisdiction in regard to regulation of gas distribution utilities.

- 1.15 The twelve-month period from November 1, 1985, to October 31, 1986, was designated as a transitional period to a fully market sensitive pricing regime. During this transitional period wholesale prices prescribed by governments were frozen, but industrial customers without gas sales contracts with the LDCs were free to negotiate prices for the purchase of natural gas directly with producers. The availability of direct purchase was, however, conditional upon contract carriage arrangements being available from the LDCs. To enable TCPL producers to meet the competition of direct purchase, CMPs were permitted between the end-use customer, the LDC, TCPL and its producers, effective November 1, 1985.

- 1.16 Although the transitional period prescribed in the Agreement lasted until October 31, 1986, the Interim Decision remains in effect until this Decision is issued.
- 1.17 Direct purchase is an arrangement whereby an end-user of natural gas purchases gas directly from a producer or broker rather than from an LDC. The gas is transported to Ontario by TCPL and is handled by the LDC in one of two ways:
- o Buy-Sell: Wherein the Ontario LDC purchases the direct purchaser's volumes, commingles them with other purchased gas and sells to the direct purchaser as a sales customer under the appropriate rate schedule; or
 - o Contract Carriage: Wherein the LDC does not take title to the direct purchaser's supply of gas but contracts to carry the volumes of gas from the point of receipt through the LDC's system to the direct purchaser's take-off point.
- 1.18 CMP discounts are provided by system producers (i.e., those producers from whom TCPL purchases gas) to individual end-users of gas. The contractual gas supply arrangements between the system producers, TCPL and the LDCs are unaffected. The LDC delivers and sells to the individual end-users at OEB approved sales rates. The LDC provides TCPL with details each month of the volumes delivered to each customer. TCPL rebates to the LDC the discount on those

volumes and the rebate flows to the customers as a credit on the following month's invoice. The effective sales rate after the CMP discount is approved by the Board. Market Responsive Price or Distributor Market Fund (MRP) discounts are similar to CMP discounts. The MRP funds result from the revised pricing agreements between the LDCs and TCPL. The specific rate resulting from each MRP discount is approved by the Board.

1.19 On December 3, 1985, the Ontario Minister of Energy announced Ontario's support for the introduction of interim contract carriage arrangements during the transitional period ending October 31, 1986. The Minister expressed his intention that, during this period, rates to other customers should not be adversely affected by the introduction of contract carriage arrangements.

1.20 In his statement of December 3, 1985, the Minister also requested the Board to carry out intensive studies during the transitional year to determine whether contract carriage rates could be continued beyond the transitional period without adverse impact on other gas customers or on the integrity of the gas distribution systems.

REASONS FOR DECISION

- 1.21 These studies, which have been carried out, considered the impact of contract carriage on the cost allocation and rate design practices of the Ontario LDCs and surveyed the requirements of industrial gas users in Ontario.
- 1.22 Since the Interim Decision, in excess of, 40 contract carriage agreements, 20 buy-sell contracts and 730 CMP and/or MRP agreements have been approved on an interim basis by the Board both with and without public hearings.
- 1.23 In May 1986, the National Energy Board (NEB) released its Decision on the availability of transportation services on the TCPL system (RH-5-85).
- 1.24 In that Decision changes were made to the tariffs of TCPL that would enhance access to its pipeline for volumes of natural gas purchased directly from producers by end-users or agents. The displacement proviso in TCPL's transportation toll schedules, which dissuaded direct purchasers from obtaining transportation services when those direct purchases would displace volumes previously supplied by TCPL, was removed. In addition, the NEB determined that the duplication of demand charges paid by direct purchasers was inappropriate.

REASONS FOR DECISION

- 1.25 The NEB's Decision was appealed by TCPL. On November 14, 1986, the Federal Court of Appeal issued its Decision on this matter which confirmed the jurisdiction of the NEB to implement its Decision in RH-5-85.
- 1.26 Pursuant to the Agreement, an impartial Pipeline Review Panel (the Panel) was appointed to carry out a review of the role and operation of inter-provincial and international pipelines engaged in the buying, selling and transmission of gas. The Panel, in its Report submitted on July 10, 1986, found market sensitive pricing to be feasible for both government and industry by November 1, 1986.
- 1.27 The Panel also made recommendations supporting the sanctity of contracts but endorsing contract renegotiation. It recommended that the marketing function of pipeline companies be separated from the provision of transmission services. Support was also expressed for the availability of the option to bypass the LDCs' systems in the absence of reasonably competitive alternatives, subject to the approval of the provincial regulatory authority.
- 1.28 Revised pricing agreements between the system producers, TCPL and the LDCs in Ontario and Quebec were reached in September 1986. The new agreements provide for a variety of discounts

REASONS FOR DECISION

in the price of natural gas. These discounts are said to allow the LDCs to compete more effectively in the gas markets serving large volume commercial and industrial customers.

1.29 In December 1986, the Board issued Decisions in response to the LDCs' applications to reflect in rates the LDCs'/TCPL's memoranda of agreement with respect to revised gas costs and the pricing schemes that resulted. The memoranda provided for a 20¢ per gigajoule reduction in the cost of all contract gas purchased from TCPL from September 1986 to October 1988. They also provided for significantly larger discounts to be passed to certain commercial and industrial customers. These discounts would be drawn from market funds provided by the producers and administered by each LDC and TCPL. In these Decisions the Board indicated concern that the proposals could effectively result in the Board no longer fixing rates for those customers.

1.30 The Board also indicated concern in its Decisions that, based on the evidence before it, the proposed method of dealing with the market funds could lead to undue discrimination, which could ultimately lead to disruption in the industry. The Board concluded that it would be in the interests of all concerned if time were allowed for further negotiations of the

contracts that would allow the Board to fully exercise its jurisdictional mandate.

- 1.31 The Board initially accepted the LDCs' proposals for six months, but extended this acceptance until October 31, 1987, because TCPL and the LDCs agreed to renegotiate the respective agreements to address the Board's concerns. During this period the Board will require all CMPs or specific MRP discounts to be submitted to the Board for approval.
- 1.32 Although the Board has accepted the proposals for one year, it believes that negotiations between the parties need not necessarily take twelve months. The Board directed the LDCs to inform the Board as to the progress of the discussions with TCPL in these matters. The Board will assess the situation periodically and decide on an appropriate course of action.
- 1.33 The Board established the following criteria by which the situation will be assessed:
- o gas purchased by the LDC should arrive in Ontario without being streamed to specific customers or customer groups;
 - o the arrangements should permit the Board to determine the rates or end prices for customers and to give any necessary

REASONS FOR DECISION

recognition to customer groups and market forces; and

- o the market for gas in Ontario should be open and there should be free access to transportation on TCPL's and the distributors' systems.

2. NATURAL GAS MARKET AND PRICES

Introduction

- 2.1 Prior to November 1, 1985, TCPL was essentially the sole seller and the sole transporter of Western Canadian gas to Ontario. TCPL obtained its gas supplies exclusively from approximately 650 producers in Alberta (system producers). As a result, gas producers not selling to TCPL (non-system producers) had virtually no access to the Ontario market.
- 2.2 On October 31, 1985, the Governments of Canada, Alberta, British Columbia and Saskatchewan signed the Agreement. Its stated intent was to "foster a competitive market for natural gas in Canada consistent with the regulated character of the transmission and distribution sectors of the gas industry".

A Competitive Market

- 2.3 In a perfectly competitive situation, market forces should drive the commodity price of gas to a level equal to the marginal cost of producing the gas. To the extent this occurs, the market will be determining an efficient allocation of resources. It is in the public interest to ensure that the most efficient allocation of resources is obtained.
- 2.4 There are at least three different views or scenarios of a competitive gas market shared in the industry:
- o The traditional one seller and many buyers;
 - o The limited access of some buyers to all sellers; and
 - o The unlimited access by all buyers to all sellers.
- 2.5 The concept of a competitive market for natural gas has not been clearly defined by any of the parties and appears to mean different things to them. Some parties believe that a competitive market means that the market is segmented in some manner and customers are only able to transact in their own segment. Some economists claim that competition can only exist in a

segmented market if parties are allowed to transact across segments.

- 2.6 According to the following quote from a communiqué issued on October 31, 1985, the Honourable Ms. Carney did not explicitly contemplate market segmentation:

All customers will be able to renegotiate existing contracts during the transition period, providing all parties agree ... by November 1, 1986, all natural gas buyers and sellers in Canada will be released from unnecessary Government intervention in their market place, (emphasis added)

- 2.7 Just as there is little agreement on what constitutes a competitive market, there is also a lack of agreement on what segmentation should exist and consequently, on how to define the core market. Some would like the entire market to be considered as core. Others argue that the core market consists of those end-users of gas that can not reasonably be expected to contract for their own needs. A third view is that the core market should consist of those who are either unable or unwilling to contract directly for their own needs and that the non-core market would, therefore, consist of all those prepared to accept the inherent risks of not being part of the core market. A fourth view is that there should be no market segmentation at all.

- 2.8 The relaxation of the surplus test used to protect the domestic market's gas needs was discussed in Ottawa/Alberta discussions prior to October 30, 1986. The two governments asked their regulatory boards to consider if the core market should have protection.
- 2.9 The Board, for the specific purposes of this Decision, defines the core market as those volumes that are sold by the LDCs, excluding buy-sell volumes. The Board accepts that other definitions may be more appropriate depending upon the reasons for establishing the core/non-core separation. If the Board finds it necessary to define the core/non-core market segmentation for other purposes, it will do so and if appropriate it will seek the advice of all interested parties.

The Board's Findings

- 2.10 The Board finds that to encourage a perfectly competitive commodity market for natural gas, at least three conditions must be satisfied. Firstly, all natural gas consumers or their agents must be free to choose from whom they purchase their natural gas supply. Secondly, transportation service on TCPL's and the LDCs' systems must be provided to all gas consumers on equal terms. That is, the tolls for non-system gas must not be more onerous than those

for system gas. Thirdly, buyers must have access to sufficient information concerning market prices for gas.

Access to Gas Supply

2.11 Ironically, although the goal of the Agreement was to promote competitive market conditions, the Agreement itself has hampered the achievement of this goal by preserving the sanctity of the long term contracts between TCPL and the Ontario LDCs.

2.12 TCPL has more than enough gas under these contracts to serve the core market through the LDCs, and as the sanctity of contracts has been preserved, the right to serve these customers essentially falls to the TCPL producers and not to other producers. The core customers thereby face a less competitive cost of gas than non-core customers who have the competitive alternative of buying gas from some other supplier through direct purchase arrangements.

Access to Transportation

2.13 This Board has no jurisdiction over the tolls charged by TCPL. Any barriers arising from TCPL's tolls are under the jurisdiction of others. The "double demand charge", which in the past has been a barrier to transportation

service, has in part been eliminated. The double demand charge arose when a customer changed to direct purchase and incurred demand charges for TCPL to transport the gas while the LDC continued to be liable for demand charges for the same TCPL capacity. In its RH-5-85 Decision, the NEB approved displacement and operational demand volumes so that those qualifying under the definition of displacement will not face double demand charges after January 1, 1987.

- 2.14 This Board has the mandate to determine the rates charged by the Ontario LDCs and it intends that non-core end-users be relatively unencumbered in Ontario with respect to entering into direct purchase and transportation arrangements. However, core customers face the potential for undue discrimination and, as such, it is the need to protect the core market customers which requires the OEB's continued involvement in the regulation of the LDCs' cost of gas supplies.

The Board's Findings

- 2.15 The Board will continue to monitor the cost of gas for the core market. Innovations, such as the introduction of a "tender" purchasing system, may have to be considered.

- 2.16 The Board finds that those buyers who choose to become part of the non-core market, and accept whatever risks are inherent therein, should be allowed to do so.

Access to Market Information

- 2.17 The lack of market information was claimed by some to be a barrier to a competitive market. However, others argued that there is the potential for harm to the LDC, the broker and the customer if sensitive information is made public.

- 2.18 The Board currently receives certain price-related information from the LDCs on a confidential basis. This is useful, but incomplete, since not all competitive pricing information is available to the Board.

The Board's Findings

- 2.19 The Board finds that any person engaged in the sale of gas in Ontario shall provide to the Board, monthly, on a confidential basis, on a customer basis (indicating the customer's identity), for those customers or customer groups purchasing directly from brokers, or those customers receiving CMP or distributor market fund discounts, data showing the volume

of gas contracted for and the customer's corresponding net price of gas.

- 2.20 The Board may require and may request, from time to time, other information.
- 2.21 The Board finds that the dissemination of some aggregated pricing information will be essential to the development of a competitive market for gas in Ontario. It will exercise discretion in determining the nature, format and frequency of the publication of this information.
- 2.22 To enhance the completeness of its data base, the Board requests that when gas is purchased directly, with the sale taking place outside of Ontario, and transportation is provided by the Ontario LDCs, the customers provide information as outlined in paragraph 2.19. This information will be kept on a confidential basis, but included in the dissemination of data noted in paragraph 2.21 in such an aggregated manner that the identity of customer-specific information is protected from public disclosure to competitors.

Reregulation

- 2.23 Prior to what is commonly referred to as deregulation, but which might more appropriately be called reregulation, TCPL and the LDCs have had

a monopoly over the sale and transportation of gas. Direct purchase has introduced a competitive element into the gas supply market, breaking TCPL's and the LDCs' monopoly to sell gas. The monopoly to transport gas still exists, reflecting the principles of the public utility concept. The public interest and the public utility concept are discussed in Appendix G.

- 2.24 As the monopoly to transport gas will remain, the need for regulation will continue.
- 2.25 The LDCs will continue to require a reasonable rate of return on their utility investments. The LDCs' return is based on its capital investment. The ownership of the gas has minimal impact on the LDCs' return. As a result, direct purchase poses no threat to the LDCs' financial well-being. To this extent, an LDC should be concerned with the loss of market to non-gas competition, but it ought not to be concerned with the loss of market to alternative suppliers of gas.
- 2.26 However, because core customers will have no gas supply alternatives to the LDC and TCPL, there is a potential for undue discrimination. Discrimination in this context is the practice of exacting different charges for different service rendered at the same marginal cost; or,

failing to impose higher charges for services rendered at markedly higher marginal costs.

- 2.27 Within a regulated environment some discrimination can occur. The regulator's mandate is to ensure that any discrimination, if present, is not undue. In the context of a natural monopoly, discrimination may arise in the allocation of costs to customers but is not necessarily undue.

The Board's Findings

- 2.28 The Board is aware of the uncertainty that has existed since the Agreement was signed on October 31, 1985. Evolving circumstances, including the issuance of this Decision, will have helped to dispell some of the uncertainties that existed when many of the interim CMP and MRP arrangements were entered into. To qualify for a CMP or MRP discount a customer must have a gas sales contract with the LDC. The Board encourages renegotiation of these gas sales arrangements by the LDC and end-users, to allow the end-users to fully participate in the more competitive market in light of the new circumstances relevant to transportation arrangements.
- 2.29 The Board has endorsed the development of a competitive market in Ontario which requires that there be equal opportunity among potential

REASONS FOR DECISION

suppliers. In addition, the Board endorses the concept from its Interim Decision that "the end-user shall have a choice of services and directs each utility to structure its proposals to end-users such that the terms and conditions will not favour one type of service over another."

REASONS FOR DECISION

3. ISSUES

Introduction

3.1 This chapter deals with the 12 major issues identified in the Board's Procedural Orders.

Part A Brokers

Introduction

- 3.2 The Brokers issue involves several sub-issues that will be dealt with in this Part. These include a definition of broker, the core/non-core issue, contracting directly with the LDC, and broker operation and regulation in Ontario.
- 3.3 The legal issues related to brokers operating in Ontario are dealt with in chapter 4, Legal Matters. The Certificate applications of Northridge, ATCOR, Brenda and Consoligas will be dealt with in a separate Decision issued under Board Docket numbers E.B.C. 177, 178, 179 and 180 respectively.

Definition of a Gas Broker

- 3.4 A gas broker, narrowly defined, is an entity that brings together buyers and sellers of gas without taking title to any gas. Thus the broker acts as an agent or consultant. An entity which takes title and acts as a principal in the transaction is referred to as a marketer of gas. In this Decision, the term "broker" will be used broadly to include the term marketer as defined above.

Core/Non-Core

3.5 The Board in this proceeding heard at least five different definitions of the core market. As noted earlier, the Board considers the core market as those volumes that are sold by the LDCs, excluding buy-sell volumes.

3.6 A major issue may be security of supply insofar as it relates to the brokers' ability to fulfill their obligations to customers who have left the core, particularly with respect to:

- o Impact of supply failure (hospitals, schools, nursing homes, etc.)
- o Financial stability of the supplier and/or broker
- o Term of the contract
- o Assessment of supply sources

The core/non-core issue as it relates to the security of supply is dealt with later in the Decision.

Contracting Directly with an LDC

3.7 A critical issue with respect to brokers operating in Ontario is their ability to contract directly with an LDC for pipeline capacity. Associated with this direct contracting is the right to sell gas in Ontario. Until now, brokers have been prevented from doing both, in

part, because the LDCs have insisted on individual contracts with the end-user and because the brokers have not yet met the necessary statutory requirements, imposed by current legislation, to operate as marketers in Ontario.

Positions of the Parties

The LDCs

- 3.8 Consumers' submitted that it is concerned about allowing brokers totally unimpeded access to operate as principals. Consumers' argued that its contact with the marketer would be far more impersonal than with the end-user. It also argued that brokers do not need to control pipeline space on either the interprovincial transmission system or the Ontario distribution systems to provide benefits to Ontario gas consumers.
- 3.9 Union submitted that the LDCs should be left in a position of being able to refuse to contract with brokers for the provision of transportation service and to require that title to the gas and the transportation contract be held by the end-user.
- 3.10 Union also submitted that all of the primary benefits to be provided by brokers can be achieved without the disadvantages of brokers,

if brokers continue to act only as agents for end-users in their relationships with the LDCs.

3.11 Union argued that brokers do not contribute to the efficiency of the LDCs' distribution systems by providing wellhead to burner tip service.

3.12 ICG submitted that it has no objection to dealing with brokers who are acting as intermediaries or agents for end-users. It argued, however, that it is not in the public interest for brokers to sell gas in Ontario as principals, but if they were permitted to sell gas in Ontario, they should be regulated in the same manner as the LDCs. ICG also submitted that if brokers are allowed to sell gas in Ontario, particularly to the core market, then the price at which gas is sold should be regulated in the public interest.

The Brokers

3.13 Northridge, ATCOR, Brenda and Consoligas argued that brokers must have the freedom to sell gas to end-users at the plant gate. They submitted that although there is the buy-sell option, there is no substitute for the ability of brokers to offer a complete service package for sale at the plant gate.

- 3.14 These brokers also submitted that since few end-users are in the gas business, and others do not want to acquire expertise in gas marketing, the presence of brokers would allow a direct purchase to be a single contract transaction from the end-user's perspective.
- 3.15 These brokers also submitted that their ability to sell gas at the plant gate would allow end-users with complementary loads to be grouped together to make the most efficient use of transportation service. End-users, especially those with alternative fuel capability, are reluctant to enter into long term contracts for the supply of gas. A broker could take advantage of its diverse customer base and contract for long term transportation service that may be required if capacity becomes scarce.

Industrial Gas Users and Producers

- 3.16 Polysar supported the activities of brokers in Ontario in all aspects of gas marketing.
- 3.17 Canadian Petroleum Association (CPA) argued that, to the extent transportation arrangements are available on the LDCs' systems, they should be reasonably open and available to any responsible party, including brokers.

- 3.18 Industrial Gas Users Association (IGUA) submitted that a broker acting as an agent for a disclosed principal should be eligible to acquire transportation services from an Ontario LDC. IGUA also submitted that if it is in the public interest of Ontario for brokers to assist direct purchases outside Ontario, then surely it is in the public interest to permit brokers to assist within Ontario.
- 3.19 Cyanamid Canada Inc. (Cyanamid) argued that brokers are an essential component of the full implementation of market responsive gas pricing. It submitted that it is essential that brokers have the right to contract directly with the LDCs rather than just act as advisers to customers in Ontario.
- 3.20 C-I-L Inc. (CIL) and Nitrochem Inc. (Nitrochem) argued that it would be in the public interest to allow brokers to enter into transportation and storage contracts particularly for groups of end-users.

Other Groups

- 3.21 The Director of Investigation and Research (The Director) argued that marketers and groups should be given access to the distribution system because it will ensure the most effective and efficient means of connecting buyers and

sellers of gas. He also submitted that most individual end-users do not have the knowledge or inclination to understand the gas transportation business. The Director submitted that, to prevent marketers or groups who have this expertise from gaining access to the system, would result in a significant barrier to the evolution of a competitive gas supply market.

3.22 Energy Probe submitted that the establishment of a truly competitive gas supply market in Ontario requires that all gas brokers, including gas marketing arms of the LDCs, compete on an equal footing within the Province. It also would require the LDCs to function as common carriers with respect to the transportation system.

3.23 The City of Kitchener submitted that permitting brokers to contract directly with end-users will not solve the main problem faced in this hearing, which is to provide non-discriminatory access to a competitive supply market. It argued that permitting brokers to contract directly with end-users will introduce inefficiencies.

Special Counsel

3.24 Special Counsel submitted that brokers ought to be allowed to act as principals. Brokers must

be able to hold title to and sell gas in the Province and be able to contract directly with the Ontario LDCs. Special Counsel also submitted that it is necessary, recognizing the many barriers beyond the jurisdiction of the Board, to achieve the benefits of market responsive pricing for the widest possible group of natural gas users in Ontario.

The Board's Findings

- 3.25 The Board finds that, subject to complying with all legal requirements in Ontario, brokers should be allowed to contract directly with the Ontario LDCs. It is only in this manner that open access to T-service can be achieved so that market responsive gas prices can be broadly obtained.

Broker Operation and Regulation in Ontario

- 3.26 Participants to the hearing expressed concerns regarding the operation of brokers within Ontario. These concerns related to financial integrity, security of supply, unregulated mini-distribution systems and "cream-skimming" or "cherry-picking".

Positions of the Parties

The LDCs

- 3.27 Consumers' submitted that contact with the broker would be far more impersonal than contact with the end-user. Consumers' questioned who would be held contractually obligated if the client used more gas than the broker delivered on its behalf. Consumers' argued that in combining loads and acquiring distribution services, brokers would be usurping diversity benefits derived from the utility's physical assets.
- 3.28 Union argued that brokers' activities in repricing and repackaging services would involve a loss of control of the system. Union also argued there would be increased complexity of administering and enforcing contracts by interjecting a broker between the distributor and end-user. As well, Union argued that its operating demand volume might not be reduced for all broker volumes, and thus there will be an increased probability of unabsorbed demand charges. Union submitted that the brokers are seeking all of the benefits of controlling the distribution system without the responsibility of the associated obligations.

- 3.29 ICG submitted that there are no savings to be made on an overall basis in transportation costs in Ontario. To the extent that a broker was able to arrange transportation on the LDC's system, which resulted in lower cost to a group of end-users, greater costs would be incurred by the remaining customers. ICG argued that a broker will be able to "cream-skim" ICG's customers to the detriment of its remaining sales customers by judiciously combining loads and exercising diversion rights.

The Brokers

- 3.30 Northridge, ATCOR, Brenda and Consoligas submitted that no justification was given for treating brokers in any different manner from end-users insofar as financial integrity is concerned. They argued that even if a broker were a legitimate credit risk, a guarantee of two months payment would be sufficient. They submitted that brokers should have no obligation to serve because, unlike LDCs, they would have no corresponding monopoly aspect to their business. The brokers submitted that the "cream-skimming" argument is not unique to the broker issue, but would also occur if sales customers become transportation customers. They submitted that the method to avoid "cream-skimming" is to have the rates in line with the costs to serve.

Industrial Gas Users and Producers

- 3.31 CPA argued that the LDCs' concerns expressed about the creation of mini-distributors are unfounded. CPA submitted that to the extent that brokers can be more efficient, via diversions or group billing, in the long run such increased efficiency can only benefit the overall operations of the LDCs.
- 3.32 IGUA submitted that it is not in the public interest for sales of gas by brokers to be subject to regulated sales rates. This would add nothing to the market sensitivity of gas prices in Ontario.
- 3.33 Cyanamid submitted that some form of minimal licensing may be required for those brokers who wish to operate in the residential and small commercial markets. This need not be onerous and would consider the brokers' experience in the gas industry and the brokers' financial stability. Cyanamid submitted that regulation of brokers should not extend to regulating the price they charge, nor the return they earn. It also submitted that the brokers should not have an obligation to serve any particular customer because the broker would not have a monopoly with respect to its services.

- 3.34 Cyanamid submitted that "cherry-picking" can easily be avoided by rates which reduce the mark-up to high load factor customers so that rates are in line with the costs to serve. Cyanamid argued that if brokers are able to combine loads to different types of customers, this will create more overall system efficiency, not less, and claimed that there is no reason to believe that the existing systems are at the optimum size as to load, geography, or customer mix.

Other Groups

- 3.35 The Director submitted that a reasonable form of licensing can take care of the financial integrity concern that the LDCs have about brokers. The Director submitted that the entry of brokers who have access to diverse supplies of gas will contribute to the secure supply of gas to consumers. He also submitted that regulating the price of gas sales by brokers would entirely defeat the purpose of market responsive pricing.
- 3.36 The City of Kitchener argued that the broker, by selecting its customers in a way that maximizes the efficiency of its service, reduces the efficiency of the franchised service. It also argued that the Board can make up for the financial fall-out of having brokers operating

in Ontario in respect of Union's, Consumers' and ICG's financial integrity. The City of Kitchener said that this Board does not have the obligation to protect The City of Kitchener's or Kingston's financial integrity and thus ought not to recommend changes which impair it.

Special Counsel

- 3.37 Special Counsel argued that a guarantee or two month's deposit covering the billing cycle, as well as the ability of the LDC to discontinue service to the broker, resolved all concerns about financial integrity.
- 3.38 Special Counsel submitted that there were no incidents disclosed during the hearing of a customer going without gas because of a broker's supply failure.
- 3.39 Special Counsel argued that to the extent the existing rates are not cost-based, the "cherry-picking" phenomenon may lead to higher rates for remaining customers. Special Counsel submitted that regardless of that fact, if contract carriage rates are to be implemented successfully on a permanent basis, the LDCs' cost allocation practices must be thoroughly reviewed and altered, at least in part. Special Counsel submitted that it is not reasonable to expect that an LDC would necessarily be able to

supply gas to a customer which has left its system for T-service.

The Board's Findings

- 3.40 The Board finds that, if in compliance with Ontario legal requirements, brokers would be consistent with and will assist in the development of a competitive gas supply market in Ontario.
- 3.41 The Board deals with the Ontario legal requirements in Chapter 4.
- 3.42 The financial soundness of brokers will be considered as part of the review undertaken by the Board before it issues a Certificate of Public Convenience and Necessity. The question of security of supply is dealt with later in this Decision.

Part B Bundled versus Unbundled Rates

Introduction

3.43 A bundled rate covers a combination of services such as storage, transportation and load-balancing. Unbundled rates entail separate rates for each of these services enabling a customer to contract and pay for only those services desired.

3.44 The Interim Decision provided for the application of a formula to determine contract carriage rates. This formula was based on existing sales rates and was constructed as follows: $T\text{-rate} = \text{sales rate} - \text{avoided costs} + \text{added costs}$. The avoided costs were gas costs, while added costs were the TCPL demand charges. The resulting T-rate was a bundled rate since it included all the services previously provided under sales service except for gas supply, i.e. transportation, load-balancing, storage and back-stopping. The composition of this bundle varies with the individual LDC. The separation of gas cost from the sales rate was only a partial unbundling of rates.

Positions of the Parties

The LDCs

- 3.45 The LDCs were united in the position that all services could not be unbundled, but their positions varied on the extent to which they could unbundle and which services they would offer on this basis.
- 3.46 Union proposed to unbundle sales from contract carriage service. It would also unbundle storage service for contract carriage customers. T-service would provide for a competitive market through the use of range rates. Storage service would be unbundled into space, injection and withdrawal components with an overrun charge for customers exceeding contract use. Union did not propose a firm back-stopping service, but it would offer a best efforts back-stopping service available under the Rate M2 schedule. Union favoured rate determination using a ground up approach.
- 3.47 Consumers' proposed that it would offer two services: a full T-service which would include transportation, storage, load-balancing and best efforts back-stopping; and
- a bare T-service. The cost of the full service would be calculated by backing out the average

cost of gas from the sales rate and the bare T-service would be set on a fully allocated cost study. Consumers' indicated that it had no storage other than that contracted for with Tecumseh and Union, but would contract with Union on behalf of customers for storage.

- 3.48 ICG proposed to offer sales service and T-service based on bundled rates. Contract carriage customers would be transportation customers only, with no separate load-balancing or storage services offered. The cost for such a transportation service would be calculated by deducting gas costs from the sales rate. Load-balancing and storage costs are considered minimal and too difficult to separate by ICG and, therefore, would be included in the bundled rate.

The Brokers

- 3.49 Northridge, ATCOR, Consoligas and Brenda considered that there was a need for complete unbundling of transportation, load-balancing, back-stopping and storage. They claimed that the LDCs gave no firm evidence as to why services could not be totally unbundled. Unbundling is necessary to facilitate the efficient operation of a competitive gas supply market. According to these brokers, both

bundled and unbundled rates should be available to permit the customer a range of selection.

Industrial Gas Users and Producers

- 3.50 Industrial gas users such as Cyanamid, CIL, Nitrochem and Polysar, as well as the associations, IGUA and CPA, all advocated the need for unbundling of services but there were variations as to the degree to which these services could or should be unbundled. Cyanamid, CIL, Nitrochem, IGUA and CPA submitted that transportation, storage and load-balancing with back-stopping on a best efforts basis should be offered as separate services. CPA submitted that peaking service should be offered as well.
- 3.51 They argued that rate design should be cost based with all cost items allocated to particular services being clearly identified. Cyanamid felt that this rate design period would be the best time to eliminate the over-contribution of the industrial classes. Polysar stressed that both bundled and unbundled rates should be available to the customer to permit selection of the services required.

Other Groups

- 3.52 Energy Probe and the Director considered that the LDCs must fully unbundle all services. They saw a need for a full cost allocation study with rates built from the ground up. The City of Kitchener stressed the difference between each utility and argued that the unbundling of services should only include what is feasible for the utility concerned.

Special Counsel

- 3.53 Special Counsel submitted that the Board ought to order as many separately costed unbundled services for each LDC as is possible in their respective circumstances. Within a contract carriage environment, he considered that unbundled rates would allow for a more efficient use of society's resources and that the best approach to unbundle rates is to perform cost allocations from the ground up. He saw separate cost allocations for transportation and other unbundled services as assisting in establishing a clear distinction between the transportation and sale of gas.
- 3.54 Special Counsel submitted that it was clearly within the capability of Consumers' and ICG to completely unbundle their rates. The Board should order both these utilities to prepare

separate cost allocations for each unbundled service, and present these in the utility-specific rate hearings. Special Counsel submitted that the Board should adopt Union's unbundling proposal. Union's current storage rate is based on a separate cost allocation study. The Board should order Union to perform a separate cost allocation for the unbundled storage proposal to be presented in the utility-specific rate hearing. A firm back-stopping provision should also be investigated and presented by Union and Consumers'.

The Board's Findings

- 3.55 The Board finds that unbundled services are a necessary part of the movement toward a more competitive commodity market for natural gas. The Board, in its Interim Decision, recognized the need to quickly implement interim transportation service, and the complexity of designing unbundled rates and consequently opted for a partially unbundled interim solution.
- 3.56 The Board finds that it is now appropriate to unbundle rates to the maximum extent possible. The Board recognized that rates should be properly designed to reflect costs, including a return component. Rate proposals, submitted in the utility-specific rate hearing, must be

supported by cost allocation studies. These studies should be performed from first principles, identifying where possible the cost relationship between the provision of services and the incurrence of costs (often referred to in the Main Hearing as a "bottom up" approach). The Board directs the utilities to segregate the cost of gas and develop cost studies for transportation, storage, load-balancing and best efforts back-stopping services separately.

Part C Distance-Based/Postage Stamp/Value of
Service Rates

Introduction

3.57 Distance-based rates vary with the distance between a specified geographic points. Postage stamp rates are uniform in a specified area and are charged per volumetric commodity unit transported or sold. Value of service rates are rates which reflect an economic benefit to a customer of using one service or energy source over an alternate source.

Positions of the Parties

The LDCs

3.58 The three LDCs all favoured postage stamp rates over distance-based and value of service rates. Although they considered the argument that distance-based rates are cost-related, they identified several factors that work against them. They argued that distance-based rates create administrative problems due to the complexity of the pipeline network and that this makes it difficult to derive and apply these rates. Distance-based rates were claimed to be discriminatory by the LDCs in that they give preference to accidents of geography, i.e. to those situated near pipelines. The LDCs noted

that distance-based rates are contrary to public policy which encourages a balanced economic development throughout the Province. They argued that distance-based rates would encourage regionalism as a result of industry locating near TCPL's pipelines.

- 3.59 The LDCs recognized that range rates which permit value of service consideration would be useful in competing with alternatives such as bypass.

The Brokers

- 3.60 Northridge, Consoligas and Brenda argued that distance-based rates reflect the cost of transportation and therefore must be adopted. They saw postage stamp rates as being insensitive to competitive alternatives. These brokers argued that rates should reflect the customers' alternatives, i.e. bypass. Value of service rates were seen by these brokers as discriminatory since they penalize the captive customer who has no other alternate energy source. ATCOR saw postage stamp rates as being generally consistent with a competitive market.

Industrial Gas Users and Producers

- 3.61 The industrial gas users and producers generally argued that distance should be a component of

rates. They varied, however, in the degree to which they recommended distance be reflected in the rate. CPA argued that distance-based rates most accurately reflect cost causation. IGUA, however, considered that zonal rates should apply within zones approved for TCPL. It saw no way of rationally introducing value of service into rate design. Polysar, CIL and Nitrochem submitted that distance should be factored into rates, perhaps through a combination of postage and distance-based elements. In this way, distributors may be forced to segregate costs that vary by distance. Cyanamid argued that the cost of the next best alternative should be considered in establishing a range rate.

Other Groups

- 3.62 Energy Probe, in principle, preferred cost-based rather than cost-related rates and advocated distance-based rates. It would, however, defer to the judgement of the LDCs as to circumstances under which distance or value of service factors should apply. The Board should scrutinize the LDCs' decisions, if necessary. The City of Kitchener saw uniform rates as an important feature in Ontario's attempt to encourage industry to locate widely across the Province. The Director expressed no opinion on whether rates should be distance-based or postage stamp

based, but was opposed to any system based on value of service rates.

Special Counsel

3.63 Special Counsel submitted that distance was fundamental to the cost of transportation and that distance-based rates should lead to a more efficient use of the LDC's system, at least for incremental loads. He submitted that as the nature of the Ontario natural gas commodity market becomes more competitive, the transition for the LDCs and end-users will be significant without imposing further changes through the system of designing rates. Special Counsel noted that range rates do impose an element of value of service on postage stamp rates. These rates provide competitive flexibility, but the potential for discrimination as well.

3.64 Special Counsel recommended that the Board order the LDCs to design a distance-based rate to create an effective alternative to bypass.

The Board's Findings

3.65 In order to meet the dual objectives of administrative simplicity and operational efficiency, the Board finds that postage stamp rates are appropriate at this time.

- 3.66 The Board in its Bypass Decision recognized the need to design rates to address the potential for bypass. The flexibility needed to compete with a credible bypass application may be provided through the application of value of service criteria or through the incorporation of distance factors in rate design. Such flexibility would introduce the potential for discrimination, but depending on the circumstances, it may not be considered undue.

Part D Group Billing and Multiple Location
Billing

Introduction

3.67 Due to the new regulatory environment in Ontario, it is necessary to again consider the issue of group and multiple location billing. The essential change in the environment is the existence of unbundled services where a bundled service used to exist. The transportation and sale of the commodity are now separated.

3.68 In past Decisions the Board has disallowed group billing to prevent a customer from qualifying for a preferred rate classification through "grouping", and hence a reduced total bill. Group billing was also rejected by the Board because the lower rates to certain customers would not allow for full recovery of the cost imposed on the system by those customers. The Board, however, has allowed group billing in relation to contiguous properties to ease administrative billing problems.

Positions of the Parties

The LDCs

3.69 Consumers' argued that each separate location should be billed separately. Group billing is

only appropriate with respect to multiple meters at a single plant site. Consumers' argued that access to direct purchase gas for groups can be, and is being, accommodated through buy-sell arrangements.

3.70 Union accepted that under certain conditions group billing should be allowed. Each plant must, however, be under common ownership and must qualify for T-service on its own. Union would require separate contractual commitments for transportation to each individual plant, but is willing to do so through separate clauses within one contract.

3.71 ICG argued that the basic principle should be a separate bill for each location. ICG is, however, prepared to group bill for administrative convenience on a limited basis.

The Brokers

3.72 Northridge, ATCOR, Brenda and Consoligas argued that group billing should be used wherever practical for the administrative convenience of both the customer and the utility.

Industrial Gas Users and Producers

3.73 Polysar submitted that group billing should be permitted in tandem with the activities of brokers.

- 3.74 CPA submitted that group billing should be consistent between the LDCs' respective sales and transportation service groups.
- 3.75 Cyanamid submitted that a group need not have any special purpose, as long as the group covers its cost of service. Cyanamid also argued that industries with plants at different locations should have the opportunity of combining their loads under a single contract.
- 3.76 CIL and Nitrochem support in principle the right of a single corporate entity to contract for, and be billed for, the delivery of gas at a number of non-contiguous locations.
- 3.77 IGUA argued that if group and multiple location billing can be justified on cost to serve grounds, they ought to be permitted.

Other Groups

- 3.78 The Director argued that group billing should be allowed to increase the availability of transportation services to groups of end-users.
- 3.79 Energy Probe argued that group billing and multiple location billing should be provided by the LDCs, if requested by customers. It submitted that, if such billing practices caused additional costs to be incurred, those costs

should be passed on to those customers who benefitted.

- 3.80 The City of Kitchener accepted the position of Union Gas on the issue of group billing.

Special Counsel

- 3.81 Special Counsel submitted that group billing must be allowed to permit more end-users to benefit from direct purchase by allowing end-users to be grouped for gas purchases. Special Counsel submitted that the Board must ensure that the groups only obtain a less expensive commodity price and not a less expensive transportation price.

The Board's Findings

- 3.82 The Board finds that groups should be permitted to be formed for the purpose of improving gas purchasing power. End-users may group together to purchase gas.
- 3.83 The Board recognizes that transportation is a separate function from the supply of the commodity. The full costs of transportation must still be recovered from each location served. The Board will require that there be a separate contractual agreement with the LDC for

T-service. However, more than one service location may be covered in one document.

3.84 The Board finds that combined bills for solely administrative purposes are acceptable as long as rates are based on the principle that the customer that causes costs to be incurred pays rates reflecting such costs of service.

3.85 The question of grouping for the purpose of storage, load-balancing and back-stopping will be dealt with at the utility-specific hearings.

Part E Demand Charges

Introduction

- 3.86 Prior to the introduction of the direct purchase option customers bought their gas from one of the LDCs, which in turn purchased most of its gas supplies under long term gas supply contracts with TCPL. One part of the supply contract with TCPL is a demand charge to reserve pipeline capacity for firm transportation.
- 3.87 When an existing gas customer arranges to purchase gas directly, it must arrange for transportation on TCPL's system, and in doing so, the end-user commits to pay a demand charge for firm service. The LDC is contractually obligated to pay the demand charge associated with the same pipeline capacity. This resulted in the so-called "double demand charge".
- 3.88 The NEB, in its RH-5-85 Decision, introduced the concepts of displacement and operational demand volume (ODV) where the LDC nominates an ODV to adjust for the firm T-service contract with TCPL. The LDC's demand charge is reduced accordingly and the volume of gas that qualifies as displacement no longer gives rise to a double demand charge. The outstanding issue is what will happen when the displacement definition is not met.

3.89 When a direct purchase volume does not qualify under the NEB's displacement definition an unabsorbed demand charge may result. There are primarily three instances where such an unabsorbed demand charge would arise. Unless the NEB rules otherwise, unabsorbed demand charges occur when,

- o a direct purchaser takes interruptible service on TCPL's system for all or part of its load where the LDC used to contract for the volumes under firm service on TCPL;
- o a direct purchaser imports its gas from the U.S, thus circumventing TCPL's system; and
- o A customer switches to an alternative energy form and leaves the system.

The third situation can occur at any time and is not a result of deregulation.

Positions of the Parties

The LDCs

3.90 The LDCs argued that because it is the contract carriage customer's choice to take interruptible service on TCPL or to purchase a foreign supply, thus causing the unabsorbed demand charge, the contract carriage customer should pay.

3.91 Consumers' has taken the position before the NEB in RH-3-86, the latest TCPL toll hearing, that interruptible as well as firm services on TCPL should be included for the purposes of defining displacement. Union argued that, until the expiry of its long term supply contracts, a direct purchaser should not be entitled to displace the LDC's supplies other than by a firm contract on TCPL. In Union's view the sharing of unabsorbed demand charges by all customers implicitly assumes that a benefit to a small number of large customers should be gained at a substantial cost to a larger number of smaller customers. Union states that the ability of a direct purchaser to obtain interruptible service on TCPL would either lead to increased unabsorbed demand charges, a reduction in Union's ability to access discretionary purchases, or increased contributions to fixed costs of TCPL. Union submitted that discretionary purchases are a means by which the LDC optimizes its gas purchases and that these are virtually the only access an LDC currently has to non-TCPL gas.

3.92 ICG recommended that with regard to interruptible service on TCPL, the Board defer a decision to the utility-specific hearing after the NEB will have ruled.

The Brokers

- 3.93 Northridge, ATCOR, Brenda and Consoligas argued that any remaining unabsorbed demand charges should be shared by all sales and T-service customers.

The Industrial Gas Users and Producers

- 3.94 IGUA submitted that any term or condition that operates to limit a shipper's right to use the full range of T-services available on TCPL's system is unduly discriminatory. This would impose an obligation on a transportation customer to indemnify a distributor for unabsorbed demand charges created by using interruptible service on TCPL. The obligation would also tend to favour system gas and give the buy-sell alternative a preference over T-service. IGUA argued that this Board should not be influenced by the fact that the NEB is currently considering adjustments to its definition of displacement.
- 3.95 CIL and Nitrochem argued that whether or not any of the LDCs' demand charge payments to TCPL will be unabsorbed will depend in large measure on the future sales of the LDCs. CIL and Nitrochem pointed out that in only one circumstance where unabsorbed demand charges occur do the LDCs seek to pass the imputed portion of

the LDCs demand charge on to the former sales customer as a surcharge. CIL, Nitrochem and Cyanamid argued that demand charge obligations of the LDCs to TCPL arise out of contracts entered into by the LDCs for all their customers, without earmarking specific volumes. They argued that it is arbitrary and unfair to presume that all interruptible volumes on the LDCs were served from firm service on TCPL.

3.96 Cyanamid noted Consumers' claim that it would not charge the customer the unabsorbed demand charges if the customer would remain on gas as opposed to switching to oil. Cyanamid questioned why a customer with access to U.S. gas and fuel oil alternatives should have an advantage over customers who want to use Alberta gas.

3.97 CPA argued that the Board need not await the results of the NEB proceedings, and that contract carriage should be made available on the LDCs' systems regardless of the mode of transportation on TCPL. Unabsorbed demand charges that are incurred should not, according to CPA, be borne by individual T-service customers, since these customers would be forced to bear the brunt of the LDCs' forecasting errors with regard to the LDCs' firm requirements.

- 3.98 Polysar submitted that any unabsorbed demand charges resulting from a direct purchase can be categorized as a cost of a competitive system and ought to be attributed to the whole system.

Other Groups

- 3.99 The City of Kitchener argued that the Board should permit the regulated LDCs the right to refuse to transport gas delivered to it from TCPL on an interruptible basis.

- 3.100 The Director argued that the unabsorbed demand charges arising from interruptible service on TCPL result from a previous regulatory environment, and thus should be shared by all users of the system. The Director also pointed out that the interruptible shipment may displace a discretionary purchase by the LDC, and thus the LDC will incur no unabsorbed demand charge.

Special Counsel

- 3.101 Special Counsel submitted that it is not the contract carriage customer's choice which creates the unabsorbed demand charges, but rather the long term contractual obligations between the LDCs and TCPL. Thus, a fair solution is a form of sharing by all customers. To encourage the LDCs to minimize these charges, Special Counsel argued that the Board should

review at annual rate hearings the charges accumulated over the past period in deferral accounts and pass on through rates only those charges reasonably incurred.

- 3.102 Special Counsel also argued that the philosophy underlying the system-wide sharing of unabsorbed demand charges should also apply to the allocation of Petrosar costs in Union's circumstances. That is, Union should allocate the Petrosar premium costs, allowed in rates, to all transportation customers and customer classes, except Rate M13. Rate M13 (Special Transportation Rate for Locally Produced Gas of Consumers') customers would pay a fair share through Rate M12 (Storage and Transportation). Rate M12 customers should only contribute on the "easterly" flow.

The Board's Findings

- 3.103 The Board finds that any unabsorbed demand charges resulting from a current gas sales customer switching to T-service should be accumulated and deferred with interest for disposition at the LDC's next full rate proceeding. The LDCs are directed to submit the proposed accounting to the Board for approval.

- 3.104 At the time of disposition, the Board will consider whether, in order to encourage the LDCs' efforts to mitigate such costs, it is appropriate to provide for full cost recovery in rates. The Board will also consider whether those costs that are to be recovered through rates should be recovered from all customers, or only certain customers.
- 3.105 The Board notes that the Petrosar SNG premium costs have been explored thoroughly in previous hearings and although not a demand charge problem, it is important that it be dealt with here in order to permit Union to develop T-Rates. The Board finds that such costs should be recovered from all customers, including all transportation customers. The Board directs Union to submit revised rate schedules for consideration by the Board, within 30 days of receipt of this Decision, to allow for the recovery of Petrosar SNG premium costs from all customers including rate M12 and M14 customers. Rate M13 customers will pay an appropriate share of Petrosar premium costs through rate M12. Rate M12 customers should only contribute on the "easterly" flow to avoid duplication of recovery.

Part F T-Rate Criteria

Introduction

3.106 This section deals with the eligibility criteria for T-service. The criteria include: T-service contracts, minimum volume, length of contract, customer's obligation to deliver, penalty charges, capacity interruptible service, minimum bill, delivery points and classes of service and priority.

T-service Contracts

Position of the Parties

The LDCs

- 3.107 Consumers' submitted that a written contract is necessary for T-service and that the contract must be held by the end-user.
- 3.108 Union submitted that it has not yet completed the design of standard contractual provisions for permanent T-service.
- 3.109 ICG submitted that, to be eligible for T-service, a customer must enter into a transportation contract with the LDC. It argued that a contract is necessary to protect the utility and its other customers by ensuring

that parties are aware of their rights and obligations.

The Brokers

- 3.110 Northridge, ATCOR, Brenda and Consoligas argued that the terms and conditions of T-service should be set out in their entirety in published rate schedules approved by the Board. Northridge submitted that it is not possible to effectively negotiate with monopolies. As well, it submitted that the LDCs, themselves, have testified that contract negotiation is an administrative burden.

Industrial Gas Users and Producers

- 3.111 CPA argued that a full examination of the terms and conditions of the various services to be offered by the LDCs, must of necessity, await the Board's Decision in this proceeding. CPA submitted that inasmuch as terms and conditions of service include the execution of a contract between the distributor and its customer, the contracts must be presented to the Board for approval. It submitted that Consumers' proposed standard contract is confusing, unduly complicated and inappropriate for facilitating expeditious negotiations of T-service arrangements.

- 3.112 Polysar submitted that the draft contracts submitted by Consumers' and Union will only discourage direct purchases. Polysar argued that there should be no restriction on the number or kinds of simultaneous sales or transportation contracts that a particular end-user can have with one or more LDCs.
- 3.113 IGUA argued that the Board should reject terms and conditions proposed by Union and Consumers' in their draft contracts. It submitted that the Board should direct Union and Consumers' to revise and simplify their proposed contracts so that sales service or buy-sell arrangements are not preferred to T-service.
- 3.114 Cyanamid argued that Consumers' insistence that the end-user be the owner of the gas and the shipper on TCPL is inappropriate. Cyanamid submitted that the complexity of the T-service document alone will discourage any potential T-service customers.
- 3.115 CIL and Nitrochem submitted that the problem with requiring a contract as a condition of service is that the contracts proposed include onerous and unacceptable terms and conditions that make T-service an unattractive proposition for customers. CIL and Nitrochem indicated that it would be desirable for the Board to be able, in appropriate circumstances, to require

service on basic terms ordered by the Board, pending mutual agreement between the disputing parties.

Other Groups

3.116 The Director argued that virtually all terms and conditions of service for each class of customers should be capable of publication in the tariff schedule. Thus, he acknowledged that a short contract is necessary only for such items as the volume, the TCPL delivery point, the end-use points to be served, and the names of the parties.

3.117 The Director submitted that transportation arrangements need not be for the end-users' full requirements. That is, end-users should have the option of combining gas purchased on a direct basis with gas purchases from the LDC.

3.118 Energy Probe argued that all system gas sales handled by the merchant arm of an LDC be delivered by the transportation arm of the LDC on the same terms and conditions as are made available to all other contract carriage parties.

Special Counsel

3.119 Special Counsel argued that a contract carriage customer, or a broker on its behalf must enter

into a transportation contract. Each contract should be filed confidentially with the Board for approval. Special Counsel submitted that a separate contract ought not to be required for each T-service delivery location.

The Board's Findings

- 3.120 The Board will require that there be a separate contractual agreement with the LDC for T-service. Several locations can be individually covered in one contract. The Board adopts the view that most of the terms and conditions of service for each class of customers should be capable of publication in the rate schedule. A contract will be necessary only for such items as the names of the parties, the volume, the end-user points to be served and the TCPL delivery point(s). In all cases contracts should be in a form that facilitates, rather than impedes, understanding.
- 3.121 The Board will continue to require that each T-service contract be submitted to the Board for approval, at least for the time being.
- 3.122 The various steps necessary for brokers to operate in Ontario are dealt with in Chapter 4, Legal Matters. The Board recognizes that, until a broker has complied with all of those steps,

it will be unable to contract for T-service with an Ontario LDC.

- 3.123 The Board also finds that the transportation arrangements need not be for the end-users' full requirements for gas at any location.

Minimum Volume

Introduction

- 3.124 Minimum volume is the lowest volume for which an end-user can contract and be eligible for T-service.

Positions of the Parties

The LDCs

- 3.125 Consumers' submitted that a minimum annual volume requirement is intended to make T-service availability consistent with sales service. Consumers' minimum annual volume requirement is 3,000,000 m³.
- 3.126 Union submitted that its minimum annual volume requirement is 700,000 m³, however, it also includes a minimum daily demand of 4,800 m³.
- 3.127 ICG did not submit that a minimum volume should be a requirement for T-service.

The Brokers

- 3.128 Northridge, ATCOR, Brenda, and Consoligas submitted that there was no need to set arbitrary minimum volumes because economic and practical limitations will establish them.

Industrial Gas Users and Producers

- 3.129 CPA argued that minimum volumes are unnecessary as they are arbitrary and possibly discriminatory.
- 3.130 Polysar argued that there should be no minimum volume.
- 3.131 IGUA submitted that there has been no persuasive evidence to suggest that minimum volumes for T-service should be higher than those stipulated in the companion sales rate schedules.
- 3.132 Cyanamid argued that Consumers' minimum volume was an unnecessary restriction.

Other Groups

- 3.133 The Director submitted that volume limitations might be established but should be subject to review as the market evolves.

3.134 Energy Probe argued that a minimum volume criterion is arbitrary.

3.135 The City of Kitchener submitted that the Board's findings in its Interim Decision with respect to minimum volumes should still apply.

Special Counsel

3.136 Special Counsel submitted that minimum volume provisions are a hindrance to direct purchase. He argued that neither operational nor economic constraints are the basis of Consumers' or Union's proposals and as such there should be no minimum volume provision.

The Board's Findings

3.137 The Board finds that on the basis of the evidence before it in these proceedings minimum volumes are not required for T-service.

Length of Contract Term

Introduction

3.138 Length of contract term is the minimum term for a transportation agreement.

Positions of the Parties

The LDCs

- 3.139 Consumers' submitted that the contract must be for a minimum term of 30 days.
- 3.140 Union submitted that a minimum term of one year for a T-service contract be accepted by the Board. Union submitted that this would be consistent with the minimum contract term for transportation on TCPL and for Union's sales rate customers. Union argued, however, that a term less than one year should be permitted but it should be at the LDC's discretion.
- 3.141 ICG requested a minimum term of five years and submitted that it will require up to twenty-five months notice from customers seeking to return to sales service. During cross-examination, ICG revised its minimum term to one year with no fixed notice period for return, as ICG will use best efforts to obtain capacity on TCPL.

The Brokers

- 3.142 Northridge and Consoligas argued that although contracts are normally for periods of one year or longer, there should be no restriction on shorter terms if that is consistent with the requirements of the customer.

3.143 ATCOR submitted that a contract should be for a period of one year or longer.

3.144 Brenda submitted that the length of contract should be determined by the needs of the end-user. Brenda submitted that it may be practical to have T-service contracts for as short as one month to accommodate spot contracts or summer interruptible contracts.

Industrial Gas Users and Producers

3.145 CPA submitted that the contract length should be at least equivalent to that of the sales customers.

3.146 Polysar argued that there should be no minimum term.

3.147 Nitrochem submitted that although ICG dropped its requirement to a one year contract and no notice period at all, it is not clear why ICG even requires a one year minimum period. Nitrochem argued for a thirty day period, with no notice period for return to sales service.

Other Groups

3.148 The Director argued that the minimum term should be consistent with the minimum term for transportation arrangements available on connecting

facilities.

- 3.149 The City of Kitchener submitted that T-service should terminate on October 31, 1987, unless, by that time, the supply contracts between TCPL and the LDCs contain provisions which ensure that the prices under those contracts are market driven.

Special Counsel

- 3.150 Special Counsel submitted that a minimum term of thirty days is appropriate with the length of the contract being negotiable.
- 3.151 Special Counsel submitted that there should be no fixed period of notice to return to the sales service. Special Counsel pointed out that if insufficient notice is given, there may be a problem of obtaining capacity on TCPL's system and that the Board should consider imposing a re-entry fee for sales customers who leave the LDC for T-service and then wish to return.

The Board's Findings

- 3.152 The Board finds that the imposition of a minimum term should not be employed as a mechanism to frustrate direct purchase. The Board also finds that although the minimum term would

normally be expected to be one year, the Board would not necessarily deny approval if the parties agree to a shorter term.

3.153 The Board cannot guarantee that a T-service customer will be able to return to the LDC's sales service. This will depend, in part, on the NEB Decision with respect to an LDC nominating up its operating demand volume if a direct purchaser wishes to return to sales service. As a result, establishment of a required period for return to sales service would be meaningless at this time.

3.154 The Board at this time will not require either a standby or a re-entry fee. Should the LDC believe that such a fee or fees are necessary it should propose both the quantum and the criteria for application in its utility-specific rate hearing. Such fees should be directly related to costs imposed or expected to be imposed on the LDC's system.

Customer's Obligation to Deliver

Introduction

3.155 The customer's obligation to deliver refers to the LDC requiring that the customer delivers its gas supply to the LDC each and every day regardless of the level of the end-users

consumption. Some LDCs claim that they rely on this gas being available for load-balancing purposes.

Positions of the Parties

The LDCs

- 3.156 Consumers' submitted that, absent a customer's obligation to deliver, it is doubtful that it would be able to provide load-balancing without building additional facilities or without contracting for more peaking service, if it were available.
- 3.157 Union submitted that, under current circumstances, it requires its transportation customers to guarantee the gas supply. Union argued that its system is such that the failure of one customer's supply may mean that a different customer will be unable to be supplied. Union argued that it is unacceptable to put some customers at risk for the failure of another customer.
- 3.158 Union agreed that the obligation to deliver is not a desirable long term condition and it outlined proposals to alter its system and eliminate this need. Union submitted that it will incur certain costs in adapting its system in this manner and argued that these costs

should be borne by all customers.

The Brokers

- 3.159 Northridge, ATCOR, Brenda and Consoligas argued that the security of a T-service customer's supply is solely the responsibility of the T-service customer.
- 3.160 CPA submitted that a direct purchaser must bear the responsibility of its own security of supply.
- 3.161 Polysar argued that there should be no obligation to deliver.
- 3.162 IGUA submitted that an obligation to deliver should not be a pre-requisite to a T-service relationship, and that there is an onus on the LDC to prove the need for such an obligation. An obligation cannot be justified so that an LDC can provide service to other interruptible customers. The LDC should only require the obligation to deliver to prevent curtailment of its other firm customers. In IGUA's view, Consumers' has failed to demonstrate the need for an obligation to deliver the mean daily volume each and every day of the year.
- 3.163 Cyanamid argued that T-service customers want to buy transportation, not to become gas

suppliers to the LDC. As such, Cyanamid questioned the necessity of imposing such an onerous obligation on all customers throughout the year.

- 3.164 CIL and Nitrochem argued that T-service customers should not be required to enter into supplier-type obligations, and that it is sufficient if T-service customers, whose gas does not arrive, accept the consequences of the LDC discontinuing their service.

Other Groups

- 3.165 The Director observed that bundled T-service will involve an obligation to guarantee supply to the LDC on an average daily basis.

Special Counsel

- 3.166 Special Counsel argued that the obligation to deliver should only be considered in the context of interruptible T-service. Special Counsel submitted that there should be neither an obligation to deliver, nor a penalty for failure to deliver. Special Counsel submitted that it may be the case that without the assurance of having the gas available on a day of curtailment, the rate for the interruptible service will be higher than would otherwise be the case.

The Board's Findings

3.167 The Board will not require a customer to be obligated to deliver in any form as a condition of a T-service contract. The Board also believes that since best efforts or reasonable efforts both imply some obligation, these terms should not be used.

3.168 The Board finds that without such an obligation, the failure of a direct purchaser on a peak day to deliver its gas could result in a penalty to the direct purchaser, unless matched with an equivalent reduced take. The Board finds that there should be no difference in this regard between a T-service contract and a buy-sell arrangement.

Indemnification Provisions

Introduction

3.169 This issue concerns the T-service customer's responsibility to indemnify the LDC against any damages.

Positions of the Parties

The LDCs

- 3.170 Consumers', Union and ICG proposed indemnification clauses in their draft T-service contracts for damages arising out of a T-service customers contract.

Industrial Gas Users and Producers

- 3.171 CPA submitted that liability and penalty provisions, clearly, should not be any more onerous in respect of a T-service customer than a sales customer.
- 3.172 Polysar argued that no penalties should exist for a breach of contract but merely a reasonable assessment of foreseeable damages, thus avoiding indemnities.
- 3.173 IGUA submitted that any penalty provisions or indemnification clauses contained in T-service relationships should be no more onerous than the penalty provisions in sales service contracts and that the broad indemnification clauses contained in the proposed T-service contracts submitted by Union and Consumers' ought to be rejected.

3.174 CIL and Nitrochem submitted that the LDCs do have their remedies in the courts if contracts are breached and, as such, the indemnification clauses are not appropriate.

The Board's Findings

3.175 The Board finds that, as outlined in the Interim Decision, it continues to be inappropriate to include wide indemnification clauses of the type proposed by the LDCs in their buy-sell and T-service draft contracts.

Capacity Interruptible Service

Introduction

3.176 Capacity interruptible service relates to the interruption of transportation because of capacity limitations.

Positions of the Parties

The LDCs

3.177 Consumers' submitted that it requires an interruptible T-service customer's gas supply on curtailment days to supply its firm sales customers. Capacity interruptible service is of little or no value to Consumers' at this time.

3.178 Union submitted that where a customer requests interruptible T-service, Union proposes that the customer be required to have an alternate fuel system available consistent with its interruptible sales customers.

3.179 ICG submitted that the only condition under which interruptible transportation service would be offered by ICG, would be if there were capacity constraints. ICG does not anticipate any capacity constraints on its system which would affect the quality of T-service.

Special Counsel

3.180 Special Counsel argued that the LDCs should offer firm and interruptible T-service. If the system requires additional capacity then capacity interruptible T-service should also be made available.

The Board's Findings

3.181 The Board finds that capacity interruptible service should be offered by an LDC only if it can be demonstrated that there is a value to the LDC and to its other customers through the offering of this service. If offered, it should be priced so as to reflect its benefit to the system.

3.182 The Board will not deal, at this time, with the necessity for a customer requiring an alternate fuel system in order to qualify for interruptible T-service. As circumstances will differ among the LDCs, it is appropriate that this be deferred until the utility-specific rate hearing.

Minimum Bill

Introduction

3.183 The minimum bill requirement relates to the imposition of a level of minimum financial contractual obligation on the part of the user.

Positions of the Parties

The LDCs

3.184 Consumers' argued that the minimum bill provisions ensure recovery of a reasonable amount of Consumers' fixed costs but only for a period of one year. It it also to ensure that customers give due regard to their contracting practices. Consumers' proposed requirement is to make T-service consistent with the minimum contractual obligation for sales service.

3.185 ICG submitted that to ensure recovery of its fixed costs, and to protect both the utility

and its other customers, a minimum monthly and annual bill must be established.

The Brokers

- 3.186 Northridge, ATCOR, Brenda, and Consoligas submitted that for contracts of one or more years, minimum bills should recover allocated fixed costs of the LDC, as determined by the Board. For shorter term contracts, a pro-rata basis can be used. ATCOR submitted that interruptible service should be charged based on a cost-based commodity charge rather than a fixed cost basis.

Industrial Gas Users and Producers

- 3.187 Cyanamid continues to object to Consumers' minimum bill provision in its T-service contract. Cyanamid submitted that the direct purchaser's exposure to minimum bills is much higher than on system gas because the customer becomes exposed to a minimum bill from NOVA and from TCPL. Cyanamid also submitted that minimum bills remove the obligation of the LDC to mitigate the damages involved with a breach of a contract.

Special Counsel

3.188 Special Counsel argued that the Board should confirm its Findings on the minimum bill provision from the Interim Decision.

The Board's Findings

3.189 The Board finds that if an LDC proposes to introduce any minimum bill in its transportation rate schedules, it should do so in the utility-specific rate hearing, including the proposed quantum. At that time, the purpose of the minimum bill must be explained and justified by the LDC. The Board has not heard sufficient evidence in this proceeding to encourage it to prescribe a minimum bill or any general principles that would apply in developing a minimum bill.

Delivery Points

Introduction

3.190 The delivery point issue relates to the contracted point at which the delivery from TCPL will take place.

Positions of the Parties

The LDCs

- 3.191 Consumers' submitted that delivery points shall be determined by mutual negotiation and agreement.
- 3.192 Union argued that the nomination of the delivery point is only of relevance to a customer if it has some impact upon its contract terms or its rate. Union claimed that this is not currently the case and as the delivery point is a major concern to Union, it should decide on the delivery point. Union submitted that only if a distance-based rate is in place would the delivery point become relevant to the customer. On the other hand, Union submitted that it could possibly incur large losses in revenue from the Dawn-Trafalgar system if certain customers were allowed to nominate the delivery point at Dawn.
- 3.193 ICG submitted that it will reserve the right to determine, in conjunction with TCPL, the point or points at which it receives the customer's gas into its system.

The Brokers

- 3.194 Northridge and Consoligas submitted that the delivery points should be as designated by the utility provided that would not result in extra cost to the end-user.
- 3.195 ATCOR and Brenda submitted that delivery point locations should be determined by mutual agreement between the utility and the customer.

Industrial Gas Users and Producers

- 3.196 CPA argued that delivery point locations should be negotiated and not set arbitrarily by the LDCs. CPA also submitted that any delivery point location available to the LDC should be available to a customer. If the costs do differ, these could be reflected in the transportation toll.
- 3.197 IGUA submitted that the Board should follow its Interim Decision with respect to delivery point designation.
- 3.198 CIL submitted that the delivery point nomination would make no difference if the conditions of service from each delivery point were the same. It also argued that the Board should order Union to accept delivery at the Dawn end of the system for those T-service customers west of Dawn.

Other Groups

- 3.199 The Director submitted that the delivery point of the TCPL system should be a matter of contractual agreement between the parties.

Special Counsel

- 3.200 Special Counsel argued that the Board should confirm its Interim Decision.

The Board's Findings

- 3.201 The Board finds that the delivery point should be negotiated between the LDC and the direct purchaser. Absent agreement following negotiations, the Board will determine, upon request, the delivery point.

Classes of Service and Priority

Introduction

- 3.202 This issue relates to the type of service to be offered and the hierarchy of access to those services.

Positions of the Parties

The LDCs

- 3.203 Consumers' submitted that bare T-service would be available on a very restricted basis and at the sole discretion of Consumers'. Otherwise, bundled T-service will be available according to Consumers' companion rates schedules.
- 3.204 Union submitted that where a customer requests interruptible T-service, Union will require the customer to have an alternative fuel system available as it does for interruptible sales customers.
- 3.205 ICG submitted that T-service customers be accorded equal priority to that of firm service customers up to their contracted daily demand in their transportation contract. It argued that where a customer wishes to split its requirement between T-service and sales services, a sales rate adjustment may be necessary if ICG is left with the responsibility to service the higher cost, lower load factor portion.

The Brokers

- 3.206 Northridge, ATCOR, Brenda and Consoligas submitted that transportation customers should enjoy

the same priority of service as the LDC's sales services. They submitted that any curtailment should be on a pro rata basis between these classes of services.

Industrial Gas Users and Producers

- 3.207 IGUA submitted that the Board ought to affirm the finding from its Interim Decision that all customers be given equal priority for similar type services.
- 3.208 Cyanamid argued that Consumers' should not be able to interrupt the T-service customer's firm gas service under the circumstances it outlines in its contract. Cyanamid also argued that Consumers' should have to give Cyanamid twenty-four hours notice for curtailment as opposed to four hours notice.
- 3.209 CIL and Nitrochem submitted that there is no justification for imposing the restriction that an interruptible T-service customer must have an alternate fuel supply.

Other Groups

- 3.210 The Director submitted that transportation services should be provided with the same priority regardless of the ownership of the gas transported in the system.

Special Counsel

3.211 Special Counsel argued that the Board should confirm its Interim Decision.

The Board's Findings

3.212 The Board finds that all customers shall be given equal priority for similar types of services: interruptible T-service customers and interruptible sales customers must be treated equally; as must firm T-service customers and firm sales customers.

3.213 The Board has heard no evidence in these proceedings that the priorities outlined in the Board's Interim Decision ought to be changed. The Board finds that, in times of emergency or gas supply shortage, the allocation priorities must be based on the specific circumstances at that time.

Part G Diversions

Introduction

3.214 In the Interim Decision the Board defined diversion as:

" ... occurring when gas is delivered at a different [TCPL] delivery point than contracted for. Such a diversion is generally undertaken to assist in the balancing of a transmission system or of supply and demand."

Positions of the Parties

The LDCs

3.215 The LDCs varied in their approach to this issue. The differences related to their respective definitions of diversion.

3.216 Union considered diversion as a redirection of gas to another plant owned by the end-user or to another location for resale at the end-user's discretion. Union was concerned that this latter situation would give rise to increased unabsorbed demand charges, as the customer who had excess gas supply would provide it to other T-service customers.

3.217 Consumers' defined diversion as a redirection of gas from one location to another for the same customer. As such, a diversion was allowable when a distributor and a customer could mutually negotiate such an arrangement through individual contracts for each plant. Consumers' are opposed to brokers, should they be granted the right to operate in the Province, unilaterally diverting between customers. It argued that diversion should only occur with the distributor's leave.

3.218 ICG argued that diversions occur when gas, which is contracted to be delivered at one location is, at the request of the distributor or end-user, delivered at one or more different locations with the concurrence of the LDC. On this basis, ICG would allow diversion as long as there was an appropriate fee charged to do so and that such a redirection of gas would not inconvenience others.

The Brokers

3.219 Northridge, ATCOR, Brenda and Consoligas, submitted that diversions are necessary for the effective operation of brokers. The brokers felt that the LDC should recognize that diversions allow for the efficient operation of the system, as gas which is not needed at a contracted location can be transported on the

system to another location where it is needed. Diversion should be subject to capacity constraints.

Industrial Gas Users and Producers

- 3.220 IGUA, Cyanamid, CIL, Nitrochem, Polysar and CPA were unanimous in their endorsement of diversions. Cyanamid submitted that diversions should be allowed unconditionally between different locations and different customers to assist the direct purchaser in obtaining 100 percent load factor. IGUA and CPA argued that a diversion should be allowed as long as it can be reasonably accommodated by a distributor's system, which implies that the shipper and carrier agree on terms and conditions. CIL and Nitrochem submitted that diversions among T-service customers be allowed. Polysar argued further that a contract could be set up so that whoever is diverting is not a seller of gas, therein addressing Union's concerns.

Other Groups

- 3.221 The Director and Energy Probe were of the opinion that shippers should be able to divert between customers and approval by the distributors should not be unreasonably withheld. The City of Kitchener submitted that diversions should be done at the utility's discretion.

Special Counsel

- 3.222 Special Counsel submitted that the Board should maintain its current position vis à vis diversions. That is, diversions should be subject to the LDCs' approval with such approval not being unreasonably withheld. This would address the concerns of the LDCs with respect to capacity requirements and their ability to maintain control of their systems.

The Board's Findings

- 3.223 Due to the peculiarities of each specific circumstance with respect to a direct purchase customer, the Board finds that the rights with respect to diversion must be negotiated between the LDC and the customer. The Board finds that if diversions are requested by an end-user who has multiple plants, and the utility can accommodate such diversions, then the conditions for and cost of diversions should be included in the negotiations. Approval of diversions should not be unreasonably withheld by the LDCs.
- 3.224 The Board does not object to the diversion of surplus gas, but it cannot under current legislation endorse the sale of gas from one direct purchaser to a different end-user. The LDC must track the overages and shortages resulting from

REASONS FOR DECISION

load-balancing, with the objective of establishing a zero balance at the end of the contract term.

Part H Security of Supply

Introduction

3.225 Security of Supply is considered to be the reasonable assurance of gas supply in the required volumes and rate of delivery over the life of the contractual arrangement, outside a condition of force majeure. This issue can be divided, for purposes of consideration, into three subsections:

- o Daily Security of Supply which can encompass firm T-service, interruptible T-rate service and Union's Dawn-Trafalgar System design;
- o The annual/seasonal security of supply; and
- o The long term security of supply.

Positions of the Parties

The LDCs

3.226 The LDCs submit that the responsibility for daily security of supply rests with the T-service customer/end-user and therefore the T-service customer/end-user should be prepared to have their supply reduced to the extent of supply failure. The LDCs were concerned that

if there were a failure of gas supply by a firm T-service customer, it could result in a very costly impact on the end-user, thus creating intense pressure on the LDC to somehow maintain service. To deal with the daily security of supply problem, Consumers' and Union submitted that a customer obligation to deliver is required. Consumers' and Union agreed to offer a best efforts back-stopping service and price it accordingly.

3.227 Union specifically addressed its system configuration problem claiming it would be unable to meet its firm market requirements if the direct purchase delivery of an interruptible customer on its system did not arrive on peak days when Union calls for an interruption. A second problem is the capacity of the Dawn-Trafalgar system to serve Ontario and other Eastern Canadian markets in the absence of a guaranteed delivery of gas at Trafalgar through the northern leg of the TCPL line.

3.228 Union submitted that if the first problem stated above is not solved, all its direct purchase customers, both firm and interruptible, must be obligated to deliver. If only the second problem is not solved, interruptible direct purchasers must be obligated to deliver.

The Brokers

- 3.229 Northridge, ATCOR, Brenda and Consoligas submitted that security of supply is the T-service customer's responsibility and that the utility should not have the right or the responsibility to address that security. The brokers also commented on Union's system problems. They outlined two options that are available to Union: first, a change to the system configuration that would require additional capital expenditures, and secondly, renegotiation of TCPL contracts. The brokers argued that if current negotiations with TCPL fail, Union should fully disclose the details of their arrangement so that the Board may assist Union in finding a solution.

Industrial Gas Users and Producers

- 3.230 IGUA, Cyanamid, CIL, Nitrochem, Polysar and CPA were consistent in their argument that the risk of security of supply should be borne by the T-service customer. CPA and Cyanamid argued that the T-service customer must make its own arrangements for backstop with the LDCs offering as well, a best efforts back-stopping service. CPA had reservations as to the seriousness of Union's system problems. It argued that if it was a question of facility changes, then Union should be assured that it would be allowed to

include the costs of such changes in its rate base.

Other Groups

- 3.231 The Director submitted that security of supply is the responsibility of the end-user. Energy Probe argued that T-service customers, for the most part, would be industrial and commercial end-users and are sophisticated enough to understand the consequences of not having firm backstop in place.

Special Counsel

- 3.232 Special Counsel submitted that T-service customers should be responsible for security of supply and the resulting consequences should supply fail. Special Counsel went on to say that where the impact of supply failure is severe, the end-user should define and provide for an acceptable quality of daily security of supply. If the firm T-service customer is in the core market then daily security of supply should be demonstrated.
- 3.233 Special Counsel submitted that there is a remote possibility of needing all the interruptible customers' supplies to meet firm commitments. There must be a reasonable definition of the quality of backstop supply required to offset this risk.

- 3.234 Special Counsel also addressed the Dawn-Trafalgar system problem. He argued that the possibility of failure of the T-service customer's gas supply on a peak design day due to system configuration problems is very low. He submitted that there should be no customer obligation to deliver. The Board should encourage Union to seek contractual solutions with TCPL since it would be the least costly and most effective solution.
- 3.235 Special Counsel submitted that the direct purchaser must be responsible for its seasonal or annual security of supply. The LDCs should undertake investigation of firm backstopping arrangements. If the supply is for the core market there must be stringent regulations governing the security of this supply.
- 3.236 The Board also should, with input from the LDCs, establish guidelines, for long term security of supply. Special Counsel argued that expert opinions on security of supply should be given by a third party until the Board gains expertise in this area.

The Board's Findings

- 3.237 The Board finds that the supply to the core market, as previously defined in Chapter 2, should be protected by the LDC making whatever

contractual arrangements are prudent and necessary to ensure that gas will be available. Back-stopping may be a requirement depending upon the source of supply and contractual arrangements that the LDC chooses.

3.238 In order to serve the public interest, the Board will continue to have responsibilities with respect to the core market. It will be necessary for the Board to ensure that the LDCs have exercised due diligence in entering into core market supply contracts with suppliers. The Board will reserve the right to examine contractual arrangements involving brokers or producers who wish to sell to existing core market customers. Criteria used by the Board in assessing a supply contract would differ, depending upon circumstances, but a requirement may be an independent professional evaluation of the ability to meet the contractual commitments.

3.239 The Board finds responsibility for security of supply with respect to deliveries to the non-core market rests with the direct purchasers. This is consistent with the Feedstock Reference (E.B.R.L.G. 26) and the Interim Decision.

Part I Storage

Introduction

3.240 The use of storage is an important component of natural gas distribution due to the varying load profiles of end-users. Union is the only Ontario LDC currently using storage for more than operational requirements. Union sells storage to others.

3.241 In a deregulated environment, the list of potential customers extends to include T-service customers on both Union's and other LDCs' system, as well as brokers. The unbundling of rates will allow direct purchasers to contract for specific storage requirements they deem necessary for their own operations after consideration of their individual supply arrangements.

3.242 The description and location of specific storage operations are discussed in Appendix E.

Positions of the Parties

The LDCs

3.243 Each of the three LDCs presented different storage proposals as each has different capacities.

- 3.244 Union would operate its storage service on a first come, first served basis, invoking a priority list only in the event of insufficient storage for everyone. Its storage list would give priority to sales customers over franchise T-service customers. Ontario LDCs are third in priority, with T-service customers on their systems following. Union outlined specific contract parameters that must be negotiated with the customer.
- 3.245 Consumers' stated that it has no storage capacity available to offer to direct purchasers. To allocate existing storage to specific customers would lead to a potential disruption in their integrated system by affecting the load-balancing which would lead to a decline in diversity benefit. Consumers' suggested that direct purchasers who wish to control their own storage can contract directly with Union. Consumers' noted that, over time, rationalization between sales service and T-service may result in it being able to offer separate storage services.
- 3.246 ICG submitted that it cannot dedicate storage to T-service customers as it needs the storage for its heat sensitive customers.

The Brokers

- 3.247 Northridge, ATCOR, Brenda and Consoligas submitted that T-service customers should have the same access to storage as sales customers. It should be on a first come, first served basis. When a customer switches from sales to direct purchase its allocated storage quantity should be available for transfer. Storage should be available under terms and conditions set out in a posted rate schedule approved by the Board.

The Industrial Gas Users and Producers

- 3.248 The industrial gas users and producers argued that there should be equal priority for services of the same type, i.e. interruptible T-service customers should have the same priority as interruptible sales customers. Cyanamid submitted that the T-service customer should balance his load either by purchasing load balancing services from LDCs or by buying storage and doing it itself. CIL and Nitrochem argued that there should be equal priority of customers among all three utilities to storage. They also submitted that it is necessary that the Ontario customers should have more information available in order to plan their storage needs. For instance, information as to the amount of storage entitlement, injection and withdrawal rights, the rates for storage service and the

assignability of storage rights should all be available. Polysar and CPA argued that Union should advise each end-user of its imputed storage. CPA further submitted that imputed storage should be available to the end-user itself, or its supplier.

Other Groups

- 3.249 The City of Kitchener submitted that Union should provide storage service in bundled and unbundled forms. The Director argued that the storage space should be assignable. Energy Probe submitted that the LDC should provide load-balancing to the extent possible.

Special Counsel

- 3.250 Under Union's priority list Special Counsel argued there was discrimination between the end-users choosing to take advantage of market sensitive rates via contract carriage and those choosing CMPs. He argued that discrimination in favour of those choosing CMPs is an artificial impediment to the use of T-service and should not be allowed. He also considered that if brokers are allowed greater freedom in Ontario, Union should prepare storage rate criteria which meet brokers' needs for storage on an equitable basis, while accepting that core customers should be protected and receive

top priority. Special Counsel submitted that Consumers' and ICG should be directed to provide draft contracts explicitly setting out terms and conditions which would allow contract carriage customers to obtain storage.

The Board's Findings

- 3.251 The Board accepts Union's priority list with respect to storage subject to the proviso that unused storage is available on a first come, first served basis and that a priority list only applies to simultaneous requests for storage from new customers.
- 3.252 The Board finds that sales customers who change to T-service should be allowed to retain their existing storage entitlement. Renewal of storage contracts by existing customers would have priority over new customers. The latter is subject, however, to the need for pro-rationing of storage capacity in the event of a shortage.

Part J Variation Accounts

Introduction

- 3.253 Variation accounts are used to defer the treatment of certain revenues or expenses pending disposition by the Board. These accounts are sometimes referred to as deferral accounts.
- 3.254 The Board has been reluctant in the past to encourage variation accounts. The Board fixes or approves rates on the basis of forecast revenues and costs, using a prospective test year. Variation accounts can tend to move a utility closer to a guaranteed return, thus reducing the incentive to be cost efficient.

Positions of the Parties

The LDCs

- 3.255 Consumers argued that variation accounts with respect to gas costs should be established since variations in these costs, which are beyond the control of the company, should result in neither a benefit nor a loss to the shareholders. Consumers' noted that customers opting for T-service give it the ability to divest itself of some portion of CD volume, its highest cost of supply. Consumers' position is that the number of customers choosing T-service

is difficult to predict, and largely beyond Consumers' control. Consumers' submitted that a customer's choice between T-service or sales service should have no effect on Consumers' earnings.

3.256 Consumers' submitted that if the Board finds that all system users should share unabsorbed demand charges, these costs should be accumulated in a deferral account for future disposition.

3.257 Union submitted that deferral accounts are necessary where events are unforeseeable or unpredictable to an extent that forecasting is sufficiently inaccurate that there would be unreasonable risks of losses or gains. Union argued in favour of deferral accounts for the following items: heat content variations; unabsorbed demand charges; revenue losses associated with changes to TCPL contracts necessary to accomodate T-service, and backstopping charges. Union argued that unabsorbed demand charges could result in \$12 million per year of unrecovered costs.

3.258 ICG argued for the limited use of variation accounts to accommodate the effects of abrupt and significant changes in LDCs' costs or revenues which are beyond the control of the

utility. ICG submitted that gas costs cannot be predicted with certainty because of the inability of the LDC to predict the number of customers that will choose transportation service.

The Brokers

3.259 Northridge and Consoligas argued that variation accounts should be allowed only where the lack of a variation account will result in an injustice to the LDC. Using variation accounts to avoid business risk is not legitimate. Northridge and Consoligas submitted that protecting the integrity of the utilities during the transition to a competitive market does not mean immunizing them from all the risks of a competitive market. It is these risks that will motivate the utilities to operate efficiently.

3.260 ATCOR and Brenda argued that variation accounts should be allowed if required to protect the integrity of the utilities.

Industrial Gas Users and Producers

3.261 CPA argued that there are benefits that exist from having variation accounts for significant costs or revenues which the distributor cannot

control nor reasonably forecast. CPA objected to the approval of "contingency" deferral accounts for potential costs exposures that are not known to exist at a time of filing.

- 3.262 Polysar submitted that if the Board deems certain deferral accounts necessary their use should be temporary and restricted.
- 3.263 Cyanamid submitted that it is generally opposed to variation accounts. Cyanamid argued that if the Board should allow any variation accounts they must be presented for disposition at rate hearings.
- 3.264 CIL and Nitrochem argued that because variation accounts move the distributor closer to a guaranteed rate of return and diminish its incentive to reduce costs the onus is on the distributor to demonstrate that the proposed deferral accounts are for items where variances will be significant and beyond the LCDs' control.
- 3.265 CIL argued that Union's heat content, demand charge, foregone TCPL transportation revenue and backstopping accounts should be rejected.
- 3.266 IGUA submitted that the issue is whether the uncertainties associated with the new market sensitive gas pricing regime in Ontario merit

the creation of variation accounts, specifically with respect to transportation rates and gas costs. IGUA noted that variation accounts with respect to some gas costs have already been established in Board Decisions E.B.R.O 430-1 and E.B.R.O. 414-1.

- 3.267 IGUA argued that it may be appropriate to include any unabsorbed demand charges that might arise as a result of shippers using interruptible services on TCPL's system or shippers who use an imported supply.

Other Groups

- 3.268 The City of Kitchener supports Union position with respect to variation accounts.

Special Counsel

- 3.269 Special Counsel argued that the existing criteria of financial significance, unpredictability and uncontrollability, used in establishing variation accounts are still valid. Thus, no new variation accounts should be established at this time, except for unabsorbed demand charges as outlined in that Section.

The Board's Findings

3.270 Other than the unabsorbed demand charge account already referred to, the Board will not specify any additional variation accounts at this time. The Board will continue to consider each specific variation account proposal on the basis of its merits.

Part K Separation of Marketing and
Transportation Functions

Introduction

3.271 The monopoly to sell gas no longer exists. Without the separation of the transportation and marketing functions, there is a potential for cross-subsidization between the two functions and undue discrimination with respect to access on the LDC's transportation systems. Cross-subsidization could occur if the LDC underprices services in markets where it faces competition and makes up the difference by overpricing service for captive customers. Discrimination would occur if the utility treated gas shipped on behalf of others differently than it treated its own gas.

3.272 The Pipeline Review Panel, in its July 10, 1986 Report recommended:

Distribution companies review their corporate alternatives and move to the appropriate degree of separation between unregulated gas purchase and marketing activities on the one hand and the regulated transportation activity and their full service to residential, commercial and non-direct sales customers on the other hand. (Section 5.2.3.)

- 3.273 This separation of marketing and transportation can be accomplished on three levels. Firstly, there is the most extreme scenario of corporate divestiture. Secondly, there is divisional separation within one company. Thirdly, there is division of costs as accomplished through accounting procedures.

Position of the Parties

The LDCs

- 3.274 Union and Consumers' submitted that it is unnecessary to separate the marketing and transportation functions. They argued that there are certain economies of scale resident in providing multi-services. There would be significant costs to the LDCs in separating transportation and marketing that would outweigh any potential benefit to the customers. Union argued that it is premature to consider such separation and, moreover, the Board has no jurisdiction in this area and would need legislation to enforce it.
- 3.275 ICG submitted that if deregulation of marketing activities in relation to a non-core market were to occur, then it might be appropriate to establish a separate marketing company to deal with these activities.

The Brokers

- 3.276 Northridge, ATCOR, Brenda and Consoligas submitted that there is a need for a corporate separation of marketing and transportation functions of the LDCs. Each function would be a separate subsidiary under a common holding company, each would have its own Board of Directors and complete separation of policy making, management and accounting. This complete separation would eliminate cross-subsidization as well as discrimination in access to transportation services.

Industrial Gas Users and Producers

- 3.277 Cyanamid and Polysar argued that cross-subsidization possibilities make it imperative that marketing and transportation functions be separated. Cyanamid was unsure as to degree and implementation timetable. Polysar supported separation in that it would refocus the utilities mental attitudes towards direct purchase. IGUA submitted that separation was premature at this stage and more experience was needed before taking such action. CIL and Nitrochem argued that this Decision should be deferred if it holds up the unbundling of rates. CPA submitted that division was not necessary if there were open and non-discriminatory access to transportation systems.

Other Groups

- 3.278 The Director, Energy Probe and The City of Kitchener submitted that organizational separation would make cross-subsidization difficult. The Director stated that without organizational divestiture there should be separation into different divisions. Failing that, separation of costs would be desirable. The City of Kitchener submitted that separation is appropriate where government has regulatory control over transportation but has eliminated regulation over marketing.

Special Counsel

- 3.279 Special Counsel submitted that ideally, under a totally open access scenario, complete corporate separation would be most consistent with the concept of a truly competitive commodity market for the sale of gas. In the more limited access scenario, where the distinction of core/ non-core markets is made, some level of separation is necessary in order to address the issues of cross-subsidization and equal access. In order to maintain full service with respect to core customers, complete corporate separation cannot be advocated. A separate broker arm of the utility could be established to contract with non-core customers. The broker arm would have to be relieved of the obligation to serve in

order to remain on the same "level playing field" with other sellers of gas. Under this limited access scenario the Board must weigh the administrative costs of separation against the desire to have marketing and transportation costs segregated.

The Board's Findings

- 3.280 The Board finds that the separation of marketing and transportation is necessary. The objective of the separation would be to improve the competitive environment by ensuring that the LDCs market gas on equal terms with brokers and producers.
- 3.281 The Board accepts that separating the functions would involve a cost and finds that this should be allocated between the two functions on the basis of cost causality. For example, all gas related advertising costs should go directly to the marketing function. The costs of handling the contracts and legal aspects of transportation rates should be borne by the transportation division of the company.
- 3.282 The Board finds that separation of costs by division should be accomplished by the time of the utility-specific rate hearing arising from these proceedings. If this is not possible, the LDC must explain at that hearing why it has

not achieved this separation of costs. The LDCs should also propose a timetable for separation of these functions at the divisional level.

- 3.283 The LDCs, as part of their submissions, should propose a timetable and approach to achieving separation of these functions through to the level of separate corporate entities. The criteria to be met with respect to the separation will be specific to each utility and as such these will be decided following utility-specific rate hearings rather than in this Decision.

Part L Affiliate Transactions

Introduction

3.284 Affiliate transactions involve the sale of goods, services or information, including gas purchases, or the conferring of a benefit between a regulated utility and any associate or affiliate of that utility.

Positions fo the Parties

The LDCs

3.285 Union agreed with Special Counsel that these hearings were not the appropriate forum for discussing the issue of affiliate transactions. Consumers' argued that these transactions could be dealt with through the Undertakings and therefore needed no comment in this Decision. ICG argued that affiliate transactions were permissible as long as it was demonstrated that they were comparable to arms length transactions.

The Brokers

3.286 Northridge, Brenda and Consoligas submitted that review of affiliate transactions should be done through public tender and be audited by independent accounting firms. In Ontario a

third party should be engaged to assist in determining which supplier gets the contract. ATCOR differed in its submission, stating that if the utility could prove that purchases from affiliates were not in excess of market price they could be allowed.

Industrial Gas Users and Producers

- 3.287 CIL, Nitrochem, Polysar and IGUA submitted that the Board should review the results of all the LDCs' affiliate transactions to ensure that they represent competitive transactions. The LDC must prove to the Board that each transaction is as beneficial as if at arms length. CPA submitted that affiliate transactions should be allowed as long as open and non-discriminatory access to the distribution system is available. Affiliate transaction should not benefit nor prejudice LDCs or affiliates.

Other Groups

- 3.288 The City of Kitchener submits that all affiliate transactions should be permitted, subject to Board scrutiny. Energy Probe has no objection to affiliate transactions if they are demonstrated to be at arm's length. The Director submitted that such direct sales transactions should be done through a separate and unregulated affiliate.

Special Counsel

- 3.289 Special Counsel submitted that no decision with respect to affiliate transaction should be made as a result of these proceedings. Affiliate transactions are being dealt with through the Undertakings of Consumers', ICG and Union.

The Board's Findings

- 3.290 The Board is less concerned with affiliate gas transactions in market segments where significant competition has been achieved. In the market segments in which workable competition has not been achieved, such as the core market, affiliate gas transactions are of greater concern.
- 3.291 Affiliate transactions have been, or are currently being, addressed in the negotiation of Undertakings with the LDCs and related parties. The Board finds that its prior approval will be required for all affiliate transactions aggregating \$100,000 or more annually, other than the sale and transportation of gas by the LDC.
- 3.292 The separation of the LDCs' transportation and marketing functions does not of itself assure that discrimination will not occur. Concurrent with the timetable for the establishment of a

REASONS FOR DECISION

separate marketing entity, the LDC should present in the utility-specific rate hearings, its proposed procedures which will assure that all shippers will have equal access to pipeline and storage capacity.

4. LEGAL MATTERS

Introduction

- 4.1 This chapter deals with the three main legal issues and proposals for legislative change.

Part A The Board's Jurisdiction to Control
the Operation of Brokers

Introduction

- 4.2 The Board has found, as stated in Chapter 3, Part A Brokers, that it is desirable that brokers of gas be allowed to act as agents or as principals to sell gas in Ontario. To accomplish this, brokers who act as principals must make contracts with the LDCs, storage companies, producers and TCPL in order to sell gas to the end-user.
- 4.3 The issue in this section is: what legal constraints does the present legislative scheme impose upon brokers operating in Ontario.

The Legislative Scheme

- 4.4 There are three pieces of legislation which, when read together, provide a comprehensive scheme to ensure the orderly and equitable provision of natural gas to Ontario consumers. These are the Ontario Energy Board Act, R.S.O. 1980, c.332 (the OEB Act), the Municipal Franchises Act, R.S.O. 1980, c.309 (the MF Act) and the Public Utilities Act, R.S.O. 1980, c. 423 (the PU Act).

4.5 The three controls on a person wishing to supply natural gas to a consumer in Ontario are:

- o A section 19 OEB Act order;
- o A certificate of public convenience and necessity obtained from the OEB; and
- o A by-law from a municipality, approved by this Board, which enables the person to supply gas in that municipality.

A Broker is a Supplier of Gas

4.6 This Board is of the opinion that a broker is:

- o a company within the purview of Part V of the PU Act;
- o a person who supplies gas under the MF Act; and
- o a distributor as defined in the OEB Act.

4.7 Therefore, in order for brokers to supply gas in Ontario, a broker would obtain a section 19 OEB Act order; a certificate of public convenience and necessity (section 8 of the MF Act); and a municipal by-law approved by the OEB (Part V of the PU Act and sections 3 and 9 of the MF Act).

- 4.8 A fundamental rule in construing statutes is that words should be given their grammatical and ordinary meaning. When interpreting a series of statutes which form part of the same legislative scheme, there is a rule of statutory interpretation which provides that the use of parallel words ought to be interpreted consistently unless there is an indication to the contrary. Similarly, the general principle underlying statutory interpretation applies in that words ought to have attributed to them, as far as is logically possible, their plain and unambiguous meaning unless a contrary intention appears.
- 4.9 The OEB Act, the PU Act and the MF Act all rely on the concept of "supply". These three Acts all seek to control any person who carries out a particular function - the act of supplying gas. The definition of who is such a supplier is a functional definition. It is the act of supplying gas that triggers the imposition of the regulatory scheme upon a person.
- 4.10 It was argued that brokers were encompassed under all, or none, or portions of the three relevant statutes. The different interpretations exist largely because of the concepts contained in the legislative scheme concerning who ought to be regulated. As noted above, the

act of supplying gas has traditionally invoked the regulatory process.

- 4.11 The industry structure has changed over recent years. Prior to this evolution, there was no differentiation between parties who carried out the sales function and the gas works functions (transportation, storage, metering, etc.). "Supply" was therefore an appropriate mechanism for the imposition of regulation.
- 4.12 In the new environment, the sales function is being severed from the gas works and transportation functions leaving the latter as a true natural monopoly.
- 4.13 It was submitted to the Board that the legislative scheme did not contemplate the regulation of parties who only sold gas in Ontario and that it was meant only to encompass those who owned and operated the physical gas works. In the opinion of the Board, this is incorrect. The legislative scheme intended to regulate any person who supplied gas in Ontario. The Board finds that the supply of gas in this scheme means passing title and/or physically delivering the commodity to a place in Ontario. This is consistent with the general meaning afforded to "supply" in regulatory schemes.

- 4.14 By regulating suppliers, the legislative scheme regulates any person who sells gas and/or who owns and operates the gas works. Therefore, the scheme captures an LDC which delivers gas by means of gas works owned and operated by the LDC and also those who store gas, transport another's gas or their own gas for sale.
- 4.15 A broker is someone who supplies gas directly to an end-user in Ontario using an LDC's or TCPL's gas works system without constructing, owning or operating any physical works. As the scheme regulates persons who supply gas, brokers are captured when they sell gas in Ontario to an end-user.
- 4.16 The Board has been given a broad mandate to control the supply of natural gas in the public interest: Union Gas Limited v. Township of Dawn (1977), 76 D.L.R. 613. We find that to fulfill this mandate the Board must have control over all avenues of the supply of gas, including supply through brokers.
- 4.17 The Legislature intended to grant to the Board a comprehensive overseeing function to ensure an efficient natural gas system in Ontario. There are no exemptions from this duty. The Board finds that it would be contrary to the legislative intent if the Board did not control a person who sells gas in Ontario, merely

because that person did not own the physical works to effect that sale.

- 4.18 If this were not the situation, and if as submitted, the Board were not able to compel service by those who control the physical works, any person could sell gas in the Ontario market; the only control on a person's ability to do so would be the owners of the physical works. As a result, brokers would be regulated, not by the OEB, but by the LDCs. The brokers' primary competitors would control the brokers' ability to sell by controlling their access to the system. This would create an industry structure ripe for abuse by the monopoly position of the LDCs. The Board finds that such a result would be contrary to the public interest.

The Source of the Municipal By-Law Requirement

- 4.19 It was argued that the requirement of a municipal by-law approving the supply of gas is mandated by section 3 of the MF Act not by section 57 in Part V of the PU Act. However, we find that the effect of the by-law requirement is not altered by the section which mandates it.
- 4.20 We find that brokers are suppliers within the purview of Part V of the PU Act. Therefore, it

is not necessary to determine whether the by-law requirement stems from section 57 of the PU Act or from section 3 of the MF Act. The effect on brokers is the same.

4.21 The Township of Nelson v. Dominion Natural Gas Co. Ltd. (1930), 66 D.L.R. 271 (Ont. H.J.); aff'd [1931] 2 D.L.R. 229 (O.C.A.), was cited both for and against the proposition that section 3 of the MF Act requires a by-law before gas may be supplied within a municipality. At trial, Wright J. took the position that section 3 of the MF Act requires a by-law without relying upon section 57 of the PU Act. It appears to this Board that the appellate court did not disapprove of Mr. Justice Wright's ground of decision. Upon appeal the decision was affirmed in result, and both section 3 of the MF Act and Part V of the PU Act were cited. Therefore, this Board is of the opinion that the Nelson decision did not decide the issue whether it is section 3 of the MF Act or Part V of the PU Act which requires a gas supplier to have a by-law.

4.22 Therefore, a person who wishes to supply gas to a municipality or to an inhabitant of the municipality is required to obtain a by-law.

The Municipal By-Law Requirement

4.23 It was submitted to the Board that a broker is not a "company incorporated for the purpose of supplying any public utility" under section 56, Part V of the PU Act. The PU Act defines "public utility" to include gas. There were two primary arguments advanced in support of this position:

- o The Board ought not attempt to modernize the words "company incorporated for the purpose" in section 56 by giving them a liberal interpretation which would look to the subjective intention of the incorporators rather than the objective evidence of the stated corporate purposes in the corporate constitution; and
- o The intention of the Legislature was not to require a franchise for a supplier who uses the physical works of another person.

4.24 The first of these arguments would result in all companies which do not have a stated corporate purpose of supplying gas being exempt from the by-law requirement. This means that virtually no one would be required to obtain a by-law. Section 56 evidences a clear intention to encompass every company supplying gas. Under the old corporate law regime, all objects of a corporation had to be expressly stated. Under

present corporate law, a corporation has the capacity to engage in whatever activities it wishes.

- 4.25 To fulfill the obvious legislative intent, this Board finds that section 56 must be interpreted as encompassing anyone who supplies, or attempts to supply, gas. This is not to be accomplished through reference to the subjective intentions of the incorporators but by reference to the objective fact of supply.
- 4.26 The second submission regarding the non-application of section 56 of the PU Act to brokers fails for reasons similar to those discussed in A Broker is a Supplier of Gas. The brokers' submission that the by-law requirement is not suitable for those who do not construct, own or operate gas works may be correct. However, the Legislature made the scheme applicable to a person who supplies gas, not only to one who constructs, owns or operates the gas works to facilitate the supply of gas.
- 4.27 It was further submitted by the brokers that the powers referred to in section 57 of the PU Act, which a company cannot exercise without a by-law, must be limited to those related to the construction, ownership or operation of gas works, rather than the power of supply. Otherwise, it was submitted, the result would be to

require a by-law to enable a gas station to sell propane or a company to sell bottled water.

4.28 The Board is of the opinion that the "powers" to which section 57 refers are the corporate powers which a private utility gains by standing in the place of a municipally-owned utility through the acquisition of a by-law. The corollary of this is that they are the powers which a company could not exercise unless it is a municipally-owned utility or a person operating under a by-law. The PU Act was written with municipally-owned utilities as the primary focus. Part V of the PU Act allows a private company to take the place of a municipally-owned utility. A municipal corporation may supply gas to its inhabitants under subsection 18(1) of the PU Act. The powers referred to in section 57 of the PU Act are not all the powers of a corporation. That section deals only with those powers which the corporation would be prohibited from exercising unless it had a municipal by-law.

4.29 Reading sections 18(1), 56 and 57 together, it is apparent to the Board that the legislative intent in enacting the PU Act was to reserve the right to supply gas to the municipally-owned utility unless the municipality waived this right by passing a by-law to enable a private company to take its place. This

suggests that Part V of the PU Act should only be applied where municipally-owned utilities operate, or would logically operate, because of the existence of a monopoly. Part V would, therefore, not apply to the sale of bottled water or propane sold at service stations. It does apply to the supply of natural gas because that is an active area of operation for a municipally-owned utility.

- 4.30 The Board is of the opinion that brokers who wish to supply gas in Ontario are covered by Part V of the PU Act and section 3 of the MF Act and require a municipal by-law.

Certificate of Public Convenience and Necessity

- 4.31 We find that brokers, as suppliers of gas, are also required to obtain a certificate of public convenience and necessity under section 8 of the MF Act in order to supply gas within a municipality.
- 4.32 There are three questions which relate to certificates of public convenience and necessity:
- o Can one certificate apply to more than one municipality?
 - o May the Board attach terms and conditions to a certificate? and

- o Does the Board have the power to grant declaratory relief to brokers exempting them from the by-law requirement?

4.33 First, can a certificate cover multiple municipalities? A certificate has been traditionally granted upon the application of an LDC for an area in which it has or will be obtaining a by-law from the municipality. The scope of such a certificate has therefore been limited to the particular municipality to which the by-law pertains.

4.34 The Board's issuance of certificates of public convenience and necessity is limited by the terms of section 8 of the MF Act. The standard applied by the Board in granting a certificate is one of public convenience and necessity. This standard places a burden on the applicant to demonstrate that the benefits to the public would outweigh the costs of allowing the activity. The opinion of the Board as to when the standard of public convenience and necessity is satisfied is determinative of the issue: Union Gas Co. v. Sydenham Gas and Petroleum Co., Ltd. (1957), 7 D.L.R. (2d) 65 (S.C.C.). We find that if brokers meet this standard for the municipalities for which the certificate is requested, then the Board may grant the certificate.

4.35 The Board finds it may issue a certificate covering more than one municipality since there is no restriction in the legislation, either expressly or by implication. Since there is a requirement for a municipal by-law, the principle of municipal control over those who operate in the place of a municipally-owned utility would not be affected. Even if the Board did not choose to issue a multiple-municipality certificate, it could achieve exactly the same result through one hearing from which many certificates could be issued.

4.36 The second question deals with the Board's power to attach terms and conditions to a certificate of public convenience and necessity. In order to execute its duty of ensuring that certificates meet the standard of public convenience and necessity, the Board reaffirms its position that it may attach appropriate terms and conditions to protect the public interest.

4.37 This jurisdiction arises by virtue of the implied and express powers in subsection 8(3) of the MF Act:

The Ontario Energy Board has and may exercise jurisdiction and power necessary for the purposes of this section
...

4.38 It is supported by the Board's general discretionary power to impose terms and conditions as the Board considers proper pursuant to section 16 of the OEB Act.

4.39 The third question is whether the Board can exempt brokers from the requirement of having to obtain a municipal by-law. As stated previously in this chapter, the Board finds that if a broker is going to supply gas within a municipality, a municipal by-law must be obtained. It is the Board's opinion that it cannot grant an exemption from this statutory requirement.

Brokers and Section 54 of the PU Act

4.40 It was submitted that if brokers are suppliers of gas under the legislative scheme, including Part V of the PU Act, then brokers must also be encompassed by section 54, Part IV of the PU Act:

54. Where there is a sufficient supply of the public utility, the corporation shall supply all buildings within the municipality situate upon land lying along the line of any supply pipe, wire or rod, upon the request in writing of the owner, occupant or other person in charge of any such building.

- 4.41 Section 54 is the mechanism by which a LDC can be forced to supply gas. This section is enforceable by way of an application to the Supreme Court of Ontario, which, if successful, will result in the LDC being ordered to provide gas to the applicant.
- 4.42 It was submitted that brokers, if captured by Part V of the PU Act as persons who supply gas, are subject to the obligation to supply any person with a building situated along a pipeline.
- 4.43 It is the Board's opinion that this section does not mean that a supplier of gas is responsible for the supply of gas to a person situated upon any pipeline, but that a supplier of gas is responsible for the supply of gas to a person situated upon any pipeline owned by that supplier of gas. Otherwise, any LDC or municipal utility could be ordered to supply gas to a person situated along a pipeline owned or operated by another LDC or municipal utility regardless of the distance of service or whether the pipeline owner will cooperate.
- 4.44 An additional reason why a broker is not encompassed by section 54 of Part IV of the PU Act is found by comparing section 48, which limits the application of Part IV of the PU Act, to

section 56, which limits the application of Part V of the PU Act.

48. This Part applies to all municipal or other corporations owning or operating public utilities.

56. This Part applies to every company incorporated for the purpose of supplying any public utility.

- 4.45 The Board is of the opinion that a broker would not necessarily be encompassed by Part IV of the PU Act since it is limited to those corporations which own or operate public utilities. Although the PU Act defines "public utility" as meaning "gas"; the words "public utilities" in section 48 do not, in the Board's opinion, refer to the commodity which is gas, rather they refer to the physical works and business institution which owns or operates the physical works to supply the gas. Brokers do not own and operate the physical works to supply gas and are therefore not a corporation owning or operating public utilities.

Are "Direct Purchasers" Suppliers

- 4.46 It was submitted that if brokers are found to be suppliers of gas under the PU Act and the MF Act and distributors under the OEB Act, then all direct purchasers of gas (end-users of gas who buy gas outside of Ontario for their own

use and arrange the transportation of that gas to their plant) would also be suppliers of gas. If so, a direct purchaser would be encompassed by the regulatory scheme and would require a certificate of public convenience and necessity and a by-law of the municipality in which it resides in order to make direct purchases.

4.47 The Board is of the opinion that these propositions arise from an erroneous interpretation of the meaning of supplier of gas. As discussed before, a supplier is one who sells gas in the province and/or delivers gas to a place in Ontario. A direct purchaser does not sell or deliver the gas to an end user in Ontario and therefore is not a supplier.

4.48 However, if a direct purchaser has an excess supply of gas and wishes to sell this gas within Ontario, then that direct purchaser would become a supplier of gas and would fall under the legislative scheme.

4.49 The Board believes that system efficiency could be improved through such diversions and that a direct purchaser should have the opportunity to divert. The Board will recommend changes to the legislation to permit such diversions.

The Section 19 OEB Act Order Requirement

4.50 A distributor is defined in the OEB Act as "a person who supplies gas ... to a consumer...". As discussed above, it is the act of supplying gas which triggers the imposition of the regulatory scheme upon a broker.

4.51 An LDC argued that the Board has a broad mandate to control the supply and distribution of natural gas in the public interest, and therefore, the Board has a duty to approve just and reasonable rates for the sale of gas by brokers. The Board finds that although it has a broad mandate to act in the public interest, the regulation of sales prices by brokers, who act in a competitive yet controlled market, would not be in the public interest.

4.52 However, subsection 19(8) prohibits a distributor, which by definition includes a broker, from selling gas except in accordance with a Board order:

Subject to the regulations, no transmitter, distributor or storage company shall sell gas or charge for the transmission, distribution or storage of gas except in accordance with an order of the Board, which is not bound by the terms of any contract.

- 4.53 The Board is given the power to make rate orders by virtue of subsection 19(1):

Subject to the regulations, the Board may make orders approving or fixing just and reasonable rates and other charges for the sale of gas by transmitters, distributors and storage companies, and for the transmission, distribution and storage of gas.

- 4.54 It is the opinion of the Board that a subsection 19(1) order fixing just and reasonable rates for the sale of gas by brokers may not be appropriate under the circumstances.

- 4.55 Subsection 19(8) provides that the prohibition is subject to regulations made under the OEB Act. It is the Board's opinion that legislative amendments to permit brokers to operate in the province, subject to any controls the Board would consider proper, would be the preferred solution. If such legislative changes are not immediately forthcoming, the Board may request the Minister to propose appropriate regulations to the Lieutenant Governor in Council (pursuant to clause 35(1)(h) of the OEB Act) to exempt brokers from the operation of section 19.

- 4.56 Should an LDC wish to compete as a broker, the Board would hear applications by the affiliate corporation of an LDC to act as a broker. Such an application should include details of what

REASONS FOR DECISION

controls would be implemented to avoid unfair dealing between that broker and the LDC.

Part B Compelling Service and Approval of
Contracts

Introduction

4.57 The issues in this section are whether the Board has the jurisdiction to order that LDCs provide a given service and to approve contracts.

4.58 The Board dealt with these issues in the Interim Decision in paragraphs 9.107 to 9.112 and 9.24 to 9.30. The Board held that rates include more than monetary terms and include many conditions of service. The Board has the jurisdiction to determine or approve any term of a contract which is directly or indirectly rate-related. The Board found that it had the jurisdiction to review the terms of any transportation contract to ensure that the contracts were not imprudent or contrary to the public interest. The Board did not decide whether it had the power to order service at that time because there were no instances where such an issue had arisen. However, the Board did state, at para. 9.112:

... that the overall scheme of the legislation in Ontario implicitly confers on it the jurisdiction to require service to a customer that qualifies for such service.

The Board's Opinion

- 4.59 The Board finds that it has the power to compel the provision of services by an LDC to any qualifying customer, including entry into a Board-specified contract. This is part of the inherent jurisdiction which the Board has as a regulator of gas monopolies.
- 4.60 It is also the opinion of the Board that it can require Board approval of contracts between an LDC and any other person, both as a prerequisite to entry and ex post. Any contract between an LDC and another party for the sale, transmission, storage, or metering etc. of gas affects the costs and revenues of the LDC; the Board finds that such contracts are reviewable through the Board's power to determine just and reasonable rates.
- 4.61 To suggest that the Board can review rate terms but not other conditions of service is to ignore the fact that they are two sides of the same equation. The Board cannot review the fairness of prices charged unless it can review the level and nature of service provided. Similarly, the Board cannot review the degree to which monopolists are fulfilling their public stewardship unless it can review discriminatory practices of LDCs between their customer classes or customers within a class.

- 4.62 This concern is accentuated because LDCs are now competing with brokers for sales as well as controlling services essential to successful brokerage sales or direct purchases. The Board, as part of its inherent public interest jurisdiction, must be able to review and compel adjustments to the conduct of LDCs in their position of dominance.

Why the OEB May Compel Service and Approve Contracts

- 4.63 The Board's opinion is that it has the jurisdiction to compel service by a LDC which refuses to co-operate with a broker or direct purchaser, and to require Board approval of contracts, is based upon:

- o The OEB Act providing the mechanisms to accomplish this role.
- o The doctrine of jurisdiction by necessary implication;
- o The inherent role of a regulator;
- o The role of the OEB in Ontario;

The Mechanisms to Approve Contracts and Compel Service

- 4.64 The first factor leading this Board to find that it has the jurisdiction necessary to approve contracts and compel service is that the Board can utilize its existing powers to

effect the necessary regulation within the present statutory framework.

- 4.65 The Board will not at this time attempt to decide the issue of how it will carry out and enforce its power to approve contract terms or compel service. The Board will decide each case on the facts as they arise.
- 4.66 The Board has the power to set just and reasonable rates under section 19. The Board may initiate a review of the rates of a LDC under subsection 19(12) of the OEB Act. This power to set rates includes all non-monetary but rate-related terms of service. Section 16 of the OEB Act allows the Board to attach whatever terms and conditions it considers proper in the exercise of its jurisdiction. This could include the requirements of information filing, contract approval or entry into service contracts on a fair basis. The Board considers all terms of service to be rate-related. Therefore, should a LDC discriminate in the provision of services at reasonable rates, the Board would have the power to set rate/service combinations which the LDC must provide. Any rate order could be made conditional upon the LDC following procedures which the Board set out. The Board could also fix rates and corresponding terms of service to facilitate the provision of services to a broker or direct

purchaser who cannot reach an agreement with an LDC upon application to the Board.

- 4.67 Board orders are enforceable under the OEB Act and the Statutory Powers Procedure Act, R.S.O. 1980, c. 484. Violation of an order could lead to the revocation of the LDC's ability to charge rates for its services or to an injunction to force the provision of those services. It is also an offence under section 34 of the OEB Act to contravene any provision of that Act or any Board order.

Jurisdiction by Necessary Implication

- 4.68 The doctrine of jurisdiction by necessary implication is explained in 36 Halsbury 3rd ed., page 436, para. 657:

The powers conferred by an enabling statute include not only such as are expressly granted but also, by implication, all powers which are reasonably necessary for the accomplishment of the object intended to be secured.

- 4.69 This doctrine has been applied in Canada to ensure that regulatory tribunals have the jurisdiction necessary to accomplish their mandates.

- 4.70 In Re Interprovincial Pipeline Ltd. and National Energy Board (1977), 78 D.L.R. (3d) 401, the

Federal Court of Appeal had to decide whether an NEB order for the production of documents was within the NEB's jurisdiction, although the NEB did not have express statutory authority to make the order. The Court looked beyond the exact words of the statute to its purpose. It found that the necessary jurisdiction to make such an order ought to be implied since such an order was clearly in furtherance of the legislative purpose and was necessary to enable the Board to function.

4.71 This same doctrine of jurisdiction by necessary implication was pleaded by the successful parties in Re Canadian Broadcasting League and Canadian Radio-Television Commission et al (1982), 138 D.L.R. (3d) 512. Here the Federal Court of Appeal accepted the argument that despite the absence of a statutory provision enabling the CRTC to regulate rates of cable companies, the authority to do so should be found to exist as a natural and necessary part of the CRTC's control of a monopoly in order to achieve the legislative objectives.

4.72 In Ref. Re National Energy Board Act (1986), 19 Admin. L.R. 301 (F.C.A.), it was argued that the NEB had jurisdiction by necessary implication to award costs. In rejecting the submission, the Court imposed two limitations on the doctrine. First, it must be a matter of

necessity that the jurisdiction exist for the regulator to accomplish the legislative purpose. This qualification is not met if the tribunal can and has accomplished this purpose without this jurisdiction. Second, the jurisdiction sought must not be jurisdiction to do an act which Parliament clearly addressed its mind to, as would be indicated by past conduct, since to do so would be to usurp the function of Parliament.

4.73 The doctrine of jurisdiction by necessary implication should be implied when:

- o the jurisdiction sought is necessary to accomplish the objectives of the legislative scheme and is essential to the Board fulfilling its mandate;
- o the enabling act fails to explicitly grant the power to accomplish the legislative objective;
- o the mandate of the Board is sufficiently broad to suggest a legislative intention to implicitly confer jurisdiction;
- o the jurisdiction sought must not be one which the Board has dealt with through use of expressly granted powers, thereby showing an absence of necessity; and

- o the Legislature did not address its mind to the issue and decide against conferring the power upon the Board.

The Inherent Role of a Regulator

- 4.74 The third factor upon which the Board's ability to compel service and approve contracts is based is the inherent role of a regulator. This underlies the invocation of the doctrine of jurisdiction by necessary implication to ensure that the Board has the power to approve contracts and compel service. This doctrine attempts to ensure that a regulator with a broad mandate will have the tools to fulfill that mandate.
- 4.75 The role of the modern regulatory tribunal evolved from common law courts which entertained claims of improper conduct by common carriers. Canadian jurisprudence recognizes the obligations of a common carrier or provider of a utility service.
- 4.76 In Red Deer v. Western General Electric (1910), 2 A.L.R. 145 at 152 (Alt. S.C.) the court stated, after reviewing the common law principles relating to common carriers, that:

... there is an implied obligation upon the franchise holder to render

such services or supply such commodities on request and without unfair discrimination to every inhabitant who is ready and willing to pay in advance therefor, and whose place at which the obligation is required to be performed lies along the line of the franchise holder's operations, and who accords to the franchise holder all reasonable facilities to admit of the convenient performance of the obligation. That, in my opinion, is the obligation in general terms.

4.77 Modern rate regulation developed from these common law principles. Technological advances resulted in more natural monopolies with larger scale operations to maximize efficiency. To ensure that rates and services would be fair and reasonable and operate in the public interest, regulatory tribunals such as the OEB were constituted.

4.78 Canadian jurisprudence has recognized the broad mandate which the modern regulator of utilities has been given. For example, in Re T.A.S. Communication Systems Ltd. and Newfoundland Telephone Company (1983), 2 D.L.R. (4th) 647 at 649, the Newfoundland Court of Appeal summarized the purpose of modern regulatory schemes as follows:

The Public Utilities Act [R.S.N. 1970], as with similar statutes in all other Canadian jurisdictions, was enacted

for the purpose of controlling and regulating companies providing essential services ... in order to ensure that those services are properly and fairly provided to the public, and that the charges for such services are fair and reasonable.

4.79 The role of the regulator is not simply to set rates to provide a fair return after legitimate costs of service. Rates must be set in relation to the expected level and quality of service; service must be provided in a non-discriminatory fashion.

4.80 As Webber stated in Principles of Public Utility Regulation, at page 101:

The grant of special privileges to public service corporations imposed upon them certain obligations and public duties. They are required:

- (1) To supply reasonably adequate facilities
- (2) To render service on reasonable terms
- (3) To refrain from unjust discrimination

The function of the state in utility regulation is to prescribe rules that will attain certain objectives.

- (1) The insurance of fair remuneration to private property used in the public service
- (2) The prevention of extortion
- (3) The securance of substantial equality of treatment under similar circumstances

(4) The promotion of public safety,
good order, and convenience

4.81 Webber further stated, with the support of State ex rel. Wood v. Consumers' Gas Trust (1901) 61 Ne 674, that:

The common and equal right of the public to reasonable service at reasonable compensation governs all situations where public service is involved. No statute is deemed necessary to aid the courts in holding such to be the law.

4.82 Webber is supported by other authorities on regulatory law such as Jones, Cases and Materials on Regulated Industries (2nd ed, 1976) at page 288, and A.J.G. Priest in his work, Principles of Public Utility Regulation (1969), concerning the service obligation (pages 227-46) and the prohibition against discrimination (page 285 and pages 300-311).

The Role of the OEB

4.83 The public interest mandate given to the Board in the OEB Act is the fourth factor which leads this Board to conclude that it can compel service and approve contracts. This mandate is premised on a legislative intention to grant the Board the necessary jurisdiction to regulate the natural gas industry in Ontario.

4.84 Section 64 provides that the OEB Act prevails in the event of a conflict with any general or special Act. Section 13 grants the Board the power to determine all questions of fact and law within its jurisdiction (subsection 1) and grants the Board exclusive jurisdiction over all matters in which it has jurisdiction (subsection 6). The legislative intent was to create an administrative, regulatory and adjudicative tribunal to oversee the energy industry, particularly the natural gas industry, in Ontario.

4.85 This broad mandate was discussed in Union Gas v. Dawn (supra); the Divisional Court stated at page 625:

... it is clear that the Legislature intended to vest in the Ontario Energy Board the widest powers to control the supply and distribution of natural gas to the people of Ontario "in the public interest" and hence must be classified as special legislation.

and, at page 622:

In my view this statute makes it crystal clear that all matters relating to or incidental to the production, distribution, transmission or storage of natural gas, including the setting of rates, location of lines and appurtenances, expropriation of necessary lands and easements, are

under the exclusive jurisdiction of the Ontario Energy Board ...

These are matters that are to be considered in the light of the general public interest and not local or parochial interests.

In the final analysis, however, it is the Energy Board that is charged with the responsibility of making a decision and issuing an order in the public interest.

- 4.86 The Ontario Divisional Court in Re Ontario Energy Board (1985), 51 O.R.(2d) 333 at 336 stated:

The jurisdiction of the Ontario Energy Board is very broad. It is charged with the regulatory and quasi-judicial functions covering the entire field of energy within the Province of Ontario.

- 4.87 This broad mandate and jurisdiction have not been disputed in the courts. The cases of Re Kimpe and Union Gas Ltd. (1985), 52 O.R. 112 and Re Ontario Energy Board (1985), 51 O.R. 333 were cited to the Board as examples of how the courts have limited the Board's jurisdiction to powers expressly delineated in the OEB Act. In the opinion of the Board, these decisions limit the Board's jurisdiction where the Legislature has clearly directed its mind to the issue and decided to withhold a procedural power from the OEB. The procedural powers withheld in these

two cases were not essential to the accomplishment of the Board's mandate.

4.88 The Board finds that the powers to compel service and approve contracts, are essential to the Board's mandate as a regulator and are not matters explicitly addressed by the Legislature.

4.89 It has been suggested to the Board that the existence of section 22 of the OEB Act, which allows the Board to compel storage service and to approve storage contracts, and section 54 of the PU Act, which allows a person to apply to a court to order an LDC or municipally-owned utility to supply gas, shows that the Legislature directed its mind to whether the Board should have the ability to compel service and approve contracts. In the opinion of the Board, this is not indicative of a legislative intention to preclude the Board.

4.90 When the legislative scheme was enacted it was not foreseen that brokers and direct purchasers would place new demands on the regulatory scheme. The relationship between these parties and LDCs raises the possibility of discriminatory practices or abuse of dominance. Notwithstanding that the Legislature did not address its mind to this possibility, it is necessary that the public interest be served.

- 4.91 This role could be fulfilled by the courts which presently oversee section 54 of the PU Act. However, it is the opinion of the Board that these new relationships are best left to regulation by the Board since it already deals with brokers, direct purchasers and LDCs. The required regulation will necessitate ongoing monitoring, administration and enforcement; regulation is best suited to an administrative tribunal. Further, the jurisdiction of the Board in section 22 of the OEB Act over the similar issue of storage matters indicates to the Board that had the Legislature contemplated the new industry structure, it would have expressly granted this jurisdiction to the OEB.
- 4.92 It was submitted that the Board had narrowly interpreted its jurisdiction in its Reasons for Decision, E.B.R.O. 377-1 (Union). The Board held (at page 15) that it did not have the jurisdiction to set the rates for the supply of gas to an LDC or to cause an LDC and its supplier to terminate or renegotiate a contract. It is the Board's opinion that this did not suggest that the Board did not have the power to review the prudence and the costs involved with supply contracts. However, the Board did state that it could not interfere in a normal LDC/supplier relationship and this is still the case, provided the supply does not implicitly set a rate or is not imprudently contracted for.

4.93 The Board does not wish to unnecessarily interfere in a competitive market for the supply of gas to LDCs. Such interference is not essential or necessary for the Board to fulfill its mandate; nor is part of the inherent jurisdiction of a regulator to regulate free market purchases by a regulated utility.

4.94 It was submitted that it would be a violation of the autonomy of the management of a utility for the Board to compel service and to review and approve contracts. An LDC cited the New York Public Service Commission case of Re Promotional Activities by Gas and Electric Corporations (1967), 68 PUR (3d) 162. However, after stating a general principle of management autonomy at page 167:

... it is a well-recognized principle of such regulation that considerable discretion must be afforded the management of a utility in the conduct of the utility's business,

the Commission set out relevant exceptions to this rule which this Board finds instructive:

Even in such areas of management discretion, sales promotion and other expenditures related to the conduct of the business are subject to scrutiny and investigation by the commission, but the commission may not substitute its judgment for management unless

there is a showing of unlawfulness, improvidence, or inefficiency.

4.95 And, at page 168:

... its [the utility's] charges shall not be unjust or unreasonable, and that it shall not unjustly discriminate so as to give undue preference or disadvantage to customers similarly circumstanced, ...

4.96 The Board finds that the powers to review the cost of service and to ensure that fair and adequate services are provided are not a violation of the principle of management autonomy. The Board agrees with the New York Commission that the potential for unjust charges and discrimination are legitimate reasons for reviewing the activities of management.

Part C Assignment Of Contracts

- 4.97 The Board is of the opinion that the assignability of contracts is primarily a matter of negotiation between the parties. However, the Board reiterates its concerns expressed under the preceding section. Where an LDC unreasonably refuses to allow assignability of contracts without valid business reasons and attempts to use its position of dominance to further its own business interests to the detriment of those who rely on those services, with the result that the public interest is harmed, then the Board may use its powers as a legitimate exercise of its jurisdiction to remedy the situation.
- 4.98 The Board will hear applications concerning unreasonable refusals to allow contract assignability and will decide each case on the facts. The Board notes that it would not be unreasonable for LDCs to charge more for assignable service contracts, as compared to non-assignable contracts, provided the excess is an accurate reflection of the additional costs involved. Nor would it be unreasonable for the parties to negotiate notice of assignment provisions and even third party insurance to make the assignment of contracts more acceptable.

Part D Conclusion and Proposals for
Legislative Change

- 4.99 This section summarizes the conclusions reached on legal matters discussed in this part of the Decision and highlights the need for amendments to the legislation.
- 4.100 Brokers engage in the supplying of gas. Supplying gas means the selling of gas, that is, the passing of title at any point in Ontario and/or the delivery of the gas. Therefore, brokers are suppliers of gas under the MF Act, the PU Act and the OEB Act.
- 4.101 As suppliers of gas, brokers require:
- o A certificate of public convenience and necessity for the municipality in which they wish to supply gas;
 - o A by-law from the municipality to enable them to supply gas; and
 - o An order of the Board to overcome the subsection 19(8) OEB Act prohibition.
- 4.102 The certificate required under section 8 of the MF Act can be used as a form of licensing by attaching terms and conditions to it. The test of public convenience and necessity must be

satisfied for each municipality covered by the certificate.

4.103 The by-law requirement exists by virtue of Part V of the PU Act and section 3 of the MF Act. The broker must obtain a by-law before it supplies gas. It may be procedurally expeditious for municipalities to have the Board act as a screening mechanism of brokers (financial integrity, supply dependability, management ability etc.) through the certificate process. It would likely be a term of every certificate that the brokers would never own, operate or construct any works to supply gas, thereby preserving the legitimate municipal interest in controlling physical works.

4.104 It was submitted that the by-law requirement could be facilitated through the Board requesting each municipality to pass a standard form by-law to enable brokers to supply to the municipality and the inhabitants of the municipality. The Board will not make this request at this time. If brokers and municipalities wish the Board's assistance, the Board will attempt to be of service. The Board believes that it would be in the interests of the municipalities to facilitate brokerage and that the enactment by each municipality of a standard form by-law to allow brokers to operate would

be an expeditious manner of implementing brokerage in the province.

4.105 The subsection 19(8) prohibition against unauthorized gas sales may be overcome by a Regulation made by the Lieutenant Governor in Council pursuant to clause 35(1)(h) of the OEB Act

4.106 The Board reiterates its position stated in the Interim Decision, paragraphs 9.24 to 9.30 regarding the Board's power to approve customer contracts and paragraphs 9.107 to 9.112 regarding the jurisdiction of the Board to compel service and approve contracts of service between an LDC and the user of its services. The Board will hear applications if an LDC and the user of the LDC's services cannot come to an agreement. Since the non-discriminatory provision of services at fair rates is rate-related, the Board has the jurisdiction to decide the terms of the contract. The Board will fix rates and terms of service to facilitate brokerage and direct purchases where necessary.

4.107 The assignment of contracts should be negotiated by the parties. In the event the parties are unable to reach agreement, the Board will entertain applications concerning unreasonable refusals to allow contract assignability.

4.108 The Minister, the Honourable Vincent Kerrio in his statement of November 3, 1985, indicated in support of legislative change:

... should it prove necessary at any stage, the government is prepared to introduce legislation ...

4.109 In the Board's opinion certain aspects of the legislative scheme require the attention of the Legislature, specifically:

- o We have found that the existing regulatory scheme is inappropriate for brokers. The Board recommends that the OEB Act be amended to provide regulatory mechanisms for brokers;
- o Section 54 of the PU Act should be clarified to exclude brokers;
- o The legislative scheme precludes diversion and sale by a direct purchaser to another end-user. The Board recommends that amendments be made to the legislation to facilitate such sales;
- o The Board's jurisdiction to compel service by an LDC and approve contract terms should be reaffirmed; and

- o It is the opinion of the Board that for purposes of clarity and simplicity, all the legislation affecting gas regulation be reviewed and consolidated in one piece of legislation.

5. TIMING

Introduction

- 5.1 The issue of timing has two components. First, the LDCs require some time to prepare and submit to the Board rate proposals incorporating the principles and decisions outlined in this Decision. Secondly, there may be time required to fully implement final contract carriage rates. Nevertheless, there is an urgency to open the Ontario gas market so that market responsive pricing can be achieved.

Positions of the Parties

The LDCs

- 5.2 Consumers' submitted that it has been developing and working on its new rate proposal and it will require enough time to make appropriate changes

to reflect this Decision. Consumers' best estimate of the time required is twelve weeks.

- 5.3 Consumers' envisages implementation to take place after the standard regulatory procedures with regard to the utility-specific rate hearing are completed and a Board Decision is issued.
- 5.4 Union argued that the time required to design new rates depends entirely on the Board's Decision. Union submitted that the implementation could take place within sixty days of the rate order following the Decision.
- 5.5 ICG argued that the time required to design new rates depends on the Board's Decision. ICG estimates that it could file new rate proposals within three to eight months after the release of Board's Decision in E.B.R.O. 411 and E.B.R.O. 430. ICG submitted that permanent T-service rates be implemented in 1988.

The Brokers

- 5.6 Northridge, ATCOR, Brenda and Consoligas argued that the utilities should be required to file rate proposals within one month of the Board's Decision. They also argued that permanent T-service rates should be implemented within one month of the Decision from the utility-specific rate hearing.

Industrial Gas Users and Producers

- 5.7 CPA argued that it is critical that final rates be presented for Board approval as soon as possible.
- 5.8 Polysar argued that four to six weeks should be permitted for the LDCs to prepare the new rates. Polysar submitted that permanent rates should be implemented immediately following the Board's Decision in the utility-specific rate hearing. Polysar also submitted that these rates should be retroactive and apply to all existing direct purchase contracts.
- 5.9 IGUA argued that the utilities be directed to design and implement new rates as quickly as possible.
- 5.10 CIL and Nitrochem argued that the Board should consider issuing its Decision in two Parts. They submitted that the most urgent issue is the unbundling of services. CIL and Nitrochem submitted that T-rates designed on a fully allocated cost study could be completed by April 15, 1987. They submitted that permanent T-service rates could be implemented immediately following a Board Decision approving such rates.

Other Groups

- 5.11 The Director submitted that adequate time must be given between the preparation of detailed cost studies and the submission of rate proposals for the utility specific hearings and that the implementation of these rates should take place within a short period of time following the decision.
- 5.12 Energy Probe argued that the six-month estimate provided by ICG appears reasonable for the designing of new rates. Energy Probe submitted that implementation should occur in the last quarter of 1987.
- 5.13 The City of Kitchener argued that T-service rates should continue on an interim basis until October 31, 1988. This would allow the LDCs to have access to the competitive gas supply market for at least one quarter of their supplies by that time.

Special Counsel

- 5.14 Special Counsel argued that the LDCs should be required to submit their proposals reflecting the Board's Decision no later than two months following the date of this Decision. Special Counsel argued that final rates should be implemented as soon as possible.

The Board's Findings

- 5.15 The Board finds that it has been evident for some time that permanent T-service rate proposals would be required and it expects that substantial progress has been made to this end. However, since it is not practical to hold three utility-specific hearings at the same time, different filing dates have been established for each LDC. Consumers' and Union are directed to file their proposals no later than June 1, 1987. ICG is directed to file its proposals no later than July 1, 1987.
- 5.16 Union, Consumers' and ICG are hereby directed by the Board to submit proposals to the Board for permanent contract carriage rates, consistent with the Findings contained in this Decision.
- 5.17 Upon receiving the LDCs' proposals the Board will set a date for the utility-specific rate hearings. The Board expects that final contract carriage rates will be implemented following the Board's Decisions arising from those proceedings.

6. COSTS

Introduction

- 6.1 The Board requested that the participants provide their submissions with respect to costs in argument. Under section 28 of the OEB Act, the Board is empowered to award costs.

Positions of the Parties

- 6.2 The LDCs were unanimous in claiming that costs should not be awarded. The other participants who referred to costs were generally in favour of costs being awarded. Special Counsel submitted that the LDCs should each pay one third of the Board's costs and that only Energy Probe should be awarded costs.

6.3 The following participants requested costs:

ATCOR
Brenda
CIL
City of Kitchener
Consoligas
IGUA
Nitrochem
Northridge
Polysar

The Board's Findings

6.4 The Board finds that the criteria set out in E.B.O. 116 are appropriate in this case. In that Report, the Board differentiated between a generic hearing and other proceedings. In this proceeding the Board is satisfied that a portion of costs should be categorized as generic. The Board has concluded that 50 percent of these proceedings, including the bypass portion, were of a generic nature. As a result, 50 percent of the reasonably incurred costs of the eligible participants will be considered.

6.5 With respect to eligibility for cost awards E.B.O. 116 set forth the following criteria which the Board will consider in the exercise of its discretion to award costs. Awards may be made to an intervenor who:

- o Has or represents a substantial interest in the proceeding to the extent that the intervenor or those it represents will be affected beneficially or adversely by the outcome;
- o Participates responsibly in the proceeding; and
- o Contributes to a better understanding of the issues by the Board.

6.6 Having considered the request of the participants against these criteria, the Board finds that each of those requesting costs is eligible to receive an award of costs.

6.7 The Board finds that all of the participants made a valuable contribution to its understanding of the issues involved. It also notes that each of the participants had a self-serving interest in appearing, in that, a direct benefit could result. Taking into consideration all of the circumstances and the difficult nature of assessing the relative contributions from each of the participants, the Board has concluded that an award of 50 percent of the 50 percent of the reasonably incurred costs, as assessed by the Assessment Officer, will be made. Within ten days of the release of this Decision with Reasons, eligible participants shall submit a

statement of costs to the Board Secretary, complete with all substantiating documents in accordance with E.B.O. 116.

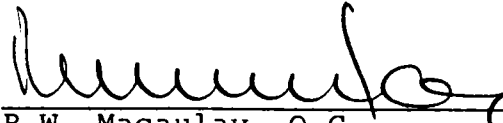
6.8 Following assessment, the Board will issue appropriate cost orders directing the LDCs to pay such costs, together with the Board's costs and expenses of and incidental to this proceeding as soon as they are fixed.

6.9 The proportion of all costs shall be borne by each of the three LDCs equally; one-third, one-third, one-third.

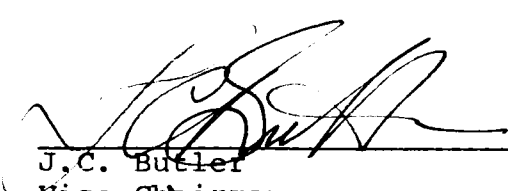
7. COMPLETION OF PROCEEDINGS

- 7.1 Consumers', Union and ICG are directed to submit rate proposals as outlined in Chapter 5.
- 7.2 The Board will issue its cost order with respect to these proceedings in due course.

DATED at Toronto this 23rd day of March, 1987.



R.W. Macaulay, Q.C.
Chairman and Presiding Member



J.C. Butler

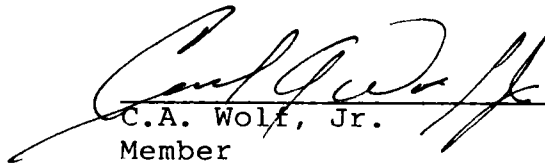
Vice Chairman



D.A. Deah
Member



M. Jackson
Member



C.A. Wolf, Jr.
Member

EB-2010-0018
Motion by IGPC
Filed: August 27, 2010

TAB E



EB-2008-0273

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 Union Gas
Limited for an Order pursuant to Section 36 of the *Ontario
Energy Board Act, 1998*, seeking changes to reduce its
financial exposure in regard to a Bundled T Gas Contract
and an M9 Delivery Contract with Natural Resource Gas
Limited.

BEFORE: Gordon Kaiser
Presiding Member and Vice-Chair

Cathy Spoel
Member

DECISION AND ORDER

On August 1, 2008 Union Gas Limited ("Union") filed an Application pursuant to Section 42(1) of the *Ontario Energy Board Act, 1998* seeking the Board's approval to discontinue service to Natural Resource Gas Limited ("NRG"). The Application was amended on October 9th and Union requested alternative relief under Sections 23 and 36 of the *Act*.

The Board has granted intervenor status to two parties, Integrated Grain Processors Co-operative ("IGPC") and the Town of Aylmer.

NRG sells and distributes natural gas in southern Ontario in a service territory that stretches south from highway 401 to the shores of Lake Erie. NRG has approximately 6,500 customers located in and around the Town of Aylmer. The largest customer is IGPC, an ethanol plant in the Town of Aylmer owned by a 650 member Co-operative of southern Ontario corn producers.

Background

NRG delivers gas to Union in firm, daily, even quantities pursuant to a Bundled T Gas contract ("BT Contract") first made as of October, 2004. Union delivers gas as a gas transmitter to NRG pursuant to an M9 Delivery contract ("Delivery Contract") first made as of October, 2006. Both contracts have now come to an end and Union is currently supplying NRG on a month-to-month basis without a contract.

Section 5.04 of the General Terms and Conditions of both the BT Contract and the Delivery Contract provide as follows:

"5.04 Financial Assurance

If at any time during the Term of this contract, Union has reasonable grounds to believe that Customer's creditworthiness under the Contract has become unsatisfactory, then Union may by written Notice request financial assurances from Customer in an amount determined by Union in a commercially reasonable manner. Upon receipt of such Notice, customer shall have fourteen days to provide such financial assurances."

Union states that it has reasonable grounds to believe that NRG's creditworthiness has become unsatisfactory and seeks certain financial assurances from NRG which NRG to date has refused to grant.

Union advised the Board that its maximum exposure from NRG is currently in the range of \$1.9 million and that it is only prepared to grant an unsecured facility of \$600,000 leaving a balance of \$1.3 million to be satisfied by certain security arrangements.

Union proposes two alternatives to NRG. First, NRG can provide assurances in the form of a cash security deposit or a letter of credit in the amount of \$1.3 million. Alternatively, NRG can make arrangements to change the renewal date of its BT Contract to an annual anniversary date of April 1st. The result of the date change would be to limit the credit issues arising from NRG's Banked Gas Account on a going forward basis.¹

NRG's response is that its creditworthiness has not deteriorated and it has never failed to pay its bills to Union. NRG indicated in its letters of July 2 and September 5, 2008 that it would not post additional security nor change the date of the Bundled T Contract.

Union cites two developments as legitimate reasons for believing that NRG's creditworthiness has deteriorated. First, Union notes that its 2007 credit review of NRG was based on NRG's 2006 audited financial statements which contain a qualified auditor's opinion. The reason for the auditor's qualified opinion was that NRG had Class "C" retractable shares outstanding with a redemption value of about \$13.5 million and under Canadian General Accepted Accounting Principles ("GAAP") rules these shares must be presented on the balance sheet as a liability.

NRG's Financial Status

The Class "C" retractable shares have been in existence since 2003 but in previous audited statements these shares were classified as equity as opposed to liabilities. Mr. David Pallett of the firm Neal, Pallett and Townsend, the NRG auditors, testified in this proceeding. He indicated that he was aware that retractable preference shares under GAAP were to be treated as a liability but believed that there was an exemption for regulated utilities. Ultimately, he was able to clarify that matter and accordingly, the audited Financial Statements for the year ended September 30, 2006 stated that the shares were to be treated as liabilities. According to Union, decreasing NRG's equity by \$13.5 million and increasing NRG's liabilities by the same amount meant NRG had negative shareholders equity which "provides no protection for creditors".

¹ Currently, the renewal date of the Bundled T Contract is September 30th each year. NRG supplies gas to Union in firm, daily, even quantities throughout the year. However, NRG takes gas from Union according to daily and monthly demand. That demand is greatest during the winter heating season. That means that by the end of the heating season on March 31st, NRG owes Union Gas in an amount valued at approximately \$1.9 million dollars. Changing the renewal date to March 31st would mean that the balance would have to be zero at that date. This would reduce Union's liability and would impose a one time gas cost on NRG.

Union's second reason for believing that NRG's credit worthiness had become unsatisfactory is that NRG pledged all of its assets to the Bank of Nova Scotia ("BNS") pursuant to a demand loan with that institution. The BNS loan replaced a previous loan agreement with Imperial Life Assurance of Canada which had been in existence for approximately 12 years. NRG had also pledged all of its assets to Imperial Life under the terms of that loan.

Union states however that there are significant differences between the two loans. First, the BNS loan is for some \$6.4 million compared to \$2 million in the case of the Imperial loan. Secondly, the BNS loan is a demand loan whereas the original loan was long term debt. NRG's current assets Union claims are not even sufficient to cover the Bank's secured debt much less Union's unsecured commodity-related debt of \$1.9 million as of March 31st.

Although the Class "C" shares are retractable, NRG is presently prohibited from retracting them pursuant to an Assignment, Postponement and Subordination Agreement dated August 26, 2008 with the BNS. Union notes that while this protects the BNS, it is of little assistance to an unsecured creditor like Union. In response, counsel for NRG states that NRG is prepared to grant a similar postponement to Union. In the Board's view, this deals with one of Union's major concerns. And this appears to be the largest concern of the two. A \$13 million reduction in equity and a \$13 million dollar increase in liability is significant. NRG is now in a negative equity position.

The BNS loan however, is a different matter. It is true that there was an increase from \$2 million to \$6 million but this was fully disclosed in 2006 and was dealt with by this Board in the 2006 rate case. (See EB-2005-0544, September 20, 2006 at pg. 20).

In the Board's view, disclosure of retractable shares as a liability significantly increases the financial risk associated with NRG. That deterioration however can be addressed by NRG providing Union with a Postponement Agreement in substantially the same form as NRG provided to BNS. The Board notes that there is no evidence that NRG has failed to make any payments to Union in the past. While it is accepted that there is a maximum exposure of some \$1.9 million dollars at March 31st each year regarding the Bank Gas Account, the situation is not new and NRG has always met its obligations.

Financial Disclosure

The Board agrees that Union's concerns are serious. Any allegation that a Utility faces financial difficulties must always be addressed carefully by the Board. In this connection, the Board is very concerned that NRG's financial reporting is invariably late. NRG's year end is September 30th. Under the Board's Rules², NRG is required to file its audited Financial Statements within four months of year end, i.e. by January 31st of the following year. In 2007 this filing did not occur until July 16th, almost six months late.

It is a condition of this Order that NRG file its 2008 Audited Financial Statements within the four month deadline. And the Board further orders NRG to provide Union with unaudited quarterly statements within 60 days of the end of each quarter and to provide a copy to the Board. This is to begin with the quarter ended December 31, 2008. The Board will carefully monitor NRG's financial performance on an ongoing basis.

NRG should understand that these filing requirements will form part of the contract with Union and a failure to provide these Statements to Union in the timeframe specified would constitute a breach of the Agreement in which case Union would be entitled to pursue any remedies under the Contract related to the breach including an application under Section 42 of the *Act*.

Jurisdiction

The Board recognizes that it is unusual to specify terms such as these in a contract between a utility and its customer. The Board believes however that in this case it is important to improve the degree of financial disclosure. This will allow Union to protect its interests and the Board to monitor the situation more closely.

On previous occasions, the Board has clearly stated that it has the power "to compel the provision of service by an LDC to any customer including entry into a Board specified contract. This is part of the inherent jurisdiction which the Board has as a regulator of gas monopolies"³. The Board has also previously stated that "rates include more than

² Natural Gas Reporting and Record Keeping Requirements (RRR) Rules for Gas Utilities, December 22, 2004

³ Re Contract Carriage Arrangements for the Consumers Gas Company Ltd., ICG Utilities Ltd. and Union Gas Limited, Ontario Distribution Systems, EBRO 410-11, March 23, 1987 at p. 23

monetary terms and do in fact include conditions of service, particularly those that are directly or indirectly rate related"⁴.

THE BOARD THEREFORE ORDERS THAT:

1. Union and NRG enter into new five year Bundled T gas contracts and M9 Delivery contracts on substantially the same terms as the existing Bundled T contract first made as of October, 2004 and the existing M9 Delivery Contract first made on October, 2006 with the following additional terms:
 - a. NRG shall provide Union with its audited 2008 Annual Financial Statements, with a copy to the Board, no later than January 31, 2009, and each year thereafter on the same basis;
 - b. NRG shall provide Union with unaudited quarterly Financial Statements, with a copy to the Board, no later than 60 days of completion of each quarter beginning with the quarter ended December 31, 2008; and
 - c. NRG shall provide Union with a Postponement Agreement relating to the redemption of the Class "C" retractable shares in a form substantially similar to the Postponement Agreement that NRG provided to the BNS on August 26, 2008. The Postponement Agreement shall be provided by December 31, 2008.

Costs

The intervenors participating in this hearing shall be entitled to their reasonably incurred costs which costs are to be paid by NRG. The common practice is that the applicant bears the costs. However, this situation is unique. Union's concern with the financial stability of NRG was well founded, given NRG's reclassification of the retractable shares. The Bank of Nova Scotia had a similar concern and NRG addressed it promptly by providing a Postponement Agreement.

⁴ Re Contract Carriage Arrangements for the Consumers Gas Company Ltd., Northern and Central Gas Corporation Limited and Union Gas Limited, Ontario Distribution Systems, EBRO 410-11, April 9, 1986 at p. 182

In the case of Union's request for security, NRG did not act in a timely manner. The record suggests that NRG essentially stone-walled Union. This resulted in significant costs for Union, the Board, the Town of Aylmer and the Integrated Grain Processors Co-operative. This type of brinkmanship is not helpful where 6,500 customers and a recently activated ethanol plant supported by substantial Federal and Provincial funding are involved. The Board also directs that costs being paid by NRG shall be paid by NRG's shareholder and not passed on to the NRG rate payers.

DATED at Toronto, November 27, 2008

ONTARIO ENERGY BOARD

Original signed by

Gordon Kaiser
Vice-Chair and Presiding Member

Original signed by

Cathy Spoel
Panel Member

EB-2010-0018
Motion by IGPC
Filed: August 27, 2010

TAB F

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.

**COSTS OF
INTEGRATED GRAIN PROCESSORS CO-OPERATIVE INC.
IN RESPECT OF JUNE 29, 2007 MOTION**

APPENDIX "B"

FORM 1

SUMMARY STATEMENT OF HOURS – CONSULTANTS AND LEGAL COUNSEL

PREPARED ON A FULL INDEMNITY BASIS

A separate form is required for each consultant or legal counsel

EB—2006-0243 Board File Number		INTEGRATED GRAIN PROCESSORS CO-OPERATIVE INC Party Name			
DENNIS O'LEARY, SENIOR COUNSEL Counsel Name		1984, Ontario Year of Call		AIRD & BERLIS LLP Law Firm	
Consultant Name		Years of Relevant Experience (curriculum vitae must be attached)		Consultant Firm	
	Hours	Hourly Rate	Sub-total	GST 6%	Total
Preparation	14.00	\$525	\$7,350.00	\$441.00	\$7,791.00
Attendance – Technical Conference					
Attendance – Settlement Conference					
Attendance – Oral Hearing (8:30 a.m. to 5:23 p.m.)	9.0	\$525	\$4,725.00	\$283.50	\$5,008.50
Argument					
Case Management	21.20	\$525	\$11,130.00	\$667.80	\$11,797.80
TOTALS	44.20	\$525	\$23,205.00	\$1,392.30	\$24,597.30

Note: All claims must be in Canadian dollars. If applicable, state exchange rate _____, and country of initial currency _____.

Quick Matter Draft Report **Before 07/06/2007**

Member: (378) Dennis O'Leary
Client: (31624) Integrated Grain Processors Co-operative Inc.
Matter: (93668) Loan Facilities with Societe Generale

Include: Unbilled chargeable and non-chargeable time entries
All results returned

Time Details

Date	Member	Code	Time Entry Description	Entry	
				Hours	
Chargeable					
06/27/2007	(378) O'Leary.	(XX)	[324136] Review materials; discussion with S. Stoll re NRG response and potential application to the Ontario Energy Board; work on materials	2.00	
06/28/2007	(378) O'Leary.	(XX)	[324136] Meet with M. Kovnats and team; work with B. McGarva to prepare Notice of Motion/Application; draft same and supporting Affidavit materials; meetings and travel to Ontario Energy Board; meet with Board Counsel; preparation for motion/application	11.50	
06/29/2007	(378) O'Leary.	(XX)	[324136] Continued preparation for motion/application; attend the Ontario Energy Board to bring motion/application requesting order compelling execution of agreements and administrative penalty; meeting with Board Counsel	10.00	
07/01/2007	(378) O'Leary.	(XX)	Discussion with S. Stoll re options; review e-mails; telephone call with P. Tunley, counsel for the Town of Aylmer	1.00	
07/02/2007	(378) O'Leary.	(XX)	Discussion with P. Tunley; discussion with M. Kovnats	0.70	
07/03/2007	(378) O'Leary.	(XX)	Meeting with M. Kovnats, B. McGarva and S. Stoll; telephone call with Union director; telephone call with P. Tunley; draft letter to Board Secretary; review GEC decision	5.50	
07/04/2007	(378) O'Leary.	(XX)	Numerous e-mails sent and received	0.50	
07/05/2007	(378) O'Leary.	(XX)	Meetings and telephone calls with M. Kovnats, B. McGarva, and G. Alkalay	7.00	
07/06/2007	(378) O'Leary.	(XX)	Numerous meetings internally and telephone calls with client; numerous telephone calls and e-mails to L. Thacker and P. Tunley; letter to D. Woodward; review and revise Notice of Motion; receipt of letter from NRG counsel	6.00	

10. Transaction(s)

X - Entry missing either a task code, A code or E code

APPENDIX "B"

FORM 1

PREPARED ON FULL INDEMNITY BASIS

SUMMARY STATEMENT OF HOURS – CONSULTANTS AND LEGAL COUNSEL

A separate form is required for each consultant or legal counsel

EB—2006-0243 Board File Number		INTEGRATED GRAIN PROCESSORS CO-OPERATIVE INC. Party Name			
S.A. STOLL, JUNIOR COUNSEL Counsel Name		2002, Ontario Year of Call	AIRD & BERLIS LLP Law Firm		
Consultant Name		Consultant Firm			
		Years of Relevant Experience (curriculum vitae must be attached)			
	Hours	Hourly Rate	Sub-total	GST 6%	Total
Preparation	9.0	\$395	\$3,555	\$213.30	\$3,768.30
Attendance – Technical Conference					
Attendance – Settlement Conference					
Attendance – Oral Hearing	1.0	\$395	\$395	\$23.70	\$ 418.70
Argument					
Case Management	29.0	\$395	\$11,455	\$687.30	\$12,142.30
TOTALS	39.0 hrs	\$395	\$15,405	\$924.30	\$16,329.30
Note: All claims must be in Canadian dollars. If applicable, state exchange rate _____, and country of initial currency _____.					

Quick Matter Draft Report Before 07/06/2007

Member: (1203) Scott Stoll
 Client: (31624) Integrated Grain Processors Co-operative Inc.
 Matter: (93668) Loan Facilities with Societe Generale

Include: Unbilled chargeable and non-chargeable time entries
 All results returned

Time Details

Date	Member	Code	Time Entry Description	Entry	
				Hours	Value
Chargeable					
06/28/2007	(1203) Stoll. S	(DR)	[324136] Drafting materials for emergency motion; meeting with M. Kovnats, B. McGarva, D. O'Leary, D. Stevens; attend at the Ontario Energy Board	8.00	3,160.00
06/28/2007	(1203) Stoll. S	(DR)	[324136] Draft Drafting materials for emergency motion; meeting with M. Kovnats, B. McGarva, D. O'Leary, D. Stevens; attend at the Ontario Energy Board	1.00	395.00
06/29/2007	(1203) Stoll. S	(AT)	[324136] Attend at OEB hearing of Notice of Motion	1.00	395.00
07/01/2007	(1203) Stoll. S	(XX)	Develop alternate solutions to have IGPC or Union take over the project; telephone call to Union Gas; telephone call with M. Kovnats, D. O'Leary and D. Woodward	6.30	2,488.50
07/02/2007	(1203) Stoll. S	(RW)	Reviewing memo to lenders; telephone calls with M. Kovnats and G. Alkalay	1.80	711.00
07/03/2007	(1203) Stoll. S	(RW)	Review transcript; telephone call with M. Kovnats, D. O'Leary and G. Alkalay; telephone call with G. Alkalay, D. O'Leary and Union Gas Ltd.; draft letter to OEB; discussion with D. O'Leary regarding next steps	8.50	3,357.50
07/04/2007	(1203) Stoll. S	(TC)	Telephone call to Union Gas; review draft letter;	0.30	118.50
07/05/2007	(1203) Stoll. S	(DR)	Drafting letters to the Ontario Energy Board; conference call with Board of Directors of IGPC to discuss settlement; telephone call to Union Gas; telephone call with OEB counsel, M. Kovnats, D. O'Leary and B. McGarva; drafting materials regarding regulations and policy directives	8.70	3,436.50
07/06/2007	(1203) Stoll. S	(RW)	Review draft submissions to the Ontario Energy Board; discuss settlement offers; review and revise letters to L. Thacker; draft letter to OEB regarding transcripts	3.40	1,343.00

9 Transaction(s)

X - Entry missing either a task code, A code or E code

APPENDIX "B"
FORM 1

PREPARED ON A FULL INDEMNITY BASIS

SUMMARY STATEMENT OF HOURS – CONSULTANTS AND LEGAL COUNSEL

A separate form is required for each consultant or legal counsel

EB—2006-0243 Board File Number		INTEGRATED GRAIN PROCESSORS CO-OPERATIVE INC. Party Name			
B.M. MCGARVA, SENIOR COUNSEL Counsel Name		1980, Ontario Year of Call	AIRD & BERLIS LLP Law Firm		
Consultant Name		Years of Relevant Experience (curriculum vitae must be attached)			
		Hours	Hourly Rate	Sub-total	GST 6%
		Total	Total	Total	Total
Preparation		12.0	\$595	\$7,140	\$428.40
Attendance – Technical Conference					
Attendance – Settlement Conference					
Attendance – Oral Hearing (8:30 a.m. to 5:23 p.m.)		9.0	\$595	\$5,355	\$321.30
Argument					
Case Management		23.90	\$595	\$14,220.50	\$853.23
TOTALS		44.90	\$595	\$26,715.50	\$1,602.93
Total					
Note: All claims must be in Canadian dollars. If applicable, state exchange rate _____, and country of initial currency _____.					

Detailed Entry Report

Between 06/27/2007 and 07/06/2007

Member	Client	Matter	Date	Time/ Disb	Code	Quantity	Rate	Value	Description
(41) Bernie McGarva	(31624) Integrated Grain Processors Co-	(93668) Loan Facilities with Societe Generale	06/28/07	T	(XX) {Blank}	10.50	595.00	6,247.50	Meetings with M. Kovnats, D. O'Leary, S. Stoll; preparing materials for motion to Ontario Energy Board; preparing Affidavits; conferences with M. Nelligan; meeting with counsel for OEB
			06/29/07	T	(XX) {Blank}	10.50	595.00	6,247.50	Preparation for and attendance at hearing before OEB; various meetings with clients; various conferences with counsel opposite
			06/30/07	T	(XX) {Blank}	0.30	595.00	178.50	Telephone conference with M. Kovnats regarding next steps
			07/02/07	T	(XX) {Blank}	2.00	595.00	1,190.00	Reviewing various e-mails and drafts regarding advice to clients; conference with M. Kovnats
			07/03/07	T	(XX) {Blank}	3.60	595.00	2,142.00	Meetings with M. Kovnats, D. O'Leary and S. Stoll; telephone conference with G. Alkallay; further office conference with M. Kovnats
			07/04/07	T	(XX) {Blank}	1.50	595.00	892.50	Meetings with M. Kovnats, D. O'Leary and S. Stoll reviewing status; formulating strategy
			07/05/07	T	(XX) {Blank}	8.30	595.00	4,938.50	Meeting with M. Kovnats, D. O'Leary, and S. Stoll; various telephone conferences with client; telephone conference with L. Thacker and other Aird & Berlis counsel; preparation of letter to OEB; revising letter to OEB; telephone conference with counsel for OEB; telephone conference with G. Alkallay and other client representatives and counsel; drafting revised motion material for further motion to OEB; drafting regulations and ministerial directive
			07/06/07	T	(XX) {Blank}	8.20	595.00	4,879.00	Various meetings with M. Kovnats; telephone conference with client; meeting with S. Stoll, D. O'Leary; commencing drafting of Supplementary Affidavits for second emergency hearing; commencing drafting of pleadings; telephone conferences with L. Thacker

* Non-Chargeable entries

APPENDIX "B"
FORM 1

SUMMARY STATEMENT OF HOURS – CONSULTANTS AND LEGAL COUNSEL
A separate form is required for each consultant or legal counsel

EB-2006-0243 Board File Number		INTEGRATED GRAIN PROCESSORS CO-OPERATIVE INC. Party Name			
GEORGE R. ALKALAY Consultant Name		11 + years of relevant experience (C.V. attached)			
Consultant Name		Years of Relevant Experience (curriculum vitae must be attached)			
Consultant Name		Consultant Firm			
	Hours	Hourly Rate	Sub-total	GST	Total
Preparation	18.0	\$200	\$3,600	\$216	\$3,816
Attendance – Technical Conference					
Attendance – Settlement Conference					
Attendance – Oral Hearing (8:30 a.m. – 5:23 p.m.)	9.0	\$200	\$1,800	\$108	\$1,908
Argument					
Case Management	50.0	\$200	\$10,000	\$600	\$10,600
TOTALS	77.0	\$200	\$15,400	\$924	\$16,324
Note: All claims must be in Canadian dollars. If applicable, state exchange rate _____, and country of initial currency _____.					

GEORGE R. ALKALAY
NORTHFIELD VENTURES LTD.

95 King View Crescent
King City, Ontario L7B 1K5
Phone: (905) 841-6112
Fax: (905) 841-1590
Cell: (416) 579-4716
E-mail: galkalay@interlog.com

Northfield Ventures Ltd. is a consulting firm providing a wide range of agricultural, food-processing, and rural co-operatives, businesses, and not-for-profit organizations with business/strategic planning, assistance in getting access to appropriate financing, development and implementation of member/community investment campaigns, advice on corporate governance matters, assistance with government regulatory approvals and funding applications, and project management. Core areas of specialization include the development of "new generation" co-operatives and other forms of producer-driven organizations.

Northfield Ventures Ltd. was formed in 1996 by George Alkalay.

George Alkalay has worked closely with Integrated Grain Processors Co-operative Inc. since its formation in early 2002. Acting as project advisor and Project Manager George has assumed primary responsibility for: the preparation of the financing proposal for presentation to financial institutions and other prospective lenders and equity partners leading to the successful financing of this \$140 million farmer and community-owned ethanol plant in Aylmer, Ontario; the development and implementation of a comprehensive government relations strategy resulting in over \$30 million in federal and provincial Government capital grants and ongoing operating grants; negotiation of all key agreements including property purchase and sale, corn procurement, and offtake agreements, and collaboration with solicitors in drafting/review of all agreements; overall project management and recruitment of senior management for plant; preparation of Articles of Incorporation, By-laws, and Offering Statement for Co-operative to raise nearly \$50 million in funds from approximately 850 community investors.

From 1991 to 1996, George Alkalay worked at the Ontario Ministry of Finance as Manager, Co-operative Development Services, with the Credit Unions and Co-operatives Branch of (1991-1996) and was responsible for both the development of co-operative policy and the regulation of co-operatives. He also worked as a Senior Policy Analyst in the Policy and Planning Branch of the Ministry of Financial Institutions where he developed policy papers and Cabinet Submissions on pension plan governance, securities regulation, financial institutions and economic development.

From 1986 to 1990, George was an Assistant Professor at the Department of Political Science at Trent University.

George has a B.A. in Government and Legal Studies from Bowdoin College (Brunswick, Maine) and an M.A. and Ph.D. in Political Science from the University of Toronto.

APPENDIX “B”

FORM 2

SUMMARY OF DISBURSEMENTS

EB-2006-0243		INTEGRATED GRAIN PROCESSORS CO-OPERATIVE INC.	
Board File Number		Party Name	
Party or Group that made the disbursement AIRD & BERLIS LLP			
	Net Cost	GST6%	
Photocopies	\$340.75	\$ 20.45	
Printing/Binding/Tabs	\$ 133.95	\$ 8.04	
Fax	\$ 11.50	\$ 0.69	
Courier	\$ 63.21	\$ 3.79	
Telephone	\$ 48.59	\$ 2.92	
Postage			
Transcripts			
Travel: Air			
Travel: Car			
Travel: Rail			
Travel: Other ()			
Taxi or Airport Limo	\$ 14.15	\$ 0.85	
Accommodation			
Meals			
Other ()			
Sub-totals	\$ 612.15	\$ 36.74	

Notes:
1. All claims for disbursements must include receipts where practicable.
2. All claims must be in Canadian dollars. If applicable state exchange rate
and country of initial currency

Detailed Entry Report

Between 06/27/2007 and 07/06/2007

Member	Client	Matter	Date	Time/ Disb	Code	Quantity	Rate	Value	Description
(378) Dennis O'Leary	(31624) Integrated Grain Processors Co-	(93668) Loan Facilities with Societe Generale	06/29/07	D	(BC) Binding and Tabs	1.00	68.16	68.16	Binding and Tabs
			06/29/07	D	(BC) Binding and Tabs	1.00	58.77	58.77	Binding and Tabs
			06/29/07	D	(BC) Binding and Tabs	1.00	7.02	7.02	Binding and Tabs

* Non-Chargeable entries

Disbursement Summary

Disbursement Type - Content	Value
(BC) Binding and Tabs	133.95

	Time		Disbursements		Total
	Hours	Value	Taxes	Taxes	
Non Chargeable	0.00	0.00	0.00	0.00	0.00
Chargeable(WIP)	0.00	0.00	0.00	0.00	133.95
Total	0.00	0.00	0.00	0.00	133.95

Detailed Entry Report

Between 06/25/2007 and 07/06/2007

Member	Client	Matter	Date	Time/ Disb	Code	Quantity	Rate	Value	Description
(910) Accounting Department	(31624) Integrated Grain Processors Co.	(93668) Loan Facilities with Societe Generale	06/27/07	D	(FA) Fax Charges	3.00	0.50	1.50	Fax Charges Phone No:15197521887
			06/29/07	D	(FA) Fax Charges	14.00	0.50	7.00	Fax Charges Phone No:4164407656
			07/01/07	D	(FA) Fax Charges	2.00	0.50	1.00	Fax Charges Phone No:15197975336
			07/05/07	D	(FA) Fax Charges	4.00	0.50	2.00	Fax Charges

* Non-Chargeable entries

Disbursement Summary

Disbursement Type - Content	Value
-----------------------------	-------

(FA) Fax Charges 11.50

	Time		Disbursements		Total
	Hours	Value	Taxes	Values	
Non Chargeable	0.00	0.00	0.00	0.00	0.00
Chargeable(WIP)	0.00	0.00	0.00	11.50	11.50
Total	0.00	0.00	0.00	11.50	11.50

Detailed Entry Report

Between 06/27/2007 and 07/06/2007

Member	Client	Matter	Date	Time/ Disb	Code	Quantity	Rate	Value	Description
(378) Dennis O'Leary	(31624) Integrated Grain Processors Co-	(93668) Loan Facilities with Societe Generale	06/28/07	D	(DE)	1.00	19.71	19.71	Deliveries/Parss 78 CHAPLIN CRESCEN
			07/05/07	D	Deliveries/Parss (DE)	1.00	13.50	13.50	Deliveries/Parss 2300 YOUNGE STREET
			07/05/07	D	Deliveries/Parss (DE)	1.00	8.00	8.00	Deliveries/Parss 2600-130 ADELAIDE
			07/05/07	D	Deliveries/Parss (DE)	1.00	22.00	22.00	Deliveries/Parss 2300 Yonge Street

* Non-Chargeable entries

Disbursement Summary

Disbursement Type - Content	Value
-----------------------------	-------

(DE) Deliveries/Parss 63.21

	Time		Disbursements		Total
	Hours	Value	Taxes	Values	
Non Chargeable	0.00	0.00	0.00	0.00	0.00
Chargeable(WIP)	0.00	0.00	0.00	63.21	63.21
Total	0.00	0.00	0.00	63.21	63.21

Detailed Entry Report

Between 06/25/2007 and 07/06/2007

Member	Client	Matter	Date	Time/ Disb	Code	Quantity	Rate	Value	Description
(910) Accounting Department	(31624) Integrated Grain Processors Co-	(93668) Loan Facilities with Societe Generale	06/25/07	D	(02) Long Distance Charges	1.00	3.42	3.42	Long Distance Charges Phone No:5197714463 Duration:540
			06/25/07	D	(02) Long Distance Charges	1.00	0.38	0.38	Long Distance Charges Phone No:5197714463 Duration:60
			06/25/07	D	(02) Long Distance Charges	1.00	0.53	0.53	Long Distance Charges Phone No:4032603748 Duration:60
			06/25/07	D	(02) Long Distance Charges	1.00	0.53	0.53	Long Distance Charges Phone No:4032077300 Duration:60
			06/25/07	D	(02) Long Distance Charges	1.00	0.86	0.86	Long Distance Charges Phone No:5148416016 Duration:120
			06/25/07	D	(02) Long Distance Charges	1.00	0.86	0.86	Long Distance Charges Phone No:7056747597 Duration:120
			06/25/07	D	(02) Long Distance Charges	1.00	0.63	0.63	Long Distance Charges Phone No:2817739686 Duration:60
			06/25/07	D	(02) Long Distance Charges	1.00	0.59	0.59	Long Distance Charges Phone No:5152233746 Duration:60
			06/25/07	D	(02) Long Distance Charges	1.00	0.64	0.64	Long Distance Charges Phone No:4032077300 Duration:180
			06/25/07	D	(02) Long Distance Charges	1.00	1.77	1.77	Long Distance Charges Phone No:3169776368 Duration:180
			06/26/07	D	(02) Long Distance Charges	1.00	1.59	1.59	Long Distance Charges Phone No:4032077342 Duration:180
			06/26/07	D	(02) Long Distance Charges	1.00	0.76	0.76	Long Distance Charges Phone No:5197714467 Duration:120
			06/26/07	D	(02) Long Distance Charges	1.00	2.12	2.12	Long Distance Charges Phone No:4032077300 Duration:240
			06/26/07	D	(02) Long Distance Charges	1.00	1.14	1.14	Long Distance Charges Phone No:5197714463 Duration:180
			06/26/07	D	(02) Long Distance Charges	1.00	0.38	0.38	Long Distance Charges Phone No:5197714463 Duration:60
			06/26/07	D	(02) Long Distance Charges	1.00	0.38	0.38	Long Distance Charges Phone No:5197714463 Duration:60
			06/26/07	D	(02) Long Distance Charges	1.00	1.06	1.06	Long Distance Charges Phone No:4032077300 Duration:120
			06/26/07	D	(02) Long Distance Charges	1.00	1.14	1.14	Long Distance Charges Phone No:5197714463 Duration:180
			06/26/07	D	(02) Long Distance Charges	1.00	0.38	0.38	Long Distance Charges Phone No:5197714463 Duration:60
			06/26/07	D	(02) Long Distance Charges	1.00	0.38	0.38	Long Distance Charges Phone No:5197714463 Duration:60

Member	Client	Matter	Date	Time/ Disb	Code	Quantity	Rate	Value	Description
			06/26/07	D	(02) Long Distance Charges	1.00	0.34	0.34	Long Distance Charges Phone No:5197714463 Duration:60
			06/26/07	D	(02) Long Distance Charges	1.00	1.90	1.90	Long Distance Charges Phone No:5197714467 Duration:300
			06/26/07	D	(02) Long Distance Charges	1.00	0.43	0.43	Long Distance Charges Phone No:5195217113 Duration:60
			06/27/07	D	(02) Long Distance Charges	1.00	2.65	2.65	Long Distance Charges Phone No:4032077300 Duration:300
			06/27/07	D	(02) Long Distance Charges	1.00	0.76	0.76	Long Distance Charges Phone No:5197714463 Duration:120
			06/27/07	D	(02) Long Distance Charges	1.00	0.38	0.38	Long Distance Charges Phone No:5197714463 Duration:60
			06/27/07	D	(02) Long Distance Charges	1.00	0.76	0.76	Long Distance Charges Phone No:5197521887 Duration:120
			06/27/07	D	(02) Long Distance Charges	1.00	2.12	2.12	Long Distance Charges Phone No:4032603748 Duration:240
			06/27/07	D	(02) Long Distance Charges	1.00	0.76	0.76	Long Distance Charges Phone No:7054416570 Duration:120
			06/27/07	D	(02) Long Distance Charges	1.00	0.76	0.76	Long Distance Charges Phone No:5197714463 Duration:120
			06/27/07	D	(02) Long Distance Charges	1.00	2.28	2.28	Long Distance Charges Phone No:7054416570 Duration:360
			06/28/07	D	(02) Long Distance Charges	1.00	0.43	0.43	Long Distance Charges Phone No:5196455736 Duration:60
			06/28/07	D	(02) Long Distance Charges	1.00	0.34	0.34	Long Distance Charges Phone No:9056979718 Duration:60
			06/28/07	D	(02) Long Distance Charges	1.00	0.43	0.43	Long Distance Charges Phone No:5196406341 Duration:60
			06/28/07	D	(02) Long Distance Charges	1.00	2.58	2.58	Long Distance Charges Phone No:5196406341 Duration:360
			06/29/07	D	(02) Long Distance Charges	1.00	0.43	0.43	Long Distance Charges Phone No:5196455736 Duration:60
			07/01/07	D	(02) Long Distance Charges	1.00	0.34	0.34	Long Distance Charges Phone No:5197975336 Duration:120
			07/01/07	D	(02) Long Distance Charges	1.00	0.34	0.34	Long Distance Charges Phone No:5194384646 Duration:60
			07/03/07	D	(02) Long Distance Charges	1.00	0.53	0.53	Long Distance Charges Phone No:4032077300 Duration:60
			07/03/07	D	(02) Long Distance Charges	1.00	0.34	0.34	Long Distance Charges Phone No:5197714463 Duration:120
			07/03/07	D	(02) Long Distance Charges	1.00	0.34	0.34	Long Distance Charges Phone No:5197714463 Duration:60

Member	Client	Matter	Date	Time/ Disb	Code	Quantity	Rate	Value	Description
			07/03/07	D	(02) Long Distance Charges	1.00	0.34	0.34	Long Distance Charges Phone No:5197714463 Duration:120
			07/03/07	D	(02) Long Distance Charges	1.00	0.43	0.43	Long Distance Charges Phone No:5193222000 Duration:60
			07/03/07	D	(02) Long Distance Charges	1.00	0.43	0.43	Long Distance Charges Phone No:5194364646 Duration:60
			07/03/07	D	(02) Long Distance Charges	1.00	1.72	1.72	Long Distance Charges Phone No:5193523100 Duration:240
			07/04/07	D	(02) Long Distance Charges	1.00	1.90	1.90	Long Distance Charges Phone No:5197714463 Duration:300
			07/04/07	D	(02) Long Distance Charges	1.00	0.38	0.38	Long Distance Charges Phone No:5197714463 Duration:60
			07/05/07	D	(02) Long Distance Charges	1.00	0.38	0.38	Long Distance Charges Phone No:5197714463 Duration:60
			07/05/07	D	(02) Long Distance Charges	1.00	1.52	1.52	Long Distance Charges Phone No:5197714463 Duration:240
			07/05/07	D	(02) Long Distance Charges	1.00	1.52	1.52	Long Distance Charges Phone No:5197714463 Duration:240
			07/05/07	D	(02) Long Distance Charges	1.00	0.38	0.38	Long Distance Charges Phone No:5197714463 Duration:60
			07/05/07	D	(02) Long Distance Charges	1.00	0.38	0.38	Long Distance Charges Phone No:5197714463 Duration:60
			07/05/07	D	(02) Long Distance Charges	1.00	0.43	0.43	Long Distance Charges Phone No:5194364646 Duration:60
			07/06/07	D	(02) Long Distance Charges	1.00	0.38	0.38	Long Distance Charges Phone No:5197714463 Duration:60

* Non-Chargeable entries

Disbursement Summary

Disbursement Type - Content	Value
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(02) Long Distance Charges 48.59

	Hours	Time		Taxes	Disbursements		Total
		Value			Values	Taxes	
Non Chargeable	0.00	0.00		0.00	0.00	0.00	0.00
Chargeable(WIP)	0.00	0.00		0.00	48.59	0.00	48.59
Total	0.00	0.00		0.00	48.59	0.00	48.59

Detailed Entry Report

Between 06/27/2007 and 06/28/2007

Member	Client	Matter	Date	Time/ Disb	Code	Quantity	Rate	Value	Description
(1277) Jeremy Burke	(31624) Integrated Grain Processors Co.	(93668) Loan Facilities with Societe Generale	06/28/07	D	(18) Taxi	1.00	14.15	14.15	Taxi Re: M# 93668/Reimburse Travel Expense Cheque No. 11349 issued by (1277) Burke, J. D.

• Non-Chargeable entries

Disbursement Summary

Disbursement Type - Content	Value
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(18) Taxi 14.15

	Hours	Time		Taxes		Disbursements		Total
		Value	0.00	0.00	0.00	Values	Taxes	
Non Chargeable	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Chargeable(WIP)	0.00	0.00	0.00	0.00	14.15	0.00	0.00	14.15
Total	0.00	0.00	0.00	0.00	14.15	0.00	0.00	14.15

Detailed Entry Report

Between 06/27/2007 and 06/29/2007

Member	Client	Matter	Date	Time/ Disb	Code	Quantity	Rate	Value	Description
(910) Accounting Department	(31624) Integrated Grain Processors Co-	(93668) Loan Facilities with Societe Generale	06/28/07	D	(01) Photocopies/Scan	1.00	115.50	115.50	Photocopies

* Non-Chargeable entries

Working Member Summary

Name	Rate	Chargeable		Non-Chargeable	
		Hours	Value	Hours	Value
(910) Accounting Department	0.00	0.00	0.00	0.00	0.00

Disbursement Summary

Disbursement Type - Content	Value
(01) Photocopies/Scanning	115.50

Detailed Entry Report

Between 06/27/2007 and 06/29/2007

Member	Client	Matter	Date	Time/ Disb	Code	Quantity	Rate	Value	Description
(910) Accounting Department	(31624) Integrated Grain Processors Co-	(93668) Loan Facilities with Societe Generale	06/28/07	D	(105) Photocopies -	1.00	97.50	97.50	Printer Copies

* Non-Chargeable entries

Working Member Summary

Name	Rate	Chargeable		Non-Chargeable	
		Hours	Value	Hours	Value
(910) Accounting Department	0.00	0.00	0.00	0.00	0.00

Disbursement Summary

Disbursement Type - Content	Value
(105) Photocopies - Local	97.50

Detailed Entry Report

Between 06/27/2007 and 06/29/2007

Member	Client	Matter	Date	Time/ Disb	Code	Quantity	Rate	Value	Description
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(910) Accounting Department	(31624) Integrated Grain Processors Co-	(93668) Loan Facilities with Societe Generale	06/28/07	D	(105) Photocopies -	1.00	20.25	20.25	Printer Copies
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* Non-Chargeable entries

Working Member Summary

Name	Rate	Chargeable		Non-Chargeable	
		Hours	Value	Hours	Value
(910) Accounting Department	0.00	0.00	0.00	0.00	0.00

Disbursement Summary

Disbursement Type - Content	Value
(105) Photocopies - Local	20.25

Detailed Entry Report

Between 06/27/2007 and 06/29/2007

Member	Client	Matter	Date	Time/ Disb	Code	Quantity	Rate	Value	Description
(910) Accounting Department	(31624) Integrated Grain Processors Co-	(93668) Loan Facilities with Societe Generale	06/28/07	D	(105) Photocopies -	1.00	23.25	23.25	Printer Copies

* Non-Chargeable entries

Working Member Summary

Name	Rate	Chargeable		Non-Chargeable	
		Hours	Value	Hours	Value
(910) Accounting Department	0.00	0.00	0.00	0.00	0.00

Disbursement Summary

Disbursement Type - Content	Value
(105) Photocopies - Local	23.25

Detailed Entry Report

Between 06/27/2007 and 06/29/2007

Member	Client	Matter	Date	Time/ Disb	Code	Quantity	Rate	Value	Description
(910) Accounting Department	(31624) Integrated Grain Processors Co-	(93668) Loan Facilities with Societe Generale	06/28/07	D	(105) Photocopies -	1.00	21.75	21.75	Printer Copies

* Non-Chargeable entries

Working Member Summary

Name	Rate	Chargeable		Non-Chargeable	
		Hours	Value	Hours	Value
(910) Accounting Department	0.00	0.00	0.00	0.00	0.00

Disbursement Summary

Disbursement Type - Content	Value
(105) Photocopies - Local	21.75

Detailed Entry Report

Between 06/27/2007 and 06/29/2007

Member	Client	Matter	Date	Time/ Disb	Code	Quantity	Rate	Value	Description
(910) Accounting Department	(31624) Integrated Grain Processors Co-	(93668) Loan Facilities with Societe Generale	06/28/07	D	(105) Photocopies -	1.00	34.50	34.50	Printer Copies

* Non-Chargeable entries

Working Member Summary

Name	Rate	Chargeable		Non-Chargeable	
		Hours	Value	Hours	Value
(910) Accounting Department	0.00	0.00	0.00	0.00	0.00

Disbursement Summary

Disbursement Type - Content	Value
(105) Photocopies - Local	34.50

Detailed Entry Report

Between 06/27/2007 and 06/29/2007

Member	Client	Matter	Date	Time/ Disb	Code	Quantity	Rate	Value	Description
(910) Accounting Department	(31624) Integrated Grain Processors Co-	(93668) Loan Facilities with Societe Generale	06/28/07	D	(105) Photocopies -	1.00	28.00	28.00	Printer Copies

* Non-Chargeable entries

Working Member Summary

Name	Rate	Chargeable		Non-Chargeable	
		Hours	Value	Hours	Value
(910) Accounting Department	0.00	0.00	0.00	0.00	0.00

Disbursement Summary

Disbursement Type - Content	Value
(105) Photocopies - Local	28.00

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.

**COSTS OF
INTEGRATED GRAIN PROCESSORS CO-OPERATIVE INC.
IN RESPECT OF FEBRUARY 28, 2008 MOTION IN AYLMER**

APPENDIX "B"
FORM 1

SUMMARY STATEMENT OF HOURS – CONSULTANTS AND LEGAL COUNSEL

PREPARED ON A FULL INDEMNITY BASIS

A separate form is required for each consultant or legal counsel

EB—2006-0243 Board File Number		INTEGRATED GRAIN PROCESSORS CO-OPERATIVE INC Party Name				AIRD & BERLIS LLP Law Firm	
DENNIS O'LEARY, SENIOR COUNSEL Counsel Name		1984, Ontario Year of Call					
Consultant Name		Years of Relevant Experience (curriculum vitae must be attached)				Consultant Firm	
	Hours	Hourly Rate	Sub-total	GST 5%	Total		
Preparation	38.00	\$550	\$20,900.00	\$1,045.00	\$21,945.00		
Attendance – Technical Conference							
Attendance – Settlement Conference							
Attendance – Oral Hearing (9:30 a.m. to 4:20 p.m.)	7.0	\$550	\$3,850.00	\$192.50	\$ 4,042.50		
Argument	25.5	\$550	\$14,025.00	\$701.25	\$14,726.25		
Case Management	44.0	\$550	\$24,200.00	\$1,210.00	\$25,410.00		
TOTALS	114.50	\$550	\$62,975.00	\$3,148.75	\$66,123.75		

Note: All claims must be in Canadian dollars. If applicable, state exchange rate _____, and country of initial currency _____.

DOCKETS FOR DENNIS O'LEARY (DMO)

RE: NATURAL RESOURCE GAS LIMITED
EB-2006-0243

DATE	DESCRIPTION	L.YR.	C/M	PREP.	ORAL HEARING	ARGUMENT	TOTAL TIME	HOURLY RATE
Feb 11. 08	Telephone conference with McCarthy's and George, working on application materials; Email to OEB; Telephone calls; Reviewing transcripts; Drafting pre-filed evidence including review of Volumes 1 and 2 and preparing notes	DMO	8.5				8.5	\$550
Feb 12. 08	Working on Notice of Motion and submissions to OEB; Telephone calls and emails; Meetings	DMO	11.5				11.50	\$550
Feb 13. 08	Review and revise Notice of Motion and Submissions; Telephone calls, meetings and emails in respect of OEB proceeding; Review L. Thacker letter; Discussions with M. Kovnats and B. McGarva re tactics	DMO	8.0				8.0	\$550
Feb 14. 08	Final review and revisions to docs; Receive oral and written comments; Compiling supporting materials; Instructions and meetings with M. Kovnats, S. Stoll, A. Chow; Telephone calls and emails	DMO	6.5				6.5	\$550
Feb 21. 08	Numerous e-mails, telephone discussions, and meeting with M. Kovnats, S. Stoll and G. Alkalay; Review and revise five letters to L. Thacker; prepare Volume 4 of Motion Record materials; Forward same to OEB; Several telephone calls to Board Staff and Board counsel	DMO	4.5				4.5	\$550

DATE	DESCRIPTION	L.YR.	C/M	PREP.	ORAL HEARING	ARGUMENT	TOTAL TIME	HOURLY RATE
Feb 22. 08	Numerous telephone calls amongst M. Kovnats, S. Stoll, and G. Alkalay in respect of the pending Board Order re motion; Receipt of review of Board Order; telephone calls to Board Staff and course; instructions; Work on outline for hearing preparations and witnesses	DMO	2.5				2.5	\$550
Feb 25. 08	Work on examination in chief and cross of NRG witnesses; prepare for motion; numerous meetings	DMO		9.5			9.5	\$550
Feb 26. 08	Work on examination in chief, cross and Volume 5, Motion Record; prepare for and travel to Ministry of Energy to meet with R. Lawrence, work on submissions; discussions with M. Kovnats, G. Alkalay, S. Stoll and B. McGarva	DMO		7.5			7.5	\$550
Feb 27. 08	Work on cross and submissions; telephone call to the OEB; e-mails sent and received; travel to Alymer	DMO		14.0			14.0	\$550
Feb 28. 08	Preparation for and attendance at hearing; meetings with client; conduct examination in chief and cross; making submissions; draft Order; return travel to Toronto	DMO		7.0	7.0		14.0	\$550
Feb 29. 08	Meeting with M. Kovnats and S. Stoll; telephone calls to Union Gas; letter to S. Wong with interrogatory; discussion with S. Stoll re submissions; review transcript of February 28 th proceeding; email to OEB re corrections to transcript	DMO	2.5				2.5	\$550

DATE	DESCRIPTION	L.YR.	C/M	PREP.	ORAL HEARING	ARGUMENT	TOTAL TIME	HOURLY RATE
Mar 3. 08	Dictating additional submissions; telephone call with T. Halinski; meeting with S. Stoll and M. Kovnats; telephone calls and e-mails; review Hydro One proceeding Decision; instructions	DMO				6.5	6.5	\$550
Mar 5. 08	Work on IGPC submissions with S. Stoll, M. Kovnats; revisions; discussion with T. Halinski re Assessment Act; meetings; telephone calls and e-mails	DMO				9.0	9.0	\$550
Mar 6. 08	Working with S. Stoll and M. Kovnats on submissions; reviewing and incorporating comments from G. Alkalay and H. Wiercinski; preparing materials for forwarding to the Ontario Energy Board	DMO				6.5	6.5	\$550
Mar 7. 08	Draft letter to Ontario Energy Board re objection to NRG's new evidence; reviewing same; numerous telephone calls and discussions; meetings with M. Kovnats and Scott Stoll	DMO				3.5	3.5	\$550
			44.0	38.0	7.0	25.5	114.5	

APPENDIX "B"
FORM 1

PREPARED ON A FULL INDEMNITY BASIS

SUMMARY STATEMENT OF HOURS – CONSULTANTS AND LEGAL COUNSEL

A separate form is required for each consultant or legal counsel

EB—2006-0243 Board File Number		INTEGRATED GRAIN PROCESSORS CO-OPERATIVE INC. Party Name			
B.M. McGARVA, SENIOR COUNSEL Counsel Name		1980, Ontario Year of Call		AIRD & BERLIS LLP Law Firm	
Consultant Name		Years of Relevant Experience (curriculum vitae must be attached) Consultant Firm			
	Hours	Hourly Rate	Sub-total	GST 5%	Total
Preparation	21.8	\$ 595	\$ 12,971	\$ 648.55	\$ 13,619.55
Attendance – Technical Conference					
Attendance – Settlement Conference					
Attendance – Oral Hearing	7.0	\$ 595	\$ 4,165	\$ 208.25	\$ 4,373.25
Argument					
Case Management	4.3	\$595	\$ 2,558.50	\$ 127.92	\$ 2,686.42
TOTALS	33.1	\$ 595	\$ 19,694.50	\$984.72	\$ 20,679.22
Note: All claims must be in Canadian dollars. If applicable, state exchange rate _____, and country of initial currency _____.					

7106001.1

DOCKETS FOR BERNIE MCGARVA (BM)
RE: NATURAL RESOURCE GAS LIMITED
EB-2006-0243

DATE	DESCRIPTION	LYR.	C/M	PREP.	ORAL HEARING	ARGUMENT	TIME	HOURLY RATE
Feb 14. 08	Conference with S. Stoll; various e-mails from S. Stoll and M. Kovnats; reviewing pre-filed evidence	BM	2.8				2.8	\$595
Feb 25.08	Preparation for Ontario Energy Board hearing; various meetings with S. Stoll, D. O'Leary and M. Kovnats; various conference with M Kovnats; reviewing e-mails from client	BM		4.40			4.40	\$595
Feb 26. 08	Preparation for Ontario Energy Board hearing; conference with M. Kovnats, D. O'Leary and S. Stoll; attendance at meeting with clients and representatives of NRG	BM		6.8			6.8	\$595
Feb 27. 08	Preparation for hearing before Ontario Energy Board; attendance in Ingersoll; meetings with client; ongoing preparations with G. Alkalay and T. Cox	BM		8.6			8.6	\$595
Feb 28. 08	Preparation for and attendance at hearing before Ontario Energy Board; various meetings with clients; continuing review of materials and drafting of Order	BM		2.0	7.0		9.0	\$595
Feb 29. 08	Receipt and review of various e-mails from M. Kovnats, St. Stoll, D. O'Leary and G. Alkalay	BM	1.5				1.5	\$595
			4.3	21.8	7		33.1	

APPENDIX "B"
FORM 1

PREPARED ON FULL INDEMNITY BASIS

SUMMARY STATEMENT OF HOURS – CONSULTANTS AND LEGAL COUNSEL

A separate form is required for each consultant or legal counsel

EB—2006-0243 Board File Number		INTEGRATED GRAIN PROCESSORS CO-OPERATIVE INC.				Party Name	
S.A. STOLL, JUNIOR COUNSEL Counsel Name		2002, Ontario Year of Call		AIRD & BERLIS LLP Law Firm			
Consultant Name		Years of Relevant Experience (curriculum vitae must be attached)					
		Hours	Hourly Rate	Sub-total	GST 5%	Total	
Preparation		18.8	\$ 495	\$ 9,306	\$ 465.30	\$ 9,771.30	
Attendance – Technical Conference							
Attendance – Settlement Conference							
Attendance – Oral Hearing		7.0	\$ 495	\$ 3,465	\$ 173.25	\$ 3,638.25	
Argument		17.6	\$ 495	\$ 8,712	\$ 435.60	\$ 9,147.60	
Case Management		46	\$ 495	\$22,770	\$1,138.50	\$23,908.50	
TOTALS		89.40	\$ 495	\$ 44,253	\$2,212.65	\$46,465.65	
Note: All claims must be in Canadian dollars. If applicable, state exchange rate _____, and country of initial currency _____.							

DOCKETS FOR SCOTT A. STOLL (SAS)

RE: NATURAL RESOURCE GAS LIMITED
EB-2006-0243

DATE	DESCRIPTION	LYR.	C/M	PREP.	ORAL HEARING	ARGUMENT	TIME	HOURLY RATE
Feb. 2/08	Reviewing case law and OEB decisions; begin drafting revisions to Notice of Motion/Application	SAS	4.2				4.2	\$425
Feb. 4/08	Meeting with M. Kovnats and D. O'Leary; preparing material for motions; telephone call to M. Aldred, OEB; reviewing draft letters; research Technical Standards and Safety Authority Act and regulations for licensing pipelines	SAS	8.5				8.5	\$425
Feb. 12/08	Telephone calls with Alkalay; conference call with G. Alkalay and D. Lessard; discussion with D. O'Leary regarding brief of material; responding to question from McCarthy Tétrault; telephone call with J. Fraser; prepare schedule	SAS	8.8				8.8	\$425
Feb. 15/08	Finalize Motion Record; conference call with G. Alkalay and M. Kovnats	SAS	6.5				6.5	\$425
Feb. 19/08	Follow up on distributing motion materials; review letter; draft language for Lakeside Controls	SAS	1.8				1.8	\$425
Feb.	Reviewing letters; attend to getting additional materials to the OEB;	SAS		4.80			4.8	\$425

DATE	DESCRIPTION	L.YR.	C/M	PREP.	ORAL HEARING	ARGUMENT	TIME	HOURLY RATE
21/08	telephone calls from G. Alkalay; conference call regarding status; telephone call to Lakeside Controls; telephone call from M. Kovnats; discuss draft agreement with M. Henderson							
Feb. 22/08	Several telephone calls to N. Mikhail; telephone call to M. Aldred; telephone call to A. Fogwill; telephone call to M. Kovnats; discuss who to call at the Ontario Energy board with F. Cass; telephone call with A. Fogwill; discuss Union Gas letter with J. Fraser; review draft order; consider witnesses	SAS	4.8				4.8	\$425
Feb 08	Final preparation of materials for motions; telephone calls with Board staff; various telephone calls; review materials from L. Thacker; review materials from Town of Aylmer; telephone calls with Union Gas counsel; travel to Ingersoll for hearing	SAS		12.50			12.5	\$425
Feb 08	Preparation and attendance at Ontario Energy Board motion in Aylmer; follow up with Lakeside Controls	SAS	.5	1.5	7.0		9.0	\$425
Feb 08	Follow up on hearing and next steps for argument; follow up with L. Summerhill reviewing transcripts	SAS	1.4				1.4	\$425
Mar 08	Revising submissions to the OEB; telephone call from Lakeside Controls; discuss submission with M. Kovnats and	SAS				6.3	6.3	\$425

DATE	DESCRIPTION	L.YR.	C/M	PREP.	ORAL HEARING	ARGUMENT	TIME	HOURLY RATE
	B. McGarva; review Union Gas Letter							
Mar 05. 08	Revising argument for motion; review construction submissions	SAS				6.8	6.8	\$425
Mar 06. 08	Review and finalize submissions to the Ontario Energy	SAS				4.5	4.5	\$425
Mar 07. 08	Follow up on Union Gas and Lakeside payment issues; L. Thacker with D. O'Leary; Email and respond to L. Thacker; Call from G. Alkalay; Review Thacker submissions	SAS	4.0				4.0	\$425
Mar 11. 08	Reviewing draft M9 and Bundled T Receipt Agreement; Call to OEB; Call from M. Kovnats and D. O'Leary; Confirmation of Union Gas payment; Conference calls regarding Somerville amendments	SAS	5.5				5.5	\$425
			46	18.8	7	17.6	89.4	

APPENDIX "B"**FORM 2****SUMMARY OF DISBURSEMENTS**

EB-2006-0243		INTEGRATED GRAIN PROCESSORS CO-OPERATIVE INC.	
Board File Number		Party Name	
Party or Group that made the disbursement			
AIRD & BERLIS LLP			
	Net Cost	GST 5%	
Photocopies	\$1,731.25	\$ 86.56	
Printing/Binding/Tabs	\$ 257.10	\$ 12.85	
Fax	\$ 23.00	\$ 1.15	
Courier	\$ 396.50	\$ 14.00	
Telephone	\$ 5.40	\$ 0.27	
Postage			
Transcripts			
Travel: Car (mileage) 379.80 km @.45 (Toronto/Aylmer return)	\$162.77	\$ 8.14	
Travel: Other ()			
Taxi or Airport Limo			
Accommodation/Meals: S. Stoll	\$ 131.25	\$ 6.25	
D. O'Leary	\$ 131.25	\$ 6.25	
M. Kovnats	\$ 131.25	\$6.25	
B. McGarva	\$ 153.74	\$ 7.21	
Other ()			
Sub-totals	\$ 3,123.51	\$ 148.93	Grand Total: \$3,272.44
Notes: 1. All claims for disbursements must include receipts where practicable. 2. All claims must be in Canadian dollars. If applicable state exchange rate and country of initial currency			

Detailed Entry Report

Between 02/28/2008 and 02/29/2008

Member	Client	Matter	Date	Time/ Disb	Code	Quantity	Rate	Value	Description
(378) Dennis O'Leary	(31624) Integrated Grain Processors Co-	(93668) Loan Facilities with Societe Generale	02/28/08	D	(BC) Binding and Tabs	1.00	35.10	35.10	Binding and Tabs
			02/28/08	D	(BC) Binding and Tabs	1.00	31.59	31.59	Binding and Tabs
			02/28/08	D	(BC) Binding and Tabs	1.00	28.80	28.80	Binding and Tabs
(1203) Scott Stoll	(31624) Integrated Grain Processors Co-	(93668) Loan Facilities with Societe Generale	02/28/08	D	(BC) Binding and Tabs	1.00	21.08	21.08	Binding and Tabs
			02/28/08	D	(BC) Binding and Tabs	1.00	5.27	5.27	Binding and Tabs
(378) Dennis O'Leary	(31624) Integrated Grain Processors Co-	(93668) Loan Facilities with Societe Generale	02/29/08	D	(BC) Binding and Tabs	1.00	1.50	1.50	Binding and Tabs
			02/29/08	D	(BC) Binding and Tabs	1.00	21.80	21.80	Binding and Tabs
			02/29/08	D	(BC) Binding and Tabs	1.00	69.72	69.72	Binding and Tabs
(1203) Scott Stoll	(31624) Integrated Grain Processors Co-	(93668) Loan Facilities with Societe Generale	02/29/08	D	(BC) Binding and Tabs	1.00	10.92	10.92	Binding and Tabs
			02/29/08	D	(BC) Binding and Tabs	1.00	31.32	31.32	Binding and Tabs

* Non-Chargeable entries

Working Member Summary

Name	Rate	Chargeable		Non-Chargeable	
		Hours	Value	Hours	Value
(378) Dennis O'Leary	0.00	0.00	0.00	0.00	0.00
(1203) Scott Stoll	0.00	0.00	0.00	0.00	0.00

Disbursement Summary

Disbursement Type - Content	Value
(BC) Binding and Tabs	257.10

Detailed Entry Report

Between 02/22/2008 and 03/07/2008

Member	Client	Matter	Date	Time/ Disb	Code	Quantity	Rate	Value	Description
(378) Dennis O'Leary	(31624) Integrated Grain Processors Co-	(93668) Loan Facilities with Societe Generale	02/22/08	D	(DE)	1.00	22.00	22.00	Deliveries/Parss 2300 YONGE ST.,SUI
			02/22/08	D	(DE)	1.00	8.00	8.00	Deliveries/Parss 199 BAY STREET,28T
			02/22/08	D	(DE)	1.00	12.00	12.00	Deliveries/Parss 130 ADELAIDE ST. W
			02/28/08	D	(DE)	1.00	324.50	324.50	Deliveries/Parss 89 progress drive
			03/05/08	D	(DE)	1.00	8.00	8.00	Deliveries/Parss 66 Wellington St W
			03/06/08	D	(DE)	1.00	22.00	22.00	Deliveries/Parss 2300 YONGE ST.,SUI
					Deliveries/Parss				

* Non-Chargeable entries

Working Member Summary

Name	Rate	Chargeable		Non-Chargeable	
		Hours	Value	Hours	Value
(378) Dennis O'Leary	0.00	0.00	0.00	0.00	0.00

Disbursement Summary

Disbursement Type - Content	Value
(DE) Deliveries/Parss	396.50

Delivery Details

Ticket No : 1023384

Waybill No :

Reference :

Status : C

Service : DIRECT

Cost Centre : 93668 378

Date Entered : 3/5/2008

Time Entered : 11:59

Delivery POD : Phil h

Delivery Date : 3/5/2008

Delivery Time : 12:19

Pickup Location

AIRD & BERLIS LLP.
1800-181 BAY STREET
TORONTO, ON CANADA M5J2T9
MAILROOM, 416-865-7789

Delivery Location

McCarthy tetrault LLP
66 Wellington St W
Toronto, ON CANADA
Henry J.P. Wiercinsk,

Special Instructions

No Special Instructions

Delivery Charges

SERVICE CHARGE	DIRECT	\$8.00
VEHICLE	BIKE	\$0.00
WEIGHT	0.00	\$0.00
PIECES	1.00	\$0.00
WAIT TIME	0.00	\$0.00
RET-SAME	No	\$0.00
RET-OTHER	No	\$0.00
AFTTR HRS	NONE	\$0.00
TOTAL CHARGES :		\$8.00

Delivery Details

Ticket No : 1018405

Waybill No :

Reference :

Status : C

Service : SUPER DIR

Cost Centre : 93668 378

Date Entered : 2/22/2008

Time Entered : 15:00

Delivery POD : Shawna

Delivery Date : 2/22/2008

Delivery Time : 15:29

Pickup Location

AIRD & BERLIS LLP.
1800-181 BAY STREET
TORONTO, ON CANADA M5J2T9
MAILROOM, 416-865-7789

Delivery Location

LENCZNER SLAGHT ROYCE SMITH
130 ADELAIDE ST. W, SUITE 260
TORONTO, ON CANADA M5H3P5
LAWRENCE THACKER,

Special Instructions

No Special Instructions

Delivery Charges

SERVICE CHARGE	SUPER DIR	\$12.00
VEHICLE	BIKE	\$0.00
WEIGHT	0.00	\$0.00
PIECES	1.00	\$0.00
WAIT TIME	0.00	\$0.00
RET-SAME	No	\$0.00
RET-OTHER	No	\$0.00
AFTTR HRS	NONE	\$0.00
TOTAL CHARGES :		\$12.00

Delivery Details

Ticket No : 1018394

Waybill No :

Reference :

Status : C

Service : DIRECT

Cost Centre : 93668 378

Date Entered : 2/22/2008

Time Entered : 14:50

Delivery POD : Lafond

Delivery Date : 2/22/2008

Delivery Time : 15:45

Pickup Location

AIRD & BERLIS LLP.
1800-181 BAY STREET
TORONTO, ON CANADA M5J2T9
MAILROOM, 416-865-7789

Delivery Location

ONTARIO ENERGY BOARD
2300 YONGE ST.,SUITE 2700
TORONTO, ON CANADA M4P1E4
KRISTEN WALLI,

Special Instructions

No Special Instructions

Delivery Charges

SERVICE CHARGE	DIRECT	\$22.00
VEHICLE	BIKE	\$0.00
WEIGHT	0.00	\$0.00
PIECES	1.00	\$0.00
WAIT TIME	0.00	\$0.00
RET-SAME	No	\$0.00
RET-OTHER	No	\$0.00
AFTR HRS	NONE	\$0.00
TOTAL CHARGES :		\$22.00

Delivery Details

Ticket No : 1024319

Waybill No :

Reference :

Status : C

Service : ON-DIRECT

Cost Centre : 936668 378

Date Entered : 3/6/2008

Time Entered : 16:47

Delivery POD : F. Lafond

Delivery Date : 3/7/2008

Delivery Time : 08:56

Pickup Location

AIRD & BERLIS LLP.
1800-181 BAY STREET
TORONTO, ON CANADA M5J2T9
MAILROOM, 416-865-7789

Delivery Location

ONTARIO ENERGY BOARD
2300 YONGE ST., SUITE 2700
TORONTO, ON CANADA M4P1E4

Special Instructions

No Special Instructions

Delivery Charges

SERVICE CHARGE	ON-DIRECT	\$22.00
VEHICLE	BIKE	\$0.00
WEIGHT	0.00	\$0.00
PIECES	1.00	\$0.00
WAIT TIME	0.00	\$0.00
RET-SAME	No	\$0.00
RET-OTHER	No	\$0.00
AFTR HRS	NONE	\$0.00

TOTAL CHARGES :	\$22.00
------------------------	----------------

Delivery Details

Ticket No : 1020645

Waybill No :

Reference :

Status : C

Service : ON-DIRECT

Cost Centre : 93668 378

Date Entered : 2/28/2008

Time Entered : 08:16

Delivery POD : Kevin. Kostyria

Delivery Date : 2/28/2008

Delivery Time : 08:23

Pickup Location

AIRD & BERLIS LLP.
1800-181 BAY STREET
TORONTO, ON CANADA M5J2T9
MAILROOM, 416-865-7789

Delivery Location

integrated grain procesors co-
89 progress drive
aylmer, ON CANADA N5H2R9
tom cox,

Special Instructions

this was given to parss last night,already on board

Delivery Charges

SERVICE CHARGE	ON-DIRECT	\$295.00
VEHICLE	BIKE	\$0.00
WEIGHT	0.00	\$0.00
PIECES	1.00	\$0.00
WAIT TIME	0.00	\$0.00
RET-SAME	No	\$0.00
RET-OTHER	No	\$0.00
AFTR HRS	NONE	\$0.00
TOTAL CHARGES :		\$324.50

Delivery Details

Ticket No : 1021730

Waybill No :

Reference :

Status : C

Service : DIRECT

Cost Centre : 99999 378

Date Entered : 2/29/2008

Time Entered : 15:05

Delivery POD : F lafond

Delivery Date : 2/29/2008

Delivery Time : 16:02

Pickup Location

AIRD & BERLIS LLP.
1800-181 BAY STREET
TORONTO, ON CANADA M5J2T9
MAILROOM, 416-865-7789

Delivery Location

ONTARIO ENERGY BOARD
2300 YONGE ST., SUITE 2700
TORONTO, ON CANADA M4P1E4

Special Instructions

VERY URGENT

Delivery Charges		
SERVICE CHARGE	DIRECT	\$22.00
VEHICLE	BIKE	\$0.00
WEIGHT	0.00	\$0.00
PIECES	1.00	\$0.00
WAIT TIME	0.00	\$0.00
RET-SAME	No	\$0.00
RET-OTHER	No	\$0.00
AFTR HRS	NONE	\$0.00
TOTAL CHARGES :		\$22.00

Detailed Entry Report

Between 02/27/2008 and 02/29/2008

Member	Client	Matter	Date	Time/ Disb	Code	Quantity	Rate	Value	Description
(910) Accounting Department	(31624) Integrated Grain Processors Co.	(93668) Loan Facilities with Societe Generale	02/29/08	D	(FA) Fax Charges	5.00	0.50	2.50	Fax Charges Phone No:15148416251
			02/29/08	D	(FA) Fax Charges	5.00	0.50	2.50	Fax Charges Phone No:12122786136
			02/29/08	D	(FA) Fax Charges	5.00	0.50	2.50	Fax Charges Phone No:4168680673
			02/29/08	D	(FA) Fax Charges	4.00	0.50	2.00	Fax Charges Phone No:4163274017

* Non-Chargeable entries

Working Member Summary

Name	Rate	Chargeable		Non-Chargeable	
		Hours	Value	Hours	Value
(910) Accounting Department	0.00	0.00	0.00	0.00	0.00

Disbursement Summary

Disbursement Type - Content	Value
(FA) Fax Charges	9.50

	Time		Disbursements		Total
	Hours	Value	Taxes	Taxes	
Non Chargeable	0.00	0.00	0.00	0.00	0.00
Chargeable(WIP)	0.00	0.00	0.00	0.00	23.00
Total	0.00	0.00	0.00	0.00	23.00

Detailed Entry Report

Between 02/25/2008 and 02/29/2008

Member	Client	Matter	Date	Time/ Disb	Code	Quantity	Rate	Value	Description
(910) Accounting Department	(31624) Integrated Grain Processors Co-	(93668) Loan Facilities with Societe Generale	02/26/08	D	(02) Long Distance Charges	1.00	0.86	0.86	Long Distance Charges Phone No:5196722121 Duration:120
			02/27/08	D	(02) Long Distance Charges	1.00	1.14	1.14	Long Distance Charges Phone No:9055285105 Duration:180
			02/27/08	D	(02) Long Distance Charges	1.00	0.43	0.43	Long Distance Charges Phone No:5197652575 Duration:60
			02/27/08	D	(02) Long Distance Charges	1.00	0.76	0.76	Long Distance Charges Phone No:5197551069 Duration:120
			02/27/08	D	(02) Long Distance Charges	1.00	0.38	0.38	Long Distance Charges Phone No:5197551069 Duration:60
			02/29/08	D	(02) Long Distance Charges	1.00	0.43	0.43	Long Distance Charges Phone No:5148416251 Duration:60
			02/29/08	D	(02) Long Distance Charges	1.00	0.54	0.54	Long Distance Charges Phone No:2122786136 Duration:60
			02/29/08	D	(02) Long Distance Charges	1.00	0.43	0.43	Long Distance Charges Phone No:5194325534 Duration:60
			02/29/08	D	(02) Long Distance Charges	1.00	0.43	0.43	Long Distance Charges Phone No:5194325534 Duration:60

* Non-Chargeable entries

Working Member Summary

Name	Rate	Chargeable		Non-Chargeable	
		Hours	Value	Hours	Value
(910) Accounting Department	0.00	0.00	0.00	0.00	0.00

Disbursement Summary

Disbursement Type - Content	Value
(02) Long Distance Charges	5.40

Detailed Entry Report

Between 02/25/2008 and 03/19/2008

Member	Client	Matter	Date	Time/ Disb	Code	Quantity	Rate	Value	Description
(1203) Scott Stoll	(31624) Integrated Grain Processors Co-	(93668) Loan Facilities with Societe Generale	03/05/08	D	(63) Travelling Expenses	1.00	162.77	162.77	Travelling Expenses Re: Payment of Expenses Trip to Aylmer for IGPC Hearing 379.80 @ .45 per km. on: 28/02/2008 paid to Mileage for 60 - Transportation (Local) (EV) 6932-20 Voucher No. 34092 for Invoice No. 6932 issued by (1203) Stoll, S. A.
			03/05/08	D	(63) Travelling Expenses	1.00	131.42	131.42	Travelling Expenses Re: Payment of Expenses Trip to Aylmer re IGPC Hearing on: 28/02/2008 paid to Elm Hurst Inn and Country Spa for 80 - Accomodations (National) (EV) 6932-19 Voucher No. 34092 for Invoice No. 6932 issued by (1203) Stoll, S. A.

* Non-Chargeable entries

Working Member Summary

Name	Rate	Chargeable		Non-Chargeable	
		Hours	Value	Hours	Value
(1203) Scott Stoll	0.00	0.00	0.00	0.00	0.00

Disbursement Summary

Disbursement Type - Content	Value
(63) Travelling Expenses	294.19

	Hours	Time		Disbursements			Total
		Value		Taxes	Values	Taxes	
Non Chargeable	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Chargeable(WIP)	0.00	0.00	0.00	0.00	294.19	0.00	294.19
Total	0.00	0.00	0.00	0.00	294.19	0.00	294.19

Elm Hurst Inn and Country Spa
415 Harris St., PO Box 123
Hwy 401 & County Rd. 19
Ingersoll, Ontario
N5C 3K1

Telephone: 519-485-5321 Fax: 519-485-6579

Scott Stoll
Aird & Berlis Law Offices
Brooke Field Place 181 Bay St
Toronto, On
M5J 2T9

Page # 1
Res. # 091029
Checked in Wed Feb 27/08 - 8:18 pm
Departing Thu Feb 28/08
Nights 1
Room Rate 125.00
Room 321

Date	Description	Reference	Charges	Credits
Feb27	Corporate Individual		125.00	
Feb27	GST		6.25	
Feb27	PST		6.25	
			-----	-----
			137.50	137.50
				0.00

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Charge Summary:

GST	6.25
PST	6.25

7010-1 16PC

Elm Hurst Inn and Country Spa
415 Harris St., PO Box 123
Hwy 401 & County Rd. 19
Ingersoll, Ontario
N5C 3K1

Telephone: 519-485-5321 Fax: 519-485-6579

Dennis O'Leary
Aird & Berlis Law Offices
Brooke Field Place 181 Bay St
Toronto, On
M5J 2T9

Page # 1
Res. # 091028
Checked in Wed Feb 27/08 - 8:16 pm
Departing Thu Feb 28/08
Nights 1
Room Rate 125.00
Room 319

Date	Description	Reference	Charges	Credits
Feb27	Corporate Individual		125.00	
Feb27	GST		6.25	
Feb27	PST		6.25	
			<hr/>	<hr/>
			137.50	137.50
				0.00

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E-mail us at accommodations@elmhurstinn.com

Charge Summary:

GST	6.25
PST	6.25

ELM HURST INN
415 HARRIS ST
INGERSOLL, ON
N5C 3J8
(519) 485-5321

Merchant ID: 5633078 Batch#: 325
Term ID: 05633078 Shift #: 001

Completion

VISA
Inv #: 0000013177 Seq#: 325001001006
*****4327

Amount: \$ 137.50
Tip: \$ 0.00

Total: CAD\$ 137.50

000/ APPROVED 001275

28-Feb-08 00:12:11

Customer Copy
THANK YOU FOR YOUR BUSINESS!

Detailed Entry Report

Between 02/25/2008 and 03/06/2008

Member	Client	Matter	Date	Time/ Disb	Code	Quantity	Rate	Value	Description
(41) Bernie McGarva	(31624) Integrated Grain Processors Co-	(93668) Loan Facilities with Societe Generale	03/06/08	D	(63) Travelling Expenses	1.00	153.74	153.74	Travelling Expenses Re: Payment of Expenses One night's stay at Elm Hurst Inn for meeting in Ingersoll on: 27/02/2008 paid to Elm Hurst Inn for 80 - Accomodations (National) (EV) 6949-1 Voucher No. 34111 for Invoice No. 6949 issued by (41) McGarva, B.

* Non-Chargeable entries

Working Member Summary

Name	Rate	Chargeable		Non-Chargeable	
		Hours	Value	Hours	Value
(41) Bernie McGarva	0.00	0.00	0.00	0.00	0.00

Disbursement Summary

Disbursement Type - Content	Value
(63) Travelling Expenses	153.74

	Time		Disbursements		Total
	Hours	Value	Taxes	Values	
Non Chargeable	0.00	0.00	0.00	0.00	0.00
Chargeable(WIP)	0.00	0.00	0.00	153.74	153.74
Total	0.00	0.00	0.00	153.74	153.74

Elm Hurst Inn and Country Spa
415 Harris St., PO Box 123
Hwy 401 & County Rd. 19
Ingersoll, Ontario
N5C 3K1

Telephone: 519-485-5321 Fax: 519-485-6579

Bernie McGarva
 Aird & Berlis Law Offices
 Brooke Field Place 181 Bay St
 Toronto, On
 M5J 2T9

Page # 1
 Res. # 091027
 Checked in Wed Feb 27/08 - 5:57 pm
 Departing Fri Feb 29/08
 Nights 2
 Room Rate 125.00
 Room 302

Date	Description	Reference	Charges	Credits
Feb27	Corporate Individual		125.00 ✓	
Feb27	GST		6.25	
Feb27	PST		6.25 ✓	
Feb28	Long Distance Charges	4164878207-1850-2	3.05 ✓	
Feb28	GST	4164878207-1850-2	0.15	
Feb28	PST	4164878207-1850-2	0.24 ✓	
Feb28	Food - D/R	#01187798	18.20 ✓	
Feb28	gst	#01187798	0.91	
Feb28	pst	#01187798	1.46 ✓	
Feb28	Gratuity	#01187798	4.00	
Feb28	Long Distance Charges	4164878207-2035-1	3.05	
Feb28	GST	4164878207-2035-1	0.15	
Feb28	PST	4164878207-2035-1	0.24	
Feb28	Long Distance Charges	9547726748-2130-2	3.05	
Feb28	GST	9547726748-2130-2	0.15	
Feb28	PST	9547726748-2130-2	0.24	
Feb28	Long Distance Charges	9547726748-2158-19	10.45	
Feb28	GST	9547726748-2158-19	0.52	
Feb28	PST	9547726748-2158-19	0.84	
Feb28	Corporate Individual		125.00	
Feb28	GST		6.25	
Feb28	PST		6.25	
			<hr/> 321.70	
			321.70	<hr/> 0.00

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Charge Summary:

GST 13.47
 PST 14.06

6-10-08
1-1-08

Elm Hurst Inn and Country Spa
415 Harris St., PO Box 123
Hwy 401 & County Rd. 19
Ingersoll, Ontario
N5C 3K1

Telephone: 519-485-5321 Fax: 519-485-6579

Martin Kovnats
Aird & Berlis Law Offices
Brooke Field Place 181 Bay St
Toronto, On
M5J 2T9

Page # 1
Res. # 091026
Checked in Wed Feb 27/08 - 6:00 pm
Departing Thu Feb 28/08
Nights 1
Room Rate 125.00
Room 301

Date	Description	Reference	Charges	Credits
Feb27	Corporate Individual		125.00	
Feb27	GST		6.25	
Feb27	PST		6.25	
			-----	-----
			137.50	137.50
				0.00

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Charge Summary:

GST	6.25
PST	6.25

Detailed Entry Report

Between 02/27/2008 and 02/29/2008

Member	Client	Matter	Date	Time/ Disb	Code	Quantity	Rate	Value	Description
(910) Accounting Department	(31624) Integrated Grain Processors Co-	(93668) Loan Facilities with Societe Generale	02/27/08	D	(01) Photocopies/Scan	1.00	1,093.25	1,093.25	Photocopies

* Non-Chargeable entries

Working Member Summary

Name	Rate	Chargeable		Non-Chargeable	
		Hours	Value	Hours	Value
(910) Accounting Department	0.00	0.00	0.00	0.00	0.00

Disbursement Summary

Disbursement Type - Content	Value
(01) Photocopies/Scanning	1,093.25

Detailed Entry Report

Between 02/27/2008 and 02/29/2008

Member	Client	Matter	Date	Time/ Disb	Code	Quantity	Rate	Value	Description
(910) Accounting Department	(31624) Integrated Grain Processors Co.	(93668) Loan Facilities with Societe Generale	02/27/08	D	(01) Photocopies/Scan	1.00	173.25	173.25	Photocopies

* Non-Chargeable entries

Working Member Summary

Name	Rate	Chargeable		Non-Chargeable	
		Hours	Value	Hours	Value
(910) Accounting Department	0.00	0.00	0.00	0.00	0.00

Disbursement Summary

Disbursement Type - Content	Value
(01) Photocopies/Scanning	173.25

Detailed Entry Report

Between 02/27/2008 and 02/29/2008

Member	Client	Matter	Date	Time/ Disb	Code	Quantity	Rate	Value	Description
(910) Accounting Department	(31624) Integrated Grain Processors Co-	(93668) Loan Facilities with Societe Generale	02/27/08	D	(105) Photocopies -	1.00	50.50	50.50	Printer Copies

* Non-Chargeable entries

Working Member Summary

Name	Rate	Chargeable		Non-Chargeable	
		Hours	Value	Hours	Value
(910) Accounting Department	0.00	0.00	0.00	0.00	0.00

Disbursement Summary

Disbursement Type - Content	Value
(105) Photocopies - Local	50.50

Detailed Entry Report

Between 02/27/2008 and 02/29/2008

Member	Client	Matter	Date	Time/ Disb	Code	Quantity	Rate	Value	Description
(910) Accounting Department	(31624) Integrated Grain Processors Co-	(93668) Loan Facilities with Societe Generale	02/27/08	D	(01) Photocopies/Scan	1.00	322.00	322.00	Photocopies

* Non-Chargeable entries

Working Member Summary

Name	Rate	Chargeable		Non-Chargeable	
		Hours	Value	Hours	Value
(910) Accounting Department	0.00	0.00	0.00	0.00	0.00

Disbursement Summary

Disbursement Type - Content	Value
(01) Photocopies/Scanning	322.00

Detailed Entry Report

Between 02/27/2008 and 02/29/2008

Member	Client	Matter	Date	Time/ Disb	Code	Quantity	Rate	Value	Description
(910) Accounting Department	(31624) Integrated Grain Processors Co-	(93668) Loan Facilities with Societe Generale	02/27/08	D	(01)	1.00	92.25	92.25	Photocopies

* Non-Chargeable entries

Working Member Summary

Name	Rate	Chargeable		Non-Chargeable	
		Hours	Value	Hours	Value
(910) Accounting Department	0.00	0.00	0.00	0.00	0.00

Disbursement Summary

Disbursement Type - Content	Value
(01) Photocopies/Scanning	92.25

EB-2010-0018
Motion by IGPC
Filed: August 27, 2010

TAB G



EB-2005-0544

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, pursuant to section 36 (1) of the *Ontario Energy Board Act, 1998*, for an order or orders approving or fixing just and reasonable rates and other charges for the sale, distribution, transmission, and storage of gas as of October 1, 2006;

BEFORE: Gordon Kaiser
Vice Chair and Presiding Member

Cathy Spoel
Member

RATE ORDER ARISING FROM THE 2007 TEST YEAR DECISION WITH REASONS
EB-2005-0544

Natural Resource Gas Limited ("NRG" or the "Company") filed an Application, dated March 30, 2006, with the Ontario Energy Board under section 36 of the *Ontario Energy Board Act, S.O. 1998, c.15*, for an order or orders of the Board approving or fixing rates for the 2007 fiscal year, commencing October 1, 2006.

An oral hearing was held in Toronto on July 21, 24 and 25, 2006, following which the Board issued its Decision with Reasons dated September 20, 2006. In its decision, the Board directed NRG, among other things, to file financial schedules reflecting the Board's findings. On the basis of the information submitted by NRG, the Board finds that:

- a) NRG's rate base for its 2007 test year is \$9,693,286;
- b) the overall rate of return on rate base for the 2007 test year is 8.87%, including a return on equity of 9.20%; and

- c) NRG's delivery related revenue deficiency for the 2007 test year is \$126,097.

The financial schedules for the 2007 test year are found in Appendix "A". The rate impacts for each rate class flowing from the Board's Decision are provided in Appendix "D".

THE BOARD THEREFORE ORDERS THAT:

1. The Financial Statements, attached as Appendix "A" to this order, are accepted as the basis for the rates in this order.
2. The rates and other charges set forth in the rate schedules, attached as Appendix "B", with the exception of the gas supply charge, but including the system gas fee, are approved and shall apply to all gas taken or considered to have been taken on or after October 1, 2006. These rates will be immediately superseded by the rates resulting from the October 2006 QRAM (EB-2006-0213) decision and order.
3. The appropriate form of customer notice shall accompany each customer's bill following the implementation of this rate order.
4. NRG shall continue the deferral and variance accounts as set forth in Appendix "C". NRG shall record simple interest on the monthly opening balances, calculated at the Board-approved short-term rate.

ISSUED at Toronto, September 28, 2006

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

APPENDIX "A"

TO

BOARD ORDER EB-2005-0544

DATED SEPTEMBER 28, 2006

NATURAL RESOURCE GAS LIMITED

UTILITY INCOME

For the Year Ending September 30, 2007
(\$)

	Per Company *	Board Decision	Note	Per Board
<u>Revenue</u>				
Distribution Revenue	3,889,059	0		3,889,059
Other Operating Revenue (Net)	<u>681,026</u>	<u>0</u>		<u>681,026</u>
Total Revenue	4,570,085	0		4,570,085
<u>Expenses</u>				
Gas Transportation costs	448,437	0		448,437
Operation & Maintenance	2,149,572	(3,990)	(1)	2,145,582
Depreciation & Amortization	731,597	(1,093)	(2)	730,504
Property & Capital Taxes	<u>334,437</u>	<u>0</u>		<u>334,437</u>
Total Expenses	3,664,043	(5,083)		3,658,960
Utility Income Before Income Taxes	906,042	5,083		911,125
Income Taxes	<u>106,232</u>	<u>24,085</u>		<u>130,317</u>
<u>Utility Income</u>	<u>799,810</u>	<u>(19,002)</u>		<u>780,808</u>

* As per Exhibit F6, Tab 1, Schedule 2, Updated

(1) Per Board Decision - page 19

(2) Per Board Decision - page 9

Reflects reduction in automotive capital expenditures - 38,000 x 16.6% =	(6,308)
Reflects retention of existing vehicle +31,413 x 16.6% =	<u>5,215</u>
	(1,093)

NATURAL RESOURCE GAS LIMITED

CALCULATION OF INCOME TAXES

For the Year Ending September 30, 2007
(\$)

	<u>Per Company *</u>	<u>Board Decision</u>	<u>Note</u>	<u>Per Board</u>
Utility Income Before Income Taxes	906,042	5,083		911,125
Plus: Depreciation Expense	731,597	(1,093)		730,504
Meals & Entertainment (non-deductible portion)	612	0		612
Less: Capital Cost Allowance	631,075	(5,100)	(1)	625,975
Interest Expense	<u>534,895</u>	<u>(49,957)</u>	(2)	<u>484,938</u>
Taxable Income	<u>472,281</u>	<u>59,047</u>		<u>531,328</u>
Calculation of Income Taxes				
Federal Income Tax				
Tax on first \$374,795 @12.00%	44,975	0		44,975
Tax on next \$0 @21.00%	0	0		0
Tax on all over \$374,795 @21.00%	20,472	12,400		32,872
Federal Surtax @ 1.12%	<u>5,290</u>	<u>661</u>		<u>5,951</u>
Total Federal Income Tax	<u>70,737</u>	<u>13,061</u>		<u>83,798</u>
Provincial Income Tax				
Tax on first \$400,000 @ 5.50%	22,000	0		22,000
Clawback on next \$728,519 @ 4.67%	3,376	2,757		6,133
Tax on all over \$400,000 @ 14.00%	<u>10,119</u>	<u>8,267</u>		<u>18,386</u>
Total Provincial Income Tax	<u>35,495</u>	<u>11,024</u>		<u>46,519</u>
Total Income Taxes	<u>106,232</u>	<u>24,085</u>		<u>130,317</u>

* As per Exhibit D6, Tab 6, Schedule 1, Updated

- | | |
|---|----------------|
| (1) Reduction in auto capital expenditures less trade in value $-(38,000 - 4,000) \times 0.5 \times 30\% =$ | (5,100) |
| (2) Reduction in short term interest cost due to change in capital structure | (41,289) |
| Reflects reduction in total refinancing costs and amortization over 60 months | <u>(8,668)</u> |
| | (49,957) |

NATURAL RESOURCE GAS LIMITED

UTILITY RATE BASE

For the Year Ending September 30, 2007
(\$)

	Per Company *	Board Decision	Note	Per Board
<u>Gas Utility Plant</u>				
Gross Plant at Cost	16,470,105	(3,294)	(1)	16,466,812
Less: Accumulated Depreciation	<u>6,753,584</u>	<u>13,160</u>	(2)	<u>6,766,744</u>
Net Utility Plant	9,716,521	(16,453)		9,700,068
<u>Allowance for Working Capital</u>				
Inventory	121,524	0		121,524
Working Cash Allowance	(38,856)	(121)	(3)	(38,977)
Security Deposits	<u>(105,903)</u>	<u>0</u>		<u>(105,903)</u>
Total Working Capital	(23,235)	(121)		(23,356)
<u>Utility Rate Base</u>	<u>9,693,286</u>	<u>(16,574)</u>		<u>9,676,712</u>

* As per Exhibit B6, Tab 1, Schedule 1, Updated

(1) Per Board Decision - page 9

Reduction in rate base calculated as follows (with half year impact):		Impact on Rate Base
Reduction partially offset by retention of existing vehicle	$-(38,000-31,413) \times 0.5 =$	(3,294)
Total impact on gross plant		(3,294)

(2) Per Board Decision - page 9

Impact of removal of new vehicle	$-38,000 \times 16.6\% \times 0.5 =$	(3,154)
Impact of retention of existing vehicle	$31,413 \times 16.6\% \times 0.5 =$	2,607
Impact of not reducing accumulated amortization	$31,413 \times 0.5 =$	15,707
Impact of no trade in value	$-4,000 \times 0.5 =$	(2,000)
Total impact on accumulated amortization		13,160

(3) Reduction in capital expenditures - GST	$38,000 \times 0.06 \times 15.6 / 365 =$	(97)
Reduction in advertising costs	$3,990 \times 1.3 / 365 =$	(14)
Reduction in advertising costs - GST	$3,990 \times 0.06 \times 15.6 / 365 =$	(10)
		(121)

NATURAL RESOURCE GAS LIMITED

CAPITALIZATION AND COST OF CAPITAL

For the Year Ending September 30, 2007
(\$)

<u>Per Company *</u>	<u>Capital Structure</u>	<u>Ratios</u>	<u>Cost Rate</u>	<u>Return Component</u>	<u>Return</u>
Long Term Debt	6,406,924	66.10%	8.45%	5.58%	541,270
Short-Term Debt	(106,288)	-1.10%	6.00%	-0.07%	(6,377)
Common Equity	<u>3,392,650</u>	<u>35.00%</u>	10.20%	<u>3.57%</u>	<u>346,050</u>
Total	<u>9,693,286</u>	<u>100.00%</u>		<u>9.08%</u>	<u>880,943</u>

* As per Exhibit E6, Tab 1, Schedule 1, Updated

<u>Per Board **</u>	<u>Capital Structure</u>	<u>Ratios</u>	<u>Cost Rate</u>	<u>Return Component</u>	<u>Return</u>
Long-Term Debt	6,406,924	66.21%	8.31%	5.50%	532,604
Short-Term Debt	(794,431)	-8.21%	6.00%	-0.49%	(47,666)
Common Equity	<u>4,064,219</u>	<u>42.00%</u>	9.20%	<u>3.86%</u>	<u>373,908</u>
Total	<u>9,676,712</u>	<u>100.00%</u>		<u>8.87%</u>	<u>858,846</u>

** Per Board Decision - page 26

NATURAL RESOURCE GAS LIMITED
DETERMINATION OF REVENUE DEFICIENCY
For the Year Ending September 30, 2007
(\$)

	<u>Per Company *</u>	<u>Board Decision</u>	<u>Per Board</u>
Net Utility Income	799,810	(19,002)	780,808
Utility Rate Base	9,693,286	(16,574)	9,676,712
Indicated Rate of Return	8.25%	-0.18%	8.07%
Required Rate of Return	<u>9.08%</u>	<u>-0.21%</u>	<u>8.87%</u>
Sufficiency (Deficiency) in Rate of Return	-0.83%	0.03%	-0.80%
Revenue Sufficiency (Deficiency) (after tax)	(80,454)	3,040	(77,414)
Provision for Income Tax	<u>(55,425)</u>	<u>2,094</u>	<u>(53,331)</u>
Gross Revenue Sufficiency (Deficiency) (1)	<u>(135,879)</u>	<u>5,134</u>	<u>(130,745)</u>

* As per Exhibit F6, Tab 1, Schedule 1, Updated

(1) As per Exhibit G3, Tab 2, Schedule 1, Updated, Sheet 3.3, attributable to:

Gas Costs Sufficiency (Deficiency)	(14,007)	0	(14,007)
Distribution Sufficiency (Deficiency)	<u>(121,557)</u>	<u>9,467</u>	<u>(112,090)</u>
Delivery Related Sufficiency (Deficiency)	<u>(135,564)</u>	<u>9,467</u>	<u>(126,097)</u>
Ancillary Services Sufficiency (Deficiency)	<u>(315)</u>	<u>(4,333)</u>	<u>(4,648)</u>
Overall Revenue Sufficiency (Deficiency)	<u>(135,879)</u>	<u>5,134</u>	<u>(130,745)</u>

APPENDIX "B"

TO

BOARD ORDER EB-2005-0544

DATED SEPTEMBER 27, 2006

NATURAL RESOURCE GAS LIMITED

RATE 1 - General Service Rate

Rate Availability

The entire service area of the Company.

Eligibility

All customers.

Rate

a)	Monthly Fixed Charge	\$11.50
b)	Delivery Charge	
	First 1,000 m ³ per month	15.2999 cents per m ³
	All over 1,000 m ³ per month	10.4073 cents per m ³
c)	Gas Supply Charge (if applicable)	Schedule A

Meter Readings

Gas consumption by each customer under this rate schedule shall be determined by monthly meter reading, provided that in circumstances beyond the control of the company such as strikes or non-access to a meter, the company may estimate the consumption each month as of the scheduled date of the regular monthly meter reading and render a monthly bill to the customer thereof.

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).

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.

Effective: October 01, 2006

Implementation: All bills rendered on or after October 01, 2006

EB-2005-0544

NATURAL RESOURCE GAS LIMITED

RATE 2 - Seasonal Service

Rate Availability

The entire service area of the company.

Eligibility

All customers.

Rate

For all gas consumed from:	April 1 through October 31:	November 1 through March 31:
a) Monthly Fixed Charge	\$12.75	\$12.75
b) Delivery Charge		
First 1,000 m ³ per month	14.5000 cents per m ³	18.5648 cents per m ³
Next 24,000 m ³ per month	10.0431 cents per m ³	16.6254 cents per m ³
All over 25,000 m ³ per month	6.5417 cents per m ³	16.1952 cents per m ³
c) Gas Supply Charge (if applicable)	Schedule A	Schedule A

Meter Readings

Gas consumption by each customer under this rate schedule shall be determined by monthly meter reading, provided that in circumstances beyond the control of the company such as strikes or non-access to a meter, the company may estimate the consumption each month as of the scheduled date of the regular monthly meter reading and render a monthly bill to the customer thereof.

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).

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.

Effective: October 01, 2006

Implementation: All bills rendered on or after October 01, 2006

EB-2005-0544

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: October 01, 2006

Implementation: All bills rendered on or after October 01, 2006

EB-2005-0544

NATURAL RESOURCE GAS LIMITED

RATE 4 - General Service Peaking

Rate Availability

The entire service area of the company.

Eligibility

All customers whose operations, in the judgment of Natural Resource Gas Limited, can readily accept interruption and restoration of gas service with 24 hours notice.

Rate

For all gas consumed from:	April 1 through December 31:	January 1 through March 31:
a) Monthly Fixed Charge	\$12.75	\$12.75
b) Delivery Charge		
First 1,000 m ³ per month	14.4501 cents per m ³	18.5648 cents per m ³
All over 1,000 m ³ per month	10.3477 cents per m ³	16.6254 cents per m ³
c) Gas Supply Charge (if applicable)	Schedule A	Schedule A

Meter Readings

Gas consumption by each customer under this rate schedule shall be determined by monthly meter reading provided that in circumstances beyond the control of the company such as strikes or non-access to a meter, the company may estimate the consumption each month as of the scheduled date of the regular monthly meter reading and render a monthly bill to the customer thereof.

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).

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.

Effective: October 01, 2006

Implementation: All bills rendered on or after October 01, 2006

EB-2005-0544

NATURAL RESOURCE GAS LIMITED

RATE 5 - Interruptible Peaking 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 daily contracted demand for interruptible service of at least 700 m³; and
- c) a qualifying annual volume of at least 50,000 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.

- b) A Monthly Delivery Charge:

A Monthly Delivery Charge for all interruptible volumes to be negotiated between the company and the customer not to exceed 8.8345 cents per m³ and not to be less than 5.7192 per m³.

- c) Gas Supply Charge (if applicable)

See Schedule A.

- d) Overrun Gas Charge:

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 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 applicable Gas Supply Charge.

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) 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 and 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 of 50,000 m³. Overrun volumes will not contribute to the minimum volume. The rate applicable to the shortfall from this annual minimum shall be 5.9604 cents per m³ for interruptible gas.

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: October 01, 2006

Implementation: All bills rendered on or after October 01, 2006

EB-2005-0544

NATURAL RESOURCE GAS LIMITED

SCHEDULE A – Gas Supply Charges

Rate Availability

Entire service area of the company.

Eligibility

All customers served under Rates 1, 2, 3, 4 and 5.

Rate

The Gas Supply Charge applicable to all sales customers shall be made up of the following charges:

PGCVA Reference Price	(EB-2006-0111)	38.4383 cents per m3
GPRA Recovery Rate	(EB-2006-0111)	(1.0353) cents per m3
Gas Commodity Recovery (1)	(RP-2004-0167 / EB-2004-0413)	0.8230 cents per m3
System Gas Fee	(EB-2005-0544)	<u>0.1828</u> cents per m3
Total Gas Supply Charge		38.4088 cents per m3

Note:

PGCVA means Purchased Gas Commodity Variance Account

GPRA means Gas Purchase Rebalancing Account

(1) RP-2002-0147/EB-2004-0004 Decision and Order dated April 19, 2004

Effective: October 01, 2006

Implementation: All bills rendered on or after October 01, 2006

EB-2005-0544

NATURAL RESOURCE GAS LIMITED

RATE BT1 – Bundled Direct Purchase Contract Rate

Availability

Rate BT1 is available to all customers or their agent, who enter into a Receipt Contract for delivery of gas to NRG. The availability of this option is subject to NRG obtaining a satisfactory agreement or arrangement with Union Gas and NRG's gas supplier for direct purchase volume and DCQ offsets.

Eligibility

All customers electing to purchase gas directly from a supplier other than NRG must enter into a Bundled T-Service Receipt Contract with NRG either directly or through their agent, for delivery of gas to NRG at a mutually acceptable delivery point.

Rate

For gas delivered to NRG at any point other than the Ontario Point of Delivery, NRG will charge a customer or their agent, all approved tolls and charges incurred by NRG to transport the gas to the Ontario Point of Delivery.

Note:

Ontario Point of Delivery means Dawn or Parkway on the Union Gas System as agreed to by NRG and NRG's customer or their agent.

Effective: October 01, 2006

Implementation: All bills rendered on or after October 01, 2006

EB-2005-0544

APPENDIX "C"

TO

BOARD ORDER EB-2005-0544

DATED SEPTEMBER 28, 2006

NATURAL RESOURCE GAS LIMITED

Accounting Entries for the Purchased Gas Transportation Variance Account

Note: Account numbers are in accordance with the Uniform System of Accounts for Gas Utilities, Class A, prescribed under the Ontario Energy Board Act.

Debit/Credit - Account No. 179-29
Purchased Gas Transportation Variance Account ("PGTVA")

Credit/Debit - Account No. 623
Gas Purchases

To record monthly as a debit (credit) in Deferral Account No. 179-29 (PGTVA) the difference between the unit cost of all gas transportation purchased by NRG each month and NRG's weighted average cost of all gas transportation, the latter being \$0.019029 per m³ approved for rate making purposes effective October 1, 2006.

Debit/Credit - Account No. 179-30
Interest on PGTVA

Credit/Debit - Account No. 323
Other Interest Expense

To record monthly as a debit (credit) in Deferral Account No. 179-30 (PGTVA), simple interest on the balance in Account No. 179-29. Such interest shall be computed monthly on the opening balance in the account at the Board approved short-term debt rate and shall not be compounded.

NATURAL RESOURCE GAS LIMITED

Accounting Entries for the Regulatory Expenses Deferral Account

Note: Account numbers are in accordance with the Uniform System of Accounts for Gas Utilities, Class A, prescribed under the Ontario Energy Board Act.

Debit/Credit - Account No. 179-21
 Regulatory Expenses Deferral Account ("REDA")

Credit/Debit - Account No. 130
 Bank

To record monthly as a debit (credit) in Deferral Account No. 179-21 (REDA) the cost for participating in generic proceedings and Union Gas proceedings, including a main rates case.

Debit/Credit - Account No. 179-22
 Interest on REDA

Credit/Debit - Account No. 323
 Other Interest Expense

To record monthly as a debit (credit) in Deferral Account No. 179-22 (REDA), simple interest on the balance in Account No. 179-21. Such interest shall be computed monthly on the opening balance in the account at the Board approved short-term debt rate and shall not be compounded.

NATURAL RESOURCE GAS LIMITED

Accounting Entries for the Gas Purchase Rebalancing Account

Note: Account numbers are in accordance with the Uniform System of Accounts for Gas Utilities, Class A, prescribed under the Ontario Energy Board Act.

Debit/Credit - Account No. 179-35
 Gas Purchase Rebalancing Account (“GPRA”)

Credit/Debit - Account No. 623
 Gas Purchases

To record monthly as a debit (credit) in Deferral Account No. 179-35 (GPRA) the decrease (increase) in the value of gas inventory available for sale to sales service customers due to changes in NRG’s PGCVA reference price approved by the Board for rate making purposes.

Debit/Credit - Account No. 179-36
 Interest on GPRA

Credit/Debit - Account No. 323
 Other Interest Expense

To record monthly as a debit (credit) in Deferral Account No. 179-36 (GPRA), simple interest on the balance in Account No. 179-35. Such interest shall be computed monthly on the opening balance in the account at the Board approved short-term debt rate and shall not be compounded.

NATURAL RESOURCE GAS LIMITED

Accounting Entries for the Gas Cost Difference Recovery Variance Account

Note: Account numbers are in accordance with the Uniform System of Accounts for Gas Utilities, Class A, prescribed under the Ontario Energy Board Act.

Debit/Credit - Account No. 179-37
Gas Cost Difference Recovery Variance Account ("GCDRVA")

Credit/Debit - Account No. 520, 521, 522
Gas Sales

To record as a debit (credit) in Deferral Account No. 179-37 (GCDRVA) the difference between the amounts collected from ratepayers, as authorized by the Board in RP-2004-0167/EB-2004-0413, and \$177,265 in fiscal 2007.

Debit/Credit - Account No. 179-38
Interest on GCDRVA

Credit/Debit - Account No. 323
Other Interest Expense

To record monthly as a debit (credit) in Deferral Account No. 179-38 (GCDRVA), simple interest on the balance in Account No. 179-37. Such interest shall be computed monthly on the opening balance in the account at the Board approved short-term debt rate and shall not be compounded.

APPENDIX "D"

TO

BOARD ORDER EB-2005-0544

DATED SEPTEMBER 28, 2006

NATURAL RESOURCE GAS LIMITED

Typical Bill Comparisons - Rate 1 Residential

2007 Test Year

M³ per Customer - Current Block Structure

	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sep.	Total
Block 1	118.8	177.8	318.5	367.8	343.6	272.5	193.1	97.6	46.8	40.4	34.0	55.8	2,066.7
Block 2	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total	118.8	177.8	318.5	367.8	343.6	272.5	193.1	97.6	46.8	40.4	34.0	55.8	2,066.7

RP-2004-0167 - October 2004

Customer	9.50	9.50	9.50	9.50	9.50	9.50	9.50	9.50	9.50	9.50	9.50	9.50	114.00
Block 1	19.47	29.14	52.20	60.28	56.32	44.66	31.65	16.00	7.67	6.62	5.57	9.15	338.73
Block 2	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
System Gas Charge	0.14	0.21	0.37	0.43	0.40	0.32	0.22	0.11	0.05	0.05	0.04	0.06	2.40
Total Bill	29.11	38.85	62.07	70.21	66.21	54.48	41.37	25.61	17.22	16.17	15.11	18.71	455.13

Charge
\$9.50
\$0.163901
\$0.080771
\$0.001159

EB-2005-0544 - October 2006 (Board Approved)

Customer	11.50	11.50	11.50	11.50	11.50	11.50	11.50	11.50	11.50	11.50	11.50	11.50	138.00
Block 1	18.18	27.20	48.73	56.27	52.57	41.69	29.54	14.93	7.16	6.18	5.20	8.54	316.20
Block 2	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
System Gas Charge	0.22	0.33	0.58	0.67	0.63	0.50	0.35	0.18	0.09	0.07	0.06	0.10	3.78
Total Bill	29.89	39.03	60.81	68.45	64.70	53.69	41.40	26.61	18.75	17.76	16.76	20.14	457.98
Percent Change													0.6%

Charge
\$11.50
\$0.152999
\$0.104073
\$0.001828

Note: System Gas Charge does not apply to direct purchase customers.

NATURAL RESOURCE GAS LIMITED

Typical Bill Comparisons - Rate 1 Commercial
2007 Test Year

	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sep.	Total
M³ per Customer - Current Block Structure													
Block 1	501.0	875.8	1,000.0	1,000.0	1,000.0	1,000.0	750.0	437.6	216.5	186.7	191.5	269.6	7,428.7
Block 2	0.0	0.0	449.0	684.9	517.5	341.8	0.0	0.0	0.0	0.0	0.0	0.0	1,993.2
Total	501.0	875.8	1,449.0	1,684.9	1,517.5	1,341.8	750.0	437.6	216.5	186.7	191.5	269.6	9,421.9
RP-2004-0167 - October 2004													
Customer	9.50	9.50	9.50	9.50	9.50	9.50	9.50	9.50	9.50	9.50	9.50	9.50	114.00
Block 1	82.11	143.54	163.90	163.90	163.90	163.90	122.93	71.72	35.48	30.60	31.39	44.19	1,217.57
Block 2	0.00	0.00	36.27	55.32	41.80	27.61	0.00	0.00	0.00	0.00	0.00	0.00	160.99
System Gas Charge	0.58	1.02	1.68	1.95	1.76	1.56	0.87	0.51	0.25	0.22	0.22	0.31	10.92
Total Bill	92.20	154.06	211.35	230.67	216.96	202.56	133.30	81.73	45.24	40.32	41.11	54.00	1,503.48
													Charge
													\$9.50
													\$0.163901
													\$0.080771
													\$0.001159
EB-2005-0544 - October 2006 (Board Approved)													
Customer	11.50	11.50	11.50	11.50	11.50	11.50	11.50	11.50	11.50	11.50	11.50	11.50	138.00
Block 1	76.65	134.00	153.00	153.00	153.00	153.00	114.75	66.95	33.12	28.56	29.30	41.25	1,136.58
Block 2	0.00	0.00	46.73	71.28	53.86	35.57	0.00	0.00	0.00	0.00	0.00	0.00	207.44
System Gas Charge	0.92	1.60	2.65	3.08	2.77	2.45	1.37	0.80	0.40	0.34	0.35	0.49	17.22
Total Bill	89.07	147.10	213.88	238.86	221.13	202.52	127.62	79.25	45.02	40.41	41.15	53.24	1,499.25
Percent Change													-0.3%
													Charge
													\$11.50
													\$0.152999
													\$0.104073
													\$0.001828

Note: System Gas Charge does not apply to direct purchase customers.

NATURAL RESOURCE GAS LIMITED

Typical Bill Comparisons - Rate 1 Industrial

2007 Test Year

	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sep.	Total
M ³ per Customer - Current Block Structure													
Block 1	1,000.0	1,000.0	1,000.0	1,000.0	1,000.0	1,000.0	1,000.0	1,000.0	713.4	492.7	597.1	668.1	10,471.4
Block 2	518.6	1,790.6	3,006.4	3,341.6	3,271.4	3,607.5	2,295.2	894.7	0.0	0.0	0.0	0.0	18,726.1
Total	1,518.6	2,790.6	4,006.4	4,341.6	4,271.4	4,607.5	3,295.2	1,894.7	713.4	492.7	597.1	668.1	29,197.4
RP-2004-0167 - October 2004													
Customer	9.50	9.50	9.50	9.50	9.50	9.50	9.50	9.50	9.50	9.50	9.50	9.50	114.00
Block 1	163.90	163.90	163.90	163.90	163.90	163.90	163.90	163.90	116.93	80.76	97.87	109.50	1,716.27
Block 2	41.89	144.63	242.83	269.91	264.23	291.38	185.38	72.27	0.00	0.00	0.00	0.00	1,512.52
System Gas Charge	1.76	3.23	4.64	5.03	4.95	5.34	3.82	2.20	0.83	0.57	0.69	0.77	33.84
Total Bill	217.05	321.27	420.88	448.34	442.58	470.12	362.60	247.86	127.25	90.83	108.06	119.78	3,376.63
													Charge
													\$9.50
													\$0.163901
													\$0.080771
													\$0.001159
EB-2005-0544 - October 2006 (Board Approved)													
Customer	11.50	11.50	11.50	11.50	11.50	11.50	11.50	11.50	11.50	11.50	11.50	11.50	138.00
Block 1	153.00	153.00	153.00	153.00	153.00	153.00	153.00	153.00	109.15	75.38	91.36	102.22	1,602.11
Block 2	53.97	186.36	312.89	347.77	340.46	375.45	238.87	93.12	0.00	0.00	0.00	0.00	1,948.88
System Gas Charge	2.78	5.10	7.32	7.94	7.81	8.42	6.02	3.46	1.30	0.90	1.09	1.22	53.37
Total Bill	221.25	355.96	484.71	520.21	512.77	548.37	409.39	261.08	121.95	87.78	103.95	114.94	3,742.36
Percent Change													10.8%

Note: System Gas Charge does not apply to direct purchase customers.

NATURAL RESOURCE GAS LIMITED

Typical Bill Comparisons - Rate 2 Seasonal
2007 Test Year

	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sep.	Total	
M³ per Customer - Current Block Structure														
Block 1	1,000.0	135.4	38.6	33.6	29.4	46.7	101.3	34.4	16.0	314.1	1,000.0	1,000.0	3,749.5	
Block 2	377.5	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	8,266.0	11,841.5	20,485.0	
Block 3	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	
Total	1,377.5	135.4	38.6	33.6	29.4	46.7	101.3	34.4	16.0	314.1	9,266.0	12,841.5	24,234.5	
RP-2004-0167 - October 2004														
Customer	10.75	10.75	10.75	10.75	10.75	10.75	10.75	10.75	10.75	10.75	10.75	10.75	129.00	Summer
Block 1	153.91	25.14	7.17	6.24	5.46	8.67	15.59	5.29	2.46	48.34	153.91	153.91	586.10	\$10.75
Block 2	29.04	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	635.90	910.95	1,575.89	\$0.185648
Block 3	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	\$0.166254
System Gas Charge	1.60	0.16	0.04	0.04	0.03	0.05	0.12	0.04	0.02	0.36	10.74	14.88	28.09	\$0.161952
Total Bill	195.30	36.04	17.96	17.03	16.24	19.47	26.46	16.08	13.23	59.46	811.30	1,090.50	2,319.08	\$0.001159
EB-2005-0544 - October 2006 (Board Approved)														
Customer	12.75	12.75	12.75	12.75	12.75	12.75	12.75	12.75	12.75	12.75	12.75	12.75	153.00	Summer
Block 1	145.00	25.14	7.17	6.24	5.46	8.67	14.69	4.99	2.32	45.54	145.00	145.00	555.21	\$12.75
Block 2	37.91	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	830.16	1,189.25	2,057.33	\$0.185648
Block 3	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	\$0.166254
System Gas Charge	2.52	0.25	0.07	0.06	0.05	0.09	0.19	0.06	0.03	0.57	16.94	23.47	44.30	\$0.161952
Total Bill	195.18	38.13	19.99	19.05	18.26	21.51	27.62	17.80	15.10	58.87	1,004.85	1,370.48	2,809.84	\$0.001828
Percent Change														21.2%

Note: System Gas Charge does not apply to direct purchase customers.

NATURAL RESOURCE GAS LIMITED

Typical Bill Comparisons - Rate 3 Firm
2007 Test Year

	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sep.	Total
<u>M³ per Customer</u>													
Total	44,817.4	71,255.4	108,288.6	112,604.4	100,968.4	94,662.4	62,625.0	38,443.2	26,864.2	6,957.0	6,409.3	8,784.3	682,679.5
Firm CD	6,453.5	6,453.5	6,453.5	6,453.5	6,453.5	6,453.5	6,453.5	6,453.5	6,453.5	6,453.5	6,453.5	6,453.5	
<u>RP-2004-0167 - October 2004</u>													
Customer	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	1,200.00
Demand	1,467.98	1,467.98	1,467.98	1,467.98	1,467.98	1,467.98	1,467.98	1,467.98	1,467.98	1,467.98	1,467.98	1,467.98	17,615.79
Delivery	1,637.18	2,602.96	3,955.78	4,113.44	3,688.38	3,458.02	2,287.69	1,404.33	981.35	254.14	234.13	320.89	24,938.28
System Gas Charge	51.94	82.59	125.51	130.51	117.02	109.71	72.58	44.56	31.14	8.06	7.43	10.18	791.23
Total Bill	3,257.11	4,253.53	5,649.27	5,811.93	5,373.38	5,135.71	3,928.26	3,016.87	2,580.47	1,830.18	1,809.54	1,899.05	44,545.29
													Charge
													\$100.00
													\$0.227470
													\$0.036530
													\$0.001159
<u>EB-2005-0544 - October 2006 (Board Approved)</u>													
Customer	150.00	150.00	150.00	150.00	150.00	150.00	150.00	150.00	150.00	150.00	150.00	150.00	1,800.00
Demand	1,651.48	1,651.48	1,651.48	1,651.48	1,651.48	1,651.48	1,651.48	1,651.48	1,651.48	1,651.48	1,651.48	1,651.48	19,817.78
Delivery	1,672.14	2,858.54	4,040.25	4,201.27	3,767.13	3,531.85	2,336.54	1,434.32	1,002.30	259.57	239.13	327.74	25,470.77
System Gas Charge	81.93	130.25	197.95	205.84	184.57	173.04	114.48	70.27	49.11	12.72	11.72	16.06	1,247.94
Total Bill	3,555.54	4,590.28	6,039.68	6,208.59	5,753.18	5,506.38	4,252.50	3,306.07	2,852.89	2,073.76	2,052.33	2,145.28	48,336.49
Percent Change													8.5%

Note: System Gas Charge does not apply to direct purchase customers.

NATURAL RESOURCE GAS LIMITED

Typical Bill Comparisons - Rate 4
2007 Test Year

	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sep.	Total	
MR3 per Customer - Current Block Structure														
Block 1	1,000.0	1,000.0	1,000.0	286.0	219.8	132.2	95.3	47.2	31.7	158.0	457.0	1,000.0	5,427.3	
Block 2	3,071.9	5,501.9	2,580.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	1,768.7	12,922.5	
Total	4,071.9	6,501.9	3,580.0	286.0	219.8	132.2	95.3	47.2	31.7	158.0	457.0	2,768.7	18,349.7	
RP-2004-0167 - October 2004														
Customer	10.75	10.75	10.75	10.75	10.75	10.75	10.75	10.75	10.75	10.75	10.75	10.75	129.00	Summer
Block 1	153.91	153.91	153.91	53.10	40.81	24.54	14.67	7.26	4.88	24.31	70.34	153.91	855.58	\$10.75
Block 2	246.29	441.12	206.85	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	141.80	1,036.06	\$0.153914
System Gas Charge	4.72	7.54	4.15	0.33	0.25	0.15	0.11	0.05	0.04	0.18	0.53	3.21	21.27	\$0.080175
Total Bill	415.67	613.32	375.66	64.18	51.82	35.45	25.53	18.06	15.67	35.25	81.62	309.67	2,041.91	\$0.001159
EB-2005-0544 - October 2006 (Board Approved)														
Customer	12.75	12.75	12.75	12.75	12.75	12.75	12.75	12.75	12.75	12.75	12.75	12.75	153.00	Summer
Block 1	144.50	144.50	144.50	53.10	40.81	24.54	13.77	6.81	4.58	22.83	66.04	144.50	810.50	\$12.75
Block 2	317.87	569.32	266.97	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	183.01	1,337.18	\$0.185648
System Gas Charge	7.44	11.89	6.54	0.52	0.40	0.24	0.17	0.09	0.06	0.29	0.84	5.06	33.54	\$0.166254
Total Bill	482.57	738.46	430.76	66.38	53.96	37.53	26.70	19.65	17.39	35.86	79.63	345.33	2,334.22	\$0.001828
Percent Change													14.3%	

Note: System Gas Charge does not apply to direct purchase customers.

NATURAL RESOURCE GAS LIMITED

Typical Bill Comparisons - Rate 5

2007 Test Year

	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sep.	Total	
<u>M³ per Customer</u>														
<u>Total</u>	47,020.8	99,609.2	23,650.4	2,001.6	94.8	62.6	38.8	22.4	2.6	619.6	1,368.4	1,323.0	175,814.2	
<u>RP-2004-0167 - October 2004</u>														
Customer	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	1,200.00	Charge
Delivery	2,887.59	6,117.10	1,452.39	122.92	5.82	3.84	2.38	1.38	0.16	38.05	84.03	81.25	10,796.93	\$100.00
System Gas Charge	54.50	115.45	27.41	2.32	0.11	0.07	0.04	0.03	0.00	0.72	1.59	1.53	203.77	\$0.061411
Total Bill	3,042.09	6,332.55	1,579.81	225.24	105.93	103.92	102.43	101.40	100.16	138.77	185.62	182.78	12,200.69	\$0.001159
<u>EB-2005-0544 - October 2006 (Board Approved)</u>														
Customer	150.00	150.00	150.00	150.00	150.00	150.00	150.00	150.00	150.00	150.00	150.00	150.00	1,800.00	Charge
Delivery	2,965.18	6,281.46	1,491.42	126.22	5.98	3.95	2.45	1.41	0.16	39.07	86.29	83.43	11,087.02	\$150.00
System Gas Charge	85.95	182.09	43.23	3.66	0.17	0.11	0.07	0.04	0.00	1.13	2.50	2.42	321.39	\$0.063061
Total Bill	3,201.13	6,613.54	1,684.65	279.88	156.15	154.06	152.52	151.45	150.17	190.21	238.79	235.85	13,208.41	\$0.001828
Percent Change														8.3%

Note: System Gas Charge does not apply to direct purchase customers.

EB-2010-0018
Motion by IGPC
Filed: August 27, 2010

TAB H

NATURAL RESOURCE GAS LIMITED

PROPOSED RATE SCHEDULE – 2011 TEST YEAR

RATE 1 - General Service Rate

Rate Availability

The entire service area of the Company.

Eligibility

All customers.

Rate

a)	Monthly Fixed Charge	\$13.50
b)	Delivery Charge	
	First 1,000 m ³ per month	<u>15.5753</u> cents per m ³
	All over 1,000 m ³ per month	<u>11.1874</u> cents per m ³
c)	Gas Supply Charge (if applicable)	Schedule A

Meter Readings

Gas consumption by each customer under this rate schedule shall be determined by monthly meter reading, provided that in circumstances beyond the control of the company such as strikes or non-access to a meter, the company may estimate the consumption each month as of the scheduled date of the regular monthly meter reading and render a monthly bill to the customer thereof.

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).

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.

Effective: October 01, 2010

Implementation: All bills rendered on or after October 01, 2010

NATURAL RESOURCE GAS LIMITED

RATE 2 - Seasonal Service

Rate Availability

The entire service area of the company.

Eligibility

All customers.

Rate

For all gas consumed from:	April 1 through October 31:	November 1 through March 31:
a) Monthly Fixed Charge	\$15.00	\$15.00
b) Delivery Charge		
First 1,000 m ³ per month	<u>14.3470</u> cents per m ³	<u>18.3687</u> cents per m ³
Next 24,000 m ³ per month	<u>9.9370</u> cents per m ³	<u>16.4498</u> cents per m ³
All over 25,000 m ³ per month	<u>6.4726</u> cents per m ³	<u>16.0241</u> cents per m ³
c) Gas Supply Charge (if applicable)	Schedule A	Schedule A

Meter Readings

Gas consumption by each customer under this rate schedule shall be determined by monthly meter reading, provided that in circumstances beyond the control of the company such as strikes or non-access to a meter, the company may estimate the consumption each month as of the scheduled date of the regular monthly meter reading and render a monthly bill to the customer thereof.

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).

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.

Effective: October 01, 2010

Implementation: All bills rendered on or after October 01, 2010

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 26.9947 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 10.9612 cents per m³ and not to be less than 7.9412 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.

March, 2010

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 3.1530 cents per m³ for firm gas and 5.4412 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 5.7163 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: October 01, 2010

Implementation: All bills rendered on or after October 01, 2010

NATURAL RESOURCE GAS LIMITED

RATE 4 - General Service Peaking

Rate Availability

The entire service area of the company.

Eligibility

All customers whose operations, in the judgment of Natural Resource Gas Limited, can readily accept interruption and restoration of gas service with 24 hours notice.

Rate

For all gas consumed from:	April 1 through December 31:	January 1 through March 31:
a) Monthly Fixed Charge	\$15.00	\$15.00
b) Delivery Charge		
First 1,000 m ³ per month	<u>14.4482 cents per m³</u>	<u>18.5629 cents per m³</u>
All over 1,000 m ³ per month	<u>10.3477 cents per m³</u>	<u>16.6237 cents per m³</u>
c) Gas Supply Charge (if applicable)	Schedule A	Schedule A

Meter Readings

Gas consumption by each customer under this rate schedule shall be determined by monthly meter reading provided that in circumstances beyond the control of the company such as strikes or non-access to a meter, the company may estimate the consumption each month as of the scheduled date of the regular monthly meter reading and render a monthly bill to the customer thereof.

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).

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.

Effective: October 01, 2010

Implementation: All bills rendered on or after October 01, 2010

NATURAL RESOURCE GAS LIMITED

RATE 5 - Interruptible Peaking 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 daily contracted demand for interruptible service of at least 700 m³; and
- c) a qualifying annual volume of at least 50,000 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.

- b) A Monthly Delivery Charge:

A Monthly Delivery Charge for all interruptible volumes to be negotiated between the company and the customer not to exceed 8.4612 cents per m³ and not to be less than 5.4612 per m³.

- c) Gas Supply Charge (if applicable)

See Schedule A.

- d) Overrun Gas Charge:

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 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 applicable Gas Supply Charge.

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) 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 and 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 of 50,000 m³. Overrun volumes will not contribute to the minimum volume. The rate applicable to the shortfall from this annual minimum shall be 5.6702 cents per m³ for interruptible gas.

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: October 01, 2010

Implementation: All bills rendered on or after October 01, 2010

NATURAL RESOURCE GAS LIMITED

RATE 6 – Integrated Grain Processors Co-Operative Aylmer Ethanol Production Facility

Rate Availability

Entire service area of the company.

Eligibility

Integrated Grain Processors Co-Operative's ("IGPC") ethanol production facility located in the Town of Aylmer

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 services

b) A Monthly Demand Charge:

A Monthly Demand Charge of 36.1848 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 IGPC not to exceed 10.9612 cents per m³ and not to be less than 7.9412 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, IGPC 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 IGPC on such day, or if, on any day, IGPC fails to comply with any curtailment notice reducing IGPC'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 6 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,

March, 2010

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

3. In each contract year, IGPC shall take delivery from the company, or in any event pay for it if available and not accepted by the IGPC, 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 3.1530 cents per m³ for firm gas and 5.4412 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 IGPC 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 5.7163 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 IGPC elects under this rate schedule to directly purchase its gas from a supplier other than NRG, IGPC or its 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 IGPC if it elects said Bundled T transportation service.

Unless otherwise authorized by NRG, IGPC, when 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: October 01, 2010

Implementation: All bills rendered on or after October 01, 2010

RP-2004-0167 / EB-2006-0037

NATURAL RESOURCE GAS LIMITED

SCHEDULE A – Gas Supply Charges

Rate Availability

Entire service area of the company.

Eligibility

All customers served under Rates 1, 2, 3, 4 and 5.

Rate

The Gas Supply Charge applicable to all sales customers shall be made up of the following charges:

PGCVA Reference Price	(EB-2009-0407)	29.4915 cents per m3
GPRA Recovery Rate	(EB-2009-0407)	(0.0332) cents per m3
System Gas Fee	(RP-2005-0544)	<u>0.0348</u> cents per m3
Total Gas Supply Charge		<u>29.4931</u> cents per m3

Note:

PGCVA means Purchased Gas Commodity Variance Account

GPRA means Gas Purchase Rebalancing Account

Effective: October 01, 2010

Implementation: All bills rendered on or after October 01, 2010

March, 2010

NATURAL RESOURCE GAS LIMITED

RATE BT1 – Bundled Direct Purchase Contract Rate

Availability

Rate BT1 is available to all customers or their agent, who enter into a Receipt Contract for delivery of gas to NRG. The availability of this option is subject to NRG obtaining a satisfactory agreement or arrangement with Union Gas and NRG's gas supplier for direct purchase volume and DCQ offsets.

Eligibility

All customers electing to purchase gas directly from a supplier other than NRG must enter into a Bundled T-Service Receipt Contract with NRG either directly or through their agent, for delivery of gas to NRG at a mutually acceptable delivery point.

Rate

For gas delivered to NRG at any point other than the Ontario Point of Delivery, NRG will charge a customer or their agent, all approved tolls and charges incurred by NRG to transport the gas to the Ontario Point of Delivery.

Note:

Ontario Point of Delivery means Dawn or Parkway on the Union Gas System as agreed to by NRG and NRG's customer or their agent.

Effective: October 01, 2010

Implementation: All bills rendered on or after October 01, 2010

March, 2010

EB-2010-0018
Motion by IGPC
Filed: August 27, 2010

TAB I

PO BOX 205
Aylmer, ON
N6H 2R9

Mark Bristoll
Natural Resource Gas Ltd.
PO BOX 307
Aylmer, Ontario
N5H 2S1



June 24, 2008

RE: Upcoming Milestones

Dear Mark,

Unfortunately we have not been able to touch base as of yet. I still would like to review with you our schedule as we approach start up, and review any outstanding issues that may still exist that require resolution. At the moment our intent is to start our facility up during the first week of September. We will likely be burning some gas during August as we get our boiler going.

If you have any questions, comments or if there are any issues that you feel need to be addressed please do not hesitate to let me know. I look forward to working with you and hope that your schedule will allow us to meet in the near future.

Kind regards,

A handwritten signature in black ink, appearing to read "Jim Grey". The signature is fluid and cursive, with the first name "Jim" and last name "Grey" clearly distinguishable.

Jim Grey
CEO

IGPC Ethanol Inc.
PO BOX 205
Aylmer, Ontario
N5H 2R9

T. 519-765-2575
F. 519-765-2775

Scott Stoll

From: Lainie Hird [lhird@igpc.ca]
Sent: June 24, 2008 4:23 PM
To: mjb@cpirentals.com
Cc: jgrey@igpc.ca
Subject: IGPC Ethanol Inc.
Attachments: markbristolletter-nrg062420082.pdf

Mark,

Please find attached a letter from Mr. Jim Grey. If you should have any questions, please do not hesitate to contact Jim directly.

Kind regards,

Lainie Hird
Executive Assistant to Jim Grey
Office Manager

IGPC Ethanol Inc.
PO BOX 205
89 Progress Drive
Aylmer, Ontario
N5H 2R9

T. 519-765-2575
F. 519-765-2775

www.igpc.ca

EB-2010-0018
Motion by IGPC
Filed: August 27, 2010

TAB J

7116250.1

IGPC Account Summary Jul08

BLACKSTONE
ENERGY SERVICES INC

DCQ	Transaction Type	Volumetric Breakdown			Start Date	End Date	Total Days	Total Volume Delivered	Price	Term Cost	G.S.T.	Total Transaction Cost
		Delivery	Incremental	Suspension								
GJ		GJ						GJ	CAD/GJ	CAD	CAD	CAD
0	Sale	3,169	0	0	1-Jul-08	2-Jul-08	2	6,338	17,000	\$107,746.00	\$5,387	\$113,133.30
0	Sale	3,169	0	0	3-Jul-08	7-Jul-08	5	15,845	13,750	\$217,868.75	\$10,893	\$228,762.19
0	Buyback	0	(22,183)	0	9-Jul-08	9-Jul-08	1	(22,183)	(11,350)	(\$251,777.05)	(\$12,589)	(\$264,365.90)
0	N/A	0	0	0	10-Jul-08	31-Jul-08	22	0	0,000	\$0.00	\$0	\$0.00

EB-2010-0018
Motion by IGPC
Filed: August 27, 2010

TAB K

7116250.1

BILLS ARE DUE WHEN RENDERED. LATE FEE: LATE CHARGE OF 1.5% PER MONTH WILL APPLY.


BILLING PERIOD		NUMBER OF DAYS	SERVICE ADDRESS		ACCOUNT NUMBER
FROM	SEPT 01 2008	TO	SEPT 30 2008	30	PO BOX 205, 89 PROGRESS DR, AYLMER
PRESENT		PREVIOUS	METER DIFFERENCE	FACTOR	AMOUNT USED CUBIC METRES
			0		

YOUR GAS SUPPLIED BY BLACKSTONE ENERGY SERVICES INC 416-628-2828

DELIVERY TO YOU \$102,474.60

DEMAND CHARGES \$27,835.74
add GST on regular gas charges #R103839106 \$6,515.52

MESSAGES:

BUDGET BILLING PLAN 	ACTUAL USE THIS MONTH	ACTUAL USE TO DATE	BUDGET BILLED TO DATE	BALANCE AFTER CURRENT BILL PAID
Natural Resource Gas Limited P.O. BOX 307 39 BEECH STREET EAST AYLMER, ONT. N5H 2S1 (519) 773-5321	AMOUNT DUE NOW \$ 136,825.86	AFTER 17-Oct-08	AMOUNT DUE \$ 138,878.25	
RETAIN THIS PORTION		Thank you for Choosing Natural Gas!		

IGPC

IGPC Ethanol Inc

For the month of

September-08

Firm Contract Demand per day (m3)	108,188.0	91,552.4
New Firm Contract Demand	108,188.0	

Date	Mcf's Corrected	Cubic Meters	Excess Demand	Minimum Annual Volume
1	251	7,074	-	91,552
2	251	7,074	-	91,552
3	251	7,074	-	91,552
4	251	7,074	-	91,552
5	251	7,074	-	91,552
6	251	7,074	-	91,552
7	251	7,074	-	91,552
8	251	7,074	-	91,552
9	251	7,074	-	91,552
10	251	7,074	-	91,552
11	251	7,074	-	91,552
12	251	7,074	-	91,552
13	251	7,074	-	91,552
14	251	7,074	-	91,552
15	251	7,074	-	91,552
16	251	7,074	-	91,552
17	251	7,074	-	91,552
18	251	7,074	-	91,552
19	251	7,074	-	91,552
20	251	7,074	-	91,552
21	251	7,074	-	91,552
22	251	7,074	-	91,552
23	251	7,074	-	91,552
24	251	7,074	-	91,552
25	251	7,074	-	91,552
26	251	7,074	-	91,552
27	251	7,074	-	91,552
28	251	7,074	-	91,552
29	251	7,074	-	91,552
30	251	7,074	-	91,552
31				

TOTALS	7,532	212,220	-	2,746,572
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	Volume m3	Rate per m3	Charges \$'s
Firm Delivery Charge	2,746,572	\$ 0.037310	102,474.60
Gas Supply	2,746,572	\$ -	-
Excess Volume	-	\$ -	-
Total Supply and Delivery			102,474.60
Demand Charge	108,188.0	\$ 0.255904	27,685.74
Customer Charge			150.00
Total Monthly Charge			27,835.74
Total			130,310.34

BILLS ARE DUE WHEN RENDERED. A FEE OF 1.5% LATE CHARGE OF 1.5% PER MONTH WILL APPLY.

BILLING PERIOD		NUMBER OF DAYS	SERVICE ADDRESS		ACCOUNT NUMBER
FROM	AUG 01 2008	TO	AUG 31 2008	31	PO BOX 205, 89 PROGRESS DR, AYLMER
PRESENT	PREVIOUS	METER DIFFERENCE	FACTOR		AMOUNT USED CUBIC METRES
		0			-

YOUR GAS SUPPLIED BY BLACKSTONE ENERGY SERVICES INC 416-628-2828

DELIVERY TO YOU

\$105,890.42


DEMAND CHARGES

\$27,835.74

add GST on regular gas charges #R103839106

\$6,686.31

Figure 6

BUDGET BILLING PLAN 	ACTUAL USE THIS MONTH	ACTUAL USE TO DATE	BUDGET BILLED TO DATE	BALANCE AFTER CURRENT BILL PAID
	Natural Resource Gas Limited P.O. BOX 207 39 BEECH STREET EAST AYLMER, ONT. N5H 2S1 (519) 773-5321	AMOUNT DUE NOW \$ 140,412.47	AFTER 18-Sep-08	AMOUNT DUE \$ 142,518.66
RETAIN THIS PORTION		Thank you for Choosing Natural Gas!		

RETAIN THIS PORTION

Thank you for Choosing Natural Gas!

IGPC Ethanol Inc

For the month of

August-08

Firm Contract Demand per day (m3)	108,188.0	91,552.4
New Firm Contract Demand	108,188.0	

Date	Mcf's Corrected	Cubic Meters	Excess Demand	Minimum Annual Volume
1	-	-	-	91,552
2	-	-	-	91,552
3	-	-	-	91,552
4	-	-	-	91,552
5	-	-	-	91,552
6	-	-	-	91,552
7	-	-	-	91,552
8	-	-	-	91,552
9	-	-	-	91,552
10	-	-	-	91,552
11	-	-	-	91,552
12	-	-	-	91,552
13	-	-	-	91,552
14	-	-	-	91,552
15	-	-	-	91,552
16	-	-	-	91,552
17	-	-	-	91,552
18	-	-	-	91,552
19	-	-	-	91,552
20	-	-	-	91,552
21	-	-	-	91,552
22	-	-	-	91,552
23	-	-	-	91,552
24	-	-	-	91,552
25	-	-	-	91,552
26	-	-	-	91,552
27	-	-	-	91,552
28	-	-	-	91,552
29	-	-	-	91,552
30	-	-	-	91,552
31	-	-	-	91,552
TOTALS		-	-	2,838,124

	Volume m3	Rate per m3	Charges \$'s
Firm Delivery Charge	2,838,124	\$ 0.037310	105,890.42
Gas Supply	2,838,124	\$ -	-
Excess Volume	-	\$ -	-
Total Supply and Delivery			105,890.42
Demand Charge	108,188.0	\$ 0.255904	27,685.74
Customer Charge			150.00
Total Monthly Charge			27,835.74
Total			133,726.16


BILLS ARE DUE WHEN RENDERED. AFTER 10 DAYS A LATE CHARGE OF 1.5% PER MONTH WILL APPLY.

BILLING PERIOD		NUMBER OF DAYS	SERVICE ADDRESS	ACCOUNT NUMBER		
FROM	JUL 15 2008	TO	JUL 31 2008	16	PO BOX 205, 89 PROGRESS DR, AYLME	P02000-01
PRESENT	PREVIOUS	METER DIFFERENCE	FACTOR	AMOUNT USED CUBIC METRES		
		0				

YOUR GAS SUPPLIED BY BLACKSTONE ENERGY SERVICES INC 416-628-2828

DELIVERY TO YOU	\$58,068.94
DEMAND CHARGES	\$27,835.74
add GST on regular gas charges #R103839106	\$4,295.23

MESSAGES:

BUDGET BILLING PLAN 	ACTUAL USE THIS MONTH	ACTUAL USE TO DATE	BUDGET BILLED TO DATE	BALANCE AFTER CURRENT BILL PAID
Natural Resource Gas Limited P.O. BOX 307 39 BEECH STREET EAST AYLMER, ONT. N5H 2S1 (519) 773-3321	AMOUNT DUE NOW \$ 90,199.91	AFTER 30-Jul-08	AMOUNT DUE \$ 91,552.91	
RETAIN THIS PORTION		Thank you for Choosing Natural Gas!		

IGPC Ethanol Inc

For the month of July-08

Firm Contract Demand per day (m3)	108,188.0	91,552.4
New Firm Contract Demand	108,188.0	

Date	Mcf's Corrected	Cubic Meters	Excess Demand	Minimum Annual Volume
1	-	-	-	-
2	-	-	-	-
3	-	-	-	-
4	-	-	-	-
5	-	-	-	-
6	-	-	-	-
7	-	-	-	-
8	-	-	-	-
9	-	-	-	-
10	-	-	-	-
11	-	-	-	-
12	-	-	-	-
13	-	-	-	-
14	-	-	-	-
15	-	-	-	91,552
16	-	-	-	91,552
17	-	-	-	91,552
18	-	-	-	91,552
19	-	-	-	91,552
20	-	-	-	91,552
21	-	-	-	91,552
22	-	-	-	91,552
23	-	-	-	91,552
24	-	-	-	91,552
25	-	-	-	91,552
26	-	-	-	91,552
27	-	-	-	91,552
28	-	-	-	91,552
29	-	-	-	91,552
30	-	-	-	91,552
31	-	-	-	91,552
TOTALS	-	-	-	1,556,391

	Volume m3	Rate per m3	Charges \$'s
Firm Delivery Charge	1,556,391	\$ 0.037310	58,068.94
Gas Supply	1,556,391	\$ -	-
Excess Volume	-	\$ -	-
Total Supply and Delivery			58,068.94
Demand Charge	108,188.0	\$ 0.255904	27,685.74
Customer Charge			150.00
Total Monthly Charge			27,835.74
Total			85,904.68