

AIRD & BERLIS LLP

Barristers and Solicitors

Scott A. Stoll
Direct: 416-865-4703
E-mail: sstoll@airdberlis.com

September 14, 2010

BY COURIER

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 ("NRG")
2011 Rates Application (EB-2010-0018)
Responses to Undertakings J2.1, J2.2 and J2.3**

Please find enclosed the response to undertakings for Integrated Grain Processors Co-Operative Inc. ("IGPC") from the oral hearing on September 9, 2010.

In addition, please find attached an Updated Tab 6 from the Motion Materials which incorporates the changes from the response to Undertakings.

These materials will be submitted to the Board's RESS system later today. If there are any questions, please feel free to contact me at your convenience.

Yours truly,

AIRD & BERLIS LLP



Scott Stoll

SS/hm

7171513.1

UNDERTAKING NO. J2.1: TO REVIEW DOCUMENTATION AND TO ADVISE WHETHER ANY COSTS CAN BE PULLED OUT OF DISPUTE.

The following costs, excluding legal costs, were identified or substantiated in the Exhibit E of the Affidavit of Mr. Robert Cowan. Legal costs will be discussed in the response to J2.2. Included in the summary table of Exhibit E was the cost for Insurance of \$62,000 which IGPC disputes in its entirety. Also, note an updated Tab 6 will be submitted separately.

Description	Claimed Amount	Agreed to Costs
Union Gas (commissioning)	\$3,979.56	\$3,979.56
NRG (Commissioning)	\$3,527.55	\$3,527.55
Bank of Nova Scotia (\$25,800)	\$10,400.00	\$10,400.00
OEB Cost EB-2006-0243 ⁽¹⁾	\$12,562.18	\$6,281.09
Union Land Costs	\$12,105.00	\$12,105.00
Total	\$42,574.29	\$36,293.14

1. The OEB costs pertain to the leave to construct ("LTC") proceeding and the 2 motions. IGPC has suggested a 50:50 allocation between the LTC and the 2 motions related to the OEB cost.

UNDERTAKING NO. J2.2: TO PROVIDE BREAKDOWN OF NUMBERS.

IGPC is providing the basis for the development of the table and the determination of the numbers. A general description of the columns used to organize the concerns is provided below. IGPC tried to determine an appropriate amount based upon the experience possessed, information that has been provided by NRG and costs from third parties.

Inappropriate Direct Costs – These costs are not appropriate for inclusion in the reconciliation of actually incurred capital costs – this would include contingency costs or operating and maintenance costs.

Inappropriate InDirect Costs – These are costs that should not have been necessary for the construction pipeline such as the administrative penalty, legal fees related to motions, appeal, the demand for \$32million in financial assurance and overlawying.

Costs without documentation – Self-explanatory really, this includes costs claimed but where there has been no documentation provided.

Unreasonable Costs – Costs claimed that we do not feel are reasonable in the circumstances such as paying \$295/hour for Mr. Bristoll.

As a result of the additional information provided by NRG has recalculated the amount of the dispute. IGPC has summarized the disputed amounts as follows:

<u>Description</u>	<u>Disputed Amount</u>
Administrative Penalty	\$140,000.00
Legal Costs	\$362,782.65
Project Management	\$349,609.50
Interest	\$140,605.07
EB-2006-0243 (see J2.1)	\$6,281.09
Miscellaneous	\$81,041.00
Total	\$1,080,319.31

(i) Administrative Penalty

The \$140,000 penalty was thought to be inappropriate as IGPC felt that including such a charge is contrary to regulatory principles. IGPC requested from NRG whether such a charge had been permitted in similar circumstances and NRG was not aware of any regulator approving such a charge to be recovered from a ratepayer.

(ii) Legal Costs

The disputed legal costs related to contingency costs, costs related to the motions, the appeal of the Board's decision, the police investigation, the libel claim and the gas nomination issue. In addition,

IGPC has disputed being responsible for any of the contingent legal fees. This amount has varied from \$86,088 to \$132,000. IGPC understands from the oral hearing the contingency fees are \$132,000 which are disputed because the fees were not incurred as part of the construction of the pipeline and there is no identified task for the expenditure of money related to the construction of the pipeline.

In response to IGPC IR #17 , NRG had acknowledged \$ 135,279.38 being spent on the two motions.

Description of Disputed Claim	Ogilvey Renault	Lenczner Slaght	Harrison Pensa	Notes
2007 Emergency Motion	\$10,000.00	\$23,003.25		(IGPC IR #17) \$52,725.54 Assume some includes reference to Appeal.
Appeal of Emergency Motion	\$13,850.00	\$47,949.79		July/August/September 2007 time related to appeal.
2008 Motion for \$32million demand (includes libel claim)	\$10,000.00	\$72,553.84		<u>IGPC #17, \$82,553.84</u> Lenczner Invoice73976 \$21,007.93 @25% motion = \$10,500.00 Lenczner Invoice74245 total \$72,793.57; so assumed \$62,053.84 related to Motion. Ogilvey invoice for Feb/March total approx. \$12,000.
Franchise Negotiations		\$4,000.00		Invoice 77360 – estimate of 6 hours at \$675/hour
Police Investigation into Security Deposits		\$4,000.00		Invoice 77360 – estimate of 6 hours at \$675/hour
Over –lawyering, providing shareholder advice Leave to Construct and Contract Negotiation	\$20,000.00		\$6,425.77	LTC and negotiation of agreements was in excess of \$175,000 for Ogilvey Renault and exceeded \$25,609.21 for Harrison Pensa. Based upon a review of invoices and .
Contingency	\$132,000.00			Per revision during oral

				hearing.
Gas Nomination		\$2,000.00		
Project Management		\$15,000.00		Paying L. Thacker for Project Management services but at rate of \$675/hour. Estimate based upon fraction of claimed by communicating directly with IGPC (G. Alkalay).
Post July 2008 Costs	\$2,000.00			J. Beauchamp time related to Union Gas Hearing
Sub-total	\$187,850.00	\$168,506.88	\$6,425.77	
Total	\$362,782.65			

(iii) **Project Management**

With respect to Mr. Bristoll, IGPC understands the claim is for \$397,945 (Affidavit of Mr. Cowan, Exhibit E) at an hourly rate of \$295.00. This results in a total of 1,349 hours. IGPC had indicated the claim was for \$388,585 or 1,317 hours. The original budget used for the leave to construct had \$100,000 which would be approximately 340 hours if the rate of \$295/hour is used.

Rate

Because the PCRA was based upon an actual cost, IGPC used a rate of \$100.00. This rate was estimated by using a \$75.00 per hour charge (\$150,000 annual salary) with a 33% loading factor.

IGPC estimated that approximately 1290 hours would be more appropriately charged at the \$100 hour rate. This left approximately 60 hours at \$295/hour for items beyond project managing such as negotiating the financing. This led to the majority of the disputed amount of \$251,439.50.

Hours Claimed

In reviewing the information provided, IGPC estimated that approximately 133 hours were not appropriate. NRG has indicated and remove 12 hours related to double counting. We estimated a further 121 hours were not related to the pipeline or were related to the motions and appeals. **(Inappropriate Indirect Cost \$13,300 = 133 hours x \$100/hour, see Table below)**

Disputed Hour Determination

Time frame	Hours	Reasons
December 2006	23 hours	Admitted double entry + mismatch of times
June 2007	20 hours	Emergency Motion
July 2007	20 hours	Emergency Motion/Appeal
August 2007	10 hours	Appeal
February 2008	30 hours	2008 Motion (30 of 73 for month)
March 2008	30 hours	2008 Motion (30 of 118 for month)
Total	133 hours	

For time after December 2007, IGPC received only spreadsheets which indicated only time was spent on the file but provided no detail as to the activity. A copy of a sample timesheet is provided below. Also, given that hours after the completion of the financing and the commencement of full deliveries. IGPC disputed that sufficient documentation had been provided to substantiate the 850 hours claimed since December 2007. Some hours would be legitimate but without detail it was difficult to determine which hours. **(Costs without Documentation \$84,870.00 = 848.7 hours at \$100/hour)**

For example, IGPC was concerned that certain hours during June 2008 related to the Franchise issue with the Town of Aylmer as there was a dramatic increase in hours as compared to May 2008. Similarly, it appeared NRG was claiming hours in respect of the Union Gas proceeding, EB-2008-0273. Also, hours related to: (i) the police investigation into the security deposits; or (ii) solving the issue of the gas nomination should not be recoverable from IGPC.

(iv) Interest

IGPC made a number of conservative assumptions to determine that it would agree to \$50,000 in interest related costs.

Description		Notes
Claimed Amount by NRG	\$190,605.07	
Less:		
Interest Claimed After Commencement of 100% Distribution Charges	\$89,206.18	=\$190,605.07-\$101,398.89 The amount on July 15, 2008
Overstatement of Interest Rate by 1%	\$10,000.00	Estimate based upon percentage of claimed interest. The 1% would represent from 12% to 18% of the charged rate during the period. An estimate of a 10% reduction was

Acknowledgement of Steel Purchase	\$22,783.45	taken. \$911,388 for 6 months @ 5% (low estimate of Prime during 6 month period). If use 6% - then it would be \$27,341.64.
Incorrect Period for Claiming Interest	\$10,000.00	Start date too early – June 22, 2007 letter shows no interest claimed amount was \$6,886.02 plus estimate of interest on other invoices to final payment of final installment of aid-to-construct.
Elimination of Costs that relate to the Motion	\$10,000.00	Remove interest on legal costs related to the Motion
Sub-total Expense	\$141,989.63	
Agreed to Costs	\$ 48,615.44	Rounded to \$50,000.00 for purposes of the table and discussions with NRG.

(v) Miscellaneous (Disputing - \$81,041)

IGPC has disputed \$9,360 in claimed costs from Ayerswood Development, a related company to NRG, and IGPC is unclear what service was provided to substantiate such a claim.

IGPC has disputed \$9,681 for Neal, Pallett & Townsend who are NRG's auditors. It is unclear why the company needed an auditor as it appears some of the advice related to shareholder issues.

IGPC disputes the inclusion of \$62,000 related to insurance costs. This was an allocated O&M expenditure. No insurance was purchased for the construction project.

UNDERTAKING NO. J2.3: TO PROVIDE ANALYSIS OF WHERE 30 PERCENT FIGURE FOR SOFT COSTS CAME FROM.

The following table provides the basis of the approximation of “soft costs” as 30% of the claimed costs. IGPC estimated the 30% figure from the costs claimed as outline in Tab 6 of its Motion materials dated August 3, 2010.

Description	Amount (\$)	Percentage
Regulatory Costs	\$ 991,570	11.49%
Design Drafting & Procurement	\$ 480,768	5.57%
Environmental	\$ 81,519	0.94%
Project Management (M. Bristoll)	\$ 388,585	4.50%
MIG Engineering	\$ 314,808	3.65%
Other	\$ 320,225	3.71%
Total	\$2,577,475	29.86%

Notes Regarding Table:

Percentage is based upon the claimed cost by NRG of \$8,626,532 found in the table in Exhibit E of the Affidavit of Mr. Robert Cowan. IGPC did not use the figure of \$8,652,380 from paragraph 5 of the Affidavit of Mr. Robert Cowan.

Regulatory Costs includes the \$140,000 Administrative Penalty and contingency legal fees identified in response to IGPC IR # of \$86,088. The Contingency costs were subsequently revised during the oral hearing to total \$132,000.

Non-Destructive Testing – Costs related to non-destructive testing in the amount of \$211,809 are not included the costs listed and represent 2.45% of the claimed costs.

Land Acquisition is not included.

Commissioning costs of NRG (\$3,527.55) and Union Gas (\$3,979.56) that were included in the affidavit of Mr. Robert Cowan were also not included.

Also, not included are the \$62,000 (0.72%) related to the allocation of period insurance costs to the pipeline.

IGPC - NRG PIPELINE COST RECONCILIATION
SUMMARY TABLE

Name	NRG Claimed Amount	Inappropriate Direct Cost	Inappropriate Indirect Cost	Costs Without Documentation	Unreasonable Costs	Cost Denied or Not yet Agreed by IGPC	Agreed to Costs
Prime Contract							
Prime Contractor (Somerville)	\$ 3,180,642.00					0	\$ 3,180,642.00
Bell Canada	\$ 2,576.00					\$ -	\$ 2,576.00
Black & McDonald	\$ 823.00					\$ -	\$ 823.00
Wellmaster	\$ 11.00					\$ -	\$ 11.00
Fastenal	\$ 141.00					\$ -	\$ 141.00
Union Gas Ltd. (IGPC)	\$ 736,000.00					\$ -	\$ 736,000.00
Subtotal	\$ 3,920,192.00						\$ 3,920,192.00
Custody Transfer Station							
Prime Contract (Lakeside Controls)	\$ 884,003.00						\$ 884,003.00
Subtotal	\$ 884,003.00						\$ 884,003.00
Pipe and Materials							
Lakeside Steel	\$ 863,420.00					\$ -	\$ 863,420.00
CR Wall	\$ 34,539.00					\$ -	\$ 34,539.00
Comco	\$ 35,696.00					\$ -	\$ 35,696.00
KTT	\$ 22,587.00					\$ -	\$ 22,587.00
Fastenal	\$ -					\$ -	\$ -
Subtotal	\$ 936,242.00						\$ 936,242.00

IGPC - NRG PIPELINE COST RECONCILIATION
SUMMARY TABLE

Name	NRG Claimed Amount	Inappropriate Direct Cost	Inappropriate Indirect Cost	Costs Without Documentation	Unreasonable Costs	Cost Denied or Not yet Agreed by IGPC	Agreed to Costs
Regulatory Costs							
Administrative Penalty	\$ 140,000.00		\$ 140,000.00			\$ 140,000.00	\$ -
Alken & Associates	\$ 7,718.00						\$ 7,718.00
Harrison Pensa	\$ 25,609.21		\$ 6,425.77			\$ 6,425.77	\$ 19,183.44
Lobsenzateur	\$ 1,935.00						\$ 1,935.00
Martin Malette	\$ 292.00						\$ 292.00
London Free Press	\$ 7,585.00						\$ 7,585.00
Viva Voce Reporting	\$ 2,195.00						\$ 2,195.00
ASAP Reporting	\$ 7,476.00						\$ 7,476.00
Lenczner Slaght (Note 1)	\$ 338,522.33		\$ 168,506.88			\$ 168,506.88	\$ 170,015.45
Ogilvie Renault (Note 1)	\$ 437,304.08	\$ 132,000.00	\$ 55,850.00			\$ 187,850.00	\$ 249,454.08
Manitoulin Transport	\$ -						\$ -
Helix Courier	\$ 198.00						\$ 198.00
Purulator	\$ 498.00						\$ 498.00
Neal, Pallett & Townsend Audit Fees	\$ 9,681.00		\$ 9,681.00			\$ 9,681.00	\$ -
EB-2006-0243	\$ 12,562.00		\$ 6,281.09	\$ -		\$ 6,281.09	\$ 6,280.91
Design, Drafting & Procurement							
AUE (AECON)	\$ 474,856.00						\$ 474,856.00
TSSA	\$ 750.00						\$ 750.00
NRG Corp.	\$ 1,046.00						\$ 1,046.00
Ayerswood Development	\$ 402.00						\$ 402.00
Corrosion Protection	\$ 3,714.00						\$ 3,714.00
Environmental							
Stantec	\$ 26,329.00						\$ 26,329.00
Senes	\$ 13,547.00						\$ 13,547.00
Senes (IGPC)	\$ 37,483.00						\$ 37,483.00
Canadian Pacific Railway	\$ 650.00						\$ 650.00
Middlesex County Engineers Office	\$ -						\$ -
Kettle Creek CA	\$ 100.00						\$ 100.00
Kettle Creek CA	\$ 500.00						\$ 500.00
Elgin County	\$ 800.00						\$ 800.00
Malahide Township	\$ 1,160.00						\$ 1,160.00
Upper Thames CA	\$ 800.00						\$ 800.00
Thames Centre	\$ 150.00						\$ 150.00
Lands							
Land Rights (Union Gas)	\$ 12,105.00						\$ 12,105.00

IGPC - NRG PIPELINE COST RECONCILIATION
SUMMARY TABLE

Name	NRG Claimed Amount	Inappropriate Direct Cost	Inappropriate Indirect Cost	Costs Without Documentation	Unreasonable Costs	Cost Denied or Not yet Agreed by IGPC	Agreed to Costs
Other							
Surveying (FKS)	\$ 72,118.00					\$ -	\$ 72,118.00
Harrison Pensa (Financing)	\$ 29,295.00					\$ -	\$ 29,295.00
Belanger, Cassino & Coulston	\$ 1,929.00					\$ -	\$ 1,929.00
Bank of Nova Scotia	\$ 10,400.00					\$ -	\$ 10,400.00
Societe Generale	\$ 6,518.00					\$ -	\$ 6,518.00
MIG Non-destructive testing (x-ray)	\$ 211,809.00					\$ -	\$ 211,809.00
Averswood Development	\$ 9,360.00					\$ 9,360.00	\$ -
Project Management (M. Bristol)	\$ 397,945.00		\$ 13,300.00	\$ 84,870.00	\$ 251,439.50	\$ 349,609.50	\$ 48,335.50
MIG Engineering (1)	\$ 199,673.00					\$ -	\$ 199,673.00
MIG Engineering (2) Change Orders	\$ 115,135.00					\$ -	\$ 115,135.00
Interest	\$ 190,605.07				\$ 140,605.07	\$ 140,605.07	\$ 50,000.00
NRG Commissioning	\$ 3,527.55						\$ 3,527.55
Union Gas Commissioning	\$ 3,979.56						\$ 3,979.56
Insurance (O&M not a capital expense)	\$ 62,000.00	\$ 62,000.00				\$ 62,000.00	\$ -
	\$ 8,640,699.80	\$ 194,000.00	\$ 400,044.74	\$ 84,870.00	\$ 401,404.57	\$ 1,060,319.31	\$ 7,660,380.49
Total							

Notes:
1. Lenczner Slaght and Ogilvey Renault revised per legal summary contained in Exhibit E to the Affidavit of Mr. Robert Cowan. It would appear that Note 4 of cost summary table is incorrect as it does not match legal summary.

2. Environmental not reduced per Exhibit E, of Affidavit (\$1,600);