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October 6, 2010

VIA MAIL and E-MAIL

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge St.
Toronto, ON
M4P 1E4

Dear Ms. Walli:

Re: EB-2010-0018
Natural Resource Gas Limited – 2011 Gas Rates Application

Please find enclosed the final submissions of the Vulnerable Energy Consumers Coalition in the above noted matter. We apologize for the late filing of our argument.

Thank you.

Yours truly,

Michael Buonaguro
Counsel for VECC
Encl.

EB-2010-0018

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 to the Ontario Energy Board for an Order or Orders approving or fixing just and reasonable rates and other charges for the sale, transmission and distribution of gas as of October 1, 2010.

FINAL SUBMISSIONS OF THE VULNERABLE ENERGY CONSUMERS COALITION (VECC)

OCTOBER 6, 2010

1. These are the submissions of VECC with respect to the outstanding issues surrounding NRG's application for rates effective October 1, 2010. To the extent that VECC has not made submissions on a particular issue it should not be construed with a particular position on that issue.

CAPITAL COST OF THE IGPC PIPELINE

2. VECC understands that IGPC is challenging the total project cost related to the IGPC pipeline. More specifically, IGPC is challenging the total cost of approximately $8.6M for the project as advanced by the applicant, seeking a reduction of the total approved project cost of up to $1.1M.

3. VECC further understands from the evidence that while IGPC's claim may materially alter the aid-to construct amount owed by IGPC to NRG, the related effect on the cost of the project that goes into rate base is:

    a) determined mechanistically in accordance with the Board's requirements in EBO 188, and
    b) at the most, a relatively small reduction, with corresponding small changes in such indirect calculations such as cost allocations that depend on rate base and the calculation of the cost of capital.

4. Accordingly VECC's only specific concern, once the Board has determined the appropriate total cost of the project, is that the Board satisfy itself that the resulting total

project cost, in conjunction with the appropriate mechanism, produces the proper rate base amount related to the project.

OM&A COST RELATED TO THE IGPC PIPELINE

5. VECC understands from the evidence that the OM&A costs that remain in dispute in this hearing are directly allocated to Rate 6, namely IGPC, such that the resolution of this issue has no bearing on NRG's other customers. On this basis VECC has no submissions with respect to this issue.

AMORTIZATION OF REGULATORY COSTS UNDER THE SETTLEMENT PROPOSAL

6. Under the settlement proposal the amount recovered by NRG for its Regulatory Costs in relation to its application, along with the costs it forecasted to incur during the course of an additional 4 years of a 5 IRM period, were reduced to $450,000.[1] Implicit in NRG's application was the amortization of the total costs over the 5 years of its applied for IRM period; however, as the issue of an IRM has been, for the moment, removed from consideration, and as the approval of an IRM was not, in any event, assured, there remains the discrete issue of the appropriate amortization period for the remaining regulatory costs.

7. VECC disagrees with the calculations of NRG at paragraph 74 of its Argument in Chief. It appears to VECC that NRG continues to include some portion of the amounts associated with the total IRM costs of $54,000.00 when amortizing the Regulatory Costs, despite the fact that there is no approved IRM plan. To the extent the Board may approve an IRM plan in a subsequent phase to this proceeding, it is VECC's view that those costs should simply be included in the adjusted base rates for the IRM period, i.e. the Board would simply approve the addition of ¼ of the $54,000 in IRM costs to the base rates as the annual amount related to IRM management pursuant to the settlement.

8. As the IRM costs are not to be included in this exercise, since the IRM related relief in the application has been withdrawn, the total amount of legal fees to be amortized is reduced by $54,000, down to $396,000.

9. VECC notes that the original 5 year amortization implicit in the application, using the IRM costs inclusive figure of $450,000.00, would have been an annual cost related to regulatory fees of $90,000. NRG's proposal is to amortize the remaining $396,000 of regulatory costs over a 3 year period; this results in annual costs to ratepayers over that period of $132,000, $42,000 more per year over that period then what was contemplated under a 5 year period including IRM costs, almost 50% more per year. In order to more

[1] Settlement Agreement page 20.

closely approximate the impact of Regulatory Costs that was implicit in the application, VECC submits that a 4 year amortization period is more appropriate, resulting in an annual cost of $99,000. VECC disagrees with NRG's assertion at paragraph 74 that the differential of $33,000 (corrected to $42,000 per annum) between NRG's proposal of a 3 year amortization and VECC's proposal of a 4 year amortization period is not significant to NRG's ratepayers. As NRG points out, this cost is to be spread out over only 7100 customers.

10. Lastly, VECC submits that recovery of this amount should be performed outside of base rates via a rate rider rather than included in base rates. VECC makes this submission so that a) in the event NRG does not obtain approval for an IRM regime and does not come back for rebasing within the 4 year period the regulatory costs will not continue to be embedded in its rates even though it will not be incurring those costs, and b) in the event an IRM is approved for NRG the amount embedded in rates will be only those costs associated with the IRM, namely ¼ of the $54,000 approved as part of the Settlement Agreement, as a result of an adjustment to the base rates.

CLEARANCE OF THE REGULATORY EXPENSE DEFERRAL ACCOUNT

11. NRG is seeking to clear $111,123 from its Regulatory Expense Deferral Account (the "REDA account") to Rates 1-5. This amount relates to NRG's own expenses in connection with EB-2008-0273, an application brought by Union Gas Ltd to cease service to NRG. The application was brought in relation to the apparent financial instability of NRG.

12. In its' decision of November 27, 2008, the Board made the following finding with respect to costs:

> **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.
>
> 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.[2] (Emphasis added)

13. In VECC's view it is clear from the Board's decision that all costs being paid by NRG are to be borne by the shareholder and not by NRG rate payers; on that basis VECC submits that clearance of NRG's own costs to rates through the REDA account should be disallowed.

14. Alternatively, VECC submits that for the same reasons that the Board ordered costs of the intervenors in the proceeding against NRG (as opposed to the applicant as would be the normal practice), this panel should disallow the clearance to rates of NRG's own costs related to the application as an imprudent expenditure.

15. As noted in the Board's decision, the hearing was required as a result of the behaviour of NRG's "brinkmanship, having "stone-walled" Union and failing to act in a timely manner. Accordingly, VECC submits, NRG's own costs of participating in the application were caused by its own unreasonable conduct.

16. Furthermore, the concerns raised by Union with respect to the financial stability of NRG related largely to the issuance of retractable shares by NRG in favour of its shareholder, an act that provides no benefit to NRG's rate payers.[3] Accordingly VECC submits that the application resulted from NRG's actions in relation to its shareholder's interest, not to the interest of its rate payers.

17. It appears to VECC, having reviewed paragraphs 53 to 62 of the applicants Argument in Chief (which inadvertently refer to the EB-2008-0273 proceeding by the file number EB-2008-0106 in several places) that NRG continues to disagree with the Board's decision in that proceeding, both with respect to the substance of the proceeding and the cost order made against NRG. VECC respectfully submits that such disagreements should have been raised by NRG on a motion to review or an appeal to Divisional Court of the orders made against it; it is not, with all due respect, for this Board panel to question the previous panel's decision outside of a formal review. In VECC's view, a review of the Board's decision in EB-2008-0273 supports a conclusion that either

    a) NRG's own costs were specifically ordered to be paid by its shareholder, or
    b) that the costs incurred by NRG in the proceeding were imprudent.

18. For all these reasons VECC respectfully submits that the claimed $111,123 in regulatory costs related to the EB-2008-00273 proceeding should be disallowed for recovery.

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[2] EB-2008-0273, Decision dated November 27, 2008, pages 6-7.
[3] EB-2008-0273, Decision dated November 27, 2008, page 3.

COST OF CAPITAL

- **CAPITAL STRUCTURE**

Summary of VECC's Position on Capital Structure

19. VECC submits that the deemed capital structure of 42% equity and 58% debt (using a blend of long term and short term debt) applied for by NRG is inappropriate for the base year.

20. In VECC's view the circumstances surrounding NRG's actual capital structure are such that it would be appropriate to deem NRG's capital structure at 40% equity, 56% Long Term Debt, and 4% Short Term Debt for the test year in accordance with the Board's parameters for Electricity Distributors as determined in the Board's Report on Cost of Capital on Cost of Capital and 2nd Generation Incentive Regulation for Ontario's Electricity Distributors (the "2006 Report"), the appropriateness of which was re-affirmed by the Board in its Report of the Board on the Cost of Capital for Ontario's Regulated Utilities (the "2009 Report").

NRG's Evidence

21. NRG relies on the evidence of Kathleen McShane to establish a deemed structure of 42% equity on the basis that it captures the "real" capital structure that NRG will experience over a 5 year term. Ms McShane was asked to prepare her evidence on the basis of a 5 year view of NRG's capital structure on the premise that the company's application for a 5 year incentive regulation mechanism would be approved by the Board.[4]

22. As the Board is aware, NRG has withdrawn its request for relief associated with an IRM for the rate years beyond the test year, opting to establish the test year rates on a stand -alone basis and have the Board consider an appropriate IRM regime for NRG, if any, in a phase 2 to the proceeding.[5] Accordingly, VECC submits, any suggestion that the capital structure of NRG be established with a view to a period beyond the test year is clearly inappropriate; doing so would amount to prejudgment of the appropriate, if any, IRM regime for NRG beyond the test year.

23. Quite aside from the steps NRG has taken to separate consideration of the base year from potential, subsequent IRM years, it is VECC's position that it would be

[4] Transcript Volume 3, pages 58-59.
[5] Transcript Volume 3 page 1.

inappropriate to consider the appropriate capital structure for NRG in the base year using analysis beyond the test year in any event, and in particular in view of NRG's position on providing evidence relating to years beyond the test year.

24. In VECC's view the base year rates are appropriately considered on the basis of test year data. While consideration of future changes in consideration of an appropriate IRM may be appropriate for the purposes of adjusting the base year for use in subsequent years, VECC submits that, for the purposes of establishing the test year rates, it is the test year data that is relevant.

25. In support of that view VECC notes that NRG appears to have taken the same stance with respect to interrogatories which sought forecast data beyond the test year; when asked about the amount of rate base associated with IGPC for each of the years during the proposed incentive rate period at Exhibit I-4-76, NRG responded that:

> The current proceeding addresses rate base, revenue requirement and other financial information for the 2011 test year. The rate base in subsequent years is not being addressed in this proceeding and has not been projected by NRG.

26. Similarly, when asked at Exhibit I-4-75 about capital budgets beyond the test year, NRG responded that:

> NRG has not prepared a capital budget for years after the Test Year. Without projected capital expenditures, depreciation in the years after the test year cannot be determined.

27. VECC respectfully submits that it is disingenuous of NRG to apply for a capital structure based on a projection beyond the test year, and then refuse to answer any questions relating to the years upon which that projection is based. Accordingly, VECC submits, the Board should determine the appropriate test year capital structure based on the evidence of NRG's actual capital structure entering the test year.

The Actual Capital Structure

28. As Board staff points out in its argument, NRG's evidence at the technical conference is that NRG's actual current equity is 37%.[6] In its argument in chief (paragraph 99) NRG asserts that net of the effect of the GIC investment (discussed later on) its equity was only 39% at the end of 2009, and on a gross debt basis was only 32%. Only at the end of 2011 does NRG assert that its equity, net of the GIC, will be in excess of 40%; on a gross debt basis, at the end of 2011, NRG concedes that its equity will still only be 39%.

29. NRG's actual capital structure is clouded by issues which, in VECC's experience, few, if any, of the other regulated utilities in Ontario exhibit.

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[6] Board Staff Argument page 11.

30. As a result of the issuance of retractable shares in the amount of NRG's total rate base, it is VECC's submission that NRG, arguably, has little or no actual equity; as noted in the Auditor's Report dated December 11, 2009:

> The company has issued and outstanding Class C shares with a redemption value of $13,461,418. Canadian generally accepted accounting principles require that the company present and classify shares that are retractable at the option of the shareholder as a liability on the balance sheet. The company has presented these shares as part of Shareholders' equity. If the shares were classified as liabilities, then the total liabilities would increase by $13,461,418 and share capital would decrease by $13,461,418.[7]

31. VECC further notes that:

    a) the issuance of retractable shares has no value for the regulated utility,
    b) the company cannot provide any information as to why the retractable shares were issued, and
    c) the issuance of the retractable shares have led to a requirement of postponement agreements in favour of the Bank of Nova Scotia, in order for NRG to obtain financing, and Union Gas Limited, in order to avoid cessation of service. [8]

32. NRG's application for recovery of its cost of capital is further complicated by the requirements imposed on it by the Bank of Nova Scotia in order to obtain the debt financing required to support its rate base, requirements met by NRG, in part, by the borrowing of an amount of debt beyond what was required to support its rate base and the use of that excess debt to invest in a Guaranteed Investment Certificate, for the sole purpose of maintaining NRG's ratio of current assets to current liabilities at a ratio of more than 1/1.[9]

The Instability of NRG's Actual Capital Structure

33. As noted in the 2009 Report, at page 50:

> For electricity transmitters, generators, and gas utilities, the deemed capital structure is determined on a case-by-case basis. <u>The Board's draft guidelines assume that the base capital structure will remain relatively constant over time</u> and that a full reassessment of a gas utility's capital structure will only be undertaken in the event of

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[7] This Report is attached to the Natural Gas Resources Limited Financial Statements, September 30, 2009, at page 2 of that attachment to the filing.
[8] Transcript, EB-2010-0018, June 14, 2010, Technical Conference, pages 10-11.
[9] Transcript, Volume 3, pages 50-53.

significant changes in the company's business and/or financial risk. (emphasis added)

34. VECC notes that NRG appears, at paragraph 106 of its argument, to rely on this same quote as support for the proposition that the Board will assume that the base capital structure will remain relatively constant over time. VECC disagrees with NRG's paraphrasing of this part of the Board's 2009 Report. In VECC's view the 2009 Report is pointing out that the draft guidelines are based on the assumption that they are being applied to a relatively constant base capital structure, such that in the absent of a stable capital structure the draft guidelines, which allow for the capital structures of utilities other then electricity LDC's to be set on a case by case basis, may not apply.

35. VECC respectfully asserts that the base capital structure of NRG is anything but stable; by Ms Mcshane's evidence NRG is trying to capture an apparent fluctuation on NRG's capital structure of more than 1000 basis points over 5 years.[10]

Conclusion

36. For all these reasons VECC submits that it would be appropriate, in the circumstances of this case, to deem NRG's capital structure in accordance with the 2006 Report, as confirmed in the 2009 Report. Pursuant to pages 5 and 9 of the 2006 Report, VECC submits that a capital structure of 40% equity, 56% Long Term Debt, and 4% Short Term Debt would be appropriate for NRG.

- **COST OF DEBT**

Long Term Debt

37. In VECC's view NRG's effective cost of long term debt has been artificially inflated as a result of the inclusion of the Guaranteed Investment Certificate ("GIC") in its debt calculation. VECC submits that the circumstances surrounding the requirement of the GIC are such that the costs associated with the GIC should be removed from the revenue requirement.

38. While it appears clear that NRG borrowed approximately $2.75M in order to fund GIC investments, it is equally clear that those investments do not underpin NRG's rate base.[11] In VECC's view, the borrowing and subsequent investing of approximately $2.75M is activity that falls outside of NRG's cost of debt; in determining the appropriate cost of debt for NRG, the borrowing of $2.75M for the purposes of investing the same amount in GIC's should not impact on the Board's determination of an appropriate cost of debt for NRG.

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[10] Exhibit E2, Tab 1, Schedule 1, pages 12-13 asserts movement in NRG's equity of approximately 1000 basis points during the next 5 years.
[11] Put simply, the GIC is not part of NRG's approved rate base.

39. In order to “back out” the effect of the GIC related borrowing and investing from the proposed cost of debt, VECC submits that it would be appropriate to deduct the amount of the GIC from the principal owed on the fixed rate loan from the Bank of Nova Scotia and then recalculate the effective cost of debt based on this reduced principle.

40. In accordance with Exhibit E8, Tab 1, Schedule 8, NRG calculates the cost rate for long term rate at a value of 6.69%:

NATURAL RESOURCE GAS LIMITED
Cost of Debt
2011 Bridge

	Avg. of Avgs. Principal ($'s)	Carrying Cost ($'s)	Calculated Cost Rate (%)
Long-Term Debt			
Refinancing Cost Amortization		49,814	
Bank of Nova Scotia (Variable Rate Loan)	3,943,333	162,565	4.12%
Bank of Nova Scotia (Fixed Rate Loan)	5,964,863	450,263	7.55%
Total	9,908,196	662,642	**6.69%**

41. The effect of deducting the value of the GIC from the principal of the fixed rate loan from the Bank of Nova Scotia is a reduction in the blended cost of long term debt of approximately 6.36%:

NATURAL RESOURCE GAS LIMITED
Cost of Debt
2011 Bridge (BACKING OUT THE GIC EFFECT)

	Avg. of Avgs. Principal ($'s)	Carrying Cost ($'s)	Calculated Cost Rate (%)
Long-Term Debt			
Refinancing Cost Amortization		49,814	
Bank of Nova Scotia (Variable Rate Loan)	3,943,333	162,565	4.12%
Bank of Nova Scotia (Fixed Rate Loan)	5,964,863	450,263	7.55%
GIC (assumed cost pursuant to Fixed Rate Loan)	-2,751,130	-207,710	7.55%
Total	7,157,066	454,932	**6.36%**

42. Accordingly, VECC submits, the long term debt rate for use against the 56% long term debt component of NRG's capital structure should be 6.36% for the test year.[12]

Short Term Debt Rate

43. NRG uses a notional amount of short term debt to fill the gap between its deemed amount of long term debt and its deemed amount of equity. The rate applied by NRG to that notional amount of short term debt is .5%.

44. In VECC's view it would be appropriate, in the event the Board accepts VECC and Board Staff's position that NRG's capital structure should be deemed to be 60% and 40% equity, to further use the Board's methodology to deem the short term debt rate applicable to the notional short term debt component of the deemed capital structure. Currently that rate is 2.07% in accordance with the Board's February 24th, 2010 letter regarding the 2010 Cost of Capital Parameters, as opposed to the .5% requested in the application.

- **ROE**

45. In VECC's view NRG has failed to justify a departure from the Board's policy with respect to cost of capital in requesting a 50 basis point risk premium above the Return on Equity ("ROE") produced by the Board's prevailing ROE methodology. VECC adopts the argument put forward by Board staff in its argument at pages 12-14 on this point, noting in particular in this case that the claimed 50 basis point premium sought by NRG, even if justified, would be completely offset by the inclusion of 50 basis points for transactional costs that NRG does not incur.

- **COST OF CAPITAL SUMMARY**

46. In summary, VECC submits that the applied for cost of capital for the test year of $1,244,818 should be reduced to $1,032,899 as a result of the following changes:

    a) the removal of the effects of the GIC investment,
    b) deeming a capital structure of 56% long term debt, 4% short term debt and 40% equity, and
    c) removing the claimed .5% premium included in the requested ROE.

47. All the aforementioned changes are captured in the following table:

[12] VECC notes that its position on the cost of long term debt is similar to that of Board Staff at page 15 of its argument, differing only in that Board Staff assumes the GIC is backed out proportionately from both the fixed rate and the variable rate loans, preserving the higher 6.69% long term debt rate.

VECC's Submission on the Total Cost of Capital				
Test 2011				
	PRINCIPAL	**% OF TOTAL**	**RATE**	**COST**
Short Term Debt	*544,749*	*4.00%*	*2.07%*	*11,276*
Long Term Debt	*7,626,489*	*56.00%*	*6.36%*	*485,045*
Common Equity	*5,447,492*	*40.00%*	*9.85%*	*536,578*
Total	*13,618,731*	*100.00%*		*1,032,899*

48. VECC is aware that both IGPC and the Town of Aylmer are advancing arguments that would, if accepted, reduce the total rate base upon which the cost of capital would be based. In the event that the Board accepts those argument the cost of capital would, naturally, be reduced in accordance with the rate base deductions.

- **THE GIC**

49. As noted above the difference between the applied for cost of capital amount and the proposal submitted by VECC is approximately$211,919, based on the assumption that the GIC is wholly removed from the consideration of the applied for cost of capital. Accordingly the net cost of the GIC, offset slightly by its forecast .5% return, is approximately $193,954.[13] Accordingly, VECC asserts, the bulk of the reductions associated with VECC's proposed cost of capital for NRG in this proceeding rely on the Board disallowing recovery of the costs of the GIC to NRG, either as an implicit part of its cost of capital or as a separate amount.

50. As discussed in the evidence, the GIC was not a specific requirement imposed by the Bank of Nova Scotia on NRG as a prerequisite to the advancement of funds. Rather, the GIC is an instrument NRG uses in order to meet one of the covenants imposed on it by the Bank of Nova Scotia.[14] To the extent that Ms. Mcshane describe the GIC instrument as a sinking fund in her evidence, VECC submits that in cross-examination it was clear that the use of the GIC by NRG to meet one covenant with the Bank of Nova Scotia was materially different then a sinking fund investment.[15]

51. NRG noted that it was seeking, within the year, to remove the need for the GIC, and that it was also seeking to increase the return associated with the GIC.[16] VECC notes that in

[13] VECC notes that this higher than the cost assumed by Board Staff at Transcript Volume 3, page 80 of approximately $150,000.00 as a result of attributing a debt rate of 6.36% to the GIC rather than the blended long term debt rate of 6.69%.
[14] Transcript Volume 3, page 50.
[15]Transcript Volume 3, pages 54-56.
[16]Transcript Volume 3, pages 48-60.

the event NRG is successful in either endeavour all or material portion of the costs associated with the GIC will be eliminated by NRG. VECC further notes that the need for the GIC would be obviated by the injection of equity[17], and that the NRG admits that it has not injected any equity into the company since 2006, despite an increase in its debt of approximately $5.0M.[18]

52. VECC respectfully submits that the cost to NRG of an additional $2.75M in debt, obtained for the sole purpose of creating a current asset to balance its books as a result of a failure to maintain an adequate amount of actual equity in the company is not a cost that should be borne by ratepayers. VECC notes that in deeming an equity amount of 40%, as opposed to the actual gross debt partially offsets the cost of the GIC to NRG, as does the use of a 2.07% short term debt rate on the notional short term debt. Additionally, as noted earlier, NRG has the ability to remove the requirement for the GIC, or alternatively increase the return associated with the GIC, both mitigating the costs associated with it.

COST ALLOCATION

- **ALLOCATION OF ADMINISTRATIVE AND GENERAL COSTS TO RATE 6**

53. Per Exhibit G3, Tab 2, Schedule1, Sheet 1.3, NRG provided the A&G component of its total O&M costs as $666.7K. This same exhibit indicated that of total O&M costs of $2,901.1K, $355.9K had been directly assigned to Rate 6, i.e., IGPC.

54. The proposed allocation of A&G costs to Rate 6 was provided in response to IGPC's IR No. 72 at Exhibit I, Tab 4. NRG proposed to allocate $210.0K, or 31.50% of its A&G costs to IGPC.

55. In its Undertaking Response J2.6, NRG stated that upon review it found it inappropriate to classify A&G costs using a classification factor that includes Union transportation costs attributable to IGPC. NRG subsequently revised its allocation of A&G expenses to IGPC to 25.73%. A revised Sheet 1.3 attached to this response indicates that the revised A&G component of its total O&M costs was $693.6K.[19]

56. VECC accepts NRG's proposal, as revised in this Undertaking Response, as reasonable.

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[17] Transcript Volume 3, page 78.
[18] Transcript Volume 3 page 90.
[19] This implies that the allocation of A&G costs to IGPC would be reduced by $31.5K to $178.5K.

- **ALLOCATION OF INSURANCE COSTS TO RATE 6**

57. NRG has taken out property insurance, equipment floater, fleet insurance, general liability coverage, umbrella liability, additional umbrella liability, and business interruption insurance.[20]

58. The total cost of the premiums is $284,925, of which NRG originally proposed to allocate $221,330 to IGPC.

59. In its revised proposal, NRG proposed to allocate $173,067 to IGPC. VECC's submissions are with respect to the revised proposal.

- **ALLOCATION OF GENERAL INSURANCE COSTS**

60. As mentioned above, NRG amended its Rate 6 A&G allocation factor from the originally proposed 31.50% to 25.73%. For the purpose of allocating certain insurance costs, NRG revised the allocator to 22.5%.[21]

61. Originally, NRG proposed to allocate $11,374 or 70.0% of the total cost of the property insurance, equipment floater, and fleet insurance, $16,245, to IGPC.

62. In its revised proposal, NRG proposes to allocate $3,657, or 22.5%, of this amount to IGPC. VECC supports this proposal as reasonable.

63. With respect to general liability and umbrella liability coverage, NRG originally proposed that $106,727 or 64.5% of the net amount to be recovered from ratepayers,[22] $165,452, be allocated to IGPC. Based on a letter from Zurich Insurance,[23] in its revised proposal, NRG proposes to allocate $66,181, or 40.0%, of this amount to IGPC.

64. VECC submits that the support for this revised allocation of general liability and umbrella liability coverage costs, i.e., the Zurich letter, is of sufficient opacity and ambiguity, to provide little or no guidance to the Board. As such, VECC is able to neither recommend nor reject the revision with respect to the proper allocation of company-wide general and umbrella liability costs to IGPC.

[20] The $ values of the coverages, premia, and the allocations to IGPC, both as originally proposed and as revised by NRG are set out in the attachment entitled "Schedule – Insurance Allocation" to Undertaking Response J.6.
[21] Undertaking Response J2.6
[22] Net of 4% allocated to NRG
[23] Undertaking Response J1.1 Attachment

- **DIRECT ALLOCATION OF ADDED INSURANCE**

65. In addition to the insurance coverages mentioned above, NRG has taken out additional umbrella liability, business interruption, and transfer station insurance policies. The premia associated with these policies are $42,262, $25,580, and $35,387 respectively.

66. On the basis that the costs of these new policies are "caused" by the addition of IGPC as a customer, NRG proposes to allocate 100% of the costs to IGPC.[24]

67. In VECC's submission, it is clear that the transfer station insurance costs are caused by IGPC, being directly identified with new assets only required to serve IGPC, and are therefore properly allocated 100% to IGPC. Further, VECC does not see any benefit conferred on any of the other rate classes as a result of NRG taking out this coverage.

68. Similarly, it is VECC's position that – <u>should the Board find that taking out such coverage was prudent</u>[25] – the business interruption insurance is properly allocated 100% to IGPC given NRG's evidence that the insurance was "related solely to IGPC." Further, VECC does not see any benefit conferred on any of the other rate classes as a result of NRG taking out this coverage. In the event that the Board does not find that taking out such coverage was prudent or finds that such coverage is mainly of additional benefit to the shareholder, then VECC submits that none of the costs associated with coverage should be recoverable.

69. With respect to the additional umbrella liability coverage, NRG has stated that "although company-wide, [it] is being taken out by NRG solely as a result of the new IGPC assets."[26] On the basis of cost causality alone, VECC submits that the cost of this coverage should be borne entirely by IGPC, assuming the Board finds such coverage to be prudent.

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[24] See paragraph 117 of NRG Argument-in-Chief

[25] For example, prudent in the sense that a well-run utility would require such coverage in order to serve IGPC without exposing the shareholder to unreasonable risk that he would otherwise not be exposed to. If the Board cannot make such a finding, VECC submits that the cost of the policy should be a shareholder cost.

[26] See paragraph 117 of NRG Argument-in-Chief

70. VECC notes that, during the hearing, there was a discussion concerning the possibility that taking out this additional umbrella liability coverage provides some incremental and material benefit to other classes, and that on that basis there may be some justification for allocating some of the costs to other rate classes to the extent that the cost of the insurance was higher as a result of providing coverage to the entire company.[27] However, VECC submits, there was no evidence submitted to support the notion that the cost of the additional insurance, which was clearly obtained only as a result of the addition of IGPC as a customer, was materially increased as a result of being available to cover the entire company.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 6th DAY OF OCTOBER, 2010

[27] Transcript Volume 2, pages 84-85.