

IN THE MATTER OF the *Ontario Energy Board Act, 1998*,
S.O.1988, c. 15, (Schedule B); and

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.

WRITTEN SUBMISSIONS OF THE TOWN OF AYLMER

**(Natural Resource Gas Limited (“NRG”) Rate Hearing,
Submissions on Capital Structure and Cost of Capital)**

OVERVIEW

1. The Corporation of the Town of Aylmer (the “Town”) requested this rate hearing, and has intervened in it, solely to represent the interests of those individual and business constituents of the Town who are also ratepayers of NRG and who are unable to effectively represent their own interests herein.

2. The Town notes at the outset its serious concern at the unreliability of NRG’s financial reporting and analysis throughout this Application. After the initial filing, NRG completely revised and refiled its Application with significant changes in the financial data and analysis. Then, in connection with the technical conference, NRG acknowledged several more material errors in the Application. Despite those errors, and despite an extensive Settlement Agreement which emerged from the settlement conference, NRG has failed or refused to file amended versions of key Exhibits to reflect the impact of these matters on the claimed revenue deficiency and the resulting rates for which approval is sought.

3. These financial reporting and evidentiary failures are not consistent with prudent utility practice. They make the task of preparing submissions that will assist this Board

extremely difficult. They must not be allowed to prejudice this Board's ability to ensure that any expenditures approved are prudently incurred, and that rates approved are just and reasonable. As a result, the Town asks that, in any cases of uncertainty, the "benefit" of any doubt must be given to ratepayers, and not to NRG.

4. The Town participated in proceedings leading to the Settlement Agreement proposed by the parties to the Board. On the issues that remain outstanding, the Town takes no position on Cost Allocation and other issues that involve divergent interest among ratepayer groups.

5. The Town is broadly supportive of the positions taken by the intervenors, Integrated Grain Processors Co-Operative Inc. and IGPC Ethanol Inc. (together, "IGPC"), on issues specific to the IGPC pipeline and the proposed new Rate 6 to be charged by NRG to IGPC. Specifically, the Town fully supports the following positions of IGPC set out in its Submissions dated October 5, 2010:

- (a) the reductions in rate base attributable to the capital cost of the IGPC pipeline at paras. 10-40;
- (b) the reductions for insurance costs at paras. 43-48;
- (c) the submissions of capital structure and rate of return at paras. 60-74; and
- (d) the supplementary submissions at paras. 83-84.

6. The Town also fully supports two positions advanced in the Final Arguments of Board Staff. First, the Town agrees with the suggestion at page 5 that NRG be required to secure full refunds of overpayments for gas commodity purchases, and to establish a Purchased Gas Commodity Variance Account as of October 1, 2010 to avoid such overpayments in future. Second, the Town agrees with Board Staff's suggestion, at page 9 and following, that NRG be required to charge NRG Corp a transportation rate for gas commodity deliveries to other utilities.

7. The only outstanding items on which the Town takes an independent position are Issues 5 and 6: Cost of Capital and Rate of Return.

8. On those issues, NRG asks this Board to approve a capital structure based upon a “deemed” debt/equity ratio of 58/42%, applied to a rate base of some \$13.6 million;¹ to approve a rate of return of 9.85% plus a 50 basis point (0.5%) “risk premium” on the resulting “deemed” equity of approximately \$5.7 million; to approve a return on the level of its debt which includes not only the “deemed” debt of approximately \$7.888 million, but also the full amount of additional borrowing required to finance a \$2.75 million “compensating balance” in the form of a GIC purchased from the lender; and to approve a rate of return on that debt of 8.26% on average.

9. Based upon these parameters, NRG claimed a revenue deficiency of \$462,417, of which fully \$386,657 was attributable to changes in rate base and return on capital.² However, the evidence simply does not support NRG’s claim that it is currently in a revenue deficiency situation at all, and particularly with respect to return on capital. Rather, as detailed below,³ NRG’s Financial Statements suggest that between 2006 and 2011 it will have increased its “retained earnings” by almost \$1.6 million, while at the same time paying off approximately \$2 million in debt of various kinds. Those projections strongly suggest a revenue surplus, rather than any deficiency.

10. As a result of the partial Settlement Agreement on other issues, the claimed revenue deficiency has been reduced to \$229,038, but the amount attributable to changes in rate base and cost of capital has not changed. In these Submissions, the Town argues that in fact, when a proper approach to cost of capital is included, there should be no deficiency or a small surplus.

11. In summary, the Town takes issue with each and every component of NRG’s proposed capital structure and return on capital. The Town submits as follows.

- (a) **Risk Premium:** The 50 basis point risk premium is not warranted. A review of recent proceedings before this Board confirms that the risk profile in NRG’s service area has been improving, and that any increased risk in NRG’s business is a result of its own conduct, which should not be

¹ Subject to the adjustments discussed at Section B(iii) below

² Exhibit A2 Tab 1, Schedule 2

³ Sections C(ii) and E of these Submissions,

rewarded with a “premium” rate of return on equity. NRG’s rate of return on equity should therefore be limited to 9.85%, as prescribed in this Board’s *Report on the Cost of Capital for Ontario’s Regulated Utilities*, EB-2009-0084, December 11, 2009 (the “COC Report”).

- (b) **NRG’s Rate Base:** NRG’s “rate base” for purposes of calculating allowable return on capital should be that related to its utility business only. Using NRG’s own evidence, that rate base should be reduced by at least \$1.7 million, below the \$13.6 million claimed, and a proper separation of costs and net income should be required. After this, and other adjustments, the Town presents its analysis of capital structure and rate of return using a rate base amount of \$11,595,157.
- (c) **NRG’s Equity:** NRG’s “retractable” Class C shares are not properly recognized as “equity”, at all. They should attract the Board’s rate of return for debt unless and until the “retractable” feature is withdrawn. Moreover, NRG’s “actual equity”, rather than any “deemed” amount, should be used for rate of return purposes if possible. That actual amount for the 2011 test year is difficult to discern with any confidence from NRG’s evidence, but cannot in any event exceed \$4,650,000.
- (d) **The \$2.75 million GIC:** The requirement by NRG’s long-term lender that it post a “compensating balance” in the form of a \$2.75 million GIC, financed by additional borrowing, is yet another product of NRG’s equity capital deficiencies, and should not be financed by ratepayers with a rate of return either as debt or as equity.
- (e) **NRG’s Debt:** The level of NRG’s debt that should qualify for a rate of return is another rapidly moving target, which again cannot be identified with any confidence, or meaningfully related to the revenue requirements of NRG’s core utility business. The Town suggest it should simply be calculated as the adjusted rate base calculated under issue (b), above, less the “actual equity” calculated under issue (d), or \$7,265,189.
- (f) **Rate of Return on Debt:** The Town agrees with IGPC and Vulnerable Energy Consumers’ Coalition (“VECC”) that NRG’s rate of return on debt should be its actual, blended, cost of debt, without taking into account the costs associated with the \$2.75 million GIC. The Town adopts the approach proposed by VECC, which results in the rate of 6.39%.

12. These issues are reviewed in Sections A to F of these Written Submissions, below. The resulting restatement of an appropriate capital structure and rates of return for NRG are set out in Section G.

13. In the end result, the Town concludes that, while this Application does not provide a sound evidentiary basis for this Board to finally conclude what “just and reasonable” rates should actually be charged to NRG’s customers, it does very clearly establish that *no increases in the rates currently charged are supportable at this time*. The Town proposes that this Board first make that substantive determination, but that also it require NRG, before making any further Application to increase those rates, to implement specific remedial changes and undertake the studies required to put NRG in position to ensure that its next rate Application does not suffer from the current deficiencies.

A. BACKGROUND: PRIOR PROCEEDINGS, AND “BUSINESS RISK”

14. NRG asks this Board to award it a premium rate of return on its equity capital to reflect higher than usual “business risks” which it says affect its operations. However, the Town submits that the single biggest recent contributor to such risks has been NRG’s own conduct, as reviewed in recent proceedings before this Board set out below.

(i) EB-2006-0243, Compliance and Review Proceedings

15. The Town first became involved in proceedings before this Board that were adverse to NRG in 2007 and 2008, when successive actions and positions taken by NRG appeared to jeopardize the successful completion of a project (the “Project”) by the intervenor, IGPC, to construct a \$130 million ethanol plant (the “Plant”) and related facilities including a gas pipeline and ancillary facilities needed to supply natural gas to the Project.⁴ At that time, the Town had been an active supporter of the Project from its

⁴ See this Board’s oral decision dated June 29, 2007 (Transcript at page 81, and Addendum Transcript at page 22) in EB-2006-0243 (“Compliance Proceedings”), and its oral decision dated February 28, 2008 (Transcript page 138) and written Decision dated March 12, 2008 on issues addressed in written submission, also in EB-2006-0243 (“Review Proceedings”)

earliest planning stages, and had actively engaged NRG's support for it from the outset. The Town's overriding concern was, simply, to ensure that construction commenced, and was pursued to successful completion. An important and unique feature of the Project is that its owner is a co-operative made up of 840 farmers and rural community members, who have invested over \$48 million in this value-added agricultural processing venture.

16. The Town's approach at that time and since has been based upon its conviction that this Project, and its successful completion, are of overriding importance to the economic wellbeing of the region. The Town saw a risk of dire consequences for all concerned if it failed. As this Board noted, the Project has the potential to address the deterioration of the economic base of the Town and surrounding communities resulting from the recent loss of Imperial Tobacco, and to lead a significant upswing in economic activity in the area. The Town had incurred substantial costs, and worked substantial hours for over two years prior to 2007, in its efforts to make the Project a reality. The estimates, based upon studies of comparable, existing ethanol plants, showed that:

- (a) the Plant was expected to produce approximately 150 million litres of ethanol annually;
- (b) to do so it required about 15 million bushels of corn annually or about 38,000 bushels per day; typically, existing ethanol plants of this size will draw corn from suppliers located within a 80-100 kilometre radius, and it was expected that the owner-co-operative would maximize its use of locally-produced corn;
- (c) a plant of this size can be expected to increase local corn production profits by 5-10 cents per bushel;
- (d) the major co-product of ethanol production from corn is wet and dry distiller's grain, an excellent feed source for cattle, swine and poultry, which is rich in protein, and typically one of the most cost effective sources of protein for livestock producers;
- (e) the Plant was expected to produce approximately 330 tonnes of dry distillers grain per day, which would be available for local livestock users to include in their feed rations to supplement or replace other more expensive feed sources;

- (f) the construction of the Plant required substantial amounts of building materials and created approximately 150 jobs, many of which were sourced locally and regionally;
- (g) direct employment at the Plant is estimated to be about 35 full time employees;
- (h) in addition, the Plant requires ongoing maintenance services, including the repairing and replacing of electrical motors, pumps, conveyors and other plant components; plant operations involve moving thousands of tonnes of material in and out of the Plant annually, thus providing substantial business opportunities for local truck, rail and related service companies; altogether, it is estimated that the Plant could create in excess of 600 permanent jobs in all other sectors of the economy.⁵

17. The failure of this Project in 2007 or 2008 would have been a catastrophic lost economic growth opportunity, in a region already under extreme economic pressure, not to mention the significant and direct impact on the 840 members of the owner-co-operative. Such failure would also have significantly impaired the ability of the Town to market its 28-acre, municipally-owned industrial/business park, in which the Project and other significant local businesses and industries are located, or to attract other, much needed business investment to the region.⁶ In that light, NRG's outright refusal to sign Board-approved contract documents required to complete the facility resulting in the Compliance Proceedings, and its subsequent unjustified demands concerning the costs and required security for completion in the Review Proceedings, were both unexpected and potentially devastating.

(ii) The Union Application in 2008

18. The continuing disputes involving NRG and its stakeholders in and after 2008 have also had the potential to result in unease among existing business owners and investors in the region, and to negatively affect the ability of the Town to attract new and/or continued business investment and expansion.

⁵ See Exhibits A-1, A-2, A-3 and A-4, filed by the Town at the February 28, 2008 review of the Project status before this Board in EB-2006-0246

⁶ *Ibid*

19. The next such came in late 2008, when Union Gas Limited (“Union”) brought an urgent Application to this Board to discontinue service and the supply of gas to NRG (including the Project), on the grounds that NRG’s creditworthiness had become unsatisfactory, and that NRG had refused to provide appropriate financial assurances to Union. The Board agreed, but provided alternative relief to Union, short of permitting a discontinuation of gas supply.⁷

20. That relief included a requirement that NRG provide Union with a Postponement Agreement relating to the possible redemption of its Class “C” retractable shares by December 31, 2008, discussed below.

21. In the course of its Decision, among other things, the Board made findings that are directly relevant to the present rate application, specifically that:

- (a) Union’s concerns with the financial stability of NRG were “serious” and “well-founded” (pages 5 and 6);
- (b) “disclosure of the retractable shares as a liability significantly increases the financial risk associated with NRG” (page 4); and
- (c) “In the case of Union’s request for security, NRG did not act in a timely manner” but rather “essentially stone-walled Union” (page 7).⁸

22. The Board ordered costs to be paid by NRG’s shareholders, rather than by ratepayers.

(iii) Other Proceedings and their Impacts

23. In 2008-2009, NRG pursued further ill-advised proceedings, this time against the Town itself, for renewal of its Franchise with the Town for 15 years, substantially on the terms of this Board’s Model Franchise Agreement. In refusing that relief, and renewing the franchise for an interim 3-year period only, this Board agreed with the Town’s request both for additional terms to address concerns about NRG’s financial position and quality of service (including specific requirements to amend its security deposit policy

⁷ EB-2008-0273, Union Gas Limited and Natural Resource Gas Ltd., Decision and Order dated November 27, 2008

⁸ Ibid, at pp. 4-7

and to bring this rate Application), and to allow for the alignment of the renewal period for the Town's Franchise Agreement with those of neighbouring municipalities also served by NRG. Again, in its Decision and Order, after reviewing the prior proceedings summarized above, this Board made specific findings relevant to this Application, including:

- (a) NRG "has no long term financing", but rather "chooses to finance its operations by way of a demand note" (page 11);
- (b) "the Board agrees that there are serious concerns with respect to both" NRG's financial viability and quality of service (page 12); and
- (c) "the conduct of NRG ... failed to meet the standard expected of a public utility in this Province: (page 12).⁹

24. NRG has commenced, but often not pursued, appeals and motions to the Board for review of some of these decisions. However, they stand undisturbed to date, and the Town respectfully submits that the findings made by this Board remain significant to the disposition of the present case.

25. Together, they show a pattern of self-interested conduct by NRG, and of non-responsiveness by NRG to the concerns of ratepayers and other stakeholders, which have created, exacerbated, or highlighted a type of business risk that is not inherent in the utility business that NRG is privileged to operate, but rather is the result of the *manner* in which NRG, itself, chooses to carry on those operations.

(iv) Conclusions Respecting Business Risk

26. The Town submits that all of these proceedings have direct relevance to NRG's request for a 50 basis point "risk premium" on the rate of return it seeks on the equity portion of its capital structure, and to why this Board should disallow that request.

27. First, the evidence from these proceedings shows that the Project has had, and continues to have, an enormous beneficial impact on the economic wellbeing of the region served by NRG. The success of the Project, despite NRG's actions, has

⁹ EB-2008-0413, Decision and Order, May 5, 2009

demonstrated the enormous resourcefulness, resilience and determination of business leaders in the region. As a result, the clouds of economic downturn that arose following the closure of the Imperial Tobacco plant, and which still predominated in 2006 when this Board last reviewed NRG's rates,¹⁰ have significantly lifted. By every objective measure, and despite developments in the broader economy, "business risk" specifically in the region served by NRG is markedly reduced since that time.

28. Second, and as a direct result, NRG has acquired a significant new industrial gas customer, together with associated pipeline assets and revenues related to its gas supply needs. The impacts of that Project ought to be entirely positive for NRG, at least in terms of dealings with its lenders. Construction of the pipeline was financed, in part, by the leave to construct contribution ("LTC Contribution") provided by IGPC of more than \$3 million. Moreover, substantially the whole balance of the pipeline financing was and is secured by a letter of credit posted by IGPC in an amount exceeding \$5 million. Essentially, NRG has acquired this \$8 million dollar asset risk-free. Its utility business is, as a result, significantly stronger, more diverse, and less risky than in 2006.

29. Third, and most important, however, any negative images cast upon NRG or the conduct of its core utility operations in this period are entirely self-inflicted. They are a result of NRG's own, inexplicable conduct in successive proceedings before this Board reviewed above. Not only do NRG's business circumstances not warrant any "risk premium", its own conduct in relation to its core utility business has fallen very far short of *earning* any such premium, at least if that premium is to be provided at the expense of its gas ratepayers.

B. NRG's RATE BASE

30. NRG's submissions on cost of capital and rate of return are all premised upon an alleged need to finance a total rate base of some \$13.6 million.

¹⁰ See the Board's Decision with Reasons dated September 20, 2006 in EB-2005-0544 (the "2007 Rate Decision"), entered as Exhibit K3.1

31. However, in a series of questions by counsel for the Town, Ms. McShane and the other witnesses for NRG drew a distinction between (1) the total shareholders' equity of the company, as reported in its financial statements, which includes retained earnings from water heater rentals and other ancillary activities not included in the revenue requirement, and (2) the equity underpinning NRG's utility-related rate base. The Town submits, first, that this is a proper distinction, which acknowledges that a regulated rate of return *should* only properly be allowed on NRG's core utility business, and not on its ancillary businesses and services. On that basis, and on the Answer to Undertaking J3.1, the Town submits that NRG's \$13.6 million "rate base" figure must be reduced to exclude approximately \$1.7 million of assets which NRG now acknowledges are "ancillary related", and not part of its core utility business for rate-of-return purposes.

32. The Town acknowledges that this adjustment *may* require an offsetting adjustment to remove costs, income, and perhaps even an element of net income or profit earned on NRG's ancillary businesses, although it is not clear (certainly from NRG's evidence) that any such adjustment would be required, or that it would have a commensurate impact on NRG's revenue deficiency and on rates.

33. Further, the Town submits that the net amount of approximately \$11.9 million in rate base must be further reduced to reflect reductions already conceded, or which may be made, as a result of the Settlement Agreement, correction of errors and/or this Board's resolution of the remaining issues at the hearing.

34. These issues are considered in turn.

(i) The Rate Base Supporting NRG's Utility Business

35. Undertaking J3.1 was given because neither NRG's own witnesses, nor its expert Ms. McShane, could identify what NRG's "actual" equity for rate-making purposes was in 2006, or reconcile that amount to the shareholders' equity amounts shown in its Financial Statements. Nor could they explain how that amount had increased and was expected to increase through to the start of NRG's 2011 test year. That failure is significant, given this Board's direction in the 2007 Rate Decision that the *actual*

debt/equity ratio “should be used unless the ratio is considered to be unreasonable”. In its answer to Undertaking J3.1, delivered on September 24, 2010, NRG apparently provides its best and complete evidence in that regard.

36. In the course of that answer, NRG acknowledges that the “total rate base” of \$13.6 million projected for the end of its 2011 test year, is actually made up of two components:

- (a) about \$11.9 million, being its “actual” rate base for its “utility business”; and
- (b) about \$1.7 million, being the “non-utility” share related to its ancillary businesses.¹¹

The Town agrees with the position of NRG in this answer to Undertaking J3.1 that, absent evidence to the contrary, NRG should have the same capital structure attributed to its utility-related business and to its ancillary businesses, in the sense that the same ratio of debt to equity should be attributed to both these components.

37. However, the Town does not agree that NRG should receive a regulated rate of return from its gas customers on both aspects of its business, as it has claimed. The Town submits that the proper rate base, to which rates of return should attach for the rate-making purposes before the Board in this Application, is strictly the utility-related share, which NRG calculates at \$11.9 million, or more precisely \$11,916,389.¹²

38. The Town asks this Board to make that determination now, for the purposes of fixing NRG’s rates for 2011 and thereafter.

39. In addition, however, the Town is concerned that NRG has apparently been receiving a regulated rate of return on its ancillary businesses, at least since 2007 and perhaps earlier, which was and is not warranted. The Town asks this Board to consider

¹¹ See Answer to U/T J3.1, referring to Exhibit G3, Tab 1, Sched. 1.

¹² Calculated as 87.5% of \$13,618,731, referred to in Exhibit A2, Tab1, Schedule 1

whether that question can be reviewed, and if that is the case, whether an appropriate retroactive adjustment can be applied.¹³

(ii) The Possibility of Offsetting Profit on Ancillary Businesses

40. As noted, the current inclusion in rate base of \$1.7 million in assets related to ancillary businesses may be accompanied by some amounts of income and profit earned on the ancillary businesses, which acts as an offset to the resulting increase in rates paid by NRG's gas customers to provide a rate of return on these non-utility assets.

41. However, it is certainly not possible, at least on NRG's evidence, for this Board to be satisfied, either that there are such offsetting profits or, even if there are, that they are sufficient to compensate ratepayers for the cost of paying a rate of return on NRG's non-utility assets. NRG acknowledges in its Answer to Undertaking J3.1 that an attribution of costs, as between its utility and non-utility services "cannot be done". Most if not all other gas utilities in Ontario have elected to separate their ancillary services, and deliver them through a separate company. Moreover, in principle, to the extent that the profitability of such services depends upon earning a regulated rate of return on non-utility assets, the ratepayers are themselves paying dollar-for-dollar for the profits received, and hence get no benefit.

42. In any event, NRG's own evidence supports the concern that these ancillary businesses are *not* sufficiently profitable to justify the request that ratepayers pay a regulated rate of return on the assets related to them. The second half of the table attached to the Answer to Undertaking J3.1 purports to provide an analysis of "income after tax" and "loss" on NRG's ancillary businesses from 2006 to 2011. Implausibly, the numbers appear to show profits on these businesses (on assets of just \$1.7 million) broadly comparable to those on its utility business with assets of \$11.9 million. However, even if the numbers are accepted, after deduction of losses, they show an

¹³ In this regard, the Town notes that the ratio of 87.5/12.5% calculated for the 2011 test year, in the Answer to Undertaking J3.1, is after the addition of the IGPC pipeline to rate base in 2008. Presumably, the ratio would have been very different in 2007, prior to the completion and addition of that facility. Given the absence of information in the record to calculate the appropriate ratio in 2007, the Town will simply assume that the amount of \$1.7 million in 2011 has not increased since 2007. As such, the ratio equivalent in 2007 was approximately \$7,976,712/\$1,700,000 or 82.4/17.6%.

average net contribution to NRG's profits from the ancillary businesses of \$93,927 per year, at a time when ratepayers have been paying an 8.87 rate of return on the \$1.7 million in underlying assets, or about \$150,790 per year. This is unjustifiable.

43. The Town concludes, first, that these ancillary businesses obscure the financial situation of NRG's regulated utility business to an unacceptable degree, and second, that on the evidence it has not been of benefit to ratepayers to include them in NRG's rate base for ratemaking purposes. For both reasons, they should be ordered excluded.

(iii) Further Adjustments To Rate Base Arising From This Proceeding

44. Finally, the Town notes that further adjustments to the remaining \$11,916,389 figure for utility-related rate base are or may be appropriate, based upon other proceedings herein since Exhibit A2, Tab1, Schedule 1 was first filed. First, in its Answer to Undertaking J2.4, NRG has acknowledged that a downward adjustment of \$167,749¹⁴ must now be made relating to the capital cost of the IGPC pipeline and the amount closed to rate base, bringing the remaining total to \$11,755,773. Second, IGPC's position requesting a \$1.1 million reduction in the capital cost of its pipeline, if fully accepted by this Board, would result in a further reduction to NRG's total utility-related rate base of \$160,616¹⁵.

45. As a result, for purposes of the Town's submission, the figure for rate base of \$11,595,157, rather than \$13.6 million, will be used, recognising that still other adjustments may be required, depending upon the findings made by this Board.

C. WHAT IS NRG's "ACTUAL" EQUITY FOR THE 2011 TEST YEAR?

46. Surprising as it may seem, no single answer to this fundamental question, "what is NRG's actual equity for the 2011 test year," appears in the evidence filed by NRG. This is surprising, given this Board's finding in its 2007 Rate Decision, at page 25, that the

¹⁴ Calculated as \$5,073,000 reflected in Exhibit B1, Tab 1, Schedule 1 less the adjusted amount of \$4,905,251 from Answer to Undertaking J2.4

¹⁵ Calculated as \$4,905,251 less \$4,744,635, both as shown on Answer to Undertaking J2.4

“actual” equity and debt figures, and their ratio, “should be used” for rate-making purposes “unless the ratio is considered to be unreasonable”.

47. The Town takes the position, first, that given the retractable nature of the NRG’s Class C shares, the answer should be \$0. Given the evidence and findings about this issue in the Union Application under EB-2008-0413, the Board should follow the lead of the Public Accountants Council of Ontario, which acts as the arbiter of “generally accepted accounting principles” under the *Public Accounting Act, 2004* and treat these shares as debt, rather than as equity.¹⁶ In essence, the evidence heard and findings made in that proceeding confirmed the following.

- (a) First, what is stated in the third paragraph of the Auditors’ Report to NRG’s Audited Financial Statements from 2006 to date is accurate: that is, that “generally accepted accounting principles require” NRG to present and classify these retractable shares “as a liability on the balance sheet”, and not as equity at all.¹⁷
- (b) This disclosure caused NRG’s lender, and then Union, to seek a specific postponement of the shareholders’ rights to retract as further security for their loans because, as this Board found, “disclosure of the retractable shares as a liability significantly increases the financial risk associated with NRG”.¹⁸
- (c) The “postponement” agreements given by NRG to its lender, and also ordered by this Board to be given to Union, only operate “in favour of” the lender and Union, respectively. They simply *postpone* the rights of the shareholders pursuant to a retraction in relation to NRG’s obligations to the lender and to Union. They do not prevent the exercise of those rights as against other creditors, such as gas customers from whom NRG has required security deposits, or trade creditors.¹⁹
- (d) Thus, as Union successfully argued to this Board, the effect of NRG’s shareholders exercising this right is to make them creditors for the full \$13 million in share value, competing with customers and trade creditors *pro*

¹⁶ S.O. 2004, c.8, ss. 18 and 19(4)(h)

¹⁷ Exhibit A3 Tab 1 Schedules 1-4, at page 1 in each case: and see the evidence of Mr. Pallett, Transcript, October 20, 2008, at pages 79 (line 19) to 81 (line 18)

¹⁸ EB-2008-0273, Union Gas Limited and Natural Resource Gas Ltd., Decision and Order dated November 27, 2008, at page 4; evidence of Mr. Bristow, Transcript, October 20, 2008, at page 82, lines 17-26

¹⁹ Evidence of Mr. Pallett, Transcript, October 20, 2008, at pages 81 (line 19) to 83 (line 4)

rata for the increasingly “scarce” balance of NRG’s assets, after both the lender and now Union have been satisfied.²⁰

48. The Town respectfully submits that these effects of the retractable feature of the shares are contrary to the most basic rationale for a higher rate of return on true “equity”, which is to compensate real “shareholders” for the additional risk associated with ranking *behind* all creditors in an insolvency scenario, including those unsecured. Put another way, it is contrary to basic fairness to ask NRG’s customers to pay that higher rate of return, when NRG’s shareholders at best rank together with ratepayers (if not indeed ahead of them) in terms of their customer deposits and local trade debts with NRG.

49. The Town notes that NRG in effect recognized this unfairness, in the evidence of Mr. Cowan, who testified that NRG understands this concern and is in negotiations with its shareholders to remove the retractable feature from the shares.²¹ The Town submits that this Board should give impetus to those negotiations. The Board can do so by holding that, until the retraction feature is removed, NRG be limited to a rate of return on its Class C shares appropriate to debt. As seen below, this would give NRG a 6.39% return on their value, rather than a 9.85% return.

50. If the Board does elect to treat these retractable shares as equity, however, then the question of what NRG’s “actual” equity is becomes important. The following sections break down the answer to the question, “how much equity”, into three parts as follows:

- (i) What was NRG’s actual equity related to its regulated utility business in 2007?
- (ii) How, if at all, has NRG’s actual equity related to its regulated utility business increased from 2007 to the 2011 test year?
- (iii) What is NRG’s actual equity related to its regulated utility business therefore projected to be in 2011?

²⁰ Argument of Union, Transcript, October 20, 2008, at pages 97 (line 23) to 98 (line 20).

²¹ Evidence of Mr. Cowan, Transcript, September 10, 2010, at page 9, lines 3-21

(i) NRG's Actual Equity in 2007

51. The first way to answer the fundamental question posed would be to start with NRG's actual equity at the time of the 2007 Rate Decision.

52. The Town notes that the evidence in this Application provided different answers to this question. For example, Exhibit E1 Tab 1 Schedule 4 states that the actual equity in 2006 and 2007 was only 22%. This, however, this evidence seems inconsistent with the rest of NRG's evidence and the 2007 Rate Decision..

53. This Board's finding in the 2007 Rate Decision was that, as of September 2006 and the start of NRG's 2007 fiscal year, NRG's "actual" ratio of equity to debt was 41.5%/58.5%.²² While this Board also accepted that NRG's rate base in 2007 was expected to be \$9,653,286,²³ as noted above, based upon the Answer to Undertaking J3.1, it now appears that this figure may include at least \$1.7 million²⁴ related to NRG's ancillary businesses. As such, based upon Answer to Undertaking J3.1, it appears the appropriate rate base related to NRG's utility business in 2007 would actually be \$7,950,945, and the equity component, at 41.5% of the total amount, would be \$3,299,642.

54. A third approach, also based upon NRG's Answer to Undertaking J3.1, would be to take the actual total equity reported in NRG's Audited Financial Statements as at September 30, 2006, at \$4,371,280, and apply to it the adjusted ratio of 82.4% allocable to NRG's utility business.²⁵ The result of that calculation would be equity of \$3,601,935.

²² See the 2007 Rate Decision, at pp. 21, 25, and 28-29; NRG Audited Financial Statements, September 30, 2006, page 17, Note 9.

²³ See the 2007 Rate Decision, at pp. 7-9. That would imply "actual" equity of \$4,006,114 and debt of \$5,647,172

²⁴ This figure, (or more precisely \$1,702,341) is likely conservative, as it assumes that depreciation and additions to the rate base associated with NRG's ancillary businesses were more or less the same between 2007 and 2011

²⁵ See footnote 13, above.

55. The Town notes that these numbers coincide fairly closely with what NRG and its expert, in its 2007 rate submission to this Board, said NRG's "actual" equity for rate-making purposes would be. NRG's estimate was \$3,392,650.²⁶

56. Rounding these last three results, it appears NRG's "actual" equity attributable to its utility operations at the start of its 2007 fiscal year was, at most, approximately \$3.4 million.

(ii) How has NRG's Actual Equity Changed from 2007 to 2009?

57. NRG's financial statements confirm that, from 2007 through to its 2011 test year projection, the company's total equity has increased dramatically, from \$4,371,280 at the start of its 2007 rate year, to a projected \$5,949,813 at the end of its 2011 test year. This is an increase of almost \$1.6 million over just five years.²⁷

58. In that same period, from the analysis in Section C(i), above, NRG claims that its "actual" equity attributable to its utility operations should be recognized as having enjoyed a similarly dramatic rise, from approximately \$3.4 million at the start of 2007, to the amount claimed by NRG at a deemed 42% of its utility-related rate base, or \$4,689,966. This increase, at \$1,289,966 of the total increase of \$1.6 million, appears broadly consistent with the Answer to Undertaking J3.1.²⁸

59. It is important to note, however, that these increases arise despite NRG's confirmation that its shareholders made no injection of new equity since 2007, and that none is contemplated during the period through to 2014.²⁹

60. Accordingly, the only possible source of any "actual" increase in its equity after 2007 would be through retention of NRG's Board-approved 9.2% return on this "actual" equity of \$3.4 million in each of 2006-7, 2007-8, 2008-9, and 2009-10. That calculation

²⁶ See 2007 Rate Decision, at page 20

²⁷ NRG Audited Financial Statements, as at September 30, 2006 to 2009, and pro-forma 2010 bridge year and 2011 test year projections: Exhibit A3 Tab 1 Schedules 1-6, at page 2 in each case.

²⁸ Again, the Town notes the increase would be unaccountably higher if NRG is permitted to use the full rate base claimed, at \$13.6 million, to derive a 2011 test year equity of \$5,712 million, rather than limiting its claim to the utility-related portion of that, derived at footnote __, above.

²⁹ IR Response __; and Transcript, September 10, 2010, page 8, lines 19-27

results in an annual increase in equity of \$312,800 in each of the four years, increasing the “actual” equity attributable to NRG’s utility operations at the start of NRG’s 2011 test year to approximately \$4,650,000.

(iii) NRG’s Actual Equity Related to Utility Operations in 2011

61. Applying the historical analysis outlined in the previous Sections C(i) and C(ii) allows the Board to derive a projected “actual” equity attributable to NRG’s utility operations at the start of NRG’s 2011 test year of not more than \$4,650,000.

62. Yet, as noted, NRG is claiming a “deemed” 42% of the full \$13.6 million rate base, or \$5,719,867.³⁰

63. Another direct calculation of NRG’s “actual” utility-related equity, based solely upon NRG’s projected Corporate Financial Statements for the 2011 test year, found at Exhibit A3, Tab 1, Schedule 6, and the Answer to Undertaking J3.1, produces a third, and again different result. Those Financial Statement project total net shareholders’ equity at \$5,949,813 in the 2011 test year. Applying the ratio of 87.5% from the Answer to Undertaking J3.1 to that amount, results in an “actual” equity attributable to NRG’s utility operations at the start of NRG’s 2011 test year, of \$5,206,086.

64. The Town submits that it is obviously unsatisfactory that NRG’s financial statements and other evidence are capable of supporting such divergent results. The difference between these results is significant. In the circumstances, it means the Board cannot give any “benefit of the doubt” to NRG.

65. The Town submits that the first amount, \$4,651,200, is based upon a reasonable calculation, using NRG’s own evidence and this Board’s own prior findings. It results in a conservative conclusion, that NRG’s actual utility-related equity in the 2011 test year *cannot be more than this amount.*

³⁰ See Exhibit E8, Tab 1, Schedule 1

(iv) Conclusions on NRG's Equity

66. The Town submits that the amount of \$4,650,000 should be used by this Board as NRG's actual equity underpinning its utility operations as of the start of its 2011 test year, to set capital structure, rates of return, and rates for the period 2011 to 2014.

67. The higher amounts suggested, whether at \$5,719,867 or even \$5,206,086, can only be supported, on the evidence, by permitting NRG to retain and add to its equity revenues that are *not derived* from the Board-allowed returns on equity, or from new equity injected by its shareholders. The Town is concerned that any such amount would represent "retained earnings" from excessive rates charged in this period to NRG's gas ratepayers. To accept what NRG is seeking risks this Board giving its recognition and approval to that approach. The Town submits it is inappropriate in the circumstances for NRG to retain any ratepayer funds, and to add them to the equity attributable to its utility operations, above and beyond the Board-allowed return on its existing equity at the start of the period.

68. This cannot be permitted by this Board going forward, and if it has occurred in the past it should be corrected.

D. THE \$2.75 Million GIC

69. NRG asks this Board to approve certain expenses which it claims are required to post a \$2.75 million GIC in order to satisfy its lender on a \$5.2 million loan related to the financing of the IGPC pipeline. As noted below, the effect of these claims, if accepted, would be to significantly increase NRG's rate of return on its debt, and to increase rates charged to ratepayers. The Town objects on behalf of all ratepayers, on the following grounds.

- (i) This requirement stems from NRG's own financial insecurity, and in particular the decision of its shareholder to not make any new equity injection in connection with its acquisition of the IGPC pipeline assets in 2009;

- (ii) The terms of the GIC arrangement and its impact on ratepayers are unreasonable; and
- (iii) NRG has not shown that this arrangement is reasonably required by its lender, or that it is the optimal way to meet the lender's requirements.

(i) NRG's Financial Insecurity

70. In the period prior to 2006, NRG was precluded by the terms of its long term debt covenants with Imperial Life from issuing dividends to shareholders. This restriction is recent evidence, from a sophisticated market lender, that NRG's shareholders equity to and including 2006 was deficient, and unable to support the levels debt that NRG was then carrying.

71. During its 2006 fiscal year, NRG entered into new long term debt arrangements with BNS, which among other things paid off the Imperial Life Loan. As a result, NRG immediately used the loan proceeds to pay to its Class A shareholder a whopping \$2,038,581 reduction of its stated capital. While this Board reviewed that transaction, and implicitly approved it in the 2007 Rate Decision, its effect clearly was once again to reduce NRG's equity to very low levels.

72. As noted, NRG has been rebuilding its equity since 2006. However, the \$1.6 million increase in the shareholders' equity stated in NRG's financial statements since that time does not fully restore NRG to its pre-2006 position. Moreover, as this Board noted in the Union Application, disclosure of the retractable nature of NRG's shares as a liability after 2006 "significantly increases the financial risk associated with NRG".³¹

73. In addition, NRG's total debt has also been increasing. In order to finance the balance of the pipeline capital costs not covered by IGPC's LTC Contribution in 2009, NRG entered into a variable rate loan of \$5.2 million dollars, repayable over 12 years³² in blended interest and principal instalments of \$520,000 annually. The rate on this loan is

³¹ EB-2008-0273, Union Gas Limited and Natural Resource Gas Ltd., Decision and Order dated November 27, 2008, at page 4

³² This term is much shorter than the 20-year life of the pipeline asset, which was agreed to by NRG in the Settlement Agreement: an issue addressed in the following Section E of these Submissions.

prime plus $\frac{1}{4}\%$, which Ms. McShane currently projects to be around 4.1% in the 2011 test year.³³

74. The need for the GIC is said to arise from this transaction which, as noted,³⁴ ought actually to be an entirely positive benefit to NRG's business and its risk profile. However, this is loan of just \$5.2 million against an \$8 million new asset. NRG holds collateral security for the full amount of the loan in the form of the letter of credit posted by IGPC. Yet NRG claims it has still been obliged to agree to maintain the three ratios, best described in Ms. McShane's opinion,³⁵ which provide NRG's rationale for the GIC.

75. The Town submits, simply, this history demonstrates that any need for the GIC put forward by NRG has nothing whatever to do with the regulated asset NRG has acquired, or to do with the interests of ratepayers: rather, it is entirely the result of NRG's own history of financial insecurity. The need for this measure would not have arisen but for the decision of NRG's shareholder to withdraw some \$2 million from its equity base in 2006, and it could be avoided by an appropriate equity injection at this time.

76. The Town submits there is absolutely no reason why ratepayers should be required to contribute to the financing of this arrangement.

(ii) The Impact on Ratepayers is Unreasonable

77. The Town further submits that the terms of this arrangement, and its impact on ratepayers, are unreasonable. The requirement to post additional security arises from a loan of just \$5.2 million, yet the additional cash security proposed is more than half that amount, at \$2.75 million, which is added to the total amount of the loan.

78. Ratepayers are being asked to underwrite the interest cost of that additional loan amount, not just by paying 4.1% of \$2.75 million, or \$112,750 per year (which would be bad enough), but rather by applying an increased "deemed" debt rate of 8.26% to all of

³³ Exhibit E2, Tab 1, Schedule 1, page 6-7

³⁴ See Section A of these Submissions, especially at paras. 15-17 and 26-28, above

³⁵ Exhibit E2, Tab 1, Schedule 1, page 4, lines 106-111

NRG's "deemed" debt of \$7,898,864.³⁶ In return, ratepayers will earn less than 1% interest on the GIC balance "loaned back" to NRG's lender.³⁷

79. While it is easy to see the attraction of this arrangement to the lender, no rational person would enter into such arrangements as the borrower. NRG has simply not shown that long term financing is not available from another lender on more reasonable terms.

(iii) NRG has not Shown the Arrangement it Proposes is Required

80. Finally, it is not at all clear that the three "ratios" imposed by NRG's lender actually require these arrangements. The evidence shows, certainly, that there is no contractual requirement for NRG to post any GIC, let alone this amount, and that it is simply "an understanding" between NRG and its lender.³⁸

81. The evidence also shows that NRG is deficient on only one of the three ratios, that is the "current asset ratio", and that only "a *portion* of the GIC is required to maintain that ratio".³⁹ This indicates that the requirement is simply a result of NRG's failure to match the long-term nature of the underlying pipeline asset, to a long-term debt arrangement. The Town questions the appropriateness of a "current asset ratio" to NRG's utility business, which depends primarily on fixed assets such as this pipeline.

82. The Town submits it is neither just, nor reasonable, in these circumstances, to ask that ratepayers to contribute to the costs of this arrangement in any respect.

E. NRG's LEVEL OF DEBT

83. At the same time as it has been building equity, at least since 2008, NRG has also been restructuring and paying off its debt at a rapid rate. There are several components to this picture, as follows.

³⁶ See Exhibit E1 Tab1 Schedule 2, at page 2 line 19ff and Exhibit E8, Tab 1, Schedule 2.

³⁷ See Transcript, September 10, 2010, pages 33-34 and 35-36

³⁸ Transcript, September 10, 2010, pages 47 (line 16) to 50 (line 7)

³⁹ Transcript, September 10, 2010, at pages 50 (lines 11-21) and 53 (lines 5-17)

- (a) First, since the Town began raising concerns about the level of NRG's customer deposits, which reached a "high" of \$757,065 during September 30, 2008-2009 fiscal year, the level has been falling rapidly and is projected to reach just \$250,000 in the 2011 test year.⁴⁰ This is a half-million dollar reduction in working capital, in just 3 years.
- (b) Second, during its year-ending September 30, 2009, NRG repaid two related-company loans, the first involving a \$492,505 loan to a related company, and the second a \$795,264 loan from a related company with "no set repayment terms".⁴¹ This is a further \$300,000 net loan repayment in the same time frame.
- (c) Third, since the construction and financing of the IGPC pipeline in 2008, NRG reports that "principal repayments have reduced the company's total long-term debt" by approximately \$1.2 million.

84. In total, this represents at least \$2 million in debt principal repayment over 3 years, or \$670,000 per year, all financed, apparently without difficulty, out of NRG's existing rate revenues. This is also more evidence that NRG's current rates result in a revenue surplus, rather than any deficiency.

85. As a result of these repayments, although NRG refinanced its long-term debt in 2006 in the principal amount of \$6,454,484,⁴² and took on an additional loan, now stated to be \$4,723,333 as of September 30, 2009 relating to the IGPC pipeline,⁴³ it projects having "long term debt", including the \$2.75 million GIC, of just \$9,583,165, and very little other debt by the end of its 2011 test year

86. The Town is concerned about the short term nature of both loans in this category. The first general loan, as this Board has previously found, is essentially financed "by way of a demand note".⁴⁴ With respect to the second loan taken out specifically for the IGPC pipeline, NRG has elected to repay it over 12 years, which does not correspond to the true

⁴⁰ Transcript, September 10, 2010, at page 38 lines 1-17

⁴¹ See Exhibit A3, Tab 1, Schedule 1, page 3, balance Sheet, and Note 6, page 14

⁴² At 7.52%, requiring blended monthly payments of \$48,201: see Exhibit A3, Tab 1, Schedule 5, page 14 (Note 6)

⁴³ At prime plus 0.25%, requiring monthly payments of \$43,333 plus interest: See Exhibit A3, Tab 1, Schedule 1, at page 16 (Note 8)

⁴⁴ EB-2008-0413, Decision and Order, May 5, 2009, at page 11

life of the underlying asset, which has been agreed at 20 years.⁴⁵ There is nothing in NRG's Application or the evidence supporting it which either explains or justifies the recent, and projected, rapid program of debt repayment that NRG has undertaken, or why a rate increase is now required to continue to finance it.

87. The Town sees no justification for ratepayers being asked to continue to pay off NRG's debt at the rapid rates proposed.

88. As a result of the recent rapid changes to NRG's level of debt, and the terms discussed above, the Town believes it is not possible to derive an appropriate level of debt for NRG's utility business from its financial statements. Accordingly, the Town proposes that this Board simply use a "deemed" debt amount, which it arrives at by the total utility rates base it proposes, of \$11,595,157, and deducting from it the actual equity of \$4,650,000 derived above, for a net debt of \$6,945,157.⁴⁶

89. The Town notes that this results in a debt amount that is approximately 87.5% of the "deemed" debt claimed by NRG. It also results in an actual debt/equity ratio of approximately 60/40, which is in the range claimed by NRG on a "deemed" basis.

F. RATE OF RETURN ON DEBT

90. Like the intervenors, VECC and IGPC, the Town submits that NRG's rate of return on debt should be its actual, blended, cost of debt, without taking into account the costs associated with the \$2.75 million GIC. The Town adopts the analysis of VECC supporting the rate of 6.39% in that regard.

⁴⁵ See the Settlement Agreement

⁴⁶ See Sections B and C of these Submissions

G. RESTATED CAPITAL STRUCTURE AND RATES OF RETURN

91. The Town respectfully submits that all these adjustments to NRG's application may be summarized in the following chart:

<u>Summary Position on the Cost of Capital</u>				
<i>Test 2011</i>				
	PRINCIPAL	% OF TOTAL	RATE	COST
<i>Long-Term Debt</i>	\$6,945,157	60.00%	6.39%	\$443,795
<i>Short-Term Debt</i>				
<i>Unfunded Debt</i>	0	0.00%	0.00%	
<i>Total Debt</i>	\$6,945,157	60.00%	6.39%	\$443,795
<i>Common Equity</i>	\$4,650,000	40.00%	9.85%	\$458,025
<i>Total</i>	\$11,595,157	100.00%	7.77%	\$901,830

92. It should be noted that these numbers assume the Class C shares are treated as equity, and assume their maximum value, before any retroactive deductions are made. They are therefore conservative, in NRG's favour, and subject to further reduction if the Board accepts the Town's submissions on these points in full.

93. These figures and the analysis on which they are based can then be used to adjust the claimed revenue deficiency attributable to changes in rate base and rates of return in NRG submission, which are shown at Exhibit A2, Tab 1, Schedule 2. Essentially, as noted, in that Exhibit, NRG attributes fully \$386,800⁴⁷ of the total claimed revenue deficiency of \$462,417 to changes proposed in its capital structure and rates of return. These changes obviously have a direct and significant impact on the rate increases for which NRG seeks approval.

⁴⁷ \$349,657 plus \$37,223

94. However, the numbers derived by the Town in these Submissions reduce both the increase in rate base, and the increases in rate of return. They result in reductions to the claimed revenue deficiency of \$386,800 in Exhibit A2, Tab 1, Schedule 2, as follows:

	<u>NRG</u>	<u>Adjusted</u>	<u>Change in Deficiency</u>
Increase in Rate Base	\$3,942,019	\$1,918,445	
2007 Approved Return	8.87%	8.87%	
Change in rate of return	0.27%	-1.10% ⁴⁸	
2011 Test Year Rate Base	\$13,618,731	\$11,595,157	
Revenue Deficiency	-386,880	-42,619	+344,261

95. The net result of these changes is therefore a \$344,261 *reduction* in the total revenue deficiency claimed by NRG, related to changes to its proposed capital structure and rates of return. Since the claimed revenue deficiency was reduced to \$229,038 as a result of the partial Settlement Conference, the net result of these additional changes is a small revenue surplus of \$115,223.

96. The Town submits, at a minimum, these proposed adjustments to NRG's submission support a determination by this Board to allow *no increase* in the rates charged by NRG to its customers at this time. A rate for the new Rate Class 6 resulting from the IGPC Project and pipeline development can and should be created at this time, but the Town submits that rate can and should simply reflect the rates currently being paid by IGPC for gas supply.

97. However, the Town asks this Board not only to make that determination, and to allow NRG no increase in the rates charged to its gas customers at this time. In addition, the Town asks that, before NRG is permitted to return to this Board and request a rate increase, it should be required:

⁴⁸ This adjusts the 2007 Approved Return of 8.87% to a blended rate with a 9.85% return on 40%, plus a 6.69% return on 60% of the adjusted rate base.

- (a) To obtain a refund of overpayments for past gas commodity purchases, and to establish a Purchased Gas Commodity Variance Account as of October 1, 2010 to avoid such overpayments in future;
- (b) To establish and charge to NRG Corp a transportation rate for gas commodity deliveries made to other utilities using its distribution system;
- (c) To conduct a comprehensive cost allocation study, and to propose a revised comprehensive cost allocation methodology for approval by this Board;
- (d) To completely segregate the assets, revenues and costs associated with all of its non-regulated ancillary businesses from those associated with its core, regulated gas distribution utility business, and to present its applications for future gas distribution rate increases to this Board on the basis of the assets, revenues and costs associated with its core, regulated gas distribution utility business, only; and
- (e) To provide this Board with a historical analysis, quantifying the extent to which NRG has been receiving a regulated rate of return on its ancillary businesses, over and above any offsetting contribution from those businesses to reduce the rates otherwise charged to gas ratepayers, in order to allow the Board to consider whether an appropriate retroactive adjustment should be applied.

98. The Town submits that this approach, although complex and potentially onerous for NRG, is ultimately necessary, not only to avoid the appearance of this Board simply settling on an apparently acceptable compromise despite the deficiencies and evidentiary gaps in this Application, but also to avoid the prospect of the same deficiencies and compromises occurring in the next and future NRG rate Applications. The Town submits that, at some point, this Board simply has to be satisfied that the decisions it makes on these Applications *not only do result, but also are seen by stakeholders to result*, in just and reasonable rates being charged to NRG's gas customers.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

October 6, 2010

A handwritten signature in black ink, appearing to read 'M. Philip Tunley', written over a horizontal line.

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

M. Philip Tunley
Brennagh Smith

Tel: 416-593-7200
Fax: 416-593-9345

Solicitors for the Town of Aylmer