



EB-2010-0374

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

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

AND IN THE MATTER OF a hearing on the Board's own motion to review an order made by the Board on June 29, 2007.

NOTICE OF MOTION TO REVIEW AND PROCEDURAL ORDER NO. 1

Background

On February 2, 2007, the Board approved a leave to construct application (EB-2006-0243) filed by Natural Resource Gas ("NRG"). The application related to a natural gas pipeline to serve an ethanol facility operated by the Integrated Grain Processors Co-operative ("IGPC").

On June 28, 2007, IGPC filed a notice of motion with the Board. The notice of motion sought emergency relief from the Board on the grounds that NRG had refused to execute two contracts that were required to proceed with the pipeline: an assignment agreement and a bundled T-service agreement. IGPC indicated that if the contracts were not executed the financing for the ethanol facility would fall apart and the facility itself was at risk of not being completed.

The Board issued an Emergency Notice of Hearing for June 29, 2007, to hear the motion orally. The outcome of that hearing was an oral order of the Board directing

NRG to execute the two contracts by 4 p.m. that day. NRG did not execute the contracts by 4 p.m.

At the request of IGPC, the Board reconvened after 4 p.m. and determined, on its own motion, that NRG had breached an enforceable provision of the *Ontario Energy Board Act, 1998* (the "Act") by failing to execute the contracts as ordered. The Board ultimately ordered NRG to pay an administrative penalty of \$20,000 per day until the contracts were executed. The contracts were executed on July 6, 2007, and the total administrative penalty was \$140,000.

NRG appealed both the Board's order that it execute the contracts, and the order imposing the administrative penalty, to the Divisional Court. To date the administrative penalty has not been paid, nor has the Board pursued NRG for payment.

Motion to Review

Pursuant to section 19(4) of the Act and Rules 42-45 of the Board's *Rules of Practice and Procedure*, the Board has determined that it will review on its own motion the order imposing the administrative penalty. The Board wishes to review the order to assess the adequacy of the procedural steps taken by the Board, and to assess the extent to which the requirements of Part VII.1 of the Act were followed.

The Board does not intend to review its underlying jurisdiction to order NRG to execute the two contracts.

The Board invites parties to make submissions on the following question:

1. Did the Board follow the procedural requirements of Part VII.1 of the Act in ordering NRG to pay an administrative penalty? If the answer to this question is "no", what steps, if any, should the Board take to correct this error.

THE BOARD THEREFORE ORDERS THAT:

1. Parties to the original proceeding and Board staff wishing to make submissions on the question set out above shall file written argument with the Board by **December 22, 2010**. If necessary, the Board may hold an oral hearing, at a date to be set later, to hear argument from the parties.

All filings to the Board must quote the file number, **EB-2010-0374**, be made through the Board's web portal at www.errr.oeb.gov.on.ca, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Please use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.oeb.gov.on.ca. If the web portal is not available you may email your document to the address below. Those who do not have internet access are required to submit all filings on a CD or diskette in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

ADDRESS

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4
Attention: Board Secretary

E-mail: Boardsec@oeb.gov.on.ca
Tel: 1-888-632-6273 (toll free)
Fax: 416-440-7656

DATED at Toronto, December 7, 2010

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

**Ontario Energy Board
EB-2010-0374**

APPLICANT & LIST OF INTERVENORS

December 7, 2010

APPLICANT

Rep. and Address for Service

Ontario Energy Board

Ontario Energy Board

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto ON M4P 1E4

Tel: 416-481-1967
Fax: 416-440-7656
boardsec@oeb.gov.on.ca

INTERVENORS

Rep. and Address for Service

County of Middlesex

Chris Traini

County Engineer
County of Middlesex
399 Ridout Street North
London ON N6A 2P1

Tel: 519-434-7321
Fax: 519-434-0638
ctraini@county.middlesex.on.ca

John Judson

Counsel
Lerners LLP
80 Dufferin Avenue
London ON N6A 4G4
Tel: 519-672-4510
Fax: 519-672-2044
jjudson@lerners.ca

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APPLICANT & LIST OF INTERVENORS

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December 7, 2010

**Integrated Grain Processors
Co-operative Inc.**

George Alkalay

Northfield Venture Ltd.
c/o Northfield Venture Ltd.
King City ON L7B 1K5
Tel: 905-841-6112
Fax: 905-841-1590
galkalay@interlog.com

Scott Stoll

Counsel
Aird & Berlis LLP
181 Bay Street
Suite 1800, Box 754
Brookfield Place
Toronto ON M5J 2T9
Tel: 416-865-4703
Fax: 416-863-1515
ssoll@airdberlis.com

Municipality of Thames Centre Roy Hardy

Municipality of Thames Centre
4305 Hamilton Road
Dorchester ON NOL 1G3
Tel: 519-268-7334 Ext: 223
Fax: 519-268-3928
rhardy@thamescentre.on.ca

David Broad

Counsel
Siskinds LLP
680 Waterloo St.
P.O. Box 2520
London ON N6A 3V8
Tel: 519-660-7796
Fax: 519-660-7797
david.broad@siskinds.com

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Natural Resource Gas Limited Jack Howley

General Manager
Natural Resource Gas Limited
39 Beech Street
Aylmer ON N5H 2S1
Tel: 519-773-5321
Fax: 519-773-5335
howley@nrgas.on.ca

Lawrence Thacker

Counsel
Lenczner Slaght Royce Smith Griffin LLP
130 Adelaide St. W.
Suite 2600
Toronto ON M5H 3P5
Tel: 416-865-3097
Fax: Not Provided
lthacker@litigate.com

Town of Aylmer

Heather Adams

Chief Administrative Officer
Corporation of the Town of Aylmer
46 Talbot Street West
Aylmer ON N5H 1J7
Tel: 519-773-4901
Fax: 519-765-1446
hadams@town.aylmer.on.ca

Union Gas Limited

Patrick McMahon

Manager, Regulatory Research and Records
Union Gas Limited
50 Keil Drive North
Chatham ON N7M 5M1
Tel: 519-436-5325
Fax: 519-436-4641
pmcmahon@uniongas.com