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BY COURIER, EMAIL AND RESS

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
27th Floor, Box 2319
Toronto, ON M4P 1E4

Dear Ms. Walli:

Re: Natural Resource Gas Ltd. ("NRG")

We are counsel to Integrated Grain Processors Co-operative Inc. and IGPC Ethanol Inc. (collectively "IGPC"). We are writing in response to the letters received from Mr. King and Mr. Thacker regarding various unresolved items between NRG and IGPC being the motion regarding the Actual Capital Cost of the IGPC Pipeline and the proposed IRM model. In addition, certain other comments have been made that IGPC cannot leave on the record without challenge.

IR Plan and Other Unresolved Rate Issues

IGPC outlined its concerns and position regarding the proposed IR Plan in a letter to the Board dated May 16, 2011. Included in these concerns were the changes in NRG's proposal from the original application, the lack of any incentive to improve performance, the lack of evidence regarding cost increases and the lack of recognition of the unique circumstances of the present situation. For example, the rate base applicable to Rate 6, IGPC, is decreasing by approximately \$239,000 annually and there is no plan to spend any capital for this rate classification. The proposed IR plan does not take this into consideration.

Further there continue to be a number of issues beyond the IR Plan that are not yet resolved which require additional evidence, and possibly the opportunity to file responding evidence. IGPC has maintained that intervenors should be provided the proper opportunity to participate in Phase II of the proceeding.

Actual Capital Cost of the IGPC Pipeline - Motion

IGPC does agree with NRG's current position that the Board has the jurisdiction to resolve this contractual dispute. This is implicit in the position being advanced by Mr. Thacker on behalf of NRG. This seems contrary to the position that was being advanced by NRG during the hearing. As the Board is aware, IGPC has maintained the Board has jurisdiction to resolve this dispute. While it appears that IGPC and NRG have acknowledged the jurisdiction of the Board, IGPC is unable to agree with the points of Mr. Thacker regarding the resolution of the dispute.

First, the Board in setting rates is not bound by the terms of any contract as per section 36(1) of the *Ontario Energy Board Act, 1998*. Mr. Somerville, the Chair of the Panel in EB-2010-0018 expressly acknowledge this during the hearing (Transcript, September 7, 2010, page 97, lines 25-28). The panel indicated that the amount to be included in rate base was a function of the revenue stream and not reliant upon the determination of the Actual Capital Cost of the IGPC Pipeline. As such, the Board did not determine the Actual Capital Cost of the Pipeline during the rates proceeding and the primary issue in the motion remains outstanding.

Second, in deferring the motion, the Board and the parties agreed that the contractual matters did not necessarily have to be determined by the Board for the setting of rates. During the hearing, the Board panel indicated that the consideration of expenditures beyond the amount to be included in rate base was not required for the setting of rates. It was on this basis that the motion was deferred.

Third, IGPC did continue to expressly reserve its rights. During the preparation of the draft rate order, NRG made multiple submissions regarding the amount to be included in rate base. In a letter to the Board dated January 24, 2011, IGPC indicated that IGPC continued to dispute the Actual Capital Cost of the IGPC Pipeline and expressly reserved its rights to challenge such but that IGPC was willing to accept the amount of \$4,872,182 as being closed to rate base for the purpose of setting rates.

Fourth, during the rate proceeding NRG filed, finally, certain documents to substantiate its costs such as the price of the land purchased from Union Gas Ltd. for the check metering station that was not built but replaced with a valve site. IGPC agreed, once the supporting documentation was provided by NRG, that the \$12,105 cost was appropriate for including in the Actual Capital Cost of the IGPC Pipeline. NRG conceded certain costs were not appropriate to be included in the cost of the IGPC Pipeline and agreed to reduce or eliminate such costs such as interest charges on Mr. Bristoll's wages and on other invoices.

NRG had maintained that it was entitled to include the \$140,000 administrative penalty in the Actual Capital Cost of the IGPC Pipeline. IGPC strongly disagreed that such a cost was appropriate. Following the rates case, the Board conducted a review of the administrative penalty and determined that for procedural reasons, NRG would not be

required to pay the penalty. As such, IGPC reiterates that this cost should be removed from the Actual Capital Cost of the IGPC Pipeline.

At the time of the preparation of the motion in August of 2010, IGPC had taken the position that NRG had only substantiated an Actual Capital Cost of the Pipeline of \$7,449,534. As a result of new information provided, during its submissions in October 2010, IGPC submitted the Actual Capital Cost of the IGPC Pipeline was \$7,526,353. The primary differences regarding the Actual Capital Cost of the IGPC Pipeline continue to be in respect of: (i) the administrative penalty; (ii) NRG's claimed legal costs; (iii) the costs claimed in respect of Mr. Bristoll; and (iv) interest and other costs.

As a result, IGPC would submit that the relief requested in the motion has not changed as a result of the rate proceeding. However, it is IGPC's position that the magnitudes of the items of disagreement have been reduced. This assumes NRG does not retreat from concessions made during the rate proceeding.

General Comments

NRG has attempted to brand IGPC as aggressive and litigious with the result being additional costs being forced upon the remaining ratepayers of NRG. A review of the record demonstrates it has been NRG, not IGPC that has been unreasonable and uncooperative throughout the past 5 years.

With respect to ratepayers bearing the burden of legal costs, IGPC would note that any costs associated with the IGPC Pipeline have not been charged to other customers. Proper and reasonable legal costs should be incorporated into the Actual Capital Cost of the IGPC Pipeline and improper or unreasonable costs should be to the account of NRG's shareholder. Second, IGPC pays its reasonable share of regulatory costs which have been allocated across the various rate classes as proposed by NRG.

Within the context of the rate proceeding, many of the complaints of Mr. King are the result of NRG's evidence, or lack thereof, and the choices made by NRG in preparing its rate case, including the following:

- ❖ **Three Year Depreciation** - NRG chose to have a consultant develop rates based upon a 3 year depreciation period coincident with the duration of one of its franchise agreements. Yet, the costs of preparing such evidence were included in costs NRG sought to recover from ratepayers, including IGPC.
- ❖ **Insurance** - NRG chose to file for a 50% increase in insurance costs yet provided no report and no insurance policy despite repeated requests from every intervenor. NRG could not confirm what the policy covered or who would receive the benefit of the protection. The allocation of the costs of insurance changed on several occasions. Mr. Cowan, the witness for NRG, admitted that he was not satisfied with its evidence in

this regarding in the rate proceeding. In the end, the Board denied NRG the ability to recover certain of the additional costs.

- ❖ **ROE Premium** - NRG chose to retain Ms. McShane to once again provide evidence to support NRG's request for a premium on its return on equity. Again, this request for a premium was rejected by the Board.
- ❖ **Allocation Correction** – IGPC corrected a formula for allocating certain costs based upon gas consumption.
- ❖ **Late Filing & Re-Filing** – When it became clear NRG was not going to be able to file the rate application within the time specified by the Board, IGPC agreed to NRG's request for a delay to avoid unnecessary additional costs. Shortly after filing the application, NRG re-filed the application with a number of changes. Further, NRG had to submit several versions of its draft rate order which added to its regulatory costs.

The list is not intended to be exhaustive but to highlight that IGPC had to participate in order to ensure the rates sought were just and reasonable. The validity of IGPC's participation can be seen in the results of the Decision and Order in EB-2010-0018. The annual revenue requirement from IGPC went from \$1,713,908 in the original application to \$1,484,500 as a result of the Decision and Order. This represents an annual difference of over \$229,408. IGPC would note that it had to pay 100% of its costs to participate in this proceeding.

The record also bears out that IGPC has, outside of the rate proceeding, been put to extraordinary lengths by NRG including the following:

- ❖ **Refusal to Comply** – NRG had indicated that IGPC was required to enter into a Bundled T Receipt Agreement ("**Bundled T**"). The requirement for a Bundled T is a condition of NRG's rate order. However, despite being negotiated and recommended for execution by experienced legal counsel, Mr. Pat Moran, NRG refused to execute the agreement and refused to provide any reason for its actions. NRG, also without explanation and despite contractual obligations, refused to execute consent to assignment agreement. This resulted in the Board ordering NRG to execute the agreements. While the Board subsequently removed the administrative penalty, the basis was procedural, and not a vindication NRG's obstructionist conduct.
- ❖ **Demand for \$32million** – IGPC was required to bring a motion to the Board to deal with NRG's demand for \$32million in financial assurance in respect of the IGPC Pipeline. Ultimately, the Board concluded the demand was without merit.
- ❖ **Claim for \$20million** – NRG commenced an action against IGPC for over \$20million related to a press release regarding the demand for \$32million. IGPC, through its insurers, has been put to significant expense to defend this action.

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Further, NRG's improper conduct has not been limited to IGPC. NRG stonewalled Union Gas in respect of discussions regarding security for certain credit exposure. Other ratepayers were circulating petitions and requested police investigate the actions of NRG's collecting and handling security deposits. This was an issue pursued by the Town of Aylmer during the rates proceeding. These issues were not the making of IGPC but of NRG and demonstrate a pattern of conduct on the part of NRG to be confrontational.

Yours truly,

AIRD & BERLIS LLP



Scott A. Stoll

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