

February 22, 2012

Sent By E-mail

Kirsten Walli
Board Secretary
Ontario Energy Board
Suite 2700
2300 Yonge Street
Toronto, ON M4P 1E4



Barristers & Solicitors / Patent & Trade-mark Agents

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On January 1, 2012, Macleod Dixon joined
Norton Rose OR to create Norton Rose Canada.

Your reference

Direct line
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Our reference

Email
richard.king@nortonrose.com

Dear Ms. Walli:

**Natural Resource Gas Limited ("NRG")
Franchise Renewal with Town of Aylmer**

We are counsel to NRG. Please find enclosed an application (with pre-filed evidence) in respect of NRG's franchise arrangement with the Town of Aylmer (extended by Board decision to February 27, 2012). The application includes a request for an interim extension of NRG's franchise with the Town of Aylmer.

Yours very truly,

"Signed"

Richard King

RK/mnm

Enclosures

Cop(y/ies) to: B. Cowan and L. O'Meara (NRG)
J. Reynaert (Town Administrator)
P. Tunley (Counsel to Town)
C. Kilby (Norton Rose)

DOCSTOR: 2364988\1

1 4. NRG complied with the orders made in the Franchise Decision and received a favourable
2 outcome in a regulatory audit performed by the Board. The March 29, 2011 report on this
3 regulatory audit has been provided to the Town.

4 5. NRG has approached the Town to negotiate the renewal of the Existing Franchise Agreement
5 using a 20-year franchise agreement based on the Model Franchise Agreement established by
6 the Board (the "NRG Preferred Agreement"). Negotiations between the Town and NRG are
7 continuing.

8 6. NRG hereby applies to the Board for an Order or Orders made pursuant to Section 10 of the
9 *Municipal Franchises Act* (Ontario) ("MFA"):

10 (a) renewing the term of the right to operate works for the distribution of gas for a period of
11 20 years, upon such terms and conditions as set out in the NRG Preferred Agreement,
12 which is based upon the Model Franchise Agreement developed by the Board and
13 modified to include one of the conditions being sought by the Town (section 10(2) MFA);

14 (b) interim relief continuing the right to operate works for the distribution of gas in accordance
15 with the Existing Franchise Agreement until the earlier of: (i) an Order being made under
16 section 10(2) of the MFA in respect of this application (section 10(4) MFA); or (ii) an
17 agreement being reached between the Town and NRG on a new franchise arrangement;
18 and,

19 (c) such further and other relief as the Board may deem necessary or appropriate.

20 7. This Application affects the inhabitants of the Town of Aylmer, and natural gas distribution
21 customers of NRG outside the Town of Aylmer, who are too numerous to list.

8. NRG may file amended or updated evidence in support of this Application.

All of which is respectfully submitted this 22nd day of February, 2012.

NATURAL RESOURCE GAS LIMITED

By its Counsel,


Richard King


Christine Kilby

Norton Rose Canada LLP
Royal Bank Plaza, South Tower
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Toronto, ON M5J 2Z4

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TO: Jennifer Reynaert
Administrator
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Mr. Phil Tunley
Stockwoods LLP
Counsel to the Town of Aylmer
Suite 2512, The Sun Life Tower
150 King Street West
Toronto, Ontario M5H 1J9
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Fax: (416) 593-9345

PRE-FILED EVIDENCE

Negotiations for Renewed Franchise

1. Negotiations for the renewal of the Existing Franchise Agreement have been ongoing for the past several months.
2. In a letter from the Town's counsel to counsel for NRG dated August 18, 2011, the Town set out four conditions for the renewal of the Existing Franchise Agreement, including the alignment of the franchise agreement renewal dates for surrounding municipalities, the removal of NRG's retractable feature of its Class C shares, the completion of a cost allocation study, and the separation of NRG's utility and non-utility businesses.
3. On October 17, 2011, NRG's counsel sent a detailed letter in response to the Town's concerns.
4. NRG again wrote to the Town on December 12, 2011 proposing to renew the Existing Franchise Agreement in accordance with the terms of the Board's Model Franchise Agreement (the "NRG Preferred Agreement").
5. On December 21, 2011, the Town indicated in a letter that Town Council was not prepared to agree to a renewal using the NRG Preferred Agreement.
6. On January 5, 2012, NRG sent a letter to the Town seeking greater clarity from the Town as to why it was not prepared to agree to the NRG Preferred Agreement.
7. The Town responded in a letter dated February 7, 2012 marked "CONFIDENTIAL".
8. NRG wrote to the Town on February 10, 2012 indicating a response to the February 7, letter would be forthcoming.
9. Subsequently, NRG has indicated to the Town that: (a) NRG will agree to the alignment of the municipalities' franchise agreement renewal dates (provided a twenty-year renewal is agreed upon); and (b) NRG is also prepared to conduct a cost allocation study. This term has been incorporated into the NRG Preferred Agreement included in NRG's Pre-Filed Evidence.

- 1 10. With respect to the other two conditions being sought by the Town (retractable feature of
2 shares and separation of utility and non-utility businesses), NRG believes that the
3 concerns presented by these conditions have been addressed or are not of concern to
4 the Board based on recent decisions.
- 5 11. To date, the Town and NRG have not agreed to a renewal based on the NRG Preferred
6 Agreement. NRG therefore makes this application seeking the Board's approval of the
7 NRG Preferred Agreement.

STOCKWOODS

barristers

M. Philip Tunley
Direct Line: 416-593-3495
Direct Fax: 416-593-9345
phil@stockwoods.ca

August 18, 2011

Delivered Via Fax

Lawrence E. Thacker
Lenczner Slaght Royce Smith Griffin LLP
130 Adelaide Street West
Suite 2600
Toronto, ON M5H 3P5

Dear Mr. Thacker:

Re: Natural Resource Gas Limited ("NRG") and the Town of Aylmer

As you know, we have acted for the Corporation of the Town of Aylmer in relation to recent negotiations and Ontario Energy Board proceedings concerning the renewal of its Franchise Agreement with your client, NRG.

In that regard, in its Decision and Order dated May 5, 2009, at pages 12-13, the Board endorsed the Town's proposal to align the renewal dates of the various Franchise Agreements with all municipalities within NRG's gas distribution service area. That proposal was put forward as one rationale for the 3-year franchise renewal term proposed by the Town in that case. The Board adopted that proposal, and ordered renewal of the Aylmer Franchise, on terms, for the 3-year period ending February 27, 2012.

You are also aware that, under s. 10 of the Municipal Franchises Act, either NRG or the Town of Aylmer may apply to the Board for a further renewal of their Franchise Agreement at any time during the period within one year before or after February 27, 2012.

In preparation for further negotiations and/or Board proceedings with NRG in that regard, the Town of Aylmer has again approached the other municipalities within NRG's gas distribution service area to determine their interest in aligning the renewal dates of the respective Franchise Agreements. To date the Town has received positive responses from The Township of Malahide, The Municipality of Bayham, and the Corporation of the Township of South-West Oxford, and it is hopeful that similar support will soon be confirmed from the Corporations of the Townships of Thames Centre and Central Elgin, as well. The Town believes it is in the interests of all parties, including NRG, to proceed with a joint negotiation to renew these franchises on a fully aligned basis and on consistent terms.

STOCKWOODS LLP

ROYAL TRUST TOWER, 77 KING STREET WEST, SUITE 4130, P.O. BOX 140, TORONTO, ONTARIO M5K 1H1 • PH: 416-593-7200 • FAX: 416-593-9345

- 2 -

To that end, the Town of Aylmer would be prepared to support, and to recommend to the other Municipalities, a 10-year renewal period, provided that all of the franchise terms are aligned by agreement between NRG and all affected Municipalities, and provided that NRG and its shareholders would be prepared to agree to the following terms:

I. The Town would like a firm commitment from NRG's shareholder to remove the "retractable" feature of NRG's common shares, which increases NRG's financial risk and undermines its creditworthiness, as discussed in the Board's Decision and Order dated November 27, 2008 in EB-2008-0273. NRG's witnesses in the 2011 rate case made a point in their evidence of noting that NRG was committed to address this feature with its shareholder.

II. The Town would like NRG to commit to a timetable to conduct and adopt a new cost-allocation study, to ensure that all costs and revenues are properly allocated between rate classes prior to its next rate hearing, as discussed in the Board's Decision and Order dated December 6, 2010 in EB-2010-0018.

III. Finally, the Town would like NRG to completely separate its non-utility businesses (such as hot water tank rentals) from its utility gas distribution business, for accounting and rate-making purposes. The current combination of these businesses impairs the clarity of NRG's accounting and rate filings, reduces accountability, and creates the potential for cross-subsidization and inappropriate charges to ratepayers. The Board has required this separation of other major gas utilities, and recognized in its Decision and Order dated December 6, 2010 in EB-2010-0018 that the current situation is "inconsistent with good regulatory practice".

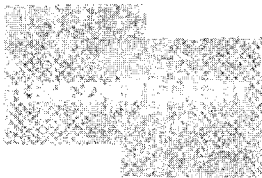
We believe that agreement along these lines would be in the best interest of all parties. It would also signal their commitment to a renewed relationship of co-operation in the economic development of the area over the term of these new agreements. Finally, it would save all parties the costs and uncertainty related to further proceedings before the Board.

We look forward to a supportive response from your client.

Yours very truly,



M. Philip Tunley
MPT/scb



BARRISTERS

Direct Line: (416) 865-3097
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October 17, 2011

VIA EMAIL

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

Dear Mr. Tunley:

**Re: Natural Resource Gas Limited ("NRG") and
Integrated Grain Processors Co-operative Inc. ("IGPC")**

Natural Resource Gas Limited and the Town of Aylmer ("Town")

We are counsel to Natural Resource Gas Limited ("NRG") and write in response to your letter dated August 18, 2011.

It is NRG's view that the issues that gave rise to the short-term franchise renewal in the May 5, 2009 decision of the Ontario Energy Board (the "Board") (EB-2008-0413) have been resolved and as a result, NRG will be seeking the standard 20-year franchise renewal based on the Board's Model Franchise Agreement ("MFA").

The EB-2008-0413 Decision

As the Board noted at page 13 of the EB-2008-0413 decision (the "Renewal Order"), the MFA "should be departed from only in exceptional and unusual circumstances." We are not aware of any exceptional or unusual circumstances warranting a departure from the MFA, and the usual 20 year renewal term.

A shorter renewal term was granted in the Renewal Order based on concerns about NRG's security deposit policy and its failure to meet routine regulatory filing requirements. Both of these issues have been resolved to the Board's satisfaction, as evidenced by the favourable outcome of the regulatory audit performed by the Board dated March 29, 2011, a copy of which is attached to this letter.

We would also point out that there are certain characterizations in your letter which do not completely capture the Board's decisions in relation to NRG. It is incorrect to say, for example, that the Board endorsed your client's proposal to align the renewal dates of the various franchise agreements between NRG and the other municipalities in the Renewal Order. Rather, the Board simply did not accept the argument that the alignment of expiration dates was initiated by an improper motive. While that may have been the Board's finding in 2009, it seems from your letter that current efforts to align all of NRG's franchisees may be motivated by other reasons.

Renewal Terms Proposed in Your August Letter

As for the proposed terms outlined in your letter, these issues are more appropriate to a rate application, and have no bearing on the renewal of a franchise agreement. Moreover, the terms you have proposed would adversely impact NRG's ratepayers. Each of your proposed terms is discussed below.

Item I: Retractable Common Shares

NRG cannot commit to removing the retractable feature of its common shares.

The retractable share issue has been dealt with by the Board in previous Board decisions which have ultimately ruled that any financial risk posed by the retractable nature of the shares is appropriately mitigated by virtue of the shares having been postponed to not only NRG's lenders but also Union Gas Limited. The effect of these two postponements is that the retractable shares cannot be retracted if: (a) NRG is in a position of indebtedness to its lender; or (b) NRG is in a debit position vis-à-vis Union Gas Limited. Practically speaking, NRG will always be indebted to its lender, and it will always be in a debit position with Union Gas Limited (since NRG "drafts" the Union system, as noted in EB-2008-0273). Accordingly, as in 2009 (see p. 9 of the Renewal Order), there is presently no basis for this issue to prevent the renewal of a franchise agreement along standard terms.

Item II: Cost Allocation Study

NRG will not commit to a schedule for carrying out a new cost allocation study.

From time to time, NRG has carried out cost allocation studies as needed, as part of NRG's rate applications. Unless there are good reasons to prepare a new cost allocation study, NRG has utilized its most recent Board-approved cost allocation methodology in any given rate application.

The purpose of a cost allocation study is to ensure that customer rates are set at a level that encompasses the utility's costs to serve that particular customer (or group of customers). From the utility's perspective, the outcome of a cost allocation study is revenue neutral. Rates will be set at a level

that allows the utility to recover its Board-approved revenue requirement – a cost allocation study merely determines which portion of that revenue requirement each different rate class should pay.

Cost allocation studies are expensive, and the cost of carrying out a cost allocation study is ultimately borne by ratepayers. Further, a cost allocation study does not reduce the costs included in rates; it simply shifts the proportion of responsibility for these costs as between different rate classes. The outcome of a new cost allocation study would likely be that one class of ratepayers will end up paying slightly more (than current rates) while another class of ratepayers will end up paying slightly less (than current rates). For example, in RP-2004-0167, NRG's new cost allocation methodology resulted in NRG's residential customers receiving a small reduction in their cost responsibility (\$6 per customer) while its commercial and industrial customers' cost responsibilities increased by \$32 and \$257 per customer, respectively. The Board accepted these proposed changes as furthering the goal of aligning cost recovery with cost causality, which is the main objective of any cost allocation study.

Consequently, cost allocation studies are only done when there are compelling reasons to do so. It is not in the interests of either the utility or the ratepayers to embark on a new cost allocation study for no good reason.

In NRG's current rates application (EB-2010-0018), NRG had to modify its existing cost allocation model in order to accommodate a new rate class for its largest customer (IGPC Ethanol Inc.). During the hearing, NRG was asked to consider refinements to its cost allocation model to ensure that IGPC was appropriately allocated its costs (specifically, insurance costs). The Board decided this issue as follows (page 33, EB-2010-0018):

With respect to conducting a review of the cost allocation methodology, the Board is of the opinion that as NRG gains experience of managing its operations with the addition of a new rate class, it will have better information on how IGPC impacts its costs. The question of whether NRG should conduct a review of its cost allocation methodology will be addressed in the next cost of service proceeding. By that time NRG will have better data and understanding of how the rate classes impact its cost structure. In the interim, NRG is directed to ensure that it retains all information relevant to this issue.

This makes complete sense, and is what the Board ordered. Moreover, the issue of cost allocation is appropriately dealt with in a rate proceeding (not a franchise negotiation or proceeding) in accordance with the Board's jurisdiction to set "just and reasonable rates".

Finally, we find this demand peculiar because it is not clear how the interests of the Town are furthered by the completion of a new cost allocation study. Presumably the Town has no preference in seeing rates shift as between its residential, commercial or industrial constituents. If the Town did have such a concern, as noted above, the appropriate place for dealing with these would be in an NRG rate application.

Item III: Separation of Non-Utility Businesses

NRG will not commit to separating its utility and non-utility businesses.

Your letter indicates that such a separation is warranted in order to improve clarity with respect to NRG's accounting and rate filings, improve accountability, and eliminate the potential for cross-subsidization and inappropriate charges to ratepayers. This is incorrect.

The separation of NRG's non-utility and utility businesses is an issue long familiar to the Board, and one which has been carefully overseen by the Board in past rate applications. At the time that the Board required larger gas utilities in Ontario to separate their utility and non-utility businesses, the Board agreed to address the issue for NRG (a much smaller utility), as follows:

- In EBRO 496 (August 1998), NRG agreed to change to fully allocated cost ("FAC") methodology for the purposes of allocating the costs of its ancillary programs, and to provide sufficient information to achieve the application of such methodology at its next rate application (see p. 7 of the ADR Agreement in EBRO 496).
- The resulting FAC study and costing allocations were presented at NRG's next rate application (RP-1999-0031, March 2000) and accepted by the Board (see paras. 91-95 of RP-1999-0031 decision).
- In EB-2002-0446, the Board approved the results of a further study which outlined the segregation of costs relating to non-utility business activities.

The Board remains content with the present arrangement. Indeed, the Board affirmed in EB-2010-0018 that it is "satisfied that the current cost allocation methodology appropriately separates the costs and assets of the regulated and ancillary business", and it did not find sufficient justification to unbundle NRG's businesses, notwithstanding your intimation that the Board is currently concerned with this issue.

Further, the separation of NRG's utility and non-utility businesses would likely result in adverse cost consequences for NRG ratepayers. In 2005, when Union Gas separated its storage services business into a "non-utility asset", the result was that any profits earned from that asset could no longer be used to reduce gas distribution rates. Instead, the separation was anticipated to increase residential rates (see EB-2005-0551, p. 4). Even with the separation ordered in that case, the Board found it unnecessary for Union and Enbridge to make a full, functional separation of their utility and non-utility storage assets, as it would be costly and difficult (p. 73).

Finally, as to your concerns about the clarity of NRG's accounting and rate filings, we recall this being a concern of the Town's in the current rate proceeding (i.e., the ability to reconcile NRG's regulatory filing with its financial statements). Your concern appears to presume that the financial statements of other gas utilities in Ontario are based solely on "bare utility" financials. That is not the case. Union Gas Limited, for example, does not have "bare utility" financial statements – they have unregulated storage within the utility. To NRG's knowledge, no municipality (nor the Board) has suggested that Union Gas Limited undertake a corporate asset reorganization for the purposes of creating "bare utility" financial statements, in order to have their franchises renewed. Accordingly, we see no compelling reason why NRG should undertake such a reorganization at all, much less for the purposes of renewing its franchise agreement with the Town.

NRG would be willing to negotiate a franchise agreement with the Town, but the basis for any such negotiation must be the Board's 20-year, standard form MFA. A further short-term franchise renewal period negatively impacts any NRG capital expenditure decision in that any future capital expenditure would have to be reviewed on the basis of a payback period commensurate with the term of the franchise renewal, which results in certain capital expenditures not considered economic. For all of the above reasons, NRG believes it is in the interests of both NRG and the Town to negotiate on the basis of a standard renewal term, rather than incur the costs of a Board proceeding.

Yours truly,



Lawrence E. Thacker

LET/rl
Encl.

cc Richard J. King and Christine Kilby (Norton Rose OR LLP)
Jack Howley and Laurie O'Meara (NRG) and Town of Aylmer (Administrator)

**Ontario Energy
Board**

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March 29, 2011

Mr. Jack Howley
General Manager
Natural Resource Gas Limited
39 Beech St. E.
Aylmer ON, N5H 2S1

Dear Mr. Howley,

Re: Follow up Audit Review of Service Quality Requirements (SQRs)

By letter dated September 3, 2010, Regulatory Audit and Accounting ("Regulatory Audit") of the Ontario Energy Board (the "Board") identified the following seven outstanding issues related to the follow-up items and implementation of action plans by Natural Resource Gas Ltd. ("NRG"):

1. To address Finding #1 of the Audit Review findings, NRG should conduct independent random audits for the purpose of verifying billing accuracy on a monthly basis. NRG has planned to conduct ten (10) per month random audits. Billing audit verifications are to be recorded on a monthly basis. NRG should commence with on its September 2010 billing cycle. NRG has committed to a plan to implement Finding #1 on September 30, 2010.
2. To address Finding #3 of the Audit Review findings, NRG under the Measurement for 'Appointments Met Within the Designated Time Period' should exclude re-connections due to non-payment. NRG should correct the measurement and follow Section 7.3.4.1 of Gas Distribution Access Rule (GDAR). NRG has committed to a plan to correct this measurement as of September 30, 2010. This correction should be reflected for the reporting period from November 1, 2009 to September 30, 2010.
3. To address Finding #4 of the Audit Review findings, NRG should include all types of appointments including missed appointments in the calculation of 'Appointments Met Within the Designated Time Period'. NRG should correct this measurement for the reporting period of November 1, 2009 to September 30, 2010. NRG committed to a plan to correct this measurement as of September 30, 2010.

4. To address Finding # 6 of the Audit Review findings, NRG should implement a procedure for the gas technicians to record and document all procedures carried out in response to a specific emergency category. NRG's Emergency Co-ordinator should audit every emergency call to ensure that established procedures are strictly adhered to. NRG committed to implement this on September 30, 2010.
5. To address Finding # 7 of the Audit Review findings, NRG should develop a retention policy and should monitor its implementation on an ongoing basis. NRG committed to a plan to establish a Policy on October 31, 2010.
6. To address Finding # 8 of the Audit Review findings, NRG should ensure that all emergency repair records are validated and signed and that a second person has been nominated to validate these repairs in the absence of the Primary Emergency Co-ordinator. NRG committed to implement this on September 30, 2010.
7. To address Finding #10 of the Audit Review findings, NRG has recently purchased a new IP telephone system. NRG has identified that this system has the capability to capture the required data which should allow NRG to report the measurements as required under Sections 7.3.1.1 and Sub-section 7.3.1.2 of GDAR. NRG committed to a plan to implement Finding #10 on October 31, 2010. NRG anticipates that within thirty (30) days of implementation, this system should be in place and that it can then record the data from October 1, 2010 onwards.

Regulatory Audit conducted a recent follow-up review of the outstanding items listed above of NRG's SQR audit to ensure that the audit findings in the September 3, 2010 SQR audit review report have been properly addressed and that the required action plans have been implemented.

This review has found no issues related to the follow-up items and implementation of action plans by NRG related to the findings of the audit review and its conformity to GDAR.

The findings and observations in this follow-up review represent the views of Regulatory Audit and are not necessarily the views of the Board as a whole.

The results of this review will be reported to the Board and may also be used as evidence in future proceedings involving NRG.

We would like to take this opportunity and acknowledge the effort and time invested from NRG staff with regard to SQRs, including data collection, validation process, calculation and measurement, and regulatory reporting to the Board.

We wish to thank the NRG staff for the assistance and support provided us during this review.

Yours truly,



Daria Babaie, *P. Eng., CMA*
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Ontario Energy Board
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Daria.Babaie@ontarioenergyboard.ca

Cc: Mr. Anthony G. Graat Jr. - President



Natural Resource Gas Limited

December 12, 2011

Sent By Courier

The Town Administrator
Town of Aylmer
46 Talbot Street West
Aylmer, Ontario
N5H 1J7

Dear Ms. Reynaert :

Renewal of Franchise - Natural Resource Gas Limited ("NRG")

We understand that there has been no further correspondence between our lawyers since the most recent letter sent on October 17, 2011, a copy of which is enclosed for your reference. We are hopeful that any outstanding matters of concern have accordingly been resolved, and enclose for your review and approve a draft franchise agreement based on the Ontario Energy Board's Model Franchise Agreement.

In light of the approaching expiry date of February 27, 2012 of the current franchise agreement, we would appreciate it if you could let us know if you have any comments to the attached proposed franchise agreement by January 13, 2012.

Yours very truly,

Anthony Graat, Jr

President

Enclosures



BARRISTERS

Direct Line: (416) 865-3097

Email: litthacker@litigate.com

October 17, 2011

VIA EMAIL

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

Dear Mr. Tunley:

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Natural Resource Gas Limited and the Town of Aylmer ("Town")

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Renewal Terms Proposed in Your August Letter

As for the proposed terms outlined in your letter, these issues are more appropriate to a rate application, and have no bearing on the renewal of a franchise agreement. Moreover, the terms you have proposed would adversely impact NRG's ratepayers. Each of your proposed terms is discussed below.

Item I: Retractable Common Shares

NRG cannot commit to removing the retractable feature of its common shares.

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Item II: Cost Allocation Study

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Cost allocation studies are expensive, and the cost of carrying out a cost allocation study is ultimately borne by ratepayers. Further, a cost allocation study does not reduce the costs included in rates; it simply shifts the proportion of responsibility for these costs as between different rate classes. The outcome of a new cost allocation study would likely be that one class of ratepayers will end up paying slightly more (than current rates) while another class of ratepayers will end up paying slightly less (than current rates). For example, in RP-2004-0167, NRG's new cost allocation methodology resulted in NRG's residential customers receiving a small reduction in their cost responsibility (\$6 per customer) while its commercial and industrial customers' cost responsibilities increased by \$32 and \$257 per customer, respectively. The Board accepted these proposed changes as furthering the goal of aligning cost recovery with cost causality, which is the main objective of any cost allocation study.

Consequently, cost allocation studies are only done when there are compelling reasons to do so. It is not in the interests of either the utility or the ratepayers to embark on a new cost allocation study for no good reason.

In NRG's current rates application (EB-2010-0018), NRG had to modify its existing cost allocation model in order to accommodate a new rate class for its largest customer (IGPC Ethanol Inc.). During the hearing, NRG was asked to consider refinements to its cost allocation model to ensure that IGPC was appropriately allocated its costs (specifically, insurance costs). The Board decided this issue as follows (page 33, EB-2010-0018):

With respect to conducting a review of the cost allocation methodology, the Board is of the opinion that as NRG gains experience of managing its operations with the addition of a new rate class, it will have better information on how IGPC impacts its costs. The question of whether NRG should conduct a review of its cost allocation methodology will be addressed in the next cost of service proceeding. By that time NRG will have better data and understanding of how the rate classes impact its cost structure. In the interim, NRG is directed to ensure that it retains all information relevant to this issue.

This makes complete sense, and is what the Board ordered. Moreover, the issue of cost allocation is appropriately dealt with in a rate proceeding (not a franchise negotiation or proceeding) in accordance with the Board's jurisdiction to set "just and reasonable rates".

Finally, we find this demand peculiar because it is not clear how the interests of the Town are furthered by the completion of a new cost allocation study. Presumably the Town has no preference in seeing rates shift as between its residential, commercial or industrial constituents. If the Town did have such a concern, as noted above, the appropriate place for dealing with these would be in an NRG rate application.

Item III: Separation of Non-Utility Businesses

NRG will not commit to separating its utility and non-utility businesses.

Your letter indicates that such a separation is warranted in order to improve clarity with respect to NRG's accounting and rate filings, improve accountability, and eliminate the potential for cross-subsidization and inappropriate charges to ratepayers. This is incorrect.

The separation of NRG's non-utility and utility businesses is an issue long familiar to the Board, and one which has been carefully overseen by the Board in past rate applications. At the time that the Board required larger gas utilities in Ontario to separate their utility and non-utility businesses, the Board agreed to address the issue for NRG (a much smaller utility), as follows:

- In EBRO 496 (August 1998), NRG agreed to change to fully allocated cost ("FAC") methodology for the purposes of allocating the costs of its ancillary programs, and to provide sufficient information to achieve the application of such methodology at its next rate application (see p. 7 of the ADR Agreement in EBRO 496).
- The resulting FAC study and costing allocations were presented at NRG's next rate application (RP-1999-0031, March 2000) and accepted by the Board (see paras. 91-95 of RP-1999-0031 decision).
- In EB-2002-0446, the Board approved the results of a further study which outlined the segregation of costs relating to non-utility business activities.

The Board remains content with the present arrangement. Indeed, the Board affirmed in EB-2010-0018 that it is "satisfied that the current cost allocation methodology appropriately separates the costs and assets of the regulated and ancillary business", and it did not find sufficient justification to unbundle NRG's businesses, notwithstanding your intimation that the Board is currently concerned with this issue.

Further, the separation of NRG's utility and non-utility businesses would likely result in adverse cost consequences for NRG ratepayers. In 2005, when Union Gas separated its storage services business into a "non-utility asset", the result was that any profits earned from that asset could no longer be used to reduce gas distribution rates. Instead, the separation was anticipated to increase residential rates (see EB-2005-0551, p. 4). Even with the separation ordered in that case, the Board found it unnecessary for Union and Enbridge to make a full, functional separation of their utility and non-utility storage assets, as it would be costly and difficult (p. 73).

Finally, as to your concerns about the clarity of NRG's accounting and rate filings, we recall this being a concern of the Town's in the current rate proceeding (i.e., the ability to reconcile NRG's regulatory filing with its financial statements). Your concern appears to presume that the financial statements of other gas utilities in Ontario are based solely on "bare utility" financials. That is not the case. Union Gas Limited, for example, does not have "bare utility" financial statements – they have unregulated storage within the utility. To NRG's knowledge, no municipality (nor the Board) has suggested that Union Gas Limited undertake a corporate asset reorganization for the purposes of creating "bare utility" financial statements, in order to have their franchises renewed. Accordingly, we see no compelling reason why NRG should undertake such a reorganization at all, much less for the purposes of renewing its franchise agreement with the Town.

NRG would be willing to negotiate a franchise agreement with the Town, but the basis for any such negotiation must be the Board's 20-year, standard form MFA. A further short-term franchise renewal period negatively impacts any NRG capital expenditure decision in that any future capital expenditure would have to be reviewed on the basis of a payback period commensurate with the term of the franchise renewal, which results in certain capital expenditures not considered economic. For all of the above reasons, NRG believes it is in the interests of both NRG and the Town to negotiate on the basis of a standard renewal term, rather than incur the costs of a Board proceeding.

Yours truly,



Lawrence E. Thacker

LET/rl
Encl.

cc Richard J. King and Christine Kilby (Norton Rose OR LLP)
Jack Howley and Laurie O'Meara (NRG) and Town of Aylmer (Administrator)

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March 29, 2011

Mr. Jack Howley
General Manager
Natural Resource Gas Limited
39 Beech St. E.
Aylmer ON, N5H 2S1

Dear Mr. Howley,

Re: Follow up Audit Review of Service Quality Requirements (SQRs)

By letter dated September 3, 2010, Regulatory Audit and Accounting ("Regulatory Audit") of the Ontario Energy Board (the "Board") identified the following seven outstanding issues related to the follow-up items and implementation of action plans by Natural Resource Gas Ltd. ("NRG"):

1. To address Finding #1 of the Audit Review findings, NRG should conduct independent random audits for the purpose of verifying billing accuracy on a monthly basis. NRG has planned to conduct ten (10) per month random audits. Billing audit verifications are to be recorded on a monthly basis. NRG should commence with on its September 2010 billing cycle. NRG has committed to a plan to implement Finding #1 on September 30, 2010.
2. To address Finding #3 of the Audit Review findings, NRG under the Measurement for 'Appointments Met Within the Designated Time Period' should exclude re-connections due to non-payment. NRG should correct the measurement and follow Section 7.3.4.1 of Gas Distribution Access Rule (GDAR). NRG has committed to a plan to correct this measurement as of September 30, 2010. This correction should be reflected for the reporting period from November 1, 2009 to September 30, 2010.
3. To address Finding #4 of the Audit Review findings, NRG should include all types of appointments including missed appointments in the calculation of 'Appointments Met Within the Designated Time Period'. NRG should correct this measurement for the reporting period of November 1, 2009 to September 30, 2010. NRG committed to a plan to correct this measurement as of September 30, 2010.

4. To address Finding # 6 of the Audit Review findings, NRG should implement a procedure for the gas technicians to record and document all procedures carried out in response to a specific emergency category. NRG's Emergency Co-ordinator should audit every emergency call to ensure that established procedures are strictly adhered to. NRG committed to implement this on September 30, 2010.
5. To address Finding # 7 of the Audit Review findings, NRG should develop a retention policy and should monitor its implementation on an ongoing basis. NRG committed to a plan to establish a Policy on October 31, 2010.
6. To address Finding # 8 of the Audit Review findings, NRG should ensure that all emergency repair records are validated and signed and that a second person has been nominated to validate these repairs in the absence of the Primary Emergency Co-ordinator. NRG committed to implement this on September 30, 2010.
7. To address Finding #10 of the Audit Review findings, NRG has recently purchased a new IP telephone system. NRG has identified that this system has the capability to capture the required data which should allow NRG to report the measurements as required under Sections 7.3.1.1 and Sub-section 7.3.1.2 of GDAR. NRG committed to a plan to implement Finding #10 on October 31, 2010. NRG anticipates that within thirty (30) days of implementation, this system should be in place and that it can then record the data from October 1, 2010 onwards.

Regulatory Audit conducted a recent follow-up review of the outstanding items listed above of NRG's SQR audit to ensure that the audit findings in the September 3, 2010 SQR audit review report have been properly addressed and that the required action plans have been implemented.

This review has found no issues related to the follow-up items and implementation of action plans by NRG related to the findings of the audit review and its conformity to GDAR.

The findings and observations in this follow-up review represent the views of Regulatory Audit and are not necessarily the views of the Board as a whole.

The results of this review will be reported to the Board and may also be used as evidence in future proceedings involving NRG.

We would like to take this opportunity and acknowledge the effort and time invested from NRG staff with regard to SQRs, including data collection, validation process, calculation and measurement, and regulatory reporting to the Board.

We wish to thank the NRG staff for the assistance and support provided us during this review.

Yours truly,



Daria Babaie, *P. Eng., CMA*
Manager, Regulatory Audit & Accounting
Ontario Energy Board
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2300 Yonge Street, 24th Floor
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Phone: (416) 440-7614
Fax: (416) 440-7656
Daria.Babaie@ontarioenergyboard.ca

Cc: Mr. Anthony G. Graat Jr. - President

STOCKWOODS
barristers

M. Philip Tunley
Direct Line: 416-593-3495
Direct Fax: 416-593-9345
phil@stockwoods.ca

August 18, 2011

Delivered Via Fax

Lawrence E. Thacker
Lenczner Slaght Royce Smith Griffin LLP
130 Adelaide Street West
Suite 2600
Toronto, ON M5H 3P5

Dear Mr. Thacker:

Re: Natural Resource Gas Limited ("NRG") and the Town of Aylmer

As you know, we have acted for the Corporation of the Town of Aylmer in relation to recent negotiations and Ontario Energy Board proceedings concerning the renewal of its Franchise Agreement with your client, NRG.

In that regard, in its Decision and Order dated May 5, 2009, at pages 12-13, the Board endorsed the Town's proposal to align the renewal dates of the various Franchise Agreements with all municipalities within NRG's gas distribution service area. That proposal was put forward as one rationale for the 3-year franchise renewal term proposed by the Town in that case. The Board adopted that proposal, and ordered renewal of the Aylmer Franchise, on terms, for the 3-year period ending February 27, 2012.

You are also aware that, under s. 10 of the Municipal Franchises Act, either NRG or the Town of Aylmer may apply to the Board for a further renewal of their Franchise Agreement at any time during the period within one year before or after February 27, 2012.

In preparation for further negotiations and/or Board proceedings with NRG in that regard, the Town of Aylmer has again approached the other municipalities within NRG's gas distribution service area to determine their interest in aligning the renewal dates of the respective Franchise Agreements. To date the Town has received positive responses from The Township of Malahide, The Municipality of Bayham, and the Corporation of the Township of South-West Oxford, and it is hopeful that similar support will soon be confirmed from the Corporations of the Townships of Thames Centre and Central Elgin, as well. The Town believes it is in the interests of all parties, including NRG, to proceed with a joint negotiation to renew these franchises on a fully aligned basis and on consistent terms.

STOCKWOODS LLP

ROYAL TRUST TOWER, 77 KING STREET WEST, SUITE 4130, P.O. BOX 140, TORONTO, ONTARIO M5K 1H1 • PH: 416-593-7200 • FAX: 416-593-9345

- 2 -

To that end, the Town of Aylmer would be prepared to support, and to recommend to the other Municipalities, a 10-year renewal period, provided that all of the franchise terms are aligned by agreement between NRG and all affected Municipalities, and provided that NRG and its shareholders would be prepared to agree to the following terms:

I. The Town would like a firm commitment from NRG's shareholder to remove the "retractable" feature of NRG's common shares, which increases NRG's financial risk and undermines its creditworthiness, as discussed in the Board's Decision and Order dated November 27, 2008 in EB-2008-0273. NRG's witnesses in the 2011 rate case made a point in their evidence of noting that NRG was committed to address this feature with its shareholder.

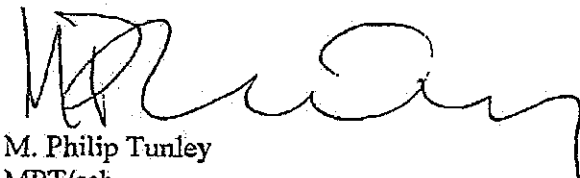
II. The Town would like NRG to commit to a timetable to conduct and adopt a new cost-allocation study, to ensure that all costs and revenues are properly allocated between rate classes prior to its next rate hearing, as discussed in the Board's Decision and Order dated December 6, 2010 in EB-2010-0018.

III. Finally, the Town would like NRG to completely separate its non-utility businesses (such as hot water tank rentals) from its utility gas distribution business, for accounting and rate-making purposes. The current combination of these businesses impairs the clarity of NRG's accounting and rate filings, reduces accountability, and creates the potential for cross-subsidization and inappropriate charges to ratepayers. The Board has required this separation of other major gas utilities, and recognized in its Decision and Order dated December 6, 2010 in EB-2010-0018 that the current situation is "inconsistent with good regulatory practice".

We believe that agreement along these lines would be in the best interest of all parties. It would also signal their commitment to a renewed relationship of co-operation in the economic development of the area over the term of these new agreements. Finally, it would save all parties the costs and uncertainty related to further proceedings before the Board.

We look forward to a supportive response from your client.

Yours very truly,



M. Philip Tunley
MPT/scb



Proud Heritage. Bright Future.

The Corporation of the Town of Aylmer
46 Talbot Street, West, Aylmer, Ontario N5H 1J7
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December 21, 2011

Anthony Graat, Jr., President
Natural Resource Gas Limited
39 Beech Street East
P.O. Box 307
Aylmer, Ontario N5H 2S1

Dear Mr. Graat:

Thank you for your correspondence dated December 12, 2011 along with the attached proposed franchise agreement.

Council is not prepared to agree to a renewal of the Franchise Agreement based on the terms proposed by NRG. Council has approved a set of conditions for renewal in the letter from their legal counsel dated August 18, 2011. Their position has not changed as a result of the letter from your legal counsel dated October 17, 2011.

Council respectfully requests your reconsideration of the conditions identified in the August 18th correspondence sent on behalf of our solicitor.

Yours truly,

Jennifer Reynaert
Administrator



Natural Resource Gas Limited

January 5, 2012

Sent By Courier

The Town Administrator
Town of Aylmer
46 Talbot Street West
Aylmer, Ontario
N5H 1J7

Dear Ms. Reynaert :

We are in receipt of your letter of December 21, 2011, wherein you state that the Town's position has not changed regarding franchise renewal. We understand the Town's position on renewal of NRG's franchise agreement to be as follows:

- a renewal period of only ten years;
- a renewal date that is aligned with other municipalities served by NRG;
- a commitment from NRG's shareholder to remove the "retractable" feature of NRG's common shares;
- a commitment to carry out a new cost allocation study; and,
- a separation of NRG's utility and non-utility business.

We addressed each of these points in a good amount of detail in our counsel's letter of October 17, 2011. Given that we went to considerable effort to explain why these conditions are unacceptable to NRG, as well as being contrary to Ontario Energy Board ("OEB") practice and in some cases contrary to the interests of NRG's ratepayers, we had hoped for a more considered, detailed response from the Town. Your letter of December 21, 2011, however, was simply a restatement of the Town's position without any attempt to respond to our October letter. In a nutshell, our October letter explained:

- **Renewal Period:** A 20-year renewal period is the OEB standard and there are no exceptional or unusual circumstances warranting a departure from this standard term. The OEB concerns that gave rise to the current shorter franchise term have been resolved to the OEB's satisfaction.
- **Renewal Date Alignment:** With respect to the alignment of renewal dates with other municipalities, the OEB decision in the last franchise renewal case did not endorse aligning renewal periods but simply acknowledged that the alignment was not initiated by improper motives.
- **Retractable Shares:** Given the postponement arrangements, there is no practical ability to retract the shares.

- **Cost Allocation Study:** This is a rate issue (not a franchise renewal issue) and indeed, was deliberated upon and decided by the Board in NRG's current rate proceeding. Further, it is not clear to NRG why the expenditure of significant amounts of money on a cost allocation (when the OEB just ruled that no such study should be done) is of any use to the Town or NRG. It should be understood that these are costs that would be passed on to the ratepayers.
- **Separation of Non-Utility Business:** Finally, on the issue of separation of NRG's utility and non-utility businesses, it appears that Town Council did not make much of an effort to consider our response to this condition (which traces the OEB decisions on this issue back to 1998). As noted, the OEB (as recently as NRG's current rate case) re-iterated its satisfaction with the separation of NRG's utility and non-utility costs.

To sum up, we are disappointed at having provided an extensive response to try to explain some of the issues the Town raised, only to have the Town simply reassert its position. From our perspective, the Town appears to have spent no time considering in any thoughtful way our explanation of the issues. In order to have a meaningful dialogue, we would ask that you explain why such conditions are requested (in light of our reply of October 17, 2011 and the OEB's past and current positions on these issues). As you may know, the Town's current position on this matter will result in serious cost to the Towns' tax payers and NRGs' customers.

Regards,



Anthony Graat Jr.
President

cc. Mayor, Deputy Mayor, Councillors



The Corporation of the Town of Aylmer

46 Talbot Street West, Aylmer Ontario N5H 1J7

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CONFIDENTIAL

February 7, 2012

Mr. Anthony Graat, Jr.
President
Natural Resource Gas Limited
39 Beech Street East, P.O. Box 307
Aylmer, ON N5H 2S1

Dear Mr. Graat:

Re: Renewal of Franchise – Natural Resource Gas Limited (“NRG”)

The Mayor and Council have indeed carefully considered your letter of January 5, 2012 and prior correspondence in this matter. They do not agree with your analysis of the issues or with the position you have put forward respecting the proposed renewal of the Franchise Agreement.

First, with respect to the alignment of franchise renewal dates with all municipalities in the NRG service area, the Town disagrees with your position. In the OEB's proceedings leading to its Decision and Order dated May 5, 2009 regarding renewal of the Town's Franchise Agreement with NRG, the Town clearly sought and obtained the OEB's endorsement of its proposal to align its renewal date with that of the other municipalities' agreements. That was one of the bases of the Board's decision to order renewal for a limited 3-year term. The other municipalities also endorse this proposal. There is an opportunity to achieve this by agreement of NRG and the other municipalities on this renewal. However, if NRG will not agree, then the Town will have no alternative but to ask the OEB to deal with this issue again.

Second, the Town does not agree with your interpretation of the OEB's Decision and Order dated November 27, 2008 in the Union application with respect to the retractable feature NRG's common shares. In that case, the OEB clearly accepted Union's position that the mere fact that there was a postponement given by NRG in favour of a third party (NRG's bank) did not provide any security to Union. The OEB ordered NRG to provide a second postponement to Union as well. Customers who provide security deposits to NRG are in exactly the same position today. The existence of a postponement in favour of Union and the Bank would not prevent NRG's shareholders from retracting their shares, but only prevent that retraction affecting the priority of

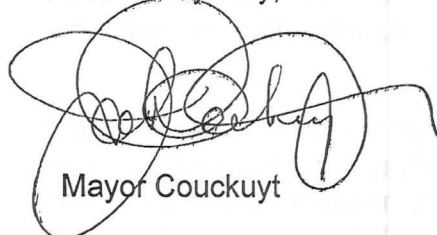
Union and the Bank. There is no principled reason why customers who provide security deposits to NRG should be in any different position. Indeed, the simplest way to address the problem is, as the Town has proposed, to remove the retractable feature of the shares altogether, as NRG's own witnesses proposed in the most recent rate case. Since this issue was not addressed by the OEB in the rate case, it clearly is a franchise issue and should be addressed as part of the renewal process.

Third, with respect to the Town's request that NRG commit to conduct a cost allocation study, NRG's own correspondence acknowledges the OEB's finding in the recent rates application that this issue will have to be addressed within the next franchise term. The Town's position is not to require that the study be undertaken immediately, but rather is simply asking for NRG's commitment that the issue will be addressed in that time frame. By providing that commitment, NRG would simply be avoiding the need for a further OEB hearing on this issue, with the resulting costs.

The same applies to the Town's request for a separation of the utility and non-utility business of NRG. The Town does not agree that the OEB's observation that the current situation is "inconsistent with good regulatory practice" was an expression of "satisfaction" as you suggest. Our own experience during the last rate case is that the current situation seriously undermines the transparency of NRG's operations. However, this is not to insist that this be done immediately, but that it be addressed within the renewal term.

Finally, the Town does not take issue with the use of the OEB's "Model" Franchise Agreement terms in the renewal it has proposed. Those terms are satisfactory, as far as they go. However, the Town is looking for some form of commitment by NRG that these additional issues will be addressed in the next term of the franchise. They are serious issues. The OEB decisions to which we make reference indicated that they should be addressed in order to improve NRG's utility operations and accountability. The Town remains open to discussion with NRG as to how best that can be achieved.

Yours very truly,

A handwritten signature in black ink, appearing to read 'M. Couckuyt', is written over a circular stamp or seal.

Mayor Couckuyt

c.c. Council Members

Jennifer Reynaert, Administrator

Phil Tunley, Stockwoods LLP



Natural Resource Gas Limited

February 10, 2012

Sent by Email

Sent By Courier

Town of Aylmer
46 Talbot Street West
Aylmer, ON
N5J 1J7

Attn: Mayor Couckuyt

Dear Mayor Couckuyt:

Thank you for your letter dated February 7, 2012. Your issues pose some challenges for NRG Limited. We will respond in writing with our suggestions as to address your concerns.

Regards

per: 

Anthony H. Graat Jr.
President

PRE-FILED EVIDENCE

Previous Franchise Renewal Decision

1. The Existing Franchise Agreement originally expired on February 27, 2009.
2. NRG and the Town were unable to agree on renewal terms for a new franchise agreement, and NRG brought an application before the Board for an order renewing the franchise agreement in accordance with its proposed terms. The proceeding was assigned the case number EB-2008-0413 (the “Franchise Proceeding”).
3. During the Franchise Proceeding, the Town raised a number of concerns relating to NRG’s service and structure and sought particular relief relating to those concerns, including a shorter than usual franchise term.
4. Among other things, the Board considered the following issues:
 - (a) the retractability of NRG’s common shares, leaving NRG with potentially very little equity against which to secure its debt;
 - (b) NRG’s security deposit policy; and
 - (c) the proposed alignment of the renewal of the franchise agreements of the Town and the surrounding Municipalities.
5. On May 5, 2009, the Board issued the Franchise Decision.
6. In the Franchise Decision, the Board noted at page 13 that the “Model Franchise Agreement should be departed from only in exceptional and unusual circumstances.” Based on the evidence it had considered, the Board chose to depart from the usual 20 year renewal term. The Board ordered that the Existing Franchise Agreement be extended for a period of three years, expiring on February 27, 2012.
7. The Town sought four conditions to be applied to NRG. Of these conditions, the Board declined to order NRG to hold customer security deposits in a trust account, a condition sought by the Town out of concerns about NRG’s equity. The Board found that the new security deposit rules that NRG would adopt were sufficient to address the issue.

1 8. The Board ordered:

2 (a) the extension of the Existing Franchise Agreement for a period of three years, to
3 expire on February 27, 2012;

4 (b) NRG to amend its security deposit policy to comply with the procedures set out in
5 an Appendix to the Franchise Decision;

6 (c) NRG to file an application for new rates within six months of the Franchise
7 Decision for rates to be effective October 1, 2010; and

8 (d) NRG to provide notice to the Town and its authorized representatives of any
9 regulatory application or proceeding coming under the Board's jurisdiction.

10 9. NRG has complied with all of the terms of the order in the Franchise Decision.

11 10. The Board has indicated its satisfaction with NRG's resolution of the issues raised in the
12 Franchise Proceeding in a favourable report on the outcome of a regulatory audit, dated
13 March 29, 2011.

**Ontario Energy
Board**

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6273



March 29, 2011

Mr. Jack Howley
General Manager
Natural Resource Gas Limited
39 Beech St. E.
Aylmer ON, N5H 2S1

Dear Mr. Howley,

Re: Follow up Audit Review of Service Quality Requirements (SQRs)

By letter dated September 3, 2010, Regulatory Audit and Accounting ("Regulatory Audit") of the Ontario Energy Board (the "Board") identified the following seven outstanding issues related to the follow-up items and implementation of action plans by Natural Resource Gas Ltd. ("NRG"):

1. To address Finding #1 of the Audit Review findings, NRG should conduct independent random audits for the purpose of verifying billing accuracy on a monthly basis. NRG has planned to conduct ten (10) per month random audits. Billing audit verifications are to be recorded on a monthly basis. NRG should commence with on its September 2010 billing cycle. NRG has committed to a plan to implement Finding #1 on September 30, 2010.
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Regulatory Audit conducted a recent follow-up review of the outstanding items listed above of NRG's SQR audit to ensure that the audit findings in the September 3, 2010 SQR audit review report have been properly addressed and that the required action plans have been implemented.

This review has found no issues related to the follow-up items and implementation of action plans by NRG related to the findings of the audit review and its conformity to GDAR.

The findings and observations in this follow-up review represent the views of Regulatory Audit and are not necessarily the views of the Board as a whole.

The results of this review will be reported to the Board and may also be used as evidence in future proceedings involving NRG.

We would like to take this opportunity and acknowledge the effort and time invested from NRG staff with regard to SQRs, including data collection, validation process, calculation and measurement, and regulatory reporting to the Board.

We wish to thank the NRG staff for the assistance and support provided us during this review.

Yours truly,



Daria Babaie, *P. Eng., CMA*
Manager, Regulatory Audit & Accounting
Ontario Energy Board
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Cc: Mr. Anthony G. Graat Jr. - President

PRE-FILED EVIDENCE

NRG Preferred Agreement

1. A copy of the NRG Preferred Agreement (the form of franchise agreement that NRG has proposed to the Town) is attached to this Pre-Filed Evidence. It is based on the Board's Model Franchise Agreement, and contains:
 - (a) a 20 year term (which expires on February 27, 2032); and
 - (b) a new section 4.7 that incorporates the Town's condition for NRG to perform a cost allocation study.

FRANCHISE AGREEMENT

THIS AGREEMENT effective this 28th day of February, 2012.

BETWEEN:

CORPORATION OF THE TOWN OF AYLMER
hereinafter called the “**Corporation**”

-and –

NATURAL RESOURCE GAS LIMITED
hereinafter called the “**Gas Company**”

WHEREAS the Gas Company desires to distribute, store and transmit gas in the Municipality upon the terms and conditions of this Agreement;

AND WHEREAS by by-law passed by the Council of the Corporation (the “**By-law**”), the duly authorized officers have been authorized and directed to execute this Agreement on behalf of the Corporation;

THEREFORE the Corporation and the Gas Company agree as follows:

ARTICLE 1 – DEFINITIONS

1.1 In this Agreement:

- (a) “**decommissioned**” and “**decommissions**” when used in connection with parts of the gas system, mean any parts of the gas system taken out of active use and purged in accordance with the applicable CSA standards and in no way affects the use of the term ‘abandoned’ pipeline for the purposes of the *Assessment Act*;
- (b) “**Engineer/Road Superintendent**” means the most senior individual employed by the Corporation with responsibilities for highways within the Municipality or the person designated by such senior employee or such other person as may from time to time be designated by the Council of the Corporation;
- (c) “**gas**” means natural gas, manufactured gas, synthetic natural gas, liquefied petroleum gas or propane-air gas, or a mixture of any of them, but does not include a liquefied petroleum gas that is distributed by means other than a pipeline;

- (d) “**gas system**” means such mains, plants, pipes, conduits, services, valves, regulators, curb boxes, stations, drips or such other equipment as the Gas Company may require or deem desirable for the distribution, storage and transmission of gas in or through the Municipality;
- (e) “**highway**” means all common and public highways and shall include any bridge, viaduct or structure forming part of a highway, and any public square, road allowance or walkway and shall include not only the travelled portion of such highway, but also ditches, driveways, sidewalks, and sodded areas forming part of the road allowance now or at any time during the term hereof under the jurisdiction of the Corporation;
- (f) “**Model Franchise Agreement**” means the form of agreement which the Ontario Energy Board uses as a standard when considering applications under the *Municipal Franchises Act*. The Model Franchise Agreement may be changed from time to time by the Ontario Energy Board;
- (g) “**Municipality**” means the territorial limits of the Corporation on the date when this Agreement takes effect, and any territory which may thereafter be brought within the jurisdiction of the Corporation;
- (h) “**Plan**” means the plan described in Paragraph 3.1 of this Agreement required to be filed by the Gas Company with the Engineer/Road Superintendent prior to commencement of work on the gas system; and
- (i) whenever the singular, masculine or feminine is used in this Agreement, it shall be considered as if the plural, feminine or masculine has been used where the context of the Agreement so requires.

ARTICLE 2 – RIGHTS GRANTED

2.1 To provide gas service:

The consent of the Corporation is hereby given and granted to the Gas Company to distribute, store and transmit gas in and through the Municipality to the Corporation and to the inhabitants of the Municipality.

2.2 To Use Highways.

Subject to the terms and conditions of this Agreement the consent of the Corporation is hereby given and granted to the Gas Company to enter upon all highways now or at any time hereafter under the jurisdiction of the Corporation and to lay, construct, maintain, replace, remove, operate and repair a gas system for the distribution, storage and transmission of gas in and through the Municipality.

2.3 Duration of Agreement and Renewal Procedures.

- (a) The rights hereby given and granted shall be for a term of 20 years from the date of final passing of the By-law provided that, if during the 20-year term this Agreement, the Model Franchise Agreement is changed, then on the 7th anniversary and on the 14th anniversary of the date of the passing of the By-law, this Agreement shall be deemed to be amended to incorporate any changes in the Model Franchise Agreement in effect on such anniversary dates. Such deemed amendments shall not apply to alter the 20-year term.
- (b) At any time within two years prior to the expiration of this Agreement, either party may give notice to the other that it desires to enter into negotiations for a renewed franchise upon such terms and conditions as may be agreed upon. Until such renewal has been settled, the terms and conditions of this Agreement shall continue, notwithstanding the expiration of this Agreement. This shall not preclude either party from applying to the Ontario Energy Board for a renewal of the Agreement pursuant to section 10 of the *Municipal Franchises Act*.

ARTICLE 3 – CONDITIONS

3.1 Approval of Construction

- (a) The Gas Company shall not undertake any excavation, opening or work which will disturb or interfere with the surface of the travelled portion of any highway unless a permit therefor has first been obtained from the Engineer/Road Superintendent and all work done by the Gas Company shall be to his satisfaction.
- (b) Prior to the commencement of work on the gas system, or any extensions or changes to it (except service laterals which do not interfere with municipal works in the highway), the Gas Company shall file with the Engineer/Road Superintendent a Plan, satisfactory to the Engineer/Road Superintendent, drawn to scale and of sufficient detail considering the complexity of the specific locations involved, showing the highways in which it proposes to lay its gas system and the particular parts thereof it proposes to occupy.
- (c) The Plan filed by the Gas Company shall include geodetic information for a particular location:
 - (i) where circumstances are complex, in order to facilitate known projects, including projects which are reasonably anticipated by the Engineer/Road Superintendent, or
 - (ii) when requested, where the Corporation has geodetic information for its own services and all others at the same location.
- (d) The Engineer/Road Superintendent may require sections of the gas system to be laid at greater depth than required by the latest CSA standard for gas pipeline systems to facilitate known projects or to correct known highway deficiencies.

- (e) Prior to the commencement of work on the gas system, the Engineer/Road Superintendent must approve the location of the work as shown on the Plan filed by the Gas Company, the timing of the work and any terms and conditions relating to the installation of the work.
- (f) In addition to the requirements of this Agreement, if the Gas Company proposes to affix any part of the gas system to a bridge, viaduct or other structure, if the Engineer/Road Superintendent approves this proposal, he may require the Gas Company to comply with special conditions or to enter into a separate agreement as a condition of the approval of this part of the construction of the gas system.
- (g) Where the gas system may affect a municipal drain, the Gas Company shall also file a copy of the Plan with the Corporation's Drainage Superintendent for purposes of the *Drainage Act*, or such other person designated by the Corporation as responsible for the drain.
- (h) The Gas Company shall not deviate from the approved location for any part of the gas system unless the prior approval of the Engineer/Road Superintendent to do so is received.
- (i) The Engineer/Road Superintendent's approval, where required throughout this Paragraph, shall not be unreasonably withheld.
- (j) The approval of the Engineer/Road Superintendent is not a representation or warranty as to the state of repair of the highway or the suitability of the highway for the gas system.

3.2 As Built Drawings.

The Gas Company shall, within six months of completing the installation of any part of the gas system, provide two copies of "as built" drawings to the Engineer/Road Superintendent. These drawings must be sufficient to accurately establish the location, depth (measurement between the top of the gas system and the ground surface at the time of installation) and distance of the gas system. The "as built" drawings shall be of the same quality as the Plan and, if the approved pre-construction plan included elevations that were geodetically referenced, the "as built" drawings shall similarly include elevations that are geodetically referenced. Upon the request of the Engineer/Road Superintendent, the Gas Company shall provide one copy of the drawings in an electronic format and one copy as a hard copy drawing.

3.3 Emergencies

In the event of an emergency involving the gas system, the Gas Company shall proceed with the work required to deal with the emergency, and in any instance where prior approval of the Engineer/Road Superintendent is normally required for the work, the Gas Company shall use its best efforts to immediately notify the Engineer/Road Superintendent of the location and nature of the emergency and the work being done and, if it deems appropriate, notify the police force, fire or other emergency services having jurisdiction. The Gas Company shall provide the Engineer/Road Superintendent with at

least one 24 hour emergency contact for the Gas Company and shall ensure the contacts are current.

3.4 Restoration

The Gas Company shall well and sufficiently restore, to the reasonable satisfaction of the Engineer/Road Superintendent, all highways, municipal works or improvements which it may excavate or interfere with in the course of laying, constructing, repairing or removing its gas system, and shall make good any settling or subsidence thereafter caused by such excavation or interference. If the Gas Company fails at any time to do any work required by this Paragraph within a reasonable period of time, the Corporation may do or cause such work to be done and the Gas Company shall, on demand, pay the Corporation's reasonably incurred costs, as certified by the Engineer/Road Superintendent.

3.5 Indemnification

The Gas Company shall, at all times, indemnify and save harmless the Corporation from and against all claims, including costs related thereto, for all damages or injuries including death to any person or persons and for damage to any property, arising out of the Gas Company operating, constructing, and maintaining its gas system in the Municipality, or utilizing its gas system for the carriage of gas owned by others. Provided that the Gas Company shall not be required to indemnify or save harmless the Corporation from and against claims, including costs related thereto, which it may incur by reason of damages or injuries including death to any person or persons and for damage to any property, resulting from the negligence or wrongful act of the Corporation, its servants, agents or employees.

3.6 Insurance

- (a) The Gas Company shall maintain Comprehensive General Liability Insurance in sufficient amount and description as shall protect the Gas Company and the Corporation from claims for which the Gas Company is obliged to indemnify the Corporation under Paragraph 3.5. The insurance policy shall identify the Corporation as an additional named insured, but only with respect to the operation of the named insured (the Gas Company). The insurance policy shall not lapse or be cancelled without sixty (60) days' prior written notice to the Corporation by the Gas Company.
- (b) The issuance of an insurance policy as provided in this Paragraph shall not be construed as relieving the Gas Company of liability not covered by such insurance or in excess of the policy limits of such insurance.
- (c) Upon request by the Corporation, the Gas Company shall confirm that premiums for such insurance have been paid and that such insurance is in full force and effect.

3.7 Alternative Easement

The Corporation agrees, in the event of the proposed sale or closing of any highway or any part of a highway where there is a gas line in existence, to give the Gas Company reasonable notice of such proposed sale or closing and, if is feasible, to provide the Gas Company with easements over that part of the highway proposed to be sold or closed sufficient to allow the Gas Company to preserve any part of the gas system in its then existing location. In the event that such easements cannot be provided, the Corporation and the Gas Company shall share the cost of relocating or altering the gas system to facilitate continuity of gas service, as provided for in Paragraph 3.8 of this Agreement.

3.8 Pipeline Relocation

- (a) If in the course of constructing, reconstructing, changing, altering or improving any highway or any municipal works, the Corporation deems that it is necessary to take up, remove or change the location of any part of the gas system, the Gas Company shall, upon notice to do so, remove and/or relocate within a reasonable period of time such part of the gas system to a location approved by the Engineer/Road Superintendent.
- (b) Where any part of the gas system relocated in accordance with this Paragraph is located on a bridge, viaduct or structure, the Gas Company shall alter or relocate that part of the gas system at its sole expense.
- (c) Where any part of the gas system relocated in accordance with this Paragraph is located other than on a bridge, viaduct or structure, the costs of relocation shall be shared between the Corporation and the Gas Company on the basis of the total relocation costs, excluding the value of any upgrading of the gas system, and deducting any contribution paid to the Gas Company by others in respect to such relocation; and for these purposes, the total relocation costs shall be the aggregate of the following:
 - (i) the amount paid to Gas Company employees up to and including field supervisors for the hours worked on the project plus the current cost of fringe benefits for these employees,
 - (ii) the amount paid for rental equipment while in use on the project and an amount, charged at the unit rate, for Gas Company equipment while in use on the project,
 - (iii) the amount paid by the Gas Company to contractors for work related to the project,
 - (iv) the cost to the Gas Company for materials used in connection with the project, and
 - (v) a reasonable amount for project engineering and project administrative costs which shall be 22.5% of the aggregate of the amounts determined in items (i), (ii), (iii) and (iv) above.

- (d) The total relocation costs as calculated above shall be paid 35% by the Corporation and 65% by the Gas Company, except where the part of the gas system required to be moved is located in an unassumed road or in an unopened road allowance and the Corporation has not approved its location, in which case the Gas Company shall pay 100% of the relocation costs.

ARTICLE 4 – PROCEDURAL AND OTHER MATTERS

4.1 Municipal By-laws of General Application

The Agreement is subject to the provisions of all regulating statutes and all municipal bylaws of general application, except by-laws which have the effect of amending this Agreement.

4.2 Giving Notice

Notices may be delivered to, sent by facsimile or mailed by prepaid registered post to the Gas Company at its head office or to the authorized officers of the Corporation at its municipal offices, as the case may be.

4.3 Disposition of Gas System

- (a) If the Gas Company decommissions part of its gas system affixed to a bridge, viaduct or structure, the Gas Company shall, at its sole expense, remove the part of its gas system affixed to the bridge, viaduct or structure.
- (b) If the Gas Company decommissions any other part of its gas system, it shall have the right, but is not required, to remove that part of its gas system. It may exercise its right to remove the decommissioned parts of its gas system by giving notice of its intention to do so by filing a Plan as required by Paragraph 3.1 of this Agreement for approval by the Engineer/Road Superintendent. If the Gas Company does not remove the part of the gas system it has decommissioned and the Corporation requires the removal of all or any part of the decommissioned gas system for the purpose of altering or improving a highway or in order to facilitate the construction of utility or other works in any highway, the Corporation may remove and dispose of so much of the decommissioned gas system as the Corporation may require for such purposes and neither party shall have recourse against the other for any loss, cost, expense or damage occasioned thereby. If the Gas Company has not removed the part of the gas system it has decommissioned and the Corporation requires the removal of all or any part of the decommissioned gas system for the purpose of altering or improving a highway or in order to facilitate the construction of utility or other works in a highway, the Gas Company may elect to relocate the decommissioned gas system and in that event Paragraph 3.8 applies to the cost of relocation.

4.4 Use of Decommissioned Gas System

- (a) The Gas Company shall provide promptly to the Corporation, to the extent such information is known:

- (i) the names and addresses of all third parties who use decommissioned parts of the gas system for purposes other than the transmission or distribution of gas; and
 - (ii) the location of all proposed and existing decommissioned parts of the gas system used for purposes other than the transmission or distribution of gas.
- (b) The Gas Company may allow a third party to use a decommissioned part of the gas system for purposes other than the transmission or distribution of gas and may charge a fee for that third party use, provided
 - (i) the third party has entered into a municipal access agreement with the Corporation; and
 - (ii) the Gas Company does not charge a fee for the third party's right of access to the highways.
- (c) Decommissioned parts of the gas system used for purposes other than the transmission or distribution of gas are not subject to the provisions of this Agreement. For decommissioned parts of the gas system used for purposes other than the transmission and distribution of gas, issues such as relocation costs will be governed by the relevant municipal access agreement.

4.5 Franchise Handbook

The Parties acknowledge that operating decisions sometimes require a greater level of detail than that which is appropriately included in this Agreement. The Parties agree to look for guidance on such matters to the Franchise Handbook prepared by the Association of Municipalities of Ontario and the gas utility companies, as may be amended from time to time.

4.6 Agreement Binding Parties

This Agreement shall extend to, benefit and bind the parties thereto, their successors and assigns, respectively.

4.7 Cost Allocation Study

NRG will complete and file a new cost allocation study for consideration and determination by the Ontario Energy Board by no later than the second cost-of-service rate proceeding following the date of the Agreement.

IN WITNESS WHEREOF the parties have executed this Agreement effective from the date written above.

**THE CORPORATION OF THE TOWN OF
AYLMER**

By: _____

By: _____

NATURAL RESOURCE GAS LIMITED

By: _____
J. Robert Cowan, Co-Chair