



EB-2012-0396

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 approving or
fixing just and reasonable rates and other charges for the
sale, distribution, transmission and storage of gas
commencing October 1, 2010;

AND IN THE MATTER OF a hearing on the Board's own
motion.

NOTICE OF MOTION TO REVIEW AND PROCEDURAL ORDER NO. 1

Background

On May 17, 2012, the Board issued its final decision and order with respect to a rates application (EB-2010-0018) by Natural Resource Gas Ltd. ("NRG"). Integrated Grain Processors Co-operative Inc. ("IGPC") was an intervenor in that proceeding. IGPC operates an ethanol facility in NRG's service territory, and is an NRG ratepayer.

In a previous proceeding (EB-2006-0243), the Board had granted NRG leave to construct a dedicated pipeline to serve IGPC's ethanol facility. A Pipeline Cost Recovery Agreement ("PCRA") was executed between IGPC and NRG which detailed, amongst other things, the amount of the capital contribution IGPC would be required to pay NRG for the construction of the pipeline. The formula used to derive the capital contribution was consistent with the Board's guidelines as established in the 1998 E.B.O. 188 proceeding. The PCRA required IGPC to pay an amount "up-front" that would later be reconciled against actual costs once construction was completed. The up-front payment by IGPC was \$3,538,792.47. In the event of a dispute between the

parties regarding the total actual costs, the PCRA provided two possible remedies: a dispute resolution clause which named the Board as arbitrator, and a separate clause which stated that all disputes arising out of the agreement were the exclusive jurisdiction of the courts of Ontario.

The pipeline was completed and began supplying gas to the ethanol facility in July 2008. Since that time, there has been an ongoing dispute between IGPC and NRG regarding the actual costs of constructing the pipeline. This issue is important to IGPC as they believe that they are entitled to a refund on the disputed costs as part of the reconciliation provisions of the PCRA.

IGPC sought to raise this issue in the EB-2010-0018 proceeding. It filed a motion asking the Board to consider the prudence and reasonableness of the total costs of the pipeline as claimed by NRG. To the extent the claimed costs were excessive, IGPC argued it would be entitled to a refund of some portion of its capital contribution.

The Board declined to hear some of the issues identified in the motion. Although it did make a determination with respect to the pipeline costs that entered NRG's rate base (which therefore comprised part of NRG's final rate order), it did not make any assessment of the total reasonable pipeline costs, or the proper amount of IGPC's capital contribution. At pages 14-15 the Board stated:

The Board can only act in accordance with those powers specifically provided by legislation, either directly or through the doctrine of necessary implication. The Board has no legislative authority to act as an arbitrator for contractual disputes, and no provision of a contract (such as Article IX to the PCRA) can give the Board such a power. The Board has no further statutory powers to resolve the remaining issues concerning the total costs of the pipeline. [...] IGPC is seeking a refund. The issue between IGPC and NRG is essentially a contractual dispute between two private entities. The Board does not have jurisdiction to consider or remedy contractual disputes.

On June 18, 2012 IGPC appealed this portion of the Board's decision to the Divisional Court.

Motion to Review

Pursuant to section 19(4) of the *Ontario Energy Board Act, 1998*, 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 decision to refrain from adjudicating the total costs of the pipeline and the appropriate amount of the capital contribution.

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

1. Does the Board have the jurisdiction to determine the proper amount of the capital contribution owed from IGPC to NRG, including any refund that may be owed by NRG to IGPC? If the answer to this question is “yes”, what steps, if any, should the Board take to address this situation?

THE BOARD THEREFORE ORDERS THAT:

1. Any party to the EB-2010-0018 proceeding may file submissions with the Board on the question presented above by October 22, 2012.
2. To the extent any party wishes to reply to the arguments of any other party, it may file such submissions by October 31, 2012.

All filings to the Board must quote file number EB-2012-0396, be made through the Board’s web portal at <https://www.pes.ontarioenergyboard.ca/eservice/>, 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. Parties shall use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.ontarioenergyboard.ca.

If the web portal is not available, parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a CD 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@ontarioenergyboard.ca
Tel: 1-888-632-6273 (toll free)
Fax: 416-440-7656

DATED at Toronto, October 4, 2012

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

INTERVENTION LIST
EB-2010-0018

**Natural Resource Gas Limited
EB-2010-0018**

APPLICANT & LIST OF INTERVENORS

October-04-12

APPLICANT

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Natural Resource Gas Limited
EB-2010-0018

APPLICANT & LIST OF INTERVENORS

October-04-12

INTERVENORS

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**Natural Resource Gas Limited
EB-2010-0018**

APPLICANT & LIST OF INTERVENORS

October-04-12

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