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EB-2012-0072

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Dear Ms. Walli:

Natural Resource Gas Limited (NRG)
Aylmer Franchise EB-2012-0072

We write in response to Mr. Tunley's and Mr. Stoll's letters of October 18th regarding: (a) an extension of time for filing responding submissions; and (b) the inclusion in such submissions of new evidence. Although the Board granted an extension on the same day that one was requested, NRG's position is that an extension of time should not have been granted, as there was no reasonable basis for doing so. In any case, the Board must make it clear that any extension which may be granted is not given so that the parties can refer to new evidence in an unrelated application in their submissions.

In his letter, Mr. Tunley seeks:

1 an indefinite postponement of the present proceeding on the basis that the Board ought to hear, adjudicate, and dispose of two entirely separate proceedings involving NRG before completing this application; or in the alternative,

2 a two week extension of the deadline for submissions by Board Staff and Intervenors as set in Procedural Order No. 5, which was issued almost five weeks ago on September 17, 2012 (**Procedural Order**).

We will address each of Mr. Tunley's arguments below.

Scheduling Conflict: Mr. Tunley states that he has been occupied by a recent trial with no time to prepare submissions in accordance with the Procedural Order. It is difficult to understand why the trial, which was presumably scheduled long ago, could have taken Mr. Tunley by surprise. The Procedural Order was released over one month ago; surely Mr. Tunley would have known by then if the scheduling would present difficulties and could have taken appropriate steps to ensure compliance with the Procedural Order. If compliance would have been impossible, Mr. Tunley ought to have approached the Board right away. Instead, he waited until the day before submissions were due, after NRG filed its Argument-in-Chief, and IGPC filed an unrelated application. This late stage request for an extension should not have been granted on the basis of scheduling conflicts known more than a month ago.

Need to Address New Evidence: Mr. Tunley suggests that more time is needed in order to address new evidence in its submissions.

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First of all, there is no new evidence in this proceeding. The evidentiary phase of this proceeding ended by virtue of the Board's Procedural Order No. 5 of September 17, 2012, wherein the proceeding moved to the written argument phase. Both the Town and IGPC had an opportunity to raise any concerns they may have had about the closure of the evidence-gathering process. No concerns were raised. As a result, the Board's Order is final and binding on all the parties to this proceeding and there can be no further evidence introduced in this proceeding.

Second, the evidence that Mr. Tunley and Mr. Stoll baldly declare to be relevant to this proceeding (namely, the motion to review EB-2010-0018, and the more recent IGPC "application") is entirely unrelated to the Town's franchise agreement with NRG.

- There is no relationship between the Board's October 4, 2012 motion to review its decision in EB-2010-0018 and the present proceeding. As explained in detail in NRG's prior submissions on the issues list and in response to interrogatories, and as expressly held by the Board in procedural order no. 4 dated July 26, 2012, issues which are more properly the subject of a rates proceeding are out of scope of this proceeding. Accordingly, the Board's motion to reconsider is irrelevant.

- The application recently filed by IGPC (**IGPC Application**) is irrelevant to this proceeding, and fundamentally flawed. If IGPC has a complaint with NRG's service, it should resolve it with NRG or failing that, file a complaint with the Board. Jurisdiction to commence compliance proceedings starts with the Board, not a customer. Moreover, the claim that NRG has denied IGPC service is entirely false. The last correspondence between NRG and IGPC is as follows:

  > NRG to IGPC (July 24, 2012): "Re: IGPC Possible Expansion" – "I have not received any further correspondence or call to discuss the above matter in greater detail. I assume that IGPC has chosen not to pursue further expansion at this time."
  >
  > IGPC to NRG (July 25, 2012): "RE: IGPC Possible Expansion" – "In response to your letter of July 24, 2012, IGPC is currently in preliminary engineering stages of an expansion to its facilities."

  This is the entire content of the two most recent letters between IGPC and NRG on this issue. There is no further oral or written communication from IGPC as to its expansion plans, until the IGPC Application on October 11, 2012 wherein Mr. O'Leary re-hashes old grievances the Board is well aware of, and alleges a denial of service by NRG. There has been no denial of service. If IGPC believes there has been, IGPC can use the Board's complaint process to try to make the case that the letter exchange above amounts to a denial of service. At no time did IGPC indicate to NRG that it considered any correspondence a denial of service, and to NRG's knowledge, no complaint process was started with the Board. To do so now, and in this manner (i.e., commencing a separate proceeding and seeking to import evidence from that proceeding into the franchise matter) is an abuse of the Board's process and results in yet additional time and resources to be spent by NRG to respond.

Accordingly, there is no basis to extend the time for submissions in order to allow the parties to comment on, or incorporate by reference, new unrelated, untested and irrelevant evidence. Such a result would be procedurally and substantively unfair to NRG and may result in prejudice which cannot be cured by an extension of time. As noted above, the evidentiary phase of the proceeding ended on September 17, 2012 and IGPC's complaints about "denial of service" relate back to June/July 2012. There was never a denial of service complaint made to NRG or, to NRG's knowledge, the Board. The first NRG has heard of this was the October 11, 2012 IGPC Application.

Although Mr. Tunley makes reference to the status quo being preserved by the Board's Interim Order in this matter, NRG does not benefit from the status quo so long as there is uncertainty about its franchise agreement being renewed, and on what terms. Further delays in reaching the conclusion of this proceeding, particularly delays arising for spurious reasons, will prejudice NRG, for all the reasons outlined in its evidence and argument.

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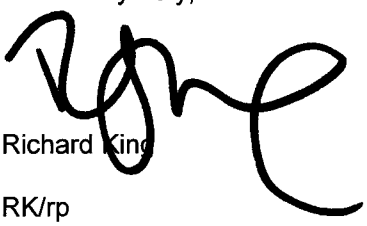
For all these reasons, we request that the Board expressly deny any attempt to rely on the new evidence mentioned by Mr. Tunley and Mr. Stoll's letters.

Yours very truly,



Richard King

RK/rp

Copies to: P. Tunley (Counsel to Town)
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All Intervenors