TOWN OF AYLMER

STATEMENT OF JENNIFER RAYNAERT

1. I am the Administrator and Deputy Clerk of The Corporation of the Town of Aylmer (the "Town") and as such have knowledge of the matters herein.

The Franchise Agreements in Place

2. The Town is one of six municipalities that are served by the natural gas distribution system operated by the Applicant, Natural Resource Gas Limited ("NRG").

3. The Town initially entered into a 25-year Franchise Agreement with NRG regarding the supply of natural gas to customers within its area dated February 27, 1984. That Franchise Agreement expired on February 27, 2009. The Town was unable to reach agreement with NRG on the terms on which it might renew the Franchise Agreement with NRG at that time. After a hearing, this Board's Decision and Order dated May 5, 2009 under EB-2008-0413 (the "2009 Franchise Decision and Order") provided that, subject to other terms set out therein, the existing Franchise Agreement be extended for a period of 3 years, to expire on February 27, 2012. The existing Franchise Agreement is reproduced as Appendix "A" to the 2009 Franchise Decision and Order.

4. NRG's appeal from the 2009 Franchise Decision and Order was dismissed by the Divisional Court on June 14, 2012. The Court ordered costs payable by NRG to the Town in the amount of $10,000. NRG has not appealed that decision, nor has it paid the costs as ordered.

5. While NRG's appeal was still pending, the Town engaged in correspondence with NRG

prior to the expiry of the 2009 Franchise Decision and Order on February 27, 2012. Again, based upon the positions taken by NRG, the Town declined to renew the Franchise Agreement at that time.

6. After NRG commenced this Application, the Franchise Agreement was further extended by interim order of the Board.

7. Subsequent "without prejudice" exchanges occurred between NRG and the Town, together with the other five municipalities in the NRG service area. The NRG service area includes parts of the areas currently served by the Corporations of the Townships of Malahide "Malahide"), and South-West Oxford ("SW Oxford"), and of the Municipalities of Bayham ("Bayham"), Central Elgin ("Elgin") and Thames Centre ("Thames"). NRG had signed one or more Franchise Agreements with predecessors to each of these municipalities, and each of these Agreements have different renewal dates. To the best of my knowledge, information and belief, the relevant renewal dates are as follows:

a. Malahide: (South Dorchester) May 5, 2012; (Springfield) October 2, 2014, (Malahide) December 15, 2014
b. Thames: (North Dorchester) November 16, 2012
c. Bayham: (Port Burwell) May 5, 2012; (Bayham) November 22, 2012, (Vienna) May 9, 2015
d. SW Oxford: 2013
e. Elgin: 2016

8. For the purposes of the "without prejudice" exchanges with NRG, both prior and between Procedural Orders 1 and 2 herein, the Town and its solicitors co-ordinated positions that would have been acceptable to all of the six municipalities. Those positions, however, all included a

requirement that the dates, terms and renewal dates all of the new Franchise Agreements to be entered into with the participating municipalities would be aligned, as of an effective date and on a go-forward basis, either pursuant to another Order of this Board under s. 10 of the *Municipal Franchises Act* or, as a preference, by agreement with NRG. The Town's preference for a solution by agreement was driven simply by the costs of Board proceedings, and the desirability of avoiding such costs if possible.

9. However, these exchanges were not successful in arriving at terms on which the Town or other municipalities were prepared to sign new Franchise Agreements with NRG.

The Town's Position and Concerns in EB-2008-0413

10. At the time of proceedings in EB-2008-0413, circumstances had arisen which had shaken the confidence of the Town and its constituents in NRG as the incumbent supplier of natural gas to customers within the municipal area of the Town. These concerns related both to the financial viability of NRG, and to the quality and reliability of its service to customers.

11. The Town detailed those concerns in its interventions in EB-2006-0243 (Compliance Order dated June 29, 2007, and Order dated March 12, 2008) and EB-2008-0273 (Decision and Order dated November 27, 2008), and in the Town's Submissions in response to the Board's consultation regarding revisions to its Gas Distribution Access Rule ("GRAR") (EB-2008-0313). The Town re-iterated these concerns in EB-2008-0413, noting that they did not originate with the Town of Aylmer or its own corporate interests, but rather were concerns raised by NRG's own customers, both individual and industrial/commercial. The Town's concerns were documented in a comprehensive Report to Council, dated October 8, 2008. A copy of that Report and the

Resolution of Council dated October 14, 2008 adopting its recommendations were attached at Tabs "B" and "C" to the Town's pre-filed evidence in EB-2008-0413.

12. The Town's position and proposal specifically to address these concerns took the form of a further Report to Council dated December 11, 2008, approved by Council on December 15, 2008 and presented to NRG the next day, which are found at the back of Tab D-1 of NRG's pre-filed evidence in EB-2008-0413. In summary, the issues raised by the Town were:

(a) Widespread customer complaints about NRG's quality of service and security deposit practices;

(b) NRG's rates generally exceeded those charged by Union in surrounding areas;

(c) NRG's recent poor record of support for new industrial development; and

(d) NRG's lack of responsiveness to these concerns.

13. The Town was generally supported by the other municipalities in the NRG service area with respect to its goals and position with regard to NRG. Specific letters and resolutions of support from Thames, Bayham, SW Oxford and Malahide were attached at Tab "D" to the Town's pre-filed evidence.

The Town's Position and Concerns Today

14. While the Town had noted that NRG was making some progress in addressing customer concerns about the service quality and security deposit issues, the Town also noted that NRG has done so grudgingly, for the most part only in response to specific Board Orders, and in some cases only after appeals from those Orders. The other concerns raised by the Town in EB-2008-

0413 have not been addressed, and continue, and other new concerns have arisen, as follows.

The Alignment of Terms of the Various Franchise Agreement Renewals

15. In its 2009 Franchise Decision and Order at pages 11-12, this Board agreed with the Town's proposal for a 3-year renewal term. The Town understands the Board did so, in part, to permit the next renewal of the Town's Franchise Agreement with NRG to come up in 2012, at a time to coincide with the pending renewals of several of NRG's other Franchise Agreements, specifically with Malahide, Thames, and Bayham. As noted above, the Town believes that two other Franchise Agreements have expired while this proceeding has been pending, and two others are due to expire within a period of weeks. Nevertheless, NRG has refused to act on this issue.

16. In the 2009 Franchise Decision and Order, this Board rejected concerns raised by NRG about the municipalities' proposal, which suggested that such a short renewal may affect its ability to refinance its long term debts in the interim. It noted that NRG itself had been arranging financing on a relatively short term (5-year on-demand) basis and not on anything like a 20-year term. NRG had continued to be able to conclude such arrangements both prior to and between 2009 and 2012, even when NRG's Franchise Agreements with the Town and other municipalities have had shorter terms than 5-years remaining prior to renewal. That situation appears to have had no impact on NRG's ability to refinance its debt, or to finance new construction, in 2006 and 2008. Nevertheless, NRG has continued to raise these same concerns.

17. The Town continues to believe that alignment of renewal terms is a necessary and desirable first step. Among other things, it would allow all affected municipalities to consider

the full range of alternatives with respect to the future supply of gas in these areas, including the option of renewal with NRG for a longer term. It would also enable all of the municipalities to exercise greater collective influence upon NRG, particularly with respect to the quality and reliability of its service to customers.

18. The failure of NRG to resolve this issue by agreement, even in the current proceeding, and its decision instead to raise again the same concerns that this Board has already rejected in the 2009 Franchise Decision and Order, only further underscores the need for the Board to resolve the issue once and for all, by Order.

19. However, this also raises a question about how, practically, an alignment of all of the terms of the seven municipalities' franchise agreements can be accomplished by this Board. NRG suggests somehow the onus was on the other municipalities, if they truly wished this relief, to have intervened in this proceeding to obtain it. However, the Town understands that s.10 of the *Municipal Franchises Act* does not permit proceedings by municipalities to renew or amend their own franchise agreements to be commenced earlier than a year before those agreements are scheduled to expire.

20. The Town, in paragraph 3(b) of its Draft Issues List, suggested that this proceeding could simply be adjourned (with the current extension Order remaining in place) until it can be joined with renewal proceedings in respect of all the other Franchise Agreements in the NRG service area. At that time, the issue of an alignment and the issue of the term of any renewal could be addressed together, with all affected parties before the Board.

21. Finally, the Town acknowledges that this Board's ultimate authority with respect to the

Franchise Agreement for its area would include the ability simply to pick a renewal date, after the anticipated expiry date of the last of the franchise agreements within NRG's service area, with the intention that each of the other agreements, as they come up for renewal, would be also be extended to that date.

22. The Town also acknowledges that the choice of how best, practically, to achieve an alignment of the various franchise agreement terms is for the Board.

NRG's Support for New Industrial Development

23. In its pre-filed evidence in EB-2008-0413, the Town noted that the most alarming example of NRG's lack of customer support involved its inexplicable and repeated interference with the development of an ethanol plant within the Town by Integrated Grain Processors Co-Operative Inc. and IGPC Ethanol Inc. ("IGPC"), and the related new pipeline construction. The Town addressed those issues in its interventions in EB-2006-0243 (Compliance Order dated June 29, 2007, and Order dated March 12, 2008), which resolved some of the issues that were threatening the completion of the initial plant and pipeline construction.

24. After the 2009 Franchise Decision and Order, the Town was dismayed by the continuing failure of NRG to address remaining disputes related to the existing pipeline, either before the Board or otherwise. Although it has not intervened formally, the Town has followed with interest IGPC's attempts to raise some remaining issues in EB-2010-0018 (the "Rate Proceedings"), including IGPC's appeal in that case and the reconsideration proceedings currently pending before the Board in EB-2012-0396.

25. More recently, however, the Town was again dismayed to be provided with copies of correspondence between NRG and IGPC dated June 18, July 3, and July 9, 2012, in which IGPC sought to engage NRG in discussions about a possible expansion of its ethanol plant, and resulting increases in its demand for natural gas supply within the existing unused capacity of the IGPC pipeline. The Town understands that this expansion project involves an investment of between $15 and $20 millions in new monies, with significant potential for related economic and employment benefits within the Town and surrounding areas. However, the response from NRG to IGPC's requests appears to put this expansion project in jeopardy, or at a minimum to make it an occasion for further proceedings, either before this Board or otherwise.

26. While the Town understands that this is now the subject of other proceedings before this Board, NRG's response (like its responses to IGPC leading to the 2007 and 2008 proceedings in EB-2006-0243, and like its response to Union Gas leading to the proceedings in EB-2008-0273) is the continuation of a highly confrontational, self-interested, and opportunistic approach in dealing with the new business and economic development initiatives that our area so desperately needs.

27. From its inception, the IGPC plant and pipeline expansion have been a critical, high profile project for the Town and surrounding areas. It has been an important local economic development success story, which should serve to highlight the best characteristics and opportunities of our area to others. Instead, however, NRG's approach at every stage of the project has soured this success, and sent exactly the opposite message to anyone considering a development in our area, and especially one that is dependent upon natural gas supply.

The Town's Letter to the Minister

28. When this exchange of correspondence first came to the Town's attention in August, 2012, the Town met with IGPC, with the other municipalities in the NRG service area, and with other affected local interests, to discuss options. That meeting led to the Town joining others in writing to the Minister to request new legislation. Our hope is that this initiative might provide this Board with new and better regulatory powers to address some of these ongoing concerns more effectively. A copy of the Town's letter to the Minister dated September 4, 2012 is found as Attachment 1 to this submission.

Other Issues Respecting Gas Supply to Customers within the Town and Surrounding Areas

29. The Town is concerned that, despite extensive proceedings both prior to and since the 2009 Franchise Decision and Order, major issues regarding the quality of gas supply to NRG's service area have not been addressed. Rather, there is a growing disparity between the quality and costs of gas supply services to the Town and surrounding areas, compared to most other areas in Ontario. The following are some of the highlights.

(a) Despite this Board's review of NRG's rates in EB-2010-0018, the rates charged by NRG for gas supply in its area remain higher than in immediately surrounding Franchise areas and across the province. These disparities continue to be reported in various local media, including the dedicate blog publication at http://nrg-aylmer.blogspot.ca/p/gas-bill-comparison.html, which reports a 40% difference between NRG and a neighbouring Union Gas service area.

(b) Despite paying these higher-than-normal rates, gas customers in the Town and surrounding areas do not have access to energy conservation programs and billing options that are now standard elsewhere in the Province of Ontario, including major provincially mandated initiatives such as Demand Side Management programs, smart-meters and time-of-use billing.

(c) NRG has sought and continues to be granted exemptions from this Board's GDAR in respect of certain service quality performance obligations, including

telephone and call answering performance levels and reporting requirements, that are in place in other areas of Ontario to protect customers.

(d) NRG, alone in the Province among gas and electricity distributors of all sizes, does not have a working website, or other means of customer access to information or online inquiry.

(e) NRG has no true equity capital, because its common shares continue to include a "retractable" feature. Nevertheless, alone among gas distributors, NRG's rates are set on a basis that simply "deems" 40% of its actual capital to be equity (even though it is not) and allows NRG to earn a return on that 40% at the "equity" rate of 9.85% rather than at its actual cost of debt capital (see Decision and Order, December 6, 2010, EB-2010-0018, pages 21-31).

(f) Yet, as this Board has found, disclosure of these "retractable shares" as debt in NRG's financial statements since 2006 "significantly increases the financial risk associated with NRG" (Decision and Order, EB-2008-0273, November 27, 2008 at page 4). As a result, again alone among gas or electricity distributors in Ontario, customers in the NRG service area who are required to post security deposits to obtain natural gas supply will rank behind even NRG's own shareholders in the event of an insolvency.

(g) Unlike both Union Gas and Enbridge, which service most of the rest f the Province, NRG has not been ordered by this Board to fully separate its regulated gas distribution business and its ancillary business of providing unregulated energy services and products, although it has recognized this situation is "generally inconsistent with good regulatory practice" (see Decision and Order, December 6, 2010, EB-2010-0018, pages 5-6).

30. The Town acknowledges that this Board has ruled some of these issues to be outside the scope of the present proceeding. As such, the Town cannot and will not seek specific relief in respect of them at this time. However, cumulatively they represent a significant disparity in the cost and benefit of gas service to our area, as compared to the rest of the Province. There is no current plan by NRG to address any of these deficiencies, even where (as in the case of its capital structure and failure to separate regulated and non-regulated businesses) this Board has clearly recognized that the current situation is anomalous and inconsistent with its own usual standards for gas utilities elsewhere in this Province

31. This is simply not acceptable to the Town as a *status quo*.

32. Again, while the Town acknowledges that the Board's ultimate authority with respect to NRG s franchise for the Town's area is not affected, the Town itself cannot and will not consider signing any new Franchise Agreement with NRG unless and until there is significant movement by NRG to address these disparities. The Town also cannot and will not consider signing any new Franchise Agreement with NRG unless and until the issues respecting IGPC's proposed expansion of the Ethanol plant and related gas supplies, and the alignment of the renewals periods of all franchises in the NRG service area, have been addressed either by NRG or by the Board.

33. To take any other approach would be to condone the *status quo*, which unfortunately the Town cannot and will not do.

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