

November 9, 2012

**Sent By Email and Courier**

Ms. Kirsten Walli  
Board Secretary  
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Dear Ms. Walli:

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

Please find enclosed NRG's Reply Argument in the above-referenced matter. The Reply Argument could not be filed on RESS today in light of an "emergency situation" at the Board. Kindly post it on the webdrawer site when it becomes available.

Please do not hesitate to contact me should you have any questions or concerns.

Yours very truly,

*Original Signed by*

Christine Kilby

CK/mnm

Enclosure

Copies to: P. Tunley (Counsel to Town)  
J. Reynaert (Town Administrator)  
B. Cowan and L. O'Meara (NRG)  
C. Kilby (Norton Rose)  
All Intervenors

DOCSTOR: 2557308\1

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ONTARIO ENERGY BOARD

**IN THE MATTER OF** the *Municipal Franchise Act*, R.S.O. 1980,  
Chapter 309, as amended;

**AND IN THE MATTER OF** the renewal of a franchise agreement  
between Natural Resource Gas Limited and the Corporation of the  
Town of Aylmer.

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**NATURAL RESOURCE GAS LIMITED  
REPLY ARGUMENT  
November 9, 2012**

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## Introduction

1. On February 22, 2012, Natural Resource Gas Limited (**NRG**) applied to the Board under the *Municipal Franchises Act*, R.S.O. 1990, c. M.55 (***Municipal Franchises Act***) for the renewal of its franchise agreement (**Franchise Agreement**) with the Town of Aylmer (**Town**). NRG seeks the renewal for 20 years of its existing right to operate works and add works for the distribution of gas in the Town.
2. NRG submits that it has met all requirements for a 20 year renewal of its franchise agreement and the Board should therefore exercise its authority to grant the relief that NRG is seeking. NRG has filed evidence, answered appropriate interrogatories, and responded to the numerous issues raised in the submissions of the intervenors in this proceeding regarding the relevant issues for consideration and the evidence.
3. NRG makes this reply to the submissions of the intervenors Integrated Grain Processors Co-operative Inc. (**IGPC**) and the Town.

## The Positions of the Parties

4. Both IGPC and the Town take the position that NRG should not be granted a renewal of the Franchise Agreement, or if granted, such a renewal should not be for 20 years.
5. Board Staff have indicated that the franchise should be renewed for a 20 year term and the Model Franchise Agreement proposed by NRG (**MFA**) should be approved as the form of agreement between NRG and the Town. Board Staff have correctly confirmed that the issues to be addressed in a franchise agreement should be limited to those related to the terms and conditions embedded within the MFA.
6. IGPC says it is primarily concerned with the duration of renewal because of “documented difficulties” in its dealings with NRG and ostensible customer complaints by Ag Energy, the Town, and other municipalities. IGPC relies on new evidence, historical complaints specifically determined by the Board to be outside the scope of this proceeding, and other unrelated proceedings before the Board involving NRG in support of its position.

7. The Town's original position on NRG's application was that it would agree to a renewal of the Franchise Agreement for a 10 year term on the condition that certain issues (NRG's security deposit policy, its retractable shares, the separation of its utility and non-utility businesses, alignment of all other municipal franchise agreements, and a cost allocation study prior to the next rates hearing) were resolved.
8. The Board ruled in Procedural Order No. 4 dated July 26, 2012 (**Procedural Order No. 4**) that most of the issues raised by the Town are out of scope of this proceeding. The Town now takes the position that it will not sign any agreement with NRG unless and until:
  - (a) NRG resolves outstanding concerns with IGPC in respect to its proposed expansion of the ethanol plant;
  - (b) NRG takes "significant steps" to address alleged pricing disparities for its services in contrast to the prices offered by other natural gas distributors; and
  - (c) the renewal periods of all franchises in NRG's service area are aligned.
9. As discussed below, NRG has never denied service to IGPC in respect of its proposed expansion, the Town's allegations regarding pricing disparity are untrue, and there is no evidence that the other municipalities in NRG's service area actually want to align their franchise agreement expiration dates.
10. With the exception of the alignment of franchise agreements, the conditions outlined above were not previously raised by the Town in this proceeding, or in the negotiations preceding NRG's application. Also new is the Town's indication that it does not wish to be privy to any renewed franchise agreement with NRG which the Board may order in this proceeding. In effect, the Town is suggesting that it is impossible for the parties to engage in a business relationship, despite a dearth of supporting evidence on the record or at all.
11. The Town seeks to absolve itself of any responsibility relating to the supply of natural gas to its residents. This is simply unworkable, as the Town has responsibilities in relation to NRG's system which cannot be abdicated. Moreover, the Town's attempt to escape a contractual relationship with NRG places on the Board a regulatory function which it has not been granted under statute – to effectively serve as the contracting party to a

franchise agreement. Until another natural gas distributor seeks the franchise rights for the Town, the Town's only option is to deal with NRG on such terms as the Board deems appropriate. There is no credible evidence that this cannot be achieved.

12. NRG agrees with Board Staff that the MFA should be granted for a 20 year term in this case, as there is no evidence of any extraordinary circumstances warranting a departure from the standard terms and conditions in the MFA in this case. Although NRG's reply need not say much more than this, NRG has been forced to reply to a host of irrelevant, out of scope issues raised by the intervenors in their submissions.

#### **A. Arguments within Scope of the Proceeding**

13. IGPC argues, without reference to any supporting case law or legislation, that as the applicant in this matter, NRG has an onus to prove that the renewal of the Franchise Agreement is in the public interest. IGPC argues that NRG has failed to meet this burden of proof.
14. This is a mistaken interpretation of the law. The test required to be applied by the Board under the *Municipal Franchises Act* does not assign any burden of proof. NRG as the applicant arguably bears an onus only to demonstrate why it believes it is entitled to renew its franchise on the terms set out in the MFA. NRG has discharged this onus by addressing the reasons for the truncated renewal term granted in 2009, demonstrating that the concerns underlying that decision have been fully addressed, and responding to appropriate interrogatories on its evidence.
15. If there were any legitimate service issues or compelling reasons why the MFA should not be adopted in this case, the intervenors would bear the onus to lead evidence on those points accordingly. No such evidence was filed within the time frame set by the Board's procedural orders. The materials filed or referred to by the intervenors in their responding submissions constitute inadmissible new evidence which is irrelevant and false in any case and will be addressed later in this submission. Accordingly, it is NRG's position that the Board has not been shown cause to depart from the MFA or the 20 year term.

### Quality of Service Allegations

16. In their respective submissions, the Town and IGPC raise, for the first time, concerns about the quality of NRG's service. In all the contact and correspondence between Town and NRG representatives relating to this Franchise Agreement renewal, there has never once been any complaint by the Town about NRG's service, even when directly solicited by NRG.
17. The evidence confirms, and the Board has found as a fact, that NRG has never once failed to provide natural gas to its customers in a reliable and uninterrupted manner for over 30 years, without complaint. There is no evidence offered to support the repeated—and false—allegations by the Town and IGPC of service quality issues with NRG. The Board has established service quality requirements in the Gas Distribution Access Rule (**GDAR**). NRG exceeds these requirements.

### Price

18. The Town alleges that NRG's rates are higher than comparable natural gas rates, based on an unsubstantiated blog posting by an unidentified author.
19. Not only is this allegation inaccurate and unfounded, it second-guesses the Board's role in setting rates for NRG, which rates are deemed to be "just and reasonable", and in which all interested parties take a role in determining. This allegation is spurious and outside the scope of this proceeding. In any event, the "rate" IGPC challenges was approved by the Board in a proceeding to which IGPC was a party. IGPC's collateral attack on this final and binding Board decision is an abuse of process.

### Provincial Standards

20. The Town alleges that NRG cannot meet provincial standards for gas supply at competitive rates but offers no substantiation for this statement, nor clarification of the "provincial standards" to which it refers. This allegation also presupposes that somehow the Board has somehow overlooked a failure by NRG in this regard. As noted above, NRG exceeds the provincial service quality requirements in GDAR that are tracked by the Board.

21. The Town also complains that NRG customers do not have access to “standard” programs such as smart meters and time-of-use billing and suggests that somehow the absence of these programs benefits NRG. Smart meters and time-of-use billing are, of course, electricity initiatives. NRG is a natural gas company. NRG’s customers do not lack any standard gas service available in Union Gas or Enbridge’s service areas. Without any specific (and relevant) examples, it is difficult to understand what the Town is attempting to say.
22. Demand-side management is an initiative to manage consumption, the costs of which are borne by ratepayers. NRG already has the lowest residential usage when compared to Enbridge and Union Gas and did not feel that its customer base was sufficiently large to require, or bear the costs of, this program.
23. One topic discussed by the Town is the absence of a website for NRG or other online information source. If the Town sees this as being essential, NRG will determine at what cost it can be provided. If the Board makes this a condition of a renewal, NRG would obviously comply.

#### GDAR Exemptions

24. Contrary to the Town’s allegations, NRG is not exempt from the Board’s GDAR in respect of service quality performance obligations such as call answer performance levels and reporting requirements. NRG refers the Board to its response to Board Staff interrogatory #1 in this regard.
25. Board Staff has specifically confirmed that NRG’s regulatory compliance and security deposit policy have been satisfactorily addressed as part of previous proceedings before the Board. Any new regulatory compliance issues are best addressed by separate means following the established process to ensure that all parties have an opportunity make full response and a fair and impartial hearing on new issues is available. Board Staff have no outstanding concerns regarding the issues identified by the Board in the last franchise renewal proceeding.

### IGPC's Allegations are Stale and Unfounded

26. IGPC argues that the Board previously accepted that there once were service quality or service reliability concerns with NRG, and that therefore, there are service issues today with which the Board ought to concern itself in this proceeding.
27. Although already ruled as outside the scope of this proceeding, IGPC's new allegation has already been determined by the Board to be false. The Board's decision in EB-2008-0413 expressly states that "there is no evidence to support the Town claim that NRG's service was unreliable."

Board Decision dated May 5, 2009, p. 12.

28. Moreover, NRG corrected the concerns that were raised by the Board in that decision and received Board approval of its efforts. The audit and report of the Board are included in NRG's pre-filed evidence and cited in its responses to interrogatories.

### Denial of Service to IGPC

29. Contrary to IGPC's allegations in paragraph 15 of its submissions and its recently-filed application (**IGPC Application**), NRG has never once denied service to IGPC in relation to the proposed expansion of its ethanol plant.
30. IGPC has chosen only to refer to, and submit in its document book, a July 9, 2012 letter in this matter to support its allegation that NRG has denied it service. IGPC has not referred to NRG's response to that letter. The last correspondence between NRG and IGPC on this matter 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."

NRG's letter dated October 25, 2012.

31. 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 IGPC baldly alleges a denial of service by NRG and repeats historic grievances with which the Board is familiar.

32. There has been no denial of service and at no time prior to the IGPC Application did IGPC indicate that it believed there was. If IGPC actually believes that NRG has abused its position, there is a complaint process available by which IGPC can try to argue that the letter exchange above amounts to a denial of service. To NRG's knowledge, IGPC has not engaged the Board's complaint process in relation to this correspondence.
33. IGPC has instead chosen to bring the IGPC Application at a late stage and attempts import the evidence from that application into this one. In addition, IGPC has only made partial and potentially misleading disclosure to the Town and the Board in this proceeding of the relevant underlying correspondence. IGPC's conduct represents an abuse of the Board's process and has caused NRG to spend additional time and resources to respond.

See, e.g., Town Submissions at para. 18.

#### Meeting of the Town, IGPC, Other Municipalities and Affected Local Interests

34. The Town in its submission states that when the letters to IGPC were brought to its attention in August 2012, there was a meeting held with the Town, IGPC, other municipalities and affected local interests. NRG can only assume that these parties were made aware of these letters by IGPC. The Town goes on to state that this meeting led to the letter to the Minister. The letter that was sent, as noted below, is very similar to the letter sent by Ag Energy.
35. It is clear that the Town has taken up arms to assist its largest taxpayer in this dispute, however, it has not provided any detail regarding its allegation of NRG's "inexplicable and repeated interference with the development of an ethanol plant" except by reference to historic, concluded, and unrelated Board proceedings. Further, the Town does not have the full correspondence record in relation to IGPC's proposed expansion. NRG submits that in any case, the non-existent issues relating to IGPC's proposed expansion are not relevant to a franchise agreement between the Town and NRG.

Town Submissions, para. 14.

#### Concerns Raised by Ag Energy Cooperative Inc.

36. IGPC makes repeated reference to service concerns raised by Ag Energy Cooperative Inc. (**Ag Energy**), a gas retailer (and gas supplier to IGPC), in a letter to the Minister of Energy dated September 10, 2012. In fact, Ag Energy's letter raises almost exactly the same concerns as those set out in IGPC's and the Town's submissions and the Town's letter to the Minister
37. Ag Energy's letter refers to time and effort spent by that body to overcome what it ambiguously refers to as "obstacles" relating to NRG's operations. Ag Energy asserts that it has "responsibly supported our members and customers but we are seeing little hope of improvement, even with extreme follow-up and due diligence."
38. In fact, the Ag Energy letter to the Minister is the first complaint that NRG has seen from Ag Energy, despite dealing with Ag Energy for years in the context of Ag Energy's supply to some of NRG's customers. Ag Energy chose not to write to the Board or NRG about its concerns or seek to intervene in, or observe, this proceeding. NRG also believes it relevant that Ag Energy is the gas supplier to IGPC, which might explain its sudden and recent dissatisfaction with NRG.
39. No probative value can be given to the Ag Energy letter in these circumstances. It is utterly undermined by the simple fact that Ag Energy has never once complained to NRG about any of its alleged concerns.

#### Alignment of Franchise Renewals

40. In Procedural Order No. 4, the Board indicated that the issue of alignment of the expiration dates of the franchise agreements for all municipalities served by NRG was subsumed in issue 4 of the approved issues list: "implications if the application is not approved." This suggests that the alignment issue is relevant only if there is otherwise a good reason not to renew the Franchise Agreement on the terms proposed by NRG. As no such reason exists, NRG submits that the alignment issue is irrelevant.
41. In any case, there is no evidence to suggest that the municipalities in NRG's service area are actually interested in aligning the expiration dates of their franchise agreements. The Town asserts that it has been in contact with its neighbouring municipalities in an effort to align franchise renewal dates and that it received support in this regard from five

municipalities. However, the only evidence of such support is the unsigned, unsworn statement of Jennifer Raynaert. No correspondence, resolutions, minutes of meetings, or provisional agreements among the municipalities have been produced in this regard. No other municipality has intervened. The Board should draw an adverse inference and find that no other municipality agrees with the Town's position.

42. What is clear and not disputed is that despite the Town's admitted attempts to gather support, not one other municipality has intervened or even provided any evidence of support for the Town's position. In contrast, the Town states that in the last franchise renewal proceeding, letters and resolutions of support were forthcoming from four other municipalities.
43. Once again, both the Town and IGPC mischaracterize the Board's 2009 findings regarding the alignment of municipal franchise agreements. The Board did not say that the previous three year renewal term was granted in order for the various franchise agreements to be aligned. This was simply the Town's position in that proceeding. The Board also did not affirm that the Town's purpose in seeking alignment was proper, but rather dismissed the argument that it was improper. The Board's discussion of the franchise renewal alignment issue is :

"The Board does not accept NRG's position that the alignment of expiration dates in the franchise agreements of adjacent municipalities is an improper motive. Different dates are simply an artificial barrier to municipalities seeking alternative supply in the appropriate circumstances, a rationale the Board accepted in the 1986 Report that created the Model Franchise Agreement;"

(emphasis added) Board Decision and Order dated May 5, 2009, pp. 11-12.

44. Contrary to the Town's argument that NRG has refused to act on this issue, NRG has no role to play. It is not NRG's responsibility to engage with municipalities for the purposes of aligning franchise terms. That initiative would be up to the other municipalities. Even if such initiative were undertaken, NRG owes no duty to agree with such initiative. NRG is running a business and has invested millions of dollars in capital assets in its franchise areas. It is not unreasonable for NRG to be less than enthusiastic about attempts by the Town to rally other municipalities against NRG.
45. No other municipality which is in a position to engage in renewal negotiations has approached NRG or the Board to align its franchise agreement expiration date with that

of the Town. Accordingly, the request by both IGPC and the Town to suspend or adjourn this proceeding until it can be joined with franchise renewal applications by other municipalities (which itself assumes that all other municipalities will be unable to reach a negotiated renewal with NRG) is without merit and unwarranted on the evidence.

46. The issue of franchise agreement alignment is not compelling and not relevant for the Board's decision in this matter.

## **B. Improper Arguments out of Scope of the Proceeding**

47. IGPC and the Town have raised numerous arguments that are clearly outside the scope of this proceeding, that rely on new evidence filed after the deadline for introducing evidence had passed, and which, even if accepted, do not provide any foundation for a decision by the Board to depart from the terms in the MFA or to refuse to renew the Franchise Agreement.
48. As set out in Procedural Order No. 4 and NRG's repeated arguments throughout this proceeding, issues relating to the previous franchise renewal proceeding or rates are simply out of scope. They have already been determined to be irrelevant. Accordingly, the Town's and IGPC's submissions on these points should be ignored.

## ***Historic Service and Regulatory Compliance Issues***

49. The Town's submissions are rife with recycled arguments and reasoning from the previous franchise renewal proceeding. Although the Town submits, in its heading for this section, that these facts are "relevant", the Board has already ruled that they are not.
50. In its submissions, as in its proposed issues list and interrogatories, the Town regurgitates the same reasons for not granting a renewal of the Franchise Agreement: NRG's retractable shares, its deemed equity structure, the non-separation of its utility and non-utility businesses, and customer security deposits. These concerns predate this proceeding and have been fully resolved to the Board's satisfaction. In any event, the Board has considered and ruled on these matters in other proceedings. In Procedural Order No. 4, the Board made it clear that these issues are out of scope.

See Town Submissions at para. 24; NRG responses to Town interrogatories #1, 2 and 4.

51. The Town itself acknowledges at paragraph 23 of its submissions that its concerns have been deemed by the Board to be out of scope, but takes the bizarre position that these issues are nevertheless relevant to the question to be decided: whether or not to renew the Franchise Agreement, and on what terms.
52. Similarly, IGPC continues to put forward issues that have been determined as out of scope of this proceeding, including the previous franchise renewal application, historic proceedings relating to NRG's relationship with Union Gas, NRG's ownership structure and succession planning, issues with respect to the Pipeline Post Construction Report and IGPC's letters of credit, and the relationship between NRG and NRG Corp.

See IGPC Submissions at paras. 9-12, 30.

### ***The Recent IGPC Application is Irrelevant***

53. As NRG has previously stated in its October 25, 2012 letter to the Board, the 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. The Board alone has the authority to commence compliance proceedings. Moreover, as discussed above, IGPC's claim that NRG has denied it service is entirely false.
54. NRG intends to respond in the context of that application, as is appropriate, however, has been forced to include a partial response above because IGPC has improperly referred to that proceeding and the evidence in this context, notwithstanding the Board's letter dated October 26, 2012 confirming the established scope of this proceeding and thereby disallowing such references.
55. The Town's parroted concerns about IGPC's hurdles in establishing the ethanol plant, or difficult relations which existed at the time of the last franchise renewal proceeding, are not only irrelevant to this proceeding, but also the quintessence of local, parochial interests which the *Municipal Franchises Act* is designed to avoid privileging. The Town has not demonstrated why the concerns it raises rise to the level of the broader public interest as contemplated by the *Municipal Franchises Act*.

### ***New Evidence Inappropriate***

56. The evidentiary phase of this proceeding ended with 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 every opportunity at that time to raise any concerns they may have had about the closure of the evidence-gathering process. The concerns they recently raised are issues that they were aware of prior or before August 2012. However, 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.
57. Both IGPC and the Town have sat on their hands in this proceeding and attempted to introduce new evidence at the eleventh hour, without a reasonable explanation for this delay. This is improper, unfair to NRG, and defiant of the Board's order.
58. Although the Town attempts to characterize the term "submissions" as encompassing evidence, this is not the meaning regularly attributed to that term in Board proceedings and the Town does not provide any authority for its position. Submissions are understood as argument. New evidence cannot be introduced through the back door by incorrectly labelling it as "submissions". The Town has no compelling reason to submit new evidence at this late date in the proceeding and is simply out of time to do so.
59. The Town and IGPC assert that the motion to review EB-2010-0018 (**Motion to Review**) is relevant to this proceeding, even though it is completely unrelated to the Town's franchise agreement with NRG and is out of scope of this proceeding per the Board's Procedural Order No. 4.
60. As the Motion to Review is related to a discrete contractual matter between NRG and IGPC, there is no basis to consolidate that motion with this application, as proposed by IGPC.
61. IGPC submits that without reference to the evidence on the Motion to Review and the IGPC Application, the Board will not have all the relevant evidence it needs to determine the issues in this proceeding. That is simply untrue and ignores the Board's Procedural Order No. 4 regarding the scope of this proceeding. The Board has turned its mind to

what it considers relevant to the issues at hand. IGPC's disagreement does not justify its continued attempts to lead irrelevant arguments and inadmissible evidence.

62. The new evidence filed by the Town and IGPC is irrelevant and out of scope. This evidence must be disregarded by the Board.

### ***Challenges to the Board's Authority***

63. Ultimately, IGPC's repeated complaints about NRG's relationships with its affiliates and its corporate structure suggest that IGPC is not convinced that the Board has properly reviewed, considered, and ruled on these issues. IGPC's submissions suggest that it would purport to second-guess or even usurp the Board's role in this regard. There is no evidence to suggest, despite IGPC's continued assertion to the contrary, that the Board has made an error in the way it has addressed these issues. If IGPC believed there was an error, it is free to appeal the Board's rulings, which it has done with respect to the Board's recent rates decision concerning NRG. To continue to attack the Board's findings on issues relating to rates rather than to NRG's franchise with the Town in this proceeding is an impermissible and unfounded collateral attack.
64. Similarly, the Town appears to find the Board's intervention in franchise matters inadequate and has requested a change to the legislation in its belief that the Board somehow lacks the relevant authority in regard to franchise renewals. The Town has gone so far as to tell the Minister that:

The Board has been ineffective at mitigating the behaviour of this company over the years so we would like to propose that you provide additional tools to the OEB so they can better manage the conduct of this utility.

Town Letter to Minister of Energy dated September 4, 2012; Attached to Statement of Jennifer Raynaert.

65. For the past 30 plus years, the Board has had the requisite authority to consider, and has considered, the evidence regarding NRG's governance, financial structure, operations, service levels, and rates, all in the proper context, which is typically rate applications and the Board's regulatory requirements. This proceeding is not the correct forum for the canvassing of many of those topics, and in particular, Procedural Order No. 4 has made it clear that the specific concerns to which the Town only obliquely refers in its letter to

the Minister are out of scope of this proceeding. The Town, not satisfied with the manner in which the Board has exercised its clear authority, now appeals directly to the Minister for intervention and ill-conceived legislative reform. This is inappropriate and offensive in the circumstances.

**C. No Basis to Depart from or Reject the MFA**

66. Notwithstanding the laundry list of allegations raised by the intervenors, NRG submits that there is no basis upon which to depart from the terms of the MFA or to reject NRG's application. None of the matters raised by IGPC or the Town is relevant to this proceeding and appear to be misleading or false.
67. Board Staff has made it clear that no additional conditions should be attached to the Board's order approving this application, and the terms and conditions in the MFA as drafted are sufficient for the purpose of franchise agreements between gas utilities and municipalities. NRG agrees with the submissions of Board Staff in this regard.
68. Further, NRG agrees with Board Staff that a 20 year franchise agreement is appropriate in this case.

**D. Costs**

69. The Town states at paragraph 59 of its submissions that it would be unfortunate if either the municipal taxpayers of the Town or NRG's customers would have to bear the costs of this proceeding, directly or indirectly. Yet this outcome is precisely what will happen, and the only parties responsible for the excessive quantity of those costs are IGPC and the Town.
70. As set out in NRG's Argument-in-Chief, if NRG is forced to absorb its costs of this proceeding, such costs will likely be recovered through rates. If the Town is forced to pay costs, those costs will be borne by its taxpayers. It is simply too late now to look back at the amount of costs incurred as a direct result of the Town's and IGPC's conduct and bemoan the fact that ratepayers or taxpayers will bear those costs. The costs



should be paid entirely by IGPC and the Town. It is their actions and choices that caused the costs to be incurred.

71. It is also disingenuous of the Town and IGPC to take the stance that NRG should bear responsibility for their decisions to raise new evidence at the last minute, continuously include issues out of scope of this proceeding, seek extensions, adjournments, and postponements in this proceeding, and attempt to commandeer this application in a way that has inflated costs for all parties, including the Board.
72. Finally, NRG submits that there is no basis for IGPC's submission that its eligibility for costs should be reconsidered. IGPC failed to seek such eligibility and cannot now revisit that decision.

### ***NRG's Business***

73. NRG is not a public trust. It is not a government body. Despite operating in a regulated industry, NRG is not a public interest organization. It is a business designed to generate revenue. The Board has a duty to balance NRG's interests as well as those of its customers. The Board also has a statutory objective to "facilitate the maintenance of a financially viable gas industry for the transmission, distribution and storage of gas." (OEB Act, s. 2(5.1)). In this specific context, the Board is obliged by statute to weigh NRG's interests against those of the Town.
74. NRG's business is to distribute natural gas to its customers, and NRG has been providing uninterrupted gas service for over 30 years. NRG is not in the business of spending inordinate amounts of time and resources litigating routine franchise renewals which ought to be straightforward.
75. Nevertheless, NRG has been forced to incur significant legal costs and commit internal management time in responding to the false allegations and irrelevant arguments which the Town and IGPC continue to advance despite the Board's clear rulings on what is—and what is not—in scope of this proceeding. While the intervenors may consider themselves to be speaking out on behalf of a public interest, in reality there is no benefit or *bona fide* purpose to this exercise for either the public or NRG.

76. IGPC has done everything possible to derail this franchise renewal proceeding.. Prior to the creation of IGPC, NRG had few issues with franchise renewals.
77. Yet IGPC's relationship with NRG has been unnecessarily acrimonious and litigious. Contrary to IGPC's allegations, it is IGPC, and not NRG, that has commenced multiple proceedings and resisted Board orders for compliance with its obligations. This latest written submission by IGPC is just one of many vituperative efforts to force NRG to spend its limited financial resources and management time to respond to unfounded and redundant allegations.
78. The only reason NRG can ascertain for IGPC's dogged efforts to impede its business is a bad faith intention to gain leverage or bargaining power over NRG in relation to IGPC's own private interests. By opposing a 20 year renewal term, IGPC appears to be seeking to ensure its ability to intervene in further regulatory proceedings involving NRG at the Board. If the Franchise Agreement is renewed for 20 years, IGPC loses this opportunity.
79. IGPC does not have the concerns of NRG's customers and the Town's taxpayers at heart—it is simply trying to “score points” against NRG in yet another forum, which is an abuse of this Board's process, a drain on NRG's resources, and a waste of everyone's time.
80. Similarly, and as argued in NRG's Argument-in-Chief in respect of costs, the Town's refusal to agree to a renewal of the franchise agreement, and its immovable position on issues that are ultimately irrelevant to the renewal, has caused NRG to incur significant unnecessary expenses. The Town's last-minute complaints about service quality as set out in its submissions are clearly a weak effort to defeat NRG's application now that every other argument it has raised has been rejected.
81. Both of these intervenors have conducted themselves in a manner that is abusive and vexatious. There has been ample notice of the issues that are considered to be in and out of scope of this proceeding. There were several opportunities for the intervenors to ask relevant questions and lead relevant evidence, which opportunities have been ignored. There is no credible basis for the Board to entertain the submissions of both intervenors to the extent those submissions attempt to revisit old proceedings, second-guess prior Board decisions, and rely on inadmissible evidence.

82. As a result, NRG submits that it is entitled to receive payment of its costs from the intervenors.

All of which is respectfully submitted this 9<sup>th</sup> day of November, 2012

**NATURAL RESOURCE GAS LIMITED**

*Original signed by*

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By its Counsel, Norton Rose Canada LLP  
Per: Richard J. King

*Original signed by*

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Per: Christine Kilby