

**Ontario Energy
Board**
P.O. Box 2319
27th Floor
2300 Yonge Street
Toronto ON M4P 1E4
Telephone: 416- 481-1967
Facsimile: 416- 440-7656
Toll free: 1-888-632-6273

**Commission de l'énergie
de l'Ontario**
C.P. 2319
27^e étage
2300, rue Yonge
Toronto ON M4P 1E4
Téléphone : 416-481-1967
Télécopieur: 416-440-7656
Numéro sans frais: 1-888-632-6273



BY E-MAIL

February 13, 2013

Dennis M. O'Leary
Aird & Berlis LLP
Barristers and Solicitors
Brookfield Place, 181 Bay Street
Suite 1800
Toronto ON M5J 2T9

Dear Mr. O'Leary:

**Re: Application of Integrated Grain Processors Co-Operative Inc.
Board File No. EB-2012-0406**

On October 11, IGPC filed an application with the Board seeking various forms of relief. In particular, IGPC sought:

- a) an Order pursuant to Subsection 42(3) of the Act requiring NRG to provide gas distribution services and gas sales as requested by IGPC to meet its facility expansion and upgrading plans;
- b) a Decision and Order that NRG's invoices to IGPC dated August 24, 2012 and September 27, 2012 contain charges, fees and rates that are not the subject of a Board Order and are thereby contrary to Subsection 36(1) of the Act and are thereby null and void;
- c) a Decision and Order that certain costs claimed by NRG for the construction of the pipeline which supplies natural gas to IGPC were not incurred, and in respect of those costs incurred, whether they were reasonably and prudently incurred;
- d) an Order or Orders pursuant to Section 19 and Subsections 36(2), (3) and (7) requiring NRG to appropriately adjust the capital contribution paid to NRG by IGPC and the security deposit paid and posted by IGPC in accordance with the conditions to the Leave to Construct approval and IGPC's covenants as approved by the Board in its Decision of March 4, 2008 (EB-2006-0243);

- e) an investigation into contraventions of the Act by NRG in respect of whether the IGPC Pipeline Post Construction Report was prepared and filed by NRG contrary to the Board's Order in EB-2006-0243 and/or whether it contains false or misleading information, and the consideration of those directors and/or officers that caused, authorized, permitted or acquiesced in respect of this conduct;
- f) in the alternative to Clause (a) above, an Order terminating the Leave to Construct approval dated February 2, 2007, as amended by the Board's Oral Decision dated February 28, 2008 and Decision and Order dated March 4, 2008 in the EB-2006-0243 proceeding, on such terms as seems just and appropriate, and such further or other relief as the Board deems appropriate for the circumstances;
- g) its costs of this application on a complete indemnity basis; and
- h) such further and other relief as counsel may advise and the Board permits.

As you will be aware, the Board has dealt with, or is in the process of dealing with, several of these matters. The Board has issued a Notice of Hearing under section 42(3) of the Act to address the issues identified in item "A". Items "C" and "D" were partially addressed by the Board's Decision with Reasons in EB-2012-0396, and that Decision contemplates a further process to deal with the remaining issues under those headings.

Items "B" and "E" appear to be compliance related matters. Parties cannot commence a compliance proceeding by way of application; only the Board can commence such a proceeding (see section 112.2(1) of the Act). However, the Board is reviewing these matters, and may take compliance action if it finds that course to be appropriate.

The Board is not clear on exactly what process IGPC believes the Board should use to consider the request to terminate the Leave to Construct granted in EB-2006-0243 under item "F". IGPC has not identified which section of the Act it is relying on to make this request. The Board's Order was issued in February 2007, and the pipeline was completed several years ago. Any motion to review that decision under Rule 42 of the Board's Rules of Practice and Procedure would be well past the 20 day deadline (although the Board can amend deadlines in appropriate circumstances). It is also not clear what practical impact terminating the Order would have, as the pipeline has already been constructed and is currently providing gas service to IGPC. The Board is unable to consider any application in this regard without a better understanding of the sections of the Act IGPC is relying on and the exact nature of the relief it seeks.

Yours truly,

Original signed by

Kirsten Walli
Board Secretary