

April 16, 2013

**VIA EMAIL**

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Kirstin Walli  
Board Secretary  
Ontario Energy Board  
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27th Floor, P.O. Box 2319  
Toronto, ON M4P 1E4

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**RE: Natural Resource Gas Limited  
Board Proceeding No.: EB-2013-0081**

Dear Ms. Walli:

This letter is further to the Board's Notice of Application dated April 2, 2013 and Mr. O'Leary's letter of March 13, 2013. Please note that we are co-counsel with Norton Rose Canada LLP in this combined proceeding.

Set out below is a brief overview of several issues that have occurred over the last 5 years between NRG and IGPC. We are nearing the end of the contract and there are still open issues with IGPC.

**IGPC stated that security documents needed to be signed by NRG immediately or funding would be revoked. IGPC had the OEB call an emergency hearing on the Friday of a long weekend.**

- June 29, 2007, IGPC stated under oath that if NRG did not sign the two security documents ( the Assignment Agreement and Bundled T-Service Agreement) immediately that day, IGPC's funding for the ethanol production facility would be permanently revoked and lost and the project would collapse.
- Subsequent events have shown that IGPC's allegations and evidence introduced to the OEB were not true.

**IGPC maintained that NRG was at fault in holding up pipeline construction.**

- IGPC refused to provide NRG with a letter of credit required under the PCRA to secure the capital costs of the pipeline.
- OEB eventually ordered IGPC to make direct payments to certain suppliers.
- NRG was compelled to correspond with IGPC through a lawyer since IGPC was using legal counsel on its' end. IGPC questioned many actions that NRG took in constructing the pipeline and in contract negotiations which led to unnecessary costs. Despite this, NRG still managed to complete construction on time and under budget.
- IGPC failed to construct its' ethanol production facility on time and made additional false allegations to try to deflect blame and evade responsibility for its own mismanagement and construction delays.

**IGPC stated that NRG did not attempt to negotiate with IGPC regarding the costs of the pipeline.**

- NRG met with senior representatives of IGPC to finalize the cost of the pipeline.
- NRG requested meetings with IGPC several times to go over the costs of the pipeline.
- When a meeting took place with an IGPC senior representative, it is our belief that NRGs' settlement offer was not tabled to IGPCs' senior executives.

**IGPC stated that NRG has done nothing to advance their October 16, 2009 defamation lawsuit.**

- NRG has spent a lot of time and resources in pursuing the defamation lawsuit.
- NRG was informed, at the outset, that IGPC was not concerned about the lawsuit as they have insurance.
- IGPC refused to deliver an Affidavit of Documents or attend discovery on the basis that it first wanted to proceed with a summary judgment motion.
- After a long delay by IGPC, motion was scheduled July 28, 2011.
- IGPC withdrew its summary judgment motion right before July 28, 2011 and IGPC failed to attend for examination of discovery.

- IGPC refused to serve an Affidavit of Documents until ordered by the Court at a status hearing on July 5, 2012 to do so by August 31 2012.
- IGPC delivered documents September 28, 2012.
- IGPC failed to respond to NRG attempts to schedule examinations of discovery and then eventually responded through new counsel (IGPC's third set of counsel in this lawsuit).
- NRG again has demanded that IGPC attend at examination for discovery and dates are in the process of being agreed to for April or May of this year.

### **IGPC's attempt to block and aggravate the Aylmer Franchise Renewal**

- IGPC was an active intervener in this proceeding (at its own cost) and seemed to make it their mandate to attempt to block the Renewal.
- IGPC set up a meeting with both the Town of Aylmer ("Town") and their gas supplier Ag Energy to rally their support against NRG. From that meeting letters were sent to the Ministry (from the Town and AgEnergy) complaining about NRG and making false statements.
- The franchise was renewed for a 20 year term.
- NRG responded to the pricing statements by taking out a full page ad in the local Aylmer paper stating accurately how pricing works between Union Gas, Enbridge and NRG.

### **IGPC States Ethanol Plant Expansion Threatened**

- NRG has never denied service to IGPC.
- IGPC informed NRG on July 25, 2012 that it is in the preliminary study stages.
- After receipt of IGPC's first letter indicating its' expansion, Union Gas and Mig Engineering were both contacted and it became clear in those discussions that a lot more data would be required before any form of analysis could be performed.
- Eight months have now passed and IGPC has not given NRG any details regarding their expansion plans for NRG to review and respond to. Yet IGPC had originally stated that this was of an urgent nature.

### **IGPCs' financial viability**

- IGPC maintains that they are financially strong, however the financial statements that NRG was able to gain access to (these are no longer available online) shows differently.
- The statements confirmed that for the last two years, IGPC has been operating at a significant rate of loss, and if their annual operating grant is terminated or reduced, IGPC could be insolvent. The financial statements also confirmed that the operating grant will terminate on December 31, 2016.
- Before entering into another “deal” with IGPC it would be prudent for NRG and the Board to assess its’ financial viability.
- In addition, the issue of decommissioning costs is significant and needs to be addressed now.

### **IGPC’s Adversarial and Litigious Conduct**

IGPC seems prepared to spend an unlimited amount of publicly funded money on legal fees making a wide range of false and irrelevant allegations, most of which raise issues that have previously been fully argued before and finally determined by the OEB in proceedings to which IGPC was a party. Therefore, even if they were relevant, and even if they were not simply false, those issues have already been determined and are *res judicata* and binding upon both IGPC and NRG.

As part of IGPC’s strategy, it has made false and unfounded allegations against NRG and has caused Union Gas and the Town of Aylmer to become involved in IGPC’s adversarial conduct.

The legal and other professional fees incurred by NRG in responding to these allegations will be grossly out of proportion to the revenue generated from IGPC, or any possible rate of return to NRG. NRG is a privately-owned regulated utility whose rate of return is set by the OEB. NRG does not have the benefit of public funds with which to pay legal and professional fees to respond to IGPC’s allegations.

All of this has placed a tremendous burden on NRG’s management and administrative staff, and has caused NRG to incur costs which should be paid by IGPC as the party solely responsible for those costs being incurred.

### **Relief Requested by IGPC Under Subsection 42(3) of the OEB Act**

With respect to the relief requested in IGPC's October 11 application (initially EB-2012-0406), we have reviewed the Board's February 13th request to IGPC for clarity on the various relief items, and have also reviewed IGPC's March 13th response.

NRG agrees with the Board that relief items (a) through (e) are outside the scope of this proceeding, as follows:

- With respect to item (a), it is moot to request that NRG be ordered by the Board to provide service. It is a statutory requirement under the *Ontario Energy Board Act, 1998* ("OEB Act"). Further, there has been no denial of service, because the last correspondence from IGPC clearly states that IGPC is undertaking preliminary engineering. When this is done, and IGPC better understands what its needs are, it can engage NRG.
- With respect to items (b) and (e), the Board has correctly indicated that these items are not properly part of any Board proceeding. If the Board wants to consider these issues further, they would do so under their compliance process.
- With respect to items (c) and (d), these items are duplicitous with the capital cost issues already being considered.

Thus, the Board has already recognized that five of the six items of relief requested by IGPC are either moot, beyond the Board panel's jurisdiction, or duplicitous.

#### **IGPC's March 13, 2013 Letter to OEB**

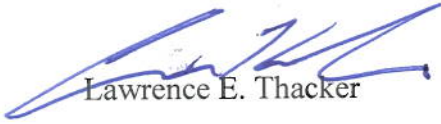
The Board did, in its February 13th request to IGPC, ask IGPC to explain how the relief in item (f) could be dealt with by the Board. In this item, IGPC asks that the Board's Order of February 28, 2008 granting NRG leave to construct the IGPC Pipeline be "terminated". Of all the relief requested by IGPC, this is perhaps the most absurd. The leave to construct application was brought by NRG, in response to a request from IGPC (then a potential customer) to be connected to the NRG system. The Order granted permission to NRG to construct the IGPC Pipeline. That has been done -- and done on time and under budget. The Board's Order has been fully implemented. It cannot be terminated any more than the construction can be undone.

In response to the Board's February 13th request for clarification, IGPC provides a rambling letter that attempts to stitch together various unrelated provisions of the OEB Act to come up with an argument that ultimately is of no use. Section 18 of the OEB Act, on which IGPC's counsel seems to ultimately rest most of his argument, is moot. Permission to construct the IGPC Pipeline cannot be transferred -- the IGPC Pipeline is already constructed. Moreover, the leave to construct Order permits NRG to construct the IGPC Pipeline. It has nothing to do with operation, so "transferring" the leave to

construct would not lead IGPC to its ultimate goal of replacing NRG as operator of the IGPC Pipeline.

Finally, attempting to oust NRG as operator of the IGPC Pipeline is a collateral attack on NRG's existing and valid franchise agreements and its Certificates of Public Convenience and Necessity in those municipalities where the IGPC Pipeline resides. We have just come through a hearing with respect to NRG's franchise arrangement in Aylmer, which IGPC opposed and was awarded a 20 year franchise renewal agreement. Rather than appeal that decision, IGPC is attempting to effect the same result through some misguided first step of transferring what is essentially a construction permit for an asset constructed years ago. The Board should see this for what it is, and dismiss this relief with costs.

Yours truly,



Lawrence E. Thacker

LET/rk

cc Dennis O'Leary  
Richard King