

# AIRD & BERLIS LLP

Barristers and Solicitors

Dennis M. O'Leary  
Direct: 416.865.4711  
E-mail: doleary@airdberlis.com

May 1, 2013

## BY COURIER, EMAIL AND RESS

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
P.O. Box 2319, 27<sup>th</sup> Floor  
2300 Yonge Street  
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: Integrated Grain Processors Co-operative Inc. Application  
Board File No. EB-2012-0406 / EB-2013-0081**

Pursuant to Procedural Order No. 1 dated April 22, 2013, we enclose the Submissions of Integrated Grain Processors Co-operative Inc. and IGPC Ethanol Inc. in respect of the Draft Issues List in the above-noted proceeding.

Yours truly,

**AIRD & BERLIS LLP**



Dennis M. O'Leary / Scott Stoll

DMO:ct  
Enclosure

cc Intervenorors

14559588.1

**IN THE MATTER OF** the *Ontario Energy Board Act, 1998*,  
S.O. 1998, c. 15, (Sched. B.)

**AND IN THE MATTER OF** an Application by Integrated Grain Processors Co-operative Inc., pursuant to section 42(3) of the Ontario Energy Board Act, 1998 for an order requiring Natural Resource Gas Limited to provide distribution service;

**AND IN THE MATTER OF** an Order to review capital contribution costs paid by Integrated Grain Processors Co-operative Inc. to Natural Resource Gas Limited pursuant to section 19 and 36 of the Ontario Energy Board Act 1998.

**SUBMISSIONS OF INTEGRATED GRAIN PROCESSORS  
CO-OPERATIVE INC. and IGPC ETHANOL INC.  
("IGPC")**

**Introduction**

We are writing in respect of Procedural Order No. 1 regarding the proposed draft issues list to be used in this proceeding. IGPC has included comments regarding each issue and proposed revisions with an explanation regarding the basis for the revision.

Prior to addressing the issues list, IGPC feels it necessary to reply to the letter filed by NRG's co-counsel, Mr. Thacker, on April 16, 2013. Aside from its irrelevance, IGPC completely disagrees with Mr. Thacker's characterization of events and his portrayal of IGPC's conduct. To the contrary, it is clear from the Board's numerous Decisions, all of which have supported IGPC's position, that NRG has not conducted itself properly. IGPC appreciatively notes that the draft issues list attached to Procedural Order No. 1 does not include the issues alleged by NRG in the above noted letter.

Throughout the past seven years of dealing with NRG, IGPC has had to endure this type of behaviour on a consistent basis. It has forced IGPC to seek the assistance of this Board to curtail NRG's conduct. Other parties such as Union Gas Limited, the Town of Aylmer, the Township of Malahide, Ag Energy, and ratepayers have also experienced significant difficulty with NRG. Rather than accept responsibility for its actions, NRG instead blames others in response to complaints about its abusive conduct. The necessity of the Board intervention in such matters is fortunately rare as most utilities view themselves as partners with their ratepayers. Sadly, NRG does not hold such a view.

### **Submissions on the Draft Issues List**

The Board, in Procedural Order No. 1, sought comments on the Draft Issues List which included the issues below:

1. Is an order of the Board requiring NRG to provide gas distribution services and gas sales to IGPC to meet its facility expansion and upgrading plans necessary and appropriate?
2. Are the construction costs as determined by NRG associated with the existing pipeline facilities to service IGPC reasonable?
3. Are the capital contribution amounts paid to NRG by IGPC for the existing NRG facilities serving IGPC reasonable?

IGPC will address each issue separately and submits there are additional issues that will assist in conducting this proceeding.

#### **Draft Issue #1**

1. Is an order of the Board requiring NRG to provide gas distribution services and gas sales to IGPC to meet its facility expansion and upgrading plans necessary and appropriate?

#### **Proposed Revision**

1. **Is an Order of the Board requiring NRG to provide gas distribution services and gas sales to IGPC to meet its facility expansion and upgrading plans necessary and appropriate and, if so, what terms and conditions to the Order are necessary to ensure NRG provides gas distribution services and gas sales in the future?**

#### **Comments:**

NRG's conduct has been an issue for a number of years and has precipitated numerous proceedings, court appeals, and motions. For example, NRG stated that it would not enter into discussions with IGPC regarding possible new business until major disagreements had been resolved and IGPC had capitulated to NRG's demand to "compensate NRG". This proceeding under this issue should determine, once and for all, the limitations on NRG's right to make demands of IGPC as a precondition to providing gas distribution services. IGPC submits that the Board's Decision and Order ("Order") at the conclusion of this proceeding should specify precisely what are NRG's obligations and responsibilities in such a manner that should NRG fail to comply with the Order or make further demands of IGPC not authorized pursuant to the Order, such conduct would amount to a contravention of an enforceable provision under Part VII.1 of the *Ontario Energy Board Act*. IGPC requests the Board's assistance by the granting of an Order which is prospective in nature and will serve to ensure NRG's future conduct is compliant.

## **Draft Issue #2**

2. Are the construction costs as determined by NRG associated with the existing pipeline facilities to service IGPC reasonable?

### **Proposed Revision**

**2.1. In respect of the costs listed below, what is the reasonable amount to be included in the capital cost of the pipeline facilities?**

**2.1.1. Legal Costs;**

**2.1.2. Contingency;**

**2.1.3. Staff Costs (M. Bristol);**

**2.1.4. Interest During Construction;**

**2.1.5. Insurance costs and other service costs (e.g. auditing); and**

**2.1.6. Administrative Penalty.**

**2.1.7. Other costs issues arising from the proceeding**

**2.2. What is the appropriate capital cost of the pipeline facilities that should be used for determining the capital contribution and the amount closed to rate base effective August 2008.**

### **Comments:**

IGPC has indicated throughout the process that it was disputing only certain costs claimed by NRG. The appropriate focus should be limited to the disputed costs and the resulting total cost of the pipeline facilities subject to any further cost issues which arise from the evidence filed in this proceeding. Under Issue 2.1, the Board may wish to consider ordering that the parties be directed to participate in a non-binding mediation presided over by Board Staff or someone else appointed by the Board for the purposes of undertaking a review of all of the costs issues associated with the pipeline. The mediation should be able to refine and scope down the cost issues that need be considered by the Board. As well, the Board might benefit from a report from the presiding Mediator setting out his or her views on the costs incurred.

In respect of issue 2.2, it is clear that the capital cost of the pipeline is used in the analysis to determine the proper amount, if any, of a contribution in aid of construction. In EB-2010-0018, responses to Undertaking J1.4 and J2.4, NRG confirmed that the capital cost of the pipeline influenced the Net Present Value of Costs, the Net Present Value of the Tax Shield, the Contribution in Aid of Construction and the Amount Closed to Rate Base in material ways if, as submitted by IGPC, the pipelines costs have been overstated by around \$1 million.

### **Draft Issue #3**

3. Are the capital contribution amounts paid to NRG by IGPC for the existing NRG facilities serving IGPC reasonable?

### **Proposed Revised Issue #3**

3. **Are the capital contribution amounts, the amounts included in rates and the letter of credit paid and provided by IGPC to NRG for the existing facilities serving IGPC reasonable? If not, what terms and conditions should be included in an Order from the Board?**

### **Comments:**

The proposed draft issue focuses solely on the impact to the capital contribution that may arise from a difference in the capital costs of the pipeline facilities, whereas the repercussions are much broader. The Application brought by IGPC dealt with the capital contribution, rate base and financial assurance. The Board's Decision on its Own Motion to Review (EB-2012-0396) confirmed these as issues.

In EB-2006-0243, the Board acknowledged the Pipeline Cost Recovery Agreement ("PCRA") provided protection for NRG, IGPC and the other ratepayers. A key component of the PCRA was the requirement for cost reconciliation. However, an additional part of the PCRA was the ongoing obligation for IGPC to provide a letter of credit equal to the declining undepreciated portion of the pipeline facilities.

IGPC commenced paying full rates on July 15, 2008. The Board, in EB-2010-0018, determined the pipeline should be included in rate base as of August 2008. The amount included in rate base as of August 2008 was \$4,872,180. NRG has depreciated the pipeline facilities at a rate of 5%, or \$243,609 per year, for a reduction of more than 20%, or \$1,000,000 since being placed into service. Despite this, NRG has not permitted IGPC to reduce the letter of credit from the original \$5,214,173. This has resulted in IGPC incurring material unnecessary financing costs.

The amount included in rate base, according to NRG's evidence is dependent upon the capital cost of the pipeline. As such, if the amount included in rate base has been overstated, NRG has over-recovered through rates (cost of capital (debt and equity), depreciation, etc.) as a result of this overstatement. IGPC also notes that the capital cost of the pipeline that was included in rate base was used to allocate Administrative and General Expenses as between Rate 6 (IGPC) and the remaining rate classes. To the extent that rate base has been overstated, Rate 6 has been over-allocated its share of the Administrative and General Expenses.

Each of the above are rate matters which will require a determination by the Board and may require a detailed review of the economic evaluation model that has been used by NRG. It should be noted that the economic model presented in EB-2006-0243 by NRG to obtain leave to construct and for the purposes of the PCRA and Gas Delivery Contract was

modified by NRG during EB-2010-0018. It is not clear precisely why this was done and its impact.

The Order resulting from this proceeding, should the Board determine that the pipelines costs have been overstated should require NRG to: (1) reimburse the overpayment of the capital contribution by a specific date; (2) accept a replacement letter of credit in the required amount by a specified date; (3) require NRG to annually by a specified date, recalculate the amount that should be secured by the letter of credit and accept a replacement letter of credit in the lower amount; and, (4) determine the total amount of the overpayments made by IGPC in rates and apply same as a credit towards future distribution charges.

### **Additional Issues**

In addition to the issues described above, IGPC submits the following issues should be added to this proceeding.

#### **Proposed Issue #4**

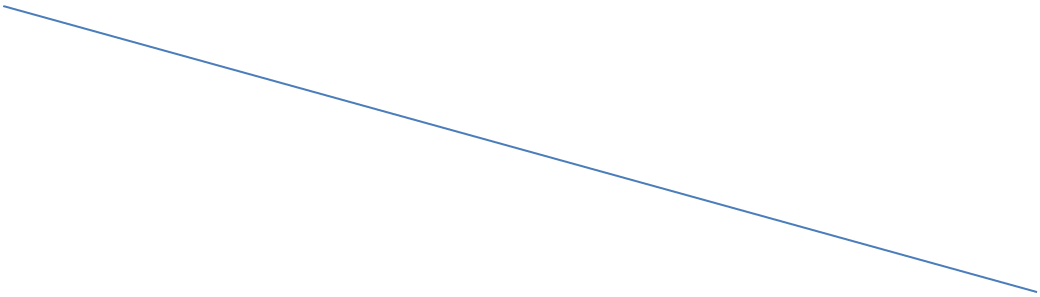
#### **4. What, if any, is the appropriate amount of payment and interest owed by NRG to IGPC?**

##### **Comment:**

The PCRA included provisions for the reconciliation of costs and the payment of interest in respect of amounts not paid. As noted above, the pipeline has been in-service for almost 5 years and NRG has stonewalled throughout this process to delay a proper reconciliation. NRG has had the benefit and use of such monies for an extended period of time.

Had IGPC owed additional monies, NRG and other ratepayers would have expected IGPC to pay interest as required by the PCRA. NRG should not be in a different position simply because it owes monies nor should it benefit from its own failure to fulfill the terms of the PCRA.

Should NRG be found to be owing any monies to IGPC, the Board should determine the proper amount of such payment and the appropriate amount of interest to be paid by NRG to IGPC.



**Proposed Issue #5**

- 5. What other orders are appropriate to deal with and correct for the refusal by NRG to permit IGPC to reduce the financial assurance in respect of the pipeline facilities and the over-recovery through rates by NRG?**

**Comment:**

Should it be determined that NRG included unreasonable costs in the cost of the pipeline, such a finding will impact the capital contribution, the financial assurance and the proper setting of just and reasonable rates. IGPC should not bear the costs of NRG's unreasonable claims, and future rates should be adjusted accordingly. A rate order adjusting the rate payable by IGPC is necessary otherwise the overpayment will continue.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.



---

Dennis M. O'Leary



---

Scott A. Stoll

Counsel for Integrated Grain Processors  
Co-operative Inc. and IGPC Ethanol Inc.