

June 3, 2013

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
Suite 2700  
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Your reference	Our reference
EB-2013-0081	01012724-0015
EB-2012-0406	

Dear Ms. Walli:

**NRG/IGPC – Capital Cost Dispute and Service Denial (EB-2012-0406/EB-2013-0081)**

In accordance with Procedural Order No. 2 issued in the above-noted proceeding, please find attached the evidence of Natural Resource Gas Limited.

Yours very truly,

***Original signed by***

Richard King  
Partner

RK/mm

Enclosure

Cop(y/ies) to: J. Grey (IGPC)  
D. O'Leary and S. Stoll (Counsel for IGPC)  
J. Reynaert (Aylmer)  
P. Tunley (Counsel for Aylmer)  
P. McMahon (Union Gas)  
M. Janigan (Counsel for VECC)  
J. Wightman (VECC)  
R. Cowan, L. O'Meara, and J. Howley (NRG)  
L. Thacker (Counsel for NRG)

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## ONTARIO ENERGY BOARD

**IN THE MATTER OF** the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule 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 gas 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 Sections 19 and 36 of the *Ontario Energy Board Act, 1998*.

## EVIDENCE OF NATURAL RESOURCE GAS LIMITED

June 3, 2013

### Preliminary – Incorporation of Evidence

1. This proceeding combines the following two proceedings:
  - Board file number EB-2013-0081 was initiated by the Ontario Energy Board (“OEB” or “Board”) pursuant to section 19 of the *Ontario Energy Board Act, 1998* (“OEB Act”), after the Board’s determination that it had jurisdiction to determine the appropriate capital amounts that should be paid by Integrated Grain Processors Co-operative Inc. (“IGPC”) to Natural Resource Gas Limited (“NRG”) for a pipeline built in 2008 by NRG to serve the IGPC ethanol plant (the “IGPC Pipeline”). The question as to the Board’s jurisdiction to determine this matter arose as the result of a motion by IGPC to have that matter determined in the context of NRG’s last main rates case (EB-2010-0018).
  - Board file number EB-2012-0406 arose from an application filed by IGPC on October 11, 2012 requesting the Board to order NRG to provide gas

distribution services and sales to meet IGPC's expansion and upgrading plans.

2. With respect to the first item (capital cost of IGPC Pipeline), we are unclear as to whether the documentary evidence from the Notice of Motion filed by IGPC on August 3, 2010 in EB-2010-0018 is incorporated into this proceeding. However, we understand that IGPC's counsel is planning to re-file the documentary evidence (invoices, time docket, etc.). NRG is re-filing (with this written evidence) much of the documentary evidence filed in response to that Notice of Motion (originally attached to the affidavit of John Robert Cowan, Q.C. dated August 26, 2010).
3. With respect to the second item (allegation of service denial), we are assuming the documentary evidence filed by IGPC's counsel with the application on October 11, 2012 does not need to be re-filed. If we are incorrect, please incorporate that documentary evidence into the record. We refer to that documentary evidence in this written evidence.

**Issue #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?**

4. NRG has provided gas distribution service reliably and consistently to IGPC since July 15, 2008.
5. As far as NRG is aware, there have been no issues or complaints with the existing service provided by NRG to IGPC. In a prior Board proceeding in which IGPC was an intervenor, the Board found that in over 30 years of continuous operations, NRG has never once failed to provide service.
6. IGPC's allegation of denial of service appears to relate solely to a July 9, 2012 letter from NRG regarding a potential expansion of IGPC's service (EB-2012-0406 at Tab 4). NRG did not deny service to IGPC in that letter.
7. NRG has never denied service to a customer.

Brief Dealings Regarding IGPC's Potential Expansion

8. IGPC sent a letter to NRG's General Manager on June 18, 2012 indicating that it was planning a facility expansion that would require more natural gas (EB-2012-0406 at Tab 1).

9. In the letter, IGPC provided some preliminary information to NRG about potential additional gas requirements, and requested an urgent meeting with NRG (within two weeks).
10. NRG replied immediately (on the same day) and indicated that IGPC should deal with NRG's President with respect to the matter (EB-2012-0406 at Tab 2).
11. More than two weeks passed before NRG heard from IGPC again. The correspondence from IGPC on July 3, 2012 did not deal with IGPC's potential expansion, but instead raised other issues (EB-2012-0406 at Tab 3).
12. NRG replied six days later (July 9, 2012) indicating that it wished to resolve outstanding issues with IGPC, and seeking to have IGPC's assurance that IGPC would pay NRG's costs for any work done on IGPC's expansion plans (EB-2012-0406 at Tab 4).
13. After NRG's letter to IGPC of July 9, 2012, NRG heard nothing from IGPC. So NRG wrote to IGPC again on July 24, 2012 stating:

"Re: IGPC Possible Expansion

I have not received any further correspondence or a call to discuss the above matter in greater detail. I assume that IGPC has chosen not to pursue further expansion at this time."

(EB-2012-0406 at Tab 5)

14. IGPC responded with a letter, the entire content of which was:

"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."

(EB-2012-0406 at Tab 5)

15. Since then, NRG has received no requests or information from IGPC about any potential expansion plans (other than allegations by IGPC that NRG is denying it service).

#### No Refusal of Service

16. IGPC has chosen to characterize NRG's July 9, 2012 letter (and ignored the subsequent letter exchange of July 24 and 25) as a refusal by NRG to assist IGPC with its expansion plans (i.e., a denial of service). That is simply not borne out by the facts.

17. Specifically, by July 9, 2012 (and after that date) NRG had spent time and money to evaluate the minimal information provided to NRG by IGPC (see invoices at EB-2012-0406 at Tab 5). More importantly, the work continued after July 9, 2012. This work has included:
  - (a) retaining MIG Engineering (the firm that designed the pipeline currently serving IGPC) and instructing them to review the information by IGPC in its June 18, 2012 letter; and
  - (b) having MIG Engineering contact Union Gas Limited to discuss the preliminary information.
18. Moreover, after not hearing from IGPC, it has been NRG who pursued IGPC to ask whether IGPC's expansion plans had been put on hold (see July 24, 2012 letter). The July 25<sup>th</sup> response from IGPC was a cryptic one sentence letter merely saying that IGPC was in the preliminary engineering stages.
19. NRG understands its statutory obligations to provide gas distribution service, and has never denied service to IGPC or any other customer. The first step in that process with all of NRG's customers is for the customer (IGPC in this case) to come forward with adequate information and work with the utility to further the expansion.
20. Given the size and importance of IGPC's current facility, plans to expand the IGPC facility will need to be dealt with via a meaningful dialogue – not a mere letter exchange. NRG does not want to end up in the same situation as with the initial construction, with approximately 2,000 emails being sent back and forth.
21. Two further facts are relevant to any expansion by IGPC:
  - (a) NRG has had unprecedented difficulties in its dealings with IGPC, of which the Board is well aware.
  - (b) NRG has grave concerns about IGPC's financial status. It is clear from IGPC's financial statements that it is only viable because it receives \$28.7 million annually as a provincial grant, which is set to expire in 2016 (see Exhibit A to this evidence).
22. Consequently, it would be imprudent (and potentially costly to NRG's ratepayers) for NRG or the Board to allow NRG to take on risk of further work or capital projects without some transparency on IGPC's financial status and plans beyond 2016. As it currently stands, NRG was denied the ability by the Board to include decommissioning costs of the IGPC pipeline in rates.

23. Given that IGPC's first request was for a meeting on an urgent basis (within two weeks), following which there has been nothing at all of substance from IGPC about its expansion plans, NRG can only assume that IGPC's expansion plans have not yet sufficiently crystallized to be able to provide NRG with information about its expansion plans.
24. Simply put, the July 9, 2012 correspondence conveyed NRG's desire for a meeting with IGPC to ensure:
  - (a) NRG will not be in the same position with an expansion as they are today with the original IGPC Pipeline (with respect to disputed costs). As it stands, IGPC has not paid the very minor costs of preliminary work done by NRG based on the June 18, 2012 information. This very minor work amounted to just over \$6,000, which in the context of a \$15 to \$20 million project (the capital cost of the expansion according to IGPC) is negligible.
  - (b) IGPC is financially able to fund any such expansion project; and,
  - (c) IGPC has a detailed plan for the expansion, and provides NRG with detailed information -- again, to ensure that NRG and IGPC do not go through the same issues it has had with the initial IGPC Pipeline construction.
25. NRG's concerns appear to be well-founded. Based on what has transpired so far, IGPC appears to be ready to repeat history by rushing off to the OEB with a very serious allegation on the basis of extremely preliminary (if any) expansion plans, no willingness to sit down reasonably with NRG to discuss its expansion plans, and on the basis of "urgent" claims that clearly are not urgent.

**Issue #2: With respect to the cost items listed below, what is the appropriate amount to be included in determining the capital cost of the IGPC pipeline facilities?**

- 2.1 Legal costs
- 2.2 Contingency costs
- 2.3 NRG staff costs (Mr. Bristoll)
- 2.4 Interest during construction
- 2.5 Insurance costs and other service costs (e.g., auditing)
- 2.6 Administrative penalty; and
- 2.7 Costs arising from this proceeding

## Context

26. This is a contractual dispute over which the Board has taken jurisdiction. Consequently, whether or not a capital cost should be payable by IGPC will be determined in accordance with the terms of the construction contract (i.e., the Pipeline Cost Recovery Agreement (“PCRA”)).
27. While this will be a matter for legal argument at the end of this proceeding, in a nutshell, the PCRA requires IGPC to pay the actual capital costs of the IGPC Pipeline, subject to IGPC’s right to dispute the reasonableness of costs incurred by NRG.
28. The Board has already undertaken a detailed “prudence” review of the capital costs of the IGPC Pipeline for the purposes of determining the capital amount of the IGPC Pipeline to be included in rates.
29. That is not the Board’s task here. The Board’s role here is not to conduct a prudence review to protect ratepayers.
30. Instead, the role of the Board in this proceeding is to be arbiter of a construction contract dispute between two commercial parties, based on the wording in the contract (noted above).
31. On that basis, NRG believes it is useful to consider the broader context for the capital cost dispute, and there are three key factors to keep in mind:
  - Presumption of Reasonableness: It is important to note that the initial estimate of the capital cost of the IGPC Pipeline was \$9.1 million. This was a legitimate estimate based on quotes received and information gathered. Had it not been legitimate, IGPC would not have agreed to include the estimated amount in the PCRA. NRG built the IGPC Pipeline on time and almost half a million dollars under budget (\$8.65 million). On its face, then, the capital cost should be presumed to be reasonable. Notwithstanding this, IGPC wants the price reduced by a further \$1.1 million.
  - Project Management Done by NRG: From the end of 2006 to mid-2008, NRG’s then-President (Mr. Mark Bristoll) spent virtually all of his time working on the IGPC Pipeline. Notwithstanding this, IGPC wants 90% of Mr. Bristoll’s time for free. In addition, Mr. Graat (current President of NRG) spent nearly as much time working on the IGPC Pipeline as Mr. Bristoll, while Mr. Graat was not on NRG payroll. Mr. Graat has over 40 years of experience in the construction industry and was instrumental in negotiations with contractors that led to the project being completed on

time and under budget. But for Mr. Graat's and Mr. Bristoll's involvement, the IGPC Pipeline would likely have exceeded the \$9.1 million. NRG has not sought to recoup any of Mr. Graat's time or costs for his work, which would have exceeded the \$394,405 for Mr. Bristoll.

- IGPC Caused Significant Legal and Consulting Costs: Because the IGPC Pipeline was a dedicated line for one customer, completing the IGPC Pipeline was not a matter of NRG dealing with a single contractor in bilateral negotiations. IGPC and its legal counsel participated in virtually every task involved to bring the IGPC Pipeline into commercial operation. This greatly added to the administrative burden (i.e., legal costs, and time of Mr. Bristoll and Mr. Graat) involved in completing the development and construction of the IGPC Pipeline. Notwithstanding this, the majority of the capital costs disputed by IGPC are precisely the administrative costs driven by IGPC's participation in the development of the IGPC Pipeline. NRG does not quarrel with IGPC's desire to play a role in that process (to keep costs in check), but it cannot then seek to contest the very administrative costs that IGPC created.

32. Leaving aside item 2.7 (costs arising from this proceeding), NRG believes that the capital costs in dispute related to the initial IGPC pipeline are as follows:

<b>Cost Category</b>	<b>NRG Cost</b>	<b>IGPC Disputed Amount of Cost</b>
Legal Costs	\$711,633	\$238,833
Contingency Costs	\$132,000	\$132,000
NRG Staff Costs (Mr. Bristoll)	\$394,405	\$349,609
Interest During Construction	\$113,272	\$64,656
Insurance Costs and Other Service Costs (e.g., auditing)	\$62,000	\$62,000
Administrative Penalty	\$0	NIL
<b>TOTAL AMOUNT IN DISPUTE</b>		<b>\$847,098</b>

33. These figures are mostly based on evidence provided as part of IGPC's motion made during NRG's rate proceeding (EB-2010-0018). IGPC sought to have the contractual dispute (i.e., the subject of this proceeding) dealt with in NRG's rate case, but the Board declined. However, the Board utilized the capital cost evidence provided in IGPC's motion for the purposes of determining the cost of the IGPC Pipeline to be included in NRG's rate base.
34. Notwithstanding that NRG built the IGPC Pipeline to serve IGPC well under budget, IGPC asked the Board in its motion (which the Board has now determined it has jurisdiction to hear) to review every item on every invoice, and every entry on every time docket included by NRG in the capital cost of the IGPC Pipeline.
35. Not only is this level of cost scrutiny unprecedented and not a particularly good use of anyone's time (including the Board's), it is fraught with potential for error and misinterpretation. For example, It is impossible to go back and look at a brief time entry for professional advice and disallow portions of time for one reason or another. The reality is that items on invoices and entries on time dockets would never be so detailed to withstand such scrutiny.
36. NRG has a long history before the Board and it cannot recall when a capital project (particularly one that has come in well under budget and on time) by Union Gas, Enbridge or NRG has needed to undergo a line by line review of hundreds of cost items and time entries to ensure every penny was accounted

for and explained ad nauseum. NRG cannot operate that way – no business can. If it did, NRG would have spent more time record-keeping than working on the IGPC Pipeline project. In the current situation NRG has already spent a significant amount of time on the record-keeping of this project.

37. The fact of the matter is the costs were properly incurred and there is sufficient documentary evidence to back it up. Indeed, the Board has been reviewing and considering the cost of the IGPC Pipeline for years now. As noted, NRG is not aware of any capital project scrutinized by the Board to such a degree. Moreover, this is not a case of a project that is drastically over-budget, which might warrant greater cost scrutiny by the Board.
38. NRG would urge the Board and IGPC to remember that the \$9.1 million estimate was based on sound quotes, and placed before both IGPC and this Board (as part of the PCRA).
39. To be clear, NRG stands behind all of its capital costs being claimed, and believes firmly that it did an excellent job of negotiating the best pricing for the equipment and services to build the IGPC Pipeline.
40. During the course of the rates proceeding, NRG agreed that certain costs should be adjusted due to error, but these were minor. NRG's evidence herein incorporates those agreed-to adjustments for the purposes of this contractual dispute.

***Legal Costs (2.1), Contingency Costs (2.2) and NRG Staff Costs (2.3)***

*General*

41. The bulk of the costs in dispute relate to these three items, which as noted above was driven by the increased “administrative burden” placed on the project by IGPC wanting to be involved at every step of the process.
42. IGPC and its counsel, Aird & Berlis, were extensively involved in the IGPC Pipeline project. Thus, whereas the typical pipeline construction project would involve a bilateral negotiation between two parties (see Figure 1), the IGPC Pipeline project was more complicated (see Figure 2).

Figure 1

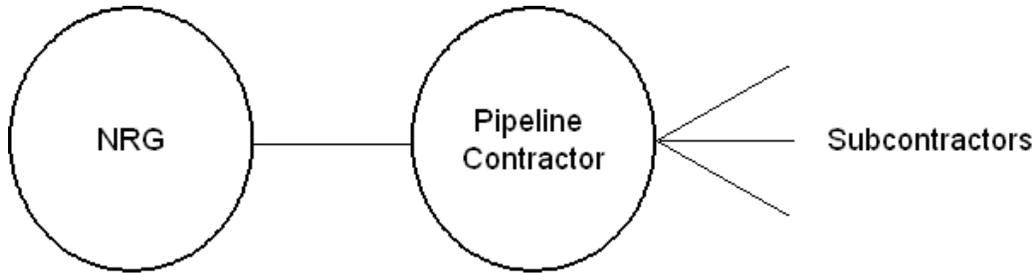
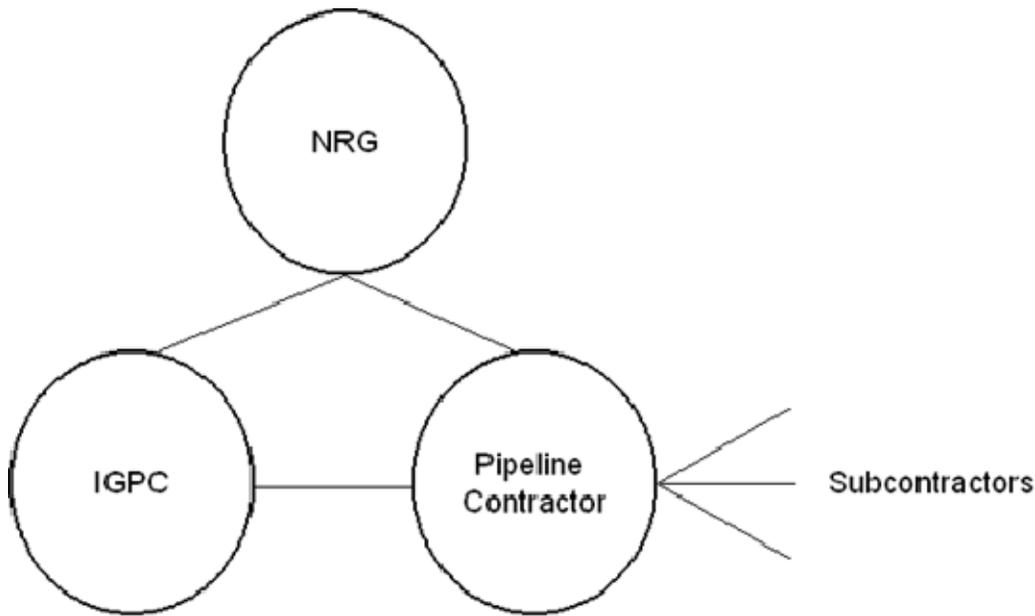


Figure 2



43. This dynamic meant that more meetings, discussions, emails, etc. were involved in the entire process. This, of course, increase legal costs, as well as Mr. Bristoll's and Mr. Graat's involvement.
44. As noted above, NRG does not quarrel with IGPC's desire to play such a role in the process -- the IGPC Pipeline was a dedicated line, and NRG understands IGPC wanted to be involved in cost decisions. However, NRG believes it is unreasonable for IGPC to dispute the legal and consulting costs that IGPC created. IGPC made numerous unfounded demands, allegations and claims against NRG that required the involvement of counsel to respond and refute.

45. As an example of how the involvement of IGPC and its counsel added to the administrative burden of the project, please see Exhibit B to this evidence, which is the documentation related to the process of quotes received for pipe.
46. As you will note, the most desirable quote according to NRG was submitted to IGPC's counsel who, by way of a letter, advises of a number of issues with the quote, including:
  - the potential need to seek an extension for placing the purchase order;
  - the need to supply IGPC's lenders and Board with a variety of documentation about the other quotes;
  - the need to coordinate pipeline delivery to suit IGPC's needs (not NRG's construction schedule); and
  - a request for special payment arrangements for the pipe to "help expedite IGPC's access to the required funding and comfort IGPC's lenders". The OEB must appreciate that NRG is not a bank.
47. These are extraordinary requests, and this is but one example. Consequently, it is difficult for NRG to consider reasonable any attempt by IGPC to dispute NRG's legal or consulting costs related to "project management" when IGPC uses its counsel this way in the procurement process.
48. When NRG builds new facilities to service new customers it does not normally have to deal with these issues. The norm is the customer calling for new or expanded service, a work order being written up, service and meter installed and gas turned on – and that is the end of the dialogue around connection. With IGPC, however, NRG seems to have been required to have daily contact, discussions or dealings in one form or another.
49. In order to demonstrate the reasonableness of the legal costs and costs for Mr. Bristoll's time, NRG did the following:
  - In Undertaking JT 1.16 in the Technical Conference convened for NRG's last main rates case, NRG demonstrated the reasonableness of Mr. Bristoll's rate by benchmarking it to the rate charged by a Chartered Accountant of Mr. Bristoll's seniority;
  - NRG retained the services of Neal Pallett (NRG's accounting firm) to carry out an audit of Mr. Bristoll's emails sent in relation to the IGPC Pipeline. The audit period covered December 2007 to October 2008. The audit results show that Mr. Bristoll sent/received a total of 1,959 emails related

to the IGPC Pipeline during that 11 month period. This is extraordinary by any measure; and,

- NRG asked MIG Engineering to comment on the typical level of consulting, legal and administrative time for analogous pipeline projects.

*Reasonableness of Mr. Bristoll's Rate*

50. Attached as Exhibit C to the evidence is NRG's response to Undertaking JT1.16 in NRG's last rate case. It sets out the rationale for Mr. Bristoll's hourly rate.
51. IGPC has taken the view that because Mr. Bristoll was NRG's President, NRG should only be able to re-coup a portion of Mr. Bristoll's salary, or an administrative fee based on a percentage of the costs of the IGPC Pipeline. It is NRG's position that that would not have been appropriate. Mr. Bristoll was, for significant stretches of time, dedicated nearly 100% to the IGPC Pipeline.
52. Further, Mr. Bristoll was a Chartered Accountant with a number of years of experience in the construction industry. He was able to draw on the expertise of the officer's of NRG's related companies, who are some of the most experienced construction executives in southwestern Ontario. None of these other advisers billed for their time (including Mr. Graat), which would have been in the hundreds of hours. NRG believes that Mr. Bristoll's accounting and construction expertise is a key reason why the IGPC Pipeline was built on time and significantly under budget.
53. Moreover, as noted above, Mr. Graat worked nearly as many hours as Mr. Bristoll on the IGPC Pipeline matter, without any compensation. Mr. Graat has over 40 years of construction experience, and was not an employee of NRG at the time.
54. IGPC benefitted substantially from the involvement of Mr. Bristoll and Mr. Graat.

*Neal Pallett Email Analysis (Reasonability of Mark Bristoll's time)*

55. Attached as Exhibit D to the evidence is the email analysis conducted by Neal Pallett.

56. The analysis shows that even during the period of time between December 2, 2007 and October 24, 2008, Mr. Bristoll sent and received a total of 1,959 emails in relation to the IGPC Pipeline project, broken down as follows:

IGPC Contract Negotiations	323 emails
Construction Contract	372 emails
Financing for IGPC Pipeline	182 emails
Engineering Matters	289 emails
Commissioning/Testing	73 emails
Material Acquisition	31 emails
Letter of Credit	161 emails
Transfer Station Testing	365 emails
June 2008 Motion	15 emails
Miscellaneous (Assignments/Consents)	148 emails

57. Neal Pallett's analysis was that although it may take only ten minutes to compose and send an email, in most instances an email involves additional time (to review a document, make a phone call or investigation). Consequently, Neal Pallett considered one hour to be a reasonable estimate of time per email. On that basis, Mr. Bristoll would have spent 1,959 hours on the IGPC Pipeline during the email audit period. At a rate of \$295 per hour that could be a cost of \$577,905. Instead, Mr. Bristoll's actual cost billed to IGPC for that period of time was only \$258,460. That means that Mr. Bristoll would have spent less than 30 minutes per email. This is demonstrative of the reasonableness of the quantum of Mr. Bristoll's time, considering most communication with IGPC involved consultation with both internal and external consultants.
58. The time spent by Mark Bristoll prior to this period (June 12, 2006 to November 2007) was outlined in a very detailed schedule already provided to IGPC.

59. Our detailed review of Mark Bristoll's time confirmed an error had been made – there was a duplication of time on December 18, 2006 where 12 hours was included twice. In 2010, we agreed to a reduction of \$3,540 to Mark Bristoll's time.

*MIG Engineering Letter*

60. Attached as Exhibit E to the evidence is a letter prepared by MIG Engineering, who constructed the IGPC Pipeline and has extensive experience with major natural gas pipeline construction in southwestern Ontario.
61. Based on MIG's letter, the "soft costs" of a major pipeline project (comprised of engineering design, procurement, contract administration, inspection and as built/documentation) is typically 17.5% of the total construction costs of a project. Note that this does not include defining project scope, regulatory application, and customer negotiations/resolutions, which would be provided on a "Time and Material" basis and could attract an administration charge of 10% for any third party assistance.
62. Based on MIG figures, NRG's costs are in-line with those noted as typical by MIG. Given the extensive involvement of IGPC and its counsel in every minute aspect of the IGPC Pipeline process, which compounded the "soft costs" of the project, one would have expected them to be higher.

*Specific Legal Costs Contested by IGPC*

63. As best as NRG can understand, the \$244,433 in legal fees disputed by IGPC is comprised primarily of:

Cost of 2007 Emergency Motion	\$33,003
Appeal of Emergency Motion	\$61,800
2008 Motion	\$82,554
Shareholder Advice	\$26,426
Project Management	\$15,000

64. As noted above, the last two items (shareholder advice and project management) were costs directly attributable to the unusual, extensive involvement by IGPC and its counsel in the construction process.

65. The other three legal cost items were all driven by two unnecessary OEB proceedings commenced by IGPC.
66. In general, with respect to legal costs related to any disputes between IGPC and NRG, IGPC seems to be suggesting that legal and regulatory costs of a utility related to business or commercial disputes are always unreasonable or inappropriate business expenses to be included in rates. That cannot be the case. To suggest that utilities must conduct their day-to-day business free of any and all disputes, and any regulatory or commercial glitches is unrealistic. There will be business expenses that arise as a result of disputes (with customers, suppliers, government, etc.). As in any dispute, there will be two (or more) views as to who was right and who was wrong. NRG submits that the reasonable approach for a regulator is to look at these disputes and ask whether the costs that the utility incurred were reasonable at the time they were incurred. In the case of both motions, NRG felt that it took prudent steps to protect itself and its ratepayers.
67. Moreover, in assessing whether incurring legal and consulting costs were necessary, one has to understand that all the Board proceedings in this case were commenced by IGPC (the emergency motion, the February 2008 motion, even the Notice of Motion in NRG's rate case and the denial of service application that is the subject of this proceeding). One has to ask – would it be reasonable for NRG to not respond to these proceedings? NRG had no choice but to respond. And IGPC cannot argue that they were “caused” by NRG because in every case so far, and in particular the 2007 and 2008 motions, ultimately IGPC failed to get what they wanted from the Board.

*The 2007 Emergency Motion and Subsequent Appeal*

68. On June 29, 2007, IGPC brought an emergency motion before the OEB. Since that emergency motion, it has become clear that there was no basis for any urgency. IGPC was demanding that NRG execute certain documents that NRG had requested time to review. IGPC was unwilling to allow NRG the time it required to review and consider the documents. Instead, IGPC commenced an emergency motion that resulted in NRG incurring unnecessary legal costs and other expenses that could have been avoided if IGPC had been willing to deal with NRG in good faith.
69. Contrary to representations made on behalf of IGPC to the Board, the failure of NRG to sign the Assignment Agreement and the Bundled-T Service Agreement did not cause the IGPC financing arrangements to collapse, and did not require funds held in escrow to be distributed back to equity investors. To the contrary, IGPC and its lenders proceeded to close the financing transaction and all documents relating to the financing were executed and delivered into escrow to

be released subject to certain conditions. The alleged urgency that IGPC relied upon in bringing the emergency motion to the OEB, without proper notice to NRG, did not exist.

70. Late in the afternoon of June 28, 2007, IGPC filed a motion with the OEB. The motion record was served on NRG at approximately 7:15 pm on June 28, by way of service on Mark Bristoll at his personal residence in London, Ontario.
71. The OEB issued an Emergency Notice of Hearing ordering that an oral hearing would be held the next day, June 29, 2007 at 8:30 a.m.
72. The Emergency Notice of Hearing was issued by the OEB without any notice to NRG or without having any response from NRG, and without allowing NRG any opportunity to respond to IGPC's request that the motion be heard without compliance with the OEB's notice requirements.
73. The following day, at 8:30 a.m., NRG's counsel attended at the motion, and requested a short adjournment to permit NRG time to respond to the motion because NRG:
  - had not had any time to retain and properly instruct counsel;
  - had not had time to consider its position and instruct counsel as to its position;
  - had not had adequate time to review the evidence or assemble and present responding evidence; and,
  - had no opportunity, prior to the issuance of the Emergency Notice of Hearing, to address the OEB as to whether the hearing should or should not proceed on an expedited basis,
74. Counsel for IGPC stated that the motion was urgent because if NRG did not sign the two agreements, the Assignment Agreement and the Bundled T-Service Agreement, by the end of the day on June 29, the equity funds raised for the financing were required to be returned by the escrow agent, Canada Trust, to the equity investors.
75. IGPC introduced evidence that if the financing transaction did not close by July 5, 2007, IGPC would lose \$11.9 million in funding under the Federal Government's ethanol expansion program.

76. The June 2007 motion is one example of how IGPC's aggressive and litigious conduct caused NRG to incur significant legal and other costs and expenses in dealing with IGPC.
77. NRG was forced to appeal this decision (which improperly levied a penalty on NRG) and incurred significant legal expenses. Ultimately, the Board expunged the penalty it had improperly levied on NRG as part of the June 2007 motion.
78. NRG had no choice but to respond to emergency motion and file the appeal.
79. Attached as Exhibit F to this evidence is NRG's factum relating to the June 2007 motion.

*The February 2008 Motion*

80. In February 2008, at the request of IGPC, the Board convened another hearing by issuance of Notice of review dated February 22, 2008.
81. The hearing involved disputes between NRG and IGPC relating to certain provisions of the PCRA.
82. Set out below is a brief description of the issues in dispute that were addressed on the motion:
83. *IGPC's Refusal to Deliver Letters of Credit.* The PCRA required IGPC to provide NRG with a Customer Letter of Credit and a Delivery Letter of Credit. In breach of its obligations under the PCRA, IGPC refused to provide the Customer Letter of Credit. As a result, NRG was delayed in ordering pipe and delayed in ordering components and materials required to construct the pipeline. IGPC also refused to provide the Delivery Letter of Credit as required by the PCRA.
84. *Union Gas and Lakeside Process Controls Ltd. Advance Payments:* Due to IGPC's refusal to provide the Customer Letter of Credit, NRG was forced to seek ad hoc financing or security from IGPC for each advance payment or liability that it incurred to suppliers or subcontractors in order to keep the construction on the required timeline. Eventually, NRG was forced to require IGPC to deal directly with certain suppliers, because IGPC was in continuing default of its obligations to deliver to NRG the Customer Letter of Credit. If IGPC had provided the Customer Letter of Credit, which was required to guarantee that NRG's rate payers would not be exposed to risk, NRG would have been able to make payments directly to those suppliers immediately.
85. *The Tender Package:* NRG had no obligation to provide IGPC with draft copies of the Tender Package. However, NRG did do so in a good faith effort to move

the project forward and ensure that IGPC understood all aspects of the project. NRG completed the construction of the pipeline ahead of schedule and well under budget. By contrast, IGPC failed to complete its facility by the agreed deadline.

86. *IGPC's Refusal to Pay NRG Invoices:* Under the PCRA, IGPC was required to pay NRG for all "reasonable internal, consulting and third party expenses incurred", which explicitly includes "consultant, legal, . . . construction and commission" costs.
87. On January 2, 2008, NRG forwarded its invoice to IGPC for payment in accordance with the PCRA. The fees covered by the invoice included reasonable legal fees paid by NRG to its counsel (Lenczner Slaght and Ogilvy Renault), as well as consulting fees necessary to protect its NRG stakeholders and to enter into appropriate subcontracts. IGPC refused to pay the invoice.
88. NRG responded by letter dated February 22, 2008. Attached as Exhibit G to this evidence is a copy of that letter dated February 22, 2008 from NRG's Counsel to IGPC's counsel.
89. *Allegations of Delay:* IGPC was in breach of the PCRA due to its failure to deliver the Customer Letter of Credit to NRG. Despite this continuing failure, NRG continued with the project, and ensured that the IGPC Pipeline was completed on time and well under budget. By letter dated February 22, 2008, NRG set out its position with respect to the continuing and deliberate breaches of the PCRA by IGPC:

I have the five letters you sent to me last night at 7:20 pm.

The obligations and rights of IGPC and NRG are set out in the Pipeline Cost Recovery Agreement dated as of January 31, 2007 ("PCRA").

Article 7.1 of the PCRA provides that IGPC will, prior to NRG ordering the pipe and stations, provide NRG with "an irrevocable letter or letters of credit...in an amount equal to the quoted cost of the pipe and the stations..."

IGPC has absolutely failed to comply with its obligations under Article 7.1 and, as a result, IGPC is in breach of the PCRA. Moreover, IGPC's failure to comply with Article 7.1 has caused delays with construction, and may cause additional delays in the future. For example, despite repeated warnings, IGPC has not provided the letter of credit to NRG, so that NRG can order components and materials from Lakeside Process Controls Ltd. ("Lakeside") for the stations, and has failed to pay Lakeside directly the amounts required by Lakeside to deliver components and materials in time to allow construction to proceed in a timely manner.

As you know, under Section 3.7 of the PCRA, given IGPC's failure to make payments required and failure to provide the letter of credit required under Section 7.1, NRG has the right to elect not to proceed further with any of its obligations under the PCRA. Moreover, if NRG elects to exercise this right, the

PCRA expressly provides that NRG "shall not be liable for any liabilities, damages, losses, payments, costs or expense that may be incurred by [IGPC] as a result".

To date, NRG has been proceeding with its obligations under the PCRA and moving forward with construction, despite IGPC's failure to comply with its obligations under the PCRA. NRG is doing so in order to cooperate with IGPC and move the project forward as fast as possible. However, NRG has obligations to all of its stakeholders and ratepayers and cannot continue with this process indefinitely, given IGPC's continuing and deliberate failures to comply with its obligations under the PCRA.

90. Attached as Exhibit H to this evidence is a copy of that letter dated February 22, 2008 from NRG's counsel to IGPC's counsel.
91. It was always NRG's goal to complete construction in accordance with the terms of the PCRA, and NRG was always willing to work with IGPC in a cooperative fashion to move forward and complete the construction of the IGPC Pipeline.
92. Despite this, IGPC maintained its refusal to pay amounts required by Union Gas and Lakeside Process Controls and failed to provide the required Letter of Credit to NRG, or alternatively pay the amount the amounts directly to each of Union Gas and Lakeside Process Controls.
93. The February 2008 motion is another example of IGPC's aggressive and litigious conduct, which required NRG to retain counsel and incur significant legal and other costs and expenses in order to respond.
94. As with the June 2007 motion, the February 2008 motion was caused by IGPC's failure to comply with its obligations owed to NRG. IGPC simply refused to give NRG the required Letter of Credit, even for the undisputed amount. NRG had no choice but to respond to the motion, prepare evidence and attend to make written and/or oral submissions at the hearing. These costs were incurred by NRG as a direct result of IGPC's conduct.
95. With respect to the legal costs associated with this motion, IGPC has incorrectly taken the position that the precipitating event was NRG's demand for \$32 million in financial assurance. The real reason for the motion was that IGPC would not provide NRG with any Customer Letter of Credit in accordance with the PCRA, holding to the position that the \$5.3 million letter of credit established in the PCRA could not be increased by the Board. The issue was that IGPC did not provide any Letter of Credit to NRG for any amount, and this caused NRG to be delayed in ordering the pipe, components and materials for the IGPC Pipeline. This resulted in the Board (on its own motion) issuing a Notice of Review of the original leave-to-construct decision, and the Board deciding that: (a) it could increase the amount of financial assurance that NRG needed; and (b) ordering

IGPC to provide such financial assurance (in this case, directly to Union Gas Limited).

#### *Contingency Costs*

96. Contingency costs on any capital project are meant to deal with exactly that – “contingencies” (i.e., costs that might occur but are not intended).
97. NRG has incurred five years of legal, consulting and staff costs related to the IGPC Pipeline.
98. The IGPC Pipeline came into service nearly five years ago and NRG is still incurring significant costs, both internal and external, related to the IGPC Pipeline.
99. The notion that the IGPC Pipeline has been completed and therefore that there should be no contingency costs is false. The issue of the cost of the IGPC Pipeline has not been resolved and these costs are indeed related to the capital cost of the IGPC Pipeline. Simply put, without the IGPC Pipeline, none of these post-construction costs would have been incurred. The utility must remain whole, and to that end, needs to recover these costs.
100. It is clear at this point that the costs have in fact exceeded that contingency, and the question is how these excess costs can be recovered by NRG.

#### **Interest Costs During Construction (2.4)**

101. IGPC is taking the position that the proper amount of interest to be included in the capital cost of the pipeline is somewhere between \$25,000 and \$50,000 and that the key to this is that NRG should cease charging interest after July 15, 2008 (when IGPC first took gas), and that to allow a utility to accrue interest thereafter (while collecting distribution rates) would permit the utility to “double recover”.
102. NRG’s position is that the proper amount of interest to be included in the capital cost of the pipeline is \$113,271. This includes two amounts (as set out in detail in Undertaking J1.5 in EB-2010-0018, attached as Exhibit I to this evidence): (a) interest calculated from the due date of the Aid-to-Construct invoice to the date the amount was received from IGPC; and (b) interest calculated from the date the last Aid-to-Construct payment was due to the date the final invoice from the primary contractor was received. With respect to (b), this refers to the period during which NRG was financing the construction costs.

103. From a financing point of view, the definition for “during construction” is not when the physical construction was completed but when the final invoices from the contract were received. There is no double recovery here.

#### **Insurance Costs and Other Service Costs (e.g. Auditing) (2.5)**

104. There is \$62,000 in insurance costs during construction in dispute between NRG and IGPC. The \$62,000 insurance figure represents an allocation of NRG’s insurance during the development and construction of the IGPC Pipeline.
105. IGPC objects to this and suggests that insurance should only start once it began receiving gas.
106. NRG believes that position to be unreasonable. Prior to coming into service, NRG had millions of dollars of pipe, components and equipment delivered and was carrying out activities in connection with the development and construction of the IGPC Pipeline.
107. Had any incident occurred to the pipe, components and equipment, IGPC would have had the benefit of NRG’s insurance coverage.
108. IGPC also object to including this amount in capital costs because IGPC believes this would allow NRG to double recover the insurance costs.
109. NRG disagrees. NRG had certain insurance costs incorporated into NRG’s revenue requirement pursuant to which NRG was operating at the time of construction of the IGPC Pipeline. However, the Board does not dictate how to manage those costs within the utility’s revenue requirement envelope.
110. On that basis, it is appropriate to have IGPC pay for a portion of NRG’s insurance coverage that IGPC benefitted from.

#### **Administrative Penalty (2.6)**

111. There is no amount in dispute between IGPC and NRG.
112. On its own motion dated December 7, 2010, the Board commenced a motion to review the levying of the administrative penalty. This was only one day after the Board issued its decision in NRG’s last rate case.
113. On the basis of the motion alone, NRG removed the \$140,000 from the capital cost of the IGPC Pipeline in the draft rate order. This was noted in the responses to comments on NRG’s draft rate order in EB-2010-0018, filed with the OEB on January 18, 2011. This document is attached as Exhibit J to this evidence, and

is an updated Attachment G to the final draft rate order, which set out how the revised amount closed to rate base of \$4.8 million was derived).

114. On February 11, 2011, the Board found that it had unlawfully levied the penalty against NRG.
115. Notwithstanding this, IGPC has continued to claim that NRG is seeking to get paid this \$140,000 – even as late as their October 22, 2012 submission in EB-2012-0396. This is obviously false.
116. There is no issue for the Board to determine here.

### **Costs Arising from This Proceeding (2.7)**

117. NRG believes that the costs arising from this proceeding should be dealt with by way of submissions at the conclusion of the hearing, as is customary Board practice.
118. NRG will be seeking its costs. As noted in NRG's reply affidavit to the original motion dealing with the capital cost of the pipeline, NRG made significant efforts to resolve the matter with IGPC. Attached as Exhibit K to this evidence is a memorandum prepared by Weston Suchard (consultant of NRG) setting out the timeline and summary of discussions between IGPC and NRG in this regard.

**Issue #3: Are the capital contribution amounts and the financial assurance provided to NRG by IGPC for the existing NRG facilities serving IGPC reasonable?**

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

**Issue #5: If any amounts are owing from NRG to IGPC, by what means and in accordance with what terms should IGPC be reimbursed?**

119. NRG believes these to be calculation issues dependent upon resolution of Issue #2, and not items requiring factual evidence.

# **EXHIBIT “A”**

**Integrated Grain Processors  
Co-operative Inc.**

**Consolidated Financial Statements  
September 30, 2011**

December 13, 2011

PricewaterhouseCoopers LLP  
Chartered Accountants  
465 Richmond Street, Suite 300  
London, Ontario  
Canada N6A 5P4  
Telephone +1 519 640 8000  
Facsimile +1 519 640 8015

## **Independent Auditor's Report**

### **To the Shareholders of Integrated Grain Processors Co-operative Inc.**

We have audited the accompanying consolidated financial statements of Integrated Grain Processors Co-operative Inc. and its subsidiary, which comprise the consolidated balance sheet as at September 30, 2011 and the consolidated statements of operations and retained earnings and cash flows for the year then ended, and the related notes, which comprise a summary of significant accounting policies and other explanatory information.

#### **Management's responsibility for the consolidated financial statements**

Management is responsible for the preparation and fair presentation of these consolidated financial statements in accordance with Canadian generally accepted accounting principles, and for such internal control as management determines is necessary to enable the preparation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

#### **Auditor's responsibility**

Our responsibility is to express an opinion on these consolidated financial statements based on our audit. We conducted our audit in accordance with Canadian generally accepted auditing standards. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the consolidated financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the consolidated financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the consolidated financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements.



We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

**Opinion**

In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of Integrated Grain Processors Co-operative Inc. and its subsidiary as at September 30, 2011 and the results of their operations and their cash flows for the year then ended in accordance with Canadian generally accepted accounting principles.

*PricewaterhouseCoopers LLP*

**Chartered Accountants, Licensed Public Accountants**

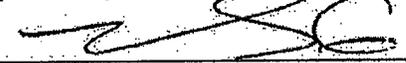
# Integrated Grain Processors Co-operative Inc.

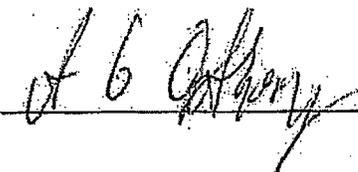
## Consolidated Balance Sheet

As at September 30, 2011

	2011 \$	2010 \$
<b>Assets (note 7)</b>		
<b>Current assets</b>		
Cash	17,656,630	14,180,256
Restricted cash (note 3)	2,708,217	3,707,130
Accounts receivable (note 4)	6,763,620	10,534,594
Inventory (note 5)	5,575,966	4,088,165
Prepaid expenses and deposits (note 14)	1,555,500	3,164,335
Income taxes recoverable	229,636	
Future income taxes	1,511,000	628,000
	<u>36,000,569</u>	<u>36,302,480</u>
<b>Property, plant and equipment (note 6)</b>	74,504,491	79,829,439
<b>Intangible assets</b>	2,766,284	2,996,803
<b>Future income taxes</b>	835,000	1,521,000
	<u>114,106,344</u>	<u>120,649,722</u>
<b>Liabilities</b>		
<b>Current liabilities</b>		
Accounts payable and accrued liabilities	4,380,326	3,555,221
Income taxes payable		540,517
Fair value of commodity derivative contracts (note 13)	100,662	898,991
Fair value of interest rate swap contracts (note 18)	944,838	1,436,240
Current portion of capital lease obligation (note 8)	619,905	539,670
Current portion of subordinated debentures and notes (note 9)	-	731,544
Current portion of term debt (note 7)	3,822,000	5,150,000
Current portion of research and development fund liability (note 15)	280,000	-
	<u>10,147,731</u>	<u>12,852,183</u>
<b>Capital lease obligation (note 8)</b>	2,566,478	3,186,383
<b>Subordinated debentures and notes (note 9)</b>	1,107,000	1,107,000
<b>Term debt (note 7)</b>	16,393,645	29,336,112
<b>Research and development fund liability (note 15)</b>	1,661,464	1,821,261
<b>Future income taxes</b>	9,718,000	6,285,000
	<u>41,594,318</u>	<u>54,587,939</u>
<b>Shareholders' Equity</b>		
<b>Capital stock (note 10)</b>	47,788,960	52,966,860
<b>Contributed surplus (note 20)</b>	703,186	806,150
<b>Retained earnings</b>	24,019,880	12,288,773
	<u>72,512,026</u>	<u>66,061,783</u>
	<u>114,106,344</u>	<u>120,649,722</u>
<b>Commitments (note 14)</b>		
<b>Contingencies (note 21)</b>		

Approved by the Board of Directors

 Director

 Director

# Integrated Grain Processors Co-operative Inc.

## Consolidated Statement of Operations and Retained Earnings

For the year ended September 30, 2011

	2011 \$	2010 \$
<b>Net sales</b>	<u>124,689,093</u>	<u>94,572,758</u>
Cost of goods sold	122,812,566 <i>98.5%</i>	86,862,984 <i>91.8%</i>
Depreciation and amortization	6,594,380	6,584,951
Net loss on commodity derivative contracts	1,056,061	1,914,480
Operating grants (note 15)	<u>(28,695,041)</u>	<u>(27,116,164)</u>
	<u>101,767,966</u>	<u>68,246,251</u>
<b>Gross profit</b>	<u>22,921,127</u>	<u>26,326,507</u>
Selling, general and administrative expenses	3,961,433	4,191,364
Amortization of deferred financing costs and depreciation	<u>1,306,573</u>	<u>1,570,667</u>
	<u>5,268,006</u>	<u>5,762,031</u>
<b>Operating income</b>	<u>17,653,121</u>	<u>20,564,476</u>
Other income (expenses)		
Interest expense (note 16)	(3,060,457)	(4,184,054)
Interest and other income	52,207	33,779
Gain on interest rate swap (note 18)	491,402	606,724
Gain (loss) on foreign exchange	<u>251,134</u>	<u>(79,690)</u>
	<u>(2,265,714)</u>	<u>(3,623,241)</u>
<b>Income before provision for taxes</b>	<u>15,387,407</u>	<u>16,941,235</u>
Provision for current income taxes	420,300	628,000
Provision for future income taxes	<u>3,236,000</u>	<u>3,861,000</u>
	<u>3,656,300</u>	<u>4,489,000</u>
<b>Net income for the year</b>	<u>11,731,107</u>	<u>12,452,235</u>
<b>Retained earnings (deficit) - Beginning of year</b>	<u>12,288,773</u>	<u>(163,462)</u>
<b>Retained earnings - End of year</b>	<u>24,019,880</u>	<u>12,288,773</u>

# Integrated Grain Processors Co-operative Inc.

## Consolidated Statement of Cash Flows

For the year ended September 30, 2011

	2011 \$	2010 \$
<b>Cash provided by (used in)</b>		
<b>Operating activities</b>		
Net income for the year	11,731,107	12,452,235
Changes (credits) to income not involving cash		
Depreciation and amortization	7,900,953	8,155,618
Unrealized (gain) loss on commodity derivative contracts	(798,329)	1,125,492
Gain on interest rate swap contracts	(491,402)	(606,723)
Loss on disposal of property, plant and equipment	9,296	-
Interest on research and development fund liability	120,203	112,761
Future income taxes	3,236,000	3,861,000
	<u>21,707,828</u>	<u>25,100,383</u>
Net change in non-cash working capital balances (note 19)	3,946,960	(989,185)
	<u>25,654,788</u>	<u>24,111,198</u>
<b>Financing activities</b>		
Repayments of subordinated debentures and notes	(731,544)	(545,956)
Net proceeds and redemptions of share subscriptions	(8,500)	(70,100)
Return of capital	(5,247,520)	-
Settlement of stock options (note 20)	(24,844)	(100,000)
Payment of term debt (note 7)	(15,500,000)	(16,971,188)
Payment of capital lease obligation	(539,670)	(464,433)
Repayment of capital grant (note 15)	(179,021)	-
Decrease in restricted cash	998,913	992,214
	<u>(21,232,186)</u>	<u>(17,159,463)</u>
<b>Investing activities</b>		
Purchase of property and equipment	(988,228)	(312,248)
Proceeds from disposal of property, plant and equipment	42,000	-
	<u>(946,228)</u>	<u>(312,248)</u>
Net increase in cash	3,476,374	6,639,487
Cash - Beginning of year	<u>14,180,256</u>	<u>7,540,769</u>
Cash - End of year	<u>17,656,630</u>	<u>14,180,256</u>

# **Integrated Grain Processors Co-operative Inc.**

Notes to Consolidated Financial Statements

September 30, 2011

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## **1 Nature of operations**

Integrated Grain Processors Co-operative Inc. (the "Co-operative") was incorporated on April 4, 2002 under the Ontario Co-operative Corporations Act.

The Co-operative produces and sells ethanol and distillers grain through its 150 million litre fuel ethanol production facility in south western Ontario, which was completed on October 15, 2008.

## **2 Summary of significant accounting policies**

### **Principles of consolidation**

The consolidated financial statements include the financial statements of the Co-operative and its wholly-owned subsidiary, IGPC Ethanol Inc. (the "subsidiary"). Intercompany balances and transactions have been eliminated on consolidation.

### **Use of estimates**

The preparation of financial statements in conformity with Canadian generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements and revenues and expenses for the year reported. Actual results could differ from those estimates.

### **Revenue recognition**

The Co-operative recognizes revenue on the sale of ethanol and distillers grains at the time of shipment.

### **Government assistance**

Government grants are recognized when there is reasonable assurance that the Co-operative has complied with the conditions of the grant. Such grants are accounted for as reduction of the related expense or asset, or as income, as appropriate.

### **Inventories**

Inventories of finished products, feedstock, process chemicals and supplies are valued at the lower of net realizable value and average cost. Work in process consists of cost of material and direct labour and is valued at the lower of net realizable value and average cost.

# Integrated Grain Processors Co-operative Inc.

## Notes to Consolidated Financial Statements

September 30, 2011

### Property, plant and equipment

Property, plant and equipment are stated at cost. Amortization is provided for in the accounts as follows:

Buildings and site pipelines	5% declining balance
Furniture and fixtures	20% declining balance
Equipment	30% declining balance
Process equipment	15 years straight line
Gas pipeline under capital lease	7 years straight line

In the year of acquisition, amortization is provided for at one-half of the above rates, except in 2009 when the cost of the process plant was transferred from construction in progress to the appropriate asset categories and amortization was provided for from the date of production.

The total cost of major capital projects includes related interest incurred during the period of construction. Capitalization of interest ceased on October 15, 2008 when the ethanol plant was substantially complete and ready for its intended productive use.

Grants under government capital assistance programs are deducted from the cost of the assets to which the grant relates.

### Intangible asset

The intangible asset recorded on the balance sheet, relates to the right to use the proprietary design and processes to produce ethanol. The asset is being amortized over the life of the process equipment of 15 years.

### Financial instruments

Under CICA Handbook Section 3855 - Financial Assets and Liabilities, including derivative instruments, are initially recognized and subsequently measured based on their classification as held-for-trading, available-for-sale financial assets, held-to-maturity, loans and receivables, or other financial liabilities as follows:

- Held-for-trading financial instruments are measured at their fair value with changes in fair value recognized in net income for the year.
- Available-for-sale financial assets are measured at their fair value and changes in fair value are included in other comprehensive income until the asset is removed from the balance sheet.
- Loans and receivables are measured at cost or amortized cost using the effective interest rate method.
- Other financial liabilities are measured at cost or amortized cost using the effective interest rate method.

# Integrated Grain Processors Co-operative Inc.

Notes to Consolidated Financial Statements

September 30, 2011

- Derivative instruments, including embedded derivatives, are measured at their fair value with changes in fair value recognized in net income for the year unless the instrument is a cash flow hedge and hedge accounting applies in which case changes in fair value are recognized in other comprehensive income.

The following is a summary of the classification of assets and liabilities of the Co-operative:

<b>Financial Instrument</b>	<b>Classification</b>
Cash	Held-for-trading
Restricted cash	Held-for-trading
Accounts receivable	Loans and receivables
Accounts payable and accrued liabilities	Other financial liabilities
Fair value of commodity derivative contracts	Derivative instrument (non-hedge)
Fair value of interest rate swap contracts	Derivative instrument (non-hedge)
Term and bank debt	Other financial liabilities
Capital lease obligation	Other financial liabilities
Shareholder loan	Other financial liabilities
Research and development fund liability	Other financial liabilities
Preference shares	Other financial liabilities

As a non-publicly accountable enterprise, the Co-operative has elected to apply CICA Handbook Section 3861 - Financial Instruments - Disclosure and Presentation, in lieu of CICA Handbook Section 3862 - Financial Instruments - Disclosure, and 3863 - Financial Instruments - Presentation. CICA Handbook Section 3861 specifies the presentation of financial instruments and non-financial derivatives, and identifies the information that should be disclosed.

## Deferred financing costs

Transaction costs related to the credit agreement are netted against the carrying value of the term loan and are amortized over the duration of the credit agreement using the effective interest rate method, based on target debt levels of the term loan and expect levels of available credit under the revolving term facility.

## Interest rate swap contracts

Exposure to interest rates on debt is managed through the use of interest rate swap contracts. These swap contracts require the periodic exchange of payments without the exchange of the notional principal amount on which the payments are based. Settlement amounts under interest rate swap contracts have been included in capitalized interest during the pre-operating period prior to October 15, 2008. Changes in the fair value of the interest rate swap contracts have been recorded in the statement of operations.

## Stock options

Options are accounted for under the fair market method. Stock-based compensation costs, measured at the grant date based on the fair value of the options granted and recognized over the service period involved, are recorded as expenses on the income statement. The amounts are credited to contributed surplus. The consideration paid upon exercise of the options and the originally recorded fair value of the options are added to share capital.

# Integrated Grain Processors Co-operative Inc.

Notes to Consolidated Financial Statements

September 30, 2011

## Income taxes

The liability method of accounting for income taxes is used. Under this method, future income tax assets and liabilities are determined based on the differences between the carrying amount of assets and liabilities and the tax cost bases of these assets and liabilities measured using substantially enacted income tax laws and rates.

## Future accounting changes

Non-publicly accountable enterprises have the option of adopting International Financial Reporting Standards (IFRS) or Accounting Standards for Private Enterprises (ASPE) for annual financial statements for fiscal years beginning on or after January 1, 2011. Management and the Board of Directors have determined that the Co-operative will adopt IFRS for its fiscal year ending September 30, 2012. Management is in the process of determining the impact of this change on its accounting policies and reporting practices.

## 3 Restricted cash

	2011 \$	2010 \$
Debt service reserve account	2,708,217	3,497,575
Post completion account	-	209,555
	<u>2,708,217</u>	<u>3,707,130</u>

Under the terms of the credit agreement, as construction funds were obtained, a portion was added to the debt service reserve account such that at substantial completion the sum of two principal instalments plus six months of interest is available in a separate account to service bank debt. In the event cash flow is insufficient to meet the quarterly requirement, these funds may be used but must be replenished.

## 4 Accounts receivable

	2011 \$	2010 \$
Trade accounts receivable	2,742,211	2,058,381
Operating grants receivable (note 15)	4,016,990	8,403,816
Other receivables	4,419	72,397
	<u>6,763,620</u>	<u>10,534,594</u>

# Integrated Grain Processors Co-operative Inc.

Notes to Consolidated Financial Statements

September 30, 2011

## 5 Inventory

	2011 \$	2010 \$
Fuel grade ethanol	1,903,821	925,550
Work in process	1,076,700	1,143,096
Feedstock, process chemicals and supplies	2,595,445	2,019,519
	5,575,966	4,088,165

## 6 Property, plant and equipment

	2011		
	Cost \$	Accumulated Amortization \$	Net \$
Land	2,923,721	-	2,923,721
Buildings	14,313,440	1,930,780	12,382,660
Site pipelines	2,287,513	339,944	1,947,569
Furniture and fixtures	93,703	39,711	53,992
Equipment	739,630	386,715	352,915
Process equipment	64,920,588	12,918,415	52,002,173
Gas pipeline under capital lease (note 8)	8,472,554	3,631,093	4,841,461
	93,751,149	19,246,658	74,504,491
	2010		
	Cost \$	Accumulated Amortization \$	Net \$
Land	2,923,721	-	2,923,721
Buildings	13,648,830	1,296,645	12,352,185
Site pipelines	2,287,513	237,440	2,050,073
Furniture and fixtures	75,703	28,463	47,240
Equipment	715,077	311,914	403,163
Process equipment	64,575,452	8,574,220	56,001,232
Gas pipe line under capital lease (note 8)	8,472,554	2,420,729	6,051,825
	92,698,850	12,869,411	79,829,439

# Integrated Grain Processors Co-operative Inc.

Notes to Consolidated Financial Statements

September 30, 2011

## 7 Term debt

	2011 \$	2010 \$
Term debt	21,500,000	37,000,000
Less: Current portion	(3,822,000)	(5,150,000)
Less: Deferred financing costs	(1,284,355)	(2,513,888)
	<u>16,393,645</u>	<u>29,336,112</u>

The Co-operative entered into a credit agreement on June 15, 2007 with a lead bank as Agent for certain lenders to initially make the following credit facilities available:

- A seven year non-revolving term loan facility for \$63,700,000 to be used for construction of the plant with principal payments of \$3,822,000 commencing in 2009, due June 27, 2014.
- Certain non-revolving bridge facilities for construction costs prior to receipt of government funding in the amount of \$14,000,000.
- A seven year revolving term facility for working capital purposes not to exceed lesser of \$7,000,000 or the borrowing base. Borrowing base uses as collateral 85% of eligible receivables and inventory. During the year, the amount was reduced to \$6,000,000.

In 2009, the Co-operative had drawn the full amount allowed against the seven year non-revolving term loan facility. The revolving facility became available after substantial completion of the ethanol plant as defined under the credit agreement.

The credit agreement also provided a short-term bridge facility for \$14,000,000 which was repaid in March 2009 when the Co-operative received the \$14,000,000 capital grant from OMAFRA (note 15).

Deferred financing costs have been allocated to the term loan, revolving term facility and bridge facility. At year-end the unamortized balances allocated to these elements of the credit agreement are \$897,155 (2010 - \$1,933,088), \$387,200 (2010 - \$580,800) and Nil (2010 - Nil) respectively.

As at September 30, 2011, the Co-operative had \$2,754,481 (2010 - \$2,754,481) of letters of credit drawn against the seven year revolving term facility.

# Integrated Grain Processors Co-operative Inc.

## Notes to Consolidated Financial Statements

September 30, 2011

During construction, interest was based on the variable banker's acceptance rate and a stamping fee of 3.75%. After substantial completion, the debt became a term debt with interest at the variable banker's acceptance rate and a stamping fee of 3.25% which was increased to 4% after negotiating the amendment to the credit agreement. The aggregate amount of principal payments required in each of the next three years under debt facilities are:

	\$
2012	3,822,000
2013	11,581,818
2014	6,096,182
	<u>21,500,000</u>

Debt repayments made on each repayment date has been the greater: of 70% of excess cash flows; and the difference between the outstanding amount and the target outstanding debt to a maximum of 100% of the excess cash flows. The target outstanding debt is reduced by \$2,895,455 per quarter. If there are no excess cash flows, the Co-operative is required to pay 1.50% of the initial debt outstanding for a total of \$955,500 per quarter, which has been disclosed in the principal payments required above and adjusted for the target outstanding debt amount. As at September 30, 2011, the target debt outstanding was \$31,850,000 (2010 - \$43,431,818). A voluntary prepayment feature allows the Co-operative to prepay a minimum of \$500,000 with adequate notice to the Agent.

Since the inception of the seven year revolving term facility, the Co-operative has made the following principal payments:

	\$
Term debt at inception	63,700,000
Principal payments in 2009	(9,728,812)
Principal payments in 2010	(16,971,188)
Principal payments in 2011	(15,500,000)
	<u>21,500,000</u>

Under the credit agreement, the Co-operative has provided security to the lenders, the key elements of which are as follows:

- a) a fixed and floating charge debenture in the amount of \$150,000,000;
- b) a general security agreement covering all assets of the Co-operative;
- c) an assignment of insurance; and
- d) a limited recourse guarantee and a securities pledge agreement

# Integrated Grain Processors Co-operative Inc.

Notes to Consolidated Financial Statements

September 30, 2011

## 8 Capital lease obligation

As part of the construction of the ethanol plant, it was necessary for the local natural gas distributor to construct a 29 km pipeline from a Union Gas trunk pipeline to the town of Aylmer. The costs of the pipeline are fully borne by the Co-operative, through 'aid-to-construct' payments, plus certain fixed gas delivery charges over a seven year contract period. While the Co-operative has no ownership interest in the pipeline, accounting guidelines require that in such instances where the value of the asset is fully recovered by the supplier and the customer has exclusive, or virtually exclusive, use of the asset, the arrangement is accounted for as a lease.

Accordingly, the Co-operative has recorded the capital cost of the pipeline as a capital lease, and the discounted value of certain fixed gas delivery charges over the next four years as a capital lease obligation, with notional interest of 15%. The details of the capital lease obligation are as follows:

Future minimum lease payments:	\$
2012	1,066,252
2013	1,066,252
2014	1,066,252
2015	1,066,252
	<u>4,265,008</u>
Amounts representing interest	<u>1,078,625</u>
	3,186,383
Less: Current portion	<u>619,905</u>
Long-term portion	<u>2,566,478</u>

In addition to the foregoing, the Co-operative is obligated to provide a letter of credit to the natural gas distributor to ensure performance under the agreement. At year end, a letter of credit in the amount of \$5,214,173 (2010 - \$5,214,173) was issued in their favour.

The final cost of the pipeline is currently under review by the Ontario Energy Board. Should the final costs differ from costs determined for purposes of calculating the capital lease obligation, the obligation will be adjusted accordingly.

# Integrated Grain Processors Co-operative Inc.

Notes to Consolidated Financial Statements

September 30, 2011

## 9 Subordinated debentures and notes

	2011 \$	2010 \$
Class A debentures maturing on December 31, 2013 and bearing interest at 8.50% per annum	1,070,000	1,070,000
Class B debentures maturing on December 31, 2013 and bearing interest at 7.50% per annum	37,000	37,000
Promissory notes maturing on December 31, 2010 and bearing interest at 8% per annum	-	731,544
	<u>1,107,000</u>	<u>1,838,544</u>
Less: Current portion	-	731,544
	<u>1,107,000</u>	<u>1,107,000</u>

The redemption of these subordinate debentures at maturity and the payment of interest thereon are subject to the prior consent of the lenders.

## 10 Capital stock

### Authorized

Prior to June 8, 2010:

100,000 membership shares, voting, with a par value of \$100 each.

11,000,000 Class A preference shares, non-voting, redeemable at the discretion of the Board, with a par value of \$5 each.

5,000,000 Class B preference shares, non-voting, redeemable at the discretion of the Board, with a par value of \$5 each.

5,000,000 Class C preference shares, non-voting, redeemable at the discretion of the Board, with a par value of \$5 each.

5,000,000 Class D preference shares, non-voting, redeemable at the discretion of the Board, with a par value of \$5 each.

The Class A and Class B preference shares were redeemable at their par value, plus a premium, if any, equivalent to a pro rata share of retained earnings of the Co-operative, calculated at the end of the immediately preceding fiscal year subject to certain conditions. The Class C and D preference shares were redeemable at their par value. The preference shares do not carry a retraction right.

# Integrated Grain Processors Co-operative Inc.

Notes to Consolidated Financial Statements

September 30, 2011

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Each of the Class A, B, C, and D preference shares were entitled to non-cumulative preferential dividends to be declared at the discretion of the Board.

With effect from June 8, 2010:

100,000 membership shares, voting, with a par value of \$100 each.

20,000,000 Class E preference shares, non-voting, redeemable at the discretion of the Board, with a par value of \$5 each.

The Class E preference shares are redeemable at their par value, plus a premium, if any, equivalent to a pro rata share of retained earnings of the Co-operative, calculated at the end of the immediately preceding fiscal year subject to certain conditions, plus a pro rata share of such premiums as may have been paid upon the purchase of any Class E preference shares. The preference shares do not carry a retraction right.

Each of the Class E preference shares is entitled to non-cumulative preferential dividends to be declared at the discretion of the Board.

In the prior year, all Class C and D preference shares were redeemed in full and all Class B preference shares were re-designated as Class A preference shares on a one to one basis. After which, all Class A preference shares were renamed as Class E preference shares. The Class A, B, C and D preference shares were deleted in the articles of amendment dated June 8, 2010, leaving only the membership shares and Class E preference shares authorized and issued at year end. These changes were approved by the members of the Co-operative at the Annual General Meeting on March 25, 2010.

# Integrated Grain Processors Co-operative Inc.

Notes to Consolidated Financial Statements  
September 30, 2011

Issued and fully paid	Membership		Class E (Class A prior to June 8, 2010)		Class B		Class C		Class D		Total	
	#	\$	#	\$	#	\$	#	\$	#	\$	#	\$
Issued at October 1, 2009	4,135	10,642,198	51,618,795	191,713	958,565	800	4,000	42,100	8,420	42,100	53,056,960	
New subscriptions	-	-	-	2,000	10,000	-	-	-	-	-	10,000	
Redemptions	(15)	(1,500)	(2,900)	(3,600)	(18,000)	(800)	(4,000)	(42,100)	(8,420)	(42,100)	(80,100)	
Re-designation of Class B shares as Class E shares	-	-	190,113	950,565	(190,113)	(950,565)	-	-	-	-	-	
Balance, September 30, 2010	4,120	10,829,411	52,554,860	-	-	-	-	-	-	-	52,966,860	
New issues	5	500	-	-	-	-	-	-	-	-	500	
Exercised stock options	-	-	15,624	78,120	-	-	-	-	-	-	78,120	
Share conversions	-	-	1,000	5,000	-	-	-	-	-	-	5,000	
Redemptions	(140)	(14,000)	-	-	-	-	-	-	-	-	(14,000)	
Return of capital	-	-	-	(5,247,520)	-	-	-	-	-	-	(5,247,520)	
Balance, September 30, 2011	3,985	998,500	10,846,035	47,390,460	-	-	-	-	-	-	47,788,960	

# **Integrated Grain Processors Co-operative Inc.**

Notes to Consolidated Financial Statements

September 30, 2011

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## **11 Capital disclosures**

The Co-operative has two primary capital management objectives. The first of which is to raise and maintain a capital base to finance the construction and operation of an ethanol manufacturing facility. In compliance with the credit agreement, membership and preference shares and subordinate debentures ("securities") have been issued. These securities are governed by the Co-operative Corporations Act. Annually, an Offering Statement is filed with the Superintendent (Financial Services Corporation of Ontario).

The second primary capital management objective is to safeguard the Co-operative's ability to continue as a going concern so that it can provide returns to its shareholders and benefits for other stakeholders. In this context, management considers capital to be its net worth as defined in the credit agreement as containing shareholders' equity and capital grants. The agent for the syndicate of the term debt has imposed certain covenants in connection with the term debt and credit facilities. As at September 30, 2011, the Co-operative was in compliance with these covenants.

## **12 Financial instruments**

### **Fair value**

The fair value of financial instruments, such as cash, restricted cash, accounts receivable, and accounts payable and accrued liabilities are determined to approximate their recorded value due to their short term maturity.

Commodity derivative contracts and the interest rate swap contract are carried at fair value.

The research and development fund liability has been recorded at fair value at the time of recognition and is carried at amortized cost (note 15).

Management has not determined the fair value of its bank debt, capital lease obligations or subordinated debentures and notes.

### **Credit risk**

The Co-operative's exposure to credit risk relates to its accounts receivable. Due to the exclusive marketing arrangements for ethanol and distillers grains, all of the trade accounts receivables are with two customers.

### **Interest rate risk**

The Co-operative is exposed to fluctuations in interest rates on its cash, restricted cash and term debt. A portion of this risk due to variable interest rates has been addressed by the use of interest rate swap contracts (note 18).

# Integrated Grain Processors Co-operative Inc.

Notes to Consolidated Financial Statements

September 30, 2011

## 13 Commodity derivative contracts

The Co-operative is exposed to the impact of market fluctuations associated with commodity prices and uses derivative financial instruments as part of an overall strategy to manage market risk, assuming it has sufficient liquidity to manage such a strategy. The Co-operative uses cash, futures, swaps, costless collars and option contracts to mitigate against the risk of changes to the commodity prices of corn, natural gas and ethanol. The Co-operative will not enter into these derivative financial instruments for trading or speculative purposes, nor will it designate these contracts as cash flow or fair value hedges for accounting. These financial instruments are accounted for using the mark-to-market method, with any changes in fair value immediately recognized in operations.

At September 30, 2011, the Co-operative had the following derivative contracts outstanding:

	Average cost/price in USD	Expiry
Natural gas	\$4.25 - \$5.00 / MMBtu	November 2011 - December 2011

The net market value of these open positions is an unrealized loss of \$100,662 (2010 - \$898,991).

## 14 Commitments

### Corn supply agreement

The Co-operative has entered into an exclusive agreement for the supply of corn for production of ethanol for an initial term of five years from October 1, 2008, and it is expected that 400,000 metric tonnes are to be supplied each year. The Co-operative is also required under the agreement to provide adequate assurance for the corn supplier's mark-to-market exposure over a pre-determined threshold. At year end, the Co-operative had deposited \$Nil (2010 - \$500,000) with the corn supplier with respect to this commitment, and this amount is recorded in prepaid expenses and deposits.

### Risk management agreement

The Co-operative has entered into an agreement with a risk management services provider to implement an integrated price risk management program for an initial term of one year from June 22, 2007 and is automatically renewed each year for an additional one year term.

### Ethanol marketing agreement

The Co-operative has entered into an exclusive agreement with an ethanol marketer for the marketing of all of the ethanol production for an initial term of one year from the first day of production, which was October 15, 2008, and the agreement has been renewed for an additional two year term. The ethanol marketing company has agreed to take and pay for 100% of the output.

# Integrated Grain Processors Co-operative Inc.

Notes to Consolidated Financial Statements

September 30, 2011

## Distillers grain purchaser agreement

The Co-operative has entered into an exclusive agreement with a marketer to market the following by-products of ethanol production: dry grains with solubles, wet grains with solubles, and wet modified grains with solubles for an initial term of five years from the first day of production, which was October 15, 2008.

## 15 Government grants

### Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA)

The Co-operative has been awarded two grants from OMAFRA:

- a) In March 2009, the Co-operative received a capital grant of \$14,000,000 after completion of the project and achieving nameplate capacity by establishing the capability of producing 145,000,000 litres of ethanol in a calendar year. As a condition precedent to receiving the grant, the Co-operative is committed to contribute \$2,800,000 over ten years to a future industry related Research and Development Fund, as administered by the Agricultural Research Institute of Ontario. The first payment is to be made on April 1, 2012, three years after the full grant was received. An amount of \$1,653,921, representing the present value of these payments discounted at 6.60%, was recorded as a research and development fund liability, thus reducing the amount of capital grant recognized for the purpose of recording the net cost of capital assets. At year end, the balance of this obligation was \$1,941,464 (2010 - \$1,821,261).
- b) An operating grant was activated when the plant began operation in October 2008. Funding is based on the actual volume of denatured ethanol produced in a month times the rate of payment for that month (not to exceed \$0.11 per litre) subject to an annual maximum of 145,000,000 litres. During the current and prior year, the Co-operative reached this maximum and earned \$14,918,113 (2010 - \$10,822,542) in operating grants (2011 - \$0.1028 per litre, 2010 - \$0.0746 per litre), of which \$1,818,598 (2010 - \$1,868,872) has been accrued as an amount receivable. The agreement is set to expire December 31, 2016.

If the profitability of the Co-operative reaches or exceeds the threshold of 17.50% as calculated by the internal rate of return on a cash flow basis, the grant is reduced by 40%. This reduction increases incrementally up to 100% if profitability remains above 17.50%. As at September 30, 2011, the Co-operative's internal rate of return was below the threshold of 17.50%.

### Ethanol Expansion Program contribution

This capital grant, managed by NRCan (Natural Resources Canada), has reimbursed \$11,900,000 of construction costs for the ethanol facility.

For each of the calendar years from 2009 to 2016 inclusive or until the grants have been repaid in full, the Co-operative must repay an amount calculated as of December 31 of each year as follows:

$(\text{Average Gross Income per Litre minus } \$0.20 \text{ per litre}) \times \text{the total Fuel Ethanol Produced in the previous twelve (12) months} \times 0.20$

# Integrated Grain Processors Co-operative Inc.

Notes to Consolidated Financial Statements

September 30, 2011

If the average gross income per litre is \$0.20 or less, the repayment will be zero. During the year, the Co-operative repaid \$179,021 (2010 \$Nil) of this capital grant as the average gross income per litre exceeded \$0.20 for calendar year 2010.

## ecoEnergy for Biofuels

The Co-operative qualified for an operating grant under the Federal Government's ecoEnergy for Biofuels program, managed by NRCan. The operating grant is payable quarterly, from 2008 to 2016. The maximum incentive rate payable declines from \$0.10 per litre of ethanol sold in the first year to \$0.04 per litre in the last. The maximum eligible sales volume is 162,000,000 litres per year. During the current and prior years, the Co-operative reached the maximum eligible sales volume and earned \$13,776,928 (2010 - \$16,293,622) in operating grants (2011 - \$0.0849 per litre, 2010 - \$0.0957 per litre) of which \$2,198,392 (2010 - \$6,534,944) has been accrued as an amount receivable.

## EcoAgriculture Biofuels Capital Program contribution

On March 27, 2009, Agriculture and Agri-Food Canada signed an amendment to the agreement which increased the grant to \$6,087,514. The grant is based on eligible project costs and maintaining a minimum level of investment in its parent by agriculture producers. This grant was received during the fiscal 2010 year.

## 16 Interest

	2011 \$	2010 \$
Term debt	1,577,257	2,122,255
Settlement interest on swap	729,012	1,108,995
Subordinated debentures and notes	103,365	163,755
Capital lease obligation	526,584	601,817
Other	124,239	187,232
	<u>3,060,457</u>	<u>4,184,054</u>

# Integrated Grain Processors Co-operative Inc.

Notes to Consolidated Financial Statements

September 30, 2011

## 17 Income taxes

The Co-operative has non-capital losses available for carry forward of \$1,577,835 (2010 - \$1,398,308) that may only be offset against future taxable income. The non-capital losses consist of \$1,020,636 (2010 - \$841,109) which can be carried forward for 20 years and \$557,199 (2010 - \$557,199) which can be carried forward for ten years. In addition, the Co-operative has capital losses available for carry-forward of \$736,539 (2010 - \$736,539) that may be offset against future capital gains. These losses have no expiry date. The Co-operative has recognized the benefit of the non-capital losses as these are expected to be recovered, while the benefit of the capital losses has not been recognized because the timing of the recovery is unknown.

## 18 Interest rate swap contracts

Under the terms of the credit agreement, on August 30, 2007, the Co-operative entered into monthly interest rate swap contracts to match the construction drawdown and term debt repayment schedule. These swap agreements convert a portion of the variable-rate liability into a fixed-rate liability. At September 30, 2011, the unrealized loss on these interest rate swap agreements was \$944,838 (2010 - \$1,436,240).

Terms of the agreement at September 30, 2011 are as follows:

Termination date:	June 1, 2014
Notional amount of principal (maximum):	\$15,925,000 (2010 - \$21,175,909)
Fixed paying rate:	4.91%

## 19 Net change in non-cash working capital balances

	2011	2010
	\$	\$
(Increase) decrease in:		
Accounts receivable	3,770,974	4,001,751
Inventories	(1,487,801)	(588,437)
Prepaid expenses and deposits	1,608,835	(1,506,001)
Income taxes recoverable	(229,636)	-
Increase (decrease) in:		
Accounts payable and accrued liabilities	825,105	(3,350,015)
Income taxes payable	(540,517)	453,517
	<u>3,946,960</u>	<u>(989,185)</u>
Cash paid (received) during the year for:		
Interest paid	2,397,689	4,063,771
Interest received	(52,207)	(27,803)
Income taxes paid	1,195,000	87,483

**Integrated Grain Processors Co-operative Inc.**  
 Notes to Consolidated Financial Statements  
 September 30, 2011

**20 Stock options**

Integrated Grain Processors Co-operative Inc. is authorized to grant certain directors options to purchase Class E (Class A prior to June 8, 2010) preference shares of the Co-operative. The Co-operative, in a prior year, authorized \$695,300 worth of Class A preference share options to certain directors for services provided prior to substantial completion of the ethanol plant which occurred on October 15, 2008.

These options vest when exercised and under the Co-operative Corporations Act are exercisable at \$5.00 per share until they expire on June 24, 2017. They will be deemed to have been automatically exercised immediately before any change in control of the Co-operative or before the sale of substantially all of its assets.

The Co-operative had also, in a prior year, authorized \$124,500 worth of Class A preference share options and \$500 worth of membership share options to a non-employee for services provided leading up to obtaining financing. These options were settled with a cash payment of \$25,000 in the current year and \$100,000 in the prior year.

During the year, the Co-operative received \$156 from the exercise of 15,624 options at \$0.01 per Class E preference share. Capital stock and contributed surplus were each adjusted by \$78,120 for stock-based compensation previously recorded on these exercised stock options.

	2011 \$	2010 \$
Options granted to acquire 139,060 Class E (Class A prior to June 8, 2010) preference shares to directors	695,300	695,300
Options exercised to acquire 15,624 Class E preference shares by directors	(78,120)	-
Total stock options - End of year	<u>617,180</u>	<u>695,300</u>

**21 Contingencies**

The Co-operative has been named as a defendant in a lawsuit arising from the construction of the gas pipeline. The outcome of this claim is not currently determinable, however management is of the view that no payments will be made, other than defense costs, as a result of the claim. Any settlement that should arise will be accounted for in the year that a liability is established.

**22 Statutory information**

The remuneration of directors, as defined by the Co-operative Corporation Act R.S.O. 1990, Chapter C.35 is \$252,724 (2010 - \$223,704).

**23 Comparative financial information**

Certain prior period financial information has been amended to conform to the current period presentation.

# **EXHIBIT “B”**

**Mark J. Bristoll**

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**From:** Mark J. Bristoll  
**Sent:** November 1, 2007 5:17 PM  
**To:** 'Lawrence Thacker'  
**Subject:** Revised Chronology  
**Attachments:** image013.pdf

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Larry

Please find attached quotations from two other suppliers of the pipe. The chronology of the negotiations is as follows:

- September 17, 2007 received quotation from Lakeside Steel Corporation for \$29.95/metre (i.e. \$898,500) F.O.B. Aylmer
- September 18, 2007 received quotation from OSM Tubular Camrose for \$35.30/metre (i.e. \$1,059,000) F.O.B. Aylmer
- September 19, 2007 received quotation from COMCO Pipe & Supply Co. for \$36.80/metre (i.e. \$1,104,000) F.O.B. Aylmer
- OSM Tubular Camrose & COMCO Pipe & Supply Co. requested to re-quote. Re-quotes did not result in reductions that would bring either companies prices within reach of Lakeside Steel Corporation's initial quotation
- September 27, 2007 revised pricing received from OSM Tubular Camrose for 30.94/metre F.O.B. Aylmer
- September 27, 2007 it was decided that Lakeside Steel Corporation's quote should be pursued and that additional reductions sought.
- October 4, 2007 received quotation from Lakeside Steel Corporation for \$29.62/metre (i.e. \$888,600) F.O.B. Aylmer
- October 16, 2007 received confirmation from Andrew Geden of AECON that Lakeside Steel Corporation's quotation satisfies pipe specifications as designed by AECON.
- October 19, 2007 received quotation from Lakeside Steel Corporation for \$29.19/metre (i.e. \$875,700) F.O.B. Aylmer
- October 29, 2007 received quotation from Lakeside Steel Corporation for \$28.66/metre (i.e. \$859,800) F.O.B. Aylmer
- October 29, 2007 received quotation from lakeside Steel Corporation for \$28.66/metre (i.e. \$859,800) F.O.B. Aylmer plus agreement by Lakeside Steel to provide delivery to Natural Resource Gas Limited on or after March 2007 on a schedule determined by Natural Resource Gas Limited and to reflect construction requirements.

Let me know if you require additional information.

Yours truly,  
Mark Bristoll

No virus found in this outgoing message.

Checked by AVG Free Edition.

Version: 7.5.503 / Virus Database: 269.15.15 - Release Date: 31/10/2007 12:00 AM

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No virus found in this incoming message.

Checked by AVG Free Edition.

Version: 7.5.503 / Virus Database: 269.15.15 - Release Date: 31/10/2007 12:00 AM

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01/11/2007

Mark J. Bristoll

**From:** Mark J. Bristoll  
**Sent:** November 1, 2007 4:55 PM  
**To:** 'Lawrence.Thacker'  
**Subject:** Quotations  
**Attachments:** image013.pdf

*Subscribed  
Nov 1, 2007  
5:10 PM.*

Larry

Please find attached quotations from two other suppliers of the pipe. The chronology of the negotiations is as follows:

- September 18, 2007 received quotation from OSM Tubular Camrose for \$35.30/metre (i.e. \$1,059,000) F.O.B. Aylmer
- September 19, 2007 received quotation from COMCO Pipe & Supply Co. for \$36.80/metre (i.e. \$1,104,000) F.O.B. Aylmer
- October 4, 2007 received quotation from Lakeside Steel Corporation for \$29.62/metre (i.e. \$888,600) F.O.B. Aylmer
- OSM Tubular Camrose & COMCO Pipe & Supply Co. requested to re-quote. Re-quotes did not result in reductions that would bring either companies prices within reach of Lakeside Steel Corporation's initial quotation. It was decided that Lakeside Steel Corporation's quote should be pursued and that additional reductions sought.
- October 19, 2007 received quotation from Lakeside Steel Corporation for \$29.19/metre (i.e. \$875,700) F.O.B. Aylmer
- October 29, 2007 received quotation from Lakeside Steel Corporation for \$28.66/metre (i.e. \$859,800) F.O.B. Aylmer
- October 29, 2007 received quotation from lakeside Steel Corporation for \$28.66/metre (i.e. \$859,800) F.O.B. Aylmer plus agreement by Lakeside Steel to provide delivery to Natural Resource Gas Limited on or after March 2007 on a schedule determined by Natural Resource Gas Limited and to reflect construction requirements.

Let me know if you require additional information.

Yours truly,  
Mark Bristoll

No virus found in this outgoing message.

Checked by AVG Free Edition.

Version: 7.5.503 / Virus Database: 269.15.15 - Release Date: 31/10/2007 12:00 AM

01/11/2007

# AIRD & BERLIS LLP

Barristers and Solicitors

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

November 1, 2007

Via E-mail

Mr. Lawrence E. Thacker  
Lenczner Slaght Royce  
Smith Griffin LLP  
Barristers and Solicitors  
2600 - 130 Adelaide Street West  
Toronto, ON M5H 3P5

Dear Mr. Thacker:

Re: **Integrated Grain Processors Co-operative Inc. ("IGPC") and  
Natural Resource Gas Limited ("NRG")**

Thank you for your letter of October 30, 2007, and the attached quote from Lakeside Steel Corporation ("Lakeside") dated October 29, 2007. Obviously we are pleased to learn that it appears that steps have been taken in respect of the supply of pipe required for the construction of the pipeline. IGPC is eager to do all that is necessary and reasonable to ensure the delivery of pipe in time to meet the facility start-up timelines.

While it will be necessary to confirm with Mr. Geden, at AECON, that the specifications quoted in the Lakeside quote are satisfactory and appropriate given the final design of the pipeline, on the assumption that AECON confirms this is the case, there are several questions which should probably be raised with Lakeside directly. We also have several requests for information, which we trust you will have no difficulty obtaining and forwarding in short order.

AECON  
CONTRIBUTION &  
SPECIFICATIONS.

To be clear, at first glance, the Lakeside quote appears to be reasonable and therefore should be pursued. I note, however, that the quote requires that a purchase order be placed by Saturday, November 3, 2007. As you know, our first notice of the quote was Tuesday, October 30<sup>th</sup>, and while we are moving as quickly as possible, it may be necessary to seek a brief extension of the quote.

As you are aware, the quote requires payment equal to the total value of the pipe at the time of order placement. We estimate that this will require a payment in excess of \$900,000.

The funds for the fabrication and supply of the pipe will be sourced from IGPC's lenders. As you are aware, such payments will form part of the "capital contribution" by IGPC towards the construction of the pipeline. Under these circumstances, IGPC's lenders will reasonably require several matters.

November 1, 2007

Page 2

First, your letter references extensive negotiations between NRG and Lakeside "as well as research into the prices available from alternate suppliers." For the benefit of IGPC's lenders and its Board, we ask that you provide us with the particulars of the information obtained by NRG in respect of the cost to source the pipe from alternate suppliers. This information will also be useful satisfying any concern on the part of the Ontario Energy Board about the prudence of the costs.

ALTERNATIVE  
QUOTATIONS.

We also wish to determine from Lakeside the actual delivery schedule of the pipe to confirm that it is consistent with the construction schedule. We are a little confused by the reference in your letter to Lakeside making deliveries to the job site according to "NRG's needs" and the reference in the quote to the date of required receipt being between March 17<sup>th</sup> to March 28<sup>th</sup>, 2008. It may be appropriate to try and confirm with Lakeside an earlier delivery date in light of an early June In-service start and to confirm the delivery schedule is as agreed by IGPC.

In SERVICE  
START. too late?

In respect of the requirement by Lakeside for payment in full at the time the purchase order is placed, we believe the most appropriate means of proceeding would be to pay the required funds into an irrevocable escrow account from which Lakeside could draw down amounts once various milestones are reached. Initially, title to the pipe would reside with IGPC. Such arrangements would help expedite IGPC's access to the required funding and comfort IGPC's lenders as to the directed use of the funds. IGPC would, as part of this arrangement, confirm that title to the pipe would be transferred to NRG contemporaneous with the construction of the pipeline in 2008.

NO!

It does not appear feasible that all of the above can be put into place and funds deposited into an irrevocable escrow account by Saturday, November 3, 2007. Under circumstances where a party has not been kept apprised of steps being undertaken, it should come as no surprise that a request for close to \$1 million cannot be approved overnight. We therefore respectfully request an extension to the Lakeside quote until we receive our lenders' consent, which would be on or about Friday, November 9, 2007 (it may take longer depending upon documentation). I would be obliged if you would contact Lakeside to advise them of the situation and request the brief extension to their offer.

Our clients continue to convey their strong preference that NRG and IGPC relate to each other directly without using our respective offices as intermediaries.

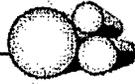
I will be difficult to reach over the period November 1<sup>st</sup> through November 8<sup>th</sup>, inclusive. During this time I ask that you contact my colleague, Bernie McGarva, at 416-865-7765, who will be able to quickly respond to your enquiries.

2

Finally, I would appreciate your confirmation that you are able to attend the meeting which we have scheduled for Friday, November 9, 2007, at 10:00 a.m., at our offices.

2





Natural Resource Gas Limited quotation for Aylmer Ethanol Plant Line Pipe

October 29, 2007  
(Final submission)

To: Mark Bristoll, Natural Resource Gas Limited  
Copy: Andrew Geden AECON

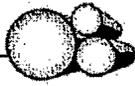
On behalf of Lakesteel Corporation, I would like to thank NRG/AECON for the opportunity to quote the 6.625 x .188 CSA Z245.21 X42 Line Pipe job. Just to summarize our quote, Lakeside is prepared to manufacture 30,000 meters for delivery in the vicinity of Alymer, Ontario on a schedule that is flexible and to be scheduled between Lakeside and Natural Resource Gas Limited.

Our pricing includes the following:

- Steel costs and conversion at Lakeside.
- Loading and offloading of trucks at Lakeside and Durabond in Mckeessport, Pa.
- 10/40 yellow jacket coating per specification outlined below. (10/60 coating is extra).
- Shipping costs to Mckeessport, Pa.
- Shipping costs to Alymer, Ontario job site.
- All export papers and billing paperwork.

Product will be manufactured at Lakeside and coating of product will be completed at Durobond using the 10/40 yellow jacket coating. The pipe will meet the specifications outlined below with the only exception being length:

1. PIPE TO MEET ALL REQUIREMENTS AS LISTED IN CSA Z245.1-02
2. QUANTITY OF STEEL : 30,000m
3. GRADE 290MPa
4. CATEGORY I
5. PROCESS OF PIPE MANUFACTURE: ERW
6. O.D.: 168.3mm
7. WALL THICKNESS: 4.8mm
8. NOMINAL LENGTH: DOUBLE RANDOM LENGTH, 46 feet maximum.
9. END FINISH: BEVELED END TO AN ANGLE OF 30 DEGREES, + 5 DEGREES, - 0



DEGREES

10. EXTERNAL COATING TYPE: YELLOW JACKET
11. EXTERNAL YELLOW JACKET COATING TO MEET ALL REQUIREMENTS AS LISTED IN

CSA Z245.21-06

12. PIPELINE SYSTEM MAXIMUM DESIGN TEMPERATURE: 140 DEGREES FAHRENHEIT (60 DEGREES CELSIUS)
13. EXTERNAL COATING SYSTEM: A2
14. EXTERNAL COATING CUTBACK LENGTH: 125mm – 150mm
15. CATHODIC DISBONDMENT RADIUS AT MAXIMUM DESIGN TEMPERATURE: 12mm (480 mils)
16. TEST TEMPERATURE FOR FLEXIBILITY TEST: -30 DEGREES CELSIUS (-22 DEGREES FAHRENHEIT)
17. FOB: AYLMEER, ONTARIO, CANADA
18. DATE OF REQUIRED RECEIPT: MARCH 17 TO MARCH 28, 2008.

Terms and Conditions

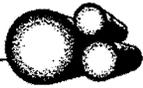
Warranty:

1. Durabond offers a 1 year workmanship and defect warranty on all their coatings.
2. Lakeside regular terms and conditions are attached. Information below will supersede some detail in our regular terms and conditions.

Payment Terms: Cash for total value of pipe at time of order placement. Price for job would be \$28.66/m. Purchase order is required by November 3, 2007 for a January rolling cycle at Lakeside.

We would also like to have a pre-production meeting prior to rolling steel and the meeting will likely take place at Durabond in Mckeesport, Pa.

Thanks, Ange Armenti  
VP Sales and Manufacturing  
Lakeside Steel Corporation  
1-800-263-7473 ext. 7355



NRG quotation for Aylmer Ethanol Plant Line Pipe

October 29, 2007  
(Final submission)

To: Mark Bristol NRG  
Copy: Andrew Geden AECON

On behalf of Lakesteel Corporation, I would like to thank NRG/AECON for the opportunity to quote the 6.625 x .188 CSA Z245.21 X42 Line Pipe job. Just to summarize our quote, Lakeside is prepared to manufacture 30,000 meters for delivery to job site in Alymer, Ontario between March 17 and March 28<sup>th</sup> 2008.

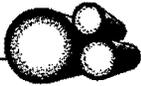
\*\*\*Delivery to job site is flexible and will be scheduled between Lakeside and NRG.

Our pricing includes the following:

- Steel costs and conversion at Lakeside.
- Loading and offloading of trucks at Lakeside and Durabond in Mckeesport, Pa.
- 10/40 yellow jacket coating per specification outlined below. (10/60 coating is extra).
- Shipping costs to Mckeesport, Pa.
- Shipping costs to Alymer, Ontario job site.
- All export papers and billing paperwork.

Product will be manufactured at Lakeside and coating of product will be completed at Durobond using the 10/40 yellow jacket coating. The pipe will meet the specifications outlined below with the only exception being length:

1. PIPE TO MEET ALL REQUIREMENTS AS LISTED IN CSA Z245.1-02
2. QUANTITY OF STEEL : 30,000m
3. GRADE 290MPa
4. CATEGORY I
5. PROCESS OF PIPE MANUFACTURE: ERW
6. O.D.: 168.3mm
7. WALL THICKNESS: 4.8mm
8. NOMINAL LENGTH: DOUBLE RANDOM LENGTH, 46 feet maximum.
9. END FINISH: BEVELED END TO AN ANGLE OF 30 DEGREES, + 5 DEGREES, - 0



DEGREES

10. EXTERNAL COATING TYPE: YELLOW JACKET
11. EXTERNAL YELLOW JACKET COATING TO MEET ALL REQUIREMENTS AS LISTED IN

CSA Z245.21-06

12. PIPELINE SYSTEM MAXIMUM DESIGN TEMPERATURE: 140 DEGREES FAHRENHEIT (60 DEGREES CELSIUS)
13. EXTERNAL COATING SYSTEM: A2
14. EXTERNAL COATING CUTBACK LENGTH: 125mm – 150mm
15. CATHODIC DISBONDMENT RADIUS AT MAXIMUM DESIGN TEMPERATURE: 12mm (480 mils)
16. TEST TEMPERATURE FOR FLEXIBILITY TEST: -30 DEGREES CELSIUS (-22 DEGREES FAHRENHEIT)
17. FOB: AYLMEER, ONTARIO, CANADA
18. DATE OF REQUIRED RECEIPT: MARCH 17 TO MARCH 28, 2008.

Terms and Conditions

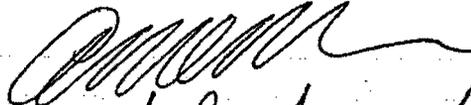
Warranty:

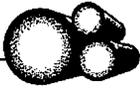
1. Durabond offers a 1 year workmanship and defect warranty on all their coatings.
2. Lakeside regular terms and conditions are attached. Information below will supersede some detail in our regular terms and conditions.

Payment Terms: Cash for total value of pipe at time of order placement. Price for job would be \$28.66/m. Purchase order is required by November 3, 2007 for a January rolling cycle at Lakeside.

We would also like to have a pre-production meeting prior to rolling steel and the meeting will likely take place at Durabond in Mckeesport, Pa.

Thanks, Ange Armenti  
VP Sales and Manufacturing  
Lakeside Steel Corporation  
1-800-263-7473 ext. 7355

  
*Need purchase this week  
to secure steel.*



10/24/07  
REMOVED ADDITIONAL  
PRICE REDUCTIONS  
\$ 20,000.

NRG quotation for Aylmer Ethanol Plant Line Pipe

October 19, 2007  
(Revision no. 2)

To: Mark Bristoll NRG  
Copy: Andrew Geden AECON

On behalf of Lakesteel Corporation, I would like to thank NRG/AECON for the opportunity to quote the 6.625 x .188 CSA Z245.21 X42 Line Pipe job. Just to summarize our quote, Lakeside is prepared to manufacture 30,000 meters for delivery to job site in Alymer, Ontario between March 17 and March 28<sup>th</sup> 2008.

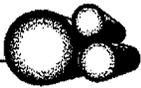
\*\*\*Delivery to job site is flexible and will be scheduled between Lakeside and NRG.

Our pricing includes the following:

- Steel costs and conversion at Lakeside.
- Loading and offloading of trucks at Lakeside and Durabond in Mckeesport, Pa.
- 10/40 yellow jacket coating per specification outlined below. (10/60 coating is extra).
- Shipping costs to Mckeesport, Pa.
- Shipping costs to Alymer, Ontario job site.
- All export papers and billing paperwork.

Product will be manufactured at Lakeside and coating of product will be completed at Durobond using the 10/40 yellow jacket coating. The pipe will meet the specifications outlined below with the only exception being length:

1. PIPE TO MEET ALL REQUIREMENTS AS LISTED IN CSA Z245.1-02
2. QUANTITY OF STEEL : 30,000m
3. GRADE 290MPa
4. CATEGORY I
5. PROCESS OF PIPE MANUFACTURE: ERW
6. O.D.: 168.3mm
7. WALL THICKNESS: 4.8mm
8. NOMINAL LENGTH: DOUBLE RANDOM LENGTH, 46 feet maximum.
9. END FINISH: BEVELED END TO AN ANGLE OF 30 DEGREES, + 5 DEGREES, - 0



DEGREES

10. EXTERNAL COATING TYPE: YELLOW JACKET
11. EXTERNAL YELLOW JACKET COATING TO MEET ALL REQUIREMENTS AS LISTED IN

CSA Z245.21-06

12. PIPELINE SYSTEM MAXIMUM DESIGN TEMPERATURE: 140 DEGREES FAHRENHEIT (60 DEGREES CELSIUS)
13. EXTERNAL COATING SYSTEM: A2
14. EXTERNAL COATING CUTBACK LENGTH: 125mm – 150mm
15. CATHODIC DISBONDMENT RADIUS AT MAXIMUM DESIGN TEMPERATURE: 12mm (480 mils)
16. TEST TEMPERATURE FOR FLEXIBILITY TEST: -30 DEGREES CELSIUS (-22 DEGREES FAHRENHEIT)
17. FOB: AYLMEER, ONTARIO, CANADA
18. DATE OF REQUIRED RECEIPT: MARCH 17 TO MARCH 28, 2008.

Terms and Conditions

Warranty:

1. Durabond offers a 1 year workmanship and defect warranty on all their coatings.
2. Lakeside regular terms and conditions are attached. Information below will supersede some detail in our regular terms and conditions.

Payment Terms: Cash for total value of pipe at time of order placement. Price for job would be \$29.19/m. Purchase order is required by November 3, 2007 for a January rolling cycle at Lakeside.

We would also like to have a pre-production meeting prior to rolling steel and the meeting will likely take place at Durabond in McKeesport, Pa.

Thanks, Ange Armenti  
VP Sales and Manufacturing  
Lakeside Steel Corporation  
1-800-263-7473 ext. 7355

*Pricing good for 60 Days.  
We can review after that.*

**Mark J. Bristoll**

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**From:** Andrew Geden [Ageden@aecon.com]  
**Sent:** October 16, 2007 2:32 PM  
**To:** Mark J. Bristoll

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**Subject:** RE: Lakeside Steel Quotation

Mark,

I have reviewed the quote, and the specifications listed in regards to the pipe and pipe coating meet the technical requirements of Aecon's design.  
Thanks, Andrew

---

**From:** Mark J. Bristoll [mailto:mjb@cpirentals.com]  
**Sent:** Tuesday, October 16, 2007 1:09 PM  
**To:** Andrew Geden  
**Subject:** Lakeside Steel Quotation

Andrew,  
Can you review the attached quotation and confirm that is based on the specifications designed by AECON for the Ethanol pipeline and the specifications are appropriate for the intended application of the pipe.  
Yours truly,  
Mark Bristoll

---

**From:** Armenti, Angelo [mailto:Angelo.Armenti@lakesidesteelcorp.ca]  
**Sent:** October 15, 2007 5:52 PM  
**To:** Mark J. Bristoll  
**Subject:** RE: test

Mark, I'll send out courier on Tuesday for original.

Thanks, Ange.

-----Original Message-----

**From:** Mark J. Bristoll [mailto:mjb@cpirentals.com]  
**Sent:** Monday, October 15, 2007 3:37 PM  
**To:** Armenti, Angelo  
**Subject:** test

Angelo,  
Please send quotation on letter head by return email to this address.  
Yours truly,  
Mark Bristoll

No virus found in this outgoing message.  
Checked by AVG Free Edition.  
Version: 7.5.488 / Virus Database: 269.14.11/1071 - Release Date: 15/10/2007 6:48 AM

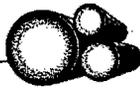
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No virus found in this incoming message.  
Checked by AVG Free Edition.  
Version: 7.5.488 / Virus Database: 269.14.11/1071 - Release Date: 15/10/2007 6:48 AM

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No virus found in this outgoing message.  
Checked by AVG Free Edition.  
Version: 7.5.488 / Virus Database: 269.14.12/1073 - Release Date: 16/10/2007 8:22 AM

30/10/2007



NRG quotation for Aylmer Ethanol Plant Line Pipe

October 4, 2007

To: Mark Bristol NRG  
Copy: Andrew Geden AECON

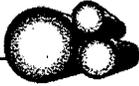
On behalf of Lakesteel Corporation, I would like to thank NRG/AECON for the opportunity to quote the 6.625 x .188 CSA Z245.21 X42 Line Pipe job. Just to summarize our quote, Lakeside is prepared to manufacture 30,000 meters for delivery to job site in Alymer, Ontario between March 17 and March 28<sup>th</sup> 2008.

Our pricing includes the following:

- Steel costs and conversion at Lakeside.
- Loading and offloading of trucks at Lakeside and Durabond in Mckeesport, Pa.
- 10/40 yellow jacket coating per specification outlined below. (10/60 coating is extra).
- Shipping costs to Mckeesport, Pa.
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3. GRADE 290MPa
4. CATEGORY I
5. PROCESS OF PIPE MANUFACTURE: ERW
6. O.D.: 168.3mm
7. WALL THICKNESS: 4.8mm
8. NOMINAL LENGTH: DOUBLE RANDOM LENGTH, 46 feet maximum.
9. END FINISH: BEVELED END TO AN ANGLE OF 30 DEGREES, + 5 DEGREES, -0 DEGREES
10. EXTERNAL COATING TYPE: YELLOW JACKET
11. EXTERNAL YELLOW JACKET COATING TO MEET ALL REQUIREMENTS AS LISTED IN



CSA Z245.21-06

12. PIPELINE SYSTEM MAXIMUM DESIGN TEMPERATURE: 140 DEGREES FAHRENHEIT (60 DEGREES CELSIUS)
13. EXTERNAL COATING SYSTEM: A2
14. EXTERNAL COATING CUTBACK LENGTH: 125mm - 150mm
15. CATHODIC DISBONDMENT RADIUS AT MAXIMUM DESIGN TEMPERATURE: 12mm (480 mils)
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17. FOB: AYLMEER, ONTARIO, CANADA
18. DATE OF REQUIRED RECEIPT: MARCH 17 TO MARCH 28, 2008.

Terms and Conditions

Warranty:

1. Durabond offers a 1 year workmanship and defect warranty on all their coatings.
2. Lakeside regular terms and conditions are attached. Information below will supersede some detail in our regular terms and conditions.

Payment Terms: Cash for total value of pipe per payment plan below. Price for job would be \$29.62/m.

1. \$500,000 required at time of order placement to cover the steel cost. Steel usually ordered 6 weeks prior to manufacture of pipe.
2. \$208,000 at time of rolling to cover the rolling costs at Lakeside. (Total now covers cost for bare pipe rolled).
3. The balance is due when pipe shipped to Durabond Industries to cover cost of wrapping and shipping costs.

Should cancellation of the project occur between any of these dates, all reasonable attempts will be made to utilize the product on other jobs to help offset the costs. (Lakeside agrees).

We can discuss timing of rolling when purchase order received. We would also like to have a pre-production meeting prior to ordering steel and the meeting will likely take place at Durabond in Mckeesport, Pa.

Thanks, Ange Armenti  
VP Sales and Manufacturing  
Lakeside Steel Corporation  
1-800-263-7473 ext. 7355

*All in Canadian Funds*

# SGS

Certificate CA02761

The management system of  
LA SYSTEMS (Canada)

## Lakeside Steel Corporation La Corporation d'Acier Lakeside

160 Bain Avenue  
Welland, Ontario, N3B 5V6, Canada

has been assessed and found to comply with the requirements of  
the standard for the purpose of certification.

### ISO 9001:2000

The scope of registration is as follows:  
LA SYSTEMS (Canada) Ltd. (Welland, Ontario)

Pipe and tubular steel products for the oil, gas, automotive,  
construction, mining, manufacturing and  
fabrication market sectors.

The certification is valid for the purpose of the certification of the applicability of  
ISO 9001:2000 for the purpose of the registration of LA SYSTEMS (Canada) Ltd.  
The certification is valid for the purpose of the registration of LA SYSTEMS (Canada) Ltd.  
for the purpose of the registration of LA SYSTEMS (Canada) Ltd. for the purpose of the registration of LA SYSTEMS (Canada) Ltd.

This certificate is valid from 29 October 2008 until 19 October 2009

CA Certificate is valid until 29 October 2009 and expires 19 October 2009

SGS Certificate is valid until 29 October 2009 and expires 19 October 2009

SGS Certificate is valid until 29 October 2009 and expires 19 October 2009

SGS Certificate is valid until 29 October 2009 and expires 19 October 2009

Manager

SGS is a member of the Bureau Veritas Group  
SGS is a member of the Bureau Veritas Group  
SGS is a member of the Bureau Veritas Group  
SGS is a member of the Bureau Veritas Group

SGS is a member of the Bureau Veritas Group





**American  
Petroleum  
Institute**



## Certificate of Authority to use the Official API Monogram

License Number: 5L-0518

ORIGINAL

The American Petroleum Institute hereby grants to

### LAKESIDE STEEL CORPORATION

160 Dain Avenue  
Welland, Ontario  
Canada

the right to use the Official API Monogram® on manufactured products under the conditions in the official publications of the American Petroleum Institute entitled API Spec Q1® and API Spec 5L and in accordance with the provisions of the License Agreement.

In all cases where the Official API Monogram is applied, the API Monogram should be used in conjunction with this certificate number: 5L-0518.

The American Petroleum Institute reserves the right to revoke this authorization to use the Official API Monogram for any reason satisfactory to the Board of Directors of the American Petroleum Institute.

The scope of this license includes the following: Manufacturer of Line Pipe Plain End at PSL 1; Manufacturer of Line Pipe Plain End at PSL 2.

QMS Exclusions: Section 7.3, Design and Development; Section 7.5.4, Customer Property

Effective Date: NOVEMBER 1, 2005

Expiration Date: NOVEMBER 1, 2008

American Petroleum Institute

Director of Certification Programs

To verify the authenticity of this license, go to [www.api.org/certification](http://www.api.org/certification).

## CONDITIONS OF SALE

THE BUYER'S PURCHASE ORDER ( IF ANY) SHALL HAVE NO APPLICATION WHATSOEVER TO ANY CONTRACT OR AGREEMENT BETWEEN THE PARTIES EXCEPT TO THE EXTENT THAT THE SELLER EXPRESSLY AGREES IN WRITING TO ANY OF SUCH PURCHASE ORDER CONDITIONS.

SUBJECT TO THESE CONDITIONS OF SALE, THE BUYER'S OFFER TO PURCHASE SHALL NOT BIND THE SELLER UNTIL ACCEPTANCE BY THE SELLER HAS BEEN MADE BY THE ISSUANCE OF AN ORDER ACKNOWLEDGEMENT.

1. **PRICES:** Unless otherwise herein stated, prices shall be the Seller's prices and transportation charges prevailing at the date of shipment.
2. **TERMS OF PAYMENT:** Net 30 days from date of invoice unless otherwise stipulated in writing by the Seller.
3. **CREDIT:** Should the Buyer fail to fulfill the terms of payment under this or any other contract between the Buyer and the Seller, the Seller may defer further shipments until such payments are made or may, at its option, cancel the unshipped balance without prejudice to any other rights which the Seller may have against the Buyer hereunder. Shipments and deliveries shall at all times be subject to the approval by the Seller of the Buyer's credit and the Seller reserves the right, even after partial shipment or partial payment on account of the contract to require from the Buyer satisfactory security for the due performance of the Buyer's obligations. Refusal to furnish such security will entitle the Seller to defer any further shipments until such security is furnished or to cancel the contract or so much of it as remains unperformed without prejudice to any other rights which the Seller may have against the Buyer hereunder.
4. **TAXES:** All prices are subject to the addition of any present or future, applicable sales, excise, use or other taxes or duties imposed by any governmental authority. All such taxes and duties, unless otherwise expressly stipulated, shall be added to and become a part of the price payable by the Buyer to the Seller.
5. **TITLE AND RISK:** Unless otherwise stipulated herein, all sales are F.O.B. Seller's plant and title shall pass to the Buyer upon delivery by the Seller to a carrier for transportation to the Buyer. Title to products sold F.O.B. destination shall pass to the Buyer upon arrival at the specified destination. All products shall be and remain at the risk of the Buyer from and after the time at which title passes.
6. **DELIVERY DATES:** Delivery dates set forth herein are subject to change and are predicated on conditions existing at this time. Seller shall exercise its best efforts to deliver within the time quoted but does not guarantee to do so, and shall not be held responsible for any loss or damage of any kind or nature whatsoever caused by the delay in delivery irrespective of the cause of such delay.
7. **FORCE MAJEURE:** In the event of any delay in the Seller's performance due to fires, strikes, labour disputes, war, civil commotion, epidemics, embargoes, floods, delays in transportation or shortage of cars, fuel or other materials, default or failure of carriers or contractors, shortage of labour, acts of God, acts, demands, requirements or request of any state or government or to any other cause beyond the reasonable control of the Seller whether or not of a kind herein before specified notwithstanding that such cause is operative at the time of making the contract the Seller shall have such additional time within which to perform this contract as may be reasonably necessary under the circumstances. Notwithstanding the foregoing, if performance of the contract by the Seller be delayed for a period exceeding thirty days by any such cause either party shall at its option be relieved from further responsibility, otherwise the time of delivery shall be extended as may be necessary to enable Seller to make delivery; provided that in respect of products manufactured or in process of manufacture at the date of exercise of the option such relief from responsibility shall be subject to the consent of the Seller.
8. **SELLER'S STANDARD PRACTICES AND TOLERANCES:** Except to the extent otherwise agreed in writing all products shall be delivered in accordance with the manufacturer's standard practice and shall be subject to the normal tolerances, variations and limitations of dimension, weight, shape, composition, mechanical properties, structure, quality and service conditions consistent with practical testing and inspection methods. All orders shall be subject to Seller's regular practice concerning over and under shipment.
9. **WARRANTY:** The Seller warrants that all products sold herein are of merchantable quality but unless otherwise herein specified makes no warranty or representation that the products sold are fit for any particular purpose. Save as specifically provided herein, all expressed or implied warranties, whether they be statutory or otherwise, and all representations or conditions as to products are expressly excluded.
10. **BUYER'S REMEDIES:** If any product furnished to the Buyer shall fail to conform to the contract between the Buyer's and the Seller, the Buyer shall give prompt written notification thereof to the Seller. Such non-conforming product shall be held for the inspection of the Seller and liability of the Seller in respect thereof shall be limited to the replacement of such product subject to the return of such product or, at the discretion of the Seller, to a return of the sale price less the salvage or scrap value thereof. The Seller shall in no event be liable for the cost of any value added to any non-conforming product or for any special, direct, indirect or consequential damages by reason of the fact that any such product shall have been non-conforming.
11. **CONSEQUENTIAL DAMAGES:** Neither party to the contract shall be liable for indirect or consequential damages.
12. **CANCELLATION:** Orders will not be subject to cancellation or modification, either in whole or in part, without the Seller's written consent.
13. **ENTIRE CONTRACT:** No terms on conditions, other than those stated herein, and no agreement or understanding, oral or written, purporting to modify these Conditions of Sale whether contained in the Buyer's purchase order or elsewhere, shall be binding on the Seller unless made in writing and accepted in writing by the Seller.

## CONDITIONS DE VENTE

LE BULLETIN DE COMMANDE DE L'ACHETEUR (S'IL Y A LIEU) NE S'APPLIQUERA D'AUCUNE FAÇON À TOUT CONTRAT OU CONVENTION ENTRE LES PARTIES SAUF DANS LA MESURE OU LE VENDEUR ACCEPTE EXPRESSÉMENT PAR ÉCRIT QUELQUE(S) CONDITION(S) DU BULLETIN DE COMMANDE.

L'OFFRE D'ACHAT DE L'ACHETEUR, SUJETTE À CES CONDITIONS DE VENTE, NE LIE PAS LE VENDEUR AVANT QUE L'ACCEPTATION PAR CE DERNIER NE SOIT CONFIRMÉE PAR L'ÉMISSION D'UN ACCUSÉ DE RÉCEPTION.

1. **PRIX.** A moins d'indication contraire contenue aux présentes, les prix seront les prix du vendeur et les frais de transport en vigueur à la date de l'expédition.
2. **MODALITÉS DE PAIEMENT.** Net, 30 jours à compter de la date de la facture à moins de stipulation contraire par écrit de la part du vendeur.
3. **CRÉDIT.** Si l'acheteur ne respecte pas les modalités de paiement en vertu des présentes ou de tout autre contrat entre l'acheteur et le vendeur, le vendeur peut différer des expéditions ultérieures jusqu'à ce que tels paiements soient effectués ou, à son gré, annuler le complètement de commande non expédié sous toute réserve de tout autre droit auquel le vendeur peut recourir contre l'acheteur en vertu des présentes. Les expéditions et livraisons seront en tout temps soumises à l'approbation par le vendeur du crédit de l'acheteur, et le vendeur se réserve le droit, même après une expédition partielle ou un paiement partiel découlant du contrat, d'exiger de l'acheteur une garantie satisfaisante de l'exécution convenable des obligations de l'acheteur. Le refus de fournir une telle garantie donnera droit au vendeur de différer toute expédition jusqu'à ce que telle garantie soit fournie ou de résilier le contrat ou la partie non exécutée de celui-ci sans préjudice de tout autre droit que le vendeur peut posséder contre l'acheteur en vertu des présentes.
4. **TAXES.** Tous les prix sont soumis à l'addition de toute taxe de vente, d'accise, d'usage ou de tout autre droit ou taxe applicables, présents ou futurs, imposés par toute autorité gouvernementale. Tous ces droits et taxes, à moins de stipulation contraire expresse, seront ajoutés au prix payable par l'acheteur au vendeur et en deviendront partie.
5. **TITRES ET RISQUES.** A moins de stipulation contraire, toutes les ventes sont effectuées F.O.B. à l'usine du vendeur et le titre de propriété passera à l'acheteur lors de la remise des marchandises par le vendeur à un voiturier pour fins de transport chez l'acheteur. Les titres des produits vendus F.O.B. destination passeront à l'acheteur lors de l'arrivée à la destination spécifiée. Tous les produits seront et demeureront aux risques de l'acheteur à partir du moment du transfert des titres.
6. **DATES DE LIVRAISON.** Les dates de livraison énoncées aux présentes sont susceptibles d'être modifiées et sont basées sur les conditions qui existent présentement. Le vendeur fera tout en son possible pour livrer dans le délai fixé mais ne garantit pas de le faire et il ne sera tenu responsable d'aucune perte ou dommage de quelque espèce ou nature causé par un retard de livraison quelque soit la cause de tel retard.
7. **FORCE MAJEURE.** Dans le cas d'un retard du vendeur dans l'exécution du contrat attribuable à des feux, grèves, différends ouvriers, guerre, agitation civile, épidémies, embargos, inondations, retards dans le transport, insuffisance de wagons, de combustible ou d'autres matériaux, défaut ou manquement des voituriers ou entrepreneurs, insuffisance de main-d'oeuvre, cas fortuits, décrets, demandes, exigences ou requêtes de tout état ou gouvernement attribuable à toute autre cause hors du contrôle du vendeur, qu'elle soit ou non de la nature ci-dessus spécifiée et nonobstant le fait que telle cause existe au moment de la formation de ce contrat, le vendeur aura le délai additionnel nécessaire pour exécuter ce contrat tel qu'il est raisonnablement requis selon les circonstances. Nonobstant ce qui précède, si l'exécution du contrat par le vendeur est retardé pour une période excédant trente jours pour l'une des causes mentionnées ci-haut, chaque partie aura le choix d'être relevée de toute autre responsabilité, mais autrement le délai de livraison sera prolongé tel que nécessaire pour permettre au vendeur d'effectuer livraison; cependant, en ce qui concerne les produits manufacturés ou en voie de l'être à la date où un tel choix est fait, un tel dégageant de responsabilité sera soumis au consentement du vendeur.
8. **TOLÉRANCES ET USAGES HABITUELS DU VENDEUR.** Excepté le cas où il en a été convenu autrement par écrit, tous les produits seront livrés conformément aux usages habituels du fabricant et seront soumis aux tolérances, variations et limitations normales de dimension, poids, forme, composition, propriétés, mécaniques, structure, qualité et conditions d'utilisation conformément aux essais pratiques et aux méthodes d'inspections usuels. Toute manque ou surplus dans les expéditions relatif à toutes commandes sera soumis à l'usage habituel du vendeur.
9. **GARANTIE.** Le vendeur garantit que tous les produits vendus par les présentes sont de qualité marchande, mais, à moins de spécification contraire dans les présentes, il ne garantit ni ne stipule que les produits vendus conviennent à un usage quelconque en particulier. A moins de stipulation spécifique à cet effet contenue aux présentes, toutes garanties expressees ou tacites, qu'elles soient statutaires ou autres, et toutes autres représentations ou conditions relatives aux produits sont expressément exclues.
10. **RECOURS DE L'ACHETEUR.** Si un produit quelconque fourni à l'acheteur n'est pas conforme au contrat entre l'acheteur et le vendeur, l'acheteur en notifiera promptement par écrit le vendeur. Un tel produit non conforme sera gardé pour en permettre l'inspection par le vendeur et la responsabilité du vendeur sur ce point sera limitée au remplacement d'un tel produit sous réserve du renvoi de ce produit, ou, au choix du vendeur, à un remboursement du prix de vente moins la valeur de rebut du produit. Le vendeur ne sera en aucun cas responsable du coût de la valeur ajoutée à un produit non conforme, quelle soit, ni de dommages spécifiques, directs ou indirects quels qu'ils soient et découlant du fait qu'un tel produit n'était pas conforme au contrat.
11. **DOMMAGES INDIRECTS.** Aucune partie à ce contrat ne sera responsable des dommages indirects.
12. **ANNULATION.** Les commandes ne seront susceptibles d'aucune annulation ou modification en totalité ou en partie, sans le consentement écrit du vendeur.
13. **CONTRAT PARFAIT.** Aucune modalités ou condition autre que celles énoncées dans les présentes, et aucune convention ou entente, orale ou écrite, prétendant modifier les présentes conditions de vente, qu'elle soit contenue dans le bulletin de commande de l'acheteur ou ailleurs, n'engagera le vendeur, à moins d'être faite par écrit et acceptée par écrit par le vendeur.

**Mark J. Bristol**

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**From:** Andrew Geden [Ageden@aecon.com]  
**Sent:** September 27, 2007 4:32 PM  
**To:** Mark J. Bristol  
**Subject:** Fw:

**Attachments:** Aecon Utility Engineering Pricing Summary.pdf



Aecon Utility  
Engineering Pric...

Mark, see attached revised pricing from Camrose. Note the terms in Jim's email: cash price and pending steel availability. Lakeside Steel remains low bidder.

----- Original Message -----

**From:** Jim Cone <conej@osm.com>  
**To:** Andrew Geden  
**Cc:** Emina Galijasevic <galijae@osm.com>  
**Sent:** Thu Sep 27 15:43:05 2007  
**Subject:** FW:

Andrew,

Please find the revised pricing. The pricing would be a cash sale and subject to steel availability at the time of purchase.

Regards,

Jim Cone  
Sales Manager  
OSM Tubular, Camrose

No virus found in this incoming message.  
Checked by AVG Free Edition.

Version: 7.5.488 / Virus Database: 269.13.32/1033 - Release Date: 27/09/2007 11:06 AM

9/26/2007



**OSM TUBULAR  
CAMROSE**  
EMILAZ OREGON STEEL MILLS

Customer: Aecon Utility Engineering  
Attn: Andrew Geden

<u>ITEM</u>	<u>OD</u>	<u>WT</u>	<u>GRADE</u>	<u>LENGTHS</u>	<u>METERS</u>	<u>FEET</u>	<u>KGS / M</u>	<u>TONS</u>	<u>TONNES</u>	<u>\$/TON</u>	<u>\$/TONNE</u>	<u>\$/M</u>	<u>TOTAL \$'s</u>
<b>Bare pipe</b>													
1	168.3	4.8	290 Cat1	DRL	30,000	98,425	19,353	640	581	\$1,155.28	\$1,273.47	\$24.65	\$739,370.37
<b>Coating</b>													
1	168.3	4.8	290 Cat1	DRL	30,000	98,425	19,353	640	581	\$294.84	\$325.01	\$6.29	\$188,700.00

TERNS  
DECKERY.  
WASRE.

WASSINE

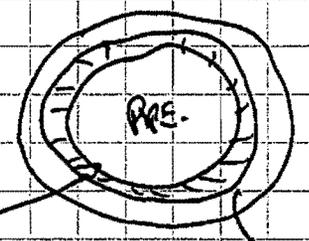
30 LN. (WASRE).

885,000

200-300M.  
- BASE STEEL PIPE.  
- FIELD APPX. AROUND  
COASTLINE.

TERNS.

HC 500,000 IN ORDER.  
HC 200,000 AT ROWING.  
HC BALANCE AT WRAPPING.



BASE TRENCH:

TAR.  
6/1000 INCH  
OR  
15m.

2 YEAR  
RATE  
~~15m~~  
~~15m~~  
~~15m~~  
~~15m~~  
15m.

PIPE - STRONG. - EN/CL RAIL STRONG.

- TOWN OF AYNER - SECURE (INBLED).

TAX. INCLUDED EXCISED. ~~PAR.~~

TAX EXCISED 28/1000 INCH 70m.

CAREWY.

WASSINE (MILL) 885,000

CANKOLE (DIFFERISE). 4,059,087.

CONES (DIFFERISE). 1,104,000

CAP I / CAP. 2YS 10/40. (AC?)  
vs. 10/60.

CAP I / CAP. 2YS AC.

CAP II / CAP. 2YS A2.

F.O.B. AYNER

F.O.B. AYNER.

F.O.B. AYNER.

MD MARCH 03

TSD.

TSD.

TERNS

HC 500,000 OVER.  
HC 200,000 BAL  
HC BALANCE.

NET 30 OAR

NET 30 OAR.

\* CAP. I TAKE HC.

STRONG TRENCH - ...

COMCO Pipe & Supply Co  
14 Kerr Cres., Kerr Ind. Park, R.R. # 3,  
Guelph, On. N1H 6H9  
Phone: (519) 763-1114  
E-mail lmooney@comcopipe.com  
Fax: (519) 763-3722



The Right People. The Right Stuff.

To: Andrew Geden – Aecon Utility

From: Lil Mooney

Fax:

Pages: 1

Date: Sept 19, 2007

Re: Aylmer Ethanol

CC:

We are pleased to offer the following for your consideration:

30,000 m – 168.3 x 4.8 mm CSA Z245.1 GR 290 CAT II (Charpy's @ -45 C)  
SWEET SERVICE, TRLS (18 m), coated with Shaw YJ# 1

Price \$ 36.80 / metre

With an order by late October, the pipe would roll January 2008.

Prices are in Canadian funds  
FOB Aylmer, Ontario  
Net 30 days  
Taxes are extra.

Regards  
Lil Mooney



The Right People. The Right Stuff.

---

R.R. NO 3 (Kerr Industrial Park Aberfoyle)  
Guelph, Ontario  
N1H 6H9  
Telephone (519) 763-1114  
Fax (519) 763 3722  
Toll free number (800) 265-7176  
(Ontario & Québec only)

### Comco Terms and Conditions - Sales Invoice

- 1. Prices and Payment.** Prices and charges are subject to change without notice and shall reflect those of Vendor in effect at the time of order. Balances past due shall bear interest at 1 ½% per month (18% per annum).
- 2. Title and Risk.** Unless otherwise stipulated: a) all sales are FOB point of shipment which shall be deemed to be the carrier's loaded truck; b) shipments will be made via carriers and routes selected by the Vendor with freight charges to be assumed by the Purchaser, and; c) title, ownership and risk of loss or damage to the goods shall pass to Purchaser immediately upon delivery to the carrier. All goods owned by the Purchaser and held for or received from the Purchaser shall be handled and stored by the Vendor only at the Purchaser's risk and expense subject to exercise of reasonable care by the Vendor. All other accessory services and demurrage shall also be at Purchaser's expense.
- 3. Orders.** Stenographic and/or clerical errors are subject to correction by the Vendor. Vendor's interpretation of a verbal order shall be final and binding where shipment is made prior to receipt of written confirmation.
- 4. Warranties.** Vendor warrants that the products sold hereunder have been produced and tested in accordance with the specifications set forth in this Sales Invoice. Purchaser acknowledges that Vendor has not made any warranty of suitability for any particular purpose, nor any other representations or warranties, whether express, implied, statutory or otherwise, except that the goods supplied conform to the specifications set forth in this Sales Invoice, subject to tolerances and variations consistent with usual trade practices.
- 5. Indemnification of Vendor.** Vendor shall not be liable in contract, tort or otherwise, and Purchaser shall indemnify and hold harmless Vendor, for any loss, damages, costs, claims, expenses, repairs, suits or judgements arising in any way out of the use of the goods furnished hereunder or resulting from any defect, failure to conform to specifications or breach of this agreement whether any such loss, damage, cost, claim, expense or repair is direct, indirect or consequential. Vendor's sole liability shall be limited in all circumstances to a period of twelve months from the date of this Sales Invoice and, at Vendor's option, to replace or repair the goods at the delivery point specified in this agreement, refund the invoice price paid, or allow appropriate credit not to exceed the invoice price paid by Purchaser for the goods purchased under this agreement. The foregoing limitation of liability is a condition of sale of the goods at the price or prices quoted and shall apply notwithstanding any defect in or failure of, including the total failure of, any product.



6. **Delivery.** Vendor shall exercise its best efforts to deliver within the times quoted but does not guarantee delivery time and shall not be liable for any damages, loss, claim or expense of any kind or nature whatsoever caused by the delay in delivery or unavailability of goods. Should the Vendor be prevented from delivering part of such goods by reason of any of the causes enumerated in Clause No. 7 hereof the Vendor shall deliver and the Purchaser shall take such part of the contract goods as the Vendor shall be able to deliver at the time fixed for delivery. The Purchaser shall pay for the part delivered in the same proportion of the price as the part delivered bears to the whole of the goods agreed to be sold.
7. **Force Majeure.** Neither party shall be responsible to the other for non-performance or delay in performance occasioned by any causes beyond its control including without limitation any acts or omissions of the other party, acts of civil or military authority, strikes, lockouts, trade actions, embargoes, insurrections or acts of God.
8. **Claims and Credits.** Vendor shall not be liable for any shortages or errors in or damages to the goods shipped to the Purchaser unless written details of such shortages, errors or damages are given by Purchaser to Vendor within ten days of receipt of goods. Neither any contract constituted hereunder, nor any claim against the Vendor arising hereunder shall be assigned by the Purchaser without the Vendor's prior written consent. Any such contract shall not be an asset of the Purchaser in bankruptcy, insolvency or receivership proceedings.
9. **Changes or Cancellation.** Orders for goods may not be cancelled and goods may not be returned by Purchaser except with the written consent of Vendor. All goods returned by the Purchaser must be received by the Vendor in the condition such goods were shipped by the Vendor.
10. **Suspension of Orders.** Vendor reserves the right, without liability and without prejudice to any other remedies, delay or stop shipment of all or any part of the goods if at any time reasonable doubt exists as to Purchaser's financial situation or if Purchaser shall fail to pay any accounts when due.
11. **Entire Agreement.** Vendor and Purchaser acknowledge that this agreement constitutes the entire agreement between them and that no other representation or agreement, whether oral, written or otherwise, has been made other than the ones expressly stated herein. This agreement is not transferable or assignable by Purchaser. Purchaser's order shall be filled in accordance with the terms and conditions set out above and on the face hereof. Acceptance of this Sales Invoice constitutes acceptance of Seller's offer subject to the conditions of sale herein and it constitutes a contract made in Canada for the sale of goods described on the face hereof. No waiver, modification, addition, deletion, alteration, limitation, termination, rescission or discharge to or of these terms and conditions shall be valid unless made in writing and signed by an officer or authorized employee of the Vendor.
12. **Taxes.** Prices for goods and services are exclusive of federal, provincial, and any other taxes which may be applicable and all such taxes shall be paid by the Purchaser. Where sales tax exemption is applicable, orders must bear the necessary sales tax certification.

September 18, 2007

Aecon Utility Engineering  
20 Carlson Court, Suite 800  
Toronto, Ontario M9W 7K6

Attention: Mr. A. Geden P. Eng.

**RE: 168.3 Inquiry**

Dear Mr. Geden,

In accordance with your request, OSM Tubular, Camrose is pleased to offer the attached pricing for your inquiry.

The enclosed pricing excludes all sales taxes, if applicable, and are subject to steel and mill availability at the time of firm order placement. The prices quoted and pipe mill availability is subject to reconfirmation within five business days upon receipt of notification in writing that the OSM Tubular bid has been selected.

**Bid Validity:** The bid is valid for 30 days. OSM Tubular, Camrose would be pleased to reconfirm pricing after thirty days if Aecon Utility Engineering is not in a position to place an order by this time.

**Terms of Sale:** The terms of sale are N 30 OAC.

**FOB:** Aylmer, Ontario. Freight is pre paid and add Aylmer, Ontario.

**Terms of Sale:** OSM Tubular, Camrose nominates our Terms and Conditions for this project. A copy of the Terms and Conditions has been included for your review.

If you have any questions regarding the enclosed or if I may be of assistance, please feel free to contact me at (403) 263-2061.

Regards,

Jim M. Cone  
Sales Manager  
OSM Tubular, Camrose

**OSM TUBULAR PORTLAND  
OSM TUBULAR CAMROSE**

**TERMS AND CONDITIONS OF SALE**

1. **Purchase and Sale.** Buyer may, from time to time, place orders for tubular steel products (the "Goods") from OSM Tubular Portland or OSM Tubular Camrose (each, "OSM"), and OSM may, in its sole discretion, agree to sell such Goods to Buyer. If Buyer's order for Goods is accepted by OSM by its issuance of its Order Acknowledgment, these Terms and Conditions of Sale, together with the Order Acknowledgment, shall constitute the terms of such sale and purchase. Buyer's purchase order for any Goods shall be deemed to be Buyer's acceptance of the these Terms and Conditions of Sale, notwithstanding the fact that Buyer's purchase order may contain terms different from or additional to the terms contained herein; in such event, such different or additional terms shall not be included within the parties' agreement. OSM reserves the right to modify, amend, or submit new Terms and Conditions of Sale, and, if OSM so elects, OSM shall provide to Buyer such modified, amended, or new Terms and Conditions of Sale. Thereafter, Buyer's subsequent submittal to OSM of a purchase order shall operate as Buyer's acceptance in their entirety of OSM's modified, amended, or new Terms and Conditions of Sale.
2. **Purchase Price.** The purchase price ("Purchase Price") for the Goods shall be OSM's prices and transportation charges prevailing at the date of shipment and in the currency as shown on OSM's invoice for the Goods, unless otherwise agreed to in writing by OSM. The Purchase Price shall be exclusive of sales, use, excise, or any other taxes or duties imposed by any governmental authority. OSM may add such taxes and duties due to the amounts due under OSM's invoice, and they shall be paid by Buyer.
3. **Terms of Payment.** Invoiced amounts are due in full within 30 days from the date of invoice, unless otherwise agreed to in writing by OSM.
4. **Warranties.** OSM warrants good title to the Goods. OSM warrants that the Goods (a) shall meet the standard specifications and tolerances allowed by either the American Petroleum Institute ("API") or the Canadian Standard Association ("CSA"), whichever is specified in the Order Acknowledgment; and (b) shall conform to such other specifications as agreed upon in writing by OSM. Conformance with the foregoing tolerances and specifications shall be conclusively established by tests performed in OSM's laboratories absent manifest error. OSM MAKES NO OTHER WARRANTIES REGARDING THE GOODS.
5. **DISCLAIMER OF OTHER WARRANTIES.** THE WARRANTIES SPECIFIED ABOVE ARE THE EXCLUSIVE WARRANTIES RESPECTING THE GOODS. OSM SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY IMPLIED WARRANTIES THAT MIGHT BE ASSERTED THROUGH COURSE OF DEALING OR USAGE OF TRADE. OSM does not warrant that API or CSA specifications shall meet Buyer's requirements for the Goods.
6. **Limitations on Buyer's Remedies.** Buyer shall promptly inspect the Goods at the time and place of delivery. Claims for breach of warranty (if any) must be reported in writing by Buyer to OSM within 30 days after delivery of the Goods and in sufficient detail to fully apprise OSM of the claimed defect. Failure to provide such written notice within 30 days after delivery of the Goods shall conclusively bar Buyer from any claim for such alleged breach of warranty. In the event OSM verifies a breach of the warranty after such written notice, Buyer shall make the defective Goods available to OSM and, thereafter, Buyer's exclusive remedy shall be limited to OSM's choice of the following: (a) OSM will repair or replace F.O.B. OSM's Mill the portion(s) of the Goods that do not conform to OSM's warranty; (b) OSM will credit Buyer's account a reasonable amount in allowance of the defect; or (c) OSM will refund the purchase price of the defective portion(s) of the Goods, less the scrap or salvage value of the Goods. Any action by Buyer against OSM for breach of warranty or for any other claim, whether in tort or contract, must be commenced within one year after delivery of the Goods. IN NO EVENT SHALL OSM HAVE ANY LIABILITY TO BUYER IN CONTRACT, TORT, OR OTHERWISE, FOR ANY OF BUYER'S INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY TYPE WHATSOEVER, INCLUDING WITHOUT LIMITATION ANY OF BUYER'S LOST REVENUES, LOST PROFITS, LOSS OF CONTRACTS OR BUSINESS, OR COSTS INCURRED WORKING ON OR ALTERING NON-CONFORMING GOODS. OSM's limited liability shall apply whether Buyer's claim is for breach of warranty or contract or for negligence, tort, strict liability, professional liability, or any other cause of action, and shall extend to any of OSM's design, engineering, manufacture, sale, or delivery of the Goods.
7. **Shipment and Delivery of Goods.** Unless otherwise stated in OSM's Order Acknowledgment, all Goods sold: (a) shall be sold and shipped F.O.B. OSM's Mill; (b) may be shipped and delivered in installments; and (c) may be invoiced with separate invoices, which invoices shall be due without regard to issuance of subsequent invoices. All shipments shall be continuously subject to the approval by OSM's Credit Department. OSM reserves the right, even after partial shipment or partial payment to withhold shipments of Goods, to require from Buyer assurances satisfactory to OSM for the due performance of Buyer's obligations. Failure to furnish such assurances to OSM's satisfaction shall entitle OSM to withhold or cancel any further shipments of Goods.
8. **Drawbacks.** All drawbacks of duties paid on any materials used in the manufacture of the Goods shall accrue in favor of OSM. Buyer shall furnish OSM all documents necessary for OSM to obtain payment of such drawbacks and shall cooperate with OSM in obtaining such payment.
9. **Risk of Loss.** Risk of loss of the Goods shall be upon Buyer at all times after OSM's delivery of the Goods to a carrier at OSM's Mill. Buyer shall procure all insurance for all Goods at the time at which risk of loss passes to Buyer.

# **EXHIBIT “C”**

**UNDERTAKING NO. JT1.16: TO PROVIDE TOTAL WAGES ON A FULLY-ALLOCATED BASIS FOR MARL BRISTOLL.**

**RESPONSE:** Converting Mark Bristoll's salary, inclusive of fully-allocated utility overheads yields an hourly rate of \$562 (for 2007), \$592 (for 2008) and \$600 (for 2009). We compared the initial figure to a charge-out rate for a senior Chartered Accountant within the London area which was \$250 to \$350 per hour. We felt the \$295 rate ultimately charged to IGPC was reasonable, given the fact that Mr. Bristoll was not only an experienced Chartered Accountant, but also had extensive experience in the construction industry.

# **EXHIBIT “D”**



Adding value. Finding balance.

P: 519-432-5534  
F: 519-432-6544  
300-633 COLBORNE ST.  
LONDON, ONTARIO N6B 2V3  
[www.nptca.com](http://www.nptca.com)

**PRIVATE & CONFIDENTIAL**

August 26, 2010

Mrs. Laurie O'Meara, Controller  
Natural Resource Gas Limited  
39 Beech St. E.  
P.O. Box 307  
Aylmer, ON N5H 2S1

Dear Laurie:

We were engaged by Natural Resource Gas Limited (the "company") to scan a series of correspondence between Mark Bristoll, a former executive employee of the company, and various other individuals of other organizations related to the natural gas pipeline constructed for the dedicated use of Integrated Grain Processors Co-operative Inc. ("IGPC") from December 2007 until October 2008.

We were provided with a series of printed email correspondences between Mark Bristoll and other individuals that were involved with various aspects of the pipeline. We scanned each email and noted the date and time of the email, the person with whom Mark Bristoll was corresponding, and in some cases, a brief description of the topic of the correspondence. We then categorized each email into one of the ten topical categories provided by the company to us. We did not fully read each correspondence item, but only read enough of the content to allow us to determine the topic of that particular piece of correspondence. We then sorted the spreadsheet into date and time order to ensure that there were no duplicate copies of email correspondence provided and recorded on the spreadsheet. An electronic copy of our Microsoft Excel Worksheet has been provided to you by email.

As a result of applying the above procedures, the following table summarizes the number of emails we counted for each topical category, which all related to the above noted pipeline:

Contract Negotiations with IGPC	323
Financing for IGPC Pipeline	182
Engineering Matters	289
MIG Commissioning / Testing	73
Construction Contractor	372
Material Acquisition	31
Letter of Credit	161
Transfer Station Testing	365
June 2008 OEB Motion	15
Other Pipeline Related Topics	148
-----	
Total	1,959

Secondly, we were provided with timesheets prepared by Mark Bristoll detailing his time spent on pipeline matters over the course of the entire pipeline project. Where able, we noted on our Excel worksheet (by way of a numbered referencing system), which email(s) corresponded with various time entries on the time sheets. All emails after January 1, 2008 tied into time and days on Mark Bristoll's time sheets.

Finally, we compared the total number of emails analyzed above with the total time billed by the company for the period from December 1, 2007 to October 31, 2008. Total time billed for this period by the company under the PCRA was \$258,460. Given the \$295 charge rate utilized by the company, the average charge made by the company for each email written by Mark Bristoll was 27 minutes. We are not able to assess the reasonability of this average time calculation, due to the variability in the size and content of the emails over the period. We did observe that some emails were quite brief, and would only have taken nominal time, while others had significant detail and may have taken several hours, including telephone conversations, meetings, or research related to that particular email. In addition, Mark Bristoll was also engaged in telephone conversations, meetings, research, negotiations and other activities around the pipeline for which no email may have been written.

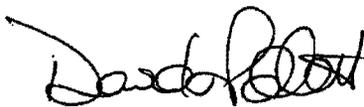
These procedures do not constitute an audit of any sort on the correspondence provided to us, and therefore we express no audit opinion on the email correspondence, but provide only a summary of the results of the count process and referencing procedure as outlined above.

Natural Resource Gas Limited  
August 26, 2010  
Page 3

It is understood that this letter is to be used solely by management and directors of Natural Resource Gas Limited for the purpose of providing evidentiary support for an Ontario Energy Board hearing regarding costs associated with the natural gas pipeline constructed for IGPC under the Pipeline Cost Recovery Agreement, and it should not be distributed for use for any other purpose without our prior written consent.

Should you have any questions, please do not hesitate to contact me.

Yours very truly,

A handwritten signature in black ink, appearing to read "David J. Pallett". The signature is written in a cursive, somewhat stylized font.

David J. Pallett  
Partner

# **EXHIBIT “E”**

Project No: 10348.01

August 26, 2010



Natural Resource Gas Ltd.  
39 Beech Street East  
Aylmer, ON N5H 3E6

Attention: Mr. Jack Howley

**Re: NRG NPS 6 Gas Pipeline  
New Pipeline Construction – EPCM**

Dear Jack Howley:

**MIG ENGINEERING LTD.**  
453 CHRISTINA ST. N.  
SARNIA, ONTARIO  
CANADA N7T 5W3  
TEL: (519) 337-8000  
TOLL FREE: 1-800-MIG-3943  
FAX: (519) 337-8001  
EMAIL: sarnia@migeng.com  
WEBSITE: www.migeng.com

MIG Engineering Ltd. ("MIG") has completed many pipeline projects in varying scope and responsibility. Our range of services include full "turn-key" projects to any mix of required tasks including Engineering Design, Permitting, Procurement, Construction Administration, Inspection, Surveying, Drafting, etc. The projects could be performed and invoiced on either 'Fixed Price' or on a 'Time and Material' basis referencing the rate sheet attached. Depending on the project scope, length, complexity and level of involvement, the approximate costs of services can be estimated using the following table:

Task	% of Total Construction Costs
Engineering Design	7.0%
Procurement	1.5%
Contract Administration	3.0%
Inspection	4.5%
As-Built / Documentation	1.5%
<b>TOTAL</b>	<b>17.5%</b>

MIG can also assist in defining the project scope, regulatory application process and customer negotiations and resolutions. MIG has many experts in-house but will also obtain the services of other fields and expertise as required. These services will be provided on a 'Time and Material' basis and will apply an administration charge of 10% for any third party assistance.

I trust that the service you have been provided to date has been exemplary and we are excited to be able to work with you on any projects in the future. Thank you.

Yours truly,

Randy Goertz, P.Eng  
Sr. Project Manager



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CONSULTING ENGINEERS OF ONTARIO  
*"engineering Integrity since 1959"*



**CONFIDENTIAL**

**RATES TO DECEMBER 31, 2010**



Employee #	Name	Title	Rate
887	Bowen, W.	Sr. Field Tech	\$ 74.00
863	Brandon, K.	Data Entry Clerk	\$ 35.00
893	Cataford, A.	E.I.T., Field Tech	\$ 75.00
870	Cook, T., P.Eng	Sr. Professional Engineer (S)	\$ 138.00
832	Dummitt, P.	Accounting Manager	\$ 58.00
504	Dupuis, M. C.	Sr. Construction Supervisor	\$ 80.00
803	Fielder, D	Survey Assistant	\$ 55.00
891	Gil, T.	Sr. Construction Inspector	\$ 74.00
900	Goertz, R., P.Eng	Sr. Project Manager	\$ 125.00
838	Graham, K. P. Eng.	Sr. Project Manager	\$ 115.00
462	Gray, A.	Title Searcher	\$ 60.00
898	Haveman, R.E., P.Eng.	Sr. Professional Engineer (S)	\$ 115.00
502	Ingram, G. W., P.Eng	Engineering Consultant ( C )	\$ 125.00
624	Johnston, Chris	Sr. CADD Technologist	\$ 74.00
516	Jones, J.	Sr. Administrative Assistant	\$ 56.00
753	Kennedy, M., P.Eng.	Sr. Professional Engineer (S)	\$ 120.00

Employee #	Name	Title	Rate
846	Mackenzie, K.P. P.Eng.	Sr. Professional Engineer (S)	\$ 120.00
507	MacKenzie, R.	OLS, Sr. CADD Tech	\$ 85.00
510	Mainland, Allen	Sr. Inspector	\$ 89.00
511	Monteith, J. A. C. Tech	Sr. Designer/Project Manager	\$ 105.00
888	Newton, J.	Sr. Field Tech	\$ 74.00
804	Nisbet, T.	Survey Assistant	\$ 58.00
885	Nisbet, M.	OLS, CLS (S)	\$ 150.00
506	Perdeaux, A.	Int. Field Tech.	\$ 68.00
523	Pincombe, C.	Junior Tech.	\$ 65.00
544	Raaymakers, M. L., C.S.T.	Sr. Project Manager	\$ 120.00
550	Sinclair, D., C.E.T.	Sr. CADD Technologist	\$ 74.00
508	Sinclair, N. A., C.E.T.	Sr. Project Manager	\$ 115.00
519	Soulard, R.	Sr. Cadd Technician	\$ 74.00
517	Spanton, G.	Sr. Designer	\$ 80.00
509	Thrower, G.F.	Sr. Cadd Technician	\$ 74.00
514	Willis, J.	Sr. Field Tech	\$ 78.00

1959-2009  
"ENGINEERING INTEGRITY SINCE 1959"

2006  
CONSULTING ENGINEERS  
AWARD OF EXCELLENCE  
2009 NOMINEE

2010  
BUSINESS OF THE YEAR  
SARNIA LAMBTON CHAMBER OF COMMERCE

( S ) Specialist  
( C ) Consulting Engineer

**The Company**  
MIG Engineering Ltd. was preceded by Monteith Ingram Graham Limited, the firm of Monteith Ingram Engineering Limited, established in 1959; the firm of J.C. Monteith established in 1928 and the original firm of C.E. Jones, which was founded in 1910. MIG offers Consulting Services, Project and Contract Management including: Feasibility Studies, Preliminary and Final Design, Surveying and Cost Estimating, Contract Documents and Bid Evaluation, Procurement, Control, Technical and Start-up assistance.

**Disbursements (on specific projects)**

Professional Liability Surcharge	2.5% of labour & consultants
Additional Endorsement at Client's request	Cost plus 10%
Vehicle & Survey Equipment	\$25.00 per hour
Vehicle only -the greater of: (varies per area)	\$8-\$13 per hour or \$0.49 per km.
Trimble GPS	\$250.00 per day
Sub-Consultants (lump sum)	Cost plus 10%
Consumables, expenses, etc.	Cost plus 10%
Plots: Sizes A to E	\$0.75 to \$10.00
Colour Plots: Sizes A to E	\$2.50 to \$40.00

ALL RATES ARE QUOTED IN CANADIAN FUNDS. GOODS AND SERVICES TAX (G.S.T.) AT 6% IS EXTRA

**Fields of Specialization** - MIG offers full EPCM (Engineering Procurement Construction Management ) services as required.

- Civil, Structural, Mechanical for Industrial, Commercial & Building Fields	- Environmental Engineering	- Planning, rezoning, Site Plans
- Fire Protection & Piping	- Bridges, Roads, Airport Aprons, Highway Design & Traffic Surveys	- Surveying, Topographic & Aerial Mapping
- Municipal Services including buildings, Infrastructure planning and design	- Stormwater Management & Drainage	- legal, topo and construction
- High pressure pipeline design	- Sanitary & Storm Sewers - Collection & Treatment	- Shoreline and Marine
- Regulatory/Permitting/Crossings	- Water Distribution & Storage Systems	

THIS INFORMATION IS CONFIDENTIAL AND CANNOT BE REPRODUCED.

# **EXHIBIT “F”**

**DIVISIONAL COURT  
SUPERIOR COURT OF JUSTICE**

**B E T W E E N :**

**NATURAL RESOURCE GAS LIMITED**

**Appellant**

**and**

**ONTARIO ENERGY BOARD and  
INTEGRATED GRAIN PROCESSORS COOPERATIVE INC.**

**Respondents**

**FACTUM OF NATURAL RESOURCE GAS LIMITED**

**PART I - OVERVIEW**

1. The Appellant, Natural Resource Gas Limited (“NRG”), appeals from the decision of the Respondent Ontario Energy Board (“OEB”) on the application brought by the Applicant and Respondent Integrated Grain Processors Co-operative Inc. (“IGPC”) pursuant to which the OEB:

- (a) ordered NRG to execute the Assignment Agreement and the Bundled T-Service Agreement; and
- (b) ordered NRG to pay an administrative penalty of \$20,000, for each and every day until NRG executes the Assignment Agreement and the Bundled T-Service Agreement (as defined herein).

2. NRG submits that the OEB erred in law and exceeded its jurisdiction by refusing to permit NRG any opportunity to:

- (i) consider its position;
- (ii) instruct counsel;
- (iii) prepare responding evidence;
- (iv) conduct cross-examinations; and
- (v) present submissions concerning the abridgement of notice requirements and times for preparing a response to the motion.

3. NRG also submits that the OEB erred in law and exceeded its jurisdiction by:

- (a) issuing an order compelling NRG to execute the Assignment Agreement and the Bundled T-Service Agreement;
- (b) issuing a compliance order without following the mandatory procedure set out in the *Ontario Energy Board Act*, 1998 S.O. 1998, c. 15, Sch. B (the “Act”) for compliance action and improperly exercising any discretion it may have had to proceed with compliance action; and
- (c) issuing an order requiring NRG to pay an administrative penalty of \$20,000 per day until NRG executes the Assignment Agreement and the Bundled T-Service Agreement;
- (d) imposing an ongoing penalty when, at its highest, the alleged contravention is a single, one time event and not a continuing contravention.

## PART II - FACTS

### The Parties

4. NRG is a natural gas distribution company that provides natural gas distribution services in the Town of Almer and surrounding areas. The rates charged by NRG to its customers are regulated by the respondent, Ontario Energy Board (“OEB”).

5. IGPC is an Ontario corporation incorporated April 4, 2002 under the laws of Ontario. The business purpose of IGPC is to develop and operate an ethanol plant in southwestern Ontario.

**Reference:** *Affidavit of Martin Kovnats*, sworn June 28, 2007 (“Kovnats Affidavit”), para. 3, Appeal Record, Tab 10-2, p. 182

### The IGPC Project

6. IGPC, together with its wholly-owned subsidiary, IGP Ethanol Inc., is in the process of arranging the financing required to design, develop, build and operate an ethanol production plant in Aylmer, Ontario.

**Reference:** *Kovnats Affidavit*, paras. 3-4, Appeal Record, Tab 10-2, p. 182

7. The proposed location of the ethanol plant in Aylmer is within the franchise area of NRG.

**Reference:** *Kovnats Affidavit*, paras. 3-4, Appeal Record, Tab 10-2, p. 182

8. The IGPC financing was intended to be used for, *inter alia*, acquisition of land, facility design and construction, the establishment of a railway spur, and obtaining gas distribution service from NRG.

**Reference:** *Kovnats Affidavit*, paras. 3-4, Appeal Record, Tab 10-2, p. 182

*Pipeline Cost Recovery Agreement*, Appeal Record, Tab 13

### **The Gas Delivery Contract and Pipeline Cost Recovery Agreement**

9. On or about January 31, 2007, IGPC and NRG entered into a Pipeline Cost Recovery Agreement dated as of January 31, 2007 (the "Pipeline Cost Recovery Agreement"). The Pipeline Cost Recovery Agreement sets out the terms and conditions on which IGPC is required to contribute to the cost of the construction of the Proposed Pipeline.

**Reference:** *Pipeline Cost Recovery Agreement*, Appeal Record, Tab 13

10. On or about June 27, 2007, IGPC and NRG entered into the Gas Delivery Contract. The Gas Delivery Contract provides that NRG will provide natural gas distribution service to deliver the natural gas IGPC required for its business purposes up to specified maximum daily and hourly maximum volumes.

**Reference:** *Gas Delivery Contract*, Appeal Record, Tab 12

11. NRG applied to the OEB pursuant to Section 90(1) of the *Act* and sought leave to construct the pipeline required to deliver natural gas to the IGPC ethanol plant. An oral hearing was held December 18, 2006. All parties and intervenors supported the application.

**Reference:** *Kovnats Affidavit*, para. 5, Appeal Record, Tab 10-2, p. 182

12. On January 19, 2007, the OEB held an oral hearing to review the status of certain agreements

between NRG and IGPC. On January 31, 2007, the OEB was provided with copies of the Gas Delivery Contract and the Pipeline Cost Recovery Agreement.

**Reference:** *Kovnats Affidavit*, para. 6, Appeal Record, Tab 10-2, p. 182

13. By Decision and Order dated February 2, 2007, the OEB determined that (a) the terms and conditions of the Gas Delivery Contract and the Pipeline Cost Recovery Agreement adequately protected the interests of NRG and its ratepayers, and (b) the Proposed Pipeline was in the public interest. The OEB granted NRG leave to construct the Proposed Pipeline.

**Reference:** *Decision and Order of OEB* dated February 2, 2007, Appeal Record, Tab 5, p. 29

#### **The Assignment Agreement and the Bundled T-Service Agreement**

14. The financing arrangements entered into by IGPC required that IGPC obtain from NRG and deliver to IGPC's lenders two agreements. The first is the Consent and Acknowledgement Agreement (the "Assignment Agreement") between NRG, IGPC Ethanol Inc., IGPC and Société Générale (Canada Branch).

15. The proposed Assignment Agreement provided that NRG irrevocably consents to, and accepts notice of and acknowledges, the assignment and transfer of all of IGPC's right, title and interest in and to the Gas Delivery Contract and the Pipeline Cost Recovery Agreement.

**Reference:** *Assignment Agreement*, Appeal Record, Tab 15, p. 341

16. The second agreement is the Bundled T-Service Receipt Contract between NRG and IGPC Ethanol Inc. (the "Bundled T-Service Agreement"). The proposed Bundled T-Service Agreement addressed the upstream transportation arrangement and balancing services for the natural gas required by IGPC's ethanol facility.

**Reference:** *Bundled T-Service Agreement*, Appeal Record, Tab 14, p. 324

17. Although there were discussions between the solicitors for NRG and IGPC respectively concerning the proposed form of each of the Assignment Agreement and the Bundled T-Service Agreement, NRG eventually determined that it was not in the best interests of NRG to sign the Assignment Agreement or the Bundled T-Service Agreement.

**Reference:** *Kovnats Affidavit*, para. 24, Appeal Record, Tab 10-2, p. 186

18. On June 28, 2007, NRG advised IGPC that it would not execute the Assignment Agreement or the Bundled T-Service Agreement.

**Reference:** *Kovnats Affidavit*, para. 24, Appeal Record, Tab 10-2, p. 186

### **The IGPC Motion**

19. Late in the afternoon of June 28, 2007, IGPC filed a motion with the OEB. The motion record was served on Mark Bristoll, Chief Executive Officer of NRG, at approximately 7:15 in the evening of June 28, by way of service at his personal residence in London, Ontario.

**Reference:** *Affidavit of Service of David Mark Wood*, sworn June 29, 2007, Appeal Record, Tab 18, p. 490

20. In the afternoon or early evening of June 28, 2007, the OEB issued an Emergency Notice of Hearing ordering that an oral hearing would be held the next day, June 29, 2007 at 8:30 a.m. The Emergency Notice of Hearing was purportedly served on NRG by way of delivery to Patrick Moran of Ogilvy Renault, solicitors for NRG.

**Reference:** *OEB Emergency Notice of Hearing*, Appeal Record, Tab 7, p. 43

21. The Emergency Notice of Hearing was issued by the OEB without any notice to NRG or without having any response from NRG, and without allowing NRG any opportunity to respond to IGPC's request that the motion be heard on an urgent basis and without compliance with the notice requirements set out in the OEB's *Rules of Practice and Procedure*.

22. At approximately 7:00 p.m. on June 28, NRG retained counsel to attend at the hearing the next day and seek a brief adjournment to allow NRG time to respond to the motion.

23. The following day, at 8:30 a.m., NRG's counsel attended at the motion, and requested a short adjournment to permit NRG time to respond to the motion.

24. Counsel for NRG submitted that NRG:

- (a) had not had any time to retain and properly instruct counsel;
- (b) had not had time to consider its position and instruct counsel as to its position;
- (c) had not had adequate time to review the evidence or assemble and present responding evidence;
- (d) had no opportunity, prior to the issuance of the Emergency Notice of Hearing, to address the OEB as to whether the hearing should or should not proceed on an expedited basis,

MR. THACKER: I was retained -- or contacted at 7 o'clock last night. My clients have asked me to attend today and to seek a short adjournment of this hearing on the basis that they have not had adequate time to -- the material was served yesterday, as I understand it, late in the day on my clients through their previous solicitors.

They have not had time to consider their position. They have certainly not had any time to retain and properly instruct counsel. They have not had adequate time to prepare a responding evidentiary record, and they have not had time to consider what position they want to take and instruct me to take that position.

In the circumstances, my submission is this hearing should be adjourned to allow my client time to consider the evidence against them, prepare a responding evidentiary record and properly instruct counsel after considering their position as to how to proceed in this hearing.

So I am seeking a short adjournment to enable them adequate time to do that.

I am aware of the notice of hearing that was issued yesterday by this Board. I am also aware it was done without hearing from my client with respect to whether the hearing should or should not proceed on an expedited basis and my client's position and the merits of whether or not it is appropriate to abbreviate the notice requirements that are set out in the Act.

Having said all of that, the fact you have issued the notice of hearing, we object in the most strenuous terms to the hearing proceeding on its merits today and would object to the basis on which the notice of hearing was issued and the basis on which the time limits that are normally available to my client were abbreviated without hearing from them.

**Reference:** *Transcript of OEB Proceedings*, pp. 2-4, Appeal Record, Tab 8, p. 53-55

25. On the motion, IGPC relied on the IGPC motion record which was not served on NRG until 7:15 pm the previous evening. IGPC also relied on an additional affidavit, the affidavit of Heather Adams sworn June 28, 2007, which was never served on NRG.

**Reference:** *Transcript of OEB Proceedings*, pp. 7-8, Appeal Record, Tab 8, p. 58-59

26. Counsel for IGPC referred to the Kovnats Affidavit. Mr. Kovnats attended at the motion as counsel to IGPC, and made submissions to the OEB on behalf of IGPC in which he explained the basis for the alleged urgency. He stated that the motion was urgent because if NRG did not sign the Assignment Agreement and Bundled T-Service Agreement by the end of the day on June 29, the terms of the escrow agreement pursuant to which funds were held in escrow by Canada Trust required that the equity funds raised for the financing be returned to the equity investors.

MR. KAISER: Here is my point, you are raising a condition that says that the escrow provides that the money has to be returned to the shareholders, 840 shareholders.

I want to know, practically, are they 840 shareholders going to enforce that covenant? And who is acting for them?

MR. KOVNATS: Sir, the way the agreements are structured is, it was a condition to the raising of the money under the Cooperatives Act, that a public disclosure document similar to a prospectus is filed, submitted, reviewed and is used to help raise the funds. It was a condition imposed by the Cooperatives Branch that 94 percent of the amount of money raised is held in escrow and cannot be used by the cooperative until they are relatively certain that the facility will be used.

Six percent could be used for working capital and development purposes.

The escrowed money is deposited with Canada Trust, pursuant to an escrow agreement that was reviewed and approved by the Cooperatives Branch. That escrow agreement cannot be amended without the consent of the Cooperatives Branch and all of the members and Canada Trust, the members being the beneficiaries of the escrow arrangements that have been set up. That agreement was amended once a year ago to get an extension from June 30, 2006 to June 30, 2007. The amendment process required the consent of each member, which required holding meetings, town hall meetings, going out to peoples' homes and getting consent documents signed.

MR. KAISER: So you're saying without an amendment in the manner you described, Canada Trust has to send this money back?

MR. KOVNATS: That's correct.

MR. KAISER: On June 30th?

MR. KOVNATS: That's correct.

MR. KAISER: Unless the agreements have been amended.

MR. KOVNATS: That's correct.

MR. KAISER: It takes a long time to get the agreement amended?

MR. KOVNATS: That is correct.

...

**MR. KAISER:** Anyone here for NRCan? All right.

If you were to be able to get consent from the shareholders, would Canada Trust not agree to retain the funds the funds?

**MR. KOVNATS:** Mr. Chairman, if we had the consent of the 840 members who are the beneficiaries, I am sure we could get Canada Trust to consent.

**MR. KAISER:** It's just a practicality of getting that done in a short frame.

**MR. KOVNATS:** Tomorrow, yes.

**MR. KAISER:** You're assuring us that if that is not done, this money is going back.

**MR. KOVNATS:** Yes.

**MR. KAISER:** Because Canada Trust is obligated legally to send it back and they will send it back?

**MR. KOVNATS:** Yes, sir.

...

**MR. KAISER:** All right. So I think where we stand, leaving aside the July 5th date, we have the June 30th date. The practicality suggests that that can't be amended over the long weekend, and if I am understanding counsel, if it is not amended the money goes back?

**MR. KOVNATS:** That is correct, sir.

**MR. KAISER:** Does that mean the end of the deal? Or can the 840 shareholders send the money back the next day?

In other words, I'm trying to get to the practicalities here. If you're telling me that this deal legally is going to fall apart, that's one thing. If it's just an annoyance, and no doubt you are entitled to be annoyed, that's another thing.

**MR. O'LEARY:** Sir, we don't believe it is an annoyance. We believe the deal is in real peril and jeopardy. [emphasis added]

**Reference:** *Transcript of OEB Proceedings*, pp. 9-12 and 14, Appeal Record, Tab 8, p. 60-63 and 65

27. Subsequent events have proven that the evidence of Mr. Kovnats was not true.

28. Although no affidavit was submitted by Mr. George Alkalay, the OEB nonetheless accepted unsworn evidence from Mr. Alkalay that if the financing transaction did not close by July 5, 2007, IGPC would lose \$11.9 million in funding under the Federal Government's ethanol expansion program.

**MR. ALKALAY:** Mr. Chairman, can I also add to that point that under the conditions of our federal government funding the ethanol expansion program, we have \$11.9 million. The final date for receiving those funds, we have to have financial close by July 5th, 2007. That date has already been extended a couple of times. July 5th is the absolute deadline for that. Even if we were to attempt to amend the provisions of our escrow agreement, we would not be able to amend the provisions of the ethanol expansion program funds.

**MR. KAISER:** All right. July 5th date, let me understand that better. That is imposed by, who?

**MR. ALKALAY:** That is by NRCan, Natural Resources Canada.

**MR. KAISER:** Federal government.

**MR. ALKALAY:** Federal government, under the ethanol expansion program.

**MR. KAISER:** And that can't be extended?

MR. ALKALAY: That cannot be extended. It has already been extended and they have told us that it is the absolute -

**Reference:** *Transcript of OEB Proceedings*, pp. 10-11, Appeal Record, Tab 8, p. 61-62

29. Subsequent events have proven that the evidence of Mr. Alkalay was not true.

30. The OEB also inquired into the impact on NRG of the order sought by IGPC. IGPC referred to a reference in the Kovnats Affidavit that refers to an agreement that was not in the IGPC motion record. Upon discovering that the key agreements relating to issue to be determined were not included in the IGPC motion record, the OEB heard lengthy unsworn evidence from Mr. Kovnats, who was appearing apparently both as witness and counsel. Mr. Kovnats referred to four agreements, none of which were included in the motion record. When counsel for NRG objected that these agreements were not in the motion record, the OEB marked the agreements as exhibits on the motion.

MR. KOVNATS: Yes, sir. Mr. Chairman there are, in essence, four material agreements between NRG and IGPC, and for these purposes IGPC includes its wholly-owned subsidiary.

One is an agreement for the design, build and operation of a pipeline, which was signed before the previous hearing, which does require IGPC to pay cash and to put up a letter of credit, all of which it is prepared to do.

There was a second agreement dealing with the supply of gas, which was signed before the hearing that was held with respect to this matter and was signed last January.

We're not here discussing those two agreements.

There are two remaining agreements that we wish to have considered and which have been reviewed extensively by McCarthy on behalf of the lenders, ourselves, on behalf of IGPC, and Ogilvy Renault on behalf of NRG, all of which agreements were -- both agreements were satisfactory to all counsel involved and resolved this week, in which Ogilvy Renault has recommended NRG sign, so they have advised us.

The purpose of these two agreements - we'll call one the bundled T agreement and the other we will call the consent and assignment agreement. The consent and assignment agreement is an agreement that is designed for the benefit of the secured lender so in the event there is a default by IGPC with the secured lending group, who will be advancing approximately \$100 million, the lending group can then step into the shoes of IGPC and take over the agreements relating to the pipeline, the supply of gas, and the bundled T agreement.

There is an acknowledgement in the agreement, and the major purpose of that agreement is to get an acknowledgement from NRG to the lending syndicate that in the event of that financial calamity for IGPC, that the bank can then step in and have a plant that will work and they will have good security.

MR. KAISER: So just stopping you there, sir. That doesn't affect NRG in any sense.

MR. KOVNATS: That is correct.

MR. KAISER: Somebody else just walks into their shoes and continues operating the plant.

MR. KOVNATS: That is correct. The second agreement is the bundled T agreement.

On the completion of this facility, IGPC will be, I think, the largest single customer NRG has in its area, buying a significant amount of natural gas to run its facility. It is a material concern to everybody that NRG has the source and pricing and the flexibility on pricing and source, to be able to allow IGPC to manage its costs of input -- its input production costs.

There have been many conversations with other gas suppliers for us to be able to buy gas from others, and use it through the pipeline, creating a handling charge to NRG for this. That requires sourcing, pricing, delivery, flow measurement and flow allocation. And I am not an energy lawyer, so forgive me, I am going way beyond where I need to go.

MR. KAISER: You're doing very well.

MR. KOVNATS: But that bundled T agreement manages that flexibility for the supply of natural gas through the facility.

MR. KAISER: So do I understand that that agreement, the bundled T agreement allows you or the lenders, I guess --

MR. KOVNATS: No. IGPC. It's one of the --

MR. KAISER: IGPC to go and source their gas elsewhere?

MR. KOVNATS: Yes.

MR. KAISER: And have NRG merely distribute it as opposed to purchasing your gas from NRG?

MR. KOVNATS: That is correct.

...

**MR. THACKER: I would like to say one thing, and I don't want to interrupt, but I think I have to at some point. These agreements, which clearly are at the focus of all of this and the rationale for my client's choosing not to sign them at the same time, aren't in the record and I haven't read them, and that's a fundamental flaw.**

**MR. KAISER: I agree. We're going to get them in the record. We haven't read them either. We'll come to that. [emphasis added]**

**Reference:** *Transcript of OEB Proceedings*, pp. 21-23 and 27-28, Appeal Record, Tab 8, p. 72-74 and 78-79

31. Counsel for NRG also objected that although there were lengthy submissions about the terms of the financing and the terms of the escrow, none of the documents relating to the escrow arrangements were in the IGPC motion record. The OEB agreed, but then directed that those documents would also be marked as exhibits on the motion.

MR. THACKER: One other thing I might ask for this, although there is discussion about the terms of financing and the terms of the escrow, none of those documents are there, either.

MR. KAISER: I understand. We're going to cure that right now.

MR. THACKER: So apart from the other two agreements...

MR. KAISER: We have the two agreements which are outstanding that you want signed.

MR. O'LEARY: Yes, sir. And I have just -- my understanding is that -- we do have copies to share with you -- is that there may be a need or a request for confidential treatment of the documents.

MR. KAISER: We will deal with that. Anything else you need, Mr. Thacker?

**Reference:** *Transcript of OEB Proceedings*, pp. 30-31, Appeal Record, Tab 8, p. 81-82

32. The OEB then adjourned for a 30-minute break.

**Reference:** *Transcript of OEB Proceedings*, p. 31, Appeal Record, Tab 8, p. 82

33. Upon resuming, counsel for NRG again objected that, although he had been given some of the documents that had been added to the record, he did not have all of the documents. Some of the documents he had been provided with were incomplete. Eventually, after numerous requests and objections, counsel for NRG was provided with a complete set of the documents that the OEB had decided to mark as exhibits on the motion.

**Reference:** *Transcript of OEB Proceedings*, pp. 33-42, Appeal Record, Tab 8, p. 84-93

34. Counsel for NRG again requested a short adjournment to allow him time to read the documents that had been newly added to the record, and to discuss those documents with NRG and to obtain instructions.

MR. THACKER: They just became part of the evidentiary record about five or ten minutes ago so I have to object. My client -- I have not had a chance to speak to them about the question you are raising, and I'm not in a position to answer it; certainly haven't had the chance to take instructions or review it with my client and discuss it with him.

So a procedural matter I have to object.

You asked the question of my friends, who were adverse to me, whether or not these detailed agreements do anything different than the one-line provision in the agreements that this Board approved. And it would be an error, in my submission, to take their word that they're identical, when I have not had a chance to read them or discuss that issue with my client.

So I'm not really able to answer your question because of the time constraints, but I appreciate your asking me.

They are different. There are many pages and words are different than the one liner. So it might well be that you have or that -- it might well be that the agreements you have approved contain the relief that they're seeking, but the many pages of the other agreements are different. They have more words in them than the minimum.

To take their word there is nothing different about the many, many words seems implausible and procedurally unfair.

**Reference:** *Transcript of OEB Proceedings*, pp. 42-43, Appeal Record, Tab 8, p. 93-94

35. The OEB refused NRG's request for an adjournment and proceeded to hear the motion.

**Reference:** *Transcript of OEB Proceedings*, pp. 42-44, Appeal Record, Tab 8, p. 93-95

36. Counsel for NRG again objected to the motion proceeding, on the basis that:

- (a) there was no evidence in the record to demonstrate urgency; and

- (b) proceeding on an urgent basis had the effect of denying NRG any opportunity to review the evidence against it, consider its position and instruct counsel, assemble and present responding evidence; conduct cross-examinations, and present its case fully to the OEB.

MR. THACKER: Well, as I said, the bulk of the documents that form the evidentiary foundation for this hearing were admitted into the record in the middle of the hearing. They were not served. They're not sworn. We have not had an opportunity to read them. We have not had an opportunity to review them with our clients. We have not had an opportunity to determine whether we wish to cross-examine and to conduct cross-examinations, and we have not had any opportunity to prepare a responding evidentiary record.

The decision is to proceed with this hearing the absence of my client, without hearing from my client.

And so we are here in a situation where the evidentiary foundation for the ruling that you are being asked to make was introduced in the middle of the hearing, and I have not had any opportunity, other than the lunch break, to try to explain things with my client.

So we are seeking an adjournment on the basis that we have not had adequate time. There is no basis to abbreviate the time requirements that are otherwise set out in the Act.

I am happy to try to -- to answer the first question, which was is there any difference between the two provisions in the agreements that had been approved, and the detailed agreements that this court is -- or that my friends are asking you to order an individual on behalf of the corporation to execute, there is obviously a difference. One is two lines. One is about -- well, many, many pages.

For you to rely simply on their assurance that they're exactly the same thing, they're clearly not, because if they were exactly the same thing, they would be relying on the agreements that have already been signed and already approved. So they're different things.

With respect to the bundled T agreement, our submission is that this is not a service request. There is not a question here of whether or not my client will supply or provide service. The question is whether or not this Board should make an order compelling an individual to sign a piece of paper binding a corporation that is governed by a board of directors.

My submission is that you do not have the jurisdiction to order a corporation to sign an agreement. You may have other remedies that you can impose against a distributor or a regulated entity, but to make an order purporting to compel an individual to sign a contract, where the board of directors of the corporation has chosen not to sign, would be an error of law, in my submission, and in excess of your jurisdiction.

So I object to the hearing proceeding on the basis that there's been a denial of procedural fairness and a denial of natural justice with respect to the time requirements. The evidentiary record was inadequate. Clearly that was recognized and it was coopered up in the middle of the hearing. My client hasn't had a chance to read them and to consider them and to respond.

With respect to the bundled T agreement, the remedy you are being asked to make -- and I am not sure if you're now proposing to deal with the draft order or if you have some other remedy that you are considering, but to order an individual to sign a document on behalf of a corporation that binds the corporation would be an error and would be a significant error in my submission. There is no jurisdiction under the Ontario Energy Act that would enable this Board to make that order.

MR. KAISER: Well, Mr. Thacker, you would agree the Board has jurisdiction to order your client to provide service?

MR. THACKER: That is clear, yes. To characterize the signing of a document that has contractual obligations as the provision of service is strange, in my submission, not correct and an error.

MR. KAISER: Well, it is generally the case that any time the utility provides service to industrial customers, they enter into a contract with them and we generally approve those contracts. And that's what is before us as J1.5.

MR. THACKER: I can understand the concept of approving a contract that has been entered into by the parties. It is a very different thing to order a party to enter into a contract it doesn't wish to enter into.

MR. KAISER: On your basis, the utility could choose when to provide service or when not to provide service, regardless of the Board's decision, by simply not signing an agreement. Is that your position?

MR. THACKER: No. The position is you could order the entity to provide service. You can't order them to execute a contract.

**Reference:** *Transcript of OEB Proceedings*, pp. 44-47, Appeal Record, Tab 8, p. 95-98

37. NRG also objected to the motion proceeding on the basis that the OEB does not have jurisdiction to compel a corporation to sign an agreement, where the Board of the Directors of the corporation has decided not to sign the agreement.

**Reference:** *Transcript of OEB Proceedings*, pp. 44-47, Appeal Record, Tab 8, p. 95-98

38. The OEB then asked its counsel to advise it as to the remedies available to the OEB. Counsel for the OEB, Kristi Sebalj, then provided her legal advice to the OEB.

MR. KAISER: Ms. Sebalj, I wonder if you could help us on a point. Let's suppose we find that the consent being requested of NRG, in the two agreements, is being unreasonably withheld.

MS. SEBALJ: Yes.

MR. KAISER: What is our remedy?

MS. SEBALJ: Well, you are taking me to the crux of some submissions that I am prepared to make to you. But I am not sure that the -- and this Panel knows better than I do what was intended when you referred to these two agreements in your decision of February 2nd, 2007, and that decision was with respect to a Section 90 leave to construct application.

This is a private agreement between the two parties and to the extent that the consent was required by that agreement -- and I'm not necessarily, in my, in Board Staff's opinion in agreement with the parties that that was necessarily required of that agreement - but leaving that aside for a moment, if you were to make that finding, I am not sure that the Panel has the ability to enforce the signing by another party of a private commercial agreement.

MR. KAISER: Well, we have approved an agreement. The agreement, and certainly the decision that we did make on February 2nd was conditioned on those agreements.

MS. SEBALJ: Yes.

MR. KAISER: Albeit we were relying upon those agreements to assure that the other ratepayers would not be impacted adversely was the principal concern in the Board's mind.

MS. SEBALJ: Yes.

MR. KAISER: But nonetheless there was an assignment clause, and the assignment clause, it turns out, may have been necessary to secure the financing, which would have which would have been important

If the assignment is not given, if the utility simply refuses to execute the assignment, notwithstanding the fact that it would appear that it's reasonable that it be given -- at least on the record we have -- are you saying that we have no remedy and this plant simply goes away?

MS. SEBALJ: The issue that I have is what this Board's jurisdiction is with respect to the plant itself. This Board's jurisdiction was grounded in a Section 90 leave to construct application for a pipeline.

The plant itself is, legally speaking, outside the realm of the Ontario Energy Board's jurisdiction. And to the extent that there was a peripheral requirement in an agreement that we would otherwise want to see to satisfy ourselves that the economic feasibility of the pipeline was satisfactory, I am not sure that this Board now gets involved in a financing transaction for an ethanol plant, because our jurisdiction lies with the pipeline itself.

MR. KAISER: Our concern is to make sure the utility serves this customer. You would agree we have jurisdiction to ensure that service is provided?

MS. SEBALJ: Yes.

MR. KAISER: Gas service is provided.

MS. SEBALJ: Yes.

MR. KAISER: And the utility brought a leave to construct and the Board approved it. The Board's relied upon that.

MS. SEBALJ: Yes.

MR. KAISER: And these parties have relied upon that.

MS. SEBALJ: Yes.

MR. KAISER: And now, for no apparent reason, it is all going up in smoke and you say there is nothing we can do?

MS. SEBALJ: I understand the predicament that the Board is in, because the balance is we don't have a satisfactory understanding of why this deal is going up in smoke.

I don't pretend to understand why NRG has not come to the table to sign a consent, a consent to assignment. But I would mention that you're absolutely correct that Section 42(2) is fairly clear that there is an obligation to serve, but the obligation to serve is with respect to the provision of gas distribution service. And gas distribution service, I don't think, is in question at this hearing.

The financing of an ethanol plant is in question at this hearing. And I am sympathetic to Integrated Grain Processors Co-Operative and the predicament that they're in, and I don't begin to understand why Natural Resources Gas hasn't come to the table.

But having said that, I am legal counsel for the Board and I am working within the parameters of the Board's jurisdiction, and the Board's jurisdiction is fairly limited in these circumstances.

**Reference:** *Transcript of OEB Proceedings*, pp. 54-57, Appeal Record, Tab 8, p. 105-108

39. When OEB asked IGPC to provide it with the basis of its purported jurisdiction for the orders sought, IGPC submitted that jurisdiction arose from section 42(3) of the *Act*.

**Reference:** *Transcript of OEB Proceedings*, pp. 58-60, Appeal Record, Tab 8, p. 109-111

40. Counsel by NRG again objected to the relief requested by IGPC on the basis of a lack of jurisdiction.

MR. THACKER: No, we're not hearing entirely different. In this record, there is not one stitch of evidence that my client, NRG, is refusing to provide services, not one piece of evidence. And the reason it is not in the record is there is no evidence. They have not at all refused to provide services.

What NRG is under no obligation to do is sign a contract that Société Générale would like to have because it makes them feel better, and my submission is you have no more jurisdiction to order NRG to sign a document to make NRG - - to make Société Générale feel better than you have jurisdiction over Société -- to order Société Générale to advance the money in the absence of the agreement.

It is a private contract that you are being asked to require a party to sign, and your own counsel is dead right as to what your jurisdiction is and my friend is misdirecting you, and you would be making a serious error. I would urge you to consider what your counsel has told you with respect to your jurisdiction. So that is my first point.

My second point, my friends have failed to give you any legal obligation upon my clients to sign the documents they're asking you to order my client to sign. There is no contractual obligation to sign that particular piece of paper.

It may be that they have an enforceable right to compel my client to comply with the obligations in the two agreements that contain those provisions, but the right place to go is a court, not here, because you don't have the jurisdiction, in my submission, to compel a corporation to enter into a contract. They're in the wrong place, and they're trying to shoehorn the remedy they ought to be seeking from a court from you and they're leading you down the wrong path.

There is no obligation under the Ontario Energy Act for my client to sign contracts. They have an obligation to provide service in certain circumstances. They have never denied it and there is no evidence that they're denying to provide service today.

There is not any order here that requires them to provide service. You are being asked to order them to sign a contract that makes the lenders to the builders of the plant feel better. They're not required to do that under the Ontario Energy Act. My submission is this Board doesn't have jurisdiction to compel them to.

The Board's Counsel's conclusions as to your jurisdiction are correct. My friend, when you asked the question, told you that your jurisdiction came from your inherent jurisdiction. That is not correct. That is just legally wrong. My submission is you don't have any inherent jurisdiction.

You are a creature of statute. You have a mandate and your jurisdiction is prescribed in the statute that creates you. There is no inherent jurisdiction in this Board and he is telling you the wrong thing.

Your counsel is correct as to your jurisdiction.

You have jurisdiction if a distributor is refusing to provide service, but there is no evidence of that here. That is not what is in issue here, and the reason you are being asked to shoehorn this remedy into this provision is that there is no other basis for you to compel a corporation to sign it and this isn't about providing service.

Even if the form of the agreements has been negotiated -- and clearly it was. There is a long record. There is a thin record, but there is evidence of e-mails that drafts were passed back and forth over a period of time. I don't suggest there wasn't.

But that is not the same thing as agreeing to sign. Two parties can negotiate the form of a contract over and over again for many, many months and choose, for economic reasons, not to conclude the deal. That's the essence of an agreement. Until there is a meeting of the minds, until they're ad idem, there isn't a contract. And there is no enforceable obligation to sign a contract.

A contract -- an agreement to agree is not enforceable. There may be an agreement to assign, and that comes from a different place, from contracts that are already signed and already executed, and those should be the subject of litigation, if that is what my friends are seeking.

But they have chosen not to do it. They have got a different kind of proceeding here and they have done it the wrong way, and they're leading you down the wrong path.

They can negotiate proposed financing documents back and forth until they're blue in the face, but my clients, until they choose to accept those terms, are under no obligation to enter into them.

With respect to the compliance order you're being asked to make, there is a number of serious deficiencies in it and you would be making serious error, in my submission, if you made the order. You have no jurisdiction over a trustee, or over anything, under the Ontario Energy Act, and it would be a serious error if you were to do that.

There is no trustee here who has indicated they're willing to act as trustee, and so you can't appoint anybody, anyway. So the order is deficient and has to be changed.

You only have jurisdiction under the provisions you're being urged to employ if there is, in fact, a breach of an enforceable provision, and there isn't one. The only provision you are pointed to, other than some assertion of inherent jurisdiction, which is just dead wrong, is this jurisdiction to compel the provision of service.

There is no indication here that there is a failure or refusal to provide service. So my submission is you don't have any basis on which to compel an individual to sign a piece of paper on behalf of a corporation that isn't properly governed by a board of directors.

You may have other supervisory powers, but what you can do is require someone to provide services, a distributor to provide services. That is not what this proceeding is about. So you can't issue a compliance order, because there is no breach under the enforceable provision and the compliance order isn't seeking to compel an enforceable -- compliance with an enforceable provision. It is seeking to compel an officer of a corporation to sign a piece of paper the corporation doesn't want to enter into.

It is unfortunate, but why is the blame laid at the feet of NRG rather than Société Générale? Why are we not blaming Société Générale for placing this project in jeopardy? Why is it my client's problem because they choose not to accept the terms of a contract that is offered to them? Why not make an order against the lenders?

Nobody would suggest you could do that. And my submission is although you have jurisdiction over NRG in certain areas by virtue of it being a distributor, you don't have jurisdiction to compel it to enter into commercial contracts when it chooses not to.

Unless you have questions, those are my submissions.

**Reference:** *Transcript of OEB Proceedings*, pp. 71-75, Appeal Record, Tab 8, p. 122-126

41. At 2:25 p.m. on June 29, the OEB ordered NRG to execute the Assignment Agreement and the Bundled T-Service Agreement by 4:00 p.m. that day.

**Reference:** *Transcript of OEB Proceedings*, pp. 81-87, Appeal Record, Tab 8, p. 132-138

42. Despite repeated requests, the OEB has refused to issue any formal Order. In response to a request for a formal order, the OEB advised that the transcript of the hearing shall constitute the Order of the OEB.

43. NRG did not execute the Assignment Agreement and the Bundled T-Service Agreement by 4:00 p.m.

**Reference:** *Transcript of OEB Proceedings*, pp. 1, Appeal Record, Tab 9, p. 149

44. At the request of IGPC, the OEB reconvened at 4:29 p.m. and proceeded with a hearing purportedly under section 112.2 of the Act.

45. The OEB determined on its own motion that the failure of NRG to execute the Assignment Agreement and the Bundled T-Service Agreement by 4:00 p.m. that day was in contravention of an enforceable provision under the Act because NRG had failed to execute those agreements as purportedly required by the OEB's Order made earlier that day. The OEB stated that "due to the urgency of the financing requirements", the OEB had determined to act under the authority given to it under section 112.2(6) to issue an interim order under section 112.3.

**Reference:** *Compliance Order of OEB*, dated June 29, 2007, Appeal Record, Tab 3, p. 18-19

46. The OEB ordered that:

NRG shall pay an administrative penalty of \$20,000.00 Canadian Dollars per day to be lifted when the Board's Orders regarding the execution of the required consents and Bundle T-Agreements have been complied with by NRG.

**Reference:** *Compliance Order of OEB*, dated June 29, 2007, Appeal Record, Tab 3, p. 18-19

47. By letter to the OEB on July 5, 2007, counsel for NRG advised that, contrary to statements in the Kovnats Affidavit, and representations made on behalf of NRG to the OEB, the failure of NRG to sign the Assignment Agreement and the Bundled T-Service Agreement did not cause the IGPC financing arrangements to collapse, and did not require funds held in escrow to be distributed back to equity investors. To the contrary, IGPC and its lenders proceeded to close the financing transaction and all documents relating to the financing were executed and delivered into escrow to be released subject to certain conditions. This letter confirms that the alleged urgency that IGPC relied upon in bringing the emergency motion to the OEB, and the basis on which the OEB proceeded to hear the motion on an urgent basis and without proper notice to NRG, did not exist.

We are writing to provide a status report of the efforts undertaken by and on behalf of the Integrated Grain Processors Co-operative Inc ("IGPC") to pursue salvaging the financial commitment of lenders to the proposed ethanol plant to be constructed in Aylmer, Ontario and the natural gas pipeline required to serve it.

...

As a result of discussions after the proceedings last Friday, IGPC and its lenders agreed that all of the documents relating to the financing for the project should be executed and delivered into escrow to be released subject to certain conditions, including, receipt before noon on Wednesday, July 4, of the agreement of IGPC and its proposed lenders to the insertion into the credit agreement of an event of default occurring if the construction of the necessary 28.5 km natural gas pipeline and the continuous uninterrupted supply of natural gas at a reasonable price is not resolved in a satisfactory manner within a specified timeframe.

### **PART III - LAW**

#### **The Standard of Review is Correctness**

48. In reviewing an administrative tribunal's decision, the courts will employ the pragmatic and functional approach to ascertain the appropriate standard of review:

“In the pragmatic and functional approach, the standard of review is determined by considering four contextual factors — the presence or absence of a privative clause or statutory right of appeal; the expertise of the tribunal relative to that of the reviewing court on the issue in question; the purposes of the legislation and the provision in particular; and, the nature of the question — law, fact, or mixed law and fact.”

These factors, taken together, will determine whether the standard of review is correctness, reasonableness *simpliciter*, or patent unreasonableness.

**Reference:** *Dr. Q v. College of Physicians and Surgeons of British Columbia*,  
[2003] 1 S.C.R. 226, Appellant’s Brief of Authorities, Tab 1 at para. 26

49. In this case, the Act specifically provides for a statutory right of appeal to the Divisional Court. This express right of appeal suggest that no deference to the OEB’s finding is warranted.

The right of appeal is an integral aspect of the statutory regime under which the OEB functions.

**Reference:** *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Appellant’s Brief of  
Authorities, Tab 15

50. With respect to the expertise of the tribunal, the OEB has expertise in:

- (a) the pricing, reliability and quality of electricity and gas service;
- (b) the economic efficiency of generating, transmitting and selling electricity and gas;
- (c) protecting customers; and
- (d) maintaining a financially viable energy structure.

51. The OEB does not, however, have any specialized knowledge or experience with respect to its jurisdiction or the principles of fundamental justice at play in an administrative hearing.

Accordingly, the second factor does not justify any deference to the OEB.

52. The purpose of the Act includes the facilitation of competition, expansion and development of gas systems, the protection of customers, and the promotion of energy efficiency in Ontario.

These objectives would militate in favour of deference if the matters in issue were specifically related to these areas. However, there is no basis for any deference outside of the scope of these purposes.

53. Finally, the questions at issue are either questions of law – the OEB’s jurisdiction – or questions of mixed law and fact – whether the hearing accorded with the rules of procedural fairness.

54. Taken together, these factors demonstrate that the OEB is entitled to no or minimal deference. The Board has no greater experience or responsibility than this Court with respect to the issues at hand, and the Act, specifically carves out a role for the Divisional Court as an appellate court. Accordingly, the OEB’s actions should be reviewed on a standard of correctness. However, even if this Court applies a reasonableness standard, the OEB’s decision cannot stand.

**The Board had no Basis to Hear the Motion on Short Notice**

55. Rule 7.01 of the OEB's *Rules of Practice and Procedure* entitles the OEB to "extend or abridge a time limit...on such conditions the Board considers appropriate". The OEB is nonetheless subject to the rules of the *Statutory Powers Procedure Act* ("SPPA") in exercising its power. Section 6(1) of the SPPA requires that "the parties to a proceeding shall be given reasonable notice of the hearing by the tribunal". The OEB's *Rules of Practice and Procedure* do not, therefore, permit the OEB to abridge the requirements in a way that will result in unreasonable notice.

**Reference:** Ontario Energy Board *Rules of Practice and Procedure*, Appellant’s Brief of Authorities, Tab 16

*Statutory Powers Procedure Act*, R.S.O. 1990, Appellant’s Brief of Authorities, Tab 17

56. The courts have held that reasonable notice of an administrative proceeding is notice that enables a party affected to learn of, and respond to, the issues affecting his interests. As the Divisional Court has explained, a tribunal's “notice must be sufficient to give those whose rights

may be affected knowledge of the allegations made against them, the grounds upon which it is relying in its decision, the nature of the evidence in support of the decision, and adequate time to fairness [sic] respond.” Accordingly, the notice “must be sufficient to give any person, whose rights are in jeopardy, an opportunity to respond to what is, in effect, the charge against him. Anything short of that is not ‘reasonable notice’.”

**Reference:** *Gratton-Masuy Environmental Technologies Inc. v. Building Materials Evaluation Commission* (2002), 60 O.R. (3d) 245 (Div. Ct.), Appellant’s Brief of Authorities, Tab 2 at para. 39

*Seven-Eleven Taxi Co. Ltd. v. City of Brampton et al.* (1976), 10 O.R. (2d) 677 (Div. Ct.), Appellant’s Brief of Authorities, Tab 3 at 5 [QL]

57. IGPC filed its notice of motion on June 28, 2007, and the emergency Notice of Hearing was issued that same day. The Appellant received notice of this hearing at approximately 5:45 pm on June 28, 2007 and the hearing was set to commence at 8:30 a.m. on June 29, 2007, the very next morning.

58. The OEB’s Emergency Notice of Hearing did not enable NRG to fully understand or respond to the case against it. NRG learned at the end of the day that its rights would be adjudicated at the start of the next morning. This notice was unreasonable. The OEB erred in law in proceeding with the hearing as it did.

### **The Board Failed to Protect Fundamental Procedural Rights in Conducting its Hearing**

59. When conducting a hearing, every administrative tribunal has a duty to act fairly. It is fundamental to this common law requirement that both sides to a dispute be entitled to present their arguments fully and fairly to the decision-making body. The Supreme Court of Canada has made it clear that this is an absolute principle of administrative law: “At the heart of [the] analysis is whether, considering all the circumstances, those whose interests were affected had a

meaningful opportunity to present their case fully and fairly.”

**Reference:** *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, Appellant’s Brief of Authorities, Tab 4 at para. 30

60. Urgency cannot override the administrative body's duty to hear both sides of an issue. The Federal Court of Appeal explained that even where there is an obligation to proceed quickly, each party must have an opportunity to present its case: “Although the Board is commanded by subsection 82.1(9) [of the Canada Labour Code] to proceed ‘without delay and in a summary way’, it remained obliged to hear both sides to the dispute before rendering its decision.”

**Reference:** *Alberto Timpauer v. Air Canada and Canada Labour Relations Board*, [1986] 1 F.C. 453 (F.C.A.), Appellant’s Brief of Authorities, Tab 5 at para. 14

61. This obligation to hear both sides includes the requirement that all parties be given the materials and information to be relied upon in the case. “The opportunity to be heard is meaningless unless information is provided upon which a meaningful response can be based. Only then are the applicants afforded a truly meaningful opportunity to respond to ‘the case to be met’.”

**Reference:** *Gratton-Masuy, supra*, at para. 39

62. In the instant case, crucial evidence was not provided to NRG. As the hearing transcript demonstrates:

- (a) no evidence was disclosed to show that the federal government would not provide more extensions;
- (b) no documents were disclosed that described the terms of the financing or terms of the escrow, which were alleged to form the foundation of the alleged urgency;
- (c) the Gas Delivery Agreement and Pipeline Cost Recovery Agreement at the heart of the IGPC motion were not in the motion record served; and
- (d) the draft order setting out the emergency relief that the OEB was asked to grant was not contained in the motion record or otherwise provided to NRG.

**Reference:** Transcript of OEB Proceedings, June 29, 2007, pp. 15, 30, 33 and 19, Appeal Record, Tab 8, pp. 66, 81, 84 and 70

63. The rules of procedural fairness and natural justice also require that a party be provided with time to consult counsel and prepare its case. As the Federal Court of Appeal commented with respect to an Immigration Appeal Board hearing, “to permit counsel but forty five minutes to peruse and digest what was in the transcript, obtain instructions from the applicant thereon and determine how to present what case there was, was, in our opinion unfair and amounted to a failure to observe a principle of natural justice.”

**Reference:** *de Oliveira v. Canada (Minister of Employment and Immigration)* (1958), 32 Admin. L.R. 138 (F.C.A.), Appellant’s Brief of Authorities, Tab 6 at 2 [QL]

64. These fundamental principles therefore oblige an administrative body to adjourn a hearing if failure to do so will result in an unfair procedure. Thus:

“In each case, whether or not the adjournment should be granted must be considered in the light of the circumstances having regard to the right of the applicant to a fair hearing weighed against the obvious desirability of a speedy and expeditious hearing, into charges of professional misconduct. When balancing these two factors the right of the applicant to a fair hearing must be the paramount consideration.”

**Reference:** *Morgan v. Association of Ontario Land Surveyors (1980)*, 28 O.R. (2d) 19 (Div. Ct.), Appellant’s Brief of Authorities, Tab 7 at 4 [QL]

65. Counsel for NRG repeatedly advised the OEB that he had not had an opportunity to consult with NRG or prepare NRG’s response. In particular, IGPC first disclosed a number of documents at the hearing itself, thus prejudicing NRG’s opportunity to know the case against it, review the evidence and instruct counsel on an appropriate response.

66. In allowing the motion to proceed and be determined in this manner, and by failing to grant an appropriate adjournment, the OEB violated its duty of fairness and failed to protect NRG’s procedural rights. It was patently unreasonable for the OEB to proceed as it did.

## **The OEB Does not Have the Jurisdiction to Compel NRG to Execute the Assignment Agreement or the Bundled T-Service Agreement**

67. As a creature of statute, the OEB's jurisdiction is limited to the power that the legislature conferred upon it. The OEB is one of the statutory bodies that "must respect the confines of their jurisdiction: they cannot trespass in areas where the legislature has not assigned them authority".

**Reference:** *ATCO Gas & Pipelines Ltd. v. Alberta (Energy and Utilities Board)*, [2006] 1 S.C.R. 140, Appellant's Brief of Authorities, Tab 8 at para. 7

68. In determining the scope of the authority conferred by the legislature, however, it has long been recognized that a statutory body's power includes both that expressly provided and necessarily implied by the statutory framework. "When legislation attempts to create a comprehensive regulatory framework, the tribunal must have the powers which by practical necessity and necessary implication flow from the regulatory authority explicitly conferred upon it."

**Reference:** *Re Dow Chemical Canada Inc. and Union Gas Ltd.* (1982), 141 D.L.R. (3d) 641 (Ont. H.C.), Appellant's Brief of Authorities, Tab 9 at pp. 658-9, aff'd (1983), 42 O.R. (2d) 731 (C.A.)

69. Thus, in order to rule on an issue, an administrative tribunal must have either express or implied jurisdiction over the issue. In this case, the OEB had no express jurisdiction and no implied jurisdiction.

70. The OEB's enabling statute does not provide express jurisdiction to compel a utility to sign a contract with a third party. The OEB suggested that it was acting under its authority pursuant to s. 42(3), which states: "Upon application, the Board may order a gas transmitter, gas distributor or storage company to provide any gas sale, transmission, distribution or storage service or cease to provide any gas sales service". This does not apply to the dispute between IGPC and NRG.

The OEB's own counsel advised the OEB that a gas distribution service was not in question at this hearing. There is thus no express grant of authority to compel a utility to sign a contract.

**Reference:** *Ontario Energy Board Act, supra*

Transcript of Ontario Energy Board Hearing, June 29, 2007, pp. 56,  
Appeal Record, Tab 8, pp. 107

71. The only possible basis of authority is therefore the doctrine of necessary implication. Under this doctrine, "the powers conferred by an enabling statute are construed to include not only those expressly granted but also, by implication, all powers which are practically necessary for the accomplishment of the object intended to be secured by the statutory regime created by the legislature".

**Reference:** *ATCO Gas & Pipelines Ltd., supra* at para. 51

72. Jurisdiction over the issue must, therefore, be supported by "evidence of practical necessity for the exercise of the power to enable the regulatory body to attain the objects expressly permitted by Parliament".

**Reference:** *Re National Energy Board Act (Can.)*, [1986] 3 F.C. 275 (F.C.A.),  
Appellant's Brief of Authorities, Tab 10 at para. 14-15

73. Jurisdiction over private contracts not yet signed is not a necessary element of an energy board's authority. It is not practically necessary in light of the governing statute to have power to compel a utility to execute and enter a contract. While the OEB has previously decided in 1987 that it has jurisdiction to approve contracts and order a local distribution company to supply gas, that decision emphasized that the power was "part of its inherent public interest jurisdiction . . . [to] compel adjustments to the conduct" of distributors and their discriminatory practices. Moreover, the OEB explicitly noted that in acting on its implicit jurisdiction:

it must be a matter of necessity that the jurisdiction exist for the regulator to accomplish the legislative purpose. This qualification is not met if the tribunal can and has accomplished this purpose without this jurisdiction.

74. Jurisdiction to adjust discriminatory contracts was part of the necessary power found in 1987, but the authority to compel a corporation to enter into a contract was not, and is not, necessary to the OEB's purpose today.

**Reference:** Ontario Energy Board, Decision in E.B.R.O. 410-II/411-II/412-II (March 23, 1987), Appellant's Brief of Authorities, Tab 14 at para. 4.62 and 4.72

75. Similarly, the Federal Court of Appeal explained that convenience is not sufficient to confer jurisdiction: "It might well be argued that the [National Energy] Board would operate more effectively with the power [to award costs] but such a circumstance does not make such a power necessary to its exercise of jurisdiction."

**Reference:** *Re National Energy Board Act (Can.)*, *supra*, at para. 9

76. Contrary to the argument advanced by IGPC's counsel, the tribunal's approval of a public utility project does not confer upon that tribunal jurisdiction to interfere with related contracts. The facts of *Crestbrook Pulp and Paper Co. v. Columbia Natural Gas Ltd.* are very similar to those in the case at bar and its conclusion is apposite. In *Crestbrook*, the B.C. Public Utilities Commission had granted Columbia (a natural gas utility) a certificate of public convenience and necessity to construct and operate a gas transmission pipeline to serve Crestbrook (a mill operator). Crestbrook later alleged that it had been overcharged for the gas supplied pursuant to the contract that had been approved by the British Columbia Energy Commission. The British Columbia Court of Appeal concluded that the *Energy Act* did not give the Commission any jurisdiction to adjudicate the issue of whether the gas supplier had overcharged its client. The Court noted: "In order to make out its case Crestbrook does not have to rely on the *Act*. It finds

upon the contract, and relies upon the common law. While a contract may be filed and approved as part of a rate schedule, it does not thereby lose its identity as a contract.” Likewise, this dispute about the utility rates of a gas supplier operating under the terms of an approved contract was also outside the jurisdiction of the Commission.

**Reference:** *Crestbrook Pulp and Paper Co. v. Columbia Natural Gas Ltd.* (1978), 87 D.L.R. (3d) 248 (B.C.C.A.), Appellant’s Brief of Authorities, Tab 11 at 6 [QL]

77. The issue in this case was fundamentally a private dispute. "As a general principle, courts possess the jurisdiction to hear disputes in contract and tort which involve a regulated entity, unless clear language in a statute expressly confers jurisdiction on a tribunal.” As explained above, no such jurisdiction has been conferred on the OEB in this case. Courts of law, and not the OEB, had jurisdiction over this private contractual dispute.

**Reference:** David M. Brown, *Energy Regulation in Ontario*, looseleaf (Aurora: Canada Law Book, 2006), Appellant’s Brief of Authorities, Tab 19 at 2-20

78. The OEB’s lack of jurisdiction is also highlighted by the fact that IGPC sought relief in equity. Equitable jurisdiction falls to courts, not administrative bodies, further demonstrating that the OEB erred in law and exceeded its jurisdiction.

79. This is particularly true in light of the private economic interests at issue. In finding that a utility regulator lacked jurisdiction over a dispute about the late payment penalty imposed by a gas utility, the Supreme Court reasoned that “while the dispute does involve rate orders, at its heart it is a private law matter under the competence of civil courts”. It similarly reasoned in another case:

“It is well established that potentially confiscatory legislative provision ought to be construed cautiously so as not to strip interested parties of their rights without the clear intention of the legislature . . . deciding otherwise would lead to the

conclusion that broadly drawn power can be interpreted to as to encroach on the economic freedom of the utility, depriving it of its rights.”

**Reference:** *Garland v. Consumers' Gas Co.*, [2004] 1 S.C.R. 629 at para. 70  
ATCO Gas & Pipelines Ltd., *supra*, at para. 79

80. The OEB therefore exceeded its jurisdiction and erred in law by ordering NRG to sign the Assignment Agreement and the Bundled T-Service Agreement, which were clearly private, commercial agreements that NRG had decided not to enter into.

**The Board did not Follow the Proper Procedure for Enforcing its Order**

81. After making its flawed order, the OEB reconvened and conducted a compliance hearing. In convening this hearing without the requisite notice and without permitting NRG to prepare its case, the OEB again contravened the NRG's procedural rights as outlined above.

82. Moreover, the OEB was not empowered by its constating statute to proceed as it did. The OEB stated that it was acting pursuant to s. 112.2(6), which allows the OEB to issue an interim order without a hearing. However, if the order was interim, NRG is entitled to be heard on the matter, including a full evidentiary hearing, before the interim order becomes final. Moreover, in the specific circumstances of this motion, there is no urgency that could possibly require the issuance of an interim order, and therefore the issuance of a purported “interim order” has the same effect as issuing a final order. The procedural rights required to be granted before a final order is made, were improperly denied to NRG.

**Reference:** *Ontario Energy Board Act, 1998, supra*

83. If, on the other hand, the compliance order is final, the Board erred in proceeding without giving the statutorily required notice. Under s. 112.2(2), the Board “shall give written notice to a person that it intends to make an order under section 112.3, 112.4 or 112.5”. Section 112.2(6)

makes it clear that such a notice is still required even if the Board issues an interim order. Such notice was not provided in this case. In the absence of the required notice and the resulting denial of NRG's right to require a hearing under section 112.2(4), the interim order is a nullity.

**Reference:** *Ontario Energy Board Act, 1998, supra*

84. The Board's authority to impose a penalty is set out in section 112.5. The Board's authority to issue an interim order pursuant to section 112.2(6) is limited to orders under section 112.3 which deals with compliance orders and not penalties. Therefore, Board had no authority to issue an interim penalty order.

85. The penalty imposed was also patently unreasonable. Under s. 112.5(3), the maximum penalty that the OEB can impose is an administrative penalty not exceeding \$20,000 "for each day or part of a day on which a contravention occurs or continues". The OEB gave no consideration to the seriousness of the contravention at hand. The OEB's Regulation entitled *Administrative Penalties* explicitly requires the OEB to determine an appropriate range of penalty based on whether the contravention was a major, moderate or minor deviation and its potential to adversely affect customers. Indeed, the OEB's counsel specifically advised the OEB that it was necessary to determine whether a violation is major, moderate or minor and to act accordingly. Nonetheless, the OEB imposed the maximum penalty without considering the nature of the contravention.

**Reference:** *Ontario Energy Board Act, Administrative Penalties, O. Reg. 331/03, Appellant's Brief of Authorities, Tab 18*

Transcript of OEB Proceeding, p. 16, Appeal Record, Tab 9, p. 164

86. The OEB's action was inconsistent with its own statute and with Supreme Court jurisprudence. The Supreme Court has held that if an administrative tribunal "imposes a remedy

which is not rationally connected to the breach and its consequences or is inconsistent with the policy objectives of the statute then it will be exceeding its jurisdiction. Its decision will in those circumstances be patently unreasonable.”

**Reference:** *Royal Oak Mines Inc. v. Canada (Labour Relations Board)*, [1996] 1 S.C.R. 369, Appellant’s Brief of Authorities, Tab 13 at para. 56

87. The OEB therefore erred in law by imposing an administrative penalty of \$20,000 a day until NRG signed the Assignment Agreement and the Bundled T-Service Agreement.

88. The daily penalty is also inconsistent with the OEB’s initial order. The OEB specifically required NRG to sign the Assignment Agreement and the Bundled T-Service Agreement by 4:00 p.m. on June 29, 2007. The violation therefore crystallized at that time, and cannot be construed as an ongoing contravention. As counsel for NRG argued at the hearing, the OEB had issued its order compelling NRG to sign the Assignment Agreement and the Bundled T-Service Agreement because of IGPC's submission that all money would have to be returned to investors by the close of business on June 29, 2007. There was therefore no basis for imposing a penalty that accrued every day after that time.

89. The issuing, value, and timing of the OEB’s administrative penalty were all unlawful and the penalty should be set aside.

#### **PART IV - ORDER SOUGHT**

90. NRG respectfully requests that the Decision and Order of the OEB made June 29, 2007, and the subsequent Compliance Order of the OEB made June 29, 2007, each be set aside and the IGPC motion be dismissed with costs to NRG.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 8<sup>th</sup> day of August 2007.

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Lawrence E. Thacker

**LENCZNER SLAGHT ROYCE  
SMITH GRIFFIN LLP**

Barristers  
Suite 2600  
130 Adelaide Street West  
Toronto, Ontario  
M5H 3P5

Lawrence E. Thacker  
Tel: (416) 865-9500  
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Solicitors for Natural Resource Gas Limited

**SCHEDULE A  
LIST OF AUTHORITIES**

**TAB**

1. *Dr. Q v. College of Physicians and Surgeons of British Columbia*, [2003] 1 S.C.R. 226
2. *Gratton-Masuy Environmental Technologies Inc. v. Building Materials Evaluation Commission* (2002), 60 O.R. (3d) 245 (Div. Ct.)
3. *Seven-Eleven Taxi Co. Ltd. v. City of Brampton et al* (1976), 10 O.R. (2d) 677 (Div. Ct.)
4. *Baker v. Canada (Minister of Citizenship and Immigration)*, [1992] 2 S.C.R. 817
5. *Alberto Timpauer v. Air Canada and Canada Labour Relations Board*, [1986] 1 F.C. 453 (F.C.A.)
6. *de Oliveira v. Canada (Minister of Employment and Immigration)* (1958), 32 Admin. L.R. 138 (F.C.A.)
7. *Morgan v. Association of Ontario Land Surveyors* (1980), 28 O.R. (2d) 19 (Div. Ct.)
8. *ATCO Gas & Pipelines Ltd. v. Alberta (Energy and Utilities Board)*, [2006] 1 S.C.R. 140
9. *Re Dow Chemical Canada Inc. and Union Gas Ltd.* (1982), 141 D.L.R. (3d) 641 (Ont. H.C.) (1983), 42 O.R. (2d) 731 (C.A.)
10. *Re: National Energy Board Act (Can.)*, [1986] 3 F.C. 275 (F.C.A.)
11. *Crestbrook Pulp and Paper Co. v. Columbia Natural Gas Ltd.* (1978), 87 D.L.R. (3d) 248 (B.C.C.A.)
12. *Garland v. Consumers' Gas Co.*, [2004] 1 S.C.R. 629
13. *Royal Oak Mines Inc. v. Canada (Labour Relations Board)*, [1996] 1 S.C.R. 369



		Major	Moderate	Minor
Potential to adversely affect consumers, persons licensed under the Act or other persons (see paragraph 2 of section 1)	Major	\$15,000 - \$20,000	\$10,000 - \$15,000	\$5,000 - \$10,000
	Moderate	\$10,000 - \$15,000	\$5,000 - \$10,000	\$2,000 - \$5,000
	Minor	\$5,000 - \$10,000	\$2,000 - \$5,000	\$1,000 - \$2,000

O. Reg. 331/03, Sched.

# **EXHIBIT “G”**

LENCZNER SLAGHT ROYCE  
SMITH GRIFFIN LLP  
BARRISTERS

Direct Line: (416) 865-3097  
Email: lthacker@litigate.com

February 22, 2008

**VIA EMAIL**

Dennis M. O'Leary  
Aird & Berlis LLP  
BCE Place, 181 Bay Street  
Suite 1800, Box 754  
Toronto, Ontario  
M5J 2T9

Dear Mr. O'Leary:

**Re: Natural Resources Gas Limited and Integrated Grain Processors Co-operative Inc.**

NRG has now had an opportunity to fully review your letter of January 9, 2008. I will respond to your comments in the order raised in your letter.

1. You assert that the invoices of Lenczner Slaght LLP and Ogilvy Renault "are not executed". Attached are copies of the signed invoices from Lenczner Slaght LLP and signed cover letters from Ogilvy Renault. These invoices were rendered to NRG by its solicitors, for work done in connection with the IGPC pipeline project. Whether or not IGPC has paid the amounts invoiced, NRG is liable to pay those amounts. In any event, NRG has paid in full the invoices of Lenczner Slaght and Ogilvy Renault in full.
2. You criticized the invoices because they "do not attempt to characterize the nature of the amounts" claimed. The legal work done is plainly stated in the detailed time dockets set out in each of the solicitors' invoices. All of the work done by the solicitors was done solely in connection with the IGPC pipeline project. This is clear on the face of the invoices. There is no need to further characterize anything. The work done was "work required to plan, design, construct, install, test and commission the Utility connection facilities."
3. **Section 3.3(b) of the Pipeline Cost Recovery Agreement dated January 31, 2007 ("PCRA") requires that IGPC will pay NRG "for reasonable internal, consulting and third party expenses incurred in the prior calendar month within fifteen (15) Business Days of receiving such invoice". Paragraph 3.4(b) of the PCRA confirms**

that those costs include, but are not limited to, "overhead, engineering, surveying, consultant, legal, major materials (pipe, metres, major equipment, heating equipment costs), easement, internal and external construction and commission and costs".

IGPC is liable to pay the costs incurred by NRG pursuant to the PCRA.

4. Previous invoices rendered by NRG have been paid. NRG followed exactly the same process as it has for previous invoices, by providing you with copies of the invoices for costs incurred by third party advisors or contractors. They are all reasonable costs payable under the PCRA. IGPC's failure to pay those costs is a breach of its obligations owed to NRG under the PCRA.
5. NRG has not paid the administrative penalty set by the OEB. NRG has appealed the OEB Orders by Notice of Appeal dated July 5, 2007. NRG has perfected its appeal. Neither the OEB nor IGPC has responded to the appeal. However, NRG is prepared to agree that until it pays this amount to IGPC, IGPC is not required to pay it to NRG.
6. The fees and expenses incurred for work done by Lenczner Slaght LLP relate to legal work, legal services and other strategic and project management advice rendered to NRG solely in connection with the construction of the IGPC pipeline. All of the services provided by Lenczner Slaght LLP to NRG were related to "pipeline work". IGPC is required to pay NRG all of its costs associated with the IGPC pipeline construction project.

If IGPC wishes to make submissions with respect to costs in the motion, it may do so in the appropriate form. IGPC's failure to even respond to the appeal casts doubt on its assertion that it has any entitlement to costs. However that is an issue to be determined in the appropriate judicial forum, and has nothing to do with IGPC's obligations to NRG under the PCRA. The costs of the NRG appeal and the underlining motion are properly determined in those proceedings, and not in any OFR dispute resolution process under the PCRA.

7. The fees and expenses incurred for work done by Ogilvy Renault LLP for NRG are required to be paid in full by IGPC under the PCRA. Since the commencement of this project, NRG has billed IGPC for its reasonable costs incurred in connection with the construction of the IGPC Pipeline. Paragraph 3.3(b) of the PCRA specifically provides that IGPC is required to pay NRG "for reasonable internal, consulting and third party expenses". The amounts invoiced by NRG are reasonable, internal expenses which IGPC is required to pay. The hourly rate charged by NRG of \$295 per hour is less than the fees charged by most of the third party contractors to NRG for which NRG has paid and is required to be paid under the PCRA.
8. NRG has required that communications go through counsel because the conduct of IGPC, including constant lobbying efforts and making false and defamatory

statements to the public as part of its campaign to manipulate and influence the political process and public opinion, has caused NRG to seek legal advice. NRG has at all times complied with its obligations under the PCRA. There is nothing that requires NRG to expose itself to IGPC's conduct without the advice of counsel. In any event, there has been no delay in any work required under the PCRA as a result of NRG obtaining legal advice to protect the interests of all of its stakeholders, including its individual and commercial customers and the municipalities in which it operates.

9. IGPC's assertion that NRG has made demands for payment or agreement on short notice is quite simply false. IGPC has at all times provided information to NRG on a timely basis. On many occasions, timelines are short. These are timelines imposed on NRG by its third party contractors.
10. IGPC appears to be incapable of complying with its financial obligations. It has repeatedly demonstrated either a lack of financial capacity or a simple unwillingness to comply with its obligations to advance funds to NRG or to third party contractors to NRG for the purchase of raw materials and services required to ensure the pipeline project proceeds on a timely basis.

These delays have been caused by its lenders, who apparently are unwilling to allow IGPC to pay amounts it is specifically obligated to pay under the PCRA, within the time required for payment. These are issues between IGPC and its lenders. They in no way mitigate or limit IGPC's obligation to NRG. In any event, the suggestion that the delays were caused by NRG's conduct is simply false.

For example, IGPC has failed to pay amounts owing to Union Gas under the Aid-to-Construct provisions. In order to assist IGPC, NRG has obtained several extensions to the deadlines imposed by Union Gas. Yet IGPC refuses to pay the amounts owing and instead chooses to let deadline after deadline lapse.

Similarly, NRG has obtained extensions for IGPC to pay amounts owing to Lakeside Controls. However, for no good reason, IGPC has again refused to pay the amounts owing to Lakeside Controls when required. By its refusal to pay, IGPC has caused a delay in the delivery by Lakeside Controls of components required to complete the pipeline.

Whether this is caused by IGPC's management, or its lender's refusal to authorize the release of funds, it is in no way caused by any act or omission of NRG. NRG is not responsible for IGPC's financial inability or refusal to pay amounts that IGPC is required to pay under the PCRA.

11. Your suggestion that NRG has refused to allow IGPC any opportunity to comment on the tender documents is false. First, NRG has no obligation to allow IGPC an

opportunity to comment on the tender documents. However, despite having no obligation to do so, NRG has provided a copy of the tender package to IGPC. IGPC reviewed it with its solicitors and provided detailed comments. Those comments were incorporated into the tender documents. As a result, IGPC has fully reviewed and has specifically approved of every document contained in the tender package.

IGPC demanded that NRG provide a copy of the tender package to the contractor who is building the ethanol plant. Although NRG was willing to do so, this is clearly an example of IGPC attempting to improperly influence the tender process. IGPC also attempted to persuade NRG to abandon the tender process and instead award the project to its preferred contractor with whom it has a prior relationship. IGPC only abandoned its efforts to persuade NRG to sole source the work when IGPC's preferred contractor advised that it was incapable of completing the work required to construct the pipeline in the time required.

It is ironic that IGPC has suggested it has concerns about NRG's willingness to engage in a competitive quotation process, when it was IGPC that attempted not only to subvert the competitive quote process and award the project to a contractor without any competitive process at all, but also attempted to ensure that contractor was the contractor IGPC has already chosen to build the ethanol facility.

IGPC's conduct suggests that it does not have the financial resources to complete the project. Certainly its recent conduct suggest that it is either unwilling or unable to pay amounts due and owing when required to ensure the construction projects proceeds along the timelines required.

IGPC's inability to obtain the finance required to complete the pipeline construction project, or even to ensure that it proceeds along the timelines agreed to in the PCRA, is solely the responsibility of IGPC. NRG has no responsibility for IGPC's inability to obtain the financing required to complete the project, or its refusal to pay amounts payable to NRG under the PCRA on a timely basis.

Yours truly,



Lawrence F. Thacker

LET/kf/kw/rl

cc Naomi Loewith

LENCZNER SLAGHT ROYCE  
SMITH GRIFFIN LLP  
BARRISTERS

Mark J. Bristoll  
(Sent Via Email)

29 November 2007

Our file #: 37489  
**INVOICE NO. 71966**

Re: Integrated Grain Processors

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TO PROFESSIONAL SERVICES RENDERED with respect to the above matter during the period from July 1, 2007 to October 31, 2007:

- Jul 3/07 To receiving instructions from L. Thacker;
- Jul 4/07 To drafting notice of appeal of Board's decision;
- Jul 5/07 To determining filing requirements and certificate of evidence;
- Jul 9/07 Telephone call to D. O'Leary; letter to D. O'Leary; letter to M. Bristoll; telephone call to M. Bristoll; email to and from M. Bristoll;
- Jul 10/07 Telephone call to M. Bristoll; email to and from M. Bristoll; letter to D. O'Leary;
- Jul 11/07 Email to and from M. Bristoll; memo to file; review Pipeline Agreement; telephone call to R. King; telephone call to D. O'Leary; telephone call to D. O'Leary; email to and from D. O'Leary; telephone call to M. Bristoll; telephone call to R. King; letter to D. O'Leary;
- Jul 12/07 Letters (2) from S. Stall re: transcripts; letter to D. O'Leary; prepare appeal materials;
- Jul 13/07 Telephone call to M. Bristoll; letter to D. O'Leary; letter from D. O'Leary; telephone call to M. Bristoll;

SUITE 2600, 130 ADELAIDE STREET WEST, TORONTO, ONTARIO, CANADA M5H 3P5  
TELEPHONE (416) 865-9500 FACSIMILE (416) 865-9010

- Jul 17/07 Telephone call to P. Moran (2); telephone call to M. Bristoll (2); telephone call to R. King; email to and from P. Moran; draft letter to D. O'Leary; email to M. Bristoll;
- Jul 18/07 Email to P. Moran and R. King; telephone call to M. Bristoll; letter to M. Bristoll; draft letter to D. O'Leary; review agreements; email to and from P. Moran (2); review response of P. Moran;
- Jul 19/07 Email to and from P. Moran; telephone call to M. Bristoll; letter from D. O'Leary;
- Jul 20/07 Telephone call to P. Moran; email to and from P. Moran; telephone call to M. Bristoll; telephone call to D. O'Leary; letter to D. O'Leary;
- Jul 23/07 Letter from D. O'Leary (2); telephone call to M. Bristoll; email to and from P. Moran; telephone call to P. Moran (3);
- Jul 24/07 Letter to D. O'Leary; telephone call to M. Bristoll;
- Jul 25/07 To reviewing transcript from OEB hearing; to reviewing key documents in case to prepare for appeal;
- Telephone call to M. Bristoll; conference with N. Loewith re: Appeal Record; draft Factum; review transcripts;
- Jul 26/07 Research for N. Loewith for OEB materials;
- To researching law re interference with private contracts; to requesting research assistance from librarian; to analysis of relevant case law;
- Jul 27/07 To researching jurisdiction of OEB and similar Boards;
- Jul 29/07 To researching law re penalty in administrative proceedings;
- Jul 30/07 To drafting factum re appeal; to reviewing energy decisions;
- Draft Appeal Factum;
- Jul 31/07 To editing and revising factum re appeal of OEB decision;
- Telephone call to P. Moran; telephone call to M. Bristoll; telephone call to R. King; prepare Appeal materials; draft Factum;

Aug 2/07 Prepare Appeal Record;

Aug 3/07 To preparing documents, including Appeal Book and Compendium and Brief of Authorities for appeal;  
  
Telephone call to D. O'Leary; telephone call to K. Sabalj; memo to file;

Aug 7/07 To preparing documents for file;  
  
Draft and revise Factum; prepare Appeal Record; telephone call to K. Sabalj; telephone call to D. O'Leary;

Aug 8/07 To final revisions for filing appeal;  
  
Telephone call to D. O'Leary; letter to D. O'Leary; telephone call to P. Moran; email to P. Moran; draft and revise Factum; email to and from P. Moran; finalize Factum; letter to D. O'Leary and OEB;

Aug 9/07 To revising Brief of Authorities for filing;

Aug 15/07 Telephone call to M. Bristoll;

Aug 17/07 Telephone call to M. Bristoll;

Sep 10/07 Telephone call to M. Bristoll; email to and from M. Bristoll;

Sep 11/07 Telephone call to M. Bristoll;

Sep 13/07 Receive instructions from L. Thacker; review appeal compendium and factum; legal research: legal consequences of failure to provide written reasons; memorandum regarding same;  
  
Telephone call to D. O'Leary and B. McGarva;

Sep 14/07 Prepare for and attend meeting with M. Bristoll, T. Grat and W. Suchard in London;

Sep 26/07 Telephone call to D. O'Leary; telephone call to M. Bristoll;

Oct 24/07 Telephone call to M. Bristoll;

Oct 25/07 Telephone call to M. Bristoll; telephone call to D. O'Leary;

Oct 26/07 Telephone call to D. O'Leary; telephone call to M. Bristoll;  
email to and from D. O'Leary;

Oct 29/07 Telephone call to M. Bristoll; draft letter to D. O'Leary; email to  
and from M. Bristoll; letter from D. O'Leary; review proposed  
schedule;

Oct 30/07 Letter to D. O'Leary; telephone call to M. Bristoll; email to and  
from M. Bristoll;

Oct 31/07 Letter from D. O'Leary; letter to M. Bristoll; telephone call to D.  
O'Leary; telephone call to M. Bristoll;

TO OUR FEE

\$44,000.00

**DISBURSEMENTS**

Copies	428.00	T
Fax	11.75	T
Scanning	4.00	T
Courier Service	114.26	T
eCarswell On-line Research	80.40	T
On-Line Searches	54.54	T
Transaction Levy Surcharge	50.00	T
Scanning, coding and printing	596.48	T
Mileage	166.42	T
Notice Of Appeal	259.00	
Perfecting Of Appeal	201.00	
Process Serving	185.00	T
Printing/Binding	1,798.94	T

TOTAL DISBURSEMENTS

\$3,949.79

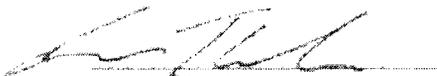
TOTAL FEES AND DISBURSEMENTS

\$47,949.79

**TOTAL TAXES**

G.S.T. on fees	2,640.00	
G.S.T. on disbursements	209.39	
G.S.T. (Registration #: R133780817)		<u>2,849.39</u>
<b>TOTAL BILL</b>		<b>\$50,799.18</b>
<b>TOTAL DUE AND OWING UPON RECEIPT</b>		<b><u>\$50,799.18</u></b>

**LENCZNER SLAGHT ROYCE  
SMITH GRIFFIN LLP**

  
Lawrence L. Thacker  
E.& O.E.

**ACCOUNTS DUE WHEN RENDERED.** In accordance with Section 33 of the *Solicitors Act*, interest will be charged at the rate of 4.5% per annum on unpaid fees, charges and disbursements, calculated from a date that is one month after this statement is delivered.

LENCZNER SLAGHT ROYCE  
SMITH GRIFFIN LLP  
BARRISTERS

Mark J. Bristoll

13 July 2007

Our file #: 37489  
INVOICE NO. 69539

Re: Integrated Grain Processors

---

TO PROFESSIONAL SERVICES RENDERED with respect to the above matter during the period from June 1, 2007 to July 12, 2007:

Jun 26/07	To reviewing Energy Board statute and jurisdiction; to researching case law re scope of authority in response to emergency motion;	3.2
Jun 28/07	Prepare for motion; emails (many); telephone conversation with P. Moran, R. King and M. Bristoll; review documents; review Ontario Energy Act;	4.1
Jun 29/07	Prepare for and attend at Ontario Energy Board hearing; telephone call to P. Moran and R. King; telephone calls to M. Bristoll (many); email to M. Bristoll;	11.0
	Conference call with clients; telephone conversation with M. Bristoll;	1.3
Jul 2/07	Telephone call to M. Bristoll;	.3
Jul 3/07	Email to and from M. Bristoll (many); telephone call to M. Bristol (many); email to and from R. King; telephone call to R. King; telephone call to P. Aiken; review of scenarios; draft Notice of Appeal; conference with N. Loewith;	5.0
Jul 4/07	Telephone call to M. Bristoll (many); email to and	5.0

SUITE 2600, 150 ADELAIDE STREET WEST, TORONTO, ONTARIO, CANADA M5H 3P5  
TELEPHONE (416) 865-9500 FACSIMILE (416) 865-9010

from M. Bristoll; draft Notice of Appeal; review of Franchise Agreements; email to and from R. King;

Jul 5/07 Telephone call to M. Bristoll (many); draft and revise Notice of Appeal; telephone call to R. King (many); telephone call to P. Moran; email to and from M. Bristoll; letter to D. O'Leary; email to and from R. King; 6.0

Jul 6/07 Telephone call to R. King; telephone call to M. Bristoll; email to and from M. Bristoll; draft settlement proposal; letter to D. O'Leary; email to and from M. Bristoll (many) letter from D. O'Leary; letter to K. Walli; email to and from P. Morin; 5.0

Lawrence E. Thacker	37.7	@	575.00	=	21,677.50
N. Loewith	3.2	@	275.00	=	<u>880.00</u>
TOTAL FEES					22,557.50

TO OUR FEE \$23,000.00

**DISBURSEMENTS**

Copies 3.25 T

TOTAL DISBURSEMENTS \$3.25

TOTAL FEES AND DISBURSEMENTS \$23,003.25

**TOTAL TAXES**

G.S.T. on fees	1,380.00
G.S.T. on disbursements	.20
G.S.T. (Registration #: R133780817)	<u>1,380.20</u>

TOTAL BILL \$24,383.45

**TRUST STATEMENT**

Jul 10/07	Trust Receipt Natural Resources Gas	(15,000.00)	
	Less amount received from Trust		15,000.00
	<b>TOTAL DUE AND OWING UPON RECEIPT</b>		<b><u>\$9,383.45</u></b>

**LENCZNER SLAGHT ROYCE  
SMITH GRIFFIN LLP**

  
Lawrence J. Thacker  
E.& O.E.

**ACCOUNTS DUE WHEN RENDERED.** In accordance with Section 33 of the *Solicitors Act*, interest will be charged at the rate of 4.5% per annum on unpaid fees, charges and disbursements, calculated from a date that is one month after this statement is delivered.

**OGILVY  
RENAULT**

LLP / S.E.N.C.R.L., s.r.l.

Direct Dial: (416) 216-2311  
Direct Fax: (416) 216-3930  
rking@ogilvyrenault.com

RECEIVED DEC 24 2007

SENT BY ORDINARY MAIL

Toronto, December 6, 2007

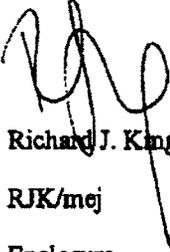
Mr. Mark Bristoll  
Chairman  
Natural Resource Gas Limited  
101 Spruce Street East  
P.O. Box 307  
Aylmer, ON, N5H 2S1

Dear Mr. Bristoll:

**RE: Natural Resource Gas Limited  
Ethanol Plant & General  
(01012724-0003 & 01012724-0004)**

Please find enclosed our statements of account for professional services rendered in connection with the above noted matters. Our invoices cover the period ending November 30, 2007.

Yours very truly,



Richard J. King

RJK/mej

Enclosure

**Barristers & Solicitors,  
Patent Agents & Trade Mark Agents**

DOCSTOR: 1391252M

Suite 700  
Royal Bank Plaza (North Tower)  
200 Bay Street  
P.O. Box 84  
Toronto, Ontario M5J 2Z4  
Canada

Telephone (416) 216-2000  
Fax (416) 216-3930

ogilvyrenault.com

Toronto • Montréal • Ottawa • Québec • London

**OGILVY  
RENAULT**

LLP / SENCRL, s.r.l.

Direct Dial: (416) 216-2311  
Direct Fax: (416) 216-3930  
rking@ogilvyrenault.com

**SENT BY ORDINARY MAIL**

Toronto, November 9, 2007

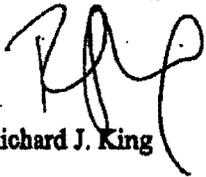
Mr. Mark Bristoll  
Natural Resources Gas Limited  
39 Beech Street East  
P.O. Box 307  
Aylmer, ON, N5H 2S1

Dear Mr. Bristoll:

**RE: Natural Resources Gas Limited  
Ethanol Plant and General  
(01012724-0003 & 01012724-0004)**

Please find enclosed our statements of account for professional services rendered in connection with the above-noted matters. Our invoices cover the period ending October 31<sup>st</sup>, 2007.

Yours very truly,

  
Richard J. King

RJK/mej

Enclosure

Barristers & Solicitors,  
Patent Agents & Trade-mark Agents

DOCSTOR: 137691111

Suite 3900  
Royal Bank Plaza, South Tower  
200 Bay Street  
P.O. Box 84  
Toronto, Ontario M5J 2Z4  
Canada

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Telephone (416) 216-4000  
Fax (416) 216-3930

ogilvyrenault.com

**OGILVY  
RENAULT**

LLP / SENCAL, s.r.l.

Direct Dial: (416) 216-2311  
Direct Fax: (416) 216-3930  
rking@ogilvyrenault.com

**SENT BY ORDINARY MAIL**

Toronto, October 9, 2007

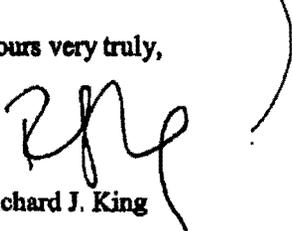
Mr. Mark Bristol  
Chairman  
Natural Resource Gas Limited  
101 Spruce St. East  
P. O. Box 307  
Aylmer, ON, N5H 2S1

Dear Mr. Bristol:

**RE: Natural Resource Gas Limited**  
Ethanol Plant (01012724-0003)

Please find enclosed our statement of account for professional services rendered in connection with the above noted matter. Our invoice covers the period ending September 30, 2007.

Yours very truly,

  
Richard J. King

RJK/mej

Enclosure

Barristers & Solicitors,  
Patent Agents & Trade-mark Agents

Suite 3800  
Royal Bank Plaza, South Tower  
200 Bay Street  
P.O. Box 84  
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**OGILVY  
RENAULT**

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Direct Dial: (416) 216-2311  
Direct Fax: (416) 216-3930  
rking@ogilvyrenault.com

**SENT BY ORDINARY MAIL**

Toronto, September 10, 2007

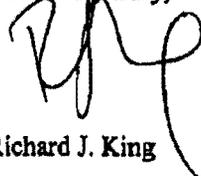
Mr. Mark Bristoll  
Chairman  
Natural Resource Gas Limited  
101 Spruce Street East  
P.O. Box 307  
Aylmer, ON, N5H 2S1

Dear Mr. Bristoll:

**RE: Natural Resource Gas Limited  
Ethanol Plant, General & 2008 Rates Case  
(01012724-0003/0004/0005)**

Please find enclosed our statements of account for professional services rendered in connection with the above noted matters. Our invoices cover the period ending August 31<sup>st</sup>, 2007.

Yours very truly,



Richard J. King

RJK/mej

Enclosure

# **EXHIBIT “H”**

LENCZNER SLAGHT ROYCE  
SMITH GRIFFIN LLP  
BARRISTERS

Direct Line: (416) 865-3097  
Email: lthacker@litigate.com

February 22, 2008

**VIA EMAIL**

Dennis M. O'Leary  
Aird & Berlis LLP  
BCE Place, 181 Bay Street  
Suite 1800, Box 754  
Toronto, Ontario  
M5J 2T9

Dear Mr. O'Leary:

**Re: Natural Resources Gas Limited and Integrated Grain Processors Co-operative Inc.**

I have the five letters you sent to me last night at 7:20 pm.

The obligations and rights of IGPC and NRG are set out in the Pipeline Cost Recovery Agreement dated as of January 31, 2007 ("PCRA").

Article 7.1 of the PCRA provides that IGPC will, prior to NRG ordering the pipe and stations, provide NRG with "an irrevocable letter or letters of credit...in an amount equal to the quoted cost of the pipe and the stations..."

IGPC has absolutely failed to comply with its obligations under Article 7.1 and, as a result, IGPC is in breach of the PCRA. Moreover, IGPC's failure to comply with Article 7.1 has caused delays with construction, and may cause additional delays in the future. For example, despite repeated warnings, IGPC has not provided the letter of credit to NRG, so that NRG can order components and materials from Lakeside Process Controls Ltd. ("Lakeside") for the stations, and has failed to pay Lakeside directly the amounts required by Lakeside to deliver components and materials in time to allow construction to proceed in a timely manner.

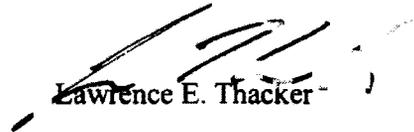
As you know, under Section 3.7 of the PCRA, given IGPC's failure to make payments required and failure to provide the letter of credit required under Section 7.1, NRG has the right to elect not to proceed further with any of its obligations under the PCRA. Moreover, if NRG elects to exercise this right, the PCRA expressly provides that NRG "shall not be liable for any liabilities, damages, losses, payments, costs or expense that may be incurred by [IGPC] as a result".

SUITE 2600, 130 ADELAIDE STREET WEST, TORONTO, ONTARIO, CANADA M5H 3P5  
TELEPHONE (416) 865-9500 FACSIMILE (416) 865-9010

To date, NRG has been proceeding with its obligations under the PCRA and moving forward with construction, despite IGPC's failure to comply with its obligations under the PCRA. NRG is doing so in order to cooperate with IGPC and move the project forward as fast as possible. However, NRG has obligations to all of its stakeholders and ratepayers and cannot continue with this process indefinitely, given IGPC's continuing and deliberate failures to comply with its obligations under the PCRA.

It remains NRG's goal to complete construction in accordance with the terms of the PCRA and we remain willing to work with IGPC in a cooperative fashion to move forward and complete the construction of the pipeline. NRG remains willing to negotiate in good faith with IGPC, and would consider a meeting to try to resolve the current outstanding issues.

Yours truly,



Lawrence E. Thacker

LET/rl

cc Naomi Loewith

# **EXHIBIT “I”**

**UNDERTAKING NO. J1.5: TO MAKE AND PROVIDE CALCULATIONS UPON RECEIPT OF INFORMATION FROM IGPC RELATED TO APPROPRIATE INTEREST CHARGE.**

**RESPONSE:** We have recalculated the interest based on the date that IGPC received the invoices from NRG (as opposed to original invoice date on supplier invoices). On that basis, the interest calculation is as follows:

“Aid to Construct” Interest (see attached table)

- Interest is calculated from the due date of the Aid-to-Construct invoice to the date the amount was received from IGPC.
- The rate applied here is Prime plus 1% in accordance with the PCRA (section 3.8).

“Project Interest During Construction” (see second table attached)

- Interest is calculated from the date the last Aid-to-Construct payment was due to the date the final invoice from the primary contract was received. During this period, NRG was financing the construction costs.
- The rate applied here is Prime plus 2% in accordance with the PCRA (section 3.14(d) – a “reasonable cost of interest during construction”). NRG’s position is that this represents a reasonable interest cost.



**NATURAL RESOURCE GAS LIMITED**  
**IGPC Project Interest Summary**

As of October 28, 2008

Consultant	Invoice Number	Date	NRG Direct	GST	Total Amount	Days	Aid-to-Construct Payment	Net Cumulative Total	Prime	Premium	Interest Rate	Interest
Aiken & Associates	618-2006	30-Jun-06	480.00	33.60	513.60	0	-	513.60	6.00%	2.00%	2.00%	-
Ogilvy Renault LLP	633876	13-Jul-06	9,601.19	576.07	10,177.26	13	-	10,690.86	6.00%	2.00%	2.00%	-
NRG Corp.	915	1-Aug-06	1,046.25	-	1,046.25	19	-	11,737.11	6.00%	2.00%	2.00%	-
Ogilvy Renault LLP	642776	16-Aug-06	2,088.75	125.33	2,214.08	15	-	13,951.19	6.00%	2.00%	2.00%	-
Ogilvy Renault LLP	648629	15-Sep-06	1,282.52	76.95	1,359.47	30	-	15,310.66	6.00%	2.00%	2.00%	-
Ogilvy Renault LLP	648627	15-Sep-06	21.25	1.28	22.53	-	-	15,333.18	6.00%	2.00%	2.00%	-
AUE - Aecon Utility Engineering	262	27-Sep-06	4,800.00	288.00	5,088.00	12	-	20,421.18	6.00%	2.00%	2.00%	-
Harrison Pensa LLP	68035	17-Sep-06	1,796.00	107.76	1,903.76	3	-	22,324.94	6.00%	2.00%	2.00%	-
Aiken & Associates	632-2006	30-Sep-06	1,162.50	69.75	1,232.25	3	-	23,557.19	6.00%	2.00%	2.00%	-
Aid-to-Construct Receipt		13-Oct-06	-	-	-	13	130,000.00	(106,442.81)	6.00%	2.00%	2.00%	-
Harrison Pensa LLP	68732	17-Oct-06	5,485.34	329.12	5,814.46	4	-	(100,628.35)	6.00%	2.00%	2.00%	-
Ogilvy Renault LLP	655972	17-Oct-06	2,036.25	122.18	2,158.43	-	-	(98,469.92)	6.00%	2.00%	2.00%	-
Ogilvy Renault LLP	655974	17-Oct-06	33,292.07	1,997.52	35,289.59	-	-	(63,180.33)	6.00%	2.00%	2.00%	-
AUE - Aecon Utility Engineering	283	25-Oct-06	35,100.00	2,106.00	37,206.00	8	-	(25,974.33)	6.00%	2.00%	2.00%	-
Aiken & Associates	635-2006	31-Oct-06	468.75	28.13	496.88	6	-	(25,477.45)	6.00%	2.00%	2.00%	-
TSSA Total	P0610-18532	31-Oct-06	750.00	45.00	795.00	-	-	(24,682.45)	6.00%	2.00%	2.00%	-
Ogilvy Renault LLP	673462	14-Nov-06	17,675.24	1,059.02	18,734.26	14	-	(5,948.19)	6.00%	2.00%	2.00%	-
Ogilvy Renault LLP	665207	17-Nov-06	17,342.71	1,040.56	18,383.27	3	-	12,435.08	6.00%	2.00%	2.00%	-
Martin Malette	2378	20-Nov-06	291.74	17.50	309.24	3	-	12,744.32	6.00%	2.00%	2.00%	-
AUE - Aecon Utility Engineering	303	22-Nov-06	42,225.00	2,533.50	44,758.50	2	-	57,502.82	6.00%	2.00%	2.00%	-
Lobservateur	1780	1-Dec-06	1,935.00	116.10	2,051.10	9	-	59,553.92	6.00%	2.00%	2.00%	-
The London Free Press Total	1.3423E+10	2-Dec-06	7,585.20	455.11	8,040.31	1	-	67,594.24	6.00%	2.00%	2.00%	-
FKS Land Surveyors	06-426	13-Dec-06	60,917.50	3,655.05	64,572.55	11	-	132,166.79	6.00%	2.00%	2.00%	-
Aiken & Associates	642-2006	29-Dec-06	1,262.04	75.72	1,337.76	16	-	133,504.55	6.00%	2.00%	2.00%	-
AUE - Aecon Utility Engineering	315	31-Dec-06	67,842.88	4,070.57	71,913.45	2	-	205,418.00	6.00%	2.00%	2.00%	-
Viva Voice Reporting Ltd. Total	1805	31-Dec-06	2,195.31	131.72	2,327.03	2	-	207,745.03	6.00%	2.00%	2.00%	-
Ogilvy Renault LLP	680927	17-Jan-07	33,570.46	2,013.86	35,584.32	17	-	243,329.35	6.00%	2.00%	2.00%	-
Senes Consultants Ltd. Total	21965	18-Jan-07	13,546.92	812.82	14,359.74	1	-	257,689.09	6.00%	2.00%	2.00%	-
A.S.A.P. Reporting Services	181	22-Jan-07	1,081.00	64.86	1,145.86	4	-	258,834.95	6.00%	2.00%	2.00%	-
Aiken & Associates	705-2007	2-Feb-07	2,406.50	144.39	2,550.89	11	-	261,385.84	6.00%	2.00%	2.00%	-
Ogilvy Renault LLP	687364	6-Feb-07	25,254.51	1,514.53	26,769.04	4	-	288,154.88	6.00%	2.00%	2.00%	-
Aid-to-Construct Receipt		16-Feb-07	-	-	-	10	100,000.00	188,154.88	6.00%	2.00%	2.00%	-
A.S.A.P. Reporting Services	304	20-Feb-07	1,095.00	65.70	1,160.70	4	-	189,315.58	6.00%	2.00%	2.00%	-
AUE - Aecon Utility Engineering	347	20-Feb-07	106,800.25	6,408.02	113,208.27	4	-	302,523.84	6.00%	2.00%	2.00%	-
Aid-to-Construct Receipt		26-Feb-07	-	-	-	6	181,454.00	121,069.84	6.00%	2.00%	2.00%	-
A.S.A.P. Reporting Services	366	27-Feb-07	150.00	9.00	159.00	1	-	121,228.84	6.00%	2.00%	2.00%	-
Ogilvy Renault LLP	695597	7-Mar-07	3,218.15	192.71	3,410.86	8	-	124,639.70	6.00%	2.00%	2.00%	-
Harrison Pensa LLP	72913	9-Mar-07	6,519.35	391.16	6,910.51	2	-	131,550.21	6.00%	2.00%	2.00%	-
FKS Land Surveyors	07-040	21-Mar-07	11,200.00	672.00	11,872.00	12	-	143,422.21	6.00%	2.00%	2.00%	-
AUE - Aecon Utility Engineering	364	28-Mar-07	38,744.50	2,324.67	41,069.17	7	-	184,491.38	6.00%	2.00%	2.00%	-
Aiken & Associates	712-2007	30-Mar-07	656.25	39.38	695.63	2	-	185,187.01	6.00%	2.00%	2.00%	-
Ogilvy Renault LLP	703732	10-Apr-07	15,428.23	925.04	16,353.27	11	-	201,540.28	6.00%	2.00%	2.00%	-
A.S.A.P. Reporting Services	567	17-Apr-07	5,149.75	308.99	5,458.74	7	-	206,999.01	6.00%	2.00%	2.00%	-
Aid-to-Construct Receipt		20-Apr-07	-	-	-	3	130,159.06	76,839.95	6.00%	2.00%	2.00%	-
AUE - Aecon Utility Engineering	377	25-Apr-07	420.00	25.20	445.20	5	-	77,285.15	6.00%	2.00%	2.00%	-
Harrison Pensa LLP	74283	30-Apr-07	423.75	25.43	449.18	5	-	77,734.33	6.00%	2.00%	2.00%	-
Ogilvy Renault LLP	712635	14-May-07	20,165.98	1,209.84	21,375.82	14	-	99,110.15	6.00%	2.00%	2.00%	-
Aid-to-Construct Receipt		31-May-07	-	-	-	17	73,898.33	25,211.82	6.00%	2.00%	2.00%	-
AUE - Aecon Utility Engineering	719-2007	31-May-07	75.00	4.50	79.50	-	-	25,291.32	6.00%	2.00%	2.00%	-
Aiken & Associates	397	31-May-07	795.00	47.70	842.70	-	-	26,134.02	6.00%	2.00%	2.00%	-
Stantec Consulting	241010	8-Jun-07	3,409.56	204.57	3,614.13	8	-	29,748.15	6.00%	2.00%	2.00%	-
AUE - Aecon Utility Engineering	283	11-Jun-07	425.50	25.53	451.03	3	-	30,199.18	6.00%	2.00%	2.00%	-
Ogilvy Renault LLP	719545	11-Jun-07	6,131.25	367.88	6,499.13	16	-	36,698.31	6.00%	2.00%	2.00%	-
AUE - Aecon Utility Engineering	415	27-Jun-07	127.50	7.65	135.15	-	-	36,833.46	6.00%	2.00%	2.00%	-
Neal, Pallert & Townsend	25378	28-Jun-07	2,014.00	100.70	2,114.70	1	-	38,948.16	6.00%	2.00%	2.00%	-
Stantec Consulting	245954	29-Jun-07	2,500.42	150.03	2,650.45	1	-	41,598.61	6.00%	2.00%	2.00%	-
Lenczner Slight Royce	69539	13-Jul-07	23,003.25	1,380.20	24,383.45	14	-	65,982.06	6.25%	2.00%	2.00%	-
Ogilvy Renault LLP	728429	13-Jul-07	44,487.09	2,673.88	47,160.97	18	-	113,143.03	6.25%	2.00%	2.00%	-
Aiken & Associates	725-2007	31-Jul-07	375.00	22.50	397.50	10	-	113,540.53	6.25%	2.00%	2.00%	-
Harrison Pensa LLP	10089	10-Aug-07	2,942.75	176.57	3,119.32	10	-	116,659.85	6.25%	2.00%	2.00%	-

Consultant	Invoice Number	Date	NRG Direct	GST	Total Amount	Days	Aid-to-Construct Payment	Net Cumulative Total	Prime	Premium	Interest Rate	Interest
Stantec Consulting	254306	17-Aug-07	4,632.55	277.95	4,910.50	7	-	121,570.35	6.25%	2.00%	7.75%	-
Harrison Pensa LLP	77118	21-Aug-07	2,016.25	120.98	2,137.23	4	-	123,707.58	6.25%	2.00%	7.75%	-
Ogilvy Renault LLP	737740	21-Aug-07	13,976.84	838.05	14,814.89	-	-	138,522.47	6.25%	2.00%	7.75%	-
AUE - Aecon Utility Engineering	447	22-Aug-07	6,075.00	351.00	6,426.00	1	-	144,948.47	6.25%	2.00%	7.75%	-
Ogilvy Renault LLP	741945	12-Sep-07	831.25	49.88	881.13	21	-	145,829.60	6.25%	2.00%	7.75%	-
AUE - Aecon Utility Engineering	468	26-Sep-07	13,172.00	469.92	13,641.92	14	-	159,471.52	6.25%	2.00%	7.75%	-
Aid-to-Construct Receipt		5-Oct-07	-	-	-	9	23,643.43	135,828.09	6.25%	2.00%	7.75%	-
Ogilvy Renault LLP	748630	11-Oct-07	8,806.86	528.41	9,335.27	6	-	145,163.36	6.25%	2.00%	7.75%	-
AUE - Aecon Utility Engineering	495	24-Oct-07	14,051.00	320.40	14,371.40	13	-	159,534.76	6.25%	2.00%	7.75%	-
Lakeside Steel Corporation		29-Oct-07	-	-	-	5	-	159,534.76	6.25%	2.00%	7.75%	-
Aid-to-Construct Receipt		2-Nov-07	-	-	-	4	23,130.12	136,404.64	6.25%	2.00%	7.75%	-
Ogilvy Renault LLP	756618	9-Nov-07	377.92	22.68	400.60	7	-	136,805.24	6.25%	2.00%	7.75%	-
AUE - Aecon Utility Engineering	525	20-Nov-07	21,563.00	549.00	22,112.00	11	-	158,917.24	6.25%	2.00%	7.75%	-
Lenczner Slaght Royce	71966	29-Nov-07	47,949.79	2,849.39	50,799.18	9	-	209,716.42	6.25%	2.00%	7.75%	-
Mark Bristol		27-Nov-07	130,006.50	-	130,006.50	2	-	339,722.92	6.25%	2.00%	7.75%	-
Ogilvy Renault LLP	765103	7-Dec-07	375.00	22.50	397.50	8	-	340,120.42	6.00%	2.00%	7.75%	-
Canadian Pacific Railway	2000050470	13-Dec-07	650.00	32.50	682.50	6	-	340,802.92	6.00%	2.00%	7.75%	-
AUE - Aecon Utility Engineering	552	31-Dec-07	17,705.57	241.08	17,946.65	18	-	358,749.57	6.00%	2.00%	7.75%	-
Ogilvy Renault LLP	775418	21-Jan-08	1,976.50	98.83	2,075.33	21	413,665.00	(52,840.10)	6.00%	2.00%	7.75%	-
AUE - Aecon Utility Engineering	571	23-Jan-08	12,456.63	176.43	12,633.06	2	-	(40,207.04)	5.75%	2.00%	7.75%	(76.83)
The Municipality of Thames Centre	02/08	1-Feb-08	2,175.00	-	2,175.00	9	-	(38,032.04)	5.75%	2.00%	7.75%	(56.64)
Stantec Consulting	288433	8-Feb-08	6,857.46	342.87	7,200.33	7	-	(30,831.71)	5.75%	2.00%	7.75%	(32.87)
Ogilvy Renault LLP	782617	13-Feb-08	2,875.00	143.75	3,018.75	5	-	(27,812.96)	5.75%	2.00%	7.75%	(41.59)
AUE - Aecon Utility Engineering	591	20-Feb-08	35,140.00	1,757.00	36,897.00	7	-	9,084.04	5.75%	2.00%	7.75%	13.14
Lenczner Slaght Royce	73976	27-Feb-08	21,007.93	1,050.40	22,058.33	7	-	31,142.37	5.75%	2.00%	7.75%	13.14
Stantec Consulting	292497	29-Feb-08	5,603.24	280.16	5,883.40	2	-	37,025.77	5.75%	2.00%	7.75%	7.82
The Municipality of Thames Centre	03/08	1-Mar-08	9,300.00	-	9,300.00	1	-	46,325.77	5.75%	2.00%	7.75%	107.79
Ogilvy Renault LLP	790238	12-Mar-08	9,628.69	481.43	10,110.12	11	-	56,435.89	5.25%	2.00%	7.25%	55.98
Kettle Creek Conservation Authority		17-Mar-08	500.00	25.00	525.00	5	-	56,960.89	5.25%	2.00%	7.25%	-
Lenczner Slaght Royce	74245	17-Mar-08	69,327.21	3,466.36	72,793.57	-	-	129,754.46	5.25%	2.00%	7.25%	-
Upper Thames River Conservation Authority		17-Mar-08	10,300.00	-	10,300.00	-	-	140,054.46	5.25%	2.00%	7.25%	-
Upper Thames River Conservation Authority		17-Mar-08	500.00	-	500.00	-	-	140,554.46	5.25%	2.00%	7.25%	27.92
Catfish Creek Conservation Authority		18-Mar-08	100.00	5.00	105.00	1	-	140,659.46	5.25%	2.00%	7.25%	55.89
Harrison Pensa LLP	83601	20-Mar-08	299.50	24.53	324.03	1	-	141,174.49	5.25%	2.00%	7.25%	168.34
AUE - Aecon Utility Engineering	613	26-Mar-08	25,289.74	1,264.49	26,554.23	6	-	167,728.71	5.25%	2.00%	7.25%	-
MIG Engineering Ltd.	24931	26-Mar-08	10,885.14	544.26	11,429.40	-	-	179,158.11	5.25%	2.00%	7.25%	-
The Township of Malahide Total		26-Mar-08	21,160.00	-	21,160.00	-	-	200,318.11	5.25%	2.00%	7.25%	39.84
Harrison Pensa LLP	83768	27-Mar-08	735.50	36.78	772.28	1	-	201,090.38	5.25%	2.00%	7.25%	40.00
Purulot	402081827	28-Mar-08	17.51	0.88	18.39	1	-	201,108.77	5.25%	2.00%	7.25%	-
Stantec Consulting	292988	28-Mar-08	3,325.53	166.28	3,491.81	-	-	204,600.58	5.25%	2.00%	7.25%	-
The Corporation of the County of Elgin		28-Mar-08	400.00	-	400.00	-	-	205,000.58	5.25%	2.00%	7.25%	-
The Corporation of the County of Elgin		28-Mar-08	400.00	-	400.00	-	-	205,400.58	5.25%	2.00%	7.25%	122.59
Helix Courier Limited	67106	31-Mar-08	132.79	6.64	139.43	3	-	205,540.01	5.25%	2.00%	7.25%	40.91
The Municipality of Thames Centre	04/08	1-Apr-08	3,425.00	-	3,425.00	1	-	208,965.01	5.25%	2.00%	7.25%	124.81
Ayerswood Development Corporation	10137	4-Apr-08	194.51	9.73	204.24	3	-	209,169.24	5.25%	2.00%	7.25%	-
Purulot	402127889	4-Apr-08	35.02	1.75	36.77	-	-	209,206.01	5.25%	2.00%	7.25%	416.76
Ogilvy Renault LLP	798316	14-Apr-08	2,187.50	109.38	2,296.88	10	-	211,502.89	5.25%	2.00%	7.25%	-
Robert B. Somerville Co. Limited	08 008 01	14-Apr-08	163,593.97	8,179.70	171,773.67	-	-	383,276.56	5.25%	2.00%	7.25%	76.33
COMCO Pipe & Supply Company	841233	15-Apr-08	4,366.40	218.32	4,584.72	1	-	387,861.28	5.25%	2.00%	7.25%	154.52
C.R. Wall & Co. Inc.	SI-55773	17-Apr-08	26,370.58	1,220.86	27,591.44	2	-	415,452.72	5.25%	2.00%	7.25%	413.86
MIG Engineering Ltd.	24975	22-Apr-08	6,708.66	335.43	7,044.09	5	-	422,496.81	5.25%	2.00%	7.25%	-
MIG Engineering Ltd.	24976	22-Apr-08	24,072.30	1,203.62	25,275.92	1	-	447,772.73	5.25%	2.00%	7.25%	89.27
AUE - Aecon Utility Engineering	637	23-Apr-08	15,043.93	752.20	15,796.13	1	-	463,568.86	4.75%	2.00%	6.75%	86.05
COMCO Pipe & Supply Company	841817	24-Apr-08	3,645.00	182.25	3,827.25	1	-	467,396.11	4.75%	2.00%	6.75%	-
KTI Limited	59686	24-Apr-08	11,448.00	530.00	11,978.00	-	-	479,374.11	4.75%	2.00%	6.75%	-
KTI Limited	59687	24-Apr-08	10,130.40	469.00	10,599.40	-	-	489,973.51	4.75%	2.00%	6.75%	363.81
Harrison Pensa LLP	84743	28-Apr-08	4,972.50	248.63	5,221.13	4	-	495,194.63	4.75%	2.00%	6.75%	91.99
COMCO Pipe & Supply Company	842010	29-Apr-08	25,513.57	1,275.68	26,789.25	1	-	521,983.88	4.75%	2.00%	6.75%	290.87
MIG Engineering Ltd.	24979	2-May-08	28,374.71	1,418.74	29,793.45	3	-	551,777.32	4.75%	2.00%	6.75%	512.60
Lenczner Slaght Royce	74952	7-May-08	57,844.13	2,892.21	60,736.34	5	-	612,513.66	4.75%	2.00%	6.75%	341.54

Consultant	Invoice Number	Date	NRG Direct	GST	Total Amount	Days	Aid-to-Construct Payment	Net Total	Prime	Premium	Interest Rate	Interest
Robert B. Somerville Co. Limited	08 008 02	10-May-08	616,624.17	30,831.21	647,455.38	3	-	1,259,969.04	4.75%	2.00%	6.75%	467.29
Aid-to-Construct Receipt		12-May-08	-	-	-	2	-	1,259,969.04	4.75%	2.00%	6.75%	-
Ogilvy Renault LLP	805822	12-May-08	4,600.00	230.00	4,830.00	-	-	1,264,799.04	4.75%	2.00%	6.75%	2,111.63
AUE - Aecon Utility Engineering	661	21-May-08	2,915.00	145.75	3,060.75	9	-	1,267,859.79	4.75%	2.00%	6.75%	471.16
COMCO Pipe & Supply Company	843129	23-May-08	2,170.80	108.54	2,279.34	2	-	1,270,139.13	4.75%	2.00%	6.75%	1,652.63
Ayerswood Development Corporation	10146	30-May-08	39.17	-	41.12	7	-	1,270,180.25	4.75%	2.00%	6.75%	-
Purulator	402493106	30-May-08	35.67	1.78	37.45	-	-	1,270,217.71	4.75%	2.00%	6.75%	236.41
Ayerswood Development Corporation	10149	31-May-08	300.00	15.00	315.00	1	-	1,270,532.71	4.75%	2.00%	6.75%	236.51
Ayerswood Development Corporation	10158	1-Jun-08	1,050.57	52.53	1,103.10	1	-	1,271,635.81	4.75%	2.00%	6.75%	1,183.80
Robert B. Somerville Co. Limited	08 008 03	6-Jun-08	971,370.45	48,568.52	1,019,938.97	5	-	2,291,574.78	4.75%	2.00%	6.75%	4,255.98
MIG Engineering Ltd.	25087	16-Jun-08	118,274.97	5,913.75	124,188.72	10	-	2,415,763.50	4.75%	2.00%	6.75%	1,797.41
Ogilvy Renault LLP	816373	20-Jun-08	718.75	35.94	754.69	5	-	2,416,518.18	4.75%	2.00%	6.75%	2,249.12
AUE - Aecon Utility Engineering	685	25-Jun-08	12,511.00	625.55	13,136.55	5	-	2,429,654.73	4.75%	2.00%	6.75%	2,263.34
Ayerswood Development Corporation	10164	30-Jun-08	350.76	17.54	368.30	5	-	2,430,023.03	4.75%	2.00%	6.75%	-
Corrosion Services Company Limited	22885	30-Jun-08	1,768.77	81.89	1,850.66	-	-	2,431,873.69	4.75%	2.00%	6.75%	-
Harrison Pensa LLP	86596	30-Jun-08	227.27	11.36	238.63	-	-	2,432,112.33	4.75%	2.00%	6.75%	-
KTI Limited	60541	30-Jun-08	800.00	104.00	904.00	-	-	2,433,016.33	4.75%	2.00%	6.75%	-
Neal, Palllett & Townsend	27423	2-Jul-08	900.00	45.00	945.00	2	-	2,433,961.33	4.75%	2.00%	6.75%	908.10
Purulator	402725966	4-Jul-08	111.63	5.58	117.21	2	-	2,434,078.54	4.75%	2.00%	6.75%	-
Robert B. Somerville Co. Limited	08 008 04	4-Jul-08	1,044,546.56	52,227.33	1,096,773.89	-	-	3,530,852.42	4.75%	2.00%	6.75%	2,628.28
C.R. Wall & Co. Inc.	SI-56816	8-Jul-08	621.00	28.75	649.75	4	-	3,531,502.17	4.75%	2.00%	6.75%	-
Fastenal	ONSTT18433	8-Jul-08	70.47	3.26	73.73	-	-	3,531,575.90	4.75%	2.00%	6.75%	1,315.38
Fastenal	ONSTT18497	10-Jul-08	70.46	3.52	73.98	2	-	3,531,649.89	4.75%	2.00%	6.75%	3,355.66
MIG Engineering Ltd.	25134	10-Jul-08	67,909.94	3,395.50	71,305.44	-	-	3,602,955.32	4.75%	2.00%	6.75%	2,015.27
Wellmaster	76262	15-Jul-08	11.48	0.57	12.05	5	-	3,602,967.38	4.75%	2.00%	6.75%	-
Ogilvy Renault LLP	823377	18-Jul-08	7,977.50	398.88	8,376.38	3	-	3,611,343.75	4.75%	2.00%	6.75%	2,694.77
Purulator	402818259	18-Jul-08	83.21	4.16	87.37	-	-	3,611,431.12	4.75%	2.00%	6.75%	-
AUE - Aecon Utility Engineering	706	22-Jul-08	1,485.96	74.30	1,560.26	4	-	3,620,991.38	4.75%	2.00%	6.75%	1,348.96
Neal, Palllett & Townsend	10167	24-Jul-08	6,767.29	406.04	7,173.33	2	-	3,620,164.71	4.75%	2.00%	6.75%	676.06
Purulator	402867492	25-Jul-08	66.08	3.30	69.38	-	-	3,623,537.65	4.75%	2.00%	6.75%	2,028.58
C.R. Wall & Co. Inc.	SI-57065	28-Jul-08	3,157.38	146.18	3,303.56	1	-	3,628,131.38	4.75%	2.00%	6.75%	1,354.36
C.R. Wall & Co. Inc.	SI-57112	30-Jul-08	4,390.47	203.26	4,593.73	2	-	3,628,131.38	4.75%	2.00%	6.75%	678.28
Helix Courier Limited	69517	31-Jul-08	64.80	3.24	68.04	1	-	3,630,392.05	4.75%	2.00%	6.75%	5,430.59
MIG Engineering Ltd.	25193	31-Jul-08	2,088.22	104.41	2,192.63	-	-	3,634,340.16	4.75%	2.00%	6.75%	-
MIG Engineering Ltd.	25196	8-Aug-08	3,760.10	188.01	3,948.11	8	-	3,960,555.92	4.75%	2.00%	6.75%	3,704.43
Robert B. Somerville Co. Limited	08 008 05	8-Aug-08	310,681.68	15,534.08	326,215.76	-	-	3,960,706.86	4.75%	2.00%	6.75%	3,707.99
Ogilvy Renault LLP	830606	13-Aug-08	143.75	7.19	150.94	5	-	3,962,749.11	4.75%	2.00%	6.75%	1,485.32
Corrosion Services Company Limited	23276	18-Aug-08	1,945.00	97.25	2,042.25	5	-	3,963,185.00	4.75%	2.00%	6.75%	1,485.95
AUE - Aecon Utility Engineering	735	20-Aug-08	195.91	9.80	205.71	2	-	3,963,357.77	4.75%	2.00%	6.75%	5,946.18
Purulator	4505192	22-Aug-08	118.52	5.93	124.45	2	-	3,963,493.44	4.75%	2.00%	6.75%	-
Aiken & Associates	826-2008	30-Aug-08	100.70	5.04	105.74	8	-	3,963,599.24	4.75%	2.00%	6.75%	744.45
Aiken & Associates	828-2008	30-Aug-08	293.75	14.69	308.44	8	-	3,963,903.28	4.75%	2.00%	6.75%	2,978.99
Black & McDonald Limited	43-W66147	31-Aug-08	823.18	41.16	864.34	1	-	3,964,357.77	4.75%	2.00%	6.75%	746.40
Bell	J16574	4-Sep-08	2,575.69	128.78	2,704.47	1	-	3,967,062.25	4.75%	2.00%	6.75%	745.80
KTI Limited	61488	5-Sep-08	134.00	17.42	151.42	4	-	3,967,213.67	4.75%	2.00%	6.75%	2,237.89
Ayerswood Development Corporation	10185	8-Sep-08	113.00	5.65	118.65	3	-	3,967,332.32	4.75%	2.00%	6.75%	746.40
MIG Engineering Ltd.	25274	9-Sep-08	7,610.86	380.54	7,991.40	1	-	3,975,323.72	4.75%	2.00%	6.75%	6,732.14
Union Gas Limited - Commission	140195	18-Sep-08	3,979.56	-	3,979.56	9	-	3,979,303.28	4.75%	2.00%	6.75%	5,999.97
Societe Generale	140195	26-Sep-08	6,517.72	-	6,517.72	8	-	3,985,821.00	4.75%	2.00%	6.75%	3,009.24
Ayerswood Development Corporation	10197	30-Sep-08	55.50	2.78	58.28	4	-	3,985,879.28	4.75%	2.00%	6.75%	15,057.56
Harrison Pensa LLP - BNS	89782	20-Oct-08	29,295.25	1,460.26	30,755.51	20	-	4,016,634.79	4.25%	2.00%	6.25%	1,409.91
Lenczner Slaght Royce	78010	22-Oct-08	20,098.87	1,004.94	21,103.81	2	-	4,037,738.60	4.00%	2.00%	6.00%	3,402.98
Robert B. Somerville Co. Limited (final invoice)	08 008 06	27-Oct-08	68,824.91	3,441.25	72,266.16	5	-	4,110,004.76	4.00%	2.00%	6.00%	-
<b>\$ 105,109.40</b>												

Robert B. Somerville Co. Limited	08 008 01	14-Apr-08	163,593.97	8,179.70	171,773.67	-	-	171,773.67	-	-	-	-
Robert B. Somerville Co. Limited	08 008 02	10-May-08	616,624.17	30,831.21	647,455.38	-	-	647,455.38	-	-	-	-
Robert B. Somerville Co. Limited	08 008 03	6-Jun-08	971,370.45	48,568.52	1,019,938.97	-	-	1,019,938.97	-	-	-	-
Robert B. Somerville Co. Limited	08 008 04	4-Jul-08	1,044,546.56	52,227.33	1,096,773.89	-	-	1,096,773.89	-	-	-	-
Robert B. Somerville Co. Limited	08 008 05	8-Aug-08	310,681.68	15,534.08	326,215.76	-	-	326,215.76	-	-	-	-
Robert B. Somerville Co. Limited	08 008 06	27-Oct-08	68,824.91	3,441.25	72,266.16	-	-	72,266.16	-	-	-	-
<b>Robert B. Somerville Co. Limited Total</b>												

# **EXHIBIT “J”**

**ATTACHMENT G**  
**RATE BASE - IGPC PIPELINE**

	Draft Rate Order
IPGC Pipeline Value for Rate Base - April Filing	\$ 5,073,005
Settlement Conference - agreed reduction (interest on M. Bristoll's time)	(26,000) x
	<u>5,047,005</u>
Interest Adjustment (Note 1)	(468) X
OEB Hearing - Undertaking J1.8 (legal fees adjustment)	(5,600) x
OEB Hearing - Para. 27 Argument-in-Chief (double counting of M. Bristoll's time)	(3,540) x
OEB Hearing - Undertaking J1.5 (correction to interest)	(77,333) x
OEB Hearing - Reference to the removal of the administrative penalty	(140,000) x
	<u>\$ 4,820,064</u>

Note 1 - Page 9 of the Settlement Agreement notes that the agreed reduction of interest on Mark Bristoll's management time was \$26,000. This was a rounded amount. The actual amount is \$26,468, so we have adjusted for an additional reduction of \$468.

x - The sum of all amounts denoted with an "x" totals \$252,941 (less \$26,000 reduction previously taken = \$226,941 reduction)

# **EXHIBIT “K”**

Memorandum  
Discussions Respecting the Capital Cost of the IGPC Pipeline

NRG engaged Mr. Weston E. Suchard, C.A. to undertake discussions with IGPC with a view of reaching an agreement between the parties with respect to the cost of the pipeline.

Two meetings were convened with Mr. Roman Chantaj, the Controller of IGPC.

The period of time between the two meetings was protracted (June 9, 2009 and October 1, 2009) with various reasons being given by Mr. Chantaj, such as:

- "Tied up preparing for bank presentation"
- "Just too busy"
- "Tied up for this week with bank matters"
- "Got caught up with the auditors"

A total of 15 phone calls were required to arrange for the two meetings.

Cost schedules were tabled by Mr. Chantaj which indicated that IGPC was questioning various costs that totaled \$1,954,294 and IGPC was therefore requesting a reduction of \$1,954,294 in the cost of the pipeline.

After two lengthy meetings with Mr. Chantaj no progress was achieved in the endeavour to gain some compromise from IGPC with respect to their request for a reduction in the pipeline cost of \$1,954,294.

Mr. Suchard called Mr. Chantaj on October 17, 2009 to arrange for a further meeting and Mr. Chantaj said that he was directed by management to not attend any further meetings.