

# AIRD & BERLIS LLP

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June 21, 2013

## BY COURIER, EMAIL AND RESS

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

Dear Ms. Walli:

**Re: Integrated Grain Processors Co-operative Inc. ("IGPC")  
Board Files No. EB-2012-0406 and EB-2013-0081**

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Pursuant to Procedural Order No. 2 dated May 17, 2013, we attach IGPC's Responses to Board Staff Interrogatories in the above-noted proceeding.

Two hard copies of IGPC's Interrogatory Responses are being forwarded to the Board via courier.

Yours truly,

**AIRD & BERLIS LLP**



Dennis M. O'Leary / Scott Stoll

cc Natural Resource Gas Limited  
cc Intervenors (Per Procedural Order No. 1, April 22, 2013)

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**INTEGRATED GRAIN PROCESSORS CO-OPERATIVE INC.  
RESPONSES TO BOARD STAFF INTERROGATORIES**

**INTERROGATORY RESPONSE NO. 1**

1. Ref: Exhibit A, Page 3

In its pre-filed evidence Integrated Grain Processors Co-operative Inc. ("IGPC") indicates that it requires additional gas distribution services to meet its expansion plans. Does IGPC require the additional gas distribution services before a specific date? Please specify.

**Response:**

IGPC will require additional gas distribution services to facilitate its expansion plans. The services required include not only the delivery of additional volumes but also confirmation of the capacity of the IGPC Pipeline and a determination of whether there is a need for any upstream upgrades or changes to permit the additional volumes. IGPC believes, for example, that upgrades at the customer meter station may be required. IGPC approached NRG in June 2012 for this specific purpose. Given that NRG does not have the internal technical knowledge and expertise to design and construct any necessary upgrades, the gas distribution services that IGPC sought at that time would have been limited to NRG cooperating and assisting in the discussion with the appropriate third party engineers and contractors. As a result of NRG's refusal to cooperate and provide the required services, IGPC has had to reconsider the nature of its expansion plans in an effort to try and reduce the likelihood of need for upgrades to the IGPC Pipeline and/or related facilities. Regardless of whether any changes are required, IGPC will require NRG's cooperation in the negotiation of amendments to the various contracts which will support the delivery and acquisition of the additional volumes. Given the history of this matter, IGPC believes that an order from the Board requiring NRG to reasonably and in good faith respond to IGPC's requests for service is necessary so that in the event of non-compliance, the Board can be informed of such conduct and may then initiate a compliance motion.

## INTERROGATORY RESPONSE NO. 2

2. Ref: Exhibit A, Page 6 and EB-2010-0018, Interrogatory Responses to Draft Rate Order dated January 17, 2011, Attachment G

IGPC has indicated that Natural Resource Gas Ltd. ("NRG") has included the administrative penalty of \$140,000 levied by the Board on NRG to the capital cost of the IGPC pipeline. In response to interrogatories to the Draft Rate Order in EB-2010-0018, NRG has provided a rate base calculation in IR#5 that shows the removal of the \$140,000 penalty from the capital cost. Does IGPC disagree with the calculation provided by NRG in EB-2010-0018 dated January 17, 2011? Please provide a detailed response.

### Response:

It was, and is, not clear to IGPC that the \$140,000 penalty has in fact been removed from the capital costs of the IGPC Pipeline for the purposes of both determining the amount of the capital contribution payable by IGPC and the calculation of the amount that was closed to rate base. As a result of this lack of clarity, IGPC has, in interrogatory 5(a) to NRG, requested a detailed breakdown of the costs of the IGPC Pipeline.

It was the oral evidence of NRG's witness at the Technical Conference held in the EB-2010-0018 proceeding on June 14, 2010, in response to question #5, that gave rise to concerns. Specifically, NRG's evidence was:

MR. BUONAGURO: Okay. Thank you. Question 5: "IGPC#19 (b) indicated that the \$140K penalty imposed by the OEB is included as part of regulatory costs." Could you: "...indicate from which class or classes NRG is seeking to recover the \$140K assessed penalty, the rationale for such recovery, and the allocation of those costs among rate classes."

MR. COWAN: I am going to respond to that, if I may. It is - sorry? Ah, sorry. I am going to respond to that. My understanding is that it's sought to be recovered from IGPC only. And the rationale is that it arose as a result of the construction of the pipeline, and we assume that it will be resolved, one way or another, either by the reconciliation process or by the Board. It has no impact on other categories.

IGPC's concerns were furthered by the Interrogatory and Undertaking Responses of NRG in the same proceeding. In its response to Board Staff IR # 11 on May 18, 2012, which asked NRG for: "a detailed breakdown of the \$5,073,000 new steel mains costs for 2009 (actual) related to the IGPC Pipeline", NRG responded with a table that showed that this figure included \$226,088 in "Regulatory & Other Legal" amounts "Payable by NRG (Contingencies)". The \$140,000 appears to continue to reside in this amount.

On September 8, 2010, NRG responded to Undertaking J1.4 given at the oral hearing which required NRG to update its response to Board Staff IR #11. NRG's response included a

summary cost table which now showed a figure of \$272,000 for "Regulatory & Other Legal" amounts "Payable by NRG (Contingencies)". This figure was broken down in the detailed schedule of the costs of the IGPC Pipeline which formed part of the same undertaking response. The detailed schedule shows that the figure of \$272,000 was comprised of \$132,000 for Ogilvy Renault and \$140,000 for the OEB Administrative Penalty. Accordingly, IGPC is uncertain as to whether the penalty payable (which was never paid) has been removed from the actual costs claim made by NRG in respect of the IGPC Pipeline. Indeed, it should be noted that both of the above responses indicate that this amount is "on NRG's books".

As a result of the concerns raised by IGPC, NRG appears to have accepted as of its January 18, 2011 response to comments made on the Draft Rate Order in EB-2010-0018, that the \$140,000 penalty which was not paid should be removed from the total cost of the IGPC Pipeline for the purposes of rate base. However, it is not clear that NRG is willing to adjust the actual costs of the IGPC Pipeline to remove this same amount for the purposes of determining the revised (lower) capital contribution that is required from IGPC. As well, it appears that it is only the administrative penalty costs which have been removed from rate base and all of the other costs associated with the June 2007 motion (which gave rise to the administrative penalty) and the winter 2008 motion in Aylmer appear to continue to be included in the total costs of the pipeline and the amount closed to rate base.

### INTERROGATORY RESPONSE NO. 3

3. Ref: Exhibit A, Page 23

In its evidence, IGPC has provided a table showing the claimed amount, disputed amount and the accepted amount. The disputed costs amount to \$1,158,594. Please provide a similar table showing the actual amounts paid by IGPC to NRG, specifically what portion of the disputed amount has been actually paid by IGPC to NRG.

#### Response:

IGPC has made payments totaling \$3,542,331 (see note 4) in respect of the contribution in aid of construction. In certain situations, the amounts were paid directly to the supplier (Lakeside or Union Gas) while some amounts were paid to NRG.

Description	Amount(2)	Recipient
Pipe	\$ 863,420	Lakeside Steel
Customer Station	\$ 884,003	Lakeside Process Controls
Union Gas Limited	\$ 736,000	Union Gas Limited(1)
Services and Balance of Estimated Aid-to-Construct	\$1,058,908	NRG(3)
<b>Total</b>	<b>\$3,542,331</b>	<b>(4)</b>

(1) IGPC also provided financial assurance to Union Gas in the amount of \$73,100 (aid to construct) and \$72,939 (M9) in addition to the payment of the aid-to-construct. Financial assurance for the aid to construct was returned by Union Gas. Financial assurance for the M9 continues to be provided by IGPC to Union Gas.

(2) These amounts do not include GST/HST.

(3) Includes payment by IGPC to Senes to commence environmental work prior to Senes commencing work for NRG.

(4) The paid amount stated by IGPC at paragraph 6 of its prefiled evidence of \$3,538,792 should be updated to the figure, \$3,542,331, as provided in the chart above. The difference of \$3,539 is related to the netting of GST in respect of certain payments. The total amount paid by IGPC of \$3,542,331 is not in dispute as NRG confirmed payments totalling this amount in an attachment to an email from NRG (Ms. O'Meara) to IGPC on October 6, 2009. A copy of the attachment from this email is attached.

**Project**  
**Date of Estimate**  
**Purpose of Estimate**  
**In Service Date**

**NRG Aylmer**  
27-Jun-08  
NPS 6" Pipeline  
15-Jul-08

	Total Costs	NRG Paid Directly to 3rd Party	Payable by NRG (Contingencies)	IGPC Paid Directly to 3rd Party
<b>Materials</b>				
Pipe	863,420	-	-	863,420
Custody Transfer Station	1,262,003	-	378,000	884,003
Construction Material	92,822	92,822	-	-
<b>Total Material</b>	<b>2,218,245</b>	<b>92,822</b>	<b>378,000</b>	<b>1,747,423</b>
<b>Prime Contractor</b>				
Prime	3,188,173	3,188,173	-	-
<b>Total Labour &amp; Material</b>	<b>5,406,418</b>	<b>3,280,995</b>	<b>378,000</b>	<b>1,747,423</b>
<b>Labour</b>				
Project Manager/Inspection	422,945	397,945	25,000	-
Design, Drafting, Procurement	771,631	771,631	-	-
Environmental	126,269	88,786	-	37,483
Regulatory & Other Legal	951,624	656,624	295,000	-
Survey	72,118	72,118	-	-
Non Destructive Testing	211,809	211,809	-	-
Local NRG Labour	3,528	3,528	-	-
<b>Total Labour</b>	<b>2,559,924</b>	<b>2,202,441</b>	<b>320,000</b>	<b>37,483</b>
Insurance	62,000	62,000	-	-
Finance Fees	48,142	48,142	-	-
<b>Total Other</b>	<b>110,142</b>	<b>110,142</b>	<b>-</b>	<b>-</b>
<b>Customer Transfer Station</b>				
Union Aid to Construct	736,000	-	-	736,000
Land - NRG side	12,105	12,105	-	-
<b>Total Other</b>	<b>748,105</b>	<b>12,105</b>	<b>-</b>	<b>736,000</b>
<b>Sub-total</b>	<b>8,824,589</b>	<b>5,605,683</b>	<b>698,000</b>	<b>2,520,906</b>
<b>Interest</b>	217,073	217,073	-	-
<b>Net Project Costs</b>	<b>9,041,662</b>	<b>5,822,756</b>	<b>698,000</b>	<b>2,520,906</b>
<b>Payments made from IGPC directly to NRG</b>		(1,058,908)		1,058,908
<b>Net Investment</b>		<b>4,763,847</b>		<b>3,579,814</b>
<b>Items under dispute:</b>				
<b>Maintenance Costs (not capital)</b>				
- Spare parts			(35,000)	
- Lakeside Maintenance Contract			(343,000)	
<b>Contingency Costs (not actual at this time)</b>				
- Professional Fees			(180,000)	
<b>Administrative Penalty</b>				
- No situation that IGPC is aware of where OEB has allowed penalties to be recoverable from rate payers + position that this penalty due to NRG's misconduct is not a cost transferable to IGPC under the agreement and is contrary to public policy			(140,000)	
<b>Indirect Construction Costs</b>		(658,937)		
- Professional fees not relating to Pipeline Work as defined in the agreement.				
<b>Costs without Supporting Documentation</b>				
- Interest		(217,073)		
- Other Fees ?				
<b>Costs which are unreasonable - Project Management</b>		(380,284)		
- Question of rates				
- Question of time spent (considerable amount identified does not relate to Pipeline work under the agreement)				
		(1,256,294)	(698,000)	
<b>Total Under Dispute</b>			<b>(1,954,294)</b>	

## Supporting Schedule

Date Prepared Oct 6/09

	Total Costs	NRG Paid Directly to 3rd Party	Payable by NRG (Contingencies)	IGPC Paid Directly to 3rd Party
<b>Pipe</b>				
Lakeside Steel Corporation	863,420	-	-	863,420
<b>Sub-total</b>	<b>863,420</b>	<b>-</b>	<b>-</b>	<b>863,420</b>
<b>Custody Transfer Station</b>				
Prime Contract	884,003	-	-	884,003
Lakeside Process Control Maintenance Contract	343,000	-	343,000	-
Custody Transfer Station Spare Parts	35,000	-	35,000	-
<b>Sub-total</b>	<b>1,262,003</b>	<b>-</b>	<b>378,000</b>	<b>884,003</b>
<b>Construction Material</b>				
C.R. Wall & Co. Inc.	34,539	34,539	-	-
COMCO Pipe & Supply Company	35,696	35,696	-	-
KTI Limited	22,587	22,587	-	-
<b>Sub-total</b>	<b>92,822</b>	<b>92,822</b>	<b>-</b>	<b>-</b>
<b>Prime Contract</b>				
Prime Contract - Sommerville (Note 1)	3,180,642	3,180,642	-	-
Bell Canada	2,576	2,576	-	-
Black & McDonald	823	823	-	-
Wellmaster Pipe & Supply Inc	11	11	-	-
Fastenal	141	141	-	-
Union Gas Limited	3,980	3,980	-	-
<b>Sub-total</b>	<b>3,188,173</b>	<b>3,188,173</b>	<b>-</b>	<b>-</b>
<b>Project Management/Customer Liaison</b>				
Pre December 2007	130,125	130,125	-	-
December 07	11,136	11,136	-	-
January 08	25,001	25,001	-	-
February 08	21,535	21,535	-	-
March 08	34,810	34,810	-	-
April 08	18,143	18,143	-	-
May 08	13,865	13,865	-	-
June 08	31,565	31,565	-	-
July 08	24,928	24,928	-	-
August 08	25,075	25,075	-	-
September 08	21,535	21,535	-	-
October 08	47,568	22,568	25,000	-
Aug-Oct 08	8,300	8,300	-	-
Ayerswood Development	9,360	9,360	-	-
<b>Sub-total</b>	<b>422,945</b>	<b>397,945</b>	<b>25,000</b>	<b>-</b>
<b>Design, Drafting, Procurement, Testing</b>				
MIG Engineering	178,714	178,714	-	-
MIG Engineering - Approved Change Orders	113,196	113,196	-	-
AUE Utility Engineering	474,855	474,855	-	-
TSSA	750	750	-	-
Ayerswood Development Corporation	402	402	-	-
Corrosion Protection	3,714	3,714	-	-
<b>Sub-total</b>	<b>771,631</b>	<b>771,631</b>	<b>-</b>	<b>-</b>
<b>Environmental</b>				
Stantec Consulting Ltd.	26,329	26,329	-	-
Senes Consultants Ltd.	51,030	13,547	-	37,483
Canadian Pacific Railway	650	650	-	-
Catfish Creek Conservation Authority	100	100	-	-
Kettle Creek Conservation Authority	500	500	-	-
The Corporation of the County of Elgin	800	800	-	-
The Township of Malahide	21,160	21,160	-	-
Upper Thames Conservation Authority	10,800	10,800	-	-
The Municipality of Thames Centre	14,900	14,900	-	-
<b>Sub-total</b>	<b>126,269</b>	<b>88,786</b>	<b>-</b>	<b>37,483</b>

	Total Costs	NRG Paid Directly to 3rd Party	Payable by NRG (Contingencies)	IGPC Paid Directly to 3rd Party
<b>Regulatory</b>				
OEB Administrative Penalty	140,000		140,000	-
Ogilvy Renault	338,271	288,271	50,000	-
Aiken & Associates	12,280	7,280	5,000	-
Harrison Pensa	25,609	25,609	-	-
L'Observateur	1,935	1,935	-	-
Martin Malette	292	292	-	-
The London Free Press	7,585	7,585	-	-
Viva Voce Reporting Ltd.	2,195	2,195	-	-
A.S.A.P. Reporting Services	7,476	7,476	-	-
Lenczner Slaght Royce	395,384	295,384	100,000	-
Manitoulin Transport Inc.	-	-	-	-
Helix Courier Limited	198	198	-	-
Purolator	468	468	-	-
Neal, Pallett & Townsend	7,369	7,369	-	-
EB-2006-0243 Cost Award	12,562	12,562	-	-
<b>Sub-total</b>	<b>951,624</b>	<b>656,624</b>	<b>295,000</b>	<b>-</b>
<b>Survey</b>				
FKS Land Surveyors	72,118	72,118	-	-
<b>Sub-total</b>	<b>72,118</b>	<b>72,118</b>	<b>-</b>	<b>-</b>
<b>Non-Destructive Testing</b>				
MIG Engineering Ltd.	211,809	211,809	-	-
<b>Sub-total</b>	<b>211,809</b>	<b>211,809</b>	<b>-</b>	<b>-</b>
<b>Finance Fees</b>				
Harrison Pensa LLP	29,295	29,295	-	-
Belanger, Cassino & Coulston	1,929	1,929	-	-
Bank of Nova Scotia - Commitment Fee	10,400	10,400	-	-
Societe Generale	6,518	6,518	-	-
<b>Sub-total</b>	<b>48,142</b>	<b>48,142</b>	<b>-</b>	<b>-</b>
<b>Land Rights</b>				
Union Gas Limited	12,105	12,105	-	-
<b>Sub-total</b>	<b>12,105</b>	<b>12,105</b>	<b>-</b>	<b>-</b>
<b>Interest</b>				
Interest	190,605	190,605	-	-
Disbursements	26,468	26,468	-	-
<b>Total</b>	<b>217,073</b>	<b>217,073</b>	<b>-</b>	<b>-</b>

**Cash Received from IGPC:**

Amount	Date Received
130,000.00	13-Oct-06
100,000.00	16-Feb-07
181,454.00	26-Feb-07
130,159.06	20-Apr-07
73,898.33	31-May-07
23,643.43	5-Oct-07
23,130.12	2-Nov-07
662,284.94	
(34,381.72)	
41,022.00	12-May-08
389,983.00	12-May-08
<u>1,058,908.22</u>	

## Note 1:

**Robert B. Somerville Co. Limited**

	Progress	Holdback	Due
Certificate No. 1	181,771	18,177	163,594
Certificate No. 2	685,138	68,514	616,624
Certificate No. 3	1,079,301	107,930	971,370
Certificate No. 4	1,160,607	116,061	1,044,547
Certificate No. 5		(310,682)	310,682
Certificate No. 6	73,825	5,000	68,825
	<u>3,180,642</u>	<u>5,000</u>	<u>3,175,642</u>



#### **INTERROGATORY RESPONSE NO. 4**

4. Ref: Exhibit A, Page 37

Assuming that IGPC were to get relief from all disputed costs, what would be the total refund that would be payable to IGPC from NRG excluding any interest cost?

**Response:**

As noted from IGPC's pre-filed evidence, it is not currently in a position to provide a detailed breakdown of the refund payable by NRG. This amount will be determined by the Board's findings as to the acceptability of some of the actual costs claimed by NRG, the revised contribution in aid of construction payable by IGPC following the true up that is required once the actual costs are settled by the Board, and the resulting impact on rates due to a change in the amount which should have been closed to rate base.