

# AIRD & BERLIS LLP

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September 26, 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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As you know there are a number of continuing outstanding unresolved matters between IGPC and Natural Resources Gas Limited ("**NRG**") relating to the capital cost of the natural gas pipeline and resulting related matters. With the assistance of the Ontario Energy Board ("**Board**"), the issues between the parties have been narrowed to the five issues approved by the Board in Procedural Order No. 2 dated May 17, 2013 (copy attached). With the guidance of the Board and a mediator appointed by it, IGPC and NRG attended the Settlement Conference on September 18, 2013. Unfortunately issues were not brought to greater clarity and a settlement was not achieved.

After consultation with IGPC, we are writing to the Board to provide our client's views for the Board's consideration of the process for the next steps in resolving the outstanding open issues set forth in the Issues List. In developing these suggestions, an overriding objective has been a desire to achieve an efficient process for the Board, Board Staff and the parties. This objective is mindful of the number of hearings held to date and the large amount of evidence on the record. The conclusion reached is that an oral hearing would not be the most effective use of the time and resources of the Board, Board Staff and the parties.

It appears clear that the starting point to resolve the outstanding issues is to settle the capital cost of the IGPC pipeline. In order for the capital cost to be determined there is supplementary information which will be helpful to the Board and which IGPC requires to make concise submissions. If these matters were requested during the course of an oral hearing it is highly likely that NRG would need to give undertakings and respond subsequently. This would occasion further delay of the resolution of the issues (all at considerable additional cost to arrive at this result). It is submitted that it is preferable to ask NRG any additional questions in an expedited manner, likely through a short technical conference under the oversight of the Board. IGPC would submit the preliminary questions prior to the technical hearing to allow NRG time to research and provide oral answers and respond to ancillary questions if any. Board Staff may also have further

questions that they may also wish to ask of NRG and/or IGPC. The written transcripts would then be available for use in final submissions. This process should avoid the need for an oral hearing.

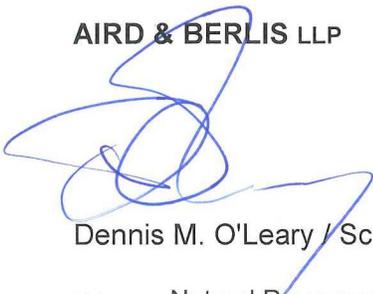
In summary it is IGPC's current view that:

1. IGPC's preference is for a short technical conference.
2. IGPC will commit to providing NRG with its questions, in writing, in advance of the technical conference. This would allow NRG to prepare for the technical conference.

It is hoped that with a brief technical conference at which NRG provides the needed missing information and detail that there shall be no need to proceed with an oral hearing and that parties would then be able to move to their final written submissions.

Yours truly,

**AIRD & BERLIS LLP**



Dennis M. O'Leary / Scott Stoll

cc Natural Resource Gas Limited  
cc Intervenors

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**EB-2012-0406**  
**EB-2013-0081**

**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.

## **PROCEDURAL ORDER NO. 2**

On February 11, 2013, the Board issued a Notice of Application and Written Hearing with respect to an order requested by Integrated Grain Producers Cooperative Inc. ("IGPC") pursuant to Section 42(3) of the Act requiring Natural Resource Gas Limited ("NRG") to provide gas distribution services and gas sales as requested by IGPC to meet its facility expansion and upgrading plans.

The Board further issued a Notice of Application on April 2, 2013, pursuant to the Board's Decision in EB-2012-0396 advising parties that the Board had initiated a new proceeding (Board file No. EB-2013-0081) to review the capital contribution costs paid by IGPC to NRG. The Board also determined that it would combine the EB-2012-0406 and EB-2013-0081 proceedings.

In Procedural Order No. 1 issued on April 22, 2013, the Board sought comments on a draft Issues List prepared by Board staff. NRG and IGPC filed their comments on May 1 and proposed certain changes to the Issues List.

## Issues List

The Board has considered the comments of the parties with respect to the Draft Issues List and has made a determination with respect to the content of the Issues List. The Board has provided below its reasons for accepting or rejecting NRG and IGPC's submissions in this regard.

### 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?**

The Board has rejected the proposed revision of IGPC to include a reference to possible specific terms and conditions, as it is not necessary. If required, the Board can impose whatever conditions it deems appropriate on a utility with respect to providing gas distribution services.

NRG proposed that this issue be deleted. The Board believes that this is a valid issue as indicated in the Board's Notice issued on February 11, 2013 pursuant to Section 42(3) of the Ontario Energy Board Act.

### Issue # 2

In the Draft Issues List, Issue No. 2 was described as follows:

*Are the construction costs as determined by NRG associated with the existing pipeline facilities to serve IGPC reasonable?*

The Board accepts in part the submissions of IGPC with respect to Issue No. 2 and has revised the Issue to read as follows:

**2.1 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?**

**2.1.1 Legal costs**

**2.1.2 Contingency costs**

- 2.1.3 NRG staff costs (Mr. Bristoll)**
- 2.1.4 Interest during construction**
- 2.1.5 Insurance costs and other service costs (e.g. auditing)**
- 2.1.6 Administrative penalty; and**
- 2.1.7 Costs arising from this proceeding**

The Board believes that confining this issue to the particular cost issues in dispute will promote procedural efficiency by ensuring that the proceeding focuses on the specific cost items as opposed to the entire capital cost of the pipeline.

IGPC further proposed an issue 2.2:

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

The Board does not see a need for Issue 2.2. The issue is partly covered in Issue 2.1 and Issue No. 3 IGPC has added "amount closed to rate base effective August 2008". The Board believes that this is not required as the Board has already determined the 2008 rate base in [EB-2010-0018](#).

### Issue #3

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

The Board has revised this Issue to include IGPC's suggestion to cover the letter of credit provided by IGPC to NRG. However, the Board rejects NRG's submission to include a discussion of IGPC's financial condition and viability. Financial assurances such as letters of credit are required to protect against any financial issues faced by IGPC. IGPC has not objected to the provision of the letter of credit but has raised issues with respect to calculating the amount of the financial assurance and reducing its value over time.

The Board has revised this issue to read as follows:

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

IGPC in its submission proposed two additional issues:

IGPC Issue #4

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

IGPC Issue #5

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

The Board accepts IGPC's submission to add Issue No. 4, with a wording clarification, but does not believe that Issue No. 5 is required as it is already covered in the other issues.

The Board has added an additional issue with respect to the remedial measures that it should adopt to resolve the issues between IGPC and NRG. Accordingly, the Board has added the following issue as Issue No. 5:

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

A final Issues List is attached as Appendix A to this procedural order.

**THE BOARD ORDERS THAT:**

1. If NRG and IGPC wish to file any evidence in this matter they may file it with the Board and deliver it to the other parties on or before **Monday, June 3, 2013**.
2. Parties and Board Staff wishing to seek further information that is in addition to the evidence filed by NRG and IGPC shall request it by written interrogatories filed with the Board and served on all parties on or before **Wednesday, June 12, 2013**.

3. NRG and IGPC shall file written responses to all interrogatories received from parties and Board Staff on or before **Friday, June 21, 2013**.

All filings to the Board must quote the file number, EB-2012-0406/EB-2013-0081, be made through the Board's web portal at [www.pes.ontarioenergyboard.ca/eservice/](http://www.pes.ontarioenergyboard.ca/eservice/), and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at [www.ontarioenergyboard.ca/OEB/Industry](http://www.ontarioenergyboard.ca/OEB/Industry). If the web portal is not available, parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 3 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

**ADDRESS**

Ontario Energy Board  
P.O. Box 2319  
2300 Yonge Street, 27th Floor  
Toronto ON M4P 1E4  
Attention: Board Secretary

E-mail: [Boardsec@ontarioenergyboard.ca](mailto:Boardsec@ontarioenergyboard.ca)  
Tel: 1-888-632-6273 (toll free)  
Fax: 416-440-7656

**DATED** at Toronto, May 17, 2013

**ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary

**APPENDIX A**

**INTEGRATED GRAIN PROCESSORS CO-OPERATIVE INC.**

**Board File No. EB-2012-0406 and EB-2013-0081**

**Issues List**

## APPENDIX A

### EB-2012-0406 and EB-2013-0081

1. Is an Order of the Board requiring NRG to provide gas distribution services and gas sales to IGPC to meet its facility expansion and upgrading plans necessary and appropriate?
2. 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
3. Are the capital contribution amounts and the financial assurance provided to NRG by IGPC for the existing NRG facilities serving IGPC reasonable?
4. What, if any, is the appropriate amount of payment including any interest owed by NRG to IGPC?
5. If any amounts are owing from NRG to IGPC, by what means and in accordance with what terms should IGPC be reimbursed?