

Scott Stoll  
Direct: 416.865.4703  
E-mail: sstoll@airdberlis.com

October 28, 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.  
Board Files No. EB-2012-0406 and EB-2013-0081**

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Pursuant to Procedural Order No. 5, we enclose two copies of the Interrogatory Responses of Integrated Grain Processors Co-operative Inc. to Board Staff (Round 2).

Yours truly,

AIRD & BERLIS LLP



Scott Stoll

cc Natural Resource Gas Limited  
cc Intervenors

15649049.1

**INTEGRATED GRAIN PROCESSORS CO-OPERATIVE INC.  
RESPONSES TO BOARD STAFF INTERROGATORIES (ROUND 2)**

**INTERROGATORY RESPONSE NO. 1**

1. Ref: IGPC Interrogatory #5

In response to IGPC interrogatory #5, NRG has provided a detailed schedule of the costs of the pipeline. The amount that is under dispute between NRG and IGPC totals \$877,938 as per this schedule. Please confirm whether IGPC agrees with the disputed amount noted in the above schedule. If not, please provide the disputed amount as per IGPC and a breakdown similar to the pipeline cost schedule provided by NRG in interrogatory #5.

**Response:**

IGPC does not agree with the figure of \$877,938. The correct figure in dispute is \$948,462 as explained below. The Pipeline Cost Recovery Agreement contemplates that interest is paid on amounts owing.

| <u>Disputed Cost</u>                                  | <u>Amount</u>           |
|-------------------------------------------------------|-------------------------|
| Legal Costs <sup>(a)</sup>                            | \$258,135               |
| Contingency Costs (legal)                             | \$132,000               |
| Insurance Costs                                       | \$62,000                |
| Employee Costs (M. Bristoll)                          | \$271,905               |
| Interest                                              | \$88,272                |
| Neal, Pallett & Townsend (auditor)                    | \$7,369                 |
| OEB Costs                                             | <u>\$6,281</u>          |
| <b>Sub-total</b>                                      | <b><u>\$825,962</u></b> |
| Employee Costs (M. Bristoll – revised) <sup>(b)</sup> | <u>\$122,500</u>        |
| <b>Total Disputed Costs</b>                           | <b><u>\$948,462</u></b> |

Notes:

- (a) From IGPC's Pre-filed Evidence, June 3, 2013, Exhibit D, Tab 2, IGPC indicated the legal amount in dispute was \$100,232 (Ogilvy Renault); \$206,045 and \$6,510 (Harrison Pensa) for a total of \$312,787. At that time IGPC understood NRG's costs claims to include \$100,000 for Contingency Costs which were not associated with legal costs. Subsequently, it appears that NRG has re-cast certain legal invoices from these charges into Contingency costs of \$132,000.
- (b) Based upon responses to interrogatories, it appears Mr. Bristoll was always an employee of NRG, that NRG did not capitalize any wages in respect of Mr. Bristoll and that at the time of the Board's Decision in EB-2005-0544 that Mr. Bristoll's salary was included in rates. As such, NRG would have been recovering

Mr. Bristol's salary through its existing rates and there was no cost incurred by NRG in respect of his efforts associated with the IGPC Pipeline. Therefore, the cost of Mr. Bristol was not incurred in respect of the IGPC Pipeline.

One of the difficulties that IGPC has had in dealing with this issue is the re-packaging of information from NRG to avoid proper comparisons.

## INTERROGATORY RESPONSE NO. 2

2. Ref: IGPC Evidence, pages 16-17, June 3, 2013

Please confirm whether IGPC has communicated with NRG in relation to its request for service in order to secure additional gas volumes to meet its expansion plans after June 28, 2013. Please provide a detailed response.

### **Response:**

IGPC views the request for service to include the adherence to the contractual and Board imposed obligations of NRG. IGPC has not had further discussions regarding the additional volumes as any discussion regarding same with NRG – even what should be non-controversial issues – are problematic.

NRG made it clear with the issuance of invoices, IGPC Pre-filed Evidence, Exhibit C, Tab 8, which included staff time at \$500.00/hour and an unspecified consultant at \$750.00/hour that it would charge for management and consultants. As such, IGPC did not wish to incur additional costs without some control over the nature and extent of such potential charges.

IGPC has attached recent correspondence with counsel to NRG (Attachment 1) regarding the replacement of the Pipeline Letter of Credit and the Delivery Letter of Credit. IGPC has not even been able to get NRG to agree to a replacement of the letters of credit when the form and the amount are exactly the same as is currently provided despite the fact that IGPC disputes such amount is proper.

October 3, 2013

Lenczner Slaght  
130 Adelaide St. W.  
Suite 2600  
Toronto, ON M5H 3P5

Osler, Hoskin & Harcourt LLP  
100 King Street West  
1 First Canadian Place  
Suite 6100, P.O. Box 50  
Toronto ON M5X 1B8

**Attention: Mr. Lawrence Thacker**

**Attention: Mr. Richard King**

Dear Sirs:

**Re: Irrevocable Standby Letter of Credit No. CT08S0L0043-B dated April 18, 2008 in favour of Natural Resource Gas Limited in the amount of \$5,214,173 (the "Pipeline Letter of Credit")**

**and**

**Irrevocable Standby Letter of Credit No. CT08SOL0052-B in favour of Natural Resource Gas Limited in the amount of \$232,664.84 (the "Security Deposit Letter of Credit")**

IGPC wishes to deliver to Natural Resource Gas Limited ("NRG") Royal Bank of Canada ("RBC") replacement letters of credit for the Pipeline Letter of Credit and the Security Deposit Letter of Credit. RBC has agreed to provide a new Pipeline Letter of Credit and new Security Deposit Letter of Credit in favour of NRG in the identical form and amount as the existing letters of credit. We have attached drafts of each of the Pipeline Letter of Credit and new Security Deposit Letter of Credit for your review.

IGPC wishes to effect the exchange solely because Société Générale has made a business decision to exit the Canadian market which is described in the attached letter. Effective December 31, 2013, Société Générale will no longer be able to provide the Letters of Credit identified above and is requesting replacement prior to December 1, 2013. The delivery of the replacement RBC letters of credit should only enhance the credit position of NRG and not in any manner whatsoever affect any credit issues for NRG.

The replacement of the letters of credit is without prejudice to NRG or IGPC to continue to take the position that the amount of financial assurance should be in an amount different than that currently provided.

To complete the process, IGPC will need the return of the existing Pipeline Letter of Credit and Security Deposit Letter of Credit to Société Générale (Canada Branch) simultaneously with the delivery of the new letters of credit. As such, we would ask that Mr. Thacker or Mr. King, make arrangements with Ms. Jill Fraser ([jfraser@airdberlis.com](mailto:jfraser@airdberlis.com)) of our office to complete the exchange prior to October 18, 2013.

Yours very truly,

Aird & Berlis LLP.



Scott Stoll

SAS:ct  
Attachments

cc: K. Walli, OEB  
M. Millar, OEB  
J. Grey, IGPC  
J. Fraser

15260972.2





**SOCIÉTÉ GÉNÉRALE**  
Corporate & Investment Banking

Filed: 2013-10-28  
EB-2012-0406 / EB-2003-0081  
IGPC IRR Board Staff 2  
Attachment 1  
Page 3 of 19

September 20, 2013

**BY EMAIL – ORIGINAL BY MESSENGER**

Mr. Jim Grey  
Chief Executive Officer  
IGPC Ethanol Inc  
89 Progress Drive  
Aylmer, Ontario  
Canada N5H 2R3

Pierre Matuszewski  
Chief Executive Officer  
Tel. + 1 514 841.6031  
Fax. + 1 514 841-6258  
pierre.matuszewski@sgcib.com

Re: Société Générale (Canada Branch) – Letters of Credit

Dear Mr. Grey:

Please be informed that the management of Société Générale (Canada Branch) (the "Bank") has decided to change its business model and to pursue its activities in Canada through its investment dealer, Société Générale Securities Inc.

As a result, the Bank will cease its operations as an authorized foreign bank in Canada on or about December 31, 2013. After such date, the Bank will no longer be in a position to issue or maintain any renewable letters of credit for the benefit of its clients.

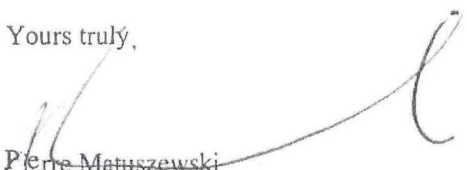
The Bank has been working very closely with its business teams in order to communicate such change to clients that have requested the issuance of letters of credit. When possible, outstanding letters of credit may be re-issued by another branch of Société Générale in accordance with the applicable law, applicable legal documentation and requirements imposed by the beneficiaries. In other circumstances, the letters of credit will be cancelled and, if necessary, they will need to be replaced by letters of credit issued by some other third party.

At your request, the Bank has issued two (2) letters of credit (bearing #CT08SOL0043-B and #CT08SOL0052-B) in favour of Natural Resource Gas Limited which are governed by the terms and conditions of a letter agreement dated February 21, 2013 executed between IGPC Ethanol Inc. and the Bank. We hereby request you to provide any and all assistance to facilitate the cancellation (replacement) of these two (2) letters of credit. In order to avoid any last minute difficulty, we hereby ask you to arrange for same on or before December 1<sup>st</sup>, 2013. Based on our prior discussions with you, we understand that another bank may be able to assist in providing you with replacement letters of credit.

We apologize for any inconvenience that these circumstances may result in, but please be assured that the Bank remains available to assist its clients in providing the best solution for each particular situation.

We thank you for your understanding.

Yours truly,

  
Pierre Matuszewski

Société Générale (Canada Branch)  
1501 McGill College Ave., Suite 1800  
Montreal (Quebec)  
H3A 3M8

Tel. + 1 514 841-6000  
Fax. + 1 514 841-6250  
www.sgcib.com

# DRAFT

This draft is provided to you at your request and there is no obligation on our part despite our assistance in its preparation, nor is it to be construed as evidence of commitment on our part to issue such instrument in the future.

Draft D. Patulli Dec 11-12 Rev Sep 30-13 Rev Oct 3-13

**EDC PURPOSES:**

**BENEFICIARY:**

NATURAL RESOURCE GAS LIMITED  
39 BEECH ST.  
AYLMER, ON.  
N5H 2S1

**RBC REF: P428964T03812**

**ISSUE DATE:** [DATE OF ISSUANCE]

**EXPIRY DATE:** 30 NOVEMBER 2014

**AMOUNT:** CAD 232,666.84  
(TWO HUNDRED THIRTY TWO THOUSAND  
SIX HUNDRED SIXTY SIX AND 84/100  
CANADIAN DOLLARS ONLY)

**APPLICANT:**

IGPC ETHANOL INC  
89 PROGRESS DRIVE  
AYLMER, ON N5H 2R9

AT THE REQUEST OF THE APPLICANT, WE, ROYAL BANK OF CANADA, INTERNATIONAL TRADE CENTRE-ONTARIO, 4TH FLOOR, 180 WELLINGTON STREET WEST, TORONTO, ONTARIO, CANADA, M5J 1J1 (THE "BANK"), HEREBY ISSUE OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO. P428964T03812 (THIS "LETTER OF CREDIT") IN YOUR FAVOUR FOR THE MAXIMUM AGGREGATE AMOUNT OF CAD232,666.84 (TWO HUNDRED THIRTY TWO THOUSAND SIX HUNDRED SIXTY SIX AND 84/100 CANADIAN DOLLARS) AVAILABLE BY YOUR DRAFT(S) DRAWN AT SIGHT ON ROYAL BANK OF CANADA, INTERNATIONAL TRADE CENTRE - ONTARIO, 4<sup>TH</sup> FLOOR, 180 WELLINGTON STREET WEST, TORONTO, ONTARIO, CANADA, M5J 1J1, ACCOMPANIED BY A LETTER FROM AN AUTHORIZED REPRESENTATIVE OF THE BENEFICIARY STATING THAT:

- (A) THE APPLICANT IS NOT IN COMPLIANCE WITH THE TERMS OF THE GAS DELIVERY CONTRACT DATED AS OF JANUARY 30, 2007 BETWEEN THE APPLICANT (AS ASSIGNEE OF INTEGRATED GRAIN PROCESSORS CO-OPERATIVE INC.) AND THE BENEFICIARY (THE "GAS DELIVERY CONTRACT") AND
- (B) THERE IS NO DISPUTE BETWEEN APPLICANT AND BENEFICIARY REGARDING A DISAGREEMENT OVER A METER READING OR THE QUANTITY OF NATURAL GAS DELIVERED OR, TO THE EXTENT SUCH A DISPUTE EXISTS, SUCH DISPUTE HAS BEEN FINALLY RESOLVED IN ACCORDANCE WITH THE GAS DELIVERY CONTRACT AND THE APPLICANT HAS NOT MADE PAYMENT TO THE BENEFICIARY WITHIN TEN (10) BUSINESS DAYS (AS DEFINED IN THE GAS DELIVERY CONTRACT) OF THE FINAL RESOLUTION OF SUCH DISPUTE.

THIS LETTER OF CREDIT WILL CONTINUE FROM .....1 DECEMBER, 2013 AND WILL EXPIRE AT OUR COUNTERS ON ...30 NOVEMBER, 2014 AND THE BENEFICIARY MAY CALL FOR PAYMENT OF THE FULL

THE

ABOVE TEXT IS ACCEPTABLE:

AUTHORIZED SIGNATURE: \_\_\_\_\_

NAME: \_\_\_\_\_



# DRAFT

This draft is provided to you at your request and there is no obligation on our part despite our assistance in its preparation, nor is it to be construed as evidence of commitment on our part to issue such instrument in the future.

Draft D. Patulli Dec 11-12 Rev Sep 30-13 Rev Oct 3-13

AMOUNT OUTSTANDING UNDER THIS LETTER OF CREDIT AT ANY TIME UP TO THE CLOSE OF BUSINESS ON THAT DATE OR ANY FUTURE EXPIRY DATE. THIS LETTER OF CREDIT SHALL BE DEEMED TO BE AUTOMATICALLY EXTENDED FOR ONE YEAR FROM THE PRESENT OR ANY FUTURE EXPIRY DATE HEREOF, UNLESS AT LEAST THIRTY (30) DAYS PRIOR TO ANY SUCH EXPIRY DATE, WE SHALL NOTIFY THE BENEFICIARY IN WRITING

BY REGISTERED MAIL OR COURIER SENT TO: 39 BEECH ST. AYLMER, ON. , N5H 2S1 OR SUCH OTHER ADDRESS AS THE BENEFICIARY MAY DESIGNATE IN WRITING, THAT WE ELECT NOT TO CONSIDER THIS LETTER OF CREDIT RENEWED FOR ANY SUCH ADDITIONAL PERIOD. UPON AND AT ANY TIME FOLLOWING THE BENEFICIARY'S RECEIPT OF SUCH NOTICE, BUT PRIOR TO THE EXPIRY OF THIS LETTER OF CREDIT, THE BENEFICIARY MAY DRAW HEREUNDER.

WE SHALL HONOR YOUR DRAFT(S) WITHIN 3 BUSINESS DAYS AFTER RECEIPT THEREOF WITHOUT ENQUIRING WHETHER THE BENEFICIARY HAS THE RIGHT AS BETWEEN THE BENEFICIARY AND THE APPLICANT TO MAKE SUCH DEMAND, AND WITHOUT RECOGNIZING ANY CLAIM OF THE APPLICANT. THE BANK SHALL ENDORSE THE ORIGINAL OF THIS LETTER OF CREDIT WITH THE AMOUNT OF THE DEMAND UPON ITS PAYMENT AND RETURN THE ORIGINAL OF THIS LETTER OF CREDIT TO THE BENEFICIARY.

PARTIAL OR MULTIPLE DRAWINGS ARE PERMITTED.

THIS LETTER OF CREDIT IS NOT TRANSFERABLE.

THIS LETTER OF CREDIT IS SUBJECT TO THE LAWS OF THE PROVINCE OF ONTARIO AND THE LAWS OF CANADA APPLICABLE THEREIN TO THE EXTENT NOT COVERED BY THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS, 2007 REVISION, ICC PUBLICATION NO. 600

ROYAL BANK OF CANADA

THE ABOVE TEXT IS ACCEPTABLE:

AUTHORIZED SIGNATURE: \_\_\_\_\_

NAME: \_\_\_\_\_

# DRAFT

This draft is provided to you at your request and there is no obligation on our part despite our assistance in its preparation, nor is it to be construed as evidence of commitment on our part to issue such instrument in the future.

Draft D. Patulli Dec 12-12 Rev Sept 30-13 Oct 3-13

**EDC PURPOSES:**

**RBC REF: P428965T03812**

**BENEFICIARY:**

NATURAL RESOURCE GAS LIMITED  
39 BEECH ST.  
AYLMER, ON.  
N5H 2S1

**ISSUE DATE:** [DATE OF ISSUANCE]

**EXPIRY DATE:** NOVEMBER 30, 2014

**AMOUNT:** CAD 5,214,173.00  
(FIVE MILLION TWO HUNDRED FOURTEEN  
THOUSAND ONE HUNDRED SEVENTY  
THREE AND 00/100 CANADIAN  
DOLLARS ONLY)

**APPLICANT:**

IGPC ETHANOL INC  
89 PROGRESS DRIVE  
AYLMER, ON N5H 2R9

PURSUANT TO THE REQUEST OF THE APPLICANT, WE, ROYAL BANK OF CANADA INTERNATIONAL TRADE CENTRE- ONTARIO, 4TH FLOOR, 180 WELLINGTON STREET WEST, TORONTO, ONTARIO, CANADA, M5J 1J1 (THE "BANK"), HEREBY ESTABLISH IN FAVOR OF THE BENEFICIARY AND GIVE THE BENEFICIARY THIS IRREVOCABLE STANDBY LETTER OF CREDIT NO. P428965T03812 (THIS "LETTER OF CREDIT") IN THE AMOUNT OF CAD5,214,173.00 (FIVE MILLION TWO HUNDRED FOURTEEN THOUSAND ONE HUNDRED SEVENTY THREE AND 00/100 CANADIAN DOLLARS ONLY).

WE ARE INFORMED BY THE APPLICANT THAT THIS LETTER OF CREDIT IS ISSUED PURSUANT TO SECTION 7.3 OF THAT CERTAIN PIPELINE COST RECOVERY AGREEMENT DATED AS OF JANUARY 31, 2007 BETWEEN INTEGRATED GRAIN PROCESSORS CO-OPERATIVE INC. ("IGPC") AND THE BENEFICIARY, AS ASSIGNED TO THE APPLICANT PURSUANT TO AN ASSIGNMENT AGREEMENT DATED AS OF MARCH 30, 2007 BETWEEN IGPC, THE APPLICANT AND THE BENEFICIARY.

THE BENEFICIARY MAY DRAW ON THIS LETTER OF CREDIT AT ANY TIME AND FROM TIME TO TIME PRIOR TO THE EXPIRY OF THIS LETTER OF CREDIT UPON WRITTEN DEMAND IN THE FORM OF SCHEDULE 2 ATTACHED (THE "DEMAND") COMPLETED AND PURPORTEDLY SIGNED BY AN AUTHORIZED OFFICER OF THE BENEFICIARY ACCOMPANIED BY THE ORIGINAL OF THIS LETTER OF CREDIT AND ALL AMENDMENTS HERETO (IF ANY). WE SHALL PAY TO THE BENEFICIARY IN ACCORDANCE WITH THE DEMAND THE LESSER OF (I) THE AMOUNT OF THE DEMAND, AND (II) THE MAXIMUM LIABILITY (AS DEFINED IN SCHEDULE 1 ATTACHED). WE SHALL HONOR A DEMAND WITHIN 3 (THREE) BUSINESS DAYS (AS DEFINED IN SCHEDULE 1 ATTACHED) OF RECEIPT OF THE DEMAND, WITHOUT INQUIRING WHETHER THE

THE ABOVE TEXT IS ACCEPTABLE:

AUTHORIZED SIGNATURE: \_\_\_\_\_

NAME: \_\_\_\_\_



# DRAFT

This draft is provided to you at your request and there is no obligation on our part despite our assistance in its preparation, nor is it to be construed as evidence of commitment on our part to issue such instrument in the future.

Draft D. Patulli Dec 12-12 Rev Sept 30-13 Oct 3-13

BENEFICIARY HAS THE RIGHT AS BETWEEN THE BENEFICIARY AND THE APPLICANT TO MAKE SUCH DEMAND, AND WITHOUT RECOGNIZING ANY CLAIM OF THE APPLICANT. WE SHALL ENDORSE THE ORIGINAL OF THIS LETTER OF CREDIT WITH THE AMOUNT OF THE DEMAND UPON OUR PAYMENT AND RETURN THE ORIGINAL OF THIS LETTER OF CREDIT TO THE BENEFICIARY.

THIS LETTER OF CREDIT WILL CONTINUE FROM 1 DECEMBER, 2013 AND WILL EXPIRE AT OUR COUNTERS ON 30 NOVEMBER, 2014 AND THE BENEFICIARY MAY CALL FOR PAYMENT OF THE FULL AMOUNT OUTSTANDING UNDER THIS LETTER OF CREDIT AT ANY TIME UP TO THE CLOSE OF BUSINESS ON THAT DATE OR ANY FUTURE EXPIRY DATE. THIS LETTER OF CREDIT SHALL BE DEEMED TO BE AUTOMATICALLY EXTENDED FOR ONE YEAR FROM THE PRESENT OR ANY FUTURE EXPIRATION DATE HEREOF, UNLESS AT LEAST THIRTY (30) DAYS PRIOR TO ANY SUCH DATE, WE SHALL NOTIFY THE BENEFICIARY IN WRITING BY REGISTERED MAIL OR COURIER SENT TO: 39 BEECH ST. AYLMER, ON. , N5H 2S1 OR SUCH OTHER ADDRESS AS THE BENEFICIARY MAY DESIGNATE IN WRITING, THAT WE ELECT NOT TO CONSIDER THIS LETTER OF CREDIT EXTENDED FOR ANY SUCH ADDITIONAL PERIOD. UPON AND AT ANY TIME FOLLOWING THE BENEFICIARY'S RECEIPT OF SUCH NOTICE, BUT PRIOR TO THE EXPIRY OF THIS LETTER OF CREDIT, THE BENEFICIARY MAY DRAW HEREUNDER.

PARTIAL OR MULTIPLE DRAWINGS ARE PERMITTED

THE AMOUNT OF THIS LETTER OF CREDIT MAY BE REDUCED AT ANY TIME BY NOTICE TO THE BANK SIGNED BY THE BENEFICIARY ACCOMPANIED BY THE ORIGINAL OF THIS LETTER OF CREDIT AND ALL AMENDMENTS HERETO (IF ANY) (EACH A "REDUCTION"). WE SHALL ENDORSE THE ORIGINAL OF THIS LETTER OF CREDIT WITH THE AMOUNT OF THE REDUCTION AND RETURN THE ORIGINAL OF THIS LETTER OF CREDIT TO THE BENEFICIARY.

THIS LETTER OF CREDIT IS NOT TRANSFERABLE.

THE BENEFICIARY MAY ASSIGN THE PROCEEDS OF THIS LETTER OF CREDIT TO ANY LENDER TO THE BENEFICIARY FROM TIME TO TIME, PROVIDED, HOWEVER, THAT WE ARE NOT OBLIGED TO GIVE EFFECT TO SUCH ASSIGNMENT EXCEPT TO THE EXTENT THAT WE HAVE ACKNOWLEDGED SUCH ASSIGNMENT IN ACCORDANCE WITH UCP 600 (AS DEFINED BELOW).

ALL PAYMENTS TO BE MADE BY US UNDER THIS LETTER OF CREDIT SHALL BE MADE WITHOUT ANY DEDUCTION OF TAXES, LEVIES, CHARGES, FEES, DEDUCTIONS OR WITHHOLDINGS OF ANY NATURE AND SHALL BE MADE WITHOUT ANY SET-OFF OR COUNTERCLAIM.

THE ABOVE TEXT IS ACCEPTABLE:

AUTHORIZED SIGNATURE: \_\_\_\_\_

NAME: \_\_\_\_\_

# DRAFT

This draft is provided to you at your request and there is no obligation on our part despite our assistance in its preparation, nor is it to be construed as evidence of commitment on our part to issue such instrument in the future.

Draft D. Patulli Dec 12-12 Rev Sept 30-13 Oct 3-13

ALL AMENDMENTS UNDER THIS LETTER OF CREDIT WILL BE EFFECTIVE ONLY ON THE BANK'S RECEIPT OF THE WRITTEN ACCEPTANCE OF SUCH AMENDMENT BY THE BENEFICIARY.

THIS LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS, 2007 REVISION, INTERNATIONAL CHAMBER OF COMMERCE, PARIS, FRANCE, PUBLICATION NO. 600 (THE "UCP 600"), EXCEPT TO THE EXTENT THAT THE UCP 600 IS INCONSISTENT WITH AN EXPRESS TERM OF THIS LETTER OF CREDIT.

AS TO MATTERS NOT COVERED BY THE UCP 600, THIS LETTER OF CREDIT SHALL BE GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN.

ROYAL BANK OF CANADA

THE ABOVE TEXT IS ACCEPTABLE:

AUTHORIZED SIGNATURE: \_\_\_\_\_

NAME: \_\_\_\_\_

# DRAFT

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Draft D. Patulli Dec 12-12 Rev Sept 30-13 Oct 3-13

## *Schedule 1 – Definitions*

“BUSINESS DAY” MEANS A DAY (OTHER THAN A SATURDAY OR SUNDAY) ON WHICH BANKS ARE OPEN FOR GENERAL BUSINESS IN TORONTO, ONTARIO AND MONTREAL, QUEBEC.

“MAXIMUM LIABILITY” MEANS AT ANY TIME, THE UNDRAWN BALANCE OF THIS LETTER OF CREDIT CALCULATED AS FIVE MILLION TWO HUNDRED FOURTEEN THOUSAND ONE HUNDRED SEVENTY THREE CANADIAN DOLLARS (CAD5,214,173.00) LESS ANY REDUCTIONS AND LESS ANY DRAWINGS WHICH WE HAVE PAID UNDER THIS LETTER OF CREDIT.

THE ABOVE TEXT IS ACCEPTABLE:

AUTHORIZED SIGNATURE: \_\_\_\_\_

NAME: \_\_\_\_\_



# DRAFT

This draft is provided to you at your request and there is no obligation on our part despite our assistance in its preparation, nor is it to be construed as evidence of commitment on our part to issue such instrument in the future.

Draft D. Patulli Dec 12-12 Rev Sept 30-13 Oct 3-13

## *Schedule 2* (to be completed on Beneficiary's letterhead in the following format)

ROYAL BANK OF CANADA  
INTERNATIONAL TRADE CENTRE-ONTARIO  
180 WELLINGTON STREET WEST, 4<sup>TH</sup> FLOOR,  
TORONTO, ONTARIO M5J 1J1

### DEMAND FOR PAYMENT

DATE: .....

RE: IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER ..... ("LETTER OF CREDIT") DATED.....

AMOUNT: .....

WE REFER TO THE ABOVE REFERENCED LETTER OF CREDIT.

WE HEREBY DEMAND PAYMENT OF THE SUM OF .....CANADIAN DOLLARS UNDER THE ABOVE REFERENCED LETTER OF CREDIT.

WE REQUEST PAYMENT OF SUCH AMOUNT TO BE MADE BY ELECTRONIC TRANSFER TO THE FOLLOWING ACCOUNT:

BANK:

ADDRESS:

SORT CODE:

ACCOUNT NAME:

ACCOUNT NUMBER:

WE CONFIRM THAT PURSUANT TO THE PIPELINE COST RECOVERY AGREEMENT (AS DEFINED IN THE LETTER OF CREDIT) WE HAVE THE RIGHT TO DRAW SUCH AMOUNT.

YOURS FAITHFULLY,

BY: \_\_\_\_\_

Authorized Signatory

Name:

Title:

# DRAFT

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Draft D. Patulli Dec 12-12 Rev Sept 30-13 Oct 3-13

THE ABOVE TEXT IS ACCEPTABLE:

AUTHORIZED SIGNATURE: \_\_\_\_\_

NAME: \_\_\_\_\_

DRAFT

**From:** Scott Stoll  
**Sent:** October-11-13 11:39 AM  
**To:** 'King, Richard'  
**Subject:** Follow Up to Voicemail

Richard:

I am following up on my letter and subsequent voicemail regarding the exchange of the Societe Generale Letters of Credit with Letters of Credit from RBC. Please follow up with Jill Fraser ([jfraser@airdberlis.com](mailto:jfraser@airdberlis.com)) from our office at your earliest opportunity. As mentioned, we tried to make this a non-issue by leaving everything the same except it is RBC providing the LCs which should be seen as a benefit.

Scott

---

### Scott Stoll

T 416.865.4703  
F 416.863.1515  
E [ssoll@airdberlis.com](mailto:ssoll@airdberlis.com)

Brookfield Place • 181 Bay Street  
Suite 1800 • Box 754  
Toronto ON • M5J 2T9 • Canada  
[www.airdberlis.com](http://www.airdberlis.com)

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**AIRD & BERLIS LLP**  
Barristers and Solicitors

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Please consider the environment before printing this email.

**From:** King, Richard <rking@osler.com>  
**Sent:** October-14-13 6:49 PM  
**To:** Scott Stoll  
**Cc:** 'lthacker@litigate.com'  
**Subject:** Re: Follow Up to Voicemail

We'll be back to you.

Richard J. King  
Partner  
Osler, Hoskin & Harcourt  
1 First Canadian Place  
Toronto, Ontario, Canada  
Tel: 416.862.6626  
Email: [rking@osler.com](mailto:rking@osler.com)

---

**From:** Scott Stoll [<mailto:ssstoll@airdberlis.com>]  
**Sent:** Friday, October 11, 2013 11:38 AM  
**To:** King, Richard  
**Subject:** Follow Up to Voicemail

Richard:

I am following up on my letter and subsequent voicemail regarding the exchange of the Societe Generale Letters of Credit with Letters of Credit from RBC. Please follow up with Jill Fraser ([jfraser@airdberlis.com](mailto:jfraser@airdberlis.com)) from our office at your earliest opportunity. As mentioned, we tried to make this a non-issue by leaving everything the same except it is RBC providing the LCs which should be seen as a benefit.

Scott

---

### Scott Stoll

T 416.865.4703  
F 416.863.1515  
E [ssstoll@airdberlis.com](mailto:ssstoll@airdberlis.com)

Brookfield Place • 181 Bay Street  
Suite 1800 • Box 754  
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**From:** Scott Stoll  
**Sent:** October-18-13 4:47 PM  
**To:** 'lthacker@litigate.com'  
**Cc:** Martin Kovnats; Jill Fraser  
**Subject:** Follow up to our conversation

Larry:

I wish to confirm the substance of our recent telephone conversation wherein we discussed the IGPC reasonable request to replace the existing Societe Generale LC's with identical RBC LC's. As you know the request is precipitated by Societe Generale's independent decision to exit Canada and not for any reason initiated by IGPC, or by NRG.

You confirmed that NRG is willing to replace the Pipeline and Distribution LCs provided that the wording in the replacement LC's is the same as the existing LCs from Societe Generale.

With respect to the amount of the replacement LCs, you acknowledged your client was willing to reduce the amount of the Pipeline LC to the undepreciated value of the Pipeline as provided in the Pipeline Cost Recovery Agreement. We understand that the amount proposed would be less than \$4 million but you did not have an exact figure. The figure would depend upon the agreed upon date but October 1, 2013 may make sense as that is the commencement of NRG's fiscal year and rate year. Finally, we confirm that you indicated that the current amount of the Distribution LC, approximately \$232,000, to secure the monthly delivery charges was not an issue.

However, the NRG and your agreement to replace the LC's was premised on two additional demands:

- IGPC providing information on its loan arrangements with RBC; and
- IGPC providing NRG with the most recent financials IGPC provided to its members.

In the absence of IGPC providing the requested materials, you stated that NRG will not permit the LCs to be replaced and that you have instructions to seek additional financial assurance related to potential future decommissioning costs if the pipeline is removed from service by filing a motion with the OEB.

IGPC is not willing to provide the confidential financial information or the terms of its confidential financing arrangements for at least two reasons:

1. IGPC has no legal or contractual obligation to provide NRG with such information. We have made this point on prior occasions when NRG has raised this issue; and
2. the LC's are designed to and in fact provide NRG and its customers with complete financial security for the relationships between NRG and IGPC – all irrespective of the financial condition or position of IGPC.

The Ontario Energy Board considered the issue of additional security for decommissioning during the motion heard in March 2008 and denied NRG's request for such security.

Your confirmations indicate that your client recognizes its obligation to reduce the amount of the LC as stipulated in the PCRA. However, the linking of the reduction of the LCs to the production of IGPC's confidential financial information is completely inappropriate and appears to be intended to inflict harm on IGPC.

We view this as a continuation of NRG's refusal to provide service.

Please govern yourself accordingly.

Scott

**Scott Stoll**

T 416.865.4703  
F 416.863.1515  
E [sstoll@airdberlis.com](mailto:ssstoll@airdberlis.com)

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Please consider the environment before printing this email.

**From:** Lawrence Thacker <lthacker@litigate.com>  
**Sent:** October-18-13 5:10 PM  
**To:** Scott Stoll  
**Cc:** Martin Kovnats; Jill Fraser; King, Richard (rking@osler.com); Laurie O'Meara  
**Subject:** RE: Follow up to our conversation

Scott,

Your email does not accurately reflect what we discussed yesterday.

There has never been any denial of service by NRG.

Not ever in the past, and not now.

IGPC's previous allegation is equally unfounded.

Both of IGPC's allegations constitute an abuse of the process of the Board.

I will respond fully next week.

Your mischaracterization of what we talked about, and IGPC's new unfounded and ridiculous allegation, is yet another example of IGPC's use of unnecessary and uneconomic litigation to try to intimidate NRG.

For a venture that has never made an operating profit, and continues to exist only because of government subsidies that will expire shortly, IGPC's tactics are, to say the least, puzzling.

I am disappointed that you would respond this way, but I have learned an important lesson.

Larry

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**From:** Scott Stoll [mailto:sstoll@airdberlis.com]  
**Sent:** Friday, October 18, 2013 4:47 PM  
**To:** Lawrence Thacker  
**Cc:** Martin Kovnats; Jill Fraser  
**Subject:** Follow up to our conversation

Larry:

I wish to confirm the substance of our recent telephone conversation wherein we discussed the IGPC reasonable request to replace the existing Societe Generale LC's with identical RBC LC's. As you know the request is precipitated by Societe Generale's independent decision to exit Canada and not for any reason initiated by IGPC, or by NRG.

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We view this as a continuation of NRG's refusal to provide service.

Please govern yourself accordingly.

Scott

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October 25, 2013

BY EMAIL

Lawrence Thacker  
Lenczner Slaght  
130 Adelaide St. W  
Toronto, ON  
Canada M5H 3P5

Dear Mr. Thacker:

**Re:      Response to Email of October 18, 2013**

---

I am writing in response to your very troubling email of October 18, 2013. I have waited to respond because you indicated in your email that you were going to respond more fully this week. However, as you did not, I feel compelled to reply to your serious and incorrect allegations about the position of IGPC and my character.

I did not mischaracterize our conversation. You made it abundantly clear the offer for the exchange of the Letters of Credit ("LCs") was contingent upon IGPC providing its confidential financial information to Natural Resources Gas Ltd. ("NRG"). You also made it clear your client does not have any existing right to this confidential information.

As you are very much aware, IGPC has provided financial assurance to NRG for the very purpose of ensuring your client was adequately protected financially. At this date, your client is holding \$5,214,173.00 in financial assurance for the IGPC pipeline which has a depreciated value of \$3,735,340 and \$3,491,731 for NRG's fiscal 2013 and 2014 years respectively. IGPC has also provided financial assurance of \$232,666.84 for monthly distribution of natural gas. In addition, Union Gas Ltd. ("Union") continues to hold more than \$70,000 in financial assurance provided by IGPC in respect of the M9 agreement between NRG and Union.

In a letter dated October 3, 2013, IGPC requested an exchange of the two letters of credit, replacing the existing Société Générale LCs with RBC LCs, solely because Société Générale is ceasing to carry on business in Canada. In light of the ongoing proceeding at the Ontario Energy Board, EB-2012-0406/EB-2013-0081, IGPC offered to maintain the current values which are in dispute in the hearing. NRG did not and has not accepted that offer.



October 25, 2013  
Page 2

Also, I did not in any way threaten further litigation on IGPC's behalf. It was YOU that indicated NRG would be filing a motion regarding additional financial assurance related to decommissioning costs. It was YOU that stated that this would not be based upon either the Pipeline Cost Recovery Agreement or the Gas Delivery Contract but rather some other concern. I at no time indicated IGPC was even contemplating further litigation.

The primary difficulty or dispute captured in your email lies in the difference of positions in what IGPC considers *service* and what NRG considers *service*. It appears that NRG considers the only requirement of providing service to be the arrival of natural gas at the customer meter. This overly narrow and restrictive interpretation is not correct.

Service encompasses a much broader approach. Adherence to the OEB ordered obligations and the contractual rights and obligations that exist between the customer and the utility is included in the definition of service. For a utility to introduce additional conditions outside of the OEB requirements and the existing contracts as pre-conditions to the fulfillment of the utility's legal obligations is effectively denying the service that NRG is obligated to provide and IGPC is entitled to receive. This dispute is the very essence of Issue 1 in the current OEB proceeding.

I am disappointed in your response. There was absolutely no need to respond in such a manner.

Yours truly,

AIRD & BERLIS LLP



Scott Stoll

SAS/hm

cc: M. Kovnats  
D. O'Leary

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### INTERROGATORY RESPONSE NO. 3

3. Ref: NRG Evidence, page 14, June 3, 2013

NRG in its evidence has provided a breakdown of the legal fees in dispute. Of the total disputed amount of \$244,433, \$94,803 represents legal costs related to the Emergency Motion and \$82,554 has been attributed to the 2008 Motion. Please confirm if IGPC agrees with the above provided breakdown. If not, please provide the costs as per IGPC.

#### **Response:**

The total disputed legal costs are **\$390,135**. The breakdown is explained below. The disputed legal costs excluding contingency costs are **\$258,135**.

IGPC detailed its dispute with NRG's claimed legal costs at paragraph 94 of the IGPC Pre-filed evidence dated June 3, 2013. In that response IGPC provided a table of the disputed legal costs totaling \$390,135. This amount included \$132,000 for contingent legal fees that NRG had, at that time, associated with Ogilvy Renault. Subsequently NRG has made claims in the Contingency Cost, see below, allocating such claims to both Ogilvy Renault and Lenczner Slaght (see discussion below under Contingency Costs).

#### ***Emergency Motion, Appeal of Emergency Motion and 2008 Motion \$199,709***

IGPC disputed \$70,952 of Lenczner Slaght costs in respect of the Emergency Motion and the Appeal of the Emergency Motion. IGPC disputed the \$72,553 costs claimed in respect of Lenczner Slaght 2008 Motion.

IGPC disputed \$56,204 in costs claimed in respect of Ogilvy Renault invoices for the Emergency Motion, Appeal of Emergency Motion and the 2008 Motion. For example, IGPC disputed the cost of Mr. King and Mr. Moran listening to the Emergency Motion and providing advice but being unable to attend when they were intimately knowledgeable of the matters and had recommended execution of the agreements, the PCRA and the GDC, to NRG, and it appears they were readily available.

IGPC disputed these costs as it was successful in these proceedings and the proceedings were entirely unnecessary had NRG engaged in appropriate conduct for a regulated utility.

#### ***Contingency Costs \$132,000***

IGPC would note that NRG has allocated recent invoices from legal counsel to the "Contingency Costs". From the record, it appears the vast majority of these costs have been incurred since 2010. IGPC has strenuously and consistently opposed the inclusion of any Contingency Costs in the cost reconciliation and from being placed into rate base as has occurred in this instance. As such, IGPC opposes the inclusion of any of the legal costs included in the "Contingency Cost" claim.

***Over-lawyering \$31,425***

IGPC disputed \$31,425 in legal costs as it was felt NRG was over-lawyering the file. It appeared that multiple law firms were duplicating efforts.

***Miscellaneous Costs \$12,000***

In addition, NRG had included \$4,000 in costs the Police investigation into the security deposits being demanded by NRG from other ratepayers and an additional \$4,000 for negotiating the franchise renewals. Clearly these items are not related to the construction of the IGPC Pipeline and should not be included in the cost of the IGPC Pipeline.

NRG had also claimed certain costs for legal services around the unauthorized nomination of gas by NRG in June 2008 prior to the Pipeline being in service. This unauthorized nomination caused IGPC to incur substantial costs to avoid the imposition of penalties. NRG also claimed \$2000 post 2008 closing which IGPC viewed as inappropriate.

***Project Management \$15,000***

IGPC has disputed \$15,000 in legal costs that were really Mr. Thacker acting in a project management role rather than acting as legal counsel. The relationship between IGPC and NRG has been particularly fractious. IGPC, for extended periods of time, was using Mr. Alkalay as the primary contact with NRG as the issues being discussed were not legal in nature. IGPC requested on multiple occasions that NRG communicate directly with IGPC and Mr. Alkalay rather than through legal counsel. IGPC's efforts to repair the relationship were rebuffed at every turn. Further, Mr. Thacker has no specialized knowledge of construction or natural gas pipelines that would have facilitated discussions.

Given the disparity between Mr. Thacker's rate of \$675/hour and that of the Project Managers from the engineering consultants, and the non-legal nature of the discussions, IGPC did not view the costs as "reasonable" in the circumstances.

**INTERROGATORY RESPONSE NO. 4**

4. Ref: IGPC Evidence, page 4, June 3, 2013

When did IGPC first contact NRG with respect to the Leave to Construct application?  
Was Mr. Bristoll involved in any negotiations in 2006?

**Response:**

The first contact between IGPC and NRG was initiated in early 2006 with discussions about the availability of gas for a plant such as IGPC was developing. At that time, IGPC met with NRG's former President Mr. Bill Blake and Mr. Sandy McCallum. IGPC understands that Mr. Bristoll replaced Mr. Blake during the second quarter of 2006.

It was not until May/June 2006 that NRG mentioned the need for leave to construct

The negotiations were mainly carried out by NRG legal counsel, Mr. Pat Moran, but IGPC understands that Mr. Bristoll was involved in the negotiation of the Pipeline Cost Recovery Agreement ("**PCRA**") and the Gas Delivery Contract ("**GDC**") which took place in the third and fourth quarters of 2006. There were timesheets filed by NRG in respect of Mr. Bristoll spending time on the IGPC file. Mr. Bristoll was in attendance during some meetings and teleconferences regarding the negotiations. The negotiation of these agreements was not concluded until the end of January 2007, immediately prior to the Board's Decision.

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