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November 11, 2013

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SENT BY COURIER, RESS and ELECTRONIC MAIL

Ms. Kirsten Walli BoardSec@ontarioenergyboard.ca
Board Secretary
Ontario Energy Board
2300 Yonge Street
27th Floor, P.O. Box 2319
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Natural Resource Gas Limited
Written Submissions on Issue 1 per Procedural Order No. 5 (October 11, 2013)
OEB File Nos. EB-2012-0406/EB-2013-0081**

Further to the Board's decision in Procedural Order No. 5 (October 11, 2013), please find enclosed Natural Resource Gas Limited ("NRG")'s written submissions on Issue 1.

Yours very truly,

per Richard King

Richard J. King
RK:pgw

Enclosures (1)

c: All Parties to EB-2012-0406/EB-2013-0081
 T. Graat and L. O'Meara (NRG)
 L. Thacker (Co-counsel to NRG)
 P. Welsh (Osler)

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 Cooperative
Inc., to Natural Resource Gas Limited pursuant to
Sections 19 and 36 of the *Ontario Energy Board Act*, 1998.

**WRITTEN SUBMISSIONS OF
NATURAL RESOURCE GAS LIMITED**

November 11, 2013

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PART I. PROCEDURAL BACKGROUND

1. In Procedural Order No. 2 dated May 17, 2013, the Board determined the scope of the combined proceedings (EB-2012-0406 and EB-2013-0081) regarding Integrated Grain Producers Cooperative Inc. (“IGPC”)’s request for an order requiring Natural Resource Gas Limited (“NRG”) to provide gas and distribution services and gas sales for IGPC’s alleged facility expansion and upgrading plans (EB-2012-0406), and the Board’s review of the capital contribution costs paid by IGPC to NRG (EB-2013-0081). As a result, there are five issues for the Board to determine in connection with the combined proceeding:

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?

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

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?

2. In Procedural Order No. 5 dated October 11, 2013, the Board ordered Board Staff and NRG to file written arguments on Issue 1 on or before November 11, 2013.

PART II. FACTS AND ARGUMENT

A. Preliminary Issues

The issue before the Board is whether or not there has been a refusal to provide gas distribution services

3. Despite the clear instructions provided by the Board in Procedural Order No. 5 that IGPC was to submit its argument-in-chief on Issue 1 (i.e., whether an Order for service under subsection 42(3) of the Act is necessary because NRG has allegedly “refused to provide service”), IGPC dedicated the vast majority of its November 4, 2013 submissions arguing points related to Issues 2 through 5 (i.e., the “capital cost” issue). The Board must explicitly strike paragraphs 10 to 25 of IGPC’s argument from the record and have no regard to it.

4. It is incumbent on the Board to cut through the clutter and see past IGPC’s obvious attempt to complicate the proceedings by raising issues that are irrelevant to the determination that the Board must make, which is to decide whether or not an order requiring NRG to provide gas distribution services and gas sales to IGPC is “necessary and appropriate.” These submissions by NRG are appropriately restricted to Issue 1 in this proceeding.

5. NRG’s position on Issue 1 is simple: an Order from the Board requiring NRG to provide gas distribution services is neither necessary nor appropriate. An Order from the Board is not **necessary** because there has been no denial of service. NRG has provided -- and continues to provide -- gas distribution services to IGPC in a reliable and consistent fashion. NRG has never refused to provide services to IGPC.

6. An Order is also not **appropriate** because such an order would be premature. IGPC requested an urgent meeting with NRG to discuss its facility expansion plans in a letter sent on June 18, 2012. NRG also sent follow-up letters to IGPC confirming its willingness to meet to discuss IGPC's plans and needs. NRG has received no subsequent meeting requests nor any information from IGPC about any potential expansion plans.

7. IGPC, in typical fashion, rushed to the Board for an Order by unilaterally characterizing NRG's letter of July 9, 2012 as a denial of service, all the while rebuffing NRG's attempts to engage in meaningful dialogue with IGPC over its purported expansion plans. The Board should not sanction IGPC's attempt to circumvent rational commercial discussions by invoking the Board's process for an order that would be premature. IGPC's conduct in commencing frivolous litigation is a misuse of the Board's process to further its tactical agenda against NRG. Unless NRG has denied service to IGPC, there are no grounds on which an Order compelling NRG to do what it is already doing could be granted.

8. Moreover, one has to query the legitimacy of IGPC's expansion plans. It has been about a year and a half since IGPC demanded immediate action by NRG to accommodate a pending expansion, yet it appears from IGPC's inactivity since then that there is no real expansion.

B. Background Issues

NRG has never denied service to IGPC

9. NRG has provided gas distribution service reliably and consistently to IGPC since July 15, 2008. As far as NRG is aware, there have been no issues or complaints with the existing

service provided by NRG to IGPC. NRG has never denied service to IGPC, or any other customer.¹

10. 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 and their interpretation of its intent.² NRG did not deny service to IGPC in that letter.

IGPC has only provided limited information about its potential expansion plans

11. 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.³

12. 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).

13. NRG replied immediately (on the same day) and indicated that IGPC should deal with NRG's President with respect to the matter.⁴

14. 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.⁵

¹ EB-2012-0406/EB-2013-0081: Evidence of Natural Resource Gas Limited (filed June 3, 2013) (the "Evidence") at paras. 4-7.

² See EB-2012-0406/EB-2013-0081: Pre-filed Evidence of Integrated Grain Processors Co-operative Inc. (filed June 3, 2013) ("IGPC Evidence") at Exhibit C, Tab 7. See also Evidence at para 6

³ See IGPC Evidence at Exhibit C, Tab 4). See also Evidence at para 8

⁴ See IGPC Evidence at Exhibit C, Tab 5. See also Evidence at para. 10.

15. 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.⁶ The intent of the letter was to engage in a meaningful dialogue with the possibility of resolving some of the outstanding issues and to get a better understanding of IGPC's future plans. 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.
- (b) IGPC is financially able to fund any such expansion project, which was a concern as noted below in more detail; 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.

16. This was a prudent move on NRG's part to ensure the utility did not incur any unrecoverable costs and any future project with IGPC was fully understood by all parties and could be discussed in a meeting rather than by way of an exchange of letters. NRG did not want

⁵ See IGPC Evidence at Exhibit C, Tab 6. See also Evidence at para. 11.

⁶ See IGPC Evidence at Exhibit C, Tab 7. See also Evidence at para. 12.

to end up in the same situation as with the construction of the current IGPC pipeline with approximately 2,000 emails being sent back and forth.

17. 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.⁷

18. 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.⁸

19. Since then, NRG has received no requests or information from IGPC about any potential expansion plans (other than the premature application that gave rise to this proceeding which IGPC filed with the Board on October 11, 2012).

20. IGPC does not dispute these facts and has no other evidence to support its allegations.

21. Finally, it is important to note that NRG is dependent on Union Gas' ability to supply the required volumes into NRG's distribution system. This is yet another reason why it is essential that IGPC provide NRG with appropriate details of its proposed expansion plans.

⁷ See IGPC Evidence at Exhibit C, Tab 9 (1 of 2). See also Evidence at para. 13

⁸ See IGPC Evidence at Exhibit C, Tab 9 (2 of 2). See also Evidence at para. 14

NRG did not deny IGPC any service; rather, it continued to assess IGPC's request

22. 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 allegation is plainly false. What is clear is that IGPC either has no need for new services or is attempting yet again to manufacture another unnecessary proceeding before this Board..

23. 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.⁹ 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.

24. This work continued because NRG is entitled -- pursuant to its Board-approved Schedule of Service Charges -- to charge customers for contract work. NRG does not need to rely on a deferral account.

25. Further, while information about MIG Engineering's work (including invoices) is evidence that NRG continued to do work during the time period IGPC alleged NRG denied it

⁹ See IGPC Evidence at Exhibit C, Tab 8. See also Evidence at para. 17

services, the appropriateness of the invoices has already been determined by the Board to be beyond the scope of this proceeding.¹⁰

26. After not hearing from IGPC, it has been NRG who pursued IGPC to ask whether IGPC's expansion plans had been put on hold.¹¹ The July 25th response from IGPC was a cryptic one-sentence letter merely saying that IGPC was in the preliminary engineering stages.

27. 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.

28. IGPC's conduct in this issue is yet another example of commencing frivolous and vexatious litigation to achieve tactical goals. These allegations are clearly unsupported and contradicted by undisputed facts.

NRG has legitimate concerns about IGPC's financial viability

29. Given the size of IGPC (i.e., making approximately 30% of NRG's rate base), and its seemingly precarious financial situation, it was entirely appropriate for NRG to request a meeting with IGPC and the resolution of issues in order to pursue work on an IGPC expansion. As NRG has advised the Board, IGPC is wholly dependent on government grants for its existence.¹² These government grants expire in 2016, which is of great concern to NRG. This

¹⁰ See EB-2012-0406/EB-2013-0081: Decision on Motion and Procedural Order No. 4 (August 29, 2013) at pp. 3-4.

¹¹ See IGPC Evidence at Exhibit C, Tab 9 (1 of 2). See Evidence at para. 18.

¹² See Evidence at para. 21(b). See also Consolidated Financial Statements of Integrated Grain Processors Cooperative Inc. (September 30, 2011) at Evidence, Exhibit "A".

concern has been heightened recently by media reports suggesting declining government support for the renewable fuels industry. For instance, the federal government's \$159 million ecoAgriculture Biofuels Capital Initiative ended on March 31, 2013, and the \$1.5 billion ecoEnergy for Biofuels is also being shut down.¹³

30. The federal government's lack of support for the ethanol industry may be driven by the government's need for fiscal restraint. Those same fiscal concerns exist at the provincial level.¹⁴

31. IGPC has not provided any indication as to whether any level of government has committed to subsidizing the ethanol plant in Aylmer beyond 2016.

32. Consequently, it would be imprudent 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. Moreover, NRG has requested updated financial information from IGPC and has been denied. As it currently stands, NRG was denied the ability by the Board to include decommissioning costs of the IGPC pipeline in rates.

IGPC's expansion plans were clearly not urgent

33. 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

¹³ EB-2012-0406/EB-2013-0081: Interrogatory Response of NRG to Town of Aylmer (filed June 28, 2013), Interrogatory Response #1. See also "Ottawa ending biofuels subsidy over unfulfilled industry promises", *The Globe and Mail*, February 22, 2013.

¹⁴ EB-2012-0406/EB-2013-0081: Interrogatory Response of NRG to Town of Aylmer (filed June 28, 2013), Interrogatory Response #1

down reasonably with NRG to discuss its expansion plans, and on the basis of “urgent” claims that clearly are not urgent.

PART III. RELIEF REQUESTED

34. NRG respectfully requests an Order by the Board confirming that an Order of the Board requiring NRG to provide gas distribution services and gas sales to IGPC is not necessary and not appropriate, and that IGPC’s application should be dismissed in its entirety, with costs to NRG.

35. In the alternative, if NRG is required to take any steps in furtherance of IGPC’s proposed expansion, then NRG respectfully requests an Order by the Board requiring IGPC to provide detailed submissions, including financial analysis, a business plan, details of gas volume and pressures, and other data before NRG is required to provide additional gas distribution services and gas sales to IGPC.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

November 11, 2013

per Richard King

Richard King – Osler Hoskin & Harcourt LLP

per Lawrence Thacker

Lawrence Thacker – Lenczner Slaght Royce Griffin LLP