



ONTARIO ENERGY BOARD

BOARD STAFF SUBMISSION

**INTEGRATED GRAIN PROCESSORS CO-OPERATIVE INC.
AND
Natural Resource Gas Limited**

**Board File Nos.
EB-2012-0406/EB-2013-0081**

November 11, 2013

Background

Integrated Grain Processors Co-operative Inc. ("IGPC") filed an application with the Board under section 42(3) of the Act, seeking an order requiring Natural Resource Gas Limited ("NRG") to provide it with natural gas service.

The particulars of the dispute are as follows. IGPC is NRG's largest customer. It operates an ethanol production facility in NRG's franchise area and constitutes approximately 60% of NRG's entire system load. IGPC is currently being served by way of a 28.5 km. NPS 6 inch steel pipeline with annual volumes exceeding 33 million cubic meters¹. IGPC is looking to expand its operations, and to the extent it does so, it will require additional gas volumes and possibly upgrades to the pipeline and associated facilities that serve it.

On June 18, 2012, IGPC wrote to NRG requesting a meeting to discuss the potential for increased gas volumes. IGPC hoped to confirm that the existing pipe had sufficient capacity to accommodate the planned volumes. NRG responded later that day with a request that all correspondence (other than that related to operational emergencies) should be directed to NRG President Mr. Anthony Graat. By letter dated July 3, 2012, IGPC requested a meeting with Mr. Graat to discuss its expansion plans.

NRG responded to this request with a letter on July 9, 2012. The letter stated:

July 9, 2012

IGPC
89 Progress Drive
P.O. Box 205
Aylmer, ON N5H 2R9

Attention: Mr. Jim Grey
Chief Executive Officer

Dear Mr. Grey,

We are in receipt of your letter dated July 6, 2012. With respect to the current annual review of the direct purchase arrangement, you understand correctly that NRG consented to the volumes and this was communicated to both AgEnergy and Union Gas. It has not been the practice in the past to supply any further documentation to IGPC, however, we requested that Jack Howley send you a copy of the SA 8937 Parameters Report for your records.

¹ IGPC Evidence, Exhibit A, Page 2, June 3, 2013

The intention of our letter was to ensure any matters, other than operational emergencies, are addressed at the highest level and there is one contact person for all such issues. We may then choose to delegate the issues within our organization.

In the past any issue with IGPC has involved an excessive use of executive time and expense by NRG. Any future requests made by IGPC would have to include a method for IGPC to compensate NRG for the time spent and the out of pocket expenses that it occurs. These financial arrangements will have to be in place before any discussions will be entertained. NRG will not and can not spend managements' time and financial resources to discuss an IGPC request with outside consultants and lawyers, only to be told that NRG's costs are excessive and IGPC will not pay.

As you know, there are currently several large and important matters that must be resolved. It is NRG's understanding, that IGPC believes that the cost incurred by NRG on the construction of the high pressure pipeline starting in 2007 are still not agreed too. If that is correct, then that issue must also be resolved.

Just to reiterate, NRG can not enter into any discussions regarding possible new business or changes to existing business arrangements until major disagreements have been resolved.

Yours truly,

NATURAL RESOURCE GAS LIMITED

Anthony H. Graat
President

In letters dated August 24, 2012 and September 27, 2012, NRG further sought to bill IGPC a total of \$6876.39 for the time it had spent addressing IGPC's request for expanded service. Virtually no details were provided regarding the nature of these expenses. Board staff is not aware of any work that was conducted other than the drafting of Mr. Graat's letter dated July 9th. IGPC asked several interrogatories on the expenses, but NRG declined to provide any further information.

Obligation to serve

NRG is a regulated natural gas distributor that is regulated by the Board pursuant to the *Ontario Energy Board Act, 1998* (the "Act"). It is a monopoly service provider; absent a by-pass, it is IGPC's only source for the natural gas that it requires to operate its business.

One of the key purposes of utility regulation is to prevent the abuse of monopoly power. At common law, this has given rise to what is known as the "regulatory compact". In

ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board), the Supreme Court of Canada described the regulatory compact as follows:

These goals have resulted in an economic and social arrangement dubbed the “regulatory compact”, which ensures that all customers have access to the utility at a fair price — nothing more. [...] Under the regulatory compact, the regulated utilities are given exclusive rights to sell their services within a specific area at rates that will provide companies the opportunity to earn a fair return for their investors. **In return for this right of exclusivity, utilities assume a duty to adequately and reliably serve all customers in their determined territories, and are required to have their rates and certain operations regulated.**²

The regulatory compact is further codified through the Act and the Gas Distribution Access Rule (“GDAR”). Section 42(2) of the Act is clear that “a gas distributor shall provide gas distribution services to any building along the line of any of the gas distributor’s distribution pipe lines upon the request in writing of the owner, occupant or other person in charge of the building.” Sections 2.1 and 2.2 of the GDAR further provide:

2.1. Gas Distributor Provides Services

2.1.1 A gas distributor shall provide gas distribution services in a non-discriminatory manner.

2.1.2 A gas distributor shall respond to all requests for gas distribution services from a person in a timely manner. The gas distributor shall record, at a minimum, the receipt and response dates of each such request.

2.2 Connection to and Expansion of a Gas Distribution System

2.2.1 A gas distributor shall connect a building to its gas distribution system in accordance with subsection 42(2) of the Act.

2.2.2 A rate-regulated gas distributor shall assess and report on expansion to its gas distribution system in accordance with the guidelines contained in the E.B.O. 188 Report.

² [2006] 1 S.C.R. 140, para. 63 (emphasis added)

There are of course some scenarios where the Act allows a utility to refuse to provide gas distribution services³; however, there has been no suggestion by NRG that any of those scenarios apply to the current situation.

Board staff have not had the benefit of seeing NRG's submissions on this issue. From NRG's interrogatory responses and a review of the correspondence that has been filed in this proceeding, Board staff understands that NRG's position is that it has not refused to provide service, and is willing to discuss IGPC's expansion plans as long as NRG's costs are covered and a number of disputes are resolved.

NRG's conduct to date does not reveal a genuine interest in assisting IGPC in meeting its potential needs for additional gas service.

Mr. Graat's July 9, 2012 letter is troubling to Board staff. Mr. Graat's statement that "NRG can not enter into any discussions regarding possible new business or changes to existing business arrangements until major disagreements have been resolved" is, on its face, a clear refusal to discuss NRG's potential needs for additional gas service. The "major disagreements" are not specified in the letter, but there is no suggestion that they relate to any legitimate rationale for refusing to provide service.

Given NRG's refusal to discuss IGPC's expansion plans, its decision to send IGPC a bill for "expenses spent to date on Potential Expansion of IGPC facility"⁴ is inexplicable. NRG's apparent refusal to provide any explanation for the invoice does not reflect well on its commitment to customer service.

Although NRG's response to IGPC's supplemental interrogatory #1 appears to indicate a vague and conditional willingness to discuss IGPC's expansion plans⁵, it is not clear if it will do so before the unspecified "major disagreements" are resolved, or the invoices paid. In Board staff's submission, this is not an acceptable position.

NRG's behaviour in this matter has been unhelpful. A utility has a responsibility to work with its customers to provide the distribution services they require. Refusing to meet to discuss expanded gas service, and sending invoices with no proper explanation (or approval from the Board), does not meet this standard. NRG's conduct borders on an

³ See, for example, section 42(5) of the Act.

⁴ Letter from NRG to IGPC, August 24, 2012. (IGPC pre-filed materials, tab 5)

⁵ NRG response to IGPC interrogatory no. 1, October 28, 2013.

abuse of monopoly power, and the Board should intervene to ensure that IGPC receives the gas service it requires.

NRG has no authority to bill IGPC for any services absent an Order of the Board.

Relief Requested

Board staff submits that much of the relief sought by IGPC should be granted. NRG should be directed to meet with or otherwise respond to IGPC's requests to discuss IGPC's expansion plans, and its potential needs for additional gas service (provided IGPC still wishes to expand its facility). It is troubling that a Board order should be required for such a routine matter of utility business.

NRG should be directed that it cannot refuse to serve (or discuss expanding service) with IGPC except as specifically set out by legislation. Existing disputes over the capital cost of the existing pipeline, the amount of financial assurance provided by IGPC, or the libel action against IGPC are not grounds for refusing service, or refusing to discuss expanded service.

IGPC has made proposals with respect to any additional costs that NRG might incur in examining IGPC's needs. In Board staff's submission, absent extraordinary circumstances any internal NRG costs should be considered to be included in existing rates. IGPC is by far NRG's largest customer, and it contributes a very significant portion of NRG's operating and capital costs. NRG has no authority to charge it additional amounts for meetings.

To the extent that external consultants are required to assess any upgrades, NRG might be required to make modifications to its system to accommodate an expansion, IGPC has expressed its willingness to cover those (reasonable) costs. Board staff recognizes that NRG is a small utility with little in-house engineering expertise, and that some flexibility may be warranted in providing for (and paying for) reasonable external assistance. As IGPC has volunteered to do so, Board staff is not sure why there is a problem here. The Board should direct NRG to work with IGPC to determine what, if any, external resources are required. If there is a disagreement about costs, it could come to the Board for resolution. However, as the Board should expect that any two

reasonable parties should be able to resolve this type of situation on their own, the Board should specify that if this matter comes back to the Board, one party will be required to pay all of the other's costs.

IGPC in its argument-in-chief has suggested a materiality threshold of \$35,000 in internal costs for NRG before it is able to claim costs incurred for responding to specific requests from IGPC. Board staff submits that such a threshold is not necessarily required. NRG should be able to absorb internal costs related to such requests which would generally be considered routine business. To the extent that NRG's current rate structure does not allow it to recover all of its costs, it can seek to include additional (future) costs in its next cost of service proceeding

However, should NRG expect to incur significant costs related to engineering studies or consultants, NRG can request a deferral account in the next IRM proceeding. The Board would then conduct a prudence review when the deferral account is cleared.

Board staff further submits that there is no need to make an order, as requested by IGPC, confirming that the relief granted in this proceeding is an "enforceable provision" as defined by Section 112.1 of the Act.

It is evident that NRG has not acted in an appropriate manner and has hampered IGPC's efforts to obtain the required information for its planned expansion. Accordingly, Board staff submit that NRG should pay for IGPC's costs related to this aspect of the proceeding.

– All of which is respectfully submitted –