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November 18, 2013

BY COURIER, EMAIL AND RESS

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319, 27th 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**

Pursuant to Procedural Order No. 5 dated October 11, 2013, we attach two copies of the Reply Submissions of Integrated Grain Processors Co-operative Inc. in respect of Issue No. 1.

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)

15801254.1

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

**REPLY SUBMISSIONS OF
INTEGRATED GRAIN PROCESSORS CO-OPERATIVE INC.
IN RESPECT OF ISSUE NO. 1**

Introduction

1. Integrated Grain Processors Co-operative Inc. ("IGPC") is responding to the Submissions made by Board Staff, the Town of Alymer and Natural Resource Gas Limited ("NRG") in respect of Issue No. 1. IGPC repeats and adopts for the purposes of this Reply Submission its Argument in Chief dated November 4, 2013.

Reply to Board Staff

2. IGPC adopts the Submissions of Board Staff dated November 11, 2013. In respect of IGPC's suggestion of the use of a materiality threshold of \$35,000.00, IGPC agrees with Board Staff that NRG's current rates should allow it to absorb internal costs related to IGPC's request for additional gas distribution services as part of NRG's routine business. The intent behind the \$35,000.00 materiality threshold was that it would only apply to extraordinary internal costs.

3. IGPC notes the suggestion of Board Staff that NRG could request the creation of a deferral account in the event that it expects to incur significant costs related to engineering studies or consultant's. IGPC would reasonably consider such a request but would remain concerned that NRG might once again frustrate the prudence review process of amounts

recorded in the deferral account in the same way that it has in respect of the capital costs of the Pipeline.

4. Board Staff correctly note that as a matter of law, it is not necessary for the Board to state that an order requiring NRG to provide additional gas distribution services is an "enforceable provision" as defined by Section 112.1 of the *Ontario Energy Board Act*. Any such order of the Board is an enforceable provision. While such a statement is not necessary as a matter of law, it was hoped that such language would signal to NRG the Board's concern about NRG's conduct to date and the serious nature of any repeated conduct in future.

Reply to the Town of Alymer

5. IGPC similarly adopts and supports the Submissions made by the Town of Alymer. In respect of the relief suggested at sub paragraph 40(b) of the Town's Submission, IGPC suggests that conditions No. 1 and 2 to the relief sought are already provided for by the Board's mandated processes. Such language is not necessary lest it offer NRG an opportunity to suggest that something beyond that already required by the Board's mandated processes is intended by such language.

Reply to NRG Submission

6. Issue No. 1 clearly relates to the conduct of NRG because, as IGPC noted in paragraph 2 of its argument, a review of NRG's past conduct is undoubtedly a harbinger of its future conduct. IGPC submits that the relief sought in respect of Issue No. 1 should be informed by a detailed review of NRG's conduct to date. Accordingly, IGPC reviewed in detail NRG's conduct leading up to this proceeding believing that this would assist the Board as to the specificity of the Order that is required.

7. Aside from there being no legal basis to strike a portion of a parties argument, the conduct IGPC references in its argument is the very conduct to which Mr. Graat specifically refers in his letter of denial dated July 9, 2012. It is, therefore, inextricably connected to Issue No. 1 being the "major disagreements" to which Mr. Graat refers. Any consideration of whether the reasons given by Mr. Graat for his refusal to provide service requires a review of the

disagreements in question so as to confirm that NRG did not have a lawful basis to refuse service.

8. Consistent with its past conduct, NRG attempts to lay blame on IGPC. Stated briefly, NRG is suggesting that IGPC, the customer, should have taken additional steps notwithstanding the response received from Mr. Graat. NRG suggests IGPC is attempting to circumvent rational commercial discussions yet that is precisely what Mr. Grey had requested and Mr. Graat refused. NRG suggests some failure by IGPC in not providing additional information in respect of expansion plans yet this is precisely the reason why Mr. Grey wished to meet with NRG's management only to be rebuffed by Mr. Graat.

9. Rather than accept that the letter was inappropriate, NRG at paragraph 16 of its submissions calls Mr. Graat's letter "a prudent move". What this clearly suggests is that absent a clear Decision and Order from the Board confirming the inappropriateness of Mr. Graat's letter and NRG's conduct, NRG will continue to act in a manner consistent with the past. Without a clear statement from the Board indicating that Mr. Graat's letter constituted a denial of services and the imposition of unlawful conditions to the provision of service, then it is obvious that NRG will see its past conduct as being acceptable.

10. NRG's assertion that it continued to assess IGPC's request for distribution services lacks all credibility. While it claims to have engaged an engineer and contacted Union Gas, when asked to provide the particulars of the accounts it rendered for such work, NRG refused to provide any details in response to IGPC's interrogatories. NRG states at page 4 that it had inadequate information but then states 3 pages later that it retained people to assess the inadequate information. These submission are obviously completely inconsistent.

11. Once again, rather than acknowledging an error, NRG remains defiant in effect arguing that Mr. Graat's letter and its subsequent invoices were prudent and appropriate. In this regard, IGPC accepts and repeats the submissions made by Board Staff:

- (a) Given NRG's refusal to discuss IGPC's expansion plans, it's decision to send IGPC a bill for "expenses spent to date on Potential Expansion of the IGPC

facility" is inexplicable. NRG's apparent refusal to provide any explanation for the invoice does not reflect well on its commitment to customer service (Board Staff Submission, Page 5).

- (b) NRG has no authority to bill IGPC for any services absent an Order of the Board (Board Staff Submission, Page 6)

Conclusion

12. It is indeed unfortunate that the within proceeding was necessary. Fortunately, such proceedings are extremely rare in respect of the conduct and actions of other utilities in the Province. The Submissions of NRG however make it clear that this proceeding was necessary as it remains in a "denial mode" in respect of the inappropriateness of its conduct. IGPC commits that NRG has been abusive of its monopolistic position and IGPC requests assistance from the Board in protecting it from the continuation of such misconduct.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Date: November 18, 2013



Scott Stoll

Dennis O'Leary