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December 2, 2013

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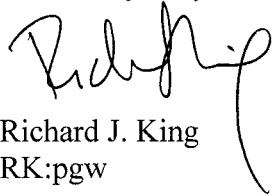
Ms. Kirsten Walli BoardSec@ontarioenergyboard.ca
Board Secretary
Ontario Energy Board
2300 Yonge Street
27th Floor, P.O. Box 2319
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Natural Resource Gas Limited ("NRG")
Reply Submission of NRG to Town of Aylmer (Issue #1)
OEB File Nos. EB-2012-0406/EB-2013-0081**

Please find enclosed NRG's reply to the Town of Aylmer's submission on Issue #1 in the above-noted proceeding.

Yours very truly,



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 subsection 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*.

**REPLY SUBMISSIONS OF
NATURAL RESOURCE GAS LIMITED
TO TOWN OF AYLMER (ISSUE #1)**

December 2, 2013

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PART 1 – INTRODUCTION

1. The November 11 submission of the Town is truly remarkable for its complete lack of concern for any gas customer in Aylmer (whether residential or small business) other than IGPC.

2. According to the Town's submission, this Board should order NRG to unconditionally do whatever IGPC demands, because:

- (a) even if IGPC is no longer in business, NRG has no cost risk because the OEB has said that NRG's other customers will pay for: (1) any un-depreciated value of the IGPC pipeline; and (2) the costs of connecting the IGPC pipeline to the rest of NRG's system;
- (b) the Town is losing economic development opportunities; and
- (c) the "regulatory compact" governing NRG's operations require it.

3. These arguments of the Town are even more remarkable given that IGPC has provided no indication (at least to NRG) that its provincial operating grants will continue beyond 2016, and enable it to remain viable. The last financial statements for IGPC that we were able to obtain make it clear that without operating grants, IGPC will be insolvent and will have to cease operations.

4. Part 2 of this Reply will address each of the Town's arguments.

PART 2 – REPLY SUBMISSIONS

A. The Town Says NRG's Obligation to Serve IGPC is Unconditional

5. The Town states that NRG sought to place conditions on IGPC's expansion plans, and that NRG cannot do so because the obligation to serve is absolute.

6. This is incorrect on several fronts. First and foremost, NRG did not place any conditions on IGPC's expansion plans. Indeed, NRG immediately undertook preliminary work on IGPC's behalf – which NRG has not been paid for. Moreover, the most recent correspondence between the parties indicates that NRG has pursued IGPC to try to get an understanding of its expansion plans, only to be told (a year and a half ago) that IGPC was in the preliminary stages of engineering. It is hard to imagine that there has been a denial of service. Indeed, given that IGPC has not sought to have NRG carry out any work in the past year and a half, NRG does not believe there is a current request for expanded service.

7. Second, given IGPC's current circumstances (the expiry of their operating grants), the past history between NRG and IGPC (which has served neither party well), and the potential for material cost shifting to NRG's other ratepayers, NRG thought it prudent to meet with IGPC to resolve historic grievances and understand IGPC's financial circumstances before embarking on a future project. NRG did not hold this meeting out as a condition, and the fact that NRG did work (including retaining third party engineers) on the very preliminary information provided by IGPC is clear evidence of that.

8. The Town, it appears, would prefer no discussion or resolution of these issues, and would prefer NRG to expose its ratepayers to even more potential cost shifting from IGPC to the Town's residents and small businesses. This potential cost shifting is real – if IGPC's grants are not renewed, it is hard to see how it could survive past 2016. At that point, the undepreciated

value of the IGPC pipeline would be about \$3 million. If we add to that the \$600,000 capital cost to integrate the IGPC pipeline into NRG's system, that leaves \$3.6 million in capital costs to be recovered from NRG's other customers, starting in 2016 or shortly thereafter.

9. IGPC is not bothered by this because they are the beneficiary of this cost-shifting. It is hard for NRG to understand why the Town is not concerned about this cost-shifting. In the early days of the ethanol plant's development and operations, NRG raised these issues (about the disappearance of IGPC prior to fully depreciating the pipeline, and decommissioning costs), but the Board panel at the time (led by former Vice Chair Kaiser) also seemed unconcerned, as shown in the next section of this reply submission.

10. These cost-shifting risks are now very real. And IGPC has not been forthcoming about whether its operating grants will be extended. Indeed, when NRG started to raise such concerns, IGPC stopped posting their financial statements on the public portion of their website. Given the importance of IGPC to NRG's business (accounting for over one-third of throughput), NRG finds this very troubling because it implies either that there has been no resolution of the operating grants renewal (which would presumably be disclosed in financial statements) or that IGPC has other plans that it cannot share with NRG.

11. In this context, and particularly when confronted with an "expansion", NRG had merely sought to meet with IGPC to get a better understanding of these fundamental issues, and ensure that the parties could proceed with any expansion on a sound financial basis, without a repeat of the acrimonious relationship that still lingers from the original pipeline construction. That is, in NRG's submission, exactly how any prudent utility should act.

12. NRG never held up any work on IGPC's expansion. It took the basic information provided, and started down the path of trying to answer IGPC's questions. However, in the last letter in the correspondence chain between NRG and IGPC, IGPC told NRG to stop work until preliminary engineering was done by IGPC. That was a year and a half ago.

13. The final point to make here relates to the Town's claim that NRG's obligation to serve is "absolute". The Town constructs an elaborate argument around section 42 of the *Ontario Energy Board Act, 1998* (the "OEB Act") but to be blunt, section 42 is only one aspect of the statutory scheme governing NRG. There are, arguably, no absolute rights or obligations in the OEB's regulatory regime. Indeed, the entire underlying premise of utility regulation involves a balancing of the interests of consumers on the one hand (and in some cases, multiple consumer groups with different interests), and the interests of utilities on the other hand. This is true in rate proceedings and facility proceedings before the OEB.

14. This fact is reflected not only in the Board's statutory objectives (protecting the interests of consumers and maintaining a financially viable gas industry), but also in the various statutory provisions and regulatory rules governing the OEB and gas market participants. These include a utility's ability to obtain security deposits, the aid-to-construct calculation in EBO 188 to protect existing ratepayers, terms and conditions placed upon utilities in leave-to-construct applications, etc.

15. So the obligation to serve is not unconditional. Were that the case, we would have no leave-to-construct applications, there would be no terms or conditions placed on any new capital projects, customer contributions would not be required, etc. The fact is there are all

kinds of rules around new and expanded facilities, all of which are part of the Board's checks and balances in order to maintain the balancing of interests between consumers and utilities.

B. The Town Says NRG Has No Risk of Non-Recovery – Other Customers Will Pay

16. The Town argues that NRG bears no financial risk when it comes to the IGPC pipeline. The Town cites the following from the Board's original leave to construct decision:

The PCRA requires IGPC to provide an irrevocable delivery letter of credit in the amount of \$5.3 million, which IGPC must maintain for as long as it continues to receive service. This letter of credit will be reduced annually to an amount equal to the net book value of the assets of this project. This aspect of the PCRA will ensure that NRG can draw on this letter of credit in the event of either a default by IGPC or its ceasing operation prior to the assets are fully depreciated, thereby avoiding the potential for stranded assets. This protects NRG and its ratepayers. [EB-2006-0243 Decision, Feb. 2, 2007, p.3]

17. On this point, the Town also states that even if IGPC were to disappear, NRG has no risk because in a March 2008 decision, the OEB stated:

On the Motion, IGPC argued that NRG had stated that if the ethanol plant ceased operation, the pipe could be integrated into the NRG system at a cost of \$600,000, that those costs would form part of the rate base, and that the cost to ratepayers would be insignificant. The Board accepted that argument and ruled that NRG was not entitled to security for decommissioning costs. [EB-2006-0243 Decision on Motion, March 12, 2008, p. 7]

18. As noted above, however, this comes with costs to NRG's other ratepayers that (five and six years later) appear to be ready to materialize. Moreover, these costs are not immaterial (\$3.6 million) and potentially not far off (2016) if there is no renewal of IGPC's operating grants.

19. NRG believes strongly that prior to embarking on potential further costs associated with an expansion, a discussion of these important issues is warranted. NRG did not seek to hold up or delay any expansion discussions with IGPC, but does want to have the

conversation. NRG's position is to protect all of its ratepayers from incremental costs caused by IGPC.

20. Quite frankly, it is ironic that NRG seems to be the one pushing for this. Like any utility, NRG benefits from having a larger rate base. One would have expected the Town to raise the potential cost-shifting issue, in the interests of its citizens and those in neighbouring municipalities (i.e., NRG's ratepayers). Notwithstanding the previous OEB panel's lack of concern or indifference to the cost-shifting issue at the time, presumably the Board would today view this as a material issue given: (a) the size of IGPC; (b) its importance to NRG; (c) its dependence on operating grants that appear to be ready to expire; and (d) the fact that IGPC's demise appears to be imminent.

21. NRG is simply acting as a prudent utility, concerned about future expansion on a project that has the ability to shift material costs to its other ratepayers. This should be of concern to others.

22. The fact that the Town is unconcerned is troubling. The fact that the Town has no interest other than IGPC's at heart raises the issue of why the Town should be entitled to intervene and participate in any proceeding where IGPC is already a participant. Certainly the Town is representing no other interests of merit.

C. The Town Says it is Losing Economic Development Opportunities

23. At paragraphs 12, 28 and 41 of its submission, the Town asserts IGPC's importance to the economic recovery and development of the Town, and that gas supply to ventures like ethanol production is vital to help attract business to communities like Aylmer.

24. Simply put, this is irrelevant.

25. The OEB has long held strictly to its statutory mandate, and deliberately refrained from making any determinations on the basis of promoting general social or economic development policies outside its mandate.

26. As far as NRG is aware, the only time that the Board has deviated from this was in the decisions led by former Vice Chair Kaiser in the initial IGPC matters. For example:

This is the third hearing the Board has held with respect to this project, two of which have been on an emergency basis. The Board is fully aware of the importance of this project to the community. The Board is also aware of the substantial financial commitment by members of the Co-operative, the Federal government and the Provincial government. [EB-2006-0243, Mar. 4, 2008, p. 2]

27. This quote flies in the face of previous Board practice and determinations, which has always held strictly to the fact that the Board is an economic regulator, and not in the business of promoting social or policy objectives such as local economic development initiatives.

28. The basis for the Board's determinations has always (with the exceptions of the decisions of former Vice Chair Kaiser) been grounded in the statutory objectives of the OEB Act. The social and economic policy initiatives furthered by the Board's decisions are similarly tied to these statutory objectives (i.e., promotion of renewable generation, protection of consumers on pricing, etc.).

29. To give any weight to the Town's economic development arguments in this case would take the Board beyond its statutory jurisdiction, or in the alternative, open the floodgates to broader social and economic benefit arguments before the OEB.

30. Finally on this point, as alluded to above, NRG doubts that there is any real expansion project in the works. If there were a viable project, why has IGPC been silent for the past year and a half? And if this expansion is so “vital” to the Town, why has the Town been silent?

31. The fact that a year and a half has passed with no resumption of gas expansion plans by IGPC is telling. How could something so urgent to IGPC, and purportedly so important to the Town, be kept in a preliminary stage for so long? How can the Town come to the conclusion that this “expansion” is a vital and plausible plan? Has the Town received information about the expansion that NRG has not (notwithstanding NRG’s requests of IGPC for further information that might shed light on the expansion requirements)?

32. Stepping back, and in light of the last correspondence from IGPC that it was in the preliminary engineering stages a year and a half ago, what is it that NRG is being asked to do?

D. The Town States that the “Regulatory Compact” Requires NRG to Provide Unconditional Service to IGPC

33. At paragraphs 20 and 34 of its November 11 submission, the Town argues that as a regulated monopoly, NRG must provide all services to all potential customers unconditionally because that is what the “regulatory compact” requires.

34. The Town does not set out what it thinks “regulatory compact” means, nor how the “regulatory compact” would bear upon the issue of NRG’s obligation to serve.

35. The phrase “regulatory compact” is from time-to-time used in utility regulatory proceedings (most often rate proceedings), but typically with very little discussion as to what it means and how it applies.

36. Indeed, even when purportedly relied upon by tribunals and courts, NRG submits that the principle is so vague and inconsistent to be of absolutely no real use to decision-makers. The National Energy Board (“NEB”) seems to have reached this same conclusion in TransCanada PipeLines’ recent tolls case, wherein the NEB had the following to say about the “regulatory compact” concept:

In our view, the concept is ill defined. TransCanada’s interpretation of the regulatory compact would have the effect of protecting the Mainline from the impact of competition. Some intervenors contended that the concept protects them from a pipeline’s market power. We are of the view that the differing characterizations of the regulatory compact evidences a fundamental flaw in using the concept to set just and reasonable tolls: the regulatory compact means different things to different people. [National Energy Board, Reasons for Decision in RH-003-2011, March 2013, pp. 37-38.]

37. Consequently, NRG submits that the “regulatory compact” as a principle (or perhaps as the NEB refers to it, merely a “concept”) offers little or no guidance to this Board’s determination of the question of whether NRG has refused to provide service to IGPC.

E. Miscellaneous

38. NRG would also like to address the repeated reliance by the Town (see paragraphs 10 and 25) on the Board’s June 29, 2007 Order. Given that this Order and the decision and reasons underlying it have been completely vacated by the Board on its own motion, it has no weight. IGPC and the Town need to stop referencing it. All that can be said is that it establishes beyond any doubt that the position of IGPC, supported by the Town of Aylmer at the time, had no merit. There was no urgency and no obligation on NRG to do what IGPC demanded. It was a wasteful and costly fiasco caused entirely by IGPC. Put frankly, IGPC’s

urgent “expansion”, supported by the Town, is looking a great deal like the June 2007 emergency motion.

PART 3 – ORDER REQUESTED

39. In light of the Town’s proposal for a specific Order from this Board, NRG respectfully requests an Order:

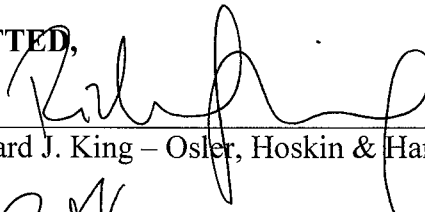
- (a) confirming that there has been no denial of service; and
- (b) dismissing IGPC’s application with costs payable to NRG.

40. In the alternative, if NRG is required to take any steps in furtherance of IGPC’s proposed expansion, then NRG respectfully requests an Order:

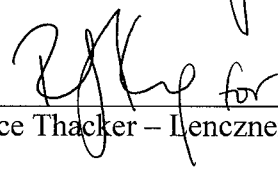
- (a) requiring IGPC to provide its most recent quarterly and annual financial statements;
- (b) requiring IGPC to advise whether its operational grants will be renewed (and on what terms), and if uncertain, when IGPC expects to learn whether its operational grants will be renewed; and
- (c) its business plan for the expansion, including project timing, details of gas volumes and pressures, any preliminary engineering done in the past year and a half, and any other data reasonably requested by NRG prior to NRG spending any further amounts.

ALL OF WHICH IS RESPECTFULLY SUBMITTED,

December 2, 2013



Richard J. King – Osler, Hoskin & Harcourt LLP



Lawrence Thacker – Lenczner Slaght Royce Griffin LLP