



# **ONTARIO ENERGY BOARD**

## **BOARD STAFF COMMENTS ON NRG SUBMISSION**

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

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

**April 1, 2014**

The Board issued its Decision and Order on February 27, 2014 regarding a request by Integrated Grain Processors Co-operative Inc. ("IGPC") to order Natural Resource Gas Ltd. ("NRG") to provide gas distribution services and gas sales to meet IGPC's proposed expansion and upgrading plans. The Decision also determined the capital costs paid by IGPC to NRG in respect of the pipeline constructed by NRG to serve IGPC's ethanol plant in Aylmer, Ontario, and also the amount of the letter of credit held by NRG reflecting the net book value of the pipeline in rate base.

The Board in its Decision ordered NRG to file a table reflecting the Board's findings and provide supporting calculations for all amounts to be paid by NRG to IGPC. The Board also provided IGPC and Board staff the opportunity to file any comments on the accuracy of NRG's submissions within 14 days.

Board staff has reviewed the submissions made by NRG dated March 19, 2014. The comments below are in response to NRG's submission.

NRG has essentially raised three issues in its submission:

1. Invoice of \$197,643 representing legal fees paid to Lenczner Slaght by NRG that was disallowed by the Board.
2. Discrepancy in the amounts claimed by NRG for the 2007 Emergency Motion and the 2008 Letter of Credit Motion
3. An amount of \$150,000 awarded to IGPC representing the excess cost of maintaining an unadjusted letter of credit for five years.

1. The Board in its Decision on page 13 disallowed the costs that were paid by NRG to Lenczner Slaght. The costs of \$197,643 were noted in Appendix A of NRG's reply submission dated November 14, 2013. However, NRG in its submission of March 19, 2014 noted that the amount of \$197,643 was not disputed by IGPC. IGPC in its Argument-in-Chief disputed a September 22, 2010 invoice for \$23,762.92. IGPC

disputed the costs and noted that the \$23,763 (rounded off) should not be included as capital costs and further should not have been included in contingency costs<sup>1</sup>.

NRG in its submission of March 19<sup>th</sup> noted that the correct amount relating to the September 22, 2010 invoice is \$23,763 and not \$197,643. NRG further submitted that the amount was included in NRG's contingency costs and was not a separate amount outside the Board's consideration of the contingency calculation of \$132,000.

Board staff agrees with NRG's submission. The disputed amount is \$23,763 and NRG has confirmed that this amount was not included in legal costs but contingency costs. However, since the Board has disallowed the entire contingency amount, the disputed amount does not need to be recalculated. In other words, the Board has already disallowed this amount by disallowing the contingency.

The Board may wish to make a correction, but in Board staff's view it is not necessary. A correction would not impact the overall calculation.

2. The Board in its Decision disallowed NRG's claim for legal costs related to the 2007 Emergency Motion and the 2008 Letter of Credit Motion. The Board in its Decision noted that the amounts for the Emergency Motion and Letter of Credit Motion were \$94,800 and \$82,554 respectively. NRG in its submission noted that the amount had been updated in its submissions dated November 7 and November 14, 2013. NRG submitted that the correct amounts were \$68,725 and \$91,554<sup>2</sup>.

The Board's Decision was based on NRG's evidence of June 3, 2013<sup>3</sup>. Although NRG updated the amount, it provided no explanation in its submission as to why the amount had changed. The costs were incurred in 2007 and 2008; so there would be no basis for an update. Board staff urges NRG to provide a better explanation in its reply for the discrepancy. Based on Board staff's analysis, NRG had all the information to determine the appropriate legal costs prior to preparing its June 3 evidence and there would have been no new information between June 3 and November 7, 2013 to require changing the costs.

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<sup>1</sup> IGPC Argument-in-Chief, November 7, 2013, Page 16

<sup>2</sup> NRG Submission, November 7, 2013, Page 14

<sup>3</sup> NRG Evidence, June 3, 2013, Page 14

3. The Board in its Decision awarded IGPC \$150,000 to compensate the company for providing a letter of credit that has remained unchanged from its inception in 2008. NRG in its submission argued that there was no evidentiary basis to award the \$150,000 and the amount was excessive when compared to the typical cost of carrying a letter of credit<sup>4</sup>. NRG provided a rough calculation suggesting that, to the extent IGPC incurred any additional costs at all; it was probably in the \$20,000 - \$40,000 range.

NRG further submitted that the Board in awarding the costs had expanded the scope of the proceeding since the expenses related to the financial assurance were not an issue before the Board. NRG therefore submitted that the Board should correct the jurisdictional error and reverse its decision of awarding costs to IGPC.

NRG is requesting a material change to the Board's decision. In Board staff's view, such a change could not reasonably be considered a "typographical error, error of calculation or similar error" as contemplated in Rule 43.01 of the Board's *Rules of Practice and Procedure*. If the Board is to consider such a change, in Board's staff's view it must be done through a motion to review. NRG appears to accept this possibility, and has asked the Board to treat its submissions as a Notice of Motion to Review as necessary. NRG's grounds for such a motion are error of fact, new facts that have arisen, and such further and other grounds as counsel may advise and the Board may permit.<sup>5</sup>

At this point Board staff does not know how IGPC will respond to NRG's arguments regarding the \$150,000. If the Board determines that it would be appropriate to hear the "motion", it should consider what additional process, if any, is required. For example, the Board may wish to see additional information from IGPC on how the excess costs to provide the letter of credit were calculated.

Board staff has identified an additional issue apart from the issues raised by NRG.

4. Interest Charges: On page 27 of the Board's Decision, the Board directed NRG to provide a revised table showing the adjustments to the interest charges as per the Board's decision on that issue. NRG has provided a revised table showing the overall calculation but has not provided a table that shows the details of the \$18,671 deduction

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<sup>4</sup> NRG's estimate is between \$20,085 and \$40,170, NRG Submission March 19, 2014, Page 9

<sup>5</sup> NRG's Submissions on Calculation, para. 6.

in interest charges. Board staff submits that NRG in its reply should provide a table showing the revised interest calculations.

– All of which is respectfully submitted –