



EB-2012-0406
EB-2013-0081

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.

BEFORE: Marika Hare
Presiding Member

Christine Long
Board Member

Ellen Fry
Board Member

DECISION AND ORDER

June 16, 2014

The Board issued its Decision and Order on February 27, 2014 with respect to a combined proceeding (EB-2012-0406 and EB-2013-0081) involving certain issues regarding a natural gas pipeline built by Natural Resource Gas Ltd. ("NRG") to serve the Integrated Grain Processors Co-operative Inc. ("IGPC") ethanol plant in Aylmer.

The Board in its Decision made a determination on the disputed cost components of the IGPC pipeline and the appropriate amount of the letter of credit held by NRG.

The Board 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.

Submissions of the Parties

NRG provided its calculations on March 19, 2014. In its submission, NRG raised three issues:

1. Amount of Invoice for legal fees paid to Lenczner Slaght

The Board in its Decision disallowed an invoice related to legal fees stated to be in the amount of \$197,643. NRG in its submission noted that IGPC had not disputed this amount; IGPC had in fact disputed an invoice of \$23,762.92 and this amount was included in contingency costs. NRG further noted that it had clarified the amount in response to an interrogatory and also confirmed that the \$23,762.92 was not a distinct amount outside the Board's consideration of contingency costs.

Board staff in its submission agreed with NRG but noted that a correction may not be required as the error does not impact the overall cost calculation of the pipeline. IGPC in its submission agreed that the reference to \$197,643 rather than \$23,762.92 was an administrative error.

2. Calculation of Legal Costs of NRG for the 2007 Emergency Motion and the 2008 Letter of Credit Motion

The Board in its Decision disallowed NRG from including legal costs related to the 2007 Emergency Motion and the 2008 Letter of Credit Motion in the capital cost of the pipeline. The Decision indicated that the amounts for the Emergency Motion and Letter of Credit Motion were \$94,800 and \$82,554 respectively. However, NRG submitted that the correct amounts were \$68,725 and \$91,554¹. NRG noted that the Board's Decision

¹ NRG Submission, November 7, 2013, Page 14

was based on NRG's evidence of June 3, 2013². NRG submitted that it had corrected these amounts in its submissions dated November 7th and November 14, 2013.

Board staff in its submission urged NRG to provide reasons for the difference in costs between the June 3, 2013 evidence and the costs provided in November 2013 given that the costs were incurred in 2007 and 2008; so according to Board staff there was no basis for an update.

IGPC in its submission accepted the Board's Decision on this matter. NRG submitted that the amounts in its June 3rd evidence were adopted from IGPC's evidence, and that its November 2013 figures are based on addition of the actual invoices.

3. Letter of Credit Costs

The Board in its Decision ordered NRG to pay \$150,000 to IGPC representing the cost of maintaining an unadjusted letter of credit for five years. NRG requested that the Board reconsider the issue and disallow the awarded amount.

NRG further requested that if the Board did not wish to make corrections through an amended decision, then NRG's submission should be treated as a Notice of Motion requesting the Board to review and vary the Decision and Order pursuant to Rules 42.01 and 44.01 on the following grounds:

- a) Error in fact;
- b) New facts have arisen; and,
- c) Such further and other grounds as counsel may advise and the Board may permit.

Board staff submitted that the change requested by NRG was a material change and could not 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 were to consider such a change, Board staff submitted that it must be done through a motion to review.

² NRG Evidence, June 3, 2013, Page 14

IGPC in its submission argued that the Board should deny NRG's request for a motion to review. IGPC however submitted that should the Board accept NRG's request, then the Board should provide a process where IGPC could file evidence and argument.

NRG in reply submitted that it should not be required to make any payment with respect to the \$150,000 until the Board has made a determination on this issue.

4. Interest Costs

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. Board staff submitted that although NRG provided a figure, it did not provide a table showing the details of the \$18,671 deduction in interest charges. Board staff submitted that NRG should provide a table detailing the revised interest calculations in its reply.

In further submissions, NRG and IGPC agreed that the correct amount of disallowed interest costs should be \$28,411.

5. Interest on Payment

The Board in its Decision ordered NRG to pay IGPC interest on the outstanding amount from 2010 to 2013. IGPC in its submission disagreed with NRG's calculation. NRG agreed to IGPC's submission in principle but submitted that the calculation was premature as the Board had still not determined the final amount owing.

Board Findings

Amount of the Invoice for Legal Fees paid to Lenczner Slight Invoice

The Board agrees with the parties that the amount in dispute that was referred to in the Decision should have been \$23,762.92 and not \$197,643 and hereby corrects this error. However, the Board further notes that the correction of this error does not impact the overall calculation as the amount of \$23,762.92 was part of the contingency costs that were disallowed in their entirety by the Board.

Calculation of Legal Costs for the Motions

The Board accepts NRG's submission that the November 2013 rather than the June 2013 figures should be used in the calculation, given the fact that these figures accord

with the invoices. The Board accordingly revises the cost of the 2007 Emergency Motion to \$68,725 and the 2008 Letter of Credit Motion to \$91,554.

Letter of Credit Costs

NRG has argued that the \$150,000 awarded to IGPC for maintaining an unadjusted letter of credit for five years should be denied because in its view there was no evidentiary basis for the determination, the costs granted were excessive and the issue of the costs to maintain the letter of credit was beyond the Board's Issues List approved in the proceeding.

The Board agrees with Board staff that a determination on this issue would amount to a substantive change that is not contemplated by Rule 43.01 of the Board's *Rules of Practice and Procedure*. The matter will proceed by way of a motion to review. The panel assigned to the motion to review will advise the parties of the next steps in the proceeding. The request for a stay of this part of the Decision is a matter for the motion to review panel.

Interest Costs

The Board in its Decision ordered NRG to provide the revised interest calculations. NRG has now provided the calculations and NRG and IGPC have ultimately agreed on the amount of \$28,411 for disallowed interest costs. The Board agrees that this is the amount that should be used.

Interest on Payment

NRG has agreed to the methodology outlined by IGPC in its submission. The Board in this Decision has now finalized all amounts that are subject to interest. NRG is ordered to calculate the appropriate interest based on the Board's Decision.

Implementation Period

NRG in its reply submission has submitted that the refund amount owing to IGPC is significant and the two year payment period in its view seems aggressive. NRG has therefore requested a payment period of up to five years. NRG had an opportunity to present its case during the proceeding and chose not to do so. The Board's Decision on this matter stands.

THE BOARD ORDERS THAT:

1. NRG shall file with the Board, and shall forward to all parties of this proceeding, a draft Rate Order attaching a proposed Tariff of Rates and Charges reflecting the Board's findings in this Decision and the Board's Decision issued on February 27, 2014, within 10 days of the date of this Decision. The Draft Rate Order should include detailed calculations of the amounts finalized in this Decision and the resulting rate rider applicable to Rate 6 ending September 30, 2016. The calculated rate rider should include the \$150,000 costs awarded to IGPC for maintaining an unadjusted letter of credit for five years.
2. Parties who wish to file any comments on the Draft Rate Order or the calculations submitted shall file them with the Board and forward them to NRG within 7 days of the filing of the Draft Rate Order.
3. NRG shall file with the Board and forward to the intervenors responses to any comments on its Draft Rate Order within 5 days of the receipt of any submissions.

DATED at Toronto June 16, 2014

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary