

AIRD & BERLIS LLP

Barristers and Solicitors

Scott Stoll
Direct: 416.865.4703
E-mail: sstoll@airdberlis.com

December 23, 2014

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: EB-2014-0291
Submissions of Integrated Grain Processors Co-operative Inc.

We are counsel to Integrated Grain Processors Co-operative Inc. ("IGPC").

Pursuant to Procedural Order No. 1 dated December 4, 2014, please find attached the Submissions of IGPC. Two hard copies of the attached materials are being couriered to the Board.

If there are any questions, please contact the undersigned.

Yours very truly,

AIRD & BERLIS LLP



Scott Stoll
SS/bm

Attach

cc: Natural Resource Gas Limited (*via email*)
All Intervenors (EB-2013-0081/EB-2012-0406) (*via email*)
Case Manager, Khalil Viraney (*via email*)
Board Counsel, Michael Miller (*via email*)

21112035.1

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act*, 1998,
S.O. 1998, c. 15 (Sched.B);

AND IN THE MATTER OF a review of the capital
contribution costs paid by Integrated Grain Processors Co-
operative Inc. to National Resource Gas Limited pursuant to
Sections 19 and 36 of the Act.

AND IN THE MATTER OF a motion to review by Natural
Resource Gas Limited

**SUBMISSIONS OF
INTEGRATED GRAIN PROCESSORS CO-OPERATIVE INC.
("IGPC")**

PART I. Introduction

1. IGPC requests the Board deny the motion brought by Natural Resource Gas Ltd. ("NRG") seeking to vary the Board's decision in EB-2013-0081/EB-2012-0406 wherein the Board ordered NRG to pay to IGPC \$150,000 in respect of the costs incurred and damages suffered by IGPC as a result of NRG's refusal to reduce the financial assurance as provided in the Pipeline Cost Recovery Agreement ("PCRA").
2. In the alternative, if the Board wishes to ensure that a more precise payment in respect of the damages suffered by IGPC are paid by NRG, IGPC would request the opportunity to fully document such costs and that all such costs be paid by NRG – meaning NRG could provide substantially more costs than the \$150,000.
3. IGPC provided evidence on the record providing a conservative estimate of the costs incurred as a result of NRG breaches of the PCRA.¹ Despite several opportunities to seek further information on the evidence of IGPC, NRG did not question the estimate of the costs and damages so no further evidence to substantiate the number was required from IGPC. It is entirely improper for NRG to make statements that it had no opportunity and then try to base its argument on submissions it made rather than evidence. That Board Staff also accepted IGPC's estimate in this regard without further question is further substantiation that IGPC's claimed costs were reasonable.
4. This motion is simply NRG attempting to re-litigate an issue and cause more disruption to IGPC contrary to grounds for bringing such a motion in the Board's Rules of Practice and Procedure. Re-litigating the cost of the excess financial assurance is similar to NRG's numerous requests for IGPC's internal confidential financial information which the Board most recently rejected in NRG's current rate hearing. Despite no legal basis for the request, IGPC's and the Board's prior rejections, NRG continued to seek such

¹ EB-2012-0406/EB-2013-0081, Exhibit A, Pre-filed Evidence of IGPC, 2013-06-03, paragraphs 142 to 158.

information; even to this very day. Such behaviour can only be interpreted as a desire to inflict harm on IGPC.

5. Finally, it is clear the payment is compensatory and not designed to punish NRG.
6. The Board should dismiss NRG's request and award IGPC its costs in this matter.

PART II. Background

7. In order to properly understand the claim, it is useful to revisit the sequence of events. IGPC entered into the PCRA dated January 31st, 2007. The PCRA included an obligation for IGPC to provide financial assurance to NRG in the form of a letter of credit. Prior to construction, in the spring of 2008 IGPC provided a letter of credit in the amount of \$5,214,173.² IGPC also provided other financial assurance for distribution services provided under the Gas Delivery Contract and in respect of the upstream services provided by Union Gas Limited.
8. Further, the PCRA provides the following:
 - 7.6 Subject to 7.7, the Customer shall be entitled to reduce the amount of the Delivery Letter of Credit on each anniversary of the commencement of deliveries under the Gas Delivery Agreement to an amount equal to the net book value of the Utility Connection Facilities allocated to the Customer at the time, as determined by the Utility in accordance with OEB-approved methodology.
 - 7.9 The Utility shall return any letter of credit held by the Utility to the Customer, if Customer is substituting a letter of credit with another letter of credit or such other financial assurance, where that substitute is acceptable to the Utility and its lender.
9. The PCRA further provides the extent of damages to which IGPC would be entitled for NRG's Event of Default under the PCRA. As such, although the additional interest charges have been the focus of the submissions, such costs do not form the entirety of costs to which IGPC is entitled to seek reimbursement.
 - 10.1 The Utility agrees to indemnify, defend, and hold harmless the Customer in respect of all actions, causes of action, suits, proceedings, claims, demands, losses, damages, penalties, fines, costs, obligations and liabilities ("Damages") arising out of the construction, installation, testing, commissioning and operation of the Utility Connection Facilities, other than any Damages caused by the negligence or wilful misconduct of the Customer.
10. NRG commenced charging, and IGPC commenced paying, for distribution service as of July 15, 2008 despite the fact that no natural gas was flowing. Shortly after commencing service, NRG should have been in a position to provide a capital amount proposed to be included in rate base and determine the proper amount of the financial assurance due.

² EB-2012-0406/EB-2013-0081, Exhibit C, Tab 12, Pre-filed Evidence of IGPC, 2013-06-03.

11. However, what became clear is that NRG's conduct was to delay reconciliation of the pipeline costs as much as possible – to avoid scrutiny of its costs and to maintain financial assurance to which it knew it had no entitlement.
12. NRG filed its next cost of service rate application in January 2010 and that proceeding was assigned number EB-2010-0018. NRG's application included a capital request to include the pipeline in rate base at \$5,073,000 as of the fall of 2008. Therefore in January of 2010, NRG was acknowledging the depreciated value of the pipeline was much less than the financial assurance it was retaining.
13. Despite this clear admission of retaining excessive financial assurance from IGPC, it is clear that NRG never intended to reduce the letter of credit absent a Board order. In fact NRG threatened proceedings to seek increases in the amount of financial assurance.³
14. The record showed IGPC pursued reconciliation shortly after the pipeline was put into service. Further, IGPC began its pursuit of reconciling the capital cost of the pipeline and therefore the amount to be closed in rate base with its intervention in EB-2010-0018 and more directly with its filing of motions in the summer of 2010.
15. NRG fought IGPC at every step of the way and denied the Board had jurisdiction which ultimately the Board determined it did possess such jurisdiction. As such, it is completely inaccurate to say IGPC did nothing to pursue its recourse. The record is just the opposite, NRG's conduct has been to force IGPC to extraordinary measures and to seek assistance from the Board at every turn in order to achieve the most basic of its contractual rights.
16. In EB-2010-0018, the Board determined that the Pipeline was determined to be in rate base effective August 1, 2008.
17. Table 1 below summarizes the excess amount of financial assurance that IGPC was forced to maintain by NRG.

NRG Fiscal Year	Amount of Pipeline in Rate Base	Excess Financial Assurance Provided by IGPC
2009 ⁴	\$4,709,776	\$504,397
2010	\$4,466,167	\$748,006
2011	\$4,222,558	\$991,615
2012	\$3,978,949	\$1,235,224
2013	\$3,735,340	\$1,478,833

As such, IGPC has provided financial assurance in an amount that exceeded what was in rate base for the entirety of the life of the project and for as much as \$1.5million more than required.

³ EB-2012-0406/EB-2013-0081, Exhibit C, Tab 16, Pre-filed Evidence of IGPC, 2013-06-03.

⁴ The commencement of Fiscal Year 2009 is October 1, 2008.

18. On numerous occasions, IGPC sought to replace the letter of credit provided by Societe Generale – even at the excessive amount of \$5,214,173 in order to reduce the costs it was suffering.
19. NRG was made aware that its refusal to exchange the letter of credit – even at the excessive amount - was requiring IGPC to take extraordinary steps with its financial institutions.⁵
20. Further, NRG continued to demand information to which it is not entitled and act outside the PCRA.
21. In addition to the actual financing costs to its lenders, IGPC stated that it had incurred additional legal and other costs related to the refusal of NRG to accept replacement of the letter of credit – even when such was offered without reduction.⁶
22. NRG was well aware of these facts and these statements were included in the pre-filed evidence of IGPC. Its refusal to accept an RBC letter of credit in the amount of \$5,214,173 can only be viewed as a deliberate intention to cause harm to IGPC.

PART III. The Board Decision was Reasonable

23. NRG has advanced several positions in its submissions. For the reasons outline below, each of NRG's positions should be rejected by the Board.
 - (a) *Evidence on the Record*
24. IGPC provided evidence of the basis for its claim in its pre-filed evidence at paragraphs 142 to 158. IGPC was incurring costs to provide excess financial assurance and legal costs for dealing with the situation.
25. As such, NRG was entirely aware of the nature of the claim during this proceeding.
26. Subsequent to that filing, NRG was provided an opportunity to raise questions about the evidence, both in writing and orally, through a technical conference or hearing.
27. IGPC would note the Board often accepts evidence by way of written statements from a party. The Board does not go behind every number to determine its correctness. However, the Board does provide a process for intervenors to test the evidence. That is precisely what occurred. Where the parties do not contest or seek substantiation of the evidence, the Board accepts the evidence.
28. In a letter to the Board dated October 2, 2014, NRG stated that it was opposing the Board holding a technical conference because there was no need "to better understand

⁵ EB-2012-0406/EB-2013-0081, Exhibit A, paragraphs 151 and 152, Pre-filed Evidence of IGPC, 2013-06-03.

⁶ IGPC Response to Board Staff I.R. #2, October 28, 2013 included as **Attachment "A"** to these submissions.

the minutiae of an applicant's evidence".⁷ It went on to say there was no need for further factual clarifications.

29. NRG admitted it had ample opportunity to review and question the evidence and expressly waived further opportunity to question the evidence through a technical conference and oral hearing. As such, NRG should be deemed to have accepted the figure provided by IGPC.
30. IGPC would note that Board Staff expressed no concern nor questioned the reasonableness of the amount claimed.
31. Therefore, IGPC's uncontroverted evidence is NRG had ample opportunity to test the evidence and expressly chose not to do so.
32. NRG's motion is directly contrary to the requirements of Rule 40.01(a)(iv) of the Board's Rules of Practice and Procedure which provides that:
 - (a) *set out the grounds for the motion that raise a question as to the correctness of the order or decision, which grounds may include:*
 - (iv) *facts that were not previously placed into evidence in the proceeding and could not have been discovered by reasonable diligence at the time; and*
33. NRG exercised no diligence in respect of seeking additional information to challenge the evidence which was already on the record.
34. As NRG accepted the statements that IGPC had been subjected to more than \$150,000 in costs and that IGPC had been put to extraordinary lengths because of NRG's breaching the PCRA. NRG should not be rewarded now for its failure to satisfy itself despite ample opportunity to question IGPC.
35. There was an ample evidentiary basis for the Board's decision. NRG's review motion is simply an attempt to re-litigate a decision which it does not like.
 - (b) *No Evidentiary Double Standard*
36. NRG asserts the Board applied a double standard in considering the Board's treatment of the NRG's construction insurance costs and IGPC's costs of providing the excessive financial assurance.
37. NRG's allegation of a double standard regarding the quality of evidence is completely wrong.

⁷ Included as **Attachment "B"** to these submissions.

http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/412068/view/NRG_Corresp_OEB_20131002.PDF.

38. As the Board will recall, NRG claimed \$62,000 in respect of additional insurance for the construction of the pipeline. When questioned about the cost, NRG acknowledged no such cost had been incurred. As such, the evidence was no cost of insurance existed. Therefore, the Board, rightfully determined that NRG could not recover costs for insurance because no such costs were ever incurred.
39. That is very different from the present situation. In the present case, the evidence from IGPC is there was a cost incurred in respect of the excessive financial assurance. There is no dispute that IGPC provided a letter of credit that was in excess of that demanded by the PCRA since the pipeline was placed into service in August of 2008.
40. In NRG's submissions, it admits there is a cost to providing a letter of credit.
41. The evidence was IGPC was being put to additional legal and other costs because NRG would not even permit the exchange of the Societe Generale letter of credit with an identical letter of credit from RBC. The evidence is NRG was made aware of Societe Generale's departure from Canada and the need to replace the letter of credit. The evidence is also clear that NRG not only refused the replacement but threatened further litigation.
42. As such, the Board did not apply a double standard to the evidence and the Board's decision in this regard is correct.

(c) *Compensatory not Punitive*

43. The Board's decision was intended to provide the compensation sought by IGPC for the costs inflicted by NRG's breach of the PCRA. The Board provided the relief sought by IGPC based upon the controverted and unchallenged evidence.
44. IGPC had provided the amount and basis for the claim. No party disputed such quantum. NRG admits costs are incurred to provide a letter of credit and so acknowledges there is compensatory aspect to the claim.
45. NRG provided no basis for its assertion that compensating IGPC in respect of NRG's breaches of the PCRA constitutes punishment. As such, there is no basis for NRG's position that the Board's order is punitive.

(d) *NRG Requests the Very Conduct of which It Complains*

46. Finally, IGPC would note that the basis of its complaint – the making of a decision without an evidentiary foundation (which IGPC denies as described above in Part III(a)) – is exactly what NRG requests in its alternate relief of seeking a reduction to \$20,000.
47. NRG is attempting in its submissions to lead evidence in respect of a different amount of damages. NRG now disputes the appropriate period for which damages were being claimed and the rate at which damages were incurred. Further, NRG makes several unfounded and incorrect statements about IGPC.

48. The Board should completely disregard these submissions as there was truly no opportunity to test these allegations.

PART IV. Conclusion

49. IGPC requests the Board dismiss NRG's motion to vary the decision and uphold the order that NRG pay the \$150,000 to IGPC in respect of the excessive financial assurance.
50. IGPC submits that NRG's continuing pattern of abuse should result in IGPC being awarded its reasonable costs of this proceeding.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated: December 23, 2014	AIRD & BERLIS LLP Barristers and Solicitors Brookfield Place 181 Bay Street, Suite 1800 Toronto, Ontario M5J 2T9 Scott Stoll (LSUC #45822G) Tel: 416.865.4703 Fax: 416.863.1515 Counsel for Integrated Grain Processors Co-operative Inc.
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ATTACHMENT “A”

INTERROGATORY RESPONSE NO. 2

2. Ref: IGPC Evidence, pages 16-17, June 3, 2013

Please confirm whether IGPC has communicated with NRG in relation to its request for service in order to secure additional gas volumes to meet its expansion plans after June 28, 2013. Please provide a detailed response.

Response:

IGPC views the request for service to include the adherence to the contractual and Board imposed obligations of NRG. IGPC has not had further discussions regarding the additional volumes as any discussion regarding same with NRG – even what should be non-controversial issues – are problematic.

NRG made it clear with the issuance of invoices, IGPC Pre-filed Evidence, Exhibit C, Tab 8, which included staff time at \$500.00/hour and an unspecified consultant at \$750.00/hour that it would charge for management and consultants. As such, IGPC did not wish to incur additional costs without some control over the nature and extent of such potential charges.

IGPC has attached recent correspondence with counsel to NRG (Attachment 1) regarding the replacement of the Pipeline Letter of Credit and the Delivery Letter of Credit. IGPC has not even been able to get NRG to agree to a replacement of the letters of credit when the form and the amount are exactly the same as is currently provided despite the fact that IGPC disputes such amount is proper.

October 3, 2013

Lenczner Slaght
130 Adelaide St. W.
Suite 2600
Toronto, ON M5H 3P5

Osler, Hoskin & Harcourt LLP
100 King Street West
1 First Canadian Place
Suite 6100, P.O. Box 50
Toronto ON M5X 1B8

Attention: Mr. Lawrence Thacker

Attention: Mr. Richard King

Dear Sirs:

Re: Irrevocable Standby Letter of Credit No. CT08S0L0043-B dated April 18, 2008 in favour of Natural Resource Gas Limited in the amount of \$5,214,173 (the "Pipeline Letter of Credit")

and

Irrevocable Standby Letter of Credit No. CT08SOL0052-B in favour of Natural Resource Gas Limited in the amount of \$232,664.84 (the "Security Deposit Letter of Credit")

IGPC wishes to deliver to Natural Resource Gas Limited ("NRG") Royal Bank of Canada ("RBC") replacement letters of credit for the Pipeline Letter of Credit and the Security Deposit Letter of Credit. RBC has agreed to provide a new Pipeline Letter of Credit and new Security Deposit Letter of Credit in favour of NRG in the identical form and amount as the existing letters of credit. We have attached drafts of each of the Pipeline Letter of Credit and new Security Deposit Letter of Credit for your review.

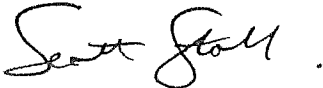
IGPC wishes to effect the exchange solely because Société Générale has made a business decision to exit the Canadian market which is described in the attached letter. Effective December 31, 2013, Société Générale will no longer be able to provide the Letters of Credit identified above and is requesting replacement prior to December 1, 2013. The delivery of the replacement RBC letters of credit should only enhance the credit position of NRG and not in any manner whatsoever affect any credit issues for NRG.

The replacement of the letters of credit is without prejudice to NRG or IGPC to continue to take the position that the amount of financial assurance should be in an amount different than that currently provided.

To complete the process, IGPC will need the return of the existing Pipeline Letter of Credit and Security Deposit Letter of Credit to Société Générale (Canada Branch) simultaneously with the delivery of the new letters of credit. As such, we would ask that Mr. Thacker or Mr. King, make arrangements with Ms. Jill Fraser (jfraser@airdberlis.com) of our office to complete the exchange prior to October 18, 2013.

Yours very truly,

Aird & Berlis LLP.



Scott Stoll

SAS:ct
Attachments

cc: K. Walli, OEB
M. Millar, OEB
J. Grey, IGPC
J. Fraser

15260972.2



September 20, 2013

BY EMAIL – ORIGINAL BY MESSENGER

Mr. Jim Grey
Chief Executive Officer
IGPC Ethanol Inc
89 Progress Drive
Aylmer, Ontario
Canada N5H 2R3

Pierre Matuszewski
Chief Executive Officer
Tel. + 1 514 841-6031
Fax. + 1 514 841-6258
pierre.matuszewski@sgcib.com

Re: Société Générale (Canada Branch) – Letters of Credit

Dear Mr. Grey:

Please be informed that the management of Société Générale (Canada Branch) (the "Bank") has decided to change its business model and to pursue its activities in Canada through its investment dealer, Société Générale Securities Inc.

As a result, the Bank will cease its operations as an authorized foreign bank in Canada on or about December 31, 2013. After such date, the Bank will no longer be in a position to issue or maintain any renewable letters of credit for the benefit of its clients.

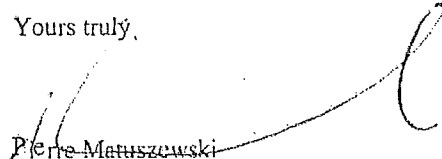
The Bank has been working very closely with its business teams in order to communicate such change to clients that have requested the issuance of letters of credit. When possible, outstanding letters of credit may be re-issued by another branch of Société Générale in accordance with the applicable law, applicable legal documentation and requirements imposed by the beneficiaries. In other circumstances, the letters of credit will be cancelled and, if necessary, they will need to be replaced by letters of credit issued by some other third party.

At your request, the Bank has issued two (2) letters of credit (bearing #CT08SOL0043-B and #CT08SOL0052-B) in favour of Natural Resource Gas Limited which are governed by the terms and conditions of a letter agreement dated February 21, 2013 executed between IGPC Ethanol Inc. and the Bank. We hereby request you to provide any and all assistance to facilitate the cancellation (replacement) of these two (2) letters of credit. In order to avoid any last minute difficulty, we hereby ask you to arrange for same on or before December 1st, 2013. Based on our prior discussions with you, we understand that another bank may be able to assist in providing you with replacement letters of credit.

We apologize for any inconvenience that these circumstances may result in, but please be assured that the Bank remains available to assist its clients in providing the best solution for each particular situation.

We thank you for your understanding.

Yours truly,



Pierre Matuszewski

Société Générale (Canada Branch)
1501 McGill College Ave., Suite 1800
Montreal (Quebec)
H3A 3M8

Tel. + 1 514 841-6000
Fax. + 1 514 841-6250
www.sgcib.com

DRAFT

This draft is provided to you at your request and there is no obligation on our part despite our assistance in its preparation, nor is it to be construed as evidence of commitment on our part to issue such instrument in the future.

Draft D. Patulli Dec 11-12 Rev Sep 30-13 Rev Oct 3-13

EDC PURPOSES:

RBC REF: P428964T03812

BENEFICIARY:

NATURAL RESOURCE GAS LIMITED
39 BEECH ST.
AYLMER, ON.
N5H 2S1

ISSUE DATE: [DATE OF ISSUANCE]

EXPIRY DATE: 30 NOVEMBER 2014

AMOUNT: CAD 232,666.84

(TWO HUNDRED THIRTY TWO THOUSAND
SIX HUNDRED SIXTY SIX AND 84/100
CANADIAN DOLLARS ONLY)

APPLICANT:

IGPC ETHANOL INC
89 PROGRESS DRIVE
AYLMER, ON N5H 2R9

AT THE REQUEST OF THE APPLICANT, WE, ROYAL BANK OF CANADA, INTERNATIONAL TRADE CENTRE-ONTARIO, 4TH FLOOR, 180 WELLINGTON STREET WEST, TORONTO, ONTARIO, CANADA, M5J 1J1 (THE "BANK"), HEREBY ISSUE OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO.P428964T03812 (THIS "LETTER OF CREDIT") IN YOUR FAVOUR FOR THE MAXIMUM AGGREGATE AMOUNT OF CAD232,666.84 (TWO HUNDRED THIRTY TWO THOUSAND SIX HUNDRED SIXTY SIX AND 84/100 CANADIAN DOLLARS) AVAILABLE BY YOUR DRAFT(S) DRAWN AT SIGHT ON ROYAL BANK OF CANADA, INTERNATIONAL TRADE CENTRE - ONTARIO, 4TH FLOOR, 180 WELLINGTON STREET WEST, TORONTO, ONTARIO, CANADA, M5J 1J1, ACCOMPANIED BY A LETTER FROM AN AUTHORIZED REPRESENTATIVE OF THE BENEFICIARY STATING THAT:

- (A) THE APPLICANT IS NOT IN COMPLIANCE WITH THE TERMS OF THE GAS DELIVERY CONTRACT DATED AS OF JANUARY 30, 2007 BETWEEN THE APPLICANT (AS ASSIGNEE OF INTEGRATED GRAIN PROCESSORS CO-OPERATIVE INC.) AND THE BENEFICIARY (THE "GAS DELIVERY CONTRACT") AND
- (B) THERE IS NO DISPUTE BETWEEN APPLICANT AND BENEFICIARY REGARDING A DISAGREEMENT OVER A METER READING OR THE QUANTITY OF NATURAL GAS DELIVERED OR, TO THE EXTENT SUCH A DISPUTE EXISTS, SUCH DISPUTE HAS BEEN FINALLY RESOLVED IN ACCORDANCE WITH THE GAS DELIVERY CONTRACT AND THE APPLICANT HAS NOT MADE PAYMENT TO THE BENEFICIARY WITHIN TEN (10) BUSINESS DAYS (AS DEFINED IN THE GAS DELIVERY CONTRACT) OF THE FINAL RESOLUTION OF SUCH DISPUTE.

THIS LETTER OF CREDIT WILL CONTINUE FROM1 DECEMBER, 2013 AND WILL EXPIRE AT OUR COUNTERS ON ...30 NOVEMBER, 2014 AND THE BENEFICIARY MAY CALL FOR PAYMENT OF THE FULL

THE

ABOVE TEXT IS ACCEPTABLE:

AUTHORIZED SIGNATURE: _____

NAME: _____

DRAFT

This draft is provided to you at your request and there is no obligation on our part despite our assistance in its preparation, nor is it to be construed as evidence of commitment on our part to issue such instrument in the future.

Draft D. Patulli Dec 11-12 Rev Sep 30-13 Rev Oct 3-13

AMOUNT OUTSTANDING UNDER THIS LETTER OF CREDIT AT ANY TIME UP TO THE CLOSE OF BUSINESS ON THAT DATE OR ANY FUTURE EXPIRY DATE. THIS LETTER OF CREDIT SHALL BE DEEMED TO BE AUTOMATICALLY EXTENDED FOR ONE YEAR FROM THE PRESENT OR ANY FUTURE EXPIRY DATE HEREOF, UNLESS AT LEAST THIRTY (30) DAYS PRIOR TO ANY SUCH EXPIRY DATE, WE SHALL NOTIFY THE BENEFICIARY IN WRITING

BY REGISTERED MAIL OR COURIER SENT TO: 39 BEECH ST. AYLMER, ON. , N5H 2S1 OR SUCH OTHER ADDRESS AS THE BENEFICIARY MAY DESIGNATE IN WRITING, THAT WE ELECT NOT TO CONSIDER THIS LETTER OF CREDIT RENEWED FOR ANY SUCH ADDITIONAL PERIOD. UPON AND AT ANY TIME FOLLOWING THE BENEFICIARY'S RECEIPT OF SUCH NOTICE, BUT PRIOR TO THE EXPIRY OF THIS LETTER OF CREDIT, THE BENEFICIARY MAY DRAW HEREUNDER.

WE SHALL HONOR YOUR DRAFT(S) WITHIN 3 BUSINESS DAYS AFTER RECEIPT THEREOF WITHOUT ENQUIRING WHETHER THE BENEFICIARY HAS THE RIGHT AS BETWEEN THE BENEFICIARY AND THE APPLICANT TO MAKE SUCH DEMAND, AND WITHOUT RECOGNIZING ANY CLAIM OF THE APPLICANT. THE BANK SHALL ENDORSE THE ORIGINAL OF THIS LETTER OF CREDIT WITH THE AMOUNT OF THE DEMAND UPON ITS PAYMENT AND RETURN THE ORIGINAL OF THIS LETTER OF CREDIT TO THE BENEFICIARY.

PARTIAL OR MULTIPLE DRAWINGS ARE PERMITTED.

THIS LETTER OF CREDIT IS NOT TRANSFERABLE.

THIS LETTER OF CREDIT IS SUBJECT TO THE LAWS OF THE PROVINCE OF ONTARIO AND THE LAWS OF CANADA APPLICABLE THEREIN TO THE EXTENT NOT COVERED BY THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS, 2007 REVISION, ICC PUBLICATION NO. 600

ROYAL BANK OF CANADA

THE ABOVE TEXT IS ACCEPTABLE:

AUTHORIZED SIGNATURE: _____

NAME: _____

DRAFT

This draft is provided to you at your request and there is no obligation on our part despite our assistance in its preparation, nor is it to be construed as evidence of commitment on our part to issue such instrument in the future.

Draft D. Patulli Dec 12-12 Rev Sept 30-13 Oct 3-13

EDC PURPOSES:

RBC REF: P428965T03812

BENEFICIARY:

NATURAL RESOURCE GAS LIMITED
39 BEECH ST.
AYLMER, ON.
N5H 2S1

ISSUE DATE: [DATE OF ISSUANCE]

EXPIRY DATE: NOVEMBER 30, 2014

AMOUNT: CAD 5,214,173.00
(FIVE MILLION TWO HUNDRED FOURTEEN
THOUSAND ONE HUNDRED SEVENTY
THREE AND 00/100 CANADIAN
DOLLARS ONLY)

APPLICANT:

IGPC ETHANOL INC
89 PROGRESS DRIVE
AYLMER, ON N5H 2R9

PURSUANT TO THE REQUEST OF THE APPLICANT, WE, ROYAL BANK OF CANADA INTERNATIONAL TRADE CENTRE- ONTARIO, 4TH FLOOR, 180 WELLINGTON STREET WEST, TORONTO, ONTARIO, CANADA, M5J 1J1 (THE "BANK"), HEREBY ESTABLISH IN FAVOR OF THE BENEFICIARY AND GIVE THE BENEFICIARY THIS IRREVOCABLE STANDBY LETTER OF CREDIT NO. P428965T03812 (THIS "LETTER OF CREDIT") IN THE AMOUNT OF CAD5,214,173.00 (FIVE MILLION TWO HUNDRED FOURTEEN THOUSAND ONE HUNDRED SEVENTY THREE AND 00/100 CANADIAN DOLLARS ONLY).

WE ARE INFORMED BY THE APPLICANT THAT THIS LETTER OF CREDIT IS ISSUED PURSUANT TO SECTION 7.3 OF THAT CERTAIN PIPELINE COST RECOVERY AGREEMENT DATED AS OF JANUARY 31, 2007 BETWEEN INTEGRATED GRAIN PROCESSORS CO-OPERATIVE INC. ("IGPC") AND THE BENEFICIARY, AS ASSIGNED TO THE APPLICANT PURSUANT TO AN ASSIGNMENT AGREEMENT DATED AS OF MARCH 30, 2007 BETWEEN IGPC, THE APPLICANT AND THE BENEFICIARY.

THE BENEFICIARY MAY DRAW ON THIS LETTER OF CREDIT AT ANY TIME AND FROM TIME TO TIME PRIOR TO THE EXPIRY OF THIS LETTER OF CREDIT UPON WRITTEN DEMAND IN THE FORM OF SCHEDULE 2 ATTACHED (THE "DEMAND") COMPLETED AND PURPORTEDLY SIGNED BY AN AUTHORIZED OFFICER OF THE BENEFICIARY ACCOMPANIED BY THE ORIGINAL OF THIS LETTER OF CREDIT AND ALL AMENDMENTS HERETO (IF ANY). WE SHALL PAY TO THE BENEFICIARY IN ACCORDANCE WITH THE DEMAND THE LESSER OF (I) THE AMOUNT OF THE DEMAND, AND (II) THE MAXIMUM LIABILITY (AS DEFINED IN SCHEDULE 1 ATTACHED). WE SHALL HONOR A DEMAND WITHIN 3 (THREE) BUSINESS DAYS (AS DEFINED IN SCHEDULE 1 ATTACHED) OF RECEIPT OF THE DEMAND, WITHOUT INQUIRING WHETHER THE

THE ABOVE TEXT IS ACCEPTABLE:

AUTHORIZED SIGNATURE: _____

NAME: _____

DRAFT

This draft is provided to you at your request and there is no obligation on our part despite our assistance in its preparation, nor is it to be construed as evidence of commitment on our part to issue such instrument in the future.

Draft D. Patulli Dec 12-12 Rev Sept 30-13 Oct 3-13

BENEFICIARY HAS THE RIGHT AS BETWEEN THE BENEFICIARY AND THE APPLICANT TO MAKE SUCH DEMAND, AND WITHOUT RECOGNIZING ANY CLAIM OF THE APPLICANT. WE SHALL ENDORSE THE ORIGINAL OF THIS LETTER OF CREDIT WITH THE AMOUNT OF THE DEMAND UPON OUR PAYMENT AND RETURN THE ORIGINAL OF THIS LETTER OF CREDIT TO THE BENEFICIARY.

THIS LETTER OF CREDIT WILL CONTINUE FROM 1 DECEMBER, 2013 AND WILL EXPIRE AT OUR COUNTERS ON 30 NOVEMBER, 2014 AND THE BENEFICIARY MAY CALL FOR PAYMENT OF THE FULL AMOUNT OUTSTANDING UNDER THIS LETTER OF CREDIT AT ANY TIME UP TO THE CLOSE OF BUSINESS ON THAT DATE OR ANY FUTURE EXPIRY DATE. THIS LETTER OF CREDIT SHALL BE DEEMED TO BE AUTOMATICALLY EXTENDED FOR ONE YEAR FROM THE PRESENT OR ANY FUTURE EXPIRATION DATE HEREOF, UNLESS AT LEAST THIRTY (30) DAYS PRIOR TO ANY SUCH DATE, WE SHALL NOTIFY THE BENEFICIARY IN WRITING BY REGISTERED MAIL OR COURIER SENT TO: 39 BEECH ST. AYLMER, ON., N5H 2S1 OR SUCH OTHER ADDRESS AS THE BENEFICIARY MAY DESIGNATE IN WRITING, THAT WE ELECT NOT TO CONSIDER THIS LETTER OF CREDIT EXTENDED FOR ANY SUCH ADDITIONAL PERIOD. UPON AND AT ANY TIME FOLLOWING THE BENEFICIARY'S RECEIPT OF SUCH NOTICE, BUT PRIOR TO THE EXPIRY OF THIS LETTER OF CREDIT, THE BENEFICIARY MAY DRAW HEREUNDER.

PARTIAL OR MULTIPLE DRAWINGS ARE PERMITTED

THE AMOUNT OF THIS LETTER OF CREDIT MAY BE REDUCED AT ANY TIME BY NOTICE TO THE BANK SIGNED BY THE BENEFICIARY ACCOMPANIED BY THE ORIGINAL OF THIS LETTER OF CREDIT AND ALL AMENDMENTS HERETO (IF ANY) (EACH A "REDUCTION"). WE SHALL ENDORSE THE ORIGINAL OF THIS LETTER OF CREDIT WITH THE AMOUNT OF THE REDUCTION AND RETURN THE ORIGINAL OF THIS LETTER OF CREDIT TO THE BENEFICIARY.

THIS LETTER OF CREDIT IS NOT TRANSFERABLE.

THE BENEFICIARY MAY ASSIGN THE PROCEEDS OF THIS LETTER OF CREDIT TO ANY LENDER TO THE BENEFICIARY FROM TIME TO TIME, PROVIDED, HOWEVER, THAT WE ARE NOT OBLIGED TO GIVE EFFECT TO SUCH ASSIGNMENT EXCEPT TO THE EXTENT THAT WE HAVE ACKNOWLEDGED SUCH ASSIGNMENT IN ACCORDANCE WITH UCP 600 (AS DEFINED BELOW).

ALL PAYMENTS TO BE MADE BY US UNDER THIS LETTER OF CREDIT SHALL BE MADE WITHOUT ANY DEDUCTION OF TAXES, LEVIES, CHARGES, FEES, DEDUCTIONS OR WITHHOLDINGS OF ANY NATURE AND SHALL BE MADE WITHOUT ANY SET-OFF OR COUNTERCLAIM.

THE ABOVE TEXT IS ACCEPTABLE:

AUTHORIZED SIGNATURE: _____

NAME: _____

DRAFT

This draft is provided to you at your request and there is no obligation on our part despite our assistance in its preparation, nor is it to be construed as evidence of commitment on our part to issue such instrument in the future.

Draft D. Patulli Dec 12-12 Rev Sept 30-13 Oct 3-13

ALL AMENDMENTS UNDER THIS LETTER OF CREDIT WILL BE EFFECTIVE ONLY ON THE BANK'S RECEIPT OF THE WRITTEN ACCEPTANCE OF SUCH AMENDMENT BY THE BENEFICIARY.

THIS LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS, 2007 REVISION, INTERNATIONAL CHAMBER OF COMMERCE, PARIS, FRANCE, PUBLICATION NO. 600 (THE "UCP 600"), EXCEPT TO THE EXTENT THAT THE UCP 600 IS INCONSISTENT WITH AN EXPRESS TERM OF THIS LETTER OF CREDIT.

AS TO MATTERS NOT COVERED BY THE UCP 600, THIS LETTER OF CREDIT SHALL BE GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN.

ROYAL BANK OF CANADA

THE ABOVE TEXT IS ACCEPTABLE:

AUTHORIZED SIGNATURE: _____

NAME: _____

DRAFT

This draft is provided to you at your request and there is no obligation on our part despite our assistance in its preparation, nor is it to be construed as evidence of commitment on our part to issue such instrument in the future.

Draft D. Patulli Dec 12-12 Rev Sept 30-13 Oct 3-13

Schedule 1 – Definitions

“BUSINESS DAY” MEANS A DAY (OTHER THAN A SATURDAY OR SUNDAY) ON WHICH BANKS ARE OPEN FOR GENERAL BUSINESS IN TORONTO, ONTARIO AND MONTREAL, QUEBEC.

“MAXIMUM LIABILITY” MEANS AT ANY TIME, THE UNDRAWN BALANCE OF THIS LETTER OF CREDIT CALCULATED AS FIVE MILLION TWO HUNDRED FOURTEEN THOUSAND ONE HUNDRED SEVENTY THREE CANADIAN DOLLARS (CAD5,214,173.00) LESS ANY REDUCTIONS AND LESS ANY DRAWINGS WHICH WE HAVE PAID UNDER THIS LETTER OF CREDIT.

THE ABOVE TEXT IS ACCEPTABLE:

AUTHORIZED SIGNATURE: _____

NAME: _____

DRAFT

This draft is provided to you at your request and there is no obligation on our part despite our assistance in its preparation, nor is it to be construed as evidence of commitment on our part to issue such instrument in the future.

Draft D. Patulli Dec 12-12 Rev Sept 30-13 Oct 3-13

Schedule 2 (to be completed on Beneficiary's letterhead in the following format)

ROYAL BANK OF CANADA
INTERNATIONAL TRADE CENTRE-ONTARIO
180 WELLINGTON STREET WEST, 4TH FLOOR,
TORONTO, ONTARIO M5J 1J1

DEMAND FOR PAYMENT

DATE:

RE: IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER ("LETTER OF CREDIT") DATED.....

AMOUNT:

WE REFER TO THE ABOVE REFERENCED LETTER OF CREDIT.

WE HEREBY DEMAND PAYMENT OF THE SUM OFCANADIAN DOLLARS UNDER THE ABOVE REFERENCED LETTER OF CREDIT.

WE REQUEST PAYMENT OF SUCH AMOUNT TO BE MADE BY ELECTRONIC TRANSFER TO THE FOLLOWING ACCOUNT:

BANK:

ADDRESS:

SORT CODE:

ACCOUNT NAME:

ACCOUNT NUMBER:

WE CONFIRM THAT PURSUANT TO THE PIPELINE COST RECOVERY AGREEMENT (AS DEFINED IN THE LETTER OF CREDIT) WE HAVE THE RIGHT TO DRAW SUCH AMOUNT.

YOURS FAITHFULLY,

BY: _____

Authorized Signatory

Name:

Title:

DRAFT

This draft is provided to you at your request and there is no obligation on our part despite our assistance in its preparation, nor is it to be construed as evidence of commitment on our part to issue such instrument in the future.

Draft D. Patulli Dec 12-12 Rev Sept 30-13 Oct 3-13

THE ABOVE TEXT IS ACCEPTABLE:

AUTHORIZED SIGNATURE: _____

NAME: _____

From: Scott Stoll
Sent: October-11-13 11:39 AM
To: 'King, Richard'
Subject: Follow Up to Voicemail

Richard:

I am following up on my letter and subsequent voicemail regarding the exchange of the Societe Generale Letters of Credit with Letters of Credit from RBC. Please follow up with Jill Fraser (jfraser@airdberlis.com) from our office at your earliest opportunity. As mentioned, we tried to make this a non-issue by leaving everything the same except it is RBC providing the LCs which should be seen as a benefit.

Scott

Scott Stoll

T 416.865.4703
F 416.863.1515
E ssoll@airdberlis.com

Brookfield Place • 181 Bay Street
Suite 1800 • Box 754
Toronto ON • M5J 2T9 • Canada
www.airdberlis.com

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Please consider the environment before printing this email.

From: King, Richard <rking@osler.com>
Sent: October-14-13 6:49 PM
To: Scott Stoll
Cc: 'lthacker@litigate.com'
Subject: Re: Follow Up to Voicemail

We'll be back to you.

Richard J. King
Partner
Osler, Hoskin & Harcourt
1 First Canadian Place
Toronto, Ontario, Canada
Tel: 416.862.6626
Email: rking@osler.com

From: Scott Stoll [<mailto:ssoll@airdberlis.com>]
Sent: Friday, October 11, 2013 11:38 AM
To: King, Richard
Subject: Follow Up to Voicemail

Richard:

I am following up on my letter and subsequent voicemail regarding the exchange of the Societe Generale Letters of Credit with Letters of Credit from RBC. Please follow up with Jill Fraser (jfraser@airdberlis.com) from our office at your earliest opportunity. As mentioned, we tried to make this a non-issue by leaving everything the same except it is RBC providing the LCs which should be seen as a benefit.

Scott

Scott Stoll

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From: Scott Stoll
Sent: October-18-13 4:47 PM
To: 'lthacker@litigate.com'
Cc: Martin Kovnats; Jill Fraser
Subject: Follow up to our conversation

Larry:

I wish to confirm the substance of our recent telephone conversation wherein we discussed the IGPC reasonable request to replace the existing Societe Generale LC's with identical RBC LC's. As you know the request is precipitated by Societe Generale's independent decision to exit Canada and not for any reason initiated by IGPC, or by NRG.

You confirmed that NRG is willing to replace the Pipeline and Distribution LCs provided that the wording in the replacement LC's is the same as the existing LCs from Societe Generale.

With respect to the amount of the replacement LCs, you acknowledged your client was willing to reduce the amount of the Pipeline LC to the undepreciated value of the Pipeline as provided in the Pipeline Cost Recovery Agreement. We understand that the amount proposed would be less than \$4 million but you did not have an exact figure. The figure would depend upon the agreed upon date but October 1, 2013 may make sense as that is the commencement of NRG's fiscal year and rate year. Finally, we confirm that you indicated that the current amount of the Distribution LC, approximately \$232,000, to secure the monthly delivery charges was not an issue.

However, the NRG and your agreement to replace the LC's was premised on two additional demands:

- IGPC providing information on its loan arrangements with RBC; and
- IGPC providing NRG with the most recent financials IGPC provided to its members.

In the absence of IGPC providing the requested materials, you stated that NRG will not permit the LCs to be replaced and that you have instructions to seek additional financial assurance related to potential future decommissioning costs if the pipeline is removed from service by filing a motion with the OEB.

IGPC is not willing to provide the confidential financial information or the terms of its confidential financing arrangements for at least two reasons:

1. IGPC has no legal or contractual obligation to provide NRG with such information. We have made this point on prior occasions when NRG has raised this issue; and
2. the LC's are designed to and in fact provide NRG and its customers with complete financial security for the relationships between NRG and IGPC – all irrespective of the financial condition or position of IGPC.

The Ontario Energy Board considered the issue of additional security for decommissioning during the motion heard in March 2008 and denied NRG's request for such security.

Your confirmations indicate that your client recognizes its obligation to reduce the amount of the LC as stipulated in the PCRA. However, the linking of the reduction of the LCs to the production of IGPC's confidential financial information is completely inappropriate and appears to be intended to inflict harm on IGPC.

We view this as a continuation of NRG's refusal to provide service.

Please govern yourself accordingly.

Scott

Scott Stoll

T 416.865.4703
F 416.863.1515
E ssoll@airdberlis.com

Brookfield Place • 181 Bay Street
Suite 1800 • Box 754
Toronto ON • M5J 2T9 • Canada
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Please consider the environment before printing this email.

From: Lawrence Thacker <lthacker@litigate.com>
Sent: October-18-13 5:10 PM
To: Scott Stoll
Cc: Martin Kovnats; Jill Fraser; King, Richard (rking@osler.com); Laurie O'Meara
Subject: RE: Follow up to our conversation

Scott,

Your email does not accurately reflect what we discussed yesterday.

There has never been any denial of service by NRG.

Not ever in the past, and not now.

IGPC's previous allegation is equally unfounded.

Both of IGPC's allegations constitute an abuse of the process of the Board.

I will respond fully next week.

Your mischaracterization of what we talked about, and IGPC's new unfounded and ridiculous allegation, is yet another example of IGPC's use of unnecessary and uneconomic litigation to try to intimidate NRG.

For a venture that has never made an operating profit, and continues to exist only because of government subsidies that will expire shortly, IGPC's tactics are, to say the least, puzzling.

I am disappointed that you would respond this way, but I have learned an important lesson.

Larry

From: Scott Stoll [mailto:ssoll@airdberlis.com]
Sent: Friday, October 18, 2013 4:47 PM
To: Lawrence Thacker
Cc: Martin Kovnats; Jill Fraser
Subject: Follow up to our conversation

Larry:

I wish to confirm the substance of our recent telephone conversation wherein we discussed the IGPC reasonable request to replace the existing Societe Generale LC's with identical RBC LC's. As you know the request is precipitated by Societe Generale's independent decision to exit Canada and not for any reason initiated by IGPC, or by NRG.

You confirmed that NRG is willing to replace the Pipeline and Distribution LCs provided that the wording in the replacement LC's is the same as the existing LCs from Societe Generale.

With respect to the amount of the replacement LCs, you acknowledged your client was willing to reduce the amount of the Pipeline LC to the undepreciated value of the Pipeline as provided in the Pipeline Cost Recovery Agreement. We understand that the amount proposed would be less than \$4 million but you did not have an exact figure. The figure would depend upon the agreed upon date but October 1, 2013 may make sense as that is the commencement of NRG's fiscal year and rate year. Finally, we confirm that you indicated that the current amount of the Distribution LC, approximately \$232,000, to secure the monthly delivery charges was not an issue.

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Your confirmations indicate that your client recognizes its obligation to reduce the amount of the LC as stipulated in the PCRA. However, the linking of the reduction of the LCs to the production of IGPC's confidential financial information is completely inappropriate and appears to be intended to inflict harm on IGPC.

We view this as a continuation of NRG's refusal to provide service.

Please govern yourself accordingly.

Scott

Scott Stoll

T 416.865.4703
F 416.863.1515
E [sstoll@airdberlis.com](mailto:ssstoll@airdberlis.com)

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 Please consider the environment before printing this email.

October 25, 2013

BY EMAIL

Lawrence Thacker
Lenczner Slaght
130 Adelaide St. W
Toronto, ON
Canada M5H 3P5

Dear Mr. Thacker:

Re: Response to Email of October 18, 2013

I am writing in response to your very troubling email of October 18, 2013. I have waited to respond because you indicated in your email that you were going to respond more fully this week. However, as you did not, I feel compelled to reply to your serious and incorrect allegations about the position of IGPC and my character.

I did not mischaracterize our conversation. You made it abundantly clear the offer for the exchange of the Letters of Credit ("LCs") was contingent upon IGPC providing its confidential financial information to Natural Resources Gas Ltd. ("NRG"). You also made it clear your client does not have any existing right to this confidential information.

As you are very much aware, IGPC has provided financial assurance to NRG for the very purpose of ensuring your client was adequately protected financially. At this date, your client is holding \$5,214,173.00 in financial assurance for the IGPC pipeline which has a depreciated value of \$3,735,340 and \$3,491,731 for NRG's fiscal 2013 and 2014 years respectively. IGPC has also provided financial assurance of \$232,666.84 for monthly distribution of natural gas. In addition, Union Gas Ltd. ("Union") continues to hold more than \$70,000 in financial assurance provided by IGPC in respect of the M9 agreement between NRG and Union.

In a letter dated October 3, 2013, IGPC requested an exchange of the two letters of credit, replacing the existing Société Générale LCs with RBC LCs, solely because Société Générale is ceasing to carry on business in Canada. In light of the ongoing proceeding at the Ontario Energy Board, EB-2012-0406/EB-2013-0081, IGPC offered to maintain the current values which are in dispute in the hearing. NRG did not and has not accepted that offer.

October 25, 2013
Page 2

Also, I did not in any way threaten further litigation on IGPC's behalf. It was YOU that indicated NRG would be filing a motion regarding additional financial assurance related to decommissioning costs. It was YOU that stated that this would not be based upon either the Pipeline Cost Recovery Agreement or the Gas Delivery Contract but rather some other concern. I at no time indicated IGPC was even contemplating further litigation.

The primary difficulty or dispute captured in your email lies in the difference of positions in what IGPC considers *service* and what NRG considers *service*. It appears that NRG considers the only requirement of providing service to be the arrival of natural gas at the customer meter. This overly narrow and restrictive interpretation is not correct.

Service encompasses a much broader approach. Adherence to the OEB ordered obligations and the contractual rights and obligations that exist between the customer and the utility is included in the definition of service. For a utility to introduce additional conditions outside of the OEB requirements and the existing contracts as pre-conditions to the fulfillment of the utility's legal obligations is effectively denying the service that NRG is obligated to provide and IGPC is entitled to receive. This dispute is the very essence of Issue 1 in the current OEB proceeding.

I am disappointed in your response. There was absolutely no need to respond in such a manner.

Yours truly,

AIRD & BERLIS LLP



Scott Stoll

SAS/hm

cc: M. Kovnats
D. O'Leary

15644907.2

ATTACHMENT “B”

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8
416.362.2111 MAIN
416.862.6666 FACSIMILE

OSLER

Toronto
Montréal
Ottawa
Calgary
New York

October 2, 2013

Richard King
Direct Dial: 416.862.6626
rking@osler.com
Our Matter Number: 1144223

SENT BY ELECTRONIC MAIL (BoardSec@ontarioenergyboard.ca)

Ms. Kirsten Walli
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/Integrated Grain Processors Co-operative Inc.
Capital Cost Dispute and Service Denial
OEB File No. EB-2012-0406/EB-2013-0081**

We are co-counsel to Natural Resource Gas Limited ("NRG"). This letter is in response to the letter from counsel for Integrated Grain Processors Co-operative Inc. ("IGPC") dated September 26, 2013 wherein IGPC suggests that the remainder of the Board process in the above-noted matter should consist of a technical conference and a written hearing. NRG agrees with IGPC that given the number of hearings and large amount of evidence on the record related to the pipeline dispute, an oral hearing is unnecessary and a written hearing would suffice, and is an effective approach. However, NRG believes that a technical conference is entirely inappropriate for several reasons:

- This is not a rate or facilities proceeding wherein technical conferences are convened in order to review and clarify an application or evidence, as per Rule 27.01 of the Board's Rules of Practice and Procedure. This particular proceeding is somewhat unique for the Board in that the Board has itself taken jurisdiction to adjudicate on a commercial contract – jurisdiction it initially declined. In this particular dispute the Board is acting akin to a civil court. There are no technical or other issues requiring clarification. Rather, IGPC is simply looking for an opportunity to obtain further discovery, and force NRG to tie up financial and internal resources providing information that has already been provided.
- This is IGPC's application, not NRG's. Typically, the Board convenes technical conferences in applications for intervenors to better understand the minutiae of an applicant's evidence (e.g., the very detailed and technical evidence that comprises in a rate case). The purpose is to limit the need for factual clarifications at the hearing stage of any proceeding. That is not what is happening here. This is a bilateral contract dispute and IGPC as applicant bears the burden of making its

case as a matter of contract law. It has had ample opportunity to do so. Surely, there is no further need for the factual clarifications typical of a technical conference. This dispute has been ongoing for years and by IGPC's own admission, has been the subject of multiple hearings and voluminous evidence. There is no further benefit to be gained from yet further discovery. It is hard to believe that after all of the evidence that has been adduced in these various Board proceedings over the years on this issue, somehow a little more process is needed to enable IGPC to argue its case. NRG has been asked and answered questions on the various cost items numerous times.

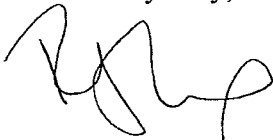
- The costs of the dispute have now outstripped any pipeline capital costs in dispute. Further process will only compound the inefficiency of resolving this dispute. Moreover, as pointed out in the letter from NRG's President (dated July 17, 2013), NRG's concern is that this dispute is really only costing NRG. As per IGPC's last financial statement available to NRG (mid-2012), IGPC has substantial assets (plant and equipment of \$70 million, and cash of \$15 million) that far outstrip NRG's. IGPC also receives over \$25 million in an annual operating grant. NRG receives no such public funds, and is dependent on this Board to ensure that it recovers its costs and earns a fair return. The amount in dispute is less than \$900,000. NRG's concern is that IGPC's operating grant has enabled IGPC to have no regard for the financial cost of litigating this issue. NRG does not have that luxury and the amounts spent to date are significant and directly impacts NRG's bottom line. Moreover, there is an internal cost for NRG to continue to engage in this dispute (i.e., senior employee time) which has meant that instead of being able to spend time on operating and growing its business, NRG has had to spend an inordinate amount of time over the six years dealing with a single customer. There is no benefit (only additional cost) associated with a technical conference. What ought to be discussed by the parties, and should be of concern to this Board, is how to deal with the expiry of IGPC's operating grant in 2016. As NRG has stated, based on the last financial statements from IGPC, in the absence of such grants IGPC operates at a significant annual loss (\$12 million). It is this issue that is looming and deserves attention, coupled with potentially significant decommissioning costs.

OSLER

Page 3

For all of these reasons, NRG would support IGPC's request for an oral hearing but without a technical conference. This is a bilateral contract dispute and a technical conference would be, in NRG's view, an irregular procedure – and one that is unnecessary at this stage.

Yours very truly,

A handwritten signature in black ink, appearing to be 'RJ King', with a long, sweeping horizontal line extending to the right.

Richard J. King
RK:hi

c: All Parties to EB-2012-0406/EB-2013-0081
T. Graat and L. O'Meara (NRG)
L. Thacker (Co-counsel to NRG)