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DELIVERED and SERVED

December 10, 2014

Ontario Energy Board  
2300 Yonge Street, 27th Floor  
Toronto, Ontario M4P 1E4

Attention: Ms. Kirsten Walli  
Board Secretary

Torys Law Firm LLP  
79 Wellington Street West, 30th Floor  
Box 270, TD South Tower  
Toronto, Ontario M5K 1N2

Attention: Crawford Smith

Dear Sirs / Mesdames:

**Re: Natural Resource Gas Limited (“NRG”)**

**Ontario Superior Court of Justice (Divisional Court) – Court File No.: 521/14  
Filing of Appeal Record and Motion for a Stay (Divisional Court Appeal)**

**NRG QRAM – Phase 2 Proceeding -- EB-2014-0053  
Motion for Consolidation with EB-2014-0154**

**Union Gas Limited (“Union”) Penalty Rate Hearing – EB-2014-0154  
Motion to Review Decision and Order of October 9, 2014  
Motion for Consolidation with EB-2014-0053**

**Introduction:**

Enclosed with this letter are the Appeal Book and Compendium and the Exhibit Book served pursuant to the *Rules of Civil Procedure* in the Divisional Court Appeal. Also enclosed is a Motion Record containing a Notice of Motion and supporting Affidavit material seeking, *inter alia*, a stay of the Divisional Court Appeal pending a decision by the Ontario Energy Board (the “Board”) in NRG’s request for a review of the Board Decision and Order in the Union Penalty Rate Hearing.

Also enclosed with this letter is a Notice of Motion and supporting Affidavit in the Union Penalty Rate Hearing seeking a review of the Board’s Decision and Order made on October 9, 2014 and, if a review is granted, an Order that the re-hearing of the matter be consolidated with the hearing of Phase II of the NRG QRAM hearing.



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Finally, enclosed is a Notice of Motion and supporting Affidavit material in the Phase II proceeding of the NRG QRAM hearing seeking consolidation of this hearing with the review of the Board's Decision in the Union Penalty Rate Hearing, if granted.

NRG relies upon the evidence, Decision and Order of the Board and other materials contained in the Appeal Book and Compendium and Exhibit Book filed with the Divisional Court in the motions described below.

### **Divisional Court Appeal Motion**

The motion for a stay of the appeal can be properly dealt with on consent if the Board and Union are so advised. I therefore enclose a Consent Order in the Divisional Court appeal for your consideration. If both parties are willing to consent, would you please approve the draft Order. I will thereafter file the Consent Order with the Court thereby eliminating the need for the Board or Union to file materials or appear on the motion for a stay.

### **Union Penalty Rate Hearing – Request for Review and Other Relief**

From the Notice of Motion filed, NRG is seeking:

- (a) a review of the Board's Decision and Order dated October 9, 2014 in the Union Penalty Rate Hearing (EB-2014-0154). NRG relies upon Rule 40.01 of the *Rules of Practice and Procedure of the Board* ("Rules") in requesting the Board review its final Order and Decision and vary the final Order and Decision directing that NRG pay only Union's cost of gas (\$7.12 per GJ) for 25,496 GJ delivered by Union to NRG's account on February 28, 2014. NRG also relies upon Rule 7.01, extending the time limit contained in Rule 40.03. In seeking a review of the Board's Decision, NRG relies upon the new evidence and opinions delivered by consultants and witnesses put forward by the Board and Union in its 2014 Natural Gas Market Review Stakeholder Conference on December 3 and 4, 2014 and described by Brian Lippold in his Affidavit of December 8, 2014, filed about the causes of the unprecedented cost of gas delivered at the Dawn hub of Union;
- (b) NRG also relies upon Rule 42.01 of the Rules setting out the grounds for a review of a Board decision. NRG relies upon "... new facts that have arisen ..." and "... facts that were not previously placed in evidence in the proceeding and could not have been discovered by reasonable diligence at the time ...". In particular, NRG relies upon paragraphs 8 to 17 of the Affidavit of Brian Lippold, filed and Exhibits "A" to "E", inclusive, attached to that Affidavit. The facts, analysis and opinion given by consultants retained by the Board and Union could not have been discovered and placed before the Board until after the reports had been delivered in December 2014, some seven weeks after the Board had made its final Decision and Order on October 9,

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2014. While the facts and opinions are numerous within the consultant's reports and slide presentations, NRG emphasizes the following evidence given by the Board consultant, Navigant, regarding the extreme natural gas price perturbations in January and February 2014: "... there were many events unfolding in real time last winter as market participants made decisions on planning and acquiring supply. The most important event was the cold weather, which was widespread, persistent and extreme. Hindsight allows all the information to be seen at once ...". Of significance in the new facts which became available at the December Review, was the list of contributing factors contained in paragraph 12 of the Affidavit of Brian Lippold. It is now apparent that Union's purchases in the market to re-fill its storage and market events in the United States of America caused the very high prices that feed the formula contained in the penalty rate calculation that Union has imposed upon NRG. In effect, Union was competing with NRG at the same time that NRG was seeking assistance to find reasonably priced natural gas in February 2014. Union was obliged to tell NRG of this fact, but did not. In any event, Union obtains a windfall in the price differential between its cost of gas and the penalty rate. In short, Union customers receive a benefit while NRG customers suffer a detriment. Having regard to all of the new facts, including Union's evidence of major purchases in the natural gas market in February and all of the other factors that were not known or could have been known either in February 2014 or prior to their disclosure in December 2014, it is respectfully submitted that NRG should be granted a review of the Board's Decision and Order of October 9, 2014;

- (c) by letter dated December 1, 2014, NRG sought relief from and a stay of the imposition of interest amounts allegedly due from NRG to Union for payment of certain winter checkpoint banked gas purchases. NRG proffered a payment of \$205,130.62 for the 25,496 GJ of natural gas. The amount offered was based on Union's average weighted cost of spot purchases as at February 28, 2014, being \$7.12 per GJ plus HST. The Board has not given any direction or decision regarding this request. NRG asks that this issue be heard and decided at the same time as the other issues, as set out above;
- (d) in the Phase II Proceeding of the NRG QRAM hearing (EB-2014-0053), the Board is required to deal with NRG's prudence in purchasing natural gas during January and February 2014. The outcome of that decision will be affected by the new evidence, facts and opinions dealt with in the Lippold Affidavit, filed. NRG requests that the issues arising in the Union Penalty Rate Hearing be consolidated with the issues arising in the NRG QRAM Hearing as they are all affected by the new evidence, facts and opinions filed with the Affidavit of Brian Lippold; and



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- (e) NRG requests an oral hearing to deal with all of the factual and expert evidence now placed on the record by the Board itself and by Union.

NRG requests direction from the Board to deal with the request for review and ancillary relief. As set out above, NRG requests an oral hearing after Union has had an opportunity to file its own evidence. NRG requests that written interrogatories be permitted after all Affidavit evidence has been received, and that oral argument follow that process. In any event, NRG asks that a witness from Union be made available for cross-examination before the Board.

**NRG QRAM – Phase II Proceeding (EB-2014-0053)**

NRG has requested a decision and order of the Board regarding the treatment of NRG's cost of gas during the winter season 2013/2014. In particular, NRG has asked that the cost of gas be declared a cost of ratepayers. The Board has directed a prudence review. NRG has sought an oral hearing. NRG was granted a right to receive the Board consultant's reports as part of the NRG QRAM Phase II Proceeding.

In that the new evidence contained in the Affidavit of Brian Lippold filed in EB-2014-0154, the Union Penalty Rate Hearing, also impacts the NRG QRAM hearing, NRG seeks permission to rely upon the Affidavit of Brian Lippold and the consultant's reports and evidence attached thereto in the NRG QRAM hearing.

NRG therefore seeks an order of the Board consolidating the NRG QRAM hearing with the issues outstanding in the Union Penalty Rate Hearing so as to obtain the "... most just, expeditious, and efficient determination on the merits of all of the proceedings presently extant before the Board ..." pursuant to Rule 2.01 of the Rules. In this regard, NRG relies upon Rule 4.01 in seeking a procedural order consistent with the requests made above.

Yours very truly,



John A. Campion

JAC/car

Enclosures

cc: Lawrie Gluck, Ontario Energy Board  
Brian Lippold, Natural Resource Gas Limited  
Laurie O'Meara, Natural Resource Gas Limited  
Robert Hutton, Natural Resource Gas Limited

*(cover letter only)*