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June 30, 2017

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Filed via RESS

Ottawa

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

New York

Attention: Kristi Walli
Board Secretary

Dear Ms. Walli:

**Re: EB-2016-0351 – Natural Resource Gas Limited (“NRG”)
Reply Argument**

Pursuant to Procedural Order No. 3 dated May 26, 2017 in the above noted proceeding, NRG hereby submits its Reply Argument.

Please do not hesitate to contact the undersigned should you have any questions.

Yours truly,



Sander Duncanson

Enclosure

cc: EB-2016-0351 Intervenors

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 Natural Resource Gas Limited for the relief necessary to transfer its natural gas distribution system to EPCOR Natural Gas Limited Partnership.

EB-2016-0351

Natural Resource Gas Limited

Reply Argument

June 30, 2017

To: Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Introduction

1. Natural Resource Gas Limited (“NRG”) makes this submission in response to the final arguments of the following parties in the EB-2016-0351 proceeding:
 - (a) Integrated Grain Processors Co-operative Inc. & IGPC Ethanol Inc. (“IGPC”);
 - (b) Tribute Resources Inc. and ON-ENERGY CORP. (together, “Tribute”);
 - (c) Union Gas Limited (“Union”);
 - (d) The Vulnerable Energy Consumers Coalition (“VECC”); and
 - (e) Ontario Energy Board Staff (“OEB Staff”).
2. None of these parties are opposed to NRG’s Application and several of them, including IGPC, Tribute and the OEB Staff, support the Board granting NRG’s requested relief. IGPC, VECC and the OEB Staff all agree that EPCOR Natural Gas Limited Partnership (“EPCOR”) will have the human and financial resources necessary to ensure the reliable, safe and efficient operation of NRG’s distribution system.¹ In addition, IGPC, VECC and OEB Staff all agree that costs for ratepayers will not be higher as a result of the proposed transaction as compared to what they otherwise would have been with NRG.² As a result, the record is clear that the proposed transfer meets the “no harm” test and should be approved by the Board.
3. The only outstanding issues that have been raised in parties’ final arguments relate to additional conditions that parties seek to have imposed on the Board’s approval. For the reasons that follow, NRG submits that none of the requested conditions are necessary or appropriate in the circumstances.

Several Issues Relate to the Revised Rate Application in EB-2016-0236

Timing of Revised EB-2016-0236 Application

4. IGPC requests as part of the current proceeding an order from the Board requiring EPCOR to file the revised EB-2016-0236 application prior to January 1, 2018.³ NRG understands IGPC’s desire to have revised rates set as soon as possible, and previously requested that the proposed transfer be processed expeditiously so that new rates can be established as

¹ IGPC Final Argument, para. 5; VECC Final Argument, para’s 1.4 and 1.8; OEB Staff Final Argument, at p. 9.

² IGPC Final Argument, para. 6; VECC Final Argument, para. 2.8; OEB Staff Final Argument, at p. 4.

³ IGPC Final Argument, para. 22.

quickly as possible.⁴ Not only would this be in the interest of IGPC, but it is also in the interests of EPCOR to obtain rate certainty as soon as reasonably possible.

5. EPCOR has already committed to filing the revised EB-2016-0236 application within six to nine months of closing the proposed transaction.⁵ This is as soon as reasonably possible following the Board's decision in this proceeding. EPCOR has no certainty regarding the timing or content of the Board's approval of the current application, which is the key pre-condition for closing⁶ and will directly influence the timing of the revised EB-2016-0236 application. As a result, it would be unreasonable to require EPCOR to file the application by a fixed date only six months from now. EPCOR and NRG intend to close the transaction as soon as practicable following a positive Board decision in this proceeding. Following the closing of the transaction, EPCOR will need a reasonable amount of time to become fully familiar with the operations of NRG in order to properly revise the EB-2016-0236 application. Given the foregoing, the Board should rely on EPCOR's commitments in this proceeding and should not impose any time restrictions on the filing of the revised EB-2016-0236 application.

Impact to Customers Resulting from Interim Rates

6. IGPC's final argument also requests an order from the Board requiring EPCOR to include evidence in the revised EB-2016-0236 application to calculate the repayment to customers for the period in which interim rates will have been in effect, and a proposal for repayment to customers that had overpaid during the period of interim rates.⁷ VECC similarly requests that the Board "should make it clear" that EPCOR will be at risk in the EB-2016-0236 proceeding for any amounts that may be determined to be unrecoverable as a result of the delay that the current application caused to the EB-2016-0236 application.⁸
7. All matters related to rates applicable to the NRG system will be addressed during the EB-2016-0236 proceeding, and will be decided on the basis of the evidence filed in that proceeding (none of which is part of the current record). NRG submits that it would be inappropriate and unfair to EPCOR for the Board to consider how to address variances from the period of interim rates in this proceeding when EPCOR has not had an opportunity to participate in the EB-2016-0236 proceeding to date, and when doing so would fetter the Board's discretion in the EB-2016-0236 proceeding.

⁴ Exhibit 1, Tab 1, Schedule 1, at p. 3.

⁵ Exhibit 1, Tab 1, Schedule 1, at p. 2.

⁶ See Article 6.1 of the Asset Purchase Agreement, Exhibit 1, Tab 1, Schedule 6, Attachment 5.

⁷ IGPC Final Argument, para. 22.

⁸ VECC Final Argument, para. 2.7.

System Integrity Study

8. Several parties reference the Board's EB-2010-0018 decision, in which the Board directed NRG to retain an independent consultant to carry out a system integrity study to determine how much supply is required from local gas wells to address system integrity issues on the system.⁹ SNC Lavalin was retained to complete the study, and it was filed in the EB-2016-0236 proceeding. The study concluded that system integrity gas was required, but could not define a precise amount, given the number of variables at play. The issue of "system integrity" gas and the appropriate cost for that gas, will be addressed in the EB-2016-0236 proceeding. Similar to the issue of interim rates, NRG submits that it would be inappropriate and unfair to EPCOR for the Board to consider issues related to the system integrity study (including the need to file a comprehensive system integrity plan) in this proceeding when EPCOR has not had an opportunity to participate in the EB-2016-0236 proceeding to date, and when doing so would fetter the Board's discretion in the EB-2016-0236 proceeding.

Reasonableness of Gas Purchase Agreement with NRG Corp.

9. OEB Staff express two concerns with the proposed Gas Purchase Agreement between EPCOR and NRG Corp. First, OEB Staff state that the Gas Purchase Agreement presumes that a premium will continue to be paid for gas supply from NRG Corp. (as authorized in the Board's EB-2010-0018 decision), which OEB Staff submit has not yet been determined by the Board. Second, OEB Staff submit that the term of the Gas Purchase Agreement (until September 30, 2020) will not allow EPCOR to explore other supply options until at least that time.¹⁰ Further, Tribute seeks an order from the Board permitting access to the NRG system by all gas producers on terms equal to those contained in the Gas Purchase Agreement.¹¹ NRG disagrees with each of these positions and submits that the terms of the Gas Purchase Agreement are reasonable and ensure EPCOR will be able to maintain reliable operation of the system.
10. The Gas Purchase Agreement does not presume that a premium will be paid to NRG Corp. for the gas supply. The purpose of the Gas Purchase Agreement is not to establish the costs for gas supply from NRG Corp.; it is to ensure that EPCOR will have the necessary access to local gas production to ensure system reliability, based on the results of the system integrity study completed by SNC-Lavalin.¹² The prudence of the costs that EPCOR pays to NRG Corp. for gas supply will be assessed in future proceedings.

⁹ VECC Final Argument, para. 3.9; OEB Staff Final Argument, p. 6 and 10.

¹⁰ OEB Staff Final Argument, p. 7.

¹¹ Tribute Final Argument, p. 1.

¹² NRG Response to 1-Staff-4(a) and (b).

11. Contrary to VECC's suggestion that "NRG and EPCOR appear to believe that either only NRG Corp. can provide the necessary gas, or that this supply of gas is the only solution to the system integrity issues", NRG considered other local gas producers in addition to or as an alternative to NRG Corp. However, those producers were either not interested in entering into an arrangement to supply natural gas to NRG, or failed to respond when approached by NRG regarding such an arrangement (as was the case with Tribute).¹³ As a result, and based on this, it was entirely reasonable for EPCOR to negotiate a Gas Purchase Agreement with NRG Corp. to maintain the current status and ensure continuity of supply as required for system integrity. To be clear, the Gas Purchase Agreement does not contain any provisions regarding exclusivity, nor does it foreclose or prohibit EPCOR from examining other sources or means of addressing supply or system integrity.
12. With respect to the term of the Gas Purchase Agreement, an initial term to September 30, 2020 ensures the necessary continuity of supply in the short-term while allowing EPCOR sufficient flexibility to evaluate alternative options for the medium- to long-term. In other words, EPCOR is entering into the Gas Purchase Agreement to ensure that it procures gas supply for an initial term to maintain current operations, based on results of the existing system integrity study as completed by NRG. The evidence is that post-closing, once EPCOR has assumed operations of the system, it plans to further review the findings and recommendations from the system integrity study completed by SNC-Lavalin and, if appropriate, perform additional analysis or studies as required to develop a comprehensive system integrity plan.¹⁴ These studies and comprehensive system integrity plan will likely take considerable time to complete. In addition, if EPCOR decides to connect supply from alternative local producers, such connection(s) would require construction of new facilities. In light of the timing associated with each of these steps, NRG submits the term of the Gas Purchase Agreement is appropriate.
13. Finally, to clarify a statement made by VECC,¹⁵ EPCOR is not purchasing NRG Corp. through the Gas Purchase Agreement. Rather, the arrangement is for EPCOR to purchase gas from NRG Corp. through the Gas Purchase Agreement. The Gas Purchase Agreement does contain an option to purchase the wells of NRG Corp. as well as a right of first refusal for EPCOR should NRG Corp. wish to sell its gas wells in the future. These contractual rights are at EPCOR's option and allow EPCOR to decide whether to purchase the gas wells from NRG Corp. in the future in order to provide additional and prudent protection of gas supply for the gas distribution system. For clarity, however, NRG Corp. has always been and remains a separate company operating at arm's length from EPCOR.

¹³ NRG Response to VECC-5(b).

¹⁴ NRG Response to VECC-5(b).

¹⁵ VECC Final Argument, para's 1.1 and 3.5.

Union Gas Penalty

14. In its final argument, Union interprets Clause 4.1.6 of the Asset Purchase Agreement to mean that upon closing, the Board's order in the combined EB-2014-0053 / EB-2014-0361 / EB-2015-0044 proceeding requiring NRG to pay a penalty to Union (the "Penalty Order") would no longer be enforceable. As a result, Union requests that the Board include a condition in its approval of the proposed transfer requiring NRG to pay the balance of the penalty amount upon closing of the proposed transaction. As an alternative, Union requests that the Board impose a condition in the transfer requiring EPCOR to assume this obligation.¹⁶ VECC also raised the Penalty Order in its final argument and makes similar requests.¹⁷
15. Union has not explained its reasoning as to why the Penalty Order would not be enforceable post-closing, however it has clearly misinterpreted Clause 4.1.6 of the Asset Purchase Agreement. This clause does not address or apply to the enforceability of the Penalty Order as against NRG and its shareholder. Rather, it is simply a standard provision in purchase agreements by which a seller confirms to the buyer that no government or regulatory approvals are required to transfer the assets except for those which are specifically described, which in this case is (primarily) approval of the OEB under Section 43 of the *Ontario Energy Board Act, 1998* ("OEB Act"). Following closing, NRG will continue to exist as an entity and the Board's Penalty Order will continue to apply to NRG as it is not to be transferred to EPCOR. Moreover, pursuant to Clause 6.1.12 of the Asset Purchase Agreement, at the time of Closing NRG will either have satisfied, or will have reached an agreement with Union to settle, all amounts owing as a result of the Penalty Order, when due and payable.¹⁸ As a result, the additional conditions proposed by Union and VECC are unnecessary and should not be imposed by the Board.

Status of Consents

16. OEB Staff requested an update from NRG on the status of required consents from Union to assign contracts for the transportation, delivery and sale of natural gas to NRG's system. NRG, Union and EPCOR have been reviewing a form of assignment and consent and NRG expects that this will be settled shortly. Union has indicated that once the form is settled and the closing date is known, it will execute the consent form.

Financial Viability

17. OEB Staff suggests that the OEB require a parental guarantee or some other assurance or undertaking from EPCOR Utilities Inc. ("EUI") for some time until EPCOR is "fully

¹⁶ Union Final Argument, p. 2.

¹⁷ VECC Final Argument, para. 4.4.

¹⁸ Exhibit 1, Tab 1, Schedule 6, Attachment 5.

operational”.¹⁹ NRG submits that a parental guarantee or some other form of assurance from EUI would be unnecessary as, upon closing, NRG’s assets and business will transfer to EPCOR and EPCOR will be “fully operational” in the same way that NRG currently is, for which there is no current parental guarantee. Moreover, EUI has committed to funding the purchase price to EPCOR for the purchase of the NRG assets and has confirmed that it will provide funding for EPCOR’s future capital projects that have been approved by the Board.²⁰ The Board has previously held that the purpose of a parental guarantee is to provide some evidence that an applicant is likely to carry out its financial obligations for the term of its approvals.²¹ The evidence in this proceeding demonstrates that EPCOR will have sufficient financial capability to fund the purchase price and reliably operate the NRG system. Further, the cases where parental guarantees have been required primarily relate to energy marketers and retailers who typically have only had intangible assets such as supply and customer contracts, whereas, upon closing, EPCOR will possess valuable physical assets, namely the NRG distribution system, and all rights related thereto, including the right to distribute gas in the relevant franchise areas. As a result of all of the above, no additional assurance from EUI is required.

18. OEB Staff also submit that the OEB should clarify that the premium paid by EPCOR for the proposed acquisition, all incremental costs relating to completion of the proposed sale transaction, and costs associated with the necessary regulatory approvals cannot be recovered through future distribution rates.²² Such clarification is not needed. The Application is clear that EPCOR will not seek to increase its future revenue requirements recovered from customers in order to recover transaction costs associated with this transaction.²³ This would include the premium paid by EPCOR for the proposed acquisition and all incremental costs relating to completion of the proposed sale transaction, including the current application. For clarity, however, EPCOR intends to seek recovery of any costs that would have been incurred regardless of the proposed transaction, including costs associated with renewing the Oxford County franchise agreement.

Transfer of Regulatory Approvals

19. OEB Staff submit that the franchise agreement between NRG and Oxford County requires OEB approval before it can be transferred to EPCOR. OEB Staff also submits that the certificate granting NRG the right to construct works in Oxford County (E.B.C. 111 and 119) forms part of the proposed franchise agreement between NRG and Oxford County,

¹⁹ OEB Staff Final Argument, p. 11.

²⁰ NRG Response to 1-Staff-5.

²¹ OEB Decision EB-2009-0242, at 9.

²² OEB Staff Final Argument, p. 11.

²³ Exhibit 1, Tab 1, Schedule 4, at p. 2.

which requires OEB approval before it can be transferred.²⁴ NRG agrees with these submissions from OEB Staff. In the event that the proposed franchise agreement between NRG and Oxford County has not been approved by the Board by the time the Board renders its decision on the present application, NRG requests that the Board conditionally approve the transfer of the franchise agreement and related certificates for Oxford County to take effect following Board approval of the proposed franchise agreement and issuance of a final by-law by the County, and also approve that, in the interim, EPCOR and NRG can continue to pursue Board approval of the proposed franchise agreement.

20. OEB Staff also support the Board transferring the rate orders referenced in the Application to EPCOR, but recommend that with respect to Decision and Order EB-2016-0266, it would be more appropriate for the Board to transfer the most recently approved OEB decision and order relating to the quarterly rate adjustment at the time the Board makes its decision on this application.²⁵ NRG agrees with this recommendation.

Accounting Standard

21. OEB Staff requested confirmation of EPCOR's plans regarding accounting standards for external reporting and the amended EB-2016-0236 rate application.²⁶ NRG confirms that EPCOR will use the MIFRS accounting standard for the amended EB-2016-0236 rate application and IFRS for external reporting. For clarity, for external reporting purposes, EPCOR's financial results will be consolidated into EUI's financial statements, which by virtue of applicable Canadian securities laws are required to utilize IFRS.

Conclusion

22. For the reasons above and those contained in NRG's final argument, the proposed transfer meets the "no harm" test and should be approved by the Board without any of the conditions requested in parties' final arguments. Specifically, NRG requests that the Board:
- (a) Grant leave under section 43 of the OEB Act allowing NRG to transfer its natural gas distribution system in its entirety to EPCOR;
 - (b) Issue orders under section 18 of the OEB Act granting leave to NRG to transfer to EPCOR the relevant regulatory agreements, certificates and orders for NRG's distribution system, as detailed in the Application, and as clarified in paragraph 19 above; and,
 - (c) Grant such further and other relief as the Board may consider appropriate.

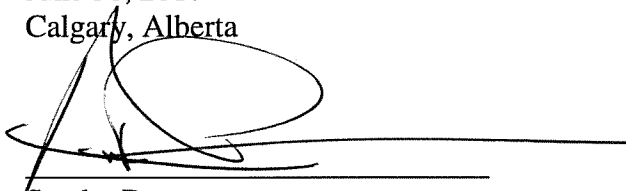
²⁴ OEB Staff Final Argument, p. 13.

²⁵ OEB Staff Final Argument, p. 13-14.

²⁶ OEB Staff Final Argument, p. 15.

Respectfully submitted,

June 30, 2017
Calgary, Alberta

A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal line extending to the right.

Sander Duncanson
Osler, Hoskin & Harcourt LLP
Counsel for Natural Resource Gas Limited

cc: EB-2016-0351 Intervenors