

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 Union Gas Limited for an Order pursuant to Section 36 of the *Ontario Energy Board Act, 1998*, seeking changes to reduce its financial exposure in regard to a Bundled T Gas Contract and an M9 Delivery Contract with Natural Resource Gas Limited.

**PRE-FILED EVIDENCE OF INTEGRATED GRAIN PROCESSORS
CO-OPERATIVE INC. and IGPC ETHANOL INC. (“IGPC”)**

1. This is the evidence filed on behalf of Integrated Grain Processors Co-Operative Inc. and IGPC Ethanol Inc. (“IGPC”). Integrated Grain Processors Co-Operative Inc. is an Ontario Co-Operative which, together with its wholly owned subsidiary, IGPC,¹ has been responsible for the financing, planning and construction of an ethanol production facility in Aylmer, Ontario (the “Facility”). Operations at the Facility are dependant upon a supply of natural gas for which a 28.5 km, 6 inch diameter steel natural gas pipeline and ancillary facilities (the “Pipeline”) have been constructed.
2. The Pipeline has been constructed through several of Natural Resource Gas Limited’s (“NRG”) franchise areas. The Pipeline is a dedicated line used exclusively by IGPC delivering gas volumes from its interconnection with Union to the Facility. The Pipeline does not now and there are no plans for the Pipeline to serve any NRG customer other than IGPC. The natural gas is received by IGPC pursuant to a Gas Delivery Contract (“GDC”) dated January 30, 2007, and a Bundled T – Service Receipt Contract (the “Bundled T”). Both the Pipeline and Facility are now operational.

Purpose of This Evidence

3. The Union Gas Limited (“Union”) Application was initially brought under Subsection 42(1) of the *Ontario Energy Board Act, 1998* (the “Act”) requesting an order permitting Union to discontinue providing gas distribution services to NRG. Subsequent to Union filing its Application, IGPC determined from Union that it was not seeking an order from

¹ By a transfer of assignment dated June 30, 2007 Integrated Grain Processors Co-Operative Inc. assigned/transferred relevant rights and obligations to IGPC.

the Ontario Energy Board (“OEB” or “Board”) requesting approval to discontinue service to NRG in respect of the Pipeline and the natural gas required by the Facility. Further, as a result of the decisions made at the Issues Day in this proceeding on October 15, 2008, IGPC understands that Union will no longer be seeking an order under Subsection 42(1) of the Act. Accordingly, IGPC understands that there is no prospect of Union discontinuing service to NRG as a result of this proceeding.

4. However, given that IGPC is a customer of NRG and relies upon it for the operation and maintenance of the Pipeline, concerns raised by Union about the financial integrity of NRG and/or its credit worthiness are of concern to IGPC given the need for a financially sound and capable gas distributor to operate the Pipeline. Should NRG encounter financial difficulties in respect of its operations and maintenance of the balance of its distribution system, this could negatively affect its ability to operate and maintain the Pipeline.
5. In addition, should Union be successful in its Application, it is anticipated that NRG will incur costs to provide additional security to Union. Alternatively, there may be potential cost of service implications in the event that there is a restructuring of NRG’s Bundled T conditions of service to provide for March 31st year end. Should any decision in this proceeding give rise to any additional cost or cost of service implications, it is important to note that these impacts did not arise by reason of the construction and ongoing operation of the Pipeline. As well, any concerns about the financial integrity of NRG or its credit worthiness do not arise by reason of the construction and operation of the Pipeline.
6. Finally, with a view to assisting the Board by providing a complete record of relevant information for the purposes of the relief sought in this proceeding, this evidence outlines circumstances and conduct which are relevant from the perspective of the Board’s inquiry into the financial integrity and credit worthiness of NRG.

Financing the Pipeline

7. The Pipeline was the subject of a leave to construct application brought by NRG (EB-2006-0243). In the OEB’s Decision and Order dated February 2, 2007, the OEB approved a Pipeline Cost Recovery Agreement (“PCRA”) and a GDC. Stated briefly, the former provided the process for the financing and construction of the Pipeline. This

involved IGPC paying an aid-to-construct and providing NRG with a letter of credit ("LC") securing the balance of the capital cost to construct the Pipeline. The Aid-to-Construct was comprised of payments by IGPC to NRG; Lakeside Steel; Lakeside Controls, and Union Gas. On April 16, 2008, IGPC confirmed that the balance owed under the PCRA for the aid-to-construct was \$389,982, and the LC was \$5,214,173. This amount and the LC were provided to NRG shortly thereafter. This LC will be reduced by the capital component of the rates charged by NRG to IGPC which are recovered over time.

8. To make the inter-connection between the Pipeline constructed in NRG's franchise areas and Union, it was necessary to construct a 1.6 km extension in the Union franchise area. In support of this, IGPC paid Union as an aid-to-construct the sum of \$736,000. As well, it provided Union directly with an LC in the amount of \$73,100 to secure the capital cost. Given that this extension pipeline connected the Union system to the Pipeline which was to be built and operated by NRG, the fact that the gas customer, namely IGPC, was required to post security directly with Union rather than NRG can only be viewed as being "unique". Importantly, what this means is that NRG has posted no security with Union nor is it at risk for any of the costs of the extension pipeline as all of the costs and risks have been paid and secured by IGPC.
9. In summary, both the Pipeline and the extension to Union has been fully paid and secured by IGPC. NRG is exposed to no risk in respect of the capital cost of the Pipeline and the extension. Accordingly, the construction of the Pipeline and the extension has had no adverse impact on NRG's financial integrity nor on its credit worthiness.

Gas Delivery Contract

10. The GDC contemplates minimum daily contract volumes. This is based upon a load profile for the Facility which is relatively flat in that it is not anticipated that operations will vary significantly over time resulting in significant fluctuations in demand. Natural gas demand by the Facility is not seasonal.
11. The GDC also contemplates IGPC providing NRG with a security deposit in the amount of \$232,666.84. This was provided to NRG on August 13, 2008. Accordingly, NRG is exposed to no risk from the prospective of the commodity in that it has the right to draw upon the security deposit in the event of non-payment.

12. IGPC has also provided security in the amount of \$72,397 to Union for distribution services that Union will provide to NRG for delivering gas to the Facility. Again, this was done directly from IGPC to Union. Accordingly, in the event of non-payment by NRG, Union may draw upon the security deposit paid by IGPC. NRG has not been put to the cost of providing Union with any security in respect of the volumes that will be delivered for use at the Facility.
13. IGPC has paid NRG for delivery services commencing July 15, 2008.

The Bundled T Gas Contracts

14. IGPC has been advised by Union that NRG has entered into two Bundled T gas contracts with NRG. One relates to those volumes delivered to supply NRG's customers other than IGPC. The other relates to those volumes Union delivers to NRG to supply the Facility by means of the dedicated Pipeline.
15. IGPC understands that Union maintains two banked gas accounts ("BGA") as described in Union's pre-filed evidence at paragraph 4, wherein Union tracks the difference between the constant daily quantities of gas delivered to Union by NRG under the Bundled T and the fluctuating daily consumption by NRG's customers. In the case of IGPC, the fluctuations are minimal; therefore the gas deliveries remain relatively constant. As a result, the BGA which Union maintains in respect of volumes delivered to the Facility by means of the Pipeline does not typically result in a significant negative or positive balance. Importantly, from the perspective of Union, the BGA in respect of IGPC's volumes does not generate a negative BGA balance. Accordingly, given the nature of IGPC's operations and its steady rate of consumption, Union's request to NRG for additional security does not arise from the gas volumes delivered to the Facility.
16. Indeed, IGPC understands that Union maintains a separate BGA for volumes delivered to the Pipeline for delivery to the Facility from those volumes delivered to NRG for distribution to its other customers which is the subject of this proceeding. IGPC understands that the BGA referenced in Union's pre-filed evidence does not and will not track any of the volumes delivered to the Facility by means of the Pipeline.
17. In summary, the gas volumes which the Facility receives do not and will not add to any negative balance in the BGA Union maintains in respect of its delivery of gas to NRG's other customers, which is the subject of this proceeding. Union's request for either

additional financial insurance or a change to the terms of its Bundled T do not arise by reason of the volumes delivered by Union to NRG for use by the Facility. Accordingly, to the extent that NRG incurs costs posting additional security or should changes to the terms of the applicable Bundled T have cost to service implications, none of these should be allocated to IGPC.

18. Consistent with this, Part 3 of the GDC provides as follows:

“The Utility acknowledges that the volumes in this agreement are significantly greater than the volumes delivered to existing Rate 3 customers and that a new rate may be more appropriate for the Utility and the Customer. The Utility has committed to developing a new rate for the Customer, to be included in the Utility’s Fiscal 2008 rate application which is anticipated to be filed with the Ontario Energy Board in April 2007.”

19. This provision was included in the GDC specifically in recognition of the large volumes, consistent consumption, and the fact that the Pipeline has been fully paid and secured by IGPC. In other words, NRG has not incurred any costs in respect of the construction of the Pipeline which are not recoverable in the rates paid by IGPC. The Pipeline operates independently of the balance of NRG’s system. Recognizing this, the above term was included in the GDC so that NRG would develop a rate specific to IGPC such that IGPC would not be required to pay rates which include costs associated with the operations and maintenance of the balance of NRG’s distribution system. Currently, IGPC is paying NRG’s Rate 3, which undoubtedly has allocated to it costs associated with operating NRG’s distribution system generally. If costs were appropriately allocated, IGPC believes that its rates would decline. Unfortunately, to IGPC’s knowledge, NRG has made no effort towards the development of an appropriate rate for IGPC.

Relevant Other Conduct

20. On January 2, 2008, NRG forwarded to IGPC a demand for the payment of \$413,665.32. This amount was comprised of the \$140,000 not yet paid administrative monetary penalty ordered payable by the OEB in June 2007. This figure included all of the legal fees and disbursements billed to NRG in respect of the June 29, 2007 emergency proceeding before the OEB. This figure also included claims based upon excessive hourly rates and time devoted to matters not related to the construction of the

Pipeline. Accordingly, IGPC disputed the amounts claimed and requested that NRG recalculate its claims so that IGPC could pay the reasonable costs NRG incurred in respect of the construction of the Pipeline. Unfortunately, there has been no resolution of this dispute and, with the exception of a reminder letter received from NRG requesting that the outstanding balance be paid plus interest. NRG has not pursued the matter with any degree of vigor.

21. IGPC believes that if NRG has incurred costs and expense to the extent set out in the January 2, 2008 demand, then its lack of activity pursuing recovery suggests that IGPC's refusal to pay to date has had no bearing on NRG's financial integrity or credit worthiness.
22. On August 18, 2008, NRG served a demand on IGPC for the payment of "rent" in respect of the placement of surplus pipe and anodes purchased by IGPC for the Pipeline on lands owned by NRG. Given that such "rent" was not contemplated under any agreement and given the fact that IGPC had not been afforded an opportunity to move the pipe to another location rather than pay "rent", IGPC disputed this demand and requested that NRG make the Pipeline available for delivery to either IGPC's property or another location. To date, this request has gone unanswered. IGPC is concerned that NRG is continuing to accrue "rental" amounts owing by IGPC in respect of the surplus pipe.
23. Under the PCRA, NRG is required to provide a detailed accounting of the actual costs of constructing the Pipeline within 45 days of the completion of the Pipeline. On October 9, 2008, IGPC wrote to NRG reminding it that the 45 days had passed and IGPC had received nothing from NRG. IGPC requested that NRG complete the accounting by October 17, 2008. This accounting is important because it may result in a reduction in the value of the LC provided to NRG. It is IGPC's belief that by reason of it directly paying for the pipe and the cost to build the Union extension as well as other matters, the reconciliation should generate a credit to IGPC and also allow it to reduce the value of the LC currently provided to NRG. As of the date of this evidence, the accounting has not been provided and IGPC has no information as to whether NRG has even begun the process.

24. As noted earlier, IGPC is required under the GDC to provide a security deposit to NRG in the amount of \$232,666.84. IGPC duly offered to provide the LC by letter dated August 13, 2008. NRG responded by an email letter dated August 13, 2008 from its counsel, Mr. Larry Thacker, stating that the LC had to be in the form of cash. This demand was not only contrary to the provisions of the GDC, it would also have breached aspects of the agreements entered into between IGPC and its lenders. After a series of correspondence, without explanation, NRG ultimately accepted the LC without amendment.
25. NRG was kept fully apprised as to the progress of construction on the Facility. NRG knew that as of June 30, 2008, the Facility had not been constructed to the point where it was ready to begin to receive natural gas even for commissioning purposes. Furthermore, the Pipeline had not been fully constructed and was not operational. Despite this, NRG contacted Union and nominated for receipt significant volumes of gas. In response to this, IGPC was put to the time and expense on an emergency basis of making arrangements for the delivery of the gas to avoid significant penalties. IGPC fails to understand what motivated this conduct as a result of which IGPC incurred losses totaling more than \$75,000.

Conclusion

26. In summary, by reason of the amounts paid and security given to NRG and Union by IGPC, NRG has assumed no risk by reason of the construction and operation of the Pipeline. None of the volumes delivered to the Facility form the bases for Union's request to NRG for additional security. Accordingly, any cost or future adjustment to NRG's rates that results from this Application should not be allocated to and paid by IGPC.