

STOCKWOODS

Barristers

M. Philip Tunley

Direct Line: 416-593-3495

Direct Fax: 416-593-9345

philt@stockwoods.ca

December 29, 2008

Delivered

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319 - 2300 Yonge Street
27th Floor, Suite 2700
Toronto, Ontario M4P 1E4

Dear Ms. Walli:

Re: EB-2008-0273: Union Gas Limited ("Union") - Application for Leave to Discontinue Service to Natural Resource Gas Limited ("NRG")

On behalf of the corporation of the Town of Aylmer ("Town"), we write in requesting intervener status in reply to the Submission on Costs of NRG dated December 22, 2008.

In its Decision and Order in this matter dated November 27, 2008, at pp. 6-7. the Board has already determined that:

- (a) NRG's conduct in this matter resulted in significant costs for the Town;
- (b) the Town shall be entitled to its reasonably incurred costs of this proceeding;
- (c) such costs are to be paid by NRG; and
- (d) the costs being paid shall be borne by NRG's shareholder and not passed on to the NRG rate payers.

To the extent that NRG's Submission on Costs seeks to ignore or vary these determinations, it is improper and does not warrant reply.

NRG is also incorrect in its suggestions that the Town had no interest in this matter, and that the evidence filed by the Town was excluded. In fact, the Board recognized the Town's interest by granting it leave to intervene, and the Board declined to exclude the Town's evidence at the hearing, despite NRG's request that it do so. In that context, the Board specifically acknowledged that the Town's evidence was potentially relevant to issue #6, as defined by agreement of NRG at the Issues Day, concerning the impact of the matters in issue on rates.

STOCKWOODS LLP

SUITE 2512, THE SUN LIFE TOWER, 150 KING STREET WEST, TORONTO, ONTARIO M5H 1J9 • PH: (416) 593-7200 • FAX: (416) 593-9345

The Town properly advanced an interest in the financial viability of NRG, which was directly raised by Union's application. The evidence led by NRG, in part in response to that filed by the Town, confirmed the legitimacy of that interest, as did the subsequent Decision and Order of the Board. Specifically, cross examination on that evidence, and the Board's decision, established the following material facts which were material to the Town and to ratepayers within the Town:

1. that approximately \$13.5 million in "retractable" shares "should properly be disclosed" as a liability (debt), rather than as equity as currently done by NRG for rate-making purposes;
2. that the Assignment, Postponement and Subordination Agreement dated August 26, 2008 currently given by NRG to its bank "is of little assistance to an unsecured creditor" such as Union or such as those NRG ratepayers from whom NRG has required security deposits;
3. this represents a significant increase in the financial risk associated with NRG, and gives rise to "serious" concerns; and
4. these matters warrant an improved degree of financial disclosure by NRG to the Board, and thereby to ratepayers, as part of the Board's jurisdiction over rates and conditions of gas service.

Finally, the Board's Decision and Order clearly reflect, and respond to the Town's submission (Transcript, October 20, 2008, at page 114) that none of these issues and concerns are attributable to the ratepayers of NRG, as opposed to its shareholder interests. The Town and the ratepayers it sought to represent clearly benefit both from the additional financial disclosure ordered by the Board, and the additional measure of protection against retraction of the \$13.5 million in NRG shares that comes with the specific relief granted to Union.

In that context, the Town submits that it should be entitled to its full costs, including all time and expenses covered by its cost submission.

Yours very truly,

A handwritten signature in black ink, appearing to read "M. Philip Tunley". The signature is fluid and cursive, with a large initial "M" and a long, sweeping underline.

M. Philip Tunley
MPT/scb