

STOCKWOODS

Barristers

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January 9, 2009

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-2008-0413: Natural Resource Gas Limited ("NRG") Application for an Order Pursuant to Section 10 of the *Municipal Franchises Act* (Ontario)

We are legal counsel to the Corporation of the Town of Aylmer. We have received the Notice of Application of NRG dated December 19, 2008 and related materials in the above-noted matter, as well as the Notice of Application and Notice of Hearing dated yesterday.

The Town intends to respond fully to this Application by way of filing of evidence and examination and cross-examination of witnesses at the hearing. The Town will participate in the hearing in the English language, and may wish to seek an award of costs. The representatives of the Town for the purposes of service and delivery of documents in the proceeding will be as follows:

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In order to assist parties, Board Staff, and the Board, it may be useful briefly to outline why, at this time, the Town is not prepared to renew the Franchise Agreement which it has with NRG on the terms, or for the length of term proposed by NRG in its Application.

The reasons for the Town's position stem from at least two sources.

First, the Board will be aware from its review of recent proceedings in EB-2006-0243 (Compliance Order dated June 29, 2007, and Order dated March 12, 2008) and EB-2008-0273 (Decision and Order dated November 27, 2008), and of the Town's Submissions in response to the Board's consultation regarding revisions to its Gas Distribution Access Rule (EB-2008-0313) that circumstances have arisen which have shaken the Town's confidence in NRG as the incumbent supplier of natural gas to customers within the municipal area of the Town. These concerns relate both to the financial viability of NRG, and to the quality and reliability of its service to customers.

Second, the Town is aware that some of its concerns are shared by other municipalities in which NRG supplies gas. NRG has one or more Franchise Agreements with each of these municipalities, each of which have different renewal dates. To the best of the Town's knowledge, information and belief, the relevant renewal dates are as follows:

1. The Township of Malahide: 2012 and 2014
2. Corporation of the Municipality of Thames Centre: 2012
3. Corporation of the Township of Bayham: 2012 and 2015
4. Corporation of the Township of South-West Oxford: 2013
5. Corporation of the Municipality of Central Elgin: 2016

The Town believes that, in order to allow all affected municipalities to consider the full range of alternatives with respect to the future supply of gas in these areas, including the option of renewal with NRG for a longer term, it is important to make provision for these various Franchise Agreements to have the same renewal terms.

The Town asks that these municipalities be given formal notice of this Application and an opportunity to intervene herein.

In order to address these issues, the Town has proposed to renew its Franchise Agreement with NRG for a shorter term (proposed at 3 years), during which most the other agreements NRG has with the other municipalities will come up for renewal, and which is also sufficient to allow NRG an opportunity to regain the confidence of the Town and other municipalities as their incumbent gas supplier. This position has been developed by the Town and approved by its Mayor and Council, in accordance with a public Report and Resolution. The Draft Agreement proposed by the Town, and the Report and Resolution will be included in the Town's pre-filed evidence. However, as they are also a matter of public record, I can provide copies in advance to anyone interested.

The Town also wishes to note at the outset that it disputes many of the factual allegations set out NRG's Notice of Application and in the document entitled "History of Franchise Renewal Negotiations" found at Exhibit D, Tab 1, as well as many other positions taken by NRG in support of its Application. If these matters are relevant to the Application, then the Town will wish to address them vigorously at the oral hearing. However, the Town believes they are of marginal if any relevance, and in any event may be of little assistance to the Board in deciding the substantive issues at stake. We simply raise the question whether a brief "issues day" attendance at some point in the schedule would assist parties and the Board on this issue.

We trust this is satisfactory. On behalf of the Town and the community it represents, we thank the Board for its prompt consideration of this matter.

Yours very truly,



M. Philip Tunley
MPT/scb

c. Heather Adams
Richard King, Ogilvy Renault
Mark Bristoll, NRG