



**EB-2008-0413**

**IN THE MATTER OF** the *Municipal Franchises Act*,  
R.S.O. 1990, c. M.55, as amended;

**AND IN THE MATTER OF** an application by Natural  
Resource Gas Inc. for an order seeking interim  
renewal of its franchise rights in the Town of Aylmer.

**BEFORE:** Gordon Kaiser  
Presiding Member and Vice Chair

Ken Quesnelle  
Member

Cathy Spoel  
Member

### **DECISION AND ORDER ON COST AWARDS**

On December 23, 2008 Natural Resource Gas Limited (“NRG”) filed an application under section 10(2) of the *Municipal Franchises Act*, R.S.O. 1990, c. M.55, as amended for renewal of its franchise rights with the town of Aylmer.

The Town of Aylmer and the Integrated Grain Processors Co-operatives Inc. (“IGPC”) filed requests for intervenor status and cost eligibility with the Board on January 9 and January 27, 2009, respectively. The Board confirmed the intervention status and cost award eligibility of the Town of Aylmer and of IGPC on January 19 and January 29, 2009, respectively.

At the conclusion of the oral hearing on February 12, 2009 in the Town of Aylmer, the Board issued an oral interim decision and on February 13, 2009 the Board issued a

written Interim Order to allow the right of NRG to continue on the terms and conditions set out in the existing franchise agreement until May 14, 2009 or until a renewal of the franchise agreement is granted under the Municipal Franchises Act, whichever comes first.

On March 11, 2009, the Board issued a letter to the Town of Aylmer and IGPC and a copy sent to NRG outlining the process for processing cost claims.

### **Cost Claims**

In accordance with directions of the Board in its March 11, 2009 letter, IGPC and the Town of Aylmer submitted on March 19 and March 20, 2009 respectively their cost claims. Each of the cost claims by IGPC and the Town of Aylmer cover legal fees and disbursements.

The total cost claim for IGPC as stated in its March 19, 2009 submission is \$4,655.89. For the Town of Aylmer, the total cost claim as stated in its March 19, 2009 submission is \$18,410.03.

### **NRG's Submission Re IGPC's Cost Claim**

With respect to IGPC, NRG's position is that it should not be permitted to recover any costs. NRG argued that this was a bilateral dispute regarding who will supply gas in Aylmer, and that IGPC has no interest other than ensuring a continued supply of gas, which was never at issue. Therefore NRG concludes that IGPC's participation was unnecessary.

### **NRG's Submission Re Town of Aylmer's Cost Claim**

NRG in its submission dated March 27, 2009 argued that a franchise renewal application is unlike a rate proceeding in which applicants pay for the reasonable costs incurred by qualifying intervenors.

NRG further stated that in this case, section 10 of the *Municipal Franchises Act* (Ontario) permits either the franchise holder or the municipality to bring an application to the Board. NRG concluded that the applicant in this proceeding should not be determinative of cost responsibility. Rather, the Board should determine costs after the decision on the merits is rendered.

NRG also claimed that the record shows that since June 2008, it had repeatedly requested that the Town provide NRG with its position on franchise renewal, and that the Town deliberately refused, over a period of six months, to tell NRG whether or not it would approve a renewal of the franchise, resulting in unnecessary significant legal expenses.

With respect to the Town of Aylmer's request to have costs paid by NRG's shareholders<sup>1</sup>, NRG submitted that at no point did the Town of Aylmer make an argument as to the basis for that request i.e., that NRG's shareholder pay the costs of this proceeding. NRG re-iterated its submission that this hearing was necessary only because of the Town's failure to negotiate with the NRG in good faith.

NRG submitted that the Town of Aylmer should bear its own costs and that the Town of Aylmer should also pay the costs of NRG and the Board, and whatever costs the Board determines IGPC should receive.

## **Reply Arguments**

The Town of Aylmer did not reply to NRG's submission of March 27, 2009. IGPC replied to NRG's submission as outlined below.

### **IGPC's Reply to NRG**

On April 3, 2009, IGPC objected to NRG's submission that IGPC should not qualify for costs as the matter was a private dispute between the two parties. IGPC stated that that argument should have been made at the time IGPC was granted status to participate in the hearing.

IGPC argued that the rights bestowed upon NRG by the franchise agreement have a public component allowing NRG to occupy right-of-ways and to distribute gas to customers within the Town of Aylmer. IGPC further indicated that the agreement regulates NRG's relationship with the Town of Aylmer and its residents, therefore IGPC would be included as directly affected by such an Agreement.

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<sup>1</sup> *Final Argument, Town of Aylmer, February 27, 2009 in regard to NRG's Franchise Renewal proceeding EB-2008-0413, paragraph 87, page 25*

IGPC further argued that NRG's prefiled evidence specifically referred to the potential impact that a failure to renew the franchise agreement could have on IGPC as well as similar situated customers. That aspect in addition to provisions in the contracts between IGPC and NRG that makes it an event of default if NRG loses its franchise agreement. IGPC concludes that it is directly affected by this proceeding and should be awarded the costs requested.

## **BOARD FINDINGS**

The Board agrees with NRG's argument that this proceeding is a contested franchise renewal application, but does not agree that this is a key determinant in the consideration of a cost claim.

### **IGPC Cost Claim**

The Board accepts that IGPC is a significant customer of NRG and has an interest in the outcome of this proceeding.

The Board therefore finds that IGPC is entitled to claim its cost for participating in this hearing and it approves the total cost submitted of \$4,655.89.

### **Town of Aylmer Cost Claim**

The Board is aware through the hearing that the application for franchise renewal became a focus for disputes between NRG and its customers who looked to the elected officials of the Town of Aylmer to represent their interests.

The Board considers that the actions taken by the Town of Aylmer in response to NRG's application for franchise renewal are understandable given the ongoing disputes cited above between NRG and its customers. However, the Board is not convinced of the appropriateness of the Town of Aylmer's request to have costs paid by NRG's shareholders, and therefore does not approve that request.

In conclusion the Board finds that the Town of Aylmer is entitled to claim its cost for participating in this hearing and hereby it approves the total cost submitted of \$18,410.03.

**THE BOARD THEREFORE ORDERS THAT:**

Pursuant to section 30 of the Ontario Energy Board Act, 1998, Natural Resource Gas Limited shall immediately upon receipt of this Decision and Order on Cost Awards pay:

- (1) the Board's costs of and incidental to, this proceeding immediately upon receipt of the Board's invoice;
- (2) the Integrated Grain Processors Co-operatives Inc. the sum of \$4,655.89; and
- (3) the Town of Aylmer the sum of \$18,410.03.

DATED at Toronto, May 5, 2009

**ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary