



**EB-2012-0406**  
**EB-2013-0081**

**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 Integrated  
Grain Processors Co-operative Inc., pursuant to section  
42(3) of the Ontario Energy Board Act, 1998, for an order  
requiring Natural Resource Gas Limited to provide gas  
distribution service; and

**AND IN THE MATTER OF** an Order to review capital  
contribution costs paid by Integrated Grain Processors Co-  
operative Inc., to Natural Resource Gas Limited pursuant to  
Sections 19 and 36 of the Ontario Energy Board Act 1998.

**BEFORE:** Marika Hare  
Presiding Member

Christine Long  
Board Member

Ellen Fry  
Board Member

**DECISION AND ORDER**

**February 27, 2014**

## Background

Natural Resource Gas Limited (“NRG”) is a privately owned utility regulated by the Ontario Energy Board (“the Board”) that sells and distributes natural gas within Southern Ontario. The utility is the sole supplier of natural gas to approximately 7,000 customers in the Town of Aylmer and surrounding areas. Integrated Grain Processors Co-operative Inc. (“IGPC”) is a customer of NRG that operates an ethanol facility in Aylmer. In 2008, NRG built a dedicated pipeline to serve the IGPC ethanol plant pursuant to a leave to construct approval issued by the Board.

NRG and IGPC signed a Pipeline Cost Recovery Agreement (“PCRA”) dated January 31, 2007. The PCRA provided for financial arrangements concerning the construction of the pipeline, which included that a financial contribution be provided by IGPC to NRG. The pipeline cost \$8.65 million. As required by the PCRA, IGPC made a pre-construction payment to NRG of approximately \$3.5 million as a contribution in aid of construction (also called a “capital contribution”) and provided a letter of credit in the amount of \$5.2 million to NRG. The capital costs of the pipeline would therefore be recovered by NRG from two sources: through its rates for distributing natural gas and from IGPC’s direct \$3.5 million capital contribution.

As discussed below, the PCRA included provisions to reconcile the amount of the capital contribution to actual costs and to reduce the letter of credit over time.

There are a number of issues in dispute between NRG and IGPC concerning these financial arrangements. IGPC submits that NRG should not have included certain costs in the capital costs of the pipeline and that IGPC’s capital contribution should be reduced to reconcile the actual costs of the pipeline with estimated costs. Accordingly, IGPC is seeking a refund for a portion of the \$3.5 million it provided to NRG for the capital contribution as stipulated in the provisions of the PCRA<sup>1</sup>. As well, IGPC seeks a reduction to the letter of credit amount in accordance with its interpretation of the PCRA.

IGPC is also seeking an order requiring NRG to provide it with gas service, pursuant to section 42(3) of the Act, which states: [u]pon application, the Board may order a gas transmitter, gas distributor or storage company to provide any gas sale, transmission, distribution or storage service or cease to provide any gas sale service”.

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<sup>1</sup> Section 3.13 of the PCRA

The history of previous proceedings in front of the Board concerning disputes between IGPC and NRG, leading up to this proceeding are contained at Appendix A.

### **This Proceeding**

IGPC filed an application with the Board on October 11, 2012 (EB-2012-0406) seeking an order pursuant to section 42(3) of the Act requiring NRG to provide gas distribution services and gas sales to meet IGPC's facility expansion and upgrading plans. The application also sought various other forms of relief.

In response to this application, the Board initiated a proceeding to address IGPC's request under Section 42(3) of the Act. The Board granted the Town of Aylmer intervenor status in the proceeding. The Board also issued a letter dated February 13, 2013 indicating that some of the issues raised by IGPC would be addressed in a separate proceeding while some of the other issues were compliance related and have been referred to the Compliance Section of the Board.

As referenced above, a separate proceeding (EB-2013-0081) had been commenced to deal with the capital costs of the pipeline constructed for IGPC's ethanol plant.

The Board issued a Notice of Application on April 2, 2013 stating that it would combine the Section 42 proceeding (EB-2012-0406) and the proceeding that would review IGPC's capital contribution costs in respect of the pipeline (EB-2013-0081).

This decision is organized on the basis of the issues list approved by the Board for this proceeding in Procedural Order No. 2.

***Issue 1: Is an Order of the Board requiring NRG to provide gas distribution services and gas sales to IGPC to meet its facility expansion and upgrading plans necessary and appropriate?***

### **Background**

In mid-2012, IGPC started to consider expanding its ethanol facility. This expansion would require additional gas supplies. On June 18th, IGPC wrote to NRG to request a

meeting to discuss the expansion. NRG responded the same day asking that IGPC direct all non-urgent communications to NRG's president. On July 3<sup>rd</sup>, IGPC sent a second letter, this time to NRG's president, requesting a meeting to discuss the proposed expansion. On July 9<sup>th</sup>, NRG responded stating that "NRG can not enter into any discussions regarding possible new business or changes to existing business arrangements until major disagreements have been resolved" and that "Any future requests made by IGPC would have to include a method for IGPC to compensate NRG for the time spent and the out of pocket expenses that it occurs [*sic*]. These financial arrangements will have to be in place before any discussions will be entertained." On July 24<sup>th</sup>, NRG wrote to IGPC stating that because NRG had not heard further from IGPC, NRG was assuming that IGPC had chosen not to proceed with the expansion. IGPC responded the next day, stating that IGPC was "currently in preliminary engineering stages of an expansion to its facilities."<sup>2</sup> Subsequently, through invoices issued August 24<sup>th</sup> and September 27<sup>th</sup>, NRG charged IGPC approximately \$7,000 for unspecified services in relation to IGPC's request for expansion.

Section 42(2) of the Act provides as follows:

Duty of gas distributor

(2) Subject to the *Public Utilities Act*, the *Technical Standards and Safety Act, 2000* and the regulations made under the latter Act, sections 80, 81, 82 and 83 of the *Municipal Act, 2001* and sections 64, 65, 66 and 67 of the *City of Toronto Act, 2006*,

a gas distributor shall provide gas distribution services to any building along the line of any of the gas distributor's distribution pipe lines upon the request in writing of the owner, occupant or other person in charge of the building.

Order

(3) Upon application, the Board may order a gas transmitter, gas distributor or storage company to provide any gas sale, transmission, distribution or storage service or cease to provide any gas sale service.

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<sup>2</sup> July 25, 2012 letter from IGPC to NRG, IGPC Pre-filed Evidence, Exhibit C, Tab 9, Page 2

## Position of IGPC

IGPC has argued that by placing conditions on discussing further expansion of the gas pipeline, NRG has failed to meet its obligations under s. 42(2) of the Act. IGPC further argued that NRG had failed to meet the standard of good utility practice. IGPC submitted that it should have access to gas distribution services on a non-discriminatory basis.

IGPC argued that NRG could not use past disagreements between the two parties as a basis to delay, defer or deny any gas distribution services. IGPC noted that the disagreements referred to by NRG in its letter of July 9 appeared to be related to the capital cost of the IGPC pipeline, a libel suit filed by NRG against IGPC (which is not before the Board) and the amount of the letter of credit provided by IGPC in relation to the gas pipeline. IGPC also submitted that costs related to time spent by NRG to discuss the expansion, should not prevent IGPC from receiving service. Furthermore, IGPC submitted that it was willing to compensate NRG for its reasonably incurred costs, but suggested a materiality threshold before NRG could request compensation from IGPC for services rendered outside the ordinary course of business.

## Position of NRG

NRG took the position that it had provided gas distribution services reliably and consistently to IGPC since July 2008 and that it had never denied service to IGPC.

Referring to the July 9<sup>th</sup> letter sent to IGPC, NRG submitted that the intent of the letter was to engage in a meaningful dialogue with the possibility of resolving some of the parties' outstanding issues and to gain a better understanding of IGPC's expansion plans<sup>3</sup>. NRG argued that if it was required to take any additional steps to providing service, then IGPC should be required to provide detailed information about its expansion plans. For example, it would require IGPC to provide its most recent quarterly and annual financial statements; to confirm whether its operational grants would be renewed and to provide a business plan for the expansion with project timelines, details of gas volumes and pressure and any preliminary engineering work done in the recent past.

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<sup>3</sup> NRG Submission, Page 5, November 11, 2013

NRG stated that after not hearing back from IGPC, it inquired whether IGPC's expansion plans were put on hold, to which IGPC responded that it was in the "preliminary engineering stages". As a result, NRG assumed that IGPC was not proceeding with the expansion. NRG considers IGPC's application to the Board under Section 42 premature and the requested Order of the Board unnecessary.

With respect to the invoices it sent to IGPC, NRG took the position that since it had to seek the services of external consultants to do preliminary engineering work, it was entitled to charge IGPC for such work. NRG requested the Board reject IGPC's application with costs payable to NRG.

### **Position of Board Staff**

Board staff took the position that NRG was a monopoly service provider and IGPC's only source of natural gas. Section 42(2) of the Act in its view provides clearly that "a gas distributor shall provide gas distribution services to any building along the line of any of the gas distributor's distribution pipe lines upon the request in writing of the owner, occupant or other person in charge of the building." The Gas Distribution Access Rule of the Board further states that "[A] gas distributor shall provide gas distribution services in a non-discriminatory manner".

Board staff submitted that NRG's conduct to date did not reveal a genuine interest in assisting IGPC in meeting its potential needs for additional gas service. NRG's letter of July 9<sup>th</sup> appeared to be a clear refusal to discuss IGPC's potential needs for additional gas service. In addition, NRG did not provide any explanation for the \$7,000 amount invoiced to IGPC.

Board staff submitted that NRG's conduct borders on an abuse of monopoly power, and the Board should intervene to ensure that IGPC receives the gas service it requires. Board staff submitted that the Board should grant much of the relief sought by IGPC but disagreed with IGPC's suggestion of a materiality threshold for costs incurred in assessing the pipeline requirements. In Board staff's view, NRG should be able to absorb internal costs related to requests which would generally be considered routine utility business. However, in cases where NRG expects to incur significant costs related to engineering studies or consultants, Board staff suggested that NRG could request a deferral account in the next Incentive Regulatory Mechanism ("IRM") proceeding. Board staff also submitted that NRG should pay for IGPC's costs related to this aspect of the proceeding.

## **Position of The Town of Aylmer**

The Town of Aylmer made a similar argument to Board staff and submitted that NRG was obligated to provide all services for which it holds a monopoly. The Town of Aylmer submitted that the refusal by NRG to meet and discuss the proposed expansion plan is akin to denial of service within Section 42(2) of the Act. In its view, NRG must provide the services requested by IGPC unconditionally.

The Town of Aylmer further suggested that the Board should order NRG to provide IGPC with all the required financial and technical information that is related to the provision of gas supply for the proposed plant expansion. In its view, NRG should not be allowed to recover the cost of this proceeding from ratepayers but rather, the shareholders should pay the legal costs.

NRG rejected the Town of Aylmer's argument that service should be provided unconditionally. NRG submitted that it needs to balance the interest of all ratepayers. IGPC had provided no indication to NRG of whether its operating grants would continue beyond 2016. NRG noted that based on the review of IGPC's financial statements, it believed that IGPC would not be able to survive without operating grants from the government.

## **Board Findings**

The evidence does not support the allegation that NRG has failed to fulfill its obligations under section 42(2) and therefore the Board will not grant the Order sought by IGPC.

In making a determination whether service has been denied, the Board considered the evidence put before it in this proceeding. While IGPC has asked the Board to consider the years of difficulties between the parties, in making a finding, the Board must consider whether there is a denial of service in the current timeframe based on the evidence before it in this proceeding. On that basis, IGPC has failed to provide sufficient evidence supporting its position that service has been denied.

The Board notes that there is no evidence of any contact between IGPC and NRG during the time period from the July 9<sup>th</sup> letter and the July 24<sup>th</sup> letter. There is no evidence before the Board that between July 25, 2012 and the commencement of this

proceeding in October 2012 IGPC communicated with NRG regarding what it considered to be a denial of service.

In response to Board Staff's interrogatory, IGPC confirmed that it had no further discussions in relation to its request to secure additional gas service after its letter of July 25, 2012. IGPC explained its decision to not take further steps on the basis that it did not want to incur costs from NRG levied as a result of inquiries regarding further supply, without having some control over the "nature and extent of such potential charges<sup>4</sup>." The Board notes that the first of the invoices issued by NRG was dated August 24, 2012, approximately one month after IGPC responded to NRG that it was in the preliminary design stage. Therefore there was a month during which IGPC had not been invoiced but did not pursue further discussions with NRG.

IGPC did not take the opportunity to meet with NRG when contacted through the July 24<sup>th</sup> letter. It seems reasonable that on the basis of the July 25<sup>th</sup> letter, NRG concluded that IGPC's expansion was not ready to proceed. Therefore the Board is left to consider the two week period between July 9<sup>th</sup> and the 25<sup>th</sup> and determine whether the failure of NRG to arrange a meeting during that time in the preliminary stage of the project constitutes a denial of service, and if so, whether any such denial of service persists to date.

The Board is of the view that a supplier should be responsive to the requests of its customers. The Board does not agree with the response provided by NRG in its letter of July 9<sup>th</sup>, since NRG appears to be seeking to impose pre-conditions on the provision of gas distribution services that are not contemplated by s 42(2). However, the Board is of the view that based on the limited overtures by IGPC to pursue a discussion on the proposed expansion, and on the basis that the expansion was only at the initial stages of planning, the actions of NRG do not constitute a denial of service.

As the Board has decided not to grant the Order, it will not consider whether the Order should be an enforceable provision as was suggested by IGPC and supported by Board Staff.

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<sup>4</sup> IGPC response to Board staff second round of interrogatory # 2, October 28, 2013



## **Amount Invoiced Concerning Proposed Expansion of Service**

NRG presented IGPC with invoices for unspecified services related to the expansion of service. The Board does not understand how NRG incurred approximately \$7,000 of costs prior to meeting with IGPC to discuss the proposed expansion.

A supplier is entitled to charge customers for expenses which exceed the regular costs of conducting business, if approved by the Board and included in a Rate Order. IGPC does not dispute this position<sup>5</sup>. The Board is not persuaded that these expenses, which appear to be incurred in the regular course of functioning as a gas distributor, should be paid by IGPC. NRG should be able to absorb the routine costs of doing business as part of its operating expenses. While the Board has not been asked to make a ruling on the invoiced costs, the Board advises parties that the matter in which expansion costs are dealt with should not act as a barrier to parties engaging in discussions regarding an expansion of service.

## **Conclusion**

For the reasons outlined above, the Board is of the view that IGPC has not established that an Order requiring NRG to provide service is necessary at this time.

The Board notes that it should be self-evident to NRG, as an entity regulated by the Board, that it is required to operate in accordance with the terms of the Act.

***Issue 2: With respect to the cost items listed below, what is the appropriate amount to be included in determining the capital cost of the IGPC pipeline?***

***2.1.1 Legal costs***

***2.1.2 Contingency costs***

***2.1.3 NRG staff costs (Mr. Bristoll)***

***2.1.4 Interest during construction***

***2.1.5 Insurance costs and other service costs (e.g. auditing)***

***2.1.6 Administrative penalty; and***

***2.1.7 Costs arising from this proceeding***

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<sup>5</sup> IGPC Argument-in-Chief, Page 11, November 4, 2013

The PCRA provided for a pre-construction capital contribution of \$3.5 million by IGPC, based on the forecasted cost of the pipeline. The PCRA also included provisions whereby the capital contribution would be adjusted as necessary after the actual, costs of the pipeline were known.

Before dealing with each of these specific capital cost items this Decision will deal with the preliminary matter of the Board's jurisdiction.

***Preliminary Matter: Jurisdiction of the Board Regarding Determination of Capital Contribution***

NRG submitted that the Board had already determined the capital costs of the pipeline for the purposes of rates in EB-2010-0018 and those findings were final and binding on IGPC. NRG further submitted that if the Board was going to take jurisdiction over private contractual disputes, then the Board must be governed solely by the law of the contract. NRG argued that the issue is one of contractual interpretation, and that this is not a rate-making exercise. The only jurisdiction the Board has, in its view, is to interpret the words of the PCRA and apply them to the issues in dispute.

IGPC disagreed with NRG's submission that the matter before the Board is simply a contractual dispute for which the Board was taking jurisdiction. IGPC submitted that the Board's Decision on the Motion to Review EB-2012-0396 (described in Appendix A of this Decision) clearly determined that the capital contribution was a rate within the meaning of the Act. IGPC further submitted that NRG did not appeal the Board's Decision (EB-2012-0396) and also did not request a review. IGPC submitted that to once more argue that the issue is a contractual dispute is akin to challenging the Board's decision in EB 2012-0396.

**Board Findings**

The Board does not accept NRG's characterization of the exercise of the Board's jurisdiction in this proceeding as being a purely contractual interpretation. Although EB-2010-0018 determined capital costs of the pipeline that would be included in rate base and form part of distribution rates, EB-2010-0018 did not set the amount of the capital contribution as contemplated in the PCRA. In other words, the Board's rates proceeding did not determine the issues in this proceeding concerning the capital costs of the pipeline.

The Board has already determined in EB-2012-0396, for the reasons set out in that decision, that a capital contribution is a “rate” within the meaning of the Act. The Board is directed by section 36(2) of the Act to ensure that all rates charged by a utility to a customer are just and reasonable, and section 36(1) of the Act specifically provides that the Board “is not bound by the terms of any contract”. In setting just and reasonable rates, the Board can adopt whatever method or technique that it considers appropriate. Accordingly, contrary to NRG’s argument, determining the appropriate amount of IGPC’s capital contribution falls within the Board’s jurisdiction under the Act to set rates. The same logic holds with respect to the costs IGPC incurs for the letter of credit.

The Board considers that the most appropriate method to determine the proper amount of IGPC’s capital contribution is with reference to the PCRA. The PCRA was negotiated between NRG and IGPC and filed in the original leave to construct proceeding (EB-2006-0243). It represents their agreement as to how the capital contribution would be determined. Although the Board did not formally approve the PCRA, it was referenced by the Board in the leave to construct proceeding, and provided part of the context to that decision. In that Decision, the Board stated:

The Board is satisfied that the terms and conditions of the two agreements, the GDC (Gas Delivery Contract) and the PCRA, adequately protect the interests of NRG and its ratepayers against anticipated risks. In making its finding to grant the requested leave to construct, the Board is placing significant reliance on the terms and conditions of both the PCRA and GDC that protect the interest of NRG’s ratepayers.<sup>6</sup>

The Board notes that the PCRA is similar to many contracts that the Board has taken notice of in other leave to construct applications.

The Board wishes to emphasize that although it will apply the provisions of the PCRA in setting the appropriate amount of the capital contribution, it will do so in exercising its jurisdiction to set rates. The Board is not taking jurisdiction over a contractual dispute issue. As indicated in EB-2012-0396 the Board is not bound by the PCRA and could adopt a different method to set the capital contribution in setting just and reasonable rates.

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<sup>6</sup> Decision and Order EB-2006-0243, page 4, February 2, 2007

### 2.1.1 Legal Costs

NRG has claimed a total of \$638,226 as IGPC's contribution to NRG's legal costs included in the capital cost of the pipeline. IGPC is willing to accept \$382,272 as the appropriate amount to be paid and therefore seeks a refund of \$255,954.<sup>7</sup>

Section 3.14 of the PCRA states the following concerning legal costs:

....In determining reasonable costs attributable to the Capital Cost, the following considerations will be taken into account:

- (a) Legal costs will include the reasonable legal costs of [NRG] to establish gas distribution service for [IGPC], including the reasonable legal cost to prepare and obtain the Leave to Construct from the OEB; acquire any temporary or permanent land rights required to complete the Pipeline Work; review any procurement or tendering documentation, and draft and negotiate this Agreement and any other documentation required to provide gas distribution service to [IGPC]

### Board Findings

Taking the provisions of the PCRA into consideration, the Board finds that the legal costs that should be included in IGPC's capital contribution are essentially the legal costs reasonably paid by NRG in order to construct the pipeline and to put in place its pipeline construction and gas distribution arrangements with IGPC. The Board does not consider that the legal costs should encompass costs concerning disputes between NRG and IGPC about fulfillment of their obligations under these arrangements.

A large part of the legal costs claimed by NRG are for two motions before the Board in which NRG and IGPC disputed issues concerning fulfillment of their respective obligations. The first of these motions was an emergency motion filed in 2007 in which IGPC alleged that NRG had inappropriately failed to sign the Assignment Agreement and Bundled T-Service Agreement that the parties had negotiated (the "Emergency Motion"). The second of these was a motion filed in 2008 in which IGPC alleged that the amount of the letter of credit required by NRG exceeded the amount required under the PCRA (the "Letter of Credit Motion"). In those motions NRG also raised issues

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<sup>7</sup> Appendix A, NRG Reply Submission.

concerning the conduct of IGPC. The legal costs claimed by NRG were \$94,800 for the Emergency Motion and \$82,554 for the Letter of Credit Motion.

In the Board's view these two motions essentially concern disputes between NRG and IGPC rather than costs to construct the pipeline or put construction or gas distribution arrangements in place. Accordingly, the Board does not consider that the legal costs of these motions should be included in the legal costs to be paid by IGPC as part of its capital contribution. The Board notes that although it made no cost order for either motion, in the Emergency Motion both parties made submissions on costs and there was no suggestion in those submissions that NRG's costs should be part of IGPC's capital contribution. Had the Board deemed it appropriate for one party to pay the other's costs, it would have done so in the context of the cost awards process in the individual hearings.

NRG also included certain legal costs as contingency costs (see section below). For the reasons cited above, the Board will not permit NRG to recover any legal costs that were included as contingency from IGPC, that relate to any other proceedings between the parties before the Board.

NRG's claim for legal costs also includes an account of Lenczner Slaght dated September 22, 2010 for \$197,643<sup>8</sup>. IGPC submitted that this account should be excluded from its capital contribution because it is for the Board proceeding in which NRG sought rates approval from the Board (EB-2010-0018). NRG did not dispute IGPC's position on this account. The Board agrees that the amount of this account should be excluded from IGPC's capital contribution. This account would reasonably be considered to relate to either the parties' dispute concerning IGPC's capital contribution or more general issues concerning NRG's rates.

IGPC also initially disputed legal costs it believed were related to shareholder advice (\$26,426) and project management (\$15,000). In its response to interrogatories, NRG indicated that it was not aware of any shareholder advice being claimed in its legal costs.

Concerning the costs that IGPC categorized as project management, NRG submitted that since IGPC's counsel was extensively involved in every stage of the project, IGPC should not dispute NRG's resulting legal costs. In its argument in chief, IGPC did not

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<sup>8</sup> Appendix A, NRG Reply Submission, November 14, 2013

pursue its arguments concerning these aspects of NRG's legal costs. The Board accepts NRG's arguments on these issues and considers that these legal costs should be included in IGPC's capital contribution.

### 2.1.2 Contingency Costs

As a result of the motions that were filed during the leave to construct proceeding, NRG in its evidence indicated that it expected a litigious relationship with IGPC and wanted some protection against unanticipated legal fees<sup>9</sup>. Board staff essentially agreed with NRG's position on this issue.

Board staff noted that NRG should be allowed to recover contingency costs as they had already been incurred<sup>10</sup>.

IGPC in its submission referred to the evidence of NRG in the rates proceeding (EB-2010-0018) confirming that NRG had no plans for the contingency costs<sup>11</sup> two years after the pipeline came into service. IGPC submitted that it had received no explanation from NRG as to why legal fees were required and how they related to the construction of the IGPC pipeline after it was completed.

IGPC submitted that it appeared that NRG was attempting to recover costs related to the motion that considered whether the Board had jurisdiction to consider the disputed costs of the pipeline. IGPC also claimed that the contingency costs were attempting to recover costs related to the current proceeding. IGPC submitted that NRG should not be allowed to recover costs that are not related to the construction of the IGPC pipeline but which are a result of NRG's refusal to undertake a reconciliation of the actual costs of the pipeline. Accordingly, IGPC submitted that the full amount of contingency costs including the return should be refunded to IGPC.

NRG disputed IGPC's argument that there should be no contingency costs after the pipeline was built. NRG noted that it had been five years since the IGPC pipeline came into service and NRG was still incurring significant costs, both external and internal. The issue of the capital costs was still outstanding and without the IGPC pipeline, NRG argued that none of these costs would have occurred. NRG submitted that the utility must remain whole and if NRG is unable to recover the costs, then the other ratepayers of NRG would be subsidizing IGPC's capital costs. NRG submitted that it had already

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<sup>9</sup> Transcript, Motion Hearing, Page 45, July 29, 2013

<sup>10</sup> NRG Evidence, Page 20, June 3, 2013

<sup>11</sup> Transcript, Technical Conference, EB-2010-0018, June 14, 2010, page 27

exceeded the contingency costs and there was no way for NRG to recover the additional costs.

NRG in its reply submission supported the position of Board staff that it was reasonable for NRG to make provision for contingencies on the basis that the relationship was litigious. NRG also dismissed IGPC's position that the contingency costs should be disallowed as they were not incurred until after the completion of the IGPC pipeline. NRG noted that the meaning of contingency is an event that could possibly occur in the future. NRG submitted that the contingency costs have been incurred and NRG's approach of including contingency costs was prudent and necessary to protect NRG's other ratepayers.

NRG submitted that the current proceeding and all other proceedings with IGPC were directly related to and caused as a result of the construction of the IGPC pipeline. The legal fees that IGPC objects to as contingency costs were according to NRG incurred as a result of IGPC's overly litigious strategy and adversarial tactics<sup>12</sup>. NRG submitted that IGPC should bear the contingency costs as it was directly responsible for those costs.

### **Board Findings**

The PCRA in Section 3.6 states that "the contingency amount to be included in the Revised Estimated Capital Cost shall be limited to a maximum of ten percent of the Construction Agreement cost." There is no further elaboration as to what constitutes contingency cost.

IGPC has argued that the contingency costs should be disallowed simply because they occurred after the construction was completed. However, the PCRA does not state this and neither does it state that the contingency costs solely refer to construction contingencies.

The Board notes, however, that under the PCRA, contingency costs are part of the Revised Estimated Capital Cost but are not part of the Actual Capital Cost, which is what determines the ultimate amount of IGPC's capital contribution. Accordingly, in this proceeding it is not necessary for the Board to determine whether the contingency costs included in the Revised Estimated Capital Cost were appropriate; it is to determine whether the costs that were actually incurred, including those that were included in contingency costs, should be paid by IGPC.

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<sup>12</sup> NRG Reply Submission, November 14, 2013, Page 27

Accordingly, the Board will not consider contingency costs as a separate item. To the extent that the contingency costs have actually been incurred, they should be included in other cost categories of the pipeline construction and will be considered by the Board as part of each cost category. A part of the claimed contingency, for example, related to certain legal costs. The Board has made its determination on those costs in the “legal costs” section above.

### 2.1.3 NRG Staff Costs

Board staff submitted that NRG should be disallowed from recovering the entire salary of Mr. Bristoll, President of NRG at the time, for 2006-2008 amounting to \$385,045, from IGPC. Board staff noted that NRG had recovered the entire salary of Mr. Bristoll in 2007 and 2008 through rates and there was no evidence of capitalization of wages by NRG related to the IGPC pipeline in their cost of service application (EB-2010-0018) evidence. For the year 2006, a portion of Mr. Bristoll’s salary was allocated to a related company. However, the hours allocated to NRG far exceeded the time spent by Mr. Bristoll on IGPC related activities in 2006. Consequently, the entire time spent by Mr. Bristoll on IGPC in 2006 was recovered in distribution rates. Accordingly, Board staff submitted that the salary of Mr. Bristoll for the years 2006 to 2008 had been recovered through rates and any additional recovery would be double-counting.

IGPC in its submission echoed the views of Board staff but revised the amount of Mr. Bristoll’s salary to \$394,405 which, as per the detailed pipeline cost schedule, includes an additional \$9,360 allocated to Ayerswood Development<sup>13</sup>.

IGPC also referenced an undertaking response<sup>14</sup> that shows an additional payment of \$130,006 to Mr. Bristoll as consulting fees. IGPC submitted that NRG had refused to provide clarity on whether the capital costs include an additional \$130,006 paid to Mr. Bristoll. NRG in an interrogatory response<sup>15</sup> indicated that the amount was an error and the interest expense related to the item in the schedule should be removed. IGPC submitted that NRG had not provided evidence to support that the \$130,006 had been removed from the capital costs.

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<sup>13</sup> Cost of Pipeline – Detailed Schedule, NRG response to IGPC IR#5 (Mark Bristoll - \$385,045 + Ayerswood Development - \$9,360)

<sup>14</sup> Undertaking Response J1.5, EB-2010-0018

<sup>15</sup> NRG Interrogatory Response IGPC #2, Q.17, October 28, 2013



IGPC submitted that NRG failed to provide any reasons for why Mr. Bristoll's time spent on IGPC was not part of his expected job duties. IGPC also reiterated the fact that NRG recovered Mr. Bristoll's salary in rates and then added the same amount to rate base.

NRG in its submission stated that Mr. Bristoll devoted nearly 100% of his time to the IGPC pipeline project prior to and during construction. NRG submitted that Mr. Bristoll's accounting and construction expertise was a key reason for the IGPC pipeline being built under budget and on time. NRG further noted that Mr. Graat, the new president of NRG, worked as many hours as Mr. Bristoll without any compensation and IGPC benefitted substantially from the involvement of Mr. Bristoll and Mr. Graat. NRG submitted that it had charged an appropriate rate to IGPC for Mr. Bristoll's services and had benchmarked the rate to that of a senior Chartered Accountant within the London area.

NRG argued that utilities routinely bill for project management work similar to that undertaken by Mr. Bristoll and NRG's Schedule of Service Charges allows for contract work to be done for customers. NRG submitted that it was simply unreasonable for IGPC to believe that it would bear none of NRG's internal costs.

### **Board Findings**

Mr. Bristoll was a full-time employee of NRG in 2007 and 2008 and a part time employee in 2006. It is not uncommon for a senior employee in a small company to devote a considerable portion of his/her time to accommodate a large customer. Furthermore, there is no evidence that NRG had to incur additional costs such as overtime or additional employee costs due to the unavailability of Mr. Bristoll for other NRG work.

There is no dispute that NRG recovered the salary of the president through its distribution rates in 2006, 2007 and 2008. The Board does not agree with NRG's argument that it has the flexibility to allocate part of Mr. Bristoll's normal salary costs to IGPC. NRG has already recovered the entire salary in rates and cannot recover the same amount from IGPC through a notional re-allocation. If NRG wished to try to recover a portion of Mr. Bristoll's salary from IGPC, it should have removed the specific amount from its Operations Maintenance & Administration ("OM&A") included in distribution rates for the respective years. NRG would then be able to include the specific portion in the capital cost of the pipeline and appropriately capitalize the

expense. However, NRG recovered the entire salary in rates and at the same time allocated a portion of the same salary to the capital cost of the pipeline. This is contrary to ratemaking principles and would amount to double recovery. Accordingly, the Board will disallow the entire amount of \$385,045 from inclusion in the capital contribution.

#### **2.1.4 Interest During Construction**

##### **(a) Aid-to-Construct Payments**

Section 3.3 of the PCRA provides for three types of aid-to construct payments to be paid by IGPC. The issues between IGPC and NRG concern the payments under section 3.3(b). The relevant parts of section 3.3 read as follows:

3.3 [IGPC] shall make payments toward the Initial Estimated Aid-to-Construct, as follows:

(b) Prior to the award of the Construction Agreement, the amount of the monthly invoices provided by [NRG] for reasonable internal, consulting and third party expenses incurred in the prior calendar month within fifteen (15) Business Days of receiving such invoice;

The evidence includes a listing of the invoices NRG issued to IGPC for these payments, the dates IGPC paid these invoices, the expenses covered by the NRG invoices and the interest that NRG charged IGPC for late payment of its invoices.

IGPC has raised 3 issues concerning these aid-to-construct payments:

1. NRG charged interest for late payment after 15 calendar days, rather than 15 business days, had elapsed;
2. Some of the expenses covered by NRG's invoices to IPGC were excessive, because they included late payment charges by NRG's suppliers that were NRG's fault; and
3. A charge for \$7099 relating to consulting work by Mr. Bristoll should not have been included.

Concerning issue 1, the evidence indicates clearly that NRG calculated interest on the basis of calendar days rather than business days. This is contrary to the PCRA which stipulates business days in section 3.3(b). However, IGPC is not seeking this relief and noted in its submission<sup>16</sup> that the amounts claimed are very small and not worth contesting. Accordingly, the Board will not require NRG to recalculate this aspect of the interest correctly.

Concerning issue 2, NRG does not appear to dispute IGPC's position that late payment charges caused by NRG are included in NRG's invoices to IGPC. The Board considers that such charges are not "reasonable...third party expenses" as contemplated by section 3.3(b) of the PCRA, and accordingly agrees with the principle that such expenses should be excluded from IGPC's payments. However, neither party has provided evidence to substantiate the amount involved. Accordingly, the Board does not require any deduction of these late payment charges from the aid-to-construct payments.

Concerning issue 3, NRG agrees with IGPC that the charge for \$7099 referred to in issue 3 was included in the interest charges in error. Accordingly, the Board agrees that it should be removed.

### **(b)Interest During Construction**

The relevant parts of section 3.14 of the PCRA provide as follows:

3.14 ....In determining reasonable costs attributable to the Capital Cost, the following considerations will be taken into account:

....

(d) Utility costs shall include the reasonable cost of interest during construction calculated in accordance with the OEB approved methodology....

IGPC submits that NRG has made 3 errors in charging interest during construction. In IGPC's view:

- (i) NRG has applied the wrong interest rate;
- (ii) NRG has charged interest for the wrong period; and
- (iii) NRG has compounded interest charges but should not have done so.

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<sup>16</sup> IGPC Submission, Page 27, November 7, 2013

IGPC submits that because of section 3.14 (d), the Board should apply the approved OEB rates for interest during construction. NRG submitted that the Board should not apply the approved OEB rates, because section 3.14 requires only that the OEB rates be “taken into account” and the interest rate applied by NRG is a commercially reasonable rate.

The Board notes that the only applicable “OEB approved methodology” consists of the approved OEB interest rates for calculating interest during construction. These are set out in the Board’s Prescribed Interest Rates for construction work in progress posted on the OEB website<sup>17</sup>. For the period in question, the approved OEB interest rates were 5.18% for the first and second quarter of 2008 and 5.43% for the third and fourth quarter of 2008. The Board considers it appropriate to apply the approved OEB interest rates in this instance.

NRG has charged interest from the date the last aid-to-construct payment was due to the date NRG received the last invoice from its primary contractor. NRG submitted that this period is appropriate because it reflects the period during which NRG was required to finance the pipeline project. IGPC submitted that NRG should have ceased to charge interest at the point when the capital costs of the pipeline were included in NRG’s rate base, because in its view to charge interest beyond that point would be double counting.

The Board agrees with NRG that the appropriate period to charge interest is the period during which NRG was financing the project costs. The Board does not agree that charging interest after the capital costs were included in NRG’s rate base would cause double counting. This interest was to be paid as part of the capital contribution costs and was separate from the amount that was added to rate base.

However, the Board does not consider that the period applied by NRG is the most appropriate period to achieve this purpose. The Board considers that to best reflect the financing period, interest during construction should have been charged from the date NRG’s first invoice from its primary contractor was due to the date NRG’s last invoice from its primary contractor was due.

The Board orders NRG to make the adjustments outlined above.

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<sup>17</sup>[http://www.ontarioenergyboard.ca/OEB/Industry/Rules+and+Requirements/Rules,Codes and Guidelines/Prescribed Interest Rates](http://www.ontarioenergyboard.ca/OEB/Industry/Rules+and+Requirements/Rules,Codes+and+Guidelines/Prescribed+Interest+Rates)

### 2.1.5 Insurance Costs and Other Service Costs

NRG charged IGPC \$62,000 for insurance for coverage during development and construction of the pipeline. In response to an interrogatory<sup>18</sup>, NRG confirmed that it did not incur additional costs to insure the pipeline; the pipeline was simply included in NRG's overall insurance costs that NRG recovered through rates.

Board staff argued that the inclusion of \$62,000 to the contributed capital of the pipeline amounts to double recovery as this amount has already been recovered through rates. IGPC made a similar argument.

NRG argued that IGPC had benefitted from NRG's insurance coverage and it was therefore appropriate for IGPC to pay for a portion of NRG's insurance. NRG also submitted that the Board does not dictate how to manage costs within the utility's revenue requirement envelope. NRG submitted that the insurance costs should be accepted as there was no evidence that the cost of insurance incurred by NRG was not reasonable or prudent<sup>19</sup>.

IGPC also disagreed with NRG's costs of \$7,639 related to its auditor. IGPC submitted that there was no need for an auditor and that these costs were related to providing shareholder advice. NRG in reply stated that it had never sought costs from IGPC for the benefit of its shareholder.

### Board Findings

The issue before the Board is whether incremental insurance costs have been incurred for the construction of the pipeline. There is no evidence that NRG incurred incremental insurance costs. NRG was able to add insurance coverage during the construction phase to its existing policy without incurring any costs. NRG's argument is twofold; one is that since IGPC received insurance coverage, it should pay for it and secondly the global OM&A envelope approved by the Board in the context of EB-2010-0018 allows NRG the flexibility to allocate costs as it sees fit.

The Board's decision is guided by ratemaking principles for just and reasonable rates, one of which is that there should be no recovery for costs that have not been incurred. NRG did not incur incremental insurance costs for the pipeline. Although utilities in

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<sup>18</sup> Response to IGPC Interrogatory #14, June 28, 2013

<sup>19</sup> NRG Reply Submission, November 14, 2013, Page 35

managing their operations have certain flexibility to allocate OM&A expenses within the envelope amount approved by the Board, this does not mean that NRG can allocate part of its insurance costs to IGPC to charge for insurance in the current context. If NRG wanted to seek to charge insurance costs to IGPC, then it should have capitalized the costs and noted this in the cost of service proceeding before the Board (EB-2010-0018). NRG did not do so and has been fully compensated for its insurance costs in rates. Accordingly, the Board will disallow the \$62,000 in insurance costs.

The Board will not adjust the auditor costs as initially requested by IGPC. The Board accepts NRG's statement that audit costs were not for the benefit of the shareholder but rather related to the construction of the pipeline. The costs appear reasonable to the Board.

### **2.1.6 Administrative Penalty**

In EB 2006-0243, the Board ordered that NRG pay an administrative penalty of \$140,000. Later, in EB-2010-0374 the Board vacated the administrative penalty<sup>20</sup>. NRG has confirmed that did not pay the administrative penalty and has not included it in the costs claimed from IGPC.<sup>21</sup> IGPC is satisfied that the administrative penalty has been excluded and accordingly this item is no longer a disputed issue in this proceeding.

### **2.1.7 Costs Arising from this Proceeding**

NRG and IGPC are seeking to recover the costs of this proceeding from each other. Board staff submitted that it was not clear whether NRG or IGPC was at fault for not resolving the disputes between them. Accordingly, Board staff submitted that there should be no costs awarded in this proceeding. However, Board staff in its submission recommended that NRG should pay the legal costs of IGPC related to the Section 42 issue as in its view NRG's conduct bordered on an abuse of its monopoly power.

## **Board Findings**

The Board agrees with the submission of Board staff that it is unclear who was at fault for the disputes between NRG and IGPC. The Board is disappointed that what would seemingly be routine matters to be settled by negotiation between the parties have been brought before the Board. The Board is of the view that NRG and IGPC have had

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<sup>20</sup> Board Decision EB-2010-0374, February 11, 2011

<sup>21</sup> Response to interrogatory #5, EB-2010-0018, January 17, 2011

mixed success in this proceeding. For these reasons, the Board will not award costs arising from this proceeding. With respect to the Board's own costs for these two proceedings, the Board orders that these should be split evenly between NRG and IGPC.

**Issue 3: Are the capital contribution amounts and the financial assurance provided to NRG by IGPC for the existing NRG facilities serving IGPC reasonable?**

IGPC submitted that once the Board determines the actual capital costs of the IGPC pipeline, the analysis can move to determining the proper amount of IGPC's capital contribution.

IGPC presented two calculations, one based on NRG's claimed costs (\$175,836 reimbursement to IGPC) and one based on IGPC's claimed costs (\$981,708 reimbursement to IGPC).

NRG is currently holding a Letter of Credit for \$5.2 million provided by IGPC. The amount has remained unchanged since its issuance in April 2008<sup>22</sup>. IGPC submitted that as per the terms of the PCRA, NRG was required to reduce the amount of the letter of credit to reflect the net book value of the IGPC pipeline in NRG's rate base. IGPC submitted that NRG had refused to reduce the value of the letter of credit and this had increased the cost for IGPC to maintain the letter of credit to the original amount. IGPC estimated the incremental cost to fully fund the letter of credit for 5 years at the original amount, rather than reducing the amount as specified in the PCRA, at over \$150,000.

IGPC submitted that the letter of credit should be immediately reduced to \$3,491,731 reflecting the net book value of the IGPC pipeline according to NRG's rate base for fiscal 2014. IGPC submitted that the Board should order an exchange of the letter of credit to occur within 30 days of the Board's Decision and Order in this proceeding. IGPC further requested that the Board order that the letter of credit be reduced annually on or before November 1 in each year by the amount of depreciation.

Board staff agreed that once the Board makes a determination on the capital cost of the pipeline, NRG should adjust the Letter of Credit based upon the net book value of the pipeline in NRG's rate base as per section 7.6 of the PCRA.

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<sup>22</sup> Response to Board staff IR# 6c, June 28, 2013

NRG in its reply agreed with Board staff that the letter of credit should be adjusted once the Board determines the capital cost of the pipeline. NRG also agreed with the starting point used by IGPC to recalculate the capital contribution. NRG made no comment about the incremental cost to IGPC of the letter of credit not being reduced.

### **Board Findings**

All parties agree that the letter of credit should be adjusted. However, the Board disagrees with NRG's view that adjusting the letter of credit is dependent upon determining the capital cost of the pipeline. Section 7.6 of the PCRA states that the amount of the letter of credit should be the net book value of the facilities allocated to IGPC, as determined by NRG in accordance with OEB-approved methodology. Net book value was determined by the Board in EB-2011-0210 as part of the rate base amount and therefore there was no reason for NRG to refuse to adjust the letter of credit on an annual basis in accordance with section 7.6 of the PCRA<sup>23</sup>.

The Board orders NRG to immediately take the necessary steps to enable IGPC to adjust the letter of credit for NRG's fiscal 2014 rate year to reflect the net book value of the IGPC pipeline as of October 1, 2013. The net book value in 2014 as per NRG's evidence in EB-2010-0018 is \$3,491,731<sup>24</sup>. NRG is to take all necessary steps to enable IGPC to make this adjustment within 30 days of the Board's Decision and Order in this proceeding. The Board further directs NRG to take all necessary steps to enable IGPC to adjust the letter of credit on an annual basis corresponding to the commencement of deliveries under the Gas Delivery Agreement as per section 7.6 of the PCRA.

IGPC in its submission has noted the cost of maintaining an unadjusted letter of credit for the past five years. IGPC has estimated the cost to be in excess of \$150,000. No substantiating evidence was provided concerning the estimate of \$150,000, but neither did NRG dispute it. There is no doubt that IGPC has had to bear additional costs because of NRG's refusal to enable revision of the letter of credit on an annual basis which was in clear contravention of section 7.6 of the PCRA. The Board believes that IGPC should not bear the cost of the excess amount. Accordingly, the Board orders NRG to refund \$150,000 to IGPC.

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<sup>23</sup> Section 7.6 agrees to reduce the amount of the Delivery Letter of Credit equal to the net book value of the Utility Connection Facilities allocated to the customer at the time.

<sup>24</sup> EB-2010-0018, Exhibit I, Tab 7, Page 6, Interrogatory #3, August 31, 2011



**Issue 4: What, if any, is the appropriate amount of payment including any interest owed by NRG to IGPC?**

Board staff noted that NRG has confirmed that it has been paid the total amount in dispute<sup>25</sup>. Board staff submitted that based on its arguments, NRG owes \$652,503 as a refund to IGPC.

IGPC in its submission submitted that it is owed \$981,708 and reconciliation should have occurred in 2009. Using a rate of Prime plus 1% as referred to in s. 3.8 of the PCRA, IGPC has included a 4% interest rate from 2009 to 2013 and has submitted a total amount of \$1,194,397.89 that it is owed.

NRG in its submission submitted that the above issue was dependent upon the resolution of the capital cost of the IGPC pipeline.

**Board Findings**

The Board has made certain findings in this Decision that impact the total cost of the pipeline. The table below provides the Board's Decision on the disputed costs:

Cost Item	Disallowed Costs as per Board's Decision
Legal Costs	Revised total to be provided by NRG
NRG Staff Costs	\$385,045
Interest	NRG to provide revised table
Insurance Costs	\$62,000

IGPC in its submission has argued for an interest payment of \$212,690 representing the cost of the overpayment from 2009 to 2013. IGPC has submitted that the reconciliation to determine actual capital cost of the pipeline should have occurred by January 1, 2009. In other words, IGPC is owed interest on the overpayment for five years which has been calculated at the rate of Prime + 1.00% in accordance with section 3.8 of the PCRA.

The pipeline was added to rate base in August 2008. IGPC has submitted that reconciliation to actual costs should have occurred within five months. The Board is of

<sup>25</sup> Response by NRG to Board staff interrogatory #1, October 28, 2013

the view that reconciliation should have occurred by the end of 2008. The PCRA states that NRG was to provide IGPC with the actual costs of the pipeline within 45 days of the pipeline entering service, or on a timeframe agreed to by the parties. If there was a disagreement, the PCRA provides that the parties were to negotiate in good faith for 20 business days, after which the matter could be referred to the Board for resolution. As the pipeline entered service in August 2008, the disagreement should have been referred to the Board before the end of 2008. Even providing for a very generous hearing schedule, the matter could have been resolved sometime in calendar 2009. Accordingly, the Board orders that NRG is liable to pay interest for 4 years (2010- 2013) for the excess amount as determined in this Decision. NRG is further ordered to calculate interest on the amount refunded by NRG to IGPC, at the rate of Prime + 1.00%, as contemplated by s 3.8 of the PCRA. The Prime Rate to be used shall be calculated on the basis of the rate existing for each of the years included in the calculation.

In addition, NRG is required to pay a further \$150,000 to IGPC representing the cost of maintaining an unadjusted letter of credit for five years.

**Issue 5: If any amounts are owing from NRG to IGPC, by what means and in accordance with what terms should IGPC be reimbursed?**

In its submission, Board staff submitted that the refund amount owed to IGPC may be too large for NRG to refund as a single payment. A suitable alternative in its view would be to refund the amount over a three year period through a rate rider. Board staff submitted that a deferral account should be established that applies Board prescribed interest rates. IGPC in its submission made a similar observation that the refund amount of \$1,194,397.80 that IGPC claimed is fairly significant and NRG should be directed to refund the amount over an 18 month period through a rate rider.

IGPC also submitted that the rate base had been overstated since the Board's Decision in EB-2010-0018. IGPC sought direction from the Board as to the manner in which the overpayment should be corrected.

NRG in its submission agreed with Board staff regarding the establishment of a deferral account to capture amounts owing to IGPC.

**Board Findings**

The Board agrees with Board staff and IGPC that the refund amount resulting from the Board's Decision is likely to be fairly significant for a small utility such as NRG. The Board orders NRG to establish a deferral account for this purpose (IGPC Pipeline Refund Deferral Account), the amount of which will be determined once the Board has determined the revised capital contribution. The Board orders NRG to clear the deferral account through a rate rider ending September 30, 2016.

IGPC has also sought an adjustment to the rate base. The Board's rates were declared final in NRG's last cost of service proceeding (EB-2010-0018) and the Board at that time was aware of the dispute between NRG and IGPC regarding the capital cost of the pipeline. The Board also issued subsequent rate orders in 2012 and 2013 that were final. Consequently, the Board will not make an adjustment to the rate base.

**THE BOARD ORDERS THAT:**

1. The Board orders NRG to file and serve on IGPC, within 21 days of the date of this decision a table reflecting the Board's findings in this Decision concerning all amounts to be paid by NRG to IGPC, including interest, together with all supporting calculations
2. IGPC and Board staff will have 14 days after the receipt of NRG's calculations to file with the Board and serve on the parties any comments on the accuracy of these NRG's figures and calculations.
3. NRG will have 7 days after receiving any such comments to file with the Board and serve on IGPC any response to the comments.

**DATED** at Toronto, February 27, 2014

**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli  
Board Secretary

## Appendix A

### History of the Capital Contribution Proceeding

IGPC brought the capital contribution dispute before the Board in NRG's 2011 rates proceeding (EB-2010-0018). In that proceeding, the Board determined that it would only address matters that impact NRG's rate base and that issues relating to the PCRA were outside its jurisdiction. The Board determined that the capital contribution dispute was essentially a contractual dispute related to the Pipeline Cost Recovery Agreement ("PCRA") signed by the two parties.

Subsequently the Board, on its own motion, reviewed its decision in EB-2010-0018 concerning jurisdiction over capital contribution issues (EB-2012-0396). On October 4, 2012, the Board determined that its original decision on this issue had been incorrect. It determined that a capital contribution is a "rate" within the meaning of the Act and that the Board therefore had jurisdiction to determine the appropriate figure for all amounts paid by IGPC to NRG.

The Board further issued a Notice of Application on April 2, 2013, pursuant to the Board's Decision in EB-2012-0396 advising parties that the Board had initiated a new proceeding (Board file No. EB-2013-0081), to review the capital contributions paid by IGPC to NRG.

### Procedural Steps related to this proceeding

In Procedural Order No. 2 issued on May 17, 2013, the Board determined a final Issues List and provided dates for filing interrogatories and responses to interrogatories.

IGPC and Board staff submitted interrogatories to NRG. On July 12, 2013, IGPC filed a motion pursuant to Rule 29 of the Board's Rules of Practice and Procedure requiring NRG to provide full and adequate responses to specific interrogatories filed by IGPC. IGPC further requested that the motion be heard orally. On July 29, 2013, the Board held an oral hearing concerning IGPC's motion to require NRG to respond to certain interrogatories.

In its Decision and Procedural Order No. 4 issued on August 29, 2013, the Board directed NRG to respond fully to certain interrogatories and also ordered a settlement

conference to be held on September 18, 2013 with the objective of reaching a settlement on the issues before the Board. However, no settlement was reached between the parties.

In Procedural Order No. 5 issued on October 11, 2013, the Board made provision for a second round of interrogatories for both, IGPC and NRG. The Board further made provision for IGPC to file its argument-in-chief for the Section 42 issue and the parties to file submissions followed by IGPC to file a reply.

With respect to the other issues (Issues 2 to 5) dealing with the capital cost of the pipeline, the Board made provision for filing submissions and then reply to the submissions from NRG and IGPC.

The Town of Aylmer filed a submission on the Section 42 issue. Since the Board did not make provision for the Town to make submissions in its Procedural Order, NRG filed a letter on November 13, 2013 objecting to the Town's submission and indicated that if the Board were to accept the submission, then NRG should have an opportunity to respond.

The Town of Aylmer in a letter dated November 18, 2013 noted that it was accepted as an intervenor and it had participated throughout the proceeding. However, the Town did not object to the request of NRG to file a reply to any issues that were raised only by the Town. The Board in Procedural Order No. 6 accepted the submission of the Town but granted NRG an opportunity to respond if it wished to do so.