

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

**AND IN THE MATTER OF** Section 19, Subsections 36(1) – (7), and Clause 126(1)(d) of the *Ontario Energy Board Act, 1998*;

**AND IN THE MATTER OF** compliance with an Order of the Board and the filing of false or misleading information under Clauses 126(1)(b) and (c) and Subsection 126(2) of the *Ontario Energy Board Act, 1998*

**APPLICATION**

1. The Applicant, Integrated Grain Processors Co-operative Inc. ("**IGPC**") is filing this application in response to Natural Resource Gas Limited's ("**NRG**") abuse of its monopoly powers.
2. IGPC, a ratepayer, requires the Ontario Energy Board (the "**Board**") to protect it from such unreasonable and unlawful behaviour as contemplated by the Board's statutory obligations set out in Section 2 of the Ontario Energy Board Act 1998, S.O. 1998, c.15, (Schedule B) (the "**Act**"), and elsewhere in the Act.
3. IGPC hereby applies for the following relief:
  - (a) an Order pursuant to Subsection 42(3) of the Act requiring NRG to provide gas distribution services and gas sales as requested by IGPC to meet its facility expansion and upgrading plans;
  - (b) a Decision and Order that NRG's invoices to IGPC dated August 24, 2012 and September 27, 2012 contain charges, fees and rates that are not the subject of a Board Order and are thereby contrary to Subsection 36(1) of the Act and are thereby null and void;
  - (c) a Decision and Order that certain costs claimed by NRG for the construction of the pipeline which supplies natural gas to IGPC were not incurred, and in respect of those costs incurred, whether they were reasonably and prudently incurred;

- (d) an Order or Orders pursuant to Section 19 and Subsections 36(2), (3) and (7) requiring NRG to appropriately adjust the capital contribution paid to NRG by IGPC and the security deposit paid and posted by IGPC in accordance with the conditions to the Leave to Construct approval and IGPC's covenants as approved by the Board in its Decision of March 4, 2008 (EB-2006-0243);
  - (e) an investigation into contraventions of the Act by NRG in respect of whether the IGPC Pipeline Post Construction Report was prepared and filed by NRG contrary to the Board's Order in EB-2006-0243 and/or whether it contains false or misleading information, and the consideration of those directors and/or officers that caused, authorized, permitted or acquiesced in respect of this conduct;
  - (f) in the alternative to Clause (a) above, an Order terminating the Leave to Construct approval dated February 2, 2007, as amended by the Board's Oral Decision dated February 28, 2008 and Decision and Order dated March 4, 2008 in the EB-2006-0243 proceeding, on such terms as seems just and appropriate, and such further or other relief as the Board deems appropriate for the circumstances;
  - (g) its costs of this application on a complete indemnity basis; and
  - (h) such further and other relief as counsel may advise and the Board permits.
4. IGPC acknowledges that on October 4, 2012 the Board, on its own motion, issued a Notice of Motion to Review a decision to refrain from adjudicating in respect of the total cost of the pipeline which serves IGPC. The preliminary question asked by the Board is whether the Board has jurisdiction to determine the proper amount of the capital contribution payable by IGPC, including any refund. In the event that the Board determines that it does have jurisdiction, IGPC anticipates that the Board will undertake a review of the actual costs incurred for the pipeline and issue appropriate Decisions and Orders, in which case some of the relief sought above may no longer be necessary. However, IGPC submits that factual information set out in this application is pertinent to both the Board's preliminary determination of its jurisdiction and in respect of any review of the costs of the pipeline serving IGPC. IGPC further submits that, in due course, it may be appropriate for the Board to either consolidate or hear the within application

together with any further investigations and considerations made by the Board in the review proceeding, EB-2012-0396.

### **Introduction and Background**

5. IGPC is an Ontario corporation with its head office in the Town of Aylmer, Ontario. IGPC owns and operates an ethanol facility in Aylmer (“**Facility**”) and is a customer of NRG, the natural gas distributor in the area.
6. The Facility consists of a corn-fed ethanol production plant which IGPC constructed in the Town of Aylmer. The Facility cost approximately \$160 million to build, annually purchases approximately \$100 million of locally grown corn; employs 50 people with an approximate annual payroll of \$5 million and produces approximately 150 million litres of ethanol. The Facility has been operating at virtually full capacity since it was commissioned in September 2008.
7. IGPC is by far the largest customer within NRG’s service territory contributing approximately 30% to NRG’s total distribution revenue. IGPC’s gas purchases constitute approximately 60% of NRG’s entire system load.
8. IGPC supports a number of NRG’s other ratepayers through the purchase of corn and other local supplies.
9. IGPC was developed at the time Imperial Tobacco, formerly NRG’s largest customer, exited the area. IGPC’s corn purchases also helped area farmers transition away from tobacco with the demise of the tobacco quota. Further, its presence helped ensure NRG’s rates for other customers did not increase unreasonably.
10. The delivery of natural gas to the Facility is by way of a 28.5km NPS 6 steel pipeline (“**IGPC Pipeline**”). IGPC contributed to the IGPC pipeline through: (i) the cash payment of \$3,538,792.47 as a contribution in aid of construction; (ii) providing financial assurance in the amount of \$5,214,173.00; and (iii) a 7 year \$10+ million commitment to monthly distribution rates.
11. IGPC is planning to invest between \$15 million and \$20 million in the next 24 to 36 months in new product lines and process improvements. This investment will mean

several man-years of construction jobs for area residents and likely additional permanent full-time jobs at IGPC.

12. With the expansion and upgrade, IGPC will increase its product offerings, reduce costs, and secure its continuing success into the future. Natural gas is crucial to the operation of the Facility. Without a secure, reliable, reasonably priced supply of natural gas (at increased levels) from a gas distributor that is a true business partner (i.e. co-operative and responsive), these investments are unlikely to happen. IGPC anticipates that its load will increase by a further 25% to 35% with the proposed expansions.
13. In less than 4 years of operation, IGPC has virtually eliminated a \$64 million term debt and has been able to make distributions to its members.
14. The term loans which facilitated the development, construction, start up and commissioning of the Facility are approaching maturity. To retire the existing loans and to finance the proposed capital expenditures in the next 24 months, IGPC needs to refinance. IGPC believes that it is in a very strong financial position. As IGPC is a registered co-operative under the *Cooperatives Act*, information regarding such loans is in the public domain.
15. IGPC believes, based upon recent correspondence which is attached, that NRG will impede the refinancing thereby hurting IGPC and the community that will benefit from the proposed expansion.
16. NRG is the sole franchisee with the right to distribute natural gas to the Facility. IGPC has no option but to deal with NRG – a position NRG has and continues to use as leverage to make unreasonable demands.

### **Ethanol Plant Expansion Threatened**

17. By letter dated June 18, 2012, IGPC wrote to Mr. Jack Howley, NRG's Operations Manager, in Aylmer, Ontario, to request a meeting to discuss the potential for increased natural gas demand load to support IGPC's expansion plans, as referred to above. A copy of the letter is found at **Tab 1**.
18. Based upon the evidence in EB-2006-0243 (the Leave to Construct Application), IGPC understood the IGPC Pipeline had sufficient unused capacity to accommodate the

additional loads. However, IGPC wanted to confirm this and to discuss the potential need to undertake modifications to the customer station to accommodate the increased load.

19. NRG responded in a letter dated June 18, 2012, authored by its President, Mr. Anthony Graat, stating that all correspondence other than operational emergencies should be addressed directly to Mr. Graat, at Ayerswood Development, London, Ontario. NRG has no plant and no franchise in London, Ontario. A copy of the letter is found at **Tab 2**.
20. By letter dated July 3<sup>rd</sup>, 2012, IGPC wrote to Mr. Anthony Graat, in London, Ontario, referencing, *inter alia*, its expansion plans and requesting an opportunity to meet to discuss what would be required for the increase in load. A copy of this letter is attached at **Tab 3** to this Application.
21. Mr. Graat's response dated July 9<sup>th</sup>, 2012 is attached at **Tab 4**. This letter contains three completely unacceptable demands which are contrary to the Act, the Board's Rules, and the contractual obligations included in the Board approved Pipeline Cost Recovery Agreement ("**PCRA**"), Gas Delivery Contract and Bundled T Service Receipt Contract.

#### **Refusal to Serve and Unlawful Demands**

22. The Act, at Subsection 42(2), obligates a gas distributor to provide gas distribution services when requested in writing. IGPC has made such a request; yet NRG's letter authored by its President, Mr. Graat, states that:

"NRG cannot enter into any discussions regarding possible new business or changes to existing business arrangements until major disagreements have been resolved" (emphasis added).

23. In other words, IGPC will not be permitted to discuss its expansion plans nor will NRG entertain any discussions regarding additional gas distribution services or gas sales until IGPC settles unrelated issues.
24. As the Board is likely aware, there are three outstanding disputes between IGPC and NRG:
  - (a) NRG has refused to complete a proper reconciliation of the capital cost of the IGPC Pipeline and return any overpayments;

- (b) NRG has refused to reduce the financial security held in respect of the IGPC Pipeline;
- (c) NRG has sued IGPC for more than \$20,100,000 for the tort of malicious falsehood.

25. Each of the above issues is discussed further below, but NRG is clearly linking its obligation to provide gas distribution sales and services to these issues. The first two issues above clearly fall within the jurisdiction of the Board to protect ratepayers from utilities which abuse their monopolistic powers. Incredibly, the demands of NRG in Mr. Graat's July 9, 2012 letter continue.

**a) *Demand for the payment of unapproved charges***

26. In addition to the above, Mr. Graat, in the third paragraph, refuses to entertain discussions about the requested additional gas sales and services required by IGPC unless IGPC pays an extraordinary additional amount over and above NRG's Board approved rates.
27. The demand by a rate regulated utility for additional unapproved payments over and above Board approved rates and charges is contrary to the Act.
28. NRG lacks the manpower and expertise to undertake the design and modification of any required changes to the customer station. It is likely that it would again retain the services of Lakeside Controls. Costs payable to Lakeside Controls for its services and the capital costs of any modifications to the regulator station would be reviewed for prudence and recovered in accordance with standard OEB rules including the application of EBO 188.
29. IGPC denies that a material amount of time will be required by anyone at NRG to facilitate the additional volumes IGPC is requesting. Accordingly, Mr. Graat's demand should be seen for precisely what it is: an unlawful abuse of NRG's position as the monopoly natural gas utility in Aylmer. NRG is, in effect, holding IGPC hostage by its demand that IGPC agree to a financial compensation methodology satisfactory to NRG in advance of any discussions, meetings or work ever having been undertaken.

30. Despite a virtual lack of communications with NRG in respect of IGPC's expansion plans because of the position taken by NRG, Mr. Graat, by letter dated August 24, 2012, forwarded an invoice totalling \$6,427.75 for "time and expenses spent to date on the Potential Expansion of IGPC Facility." The invoice includes hourly rates for unknown persons of \$500 and \$750, an unsupported and unexplained "MIG Charge" and a 15% administration charge. By a letter dated September 27, 2012, NRG submitted a second invoice for \$448.64 in respect of further unsupported and unexplained work. These invoices confirm Mr. Graat's earlier threat and intention of demanding unlawful unapproved fees and charges from IGPC. These are the rates that NRG is demanding that IGPC accept as a precondition to NRG complying with its statutory obligations. Attached at **Tab 5** are copies of Mr. Graat's letters and the two NRG invoices. Also attached at Tab 5 is a letter dated July 24, 2012, from Mr. Graat, and IGPC's response the following day constituting what IGPC believes represents the balance of all written communications with NRG in respect of the expansion.

**b) *Demand for capitulation by IGPC Regarding Return of Over-payment of Contribution in Aid of Construction and Financial Assurance***

31. In order to construct the IGPC Pipeline that serves the Facility, NRG obtained leave to construct approval from the Board. As part of that application and the pipeline's capital cost recovery, NRG committed to complete an economic analysis in accordance with the Board's Decision in EBO 188. It further committed to reconciling forecast costs with actual costs incurred to ensure all ratepayers were adequately protected. The Board determined such an approach adequately protected all ratepayers in the Leave to Construct Application (EB-2006-0243).

32. As a result of this economic analysis IGPC paid \$3,538,792.47 as a contribution in aid of construction. In addition, IGPC provided financial assurance in the amount of \$5,214,173.00 to completely secure the cost of the pipeline included in rate base. This financial assurance is to be reduced as the pipeline is depreciated.<sup>1</sup>

33. Pursuant to the Leave to Construct approval granted by the Board including, importantly, the mutual covenants of IGPC and NRG which form additional conditions of approval

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<sup>1</sup> This is the specific finding of the Board in its Decision and Order dated February 2, 2007 (the Leave to Construct) at page 3, and the Board's Decision dated March 12, 2008, at page 3 (EB-2006-0243).

which were ordered by the Board in its Decision and Order dated March 4, 2008 (EB-2006-0243), NRG was required, as a condition to the approval, to provide a reconciliation of the forecast costs with actual costs of the pipeline to determine if there should be any adjustment in the amount paid by IGPC as a capital contribution and in respect of the security posted.

34. Four years later NRG continues to refuse to provide a proper accounting and remains in non-compliance with conditions imposed by the Board to the approval. The fact is that the costs of constructing the pipeline were lower than the forecasted costs. IGPC believes it is, therefore, owed a refund by NRG of several hundred thousand dollars. IGPC also believes that the amount included in rate base by NRG has not been adjusted to reflect actual costs.
35. NRG attempts to justify this misconduct by referencing non-existent contingency costs of \$132,000 or exaggerated costs including, quite unbelievably, the \$140,000 administrative monetary penalty imposed by the Board against NRG given its refusal to comply with the Board Order following the emergency motion brought by IGPC in 2007. This administrative penalty was subsequently withdrawn by the Board and was never paid.
36. That NRG is required to refund monies and reduce the security posted is beyond question. Briefly stated, in 2008, IGPC provided NRG with a Letter of Credit in the amount of \$5,214,173.00 as required by the Board-reviewed and approved Pipeline Cost Recovery Agreement (“**PCRA**”). A copy of the PCRA is found at **Tab 6**.
37. Section 7.6 of the PCRA provides that the amount of the Letter of Credit is to be reduced annually to the net book value or the undepreciated value of the IGPC Pipeline.
38. Section 7.9 of the PCRA obligates NRG to return any Letter of Credit held by it, if IGPC is substituting or replacing it with a letter of credit.
39. To date, despite being in service for four years and the undepreciated value being hundreds of thousands of dollars less than the \$5,214,173.00 security posted, NRG has refused to reduce the letter of credit. Indeed, NRG has threatened to seek an increase in the security.



40. According to NRG's response to IGPC Interrogatory No. 3 in EB-2010-0018, filed in August 2011, the amount of the IGPC Pipeline in rate base is \$3,978,949 for the 2012 rate year, and for 2013, the amount in rate base will be \$3,735,340, a reduction of \$243,609 in one year alone.
41. On or about March 14, 2012, IGPC contacted NRG to seek an amendment to the Letter of Credit and provided an acceptance for NRG to sign back. Based upon the response in EB-2010-0018 to IGPC Interrogatory No. 3, IGPC sought confirmation of the 2012 amount, being \$3,978,949.00. A copy of the letter and amendment acceptance is found at **Tab 7**.
42. On March 23, 2012, NRG advised IGPC that the request was under advisement. A copy of the email is attached at **Tab 8**.
43. Not having received a response, by a letter dated April 23, 2012, counsel to IGPC wrote to counsel for NRG regarding the refusal to reduce the letter of credit and demanded that NRG comply with its obligations. A copy of this letter is attached at **Tab 9**.
44. NRG's counsel not only refused to reduce the Letter of Credit but threatened to increase the financial security, despite holding more than \$1.2 million more in security than it is entitled to hold. NRG's refusal has cost IGPC damages in excess of \$150,000 in carrying costs by unreasonably and unlawfully refusing to permit the substitution of the lower amount. A copy of NRG's counsel's letter dated May 9, 2012 is attached at **Tab 10**.
45. Mr. Graat's July 9, 2012 letter requires IGPC to capitulate on its proper request that the cash paid and financial assurance provided pursuant to the Board's rules be adjusted to reflect the actual cost of the IGPC Pipeline and its depreciation over the years. Mr. Graat is using IGPC's request to receive additional distribution services and gas sales as leverage to achieve his goal of avoiding application of the Board's rules and return monies and reduce the security deposited.
46. Further, the current situation appears to effectively permit NRG to recover, as part of rate base, monies that were never spent. This is contrary to the Board's accounting policies and the prudence evaluation of utility spending that is a standard tenet of utility regulation.

47. It is clear from the above that NRG has no intention of complying with relevant conditions to the approvals received in respect of the IGPC Pipeline. It has no intention of honouring its commitments to its ratepayers and the Board to operate within the acceptable bounds of a rate regulated monopoly. IGPC submits that the Board is now tasked with the statutory obligation of reviewing NRG's conduct and requiring it to comply with outstanding conditions and obligations in respect of the construction of the IGPC Pipeline.

**c) Demand for IGPC to capitulate to NRG's defamation lawsuit**

48. Another "major disagreement" (Mr. Graat's words) is the \$20,100,000 damages lawsuit which NRG commenced against IGPC and its wholly owned subsidiary, IGPC Ethanol Inc., in October 2009. A copy of the Statement of Claim and IGPC's Statement of Defence is found at **Tabs 11** and **12**, respectively.

49. This lawsuit relates to a Press Release issued in February 2008 which, *inter alia*, refers to a motion filed by IGPC with the Board, prompted in part by NRG's demand for a letter of credit of approximately \$32 million in respect of the IGPC Pipeline, a pipeline which had an estimated total cost to construct of only \$9 million.

50. NRG alleges that this Press Release caused it damages, which damages appear to include the Board's Decision of May 5, 2009 refusing NRG's request for a 20-year renewal of its franchise agreement with the Town of Aylmer, instead granting a three-year renewal term.<sup>2</sup>

51. The fact that the lawsuit has no merit and that NRG has sustained no damages explains why NRG has done virtually nothing to prosecute the lawsuit in the almost three years that the action has been outstanding.

52. It is clear from Mr. Graat's letter that he sees the request for additional gas distribution services as a basis to further try and coerce IGPC into accepting some unfavourable and inappropriate outcome to the vexatious defamation lawsuit.

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<sup>2</sup> NRG appealed this Decision to the Divisional Court which, on June 14, 2012 unanimously dismissed the appeal, with costs payable to the Town of Aylmer and IGPC. NRG has failed to pay these costs.

53. It is important that IGPC's ability to properly defend itself against this lawsuit not be compromised. It is equally important that the Board not acquiesce in the face of NRG's behaviour by failing to take steps to prevent NRG from abusing its monopolistic position.
54. IGPC will only agree that the lawsuit should be dismissed in its entirety. The costs of prosecuting this lawsuit, which is of benefit to no one and is not a normal cost of doing business, should not be recoverable from any of NRG's ratepayers.

**Section 126(b), (c) and (d) Offences of Under the Act**

55. Section 126 of the Act deals with offences and the liability for directors and officers of the corporation that assist in the commission by the corporation of an offence.

“126(1) A person is guilty of an offence who,

....

(b) knowingly furnishes false or misleading information in any application, statement or return made under this Act or in any circumstances where information is required or authorized to be provided under this Act;

(c) fails to comply with a condition of a licence or an order of the Board made under this or any other Act;

....

(d) contravenes this Act, the regulations or a rule made under section 44, 1998.

(2) It is an offence for any officer or director of a corporation to cause, authorize, permit or acquiesce in the commission by the corporation of an offence mentioned in subsection (1).”

56. In EB-2010-0018 – Phase I, the Board determined the IGPC Pipeline was to be included in rate base in August 2008.
57. Condition 3.4 of the order EB-2006-0243 reads as follows:

“Within fifteen months of the in-service date, NRG shall file with the Board a written Post Construction Financial Report. The Report shall indicate the actual capital costs of the project and shall explain all significant variances from the estimates filed with the Board.”

58. NRG was obligated, pursuant to the Board's order to file the Post Construction Financial Report prior to the end of 2009. On July 24, 2012, NRG filed the Post-Construction Report (“**PCR**”) for the IGPC Pipeline, a copy of which is attached at **Tab 13**. It should

be noted the historical base cost presented in the PCR differs from that presented during the leave to construct proceeding.

59. The "Actual" Capital Costs stated in the PCR include \$132,000 in contingencies which are monies not spent and, by definition, not actual capital costs. During a Technical Conference on June 14, 2010 (EB-2010-0018, Tech. Conf. Transcript, page 27, lines 6 to 13) NRG confirmed it did not incur such costs:

MR. STOLL: Okay, but we are two years post putting that pipeline into service. I would have thought all contingencies with the construction of the pipeline would have been realized by now.

Are there specific items that are contingent, in the eyes of NRG, that have yet to occur related to the construction?

MR. COWAN: I can't point to any. We will certainly make all of our information available with respect to that.

60. Accordingly, the PCR materially misleads the Board as to the actual costs of the IGPC Pipeline.
61. It would appear such statements are made to inflate the costs of the IGPC Pipeline and secure financial benefit for NRG from the overstatement. IGPC believes that this is just one example of an overstatement. Another potential example is the "Total Other" costs of \$110,142 which were not explained or substantiated are suspicious given that actual land costs incurred by NRG were substantially below forecast. IGPC is of the view that such overstatements did not occur by accident. It is therefore appropriate for the Board to determine which Directors and Officers of the Company caused, authorized, permitted or acquiesced to such conduct.
62. IGPC also requests that the Board investigate and determine whether either the Interim or Final Monitoring Reports were filed as required by Conditions 3.1 to 3.3 in EB-2006-0243, as amended.
63. IGPC submits that IGPC's demand for payment by NRG of unapproved rates and charges and its refusal to fully and completely provide a reconciliation of the actual costs to construct the IGPC Pipeline are contraventions of the Act which constitute an offence under Clause 126(1(d)) to the Act. It is clear that this conduct was neither inadvertent nor unplanned. IGPC similarly requests that the Board investigate those Directors and Officers that were/are involved in such conduct contrary to Subsection 126(2) of the Act.

**Summary**

64. The Board panel which heard EB-2010-0018 declined to assume jurisdiction regarding the obligation upon NRG to adjust the aid-to-construct and the letter of credit notwithstanding that the relevant agreements specifically contemplated that the Board would act as adjudicator, the Board had reviewed and approved these agreements, and the Board had previously exercised its jurisdiction by refusing to increase the letter of credit on the application of NRG.
65. As a result, IGPC was forced to appeal the Decision in EB-2010-0018 to the Divisional Court regarding this jurisdictional error. This appeal, while outstanding, need not be heard should the Board determine, based upon the conduct of NRG stated herein, that it now has the jurisdiction – indeed the obligation – to protect a ratepayer from the monopolistic abuses exercised by NRG.
66. The alternative to the Board exercising its jurisdiction is a lawsuit. In response to this, there can be no doubt that Mr. Graat and NRG will argue that the Courts are the wrong forum to obtain orders: (1) requiring NRG to provide gas distribution services; (2) reviewing the accuracy and prudence of capital spending by NRG on the IGPC Pipeline; (3) determining whether NRG has complied with its covenants and the conditions to the approval granted by the Board; and (4) protecting IGPC from NRG's demands for the payment of unapproved rates and charges including its refusal to refund monies and reduce the security provided by IGPC, all in accordance with the Board's Rules and its Leave to Construct approval.
67. A lawsuit before the Superior Court of Justice over these issues will take many years to resolve, especially when one includes the possibility of an appeal. In the meantime, IGPC's expansion plans would be frustrated or it would be required to pay unapproved rates and charges and incur the costs of providing security beyond that required under the Board's Rules.
68. NRG and Mr. Graat have linked the provision of future gas distribution services with the demand that IGPC resolve outstanding issues including the requirement to reconcile the actual costs of the construction of the Pipeline. The Board clearly has jurisdiction in light of NRG's unlawful demands and breach of its statutory and other legal obligations as a rate regulated utility.

**Documents relied upon in support of this Application**

- (a) The documents referred to and attached to this Application;
- (b) EB-2006-0243
- (c) EB-2010-0018; and
- (d) Such further and other material that counsel may advise and the Board permits.

**All of which is respectfully submitted.**

Dated: October 11, 2012.

Signed: "*Dennis O'Leary*"

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**Dennis O'Leary**

Signed: "*Scott Stoll*"

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**Scott Stoll**

TAB 1



June 18, 2012

Natural Resources Gas Ltd.  
39 Beech Street  
Aylmer, Ontario N5H 1A1

**Attention: Mr. Jack Howley**

Dear Jack:

**Re: Potential Expansion of IGPC Facility and Increased Natural Gas Deliveries**

This letter is to inform you that Integrated Grain Processors' Co-operative Inc. ("IGPC") is considering an expansion to its ethanol facility located on Progress Drive in Aylmer, Ontario. IGPC has engaged an engineering firm, CEM Engineering, led by Mr. Martin Lensink, P. Eng. to assist in the preliminary design of the additional facility.

The proposed expansion will result in an increased demand for natural gas to the ethanol facility. Our preliminary analysis indicates the following changes:

<u>Item</u>	<u>Current</u>	<u>Preliminary Proposal</u>
Hourly Volume	4,507.83 m <sup>3</sup> /hr	5,520 m <sup>3</sup> /hr
Firm Contract Demand	108,188 m <sup>3</sup>	132,480 m <sup>3</sup>
Annual Volume	33,416,618 m <sup>3</sup>	44,000,000 m <sup>3</sup>
Delivery Pressure	60psig	250 psig

At this stage of the project, IGPC requires certain information regarding the implications of the proposed expansion upon the pipeline and customer meter station serving the ethanol facility. Based upon our knowledge of the circumstances, we understand the pipeline would be capable of providing the additional gas delivery. During the original leave to construct proceeding we understood there was about 30% of the capacity which remained available. If this is incorrect, we would request that you confirm the capacity that is available.

In order to proceed with the preliminary engineering, we need to understand whether the customer meter station is capable of handling the increased volume and outlet pressure or whether it would have to be modified. We understand that Lakeside Controls designed, built and

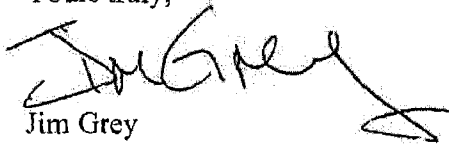


maintains the customer meter station for NRG. Given Lakeside's technical knowledge we would request that they be available to assist in the discussion.

If this project is to proceed IGPC would expect the Gas Delivery Contract and the Bundled-T Service Receipt Agreement to be amended to reflect the changed parameters. Depending upon the circumstances, additional items may need to be addressed.

We would like to meet within the next two weeks to discuss this further with you. Please contact me to arrange a time for the meeting.

Yours truly,

A handwritten signature in black ink, appearing to read "Jim Grey", written over a light blue horizontal line.

Jim Grey  
Chief Executive Officer

TAB 2



**Natural Resource Gas Limited**

June 18, 2012

IGPC  
89 Progress Drive  
P.O. Box 205  
Aylmer ON N5H 2R9

Attention: Mr. Jim Grey  
Chief Executive Officer

Dear Mr. Grey,

We are in receipt of your letter dated June 18, 2012 and request that any future correspondence relating to IGPC and Natural Resource Gas Limited ("NRG"), other than operational emergencies, be addressed directly to the undersigned at our London office: c/o Ayerswood Development, 1299 Oxford St E, London, ON N5Y 4W5.

Yours truly,

**NATURAL RESOURCE GAS LIMITED**

A handwritten signature in black ink, appearing to read "Anthony H. Graat", with a long horizontal line extending to the right.

Anthony H. Graat,  
President

TAB 3



July 3, 2012

Natural Resource Gas Limited  
c/o Ayerswood Development  
Anthony H. Graat, President  
1299 Oxford Street East  
London, ON  
N5Y 4W5

Mr. Graat,

We are in receipt of your letter dated June 18, 2012.

I am a little unclear about your response. Are we to understand that you are amending the notice information provided for in the various agreements between IGPC and NRG? If so, is this to include information related to the purchase and deliveries of natural gas which IGPC makes through its gas marketer, Ag-Energy? Does this mean you will be personally involved in all such matters? As you are no doubt aware, Ag-Energy has been corresponding directly with Union Gas Ltd. ("Union") and NRG on such matters.

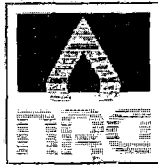
Also, we have yet to receive the annual renewal of the direct purchase arrangement for July 1, 2012. The IGPC request for increased volumes, dated May 15, 2012, was approved by Union. Union requested consent from NRG to the increased volumes on May 15, 2012. I understand NRG has consented to the volumes but has yet to provide the agreement confirming such volumes. It should be noted this annual renewal and increase is not associated with the proposed facility expansion in my prior letter.

Finally, you did not indicate any willingness or timeframe in which you are available to meet. If you could provide your availability over the next couple of weeks we can set a time.

Sincerely Yours,

Jim Grey, CEO  
IGPC Ethanol Inc.

TAB 4



**Natural Resource Gas Limited**

July 9, 2012

IGPC  
89 Progress Drive  
P.O. Box 205  
Aylmer, ON N5H 2R9

Attention: Mr. Jim Grey  
Chief Executive Officer

Dear Mr. Grey,

We are in receipt of your letter dated July 6, 2012. With respect to the current annual review of the direct purchase arrangement, you understand correctly that NRG consented to the volumes and this was communicated to both AgEnergy and Union Gas. It has not been the practice in the past to supply any further documentation to IGPC, however, we requested that Jack Howley send you a copy of the SA 8937 Parameters Report for your records.

The intention of our letter was to ensure any matters, other than operational emergencies, are addressed at the highest level and there is one contact person for all such issues. We may then choose to delegate the issues within our organization.

In the past any issue with IGPC has involved an excessive use of executive time and expense by NRG. 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. These financial arrangements will have to be in place before any discussions will be entertained. NRG will not and can not spend managements' time and financial resources to discuss an IGPC request with outside consultants and lawyers, only to be told that NRG's costs are excessive and IGPC will not pay.

As you know, there are currently several large and important matters that must be resolved. It is NRG's understanding, that IGPC believes that the cost incurred by NRG on the construction of the high pressure pipeline starting in 2007 are still not agreed too. If that is correct, then that issue must also be resolved.

Just to reiterate, NRG can not enter into any discussions regarding possible new business or changes to existing business arrangements until major disagreements have been resolved.

Yours truly,

**NATURAL RESOURCE GAS LIMITED**

A handwritten signature in black ink, appearing to read 'Anthony H. Graat', is written over a horizontal line.

Anthony H. Graat  
President

TAB 5





**Natural Resource Gas Limited**

August 24, 2012

IGPC  
89 Progress Drive  
P.O. Box 205  
Aylmer, ON N5H 2R9

Attention: Mr. Jim Grey  
Chief Executive Officer

Dear Mr. Grey,

Further to our previous correspondence, enclosed find an invoice for time and expenses spent to date on the Potential Expansion of IGPC Facility.

We trust the attached will meet with your approval.

Yours truly,

**NATURAL RESOURCE GAS LIMITED**

Anthony H. Graat  
President

Natural Resource Gas Limited  
 39 Beech St E  
 R.R. #4  
 Aylmer, Ontario N5H 2S1

IGPC Ethanol Inc.  
 89 Progress Drive  
 Aylmer, Ontario  
 N5H 2R9

Inv. #: 10262  
 Inv. Date: 08/24/2012  
 Project Code: PRO NRGL  
 Customer Code: IGPCEth  
 Page: 1

\* \* \* INVOICE \* \* \*

Correspondence	1.50	ITEM @	500.0000	750.00
Discussions with MIG	1.25	@	500.0000	625.00
Internal Discussions with Management	2.50	@	500.0000	1,250.00
Consultants Time	1.00	@	750.0000	750.00
MIG Charge	1.00	@	1,571.3300	1,571.33
Admin Charge (15%)	1.00	@	741.9500	741.95
				-----
Sub-Total...				5,688.28
Harmonized Sales Tax (HST#)				739.47
				-----
Total Invoice...				6,427.75
				=====

Past due and unpaid amounts shall bear compounding interest at a nominal annual interest rate of (21%), calculated and compounded daily

O r i g i n a l

\*\*\* Accounts are due upon receipt \*\*\*



**Natural Resource Gas Limited**

September 27, 2012

IGPC  
89 Progress Drive  
P.O. Box 205  
Aylmer, ON N5H 2R9

Attention: Mr. Jim Grey  
Chief Executive Officer

Dear Mr. Grey,

Enclosed find an invoice for time and expenses spent in August on the Potential Expansion of IGPC Facility.

Invoice 10262, dated August 24, 2012 is overdue. Overdue invoices carry an annual interest rate of 21% compounded daily.

Yours truly,

**NATURAL RESOURCE GAS LIMITED**

Anthony H. Graat  
President

Encl

Natural Resource Gas Limited  
39 Beech St E  
R.R. #4  
Aylmer, Ontario N5H 2S1

IGPC Ethanol Inc.  
89 Progress Drive  
Aylmer, Ontario  
N5H 2R9

Inv. #: 10271  
Inv. Date: 09/27/2012  
Project Code: PRO NRGL  
Customer Code: IGPCetha  
Page: 1

\* \* \* INVOICE \* \* \*

MIG Charge	1.00	@	345.2400	345.24
Admin Charge (15%)	1.00	@	51.7900	51.79
				-----
Sub-Total...				397.03
Harmonized Sales Tax (HST# )				51.61
				-----
Total Invoice...				448.64
				=====

Past due and unpaid amounts shall bear compounding interest at a nominal  
Annual interest rate of (21%), calculated and compounded daily

O r i g i n a l

\*\*\* Accounts are due upon receipt \*\*\*



**Natural Resource Gas Limited**

July 24, 2012

IGPC  
89 Progress Drive  
P.O. Box 205  
Aylmer, ON N5H 2R9

Attention: Mr. Jim Grey  
Chief Executive Officer

Dear Mr. Grey,

Re: IGPC Possible Expansion

I have not received any further correspondence or a call to discuss the above matter in greater detail. I assume that IGPC has chosen not to pursue further expansion at this time.

Yours truly,

**NATURAL RESOURCE GAS LIMITED**

Anthony H. Graat,  
President



July 25, 2012

Natural Resource Gas Limited  
c/o Ayerswood Development  
Anthony H. Graat, President  
1299 Oxford Street East  
London, ON  
N5Y 4W5

Dear Mr. Graat,

**RE: IGPC Possible Expansion**

In response to your letter of July 24, 2012, IGPC is currently in preliminary engineering stages of an expansion to its facilities.

Yours truly,

Jim Grey, CEO  
IGPC Ethanol Inc.

TAB 6

This **PIPELINE COST RECOVERY AGREEMENT** ("Agreement"), made as of the 31st day of January, 2007.

**BETWEEN:**

**NATURAL RESOURCE GAS LIMITED,**  
a corporation formed under the laws of Ontario.

(the "Utility")

- and -

**INTEGRATED GRAIN PROCESSORS CO-OPERATIVE INC.,**  
a co-operative corporation formed under the laws of Ontario.

(the "Customer")

(collectively the "Parties")

**RECITALS:**

**WHEREAS** the Customer is developing an ethanol facility (the "Customer Facility") in the Town of Aylmer, Ontario;

**AND WHEREAS** the Utility must expand its current natural gas distribution infrastructure to deliver natural gas to the Customer Facility to meet the volume, pressure and delivery requirements of the Customer;

**AND WHEREAS** the Utility has a franchise agreement to distribute natural gas in the Town of Aylmer;

**AND WHEREAS** the Utility has entered or will enter into an agreement with Union Gas Limited to install new facilities or modify existing facilities to supply the Utility with natural gas, such that Union Gas Limited will be capable of meeting the total supply requirements of the Utility, including the supply needs of the Customer;

**AND WHEREAS** the Utility and Union Gas Limited have reached an understanding regarding the Utility Connection Facilities crossing the Union Gas Limited franchise area;

**AND WHEREAS** the Customer has paid to the Utility a deposit of \$130,000.00 against any Aid-to-Construct that may be owed to the Utility;

**AND WHEREAS** the Utility and the Customer have entered into an agreement dated January 31, 2007, as the same may be amended, modified, supplemented or restated (the "Gas Delivery Contract") providing for the Utility to deliver natural gas to the Customer Facility, among other things;

**AND WHEREAS** the Customer, or its representative, will be purchasing the Customer's gas directly and arranging for transportation, and the Utility and the Customer will enter into a Bundled T-Service Receipt Contract;



**AND WHEREAS** the Utility has determined that approximately 28.53km of NPS 6 steel pipeline and related facilities are required to be installed to deliver natural gas to the Customer Facility;

**AND WHEREAS** the Customer has requested and the Utility has agreed to construct approximately 28.53km of NPS 6 steel pipeline and related facilities (the "Utility Connection Facilities") and to arrange with Union Gas Limited for the construction by Union for facilities required to complete the connection between the Utility Connection Facilities and the Union Gas Limited system (the "Union Gas Connection Facilities"), to deliver natural gas from the Union Gas Limited system to the Customer Facility, on the terms and conditions set forth in this Agreement; and

**IN CONSIDERATION** of the mutual covenants contained herein, the receipt and sufficiency of which is hereby acknowledged and accepted, the Parties to this Agreement agree as follows:

#### **ARTICLE I – ATTACHMENTS AND INTERPRETATION**

1.1 The following are hereby incorporated into and form part of this Agreement:

- (a) Schedule A - Pipeline Work
- (b) Schedule B - Project Map

1.2 For the purpose of this Agreement:

- (a) "Actual Aid-To-Construct" means the Aid-To-Construct calculated by the Utility using the Actual Capital Cost, as provided for in Article III;
- (b) "Actual Capital Cost" means the reasonable actual Capital Cost, as provided for in Article III;
- (c) "Aecon" means Aecon Utilities - A Division of Aecon Construction Inc., or any successor thereto;
- (d) "Aid-to-Construct" means the amount by which the Capital Cost exceeds the revenue recovered by the Utility through rates, as calculated in accordance with EBO 188;
- (e) "Applicable Law" means all federal, provincial, county, municipal or local laws, by-laws, statutes, rules, regulations ordinances, directives, or any decisions of a Governmental Authority.
- (f) "Business Day" means a day, other than a Saturday or Sunday or statutory holiday in the Province of Ontario or any other day on which banking institutions in Ontario are not open for the transaction of business;

- (g) "Capital Cost" means the total capital cost of the Utility Connection Facilities and the Union Gas Aid-to-Construct;
- (h) "Construction" means construction and installation of the Utility Connection Facilities;
- (i) "Construction Agreement" means the agreement between the Utility and a contractor for the completion of the Construction;
- (j) "Cubic metres" or "m<sup>3</sup>" means the volume of gas which at a temperature of 15 degrees Celsius and at an absolute pressure of 101.325 kilopascals ("kPa") occupies one cubic metre;
- (k) "Customer Facility" means the ethanol facility proposed to be built and operated by the Customer in the Town of Aylmer with an output capacity of approximately 150 million litres of ethanol annually;
- (l) "Customer Meter Facility" means the Utility's equipment to measure the gas consumed by the Customer, located at the Customer Facility, and includes but is not limited to all meters, pressure regulators, valves, fittings and communications equipment, and forms part of the Utility Connection Facilities;
- (m) "EBO 188" means the Final Report of the Board, dated January 30, 1998 regarding the economic evaluation of the expansion of natural gas systems;
- (n) "Event of Default" means either a Customer Event of Default or a Utility Event of Default;
- (o) "Governmental Authority" means any federal, provincial, municipal or local government, parliament or legislature, or any regulatory authority, agency or tribunal, commission, board or department of any such government, parliament or legislature or any court or other law, regulation or rule-making entity having jurisdiction in the relevant circumstances;
- (p) "GST" means the goods and service tax exigible pursuant to the *Excise Tax Act* (Canada) as amended from time to time;
- (q) "Initial Estimated Aid-To-Construct" means the Aid-To-Construct calculated in accordance with EBO 188 using the Initial Estimated Capital Cost;
- (r) "Initial Estimated Capital Cost" means the estimated Capital Cost provided by Aecon, including the Union Gas Aid-to-Construct;
- (s) "In-Service Date" means the later of November 1, 2007 and the date on which the pipeline is able to deliver the full amount of the gas contemplated by the Gas Delivery Contract;
- (t) "Insolvency Legislation" means the *Bankruptcy and Insolvency Act* (Canada), the *Winding Up and Restructuring Act* (Canada) and the *Companies' Creditors*

*Arrangement Act* (Canada) and the bankruptcy, insolvency, creditor protection or similar laws of any other jurisdiction (regardless of the jurisdiction of such application or competence of such law), as they may be amended from time to time.

- (u) "Leave-to-Construct" means the application, decision, order or approval as the context requires pursuant to section 90 of the *Ontario Energy Act, 1998* as amended;
- (v) "MMBTU" means one million British Thermal Units;
- (w) "NPS" means nominal pipe size;
- (x) "OEB" means the Ontario Energy Board or any successor organization;
- (y) "Overhead" shall, to the extent not included in other consulting costs, include the reasonable engineering, supervision, administrative salaries and expenses, construction engineering and supervision, legal expenses, taxes and other similar items allocated to the Utility Connection Facilities;
- (z) "Pipeline Work" means the work required to plan, design, construct, install, test and commission the Utility Connection Facilities and the Union Gas Connection Facilities;
- (aa) "Prime Rate" means the prime rate of interest of the Bank of Nova Scotia;
- (bb) "Revised Estimated Aid-To-Construct" means the estimated Aid-To-Construct calculated in accordance with EBO 188 using the Revised Estimated Capital Cost;
- (cc) "Revised Estimated Capital Cost" means the estimated Capital Cost, using the most current information available, in accordance with Article III;
- (dd) "Utility Connection Facilities" means the pipeline and ancillary facilities to be completed by the Utility to serve the Customer;
- (ee) "Union Gas Aid-To-Construct" means the Aid-To-Construct payable to Union Gas Ltd. by the Utility in respect of the Union Gas Connection Facilities, calculated in accordance with EBO 188;
- (ff) "Union Gas Connection Facilities" means the pipeline and ancillary facilities to be completed by Union Gas Limited upstream of the Utility Connection Facilities, that are necessary to serve the Customer.

## **ARTICLE II – REPRESENTATIONS AND WARRANTIES**

2.1 The Customer represents and warrants to the Utility that:

- (a) it is duly incorporated, formed or registered (as applicable) under the laws of its jurisdiction of incorporation, formation or registration (as applicable);

- (b) it has all the necessary corporate power, authority and capacity to enter into this Agreement and to perform its obligations under it;
- (c) the execution, delivery and performance of the Agreement by it has been duly authorized by all necessary corporate action and does not result in a violation, a breach or a default under: (i) its charter or by-laws; (ii) any contracts or instruments to which it is bound; or (iii) any Applicable Law;
- (d) any individual executing this Agreement, and any document in connection herewith, on its behalf has been duly authorized by it to execute this Agreement and has the full power and authority to bind it;
- (e) this Agreement constitutes a legal and binding obligation on it, enforceable against it in accordance with its terms; and,
- (f) no proceedings have been instituted by or against it with respect to bankruptcy, insolvency, liquidation or dissolution.

2.2 The Utility represents and warrants to the Customer that:

- (a) it is duly incorporated, formed or registered (as applicable) under the laws of its jurisdiction of incorporation, formation or registration (as applicable);
- (b) it has all the necessary corporate power, authority and capacity to enter into this Agreement and to perform its obligations under it;
- (c) the execution, delivery and performance of this Agreement by it has been duly authorized by all necessary corporate action and does not result in a violation, a breach or a default under: (i) its charter or by-laws; (ii) any contracts or instruments to which it is bound; or (iii) any Applicable Law;
- (d) any individual executing this Agreement, and any document in connection herewith, on its behalf has been duly authorized by it to execute this Agreement and has the full power and authority to bind it;
- (e) this Agreement constitutes a legal and binding obligation on it, enforceable against it in accordance with its terms;
- (f) no proceedings have been instituted by or against it with respect to bankruptcy, insolvency, liquidation or dissolution; and,
- (g) the calculation of the Initial Estimated Aid-To-Construct has been completed in accordance with EBO 188.

**ARTICLE III – CAPITAL COST AND AID-TO-CONSTRUCT**

- 3.1 The Initial Estimated Capital Cost is estimated at \$9,100,000.00, comprised of approximately \$8,920,000.00 for the Utility Connection Facilities and \$180,000.00 for the Union Gas Aid-To-Construct. The Initial Estimated Capital Cost is included in the Leave-to-Construct application filed by the Utility with the OEB.
- 3.2 Based upon the Initial Estimated Capital Cost and applying the Utility's current OEB-approved Rate 3 to a minimum annual volume of 33,416,618 m<sup>3</sup> and a firm contract demand of 108,188 m<sup>3</sup>/day over a seven year period, the Initial Estimated Aid-to-Construct is \$3,790,000.00, to be paid by the Customer.
- 3.3 The Customer shall make payments toward the Initial Estimated Aid-to-Construct, as follows:
- (a) \$130,000.00 on or before October 16, 2006, payment of which has been received and acknowledged;
  - (b) Prior to the award of the Construction Agreement, the amount of the monthly invoices provided by the Utility for reasonable internal, consulting and third party expenses incurred in the prior calendar month within fifteen (15) Business Days of receiving such invoice; and
  - (c) Payment, in advance as required by the Utility, of an amount equal to any required payment to be made by Utility for procuring the station material and pipe;
- the total of which payments shall not exceed the Initial Estimated Aid-to-Construct.
- 3.4 Prior to the execution of the Construction Agreement, the Utility shall provide the Customer with a Revised Estimated Capital Cost and a Revised Estimated Aid-to-Construct, based on the most current information available at the time, including the successful bid for the Construction Agreement, calculated in accordance with EBO 188, and:
- (a) The Customer shall pay the Utility an amount equal to the amount, if any, by which the Revised Aid-To-Construct exceeds the total of all payments made by the Customer to the Utility under Section 3.3. In the event that the amount paid by the Customer pursuant to Section 3.3 exceeds the Revised Estimated Aid-To-Construct then the Utility shall forthwith pay to Customer an amount equal to the payments made less the Revised Estimated Aid-To-Construct; and
  - (b) The Utility shall provide the Customer with a detailed written breakdown of the Revised Estimated Capital Cost including, but not limited to Overhead, engineering, surveying, consultant, legal, major materials (pipe, meters, major equipment, heating equipment costs), easement, internal and external construction and commissioning costs when it is available to the Utility and a copy of the cost

breakdown for the Union Gas Connection Facilities as provided to the Utility by Union Gas Limited.

- 3.5 In the event that the Commencement Date under the Gas Delivery Contract is later than the In-Service Date, the Utility shall invoice and the Customer shall pay an amount equal to the Utility's reasonable debt financing costs incurred in each month between the In-Service Date and the Commencement Date under the Gas Delivery Contract.
- 3.6 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.
- 3.7 The Utility, in its sole discretion, may elect not to proceed any further with any of its obligations under this Agreement if the Customer fails to make any payment or provide any letter of credit required under this agreement until such payment or letter of credit is delivered by the Customer to the Utility and the Utility shall not be liable for any liabilities, damages, losses, payments, costs, or expense that may be incurred by the Customer as a result.
- 3.8 From the date required for any payment required by this Agreement, all unpaid amounts will bear interest at the rate of the Prime Rate plus 1.00% per annum payable quarterly on the last day of each calendar quarter.
- 3.9 The Utility shall use best efforts to minimize the actual Capital Cost, and shall advise the Customer of actual costs as incurred, in accordance with Article IV. At a minimum, the Utility shall ensure the award of the Construction Agreement is completed through a competitive tender process unless otherwise agreed to in writing by the Customer. The Utility shall ensure that the procurement of pipe, major equipment and appliances is done using a competitive quotation process wherever possible. The Utility shall inform the Customer where a competitive process is not utilized and provide an explanation as to why a competitive process is not required. Prior to committing to any expenditure in excess of \$100,000.00, the Utility shall obtain the written consent of the Customer, such consent not to be unreasonably withheld.
- 3.10 The Utility shall request Union Gas Limited to provide it with the actual capital cost of the Union Gas Connection Facilities and the actual Union Gas Aid-to-Construct within 30 Business Days or other mutually agreeable timeframe of the pipeline being put into service.
- 3.11 The Customer and the Utility acknowledge that the Initial Estimated Capital Cost and the Revised Estimated Capital Cost may be different from the Actual Capital Cost incurred and the parties agree that the Actual Aid-to-Construct and Delivery Letter of Credit (as defined in Article VII) shall be adjusted based on an economic evaluation carried out in accordance with EBO 188.
- 3.12 The Customer reserves its rights to dispute the reasonableness of costs incurred in completing the Pipeline Work, provided that the Customer does so within 5 Business Days when such costs are provided by the Utility to the Customer.

3.13 Within forty-five (45) Business Days or some other mutually agreeable timeframe of the pipeline being put into service, the Utility shall provide the Customer with the Actual Capital Cost and Actual Aid-To-Construct, along with a summary of the information provided pursuant to Section 4.3 and copies of any invoices and supporting documentation not previously provided to Customer. If the Customer agrees with the Actual Capital Cost and Actual Aid-To-Construct, and

- (a) if the Actual Aid-To-Construct is greater than the Revised Estimated Aid-To-Construct, then the Customer shall pay to the Utility the difference between the Actual Aid-To-Construct and the Revised Aid-To-Construct within five (5) Business Days; and
- (b) if the Revised Estimated Aid-To-Construct exceeds the Actual Aid-To-Construct then the Utility shall pay to the Customer the difference between the Actual Aid-To-Construct and the Revised Aid-To-Construct within five (5) Business Days.

3.14 If the Customer does not agree with the Actual Capital Cost and Actual Aid-To-Construct, the Parties shall negotiate in good faith for a period of 20 Business days to establish an Actual Capital Cost. If the Parties are unable to agree after such negotiations then either party may refer the matter to the OEB for resolution. 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 the Utility to establish gas distribution service for the Customer, 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 agreement required to provide gas distribution service to the Customer;
- (b) Consultant costs will include the reasonable cost of consultants incurred by the Utility to provide gas distribution service to the Customer, including the reasonable cost to complete the economic analysis to determine the Initial Estimated Aid-to-Construct, the Revised Estimated Aid-to-Construct and the Actual Aid-to-Construct; to carry out title searches to identify adjacent landowners and others with interests in adjacent lands that may be impacted by the Utility Connection Facilities; and the estimated cost of a Surveyor in the amount of \$52,400;
- (c) The Capital Cost will include the cost of services provided to the Utility by Aecon and any sub-contractors to Aecon, to complete the design of the Utility Connection Facilities, obtain all permits and approvals, , prepare and complete the request for quotation documents for the Construction Agreement and all other competitive processes for services and materials, and the cost estimated by Aecon to be in the range of \$30,000 to \$50,000 for the third party borehole drilling sub-contractor for the completion of boreholes used in the preparation of the Tender Package;

- (d) Utility costs shall include the reasonable cost of interest during construction calculated in accordance with the OEB approved methodology and Overhead related to the Pipeline Work. Internal utility costs will include reasonable administrative and supervisory costs; and technician and field personnel required for the testing and commissioning of the Utility Connection Facilities.
  - (e) The reasonable costs of non-destructive testing of the welds and third party inspection of the Construction.
  - (f) The reasonable cost of the completion of as-built drawings for the Utility Connection Facilities.
  - (g) All consulting and third party costs include reasonable disbursements made by the third party or consultant unless such disbursements are included in a fixed fee quotation.
- 3.15 The Utility shall calculate and provide a partial refund of the Actual Aid-To-Construct, using the same methodology used to calculate the Actual Aid-To-Construct, if available capacity is assigned to another customer within seven years of the date on which the Utility Connection Facilities come into service, provided that the Utility is permitted by the Board to obtain any financial contribution that might be required from the subsequent customer to cover the amount of the refund. The calculation will be carried out once a year, based on the aggregate customer additions for the year. The calculation for the refund will be based on the same inputs used for the original calculation of the Actual Aid-To-Construct, except for the Capital Cost of the facilities which shall be prorated on the basis of the total capacity of the Utility Connection Facilities minus the capacity assigned to any subsequent customers.

#### ARTICLE IV – CONSTRUCTION

- 4.1 Prior to awarding of the Construction Contract, the Customer shall enter into a seven year gas delivery agreement as mutually agreed to by the Parties with a minimum annual volume of 33,416,618 m<sup>3</sup> and a firm contract demand of 108,188 m<sup>3</sup>/day (Gas Delivery Agreement).
- 4.2 The timely completion of the Utility Connection Facilities is in the interest of the Parties. As part of the Construction Agreement, the Utility shall require the contractor to post a performance bond, including a liquidated damages provision, or other performance assurance measures acceptable to the Customer acting in a reasonable manner.
- 4.3 Prior to the termination of this Agreement, the Utility shall provide the Customer with weekly updates in writing as to costs incurred, costs committed to but not yet incurred and projected costs associated with the Pipeline Work. The Utility shall provide all supporting documentation (quotations, estimates, invoices, bills of lading, receipts, timesheets, etc.) for all costs incurred. As part of the updates, the Utility shall provide the Customer with a description of upcoming work; the anticipated procurement method and



a recommended course of action. The Customer and the Utility shall discuss significant upcoming expenditures prior to committing to such expenditures and shall work cooperatively to meet all timelines and to minimize the costs in the circumstances. The Customer shall consent to such significant expenditures prior to the Utility committing to such expenditures, such consent to be given in a timely manner and not to be unreasonably withheld.

- 4.4 The Parties acknowledge that any change in the scope of the Pipeline Work may result in a change to the Capital Cost, the Aid-to-Construct, the Customer Letter of Credit and the Construction schedule. A change in scope of the Pipeline Work may come about as a result of any of the following:
- (a) a Customer-initiated scope change;
  - (b) a requirement or condition imposed by a Governmental Authority, including without limitation, the OEB;
  - (c) unplanned delays on the part of the Customer or Subcontractor; or
  - (d) an event of Force Majeure (as determined in accordance with Article VI).
- 4.5 In the event of a change in the scope of the Pipeline Work, as contemplated in Section 4.4, in excess of \$25,000, the Utility shall inform the Customer immediately of the nature of the change and the corresponding impact on the cost of the Pipeline Works. In the event such change will cause an increase in the Actual Capital Cost, the Utility shall obtain the Customer's consent to such increase prior to incurring such cost, such consent not to be unreasonably withheld and to be provided within 3 Business Days of receiving the information. In the event the Customer's consent has not been given within 3 Business Days, the Customer shall be deemed to have given consent to complete such work.
- 4.6 The Utility shall use all reasonable efforts to have the Pipeline Work (as described in Schedule A) completed by November 1, 2007 provided that:
- (a) the Customer executes and returns this Agreement to the Utility by no later than February 1, 2007 (the "Execution Date");
  - (b) the Pipeline Work is completed in accordance with Schedule A of this Agreement;
  - (c) the Customer is in compliance with its obligations under this Agreement;
  - (d) there are no delays associated with third parties, including but not limited to Union Gas Limited, the Utility's lender and any companies selected to carry out Construction;
  - (e) the Utility is granted Leave-to-Construct by March 1, 2007; and,

- (f) the Utility does not have to use its employees, agents and contractors performing the Pipeline Work elsewhere on its system due to an emergency, or an event of Force Majeure. For the purposes of this paragraph, an emergency means a line-break, leak, fire or similar event requiring an immediate response from the Utility.
- 4.7 As soon as the Utility becomes aware of any delay that may prevent the Utility from achieving the November 1, 2007 deadline, the Utility shall provide the Customer with notice in writing of such potential delay, the length of the anticipated delay and the reasons for such potential delay.

#### **ARTICLE V – DEFAULT AND REMEDIES**

- 5.1 Each of the following will constitute an Event of Default by the Customer (“Customer Event of Default”):
- (a) The Customer fails to make any payment when due, if such failure is not remedied within ten (10) Business Days after written notice of such failure from the Utility.
  - (b) The Customer fails to deliver or maintain the Customer Letter of Credit or the Delivery Letter of Credit when due.
  - (c) The Customer fails to perform any material covenant or obligation set forth in this Agreement if such failure is not remedied within fifteen (15) Business Days after written notice of such failure from the Utility.
  - (d) Any representation made by the Customer in this Agreement is not true or correct in any material respect when made and is not made true or correct in all material respects within thirty (30) Business Days after receipt by the Customer of written notice of such fact from the Utility.
  - (e) An effective resolution is passed or documents are filed in an office of public record in respect of, or a judgment or order is issued by a court of competent jurisdiction ordering, the dissolution, termination of existence, liquidation or winding up of the Customer, unless such filed documents are immediately revoked or otherwise rendered inapplicable, or unless there has been a permitted and valid assignment of this Agreement by the Customer under this Agreement to a person which is not dissolving, terminating its existence, liquidating or winding up and such person has assumed all of the Customer’s obligations under this Agreement.
  - (f) The Customer makes an assignment for the benefit of its creditors generally under any Insolvency Legislation, or consents to the appointment of a receiver, manager, receiver-manager, monitor, trustee in bankruptcy, or liquidator for all or part of its property or files a petition or proposal to declare bankruptcy or to reorganize pursuant to the provision of any Insolvency Legislation, or otherwise seeks the protection of Insolvency Legislation regardless of whether a proposal or plan is proposed.

- (g) A receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy of the Customer or of any of the Customer's property is appointed by a Governmental Authority or pursuant to the terms of a debenture or a similar instrument, and such receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy is not discharged or such appointment is not revoked or withdrawn within thirty (30) days of the appointment.
- (h) By decree, judgment or order of a Governmental Authority, the Customer is adjudicated bankrupt or insolvent or any substantial part of the Customer's property is sequestered, and such decree continues undischarged and unstayed for a period of thirty (30) days after the entry thereof.
- (i) A petition, proceeding or filing is made against the Customer seeking to have the Customer declared bankrupt or insolvent, or seeking adjustment or composition of any of their respective debts pursuant to the provisions of any Insolvency Legislation, and such petition, proceeding or filing is not dismissed or withdrawn within thirty (30) days.

5.2 Each of the following will constitute an Event of Default by the Utility ("Utility Event of Default"):

- (a) The Utility fails to perform any material covenant or obligation set forth in this Agreement if such failure is not remedied within fifteen (15) Business Days after written notice of such failure from the Customer.
- (b) Any representation made by the Utility in this Agreement is not true or correct in any material respect when made and is not made true or correct in all material respects within thirty (30) Business Days after receipt by the Utility of written notice of such fact from the Customer.
- (c) An effective resolution is passed or documents are filed in an office of public record in respect of, or a judgment or order is issued by a court of competent jurisdiction ordering, the dissolution, termination of existence, liquidation or winding up of the Utility, unless such filed documents are immediately revoked or otherwise rendered inapplicable, or unless there has been a permitted and valid assignment of this Agreement by the Utility under this Agreement to a person which is not dissolving, terminating its existence, liquidating or winding up and such person has assumed all of the Utility's obligations under this Agreement.
- (d) The Utility makes an assignment for the benefit of its creditors generally under any Insolvency Legislation, or consents to the appointment of a receiver, manager, receiver-manager, monitor, trustee in bankruptcy, or liquidator for all or part of its property or files a petition or proposal to declare bankruptcy or to reorganize pursuant to the provision of any Insolvency Legislation, or otherwise seeks the protection of Insolvency Legislation regardless of whether a proposal or plan is proposed.

- (e) A receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy of the Utility or of any of the Utility's property is appointed by a Governmental Authority or pursuant to the terms of a debenture or a similar instrument, and such receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy is not discharged or such appointment is not revoked or withdrawn within thirty (30) days of the appointment.
- (f) By decree, judgment or order of a Governmental Authority, the Utility is adjudicated bankrupt or insolvent or any substantial part of the Utility's property is sequestered, and such decree continues undischarged and unstayed for a period of thirty (30) days after the entry thereof.
- (g) A petition, proceeding or filing is made against the Utility seeking to have the Utility declared bankrupt or insolvent, or seeking adjustment or composition of any of their respective debts pursuant to the provisions of any Insolvency Legislation, or such petition, proceeding or filing is not dismissed or withdrawn within thirty (30) days.
- (h) A failure to maintain in good standing any franchise agreement or any other approval, permit or license from any Governmental Authority required for the construction and operation of the Pipeline Works and the supply of natural gas to the Customer Facility.

#### ARTICLE VI – FORCE MAJEURE

- 6.1 In the event that either the Customer or the Utility is rendered unable, in whole or in part, by Force Majeure, to perform or comply with any obligation or condition of this Agreement, then the obligations (other than the obligations to make payment of money then due and to provide or maintain any letter of credit) of both parties so far as they are directly related to and affected by such Force Majeure, shall be suspended during the continuance of the Force Majeure.
- 6.2 The party claiming Force Majeure shall give notice in writing, with full particulars, to the other party as soon as possible after the occurrence of Force Majeure.
- 6.3 The party claiming Force Majeure shall also give notice to the other party as soon as possible after the Force Majeure is remedied in whole or part.
- 6.4 Force Majeure means:
  - (a) Acts of God, landslides, lightning, earthquakes, fires, storms, floods, washouts, explosions, breakage or accident to its machinery or equipment or lines of pipe;
  - (b) freezing or failure of wells or lines of pipe; curtailment of firm transportation or firm storage by other natural gas service providers;
  - (c) strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections, civil disturbance, acts of terrorism, wars, arrests or restraint of governments and people;

- (d) any laws, orders, rules, regulations, acts of any government body or authority, civil or military;
- (e) any act or omission by parties not controlled by the party claiming Force Majeure; and
- (f) any other similar causes not within the control of the party claiming Force Majeure

which by the exercise of due diligence such party is unable to prevent or overcome. The party claiming Force Majeure shall make reasonable efforts to avoid, or correct the Force Majeure and to remedy the Force Majeure once it has occurred in order to resume performance.

6.5 Neither party shall be entitled to claim Force Majeure if any of the following circumstances prevail:

- (a) the failure resulting in Force Majeure was caused by the negligence of the party claiming suspension;
- (b) the failure was caused by the party claiming suspension where such party failed to remedy the condition by making all reasonable efforts (short of litigation, if such remedy would require litigation);
- (c) the party claiming suspension failed to resume the performance of such conditions or obligations with reasonable dispatch;
- (d) the failure was caused by lack of funds; and
- (e) the party claiming suspension did not give to the other party the required notice as soon as possible after determining or within a period within which it should have determined, acting reasonably, that the occurrence was in the nature of Force Majeure and would affect its ability to observe or perform any of its conditions or obligations under the Agreement.

**ARTICLE VII – SECURITY AND PERFORMANCE ASSURANCE**

- 7.1 Prior to the Utility ordering the pipe and the stations, the Customer shall provide to the Utility an irrevocable letter or letters of credit (“Customer Letter of Credit”) in an amount equal to the quoted cost of the pipe and the stations minus any payments made by the Customer to the Utility in respect of the pipe and the stations. The Customer shall be entitled to reduce the Customer Letter of Credit by the amount of any subsequent payments by the Customer to the Utility in respect of the pipe and the stations, upon making such payments. The Utility shall be entitled to draw upon the Customer Letter of Credit in the following circumstances:
- (a) Subject to (b), if the Customer fails to make a payment of the Aid-to-Construct in accordance with Article III, such draw not to exceed the amount owed by the Customer to the Utility.
  - (b) Notwithstanding (a) the Utility shall not be entitled to draw upon the Customer Letter of Credit within any cure periods established in Article V, in which the Customer may make payment to the Utility.
- 7.2 The Utility shall return the Customer Letter of Credit upon receipt of any payment required from the Customer in accordance with section 3.4 and delivery of the Delivery Letter of Credit required under section 7.3.
- 7.3 Prior to the award of the Construction Agreement by the Utility, the Customer shall provide to the Utility an irrevocable letter of credit (“Delivery Letter of Credit”) in an amount equal to the difference between the Revised Estimated Capital Cost and the Revised Estimated Aid-to-Construct.
- 7.4 The Utility shall be entitled to draw upon the Delivery Letter of Credit if:
- (a) The Customer terminates this Agreement prior to the In-Service Date and fails to pay any amount owing to the Utility within 30 Business Days of receiving the invoice for monies owed for actual reasonable costs incurred prior to Termination; or
  - (b) The Customer terminates this Agreement and the Gas Delivery Contract after the In-Service Date but prior to the seventh anniversary of the Commencement Date under the Gas Delivery Contract;
  - (c) For any year, the Customer fails to take receipt of the Minimum Annual Volume under the Gas Delivery Contract and the Customer fails to pay the invoice for such failure to take the Minimum Annual Volume within 15 days of receiving such invoice;
  - (d) For reasons other than Force Majeure, the Customer ceases taking service for a period of 30 days during the term of the Gas Delivery Contract or at any time after that where service has continued past the end of the term of the Gas Delivery Contract;

- (e) the Delivery Letter of Credit will not be maintained and the Customer fails to provide a substitute acceptable to the Utility and its lender; or
  - (f) The Customer commits a Customer Event of Default listed in 5.1 (e), (f), (g), (h) and (i).
  - (g) The Customer fails to restore the balance of the Delivery Letter of Credit as required by 7.5.
- 7.5 The Customer shall maintain the Delivery Letter of Credit for as long as the Customer continues to receive service from the Utility. In the event that the Utility draws on the Delivery Letter of Credit pursuant to 7.4(c), the Customer shall restore the Delivery Letter of Credit to the balance that existed immediately prior to the draw, within 10 Business Days from the date of the draw.
- 7.6 Subject to section 7.7, the Customer shall be entitled to reduce the amount of the Delivery Letter of Credit on each anniversary of the commencement of deliveries under the Gas Delivery Agreement to an amount equal to the net book value of the Utility Connection Facilities allocated to the Customer at the time, as determined by the Utility in accordance with OEB-approved methodology.
- 7.7 Any letter of credit shall be in a form acceptable to the Utility and its lender. The Utility shall have its lender provide a draft form of letter of credit for review and comment by the Customer's lender.
- 7.8 The costs and expenses of establishing, renewing, substituting, cancelling, increasing and reducing the amount of (as the case may be) any letter of credit required under this Agreement shall be borne by the Customer.
- 7.9 The Utility shall return any letter of credit held by the Utility to the Customer, if the Customer is substituting a letter of credit with another letter of credit or such other financial assurance, where that substitute is acceptable to the Utility and its lender.

#### **ARTICLE VIII – TERMINATION**

- 8.1 This Agreement terminates upon the placing into service of the Utility Connection Facilities and the Union Gas Connection Facilities and the commencement of the delivery of natural gas to the Customer Facility. All payment obligations and all obligations in relation to the Customer Letter of Credit and Delivery Letter of Credit shall survive termination of this Agreement until they are fulfilled.

- 8.2 In the event that the Utility is unable to secure all necessary permits, approvals, licenses certificates necessary to complete the Pipeline Work and supply natural gas to the Customer Facility, or obtains such permits, approvals, licenses or certificates on terms and conditions that are unacceptable to the Customer, acting in a commercially reasonable manner, then the Customer has the option to terminate this Agreement. The Customer shall, however, be responsible for all actual or committed to costs incurred by the Utility and Union Gas Limited up to and including the date of termination.
- 8.3 The Utility may terminate this Agreement if a Customer Event of Default has occurred and the Utility has given notice to the Customer of such Customer Event of Default and such default is not remedied within the applicable cure period upon receiving such notice of default. Termination pursuant to this section shall not be permitted where such default has been submitted to a dispute resolution process under Article IX.
- 8.4 Subject to Section 8.5, in the event the Revised Estimated Aid-To-Construct has been paid, in full or in part, by the Customer to the Utility and the Agreement is terminated prior to completion of the Pipeline Work, then the Utility shall return to the Customer any amount of the Revised Estimated Aid-To-Construct paid by the Customer that is in excess of the actual reasonable cost incurred by the Utility up to and including the date of termination. In the event the actual reasonable cost incurred by the Utility exceed the amount of the Revised Estimated Aid-To-Construct, the Customer shall pay that amount, upon receipt of which the Utility shall forthwith return the Delivery Letter of Credit.
- 8.5 In the event Utility invokes Force Majeure and the event of Force Majeure or the aggregate duration of all such Utility events of Force Majeure exceeds 60 days in any 12 consecutive month period, then the Customer shall have the right to terminate this Agreement upon fifteen (15) Business Days written notice. Upon termination of this Agreement pursuant to this section, the Utility shall return all security and financial assurance provided by Customer, and an amount, if any, equal to any Aid-To-Construct paid by the Customer to the Utility less the Utility's reasonable costs incurred prior to the event of Force Majeure.

#### **ARTICLE IX – DISPUTE RESOLUTION**

- 9.1 In the event of any dispute arising between the Parties regarding the subject matter of this Agreement, then the Parties shall negotiate in good faith to resolve such matters.
- 9.2 In the event the Parties are unable to resolve a dispute, then either Party may refer the matter to the OEB for resolution.

#### **ARTICLE X – INDEMNIFICATION**

- 10.1 The Utility agrees to indemnify, defend, and hold harmless the Customer in respect of all actions, causes of action, suits, proceedings, claims, demands, losses, damages, penalties,



finances, costs, obligations and liabilities ("Damages") arising out of the construction, installation, testing, commissioning and operation of the Utility Connection Facilities, other than any Damages caused by the negligence or wilful misconduct of the Customer.

- 10.2 The Customer agrees to indemnify, defend and hold harmless the Utility in respect of all Damages arising out of the construction, installation, testing, commissioning and operation of the Utility Connection Facilities caused by the negligence or wilful misconduct of the Customer.

#### ARTICLE XI – GENERAL

- 11.1 Any written notice required by this Agreement shall be deemed properly given only if either mailed or delivered to:

- (a) To the Utility:

Natural Resource Gas Limited  
P.O. Box 307  
39 Beech Street East  
Aylmer, Ontario N5H 2S1

Tel: (519) 773-5321  
Fax: (519) 773-5335

Attention: Steve Millar, General Manager  
c.c. Mark Bristoll, President

- (b) To the Customer:

Integrated Grain Processors Co-operative Inc.  
701 Powerline Road  
Brantford, Ontario N3T 5L8

Tel: (519) 752-0447  
Fax: (519) 752-1887

Attention: Chair

A faxed notice will be deemed to be received on the date of the fax if received before 4 p.m. or on the next Business Day if received after 4 p.m. Notices sent by courier or

registered mail shall be deemed to have been received on the date indicated on the delivery receipt. The designation of the person to be so notified or the address of such person may be changed at any time by either party by written notice.

11.2 This Agreement:

- (a) constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior oral or written representations and agreements concerning the subject matter of this Agreement;
- (b) shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the Province of Ontario and the laws of Canada applicable therein, and the courts of Ontario shall have exclusive jurisdiction to determine all disputes arising out of this Agreement;
- (c) may be executed in counterparts, including facsimile counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same agreement; and
- (d) shall not be assigned without the prior written consent of the other party, such consent not to be unreasonably withheld. For greater certainty an assignment by way of security to the Customer's lenders shall be considered reasonable.

11.3 No modification of or amendment to this Agreement will be valid or binding unless set forth in writing and duly executed by both of the parties hereto and no waiver of any breach of any term or provision of this Agreement will be effective or binding unless made in writing and signed by the party purporting to give the same and, unless otherwise provided, will be limited to the specific breach waived.

11.4 If any provision of this Agreement is determined to be invalid or unenforceable or in breach of any Applicable Law in whole or in part, such invalidity or unenforceability will attach only to such provision or part thereof which provision or part shall be severed from the Agreement and the remaining part of such provision and all other provisions hereof will continue in full force and effect.

- 11.5 Notwithstanding the termination or expiration of this Agreement:
- (a) Section 3.15 shall survive for the period of time provided in which a refund is to be calculated.
  - (b) The obligation to make any payment shall survive until all such payments are determined and paid.
  - (c) Article 7 shall survive until the Utility no longer requires financial assurance from the Customer.
  - (d) Article IX shall survive until the final resolution, including all appeals, of any dispute arising out of this Agreement.
- 11.6 Each Party shall from time to time execute and deliver all such further documents and instruments and do all acts and things as the other party may reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.
- 11.7 This Agreement will enure to the benefit of and be binding upon the respective successors and permitted assigns of the Parties hereto.
- 11.8 Time is of the essence in the performance of the Parties' respective obligations under this Agreement.
- 11.9 Any reference to funds is a reference to Canadian currency.
- 11.10 This Agreement is subject to the consent of the Customer's Lenders. The Customer agrees to use reasonable efforts to secure such consent in a timely manner. This paragraph is entirely for the benefit of the Customer. The Customer shall waive this condition in writing.
- 11.11 This Agreement is subject to the consent of the Utility's Lenders. The Utility agrees to use reasonable efforts to secure such consent in a timely manner. This paragraph is entirely for the benefit of the Utility. The Utility shall waive this condition in writing.
- 11.12 In the event of a change of law affecting any of the rights or obligations of one Party to the other Party, the Utility shall continue to deliver gas and the Customer shall continue to pay for the delivery of gas as if the change had not occurred unless prohibited by law. In such event the Parties shall negotiate in good faith to preserve the original intent of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by the signatures of their proper officers, as of the day and year first written above.

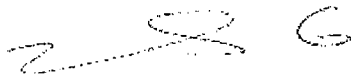
**NATURAL RESOURCE GAS LIMITED**

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Per: Mark Bristoll  
Title: President

I have authority to bind the corporation.

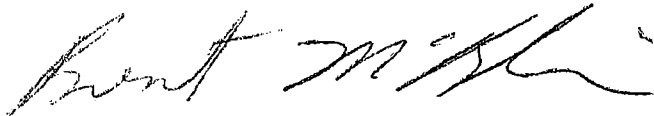
**INTEGRATED GRAIN PROCESSORS CO-OPERATIVE INC.**



---

Per: Tom Cox  
Title:

I have authority to bind the corporation.



---

Per: Brent McBlain  
Title:

I have authority to bind the corporation.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by the signatures of their proper officers, as of the day and year first written above.

**NATURAL RESOURCE GAS LIMITED**

Mark Bristoll

Per: Mark Bristoll  
Title: President

I have authority to bind the corporation.

**INTEGRATED GRAIN PROCESSORS CO-OPERATIVE INC.**

\_\_\_\_\_  
Per: Tom Cox  
Title:

I have authority to bind the corporation.

\_\_\_\_\_  
Per: Brent McBlain  
Title:

I have authority to bind the corporation.

## **Schedule A - Pipeline Work**

In carrying out the Pipeline Work (as depicted in the figure attached as Schedule B to this Agreement), the Utility or a subcontractor to the Utility will need to complete the following:

### **Pipeline Work Planning**

#### **Utility Connection Facilities**

1. The Utility shall design, construct, install, commission and operate the Utility Connection Facilities in accordance with all Applicable Laws and good utility practice.
2. The Utility shall be responsible for making applications to all Governmental Authorities for all permits, approvals, licenses and certificates necessary to undertake and complete the Utility Connection Facilities, including without limiting the foregoing, the Leave-to-Construct from the OEB. The Utility shall be responsible for maintaining all such permits, approvals, licenses in good standing.
3. The Utility shall only contract with suppliers and contractors competent to perform their tasks and shall undertake to secure competitive bids from competent suppliers and contractors for the Utility Connection Facilities.
4. The Utility and the Customer shall agree to a suitable location at the Customer Facility for the Customer Meter Facility.
5. The Utility shall coordinate the design, construction, testing and operation of the Utility Connection Facilities with Union Gas Limited such that Union Gas Limited will be able to supply the Utility with sufficient quantities of natural gas to meet the Customer's requirements by the In-Service Date.
6. The Utility shall furnish the Customer with a complete set of engineered stamped drawings of the Utility Connection Facilities before tendering for the Construction Agreement. The engineer shall be qualified to practice engineering in Ontario.
7. The Utility shall provide a flanged connection at the outlet of the Customer Meter Facility to which the Customer may connect the house-piping for the Customer Facility. In the event the Customer installs the house-piping with flanged connection prior to the Utility, the Utility shall be responsible for completing the connections. The flanged connection shall be adequately protected to prevent the entry of dirt, water or other extraneous materials from entering the Customer Meter Facility or the house-piping.
8. The Utility shall ensure the Customer Meter Facility is properly insulated from the Customer Facility.
9. The Utility shall furnish the Customer the required communications specifications for the Customer Meter Facility with the stamped drawings.

**Access To Customer Facility**

10. The Customer shall provide the Utility and its contractor with reasonable access to the Customer Facility to construct, install, test, commission and operate the Customer Meter Facility.
11. The Utility shall ensure that all employees of the Utility or its contractor obey all safety requirements of the Customer while on the Customer Facility.

**Pipeline Work Testing and Commissioning**

12. The Utility shall coordinate hydrotesting or any other testing, including non-destructive testing of welds, of the Utility Connection Facilities with the Customer and the Utility shall not interfere with the construction, installation, testing or commissioning of the Customer Facility.
13. The Utility shall ensure that the Utility Connection Facility is completely dewatered. Dewatering shall not occur on the Customer Facility.

**Union Gas Connection Facilities**

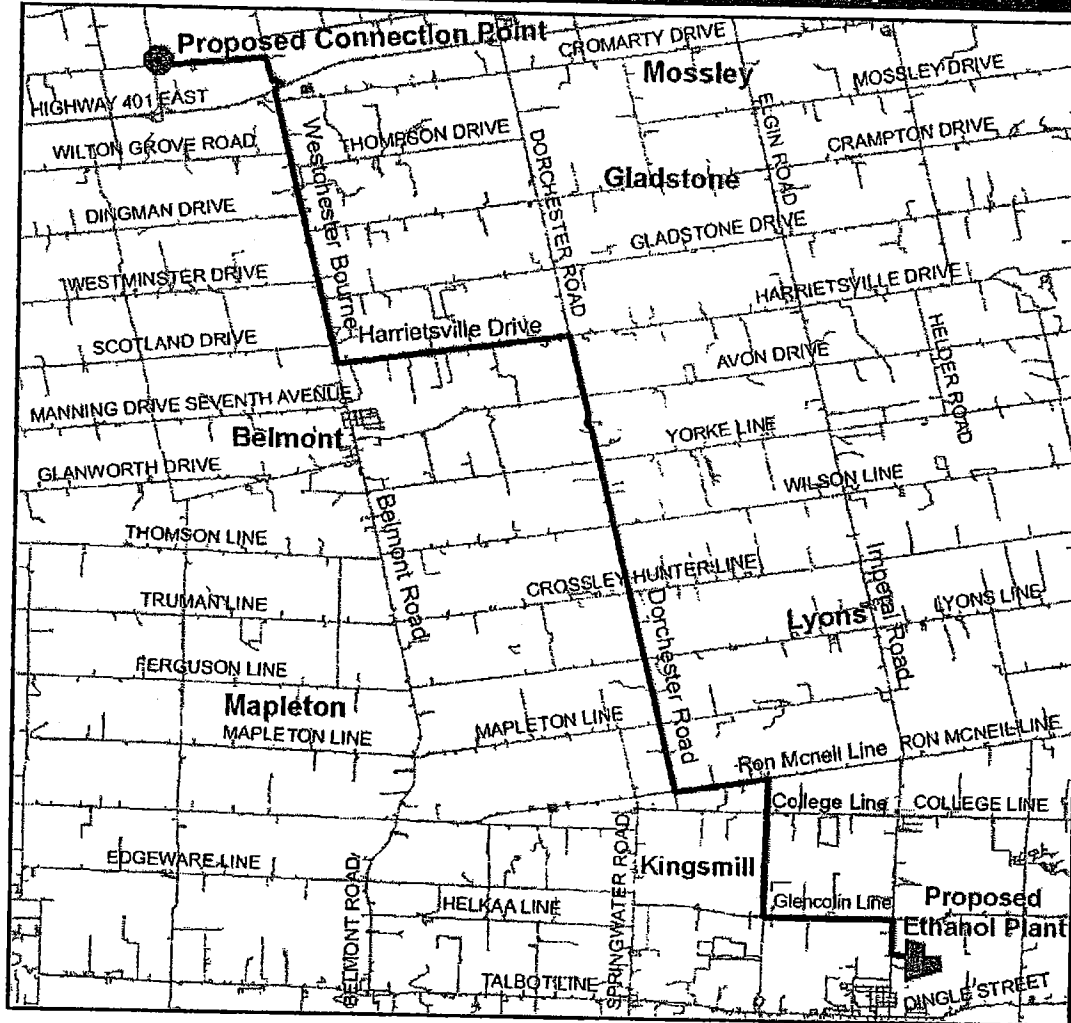
14. The Utility shall coordinate the construction of the Utility Connection Facilities with Union Gas Ltd. to facilitate the completion of the Union Gas Connection Facilities by or before November 1, 2007.

**SCHEDULE B - PROJECT MAP**

[To be inserted]



# Proposed NRG Ltd. Gas Pipeline Route



**Legend**

— Proposed Gas Pipeline Route

0 3,000 6,000 Meters

SENEC Consultants Project Number 84366

TAB 7



March 14, 2012

To: Mr. Jack Howley

Re: Amendment No. 1  
L/C Reference: CT08SOL0043-B

Further to our telephone conversation earlier today.

IGPC had forwarded the following information to Societe Generale for a possible reduction to the current Letter of Credit.

Clause 7.6 of the Pipeline Cost Recovery Agreement provides the right to reduce the LC on the anniversary of taking gas.

The actual dollar amount was taken from a table filed by NRG in the rate application (Response to IGPC Interrogatory 3). This document was dated August 31, 2011 and filed the following day by NRG.

Year

2011	\$ 4,222,558
2012	\$ 3,978,949
2013	\$ 3,735,340
2014	\$ 3,491,731
2015	\$ 3,248,122

The highlighted number was used by Societe Generale in drafting up the Letter of Credit Amendment No. 1, which was dropped off at your office earlier in the week, for NRG's authorization.

I hope this information addresses NRG's question in regards to the amendment. Please let me know if I can be of further assistance.

Regards

**FILE COPY**

Doug Blair

Phone 519-765-2575 ext 234

Date: 09 March 2012

**NATURAL RESOURCE GAS LIMITED**  
P O Box 307  
Aylmer, Ontario N5H 2S1

AMENDMENT NO. 1

Our Standby L/C Reference: **CT08SOL0043-B**  
Issue date: 18 April 2008  
Amount: CAD5,214,173.00

At the request of the applicant, IGPC Ethanol Inc., we hereby amend our Irrevocable Standby Letter of Credit as follows:

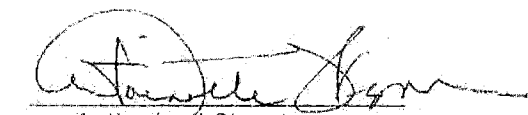
- **The letter of credit amount is reduced to CAD3,978,949.00**

All other terms and conditions remain unchanged.

This amendment is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication No. 500.

Please confirm your acceptance of this amendment by signing and returning a copy to us.

Societe Generale (Canada Branch)

  
Authorized Signature  
Antoinette Wynn

  
Authorized Signature  
Sally Jow

We hereby confirm acceptance of this amendment.

\_\_\_\_\_  
Natural Resource Gas Limited

TAB 8

## Carol Thomas

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**From:** Doug Blair [dblair@igpc.ca]  
**Sent:** March 23, 2012 12:55 PM  
**To:** Jim Grey; Scott Stoll  
**Subject:** FW: Request Possible Reduction L/C

Jim / Scott

This is the response from NRG in regards to my follow up phone call yesterday.

Doug

**From:** Jack Howley [mailto:[howley@nrgas.on.ca](mailto:howley@nrgas.on.ca)]  
**Sent:** March 23, 2012 12:18 PM  
**To:** Doug Blair  
**Subject:** Request Possible Reduction L/C

Doug Blair

In response to your recent telephone enquiry pertaining to the reduction in the L/C as outlined in your letter of 14 March 2012, at this time we wish to confirm that your request is currently under advisement and that you will be advised in due course.

Thank you,

Jack

**Jack Howley**  
General Manager  
Phone: 519-773-5321  
Fax: 519-773-5335  
E-Mail: [howley@nrgas.on.ca](mailto:howley@nrgas.on.ca)



**NATURAL RESOURCE GAS LIMITED**  
Supporting Your Natural Gas Lifestyle

36 Bazeah St. E., Aylmer, Ontario N5H 1A1 | Tel. 519-773-5321 | Fax: 519-773-5335

TAB 9

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# AIRD & BERLIS LLP

Barristers and Solicitors

Scott A. Stoll  
Direct: 416.865.4703  
E-mail: sstoll@airdberlis.com

April 23, 2012

BY COURIER

Richard King  
Norton Rose Canada LLP  
3800-200 Bay Street  
Toronto, ON M5J 2Z4

Dear Mr. King:

**Re: NRG's Refusal to Permit Reduction in Letter of Credit**

I am writing in response to your client's continued failure to abide by the Pipeline Cost Recovery Agreement ("PCRA") and the expectations of a utility in this province. As you are aware, IGPC has provided a Delivery Letter of Credit in the amount of \$5,214,173.00. This amount exceeds the value of the IGPC Pipeline, \$4,872,180.00 that was approved by the Ontario Energy Board to be included in rate base. To date, NRG has not permitted IGPC to reduce the Delivery Letter of Credit.

Recently, IGPC tried to reduce the amount of the Delivery Letter of Credit that it had provided to support the construction of the pipeline. As you will recall, under the PCRA, IGPC is entitled to reduce the security to match the undepreciated amount of the IGPC pipeline. However, following the request of my client to confirm the correct amount of the Delivery Letter of Credit, your client stonewalled and would not confirm a number, even when IGPC pointed to the evidence filed by NRG during the rate hearing. This is outrageous.

Your client has not permitted my client to reduce the Delivery Letter of Credit in the nearly four years since the pipeline became operational. The cost to my client of providing such excessive protection is significant and is not required by the PCRA nor by the OEB. We demand NRG fulfill its obligations under the PCRA in respect of the reduction in the letter of credit.

During the last rate hearing, EB-2010-0018, a settlement was reached, in part, because the accelerated depreciation of the IGPC Pipeline, \$243,609.00 annually, provides a significant non-cash expense to NRG and would have resulted in reduced borrowing costs for IGPC. However, NRG's refusal to permit a reduction in the Delivery Letter of Credit, despite the clear language in the PCRA, has prohibited IGPC from receiving the benefit to which it is entitled. As such, IGPC will have no alternative but to reconsider such a position in the next rate hearing.



IGPC is being forced to provide approximately \$1,000,000 in financial assurance to which NRG has no right or entitlement

IGPC had sincerely hoped the NRG was serious about improving its relationship with its ratepayers. However, the obstructionist behaviour described above and NRG's very recent decision to continue with the appeal in divisional court of the Board's decision in EB-2008-0413 to grant a 3 year extension to the franchise would confirm that NRG has no interest in its ratepayers or in improving its behaviour.

Yours truly,

AIRD & BERLIS LLP



Scott A. Stoll

SAS

cc: J. Grey, IGPC  
J. Howley, NRG  
K. Walli, OEB  
M. Miller, OEB

12264510.1

TAB 10

BARRISTERS

Direct Line: (416) 865-3097  
Email: lthacker@litigate.com

May 9, 2012

**VIA EMAIL**

Scott Stoll  
Aird & Berlis LLP  
BCE Place, 181 Bay Street  
Suite 1800, Box 754  
Toronto, ON M5J 2T9

Dear Mr. Stoll:

**Re: Natural Resource Gas Limited**

Natural Resource Gas Limited ("NRG") has now had an opportunity to review and consider your letter of April 23, 2012 to Richard King of Norton Rose Canada LLP. This letter is in response to that letter.

IGPC's request to reduce the Delivery Letter of Credit was made in a letter dated March 14, 2012 from Doug Blair. The statements in your letter describing repeated requests are inaccurate. On March 23, 2012, NRG advised IGPC that its request was under consideration. The statement that NRG stonewalled is inaccurate and misleading. NRG merely requested support for the number used and at no time were they asked to confirm this number. This number is the amount of the net book value of the pipeline as at September 30, 2012. In considering IGPC's request, NRG reviewed IGPC's financial position to determine if the reduced Delivery Letter of Credit would provide NRG with appropriate security. This involved an assessment of IGPC's financial circumstances and ongoing viability.

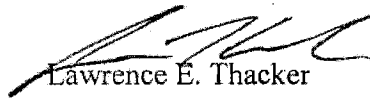
NRG has reviewed IGPC's financial statements for the fiscal year ended September 30, 2011 (copy attached), and without an in-depth review it clearly indicates that, but for an operating grant in the amount of approximately \$28.7 million last year (which expires in 2016 and with current government funding cutbacks it could be earlier), IGPC could be rendered unable to meet their future financial commitments. IGPC's net income for its most recent financial fiscal year was \$11.7m. The operating grant was \$28.7m. Accordingly, without the operating grant, IGPC would have incurred a net loss of \$17m. IGPC appears to be operating at a significant rate of loss. If the operating grant is terminated or reduced, IGPC could be insolvent. Accordingly, NRG is at significant risk that IGPC will not have the financial capability to pay NRG for the undepreciated capital costs of the pipeline.

Given the current financial circumstances of IGPC, NRG is considering whether to bring a motion for an order requiring IGPC to provide NRG with adequate security. As you will recall, Union Gas

brought a similar motion against NRG in Fall 2008. At that time, IGPC intervened in Union Gas' motion, and took a very active role in supporting Union Gas' request for additional security. The same principles apply in this circumstance – concerns about the financial viability of a gas utility's large customer. It is clear that IGPC's financial viability is seriously in doubt.

I will be in touch shortly to discuss mutually convenient dates for NRG's motion to require IGPC to provide NRG with additional security.

Yours truly,



Lawrence E. Thacker

LET/rk

cc R. King  
J. Grey, IGPC  
J. Howley, NRG  
K. Walli, OEB  
M. Millar, OEB

TAB 11

CV-09-389242

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

NATURAL RESOURCE GAS LIMITED

Plaintiff

- and -

IGPC ETHANOL INC. and  
INTEGRATED GRAIN PROCESSORS CO-OPERATIVE INC.

Defendants

**STATEMENT OF CLAIM**

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES,

LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date October 16, 2009

Issued by

*Sagaria*

M. Sagaria  
Registrar

Local Registrar

Address of

court office:

393 University Avenue  
10th Floor  
Toronto, ON M5G 1E6

TO: **IGPC ETHANOL INC.**  
701 Powerline Road  
Brantford, Ontario  
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L0R 1T0

AND TO: **INTEGRATED GRAIN PROCESSORS CO-OPERATIVE INC.**  
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AND TO: **DENNIS O'LEARY**  
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Lawyers for the Defendants,  
IGPC Ethanol Inc. and Integrated Grain Processors Co-operative Inc.

## CLAIM

1. The Plaintiff, Natural Resource Gas Limited ("NRG"), claims:
  - (a) general damages in the amount of \$20,000,000;
  - (b) punitive damages in the amount of \$100,000;
  - (c) pre-judgment and post-judgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
  - (d) its costs of this action;
  - (e) all applicable Goods and Services tax on all amounts awarded in accordance with the *Excise Tax Act* R.S.C., 1985, c.E-15, as amended; and
  - (f) such further and other relief as to this Honourable Court may seem just.
2. NRG is a corporation existing under the laws of Ontario. NRG carries on business as a producer and distributor of natural gas that has operated continuously in Ontario since 1979.
3. The defendant IGPC Ethanol Inc. ("IGPC") is a corporation existing under the laws of Ontario.
4. The defendant Integrated Grain Processors Co-operative Inc. ("IGPC Co-op") is a corporation existing under the laws of Ontario. IGPC is a wholly-owned subsidiary of IGPC Co-op. IGPC and IGPC Co-op carry on business as a producer of ethanol.
5. On February 27, 1984, NRG signed and entered into a franchise agreement with the Town of Aylmer, pursuant to which NRG was granted the franchise to distribute natural gas to



residents and all commercial and agricultural users of natural gas in the Town of Aylmer for the period commencing February 27, 1984 and ending February 27, 1009. NRG's franchise rights included the right to be the exclusive supplier of natural gas to all residents and all commercial and agricultural users of natural gas in the Town of Aylmer.

6. NRG has been distributing natural gas in the Township of Aylmer continuously for many years prior to 1982. The Township of Aylmer has never before objected to or opposed the renewal of the franchise.

7. On February 11, 2008, IGPC issued a press release (the "Press Release") which stated as follows:

**"IGPC ETHANOL INC. APPEALS TO ONTARIO ENERGY BOARD TO ENSURE NATURAL GAS AVAILABLE FOR ETHEANOL PLANT**

**Aylmer, Ontario.** IGPC Ethanol Inc. (IGPC) has filed a motion with the Ontario Energy Board (OEB) in an effort to ensure that natural gas will be available to the ethanol plant in time for Summer 2008 commissioning of the facility. The move follows growing concern that the slow progress towards construction of a new 28.5 kilometer pipeline by the local gas utility, Natural Resource Gas Limited (NRG), is jeopardizing timely start-up of the \$140 million plant.

IGPC's appeal for help from the OEB was made more urgent after NRG informed the Co-operative that it now has to post a Letter of Credit of nearly \$32 million before it will proceed with construction of the \$9.1 million pipeline. Under IGPC's OEB-approved agreement with NRG, IGPC was to post a Letter of Credit of approximately \$5.3 million, in addition to a cash payment of \$3.8 million.

In its request to the OEB, IGPC stated that it believes that "NRG's recent demands lead to the conclusion that NRG is either unwilling or unable to complete the pipeline. IGPC believes that unless it accedes to NRG's unlawful demands, construction of the pipeline will not commence on a timely basis, or at all. IGPC is concerned that NRG's conduct threatens the very viability of the pipeline and the facility."

Pending the resolution of the natural gas issue at the OEB hearing or the filing of an updated offering statement with provincial regulators, the Co-operative has suspended the sale of its securities.

IGPC President Tom Cox expressed confidence that the Province, which regulates gas utilities, will help find a solution to the Co-operative's continuing natural gas difficulties. "Our ethanol project has come this far only because the Ontario Government has created the climate for value-added agricultural projects to flourish. Ethanol has been a signature priority of this Government. Through the vision and concrete support of Premier Dalton McGuinty, Agriculture Minister Leona Drombowsky, and our local MPP, Steve Peters, our ethanol plant is only months away from firing up its boilers."

IGPC Vice President Brent McBlain stressed the importance of the ethanol plant to its member farmers, the town of Aylmer, and the other communities in rural Elgin County. "A lot of our corn is going to be coming from local farmers and elevators. Most of our employees will live in or close to Aylmer. With the threat of recession growing daily, we're certain that the Province will not just stand by while a new manufacturing plant sits idle because of the failure by a provincially regulated utility to turn on the gas in time."

IGPC started construction of its 150 million litre ethanol plant in Aylmer, Ontario in July 2007. Nearly 150 workers are currently engaged in plant construction. Work on the facility has moved faster than anticipated and project builder North America Construction now anticipates completing the facility at least two months earlier than originally planned.

Once operational, 35 skilled workers will be employed at the plant, providing a welcome boost to the Aylmer economy which has been hard hit by the collapse of the tobacco industry. The Town's biggest employer, Imperial Tobacco, closed its doors last year resulting in the loss of nearly 350 jobs. Across North America the ethanol boom has created renewed hope in rural communities, as higher grain prices and new jobs have revitalized local agricultural economies.

In June 2007, IGPC was forced to seek an order from the OEB compelling NRG to comply with its agreement with IGPC requiring it to facilitate pipeline construction. NRG's initial defiance of the OEB order resulted in a \$140,000 penalty being levied against NRG.

IGPC Ethanol Inc. is a wholly-owned subsidiary of Integrated Grain Processors Co-operative, an Ontario farmer and community-owned co-operative. Its 840 members have invested some \$48 million into the plant which will process over 15 million bushels of corn annually.

The Province has also committed \$14 million in capital grants to the project through the Ontario Ethanol Growth Fund as well as \$560,000 under the Community transition program. IGPC has also qualified for operating grants under the \$520 million Ontario Ethanol Growth Fund program, which is a

cornerstone of the Province's commitment to build an Ontario ethanol industry. IGPC has also obtained an \$11.9 million federal Government commitment under the Ethanol Expansion Program."

8. NRG pleads that the issuance and publication of the Press Release by IGPC an injurious falsehood. Specifically, the issuance of the Press Release, the choice of the headline and the words and the statements contained in the Press Release are false and misleading, and were made with malice and with knowledge or reckless indifference as to their foreseeable consequences and the resulting losses that NRG would incur.

9. NRG pleads that the words in the IGPC Press Release meant and were understood to mean that:

- (a) the construction of the pipeline to the IGPC plant had been delayed;
- (b) the alleged construction delays were caused by actions of NRG;
- (c) there was a risk that the pipeline might never be completed;
- (d) the commencement of operations of the IGPC plant was in jeopardy;
- (e) the potential delays in start-up were caused by actions of NRG;
- (f) NRG was "either unwilling or unable to complete the pipeline";
- (g) NRG would not commence construction of the pipeline "on a timely basis, or at all";
- (h) the "very viability of the pipeline and the facility" was being threatened by the conduct of NRG; and

- (i) NRG had acted illegally or improperly in requesting IGPC to post letters of credit, even though IGPC was in breach of its contractual obligations owed to NRG by refusing to provide NRG with letters of credit necessary to secure financing for construction of the pipeline.

10. In the weeks and months following IGPC's publication of the Press Release, the Town of Aylmer began to act in a highly adversarial and confrontational manner in its dealings with NRG. Among other things, the Town of Aylmer began to intervene directly in the relationship between NRG and IGPC and various disputes between them. Moreover, the Town of Aylmer adopted a highly adversarial and confrontational position against NRG.

11. For example, an OEB hearing was held on February 28, 2008, relating to IGPC's breach of its obligations owed to NRG under various agreements relating to the construction of the pipeline. The Town of Aylmer opposed the position of NRG and supported the position of IGPC;

12. Similarly, an OEB hearing was held October 20, 2008, to resolve issues concerning the request by Union Gas for an order requiring NRG to provide additional security in favour of Union Gas. The Town of Aylmer intervened and opposed the position of NRG in a highly confrontational and adversarial manner.

13. By letter dated June 13, NRG advised that it wished to commence the process for renewing its franchise agreement, which was set to expire February 27, 2009. NRG repeated its previous request for an opportunity to meet with the Town of Aylmer.

14. By letter dated June 17, 2008 from Heather Adams, Administrator for the Town of Aylmer, the Town advised that it would not even meet with NRG with discuss renewal of the franchise until IGPC was able to receive delivery of natural gas:

“I would like to advise that the Mayor and I would be pleased to meet with you to discuss the franchise agreement on a mutually convenient date immediately after natural gas is being provided by NRG to site of the Town’s newest business, IGPC Ethanol Inc. We expect that this will happen some time in July, 2008. In the interim, we will proceed to review the document you have submitted.”

15. By letter dated June 20, 2008, NRG again advised the Town of Aylmer that it wanted to commence the renewal process as soon as possible to ensure an orderly process and repeated its request for a meeting with representatives of the Town. NRG also stated that it does not understand why the Town is linking the renewal of the franchise to the IGPC facility:

“NRG does not understand whether and, if so, why the Town wishes to link franchise renewal to the opening of the IGPC facility. As I am sure you are aware, construction of the pipeline is well underway and is expected to be completed by July.”

16. By July 3, 2008, the Town had not responded. By letter dated July 3, 2008, NRG advised the Town of Aylmer as follows:

“We have not received any response from you to our letter of June 27.

We presume that the Town of Aylmer does not foresee any difficulties in the renewal process and, for that reason, does not feel it necessary to meet immediately with NRG.

NRG will proceed on the basis that the Town of Aylmer does not oppose the renewal of the Franchise Agreement with NRG. NRG would like to meet with you to begin implementing the renewal as soon as possible.”

17. By letter dated July 8, 2008, the solicitor for the Town of Aylmer advised that the Town would be willing to meet with NRG “to discuss the renewal issue shortly”.

18. On July 17, 2008, NRG requested a meeting with the Town of Aylmer on July 23, 2008. On that same date, NRG's counsel responded to the July 8 letter from the Town of Aylmer.

19. On July 20, the Town of Aylmer advised NRG that the Town would not be available to meet NRG to discuss the franchise renewal until mid-August 2008.

20. By letter dated August 11, 2008, NRG, through its counsel, again requested an opportunity to meet with the Town of Aylmer and repeated its request that the Town provide its position on whether or not it will support the renewal of the franchise agreement:

"We are pleased that the Town of Aylmer is willing to meet with NRG to discuss renewal. NRG does not wish to pre-empt any discussion. NRG has repeatedly requested an opportunity to meet with the Town, and we are pleased the Town is now willing to meet with NRG. We are available to meet at your earliest convenience.

The construction of the pipeline by NRG is complete and the pipeline was commissioned on July 3. It would appear that construction of the IGPC facility is significantly behind schedule and IGPC is not yet able to receive natural gas. NRG and IGPC have agreed that the deemed "In-Service Date" for the pipeline will be July 15, 2008. NRG remains ready, willing and able to deliver gas when IGPC's construction is complete and IGPC commences operations, and IGPC has fulfilled its financial obligations owed to NRG."

21. On September 9, 2008, NRG made another request for a meeting with the Town of Aylmer.

22. Finally, on September 11, 2008, a meeting was held between NRG and the Town. At that meeting, NRG provided the Town with the Model Franchise Agreement and asked the Town to provide any comments or concerns to NRG as soon as possible. The Town advised that it would provide comments to NRG shortly.

23. In follow-up correspondence (letters of September 11 and 16, and telephone conversations of October 14) with the Town of Aylmer, NRG thanked the Town for the meeting and confirmed that NRG was looking forward to obtaining the Town's comments on the Model Franchise Agreement.

24. By November 19, 2009, the Town had failed to provide any response. NRG wrote to the Mayor and Heather Adams again requesting a meeting to discuss the Town's comments on NRG's proposal for a franchise renewal. On November 26, 2008, the Town responded in writing agreeing to a meeting on December 16, 2008.

25. On December 16, 2008, more than six months after NRG first sought to obtain a meeting with the Town to discuss the Town's issues with the franchise renewal, a meeting was finally held in which the Town outlined their position. Unfortunately, the Town's position was by this point "set in stone" as a result of the Aylmer Town Council meeting held December 15, 2008.

26. The Town of Aylmer specifically delayed and refused to meet with NRG for more than six months until the day after Town Council met and formally decided and resolved to oppose the renewal of the Franchise Agreement. The very next day, after refusing to meet NRG for more than six months, the Town advised NRG the Town council had already decided to oppose renewal of the NRG franchise.

27. NRG states that the refusal of the Town of Aylmer to support the renewal of the franchise agreement was caused by the false and misleading statements made by IGPC and IGPC Co-op in the Press Release.

28. The Town of Aylmer has specifically linked its refusal to support the renewal of the franchise to:

- (a) the completion of the IGPC pipeline, which IGPC falsely stated in the Press Release had been delayed, and
- (b) the start up of the IGPC plant, which IGPC falsely stated was being jeopardized by NRG.

29. The Town of Aylmer refused to meet with NRG or to support the renewal of the franchise agreement until the viability of the pipeline and the IGPC facility was demonstrated. The actions of the Town of Aylmer were the direct result of the false and misleading statements made by IGPC in the Press Release, including the statement that "IGPC is concerned that NRG's conduct threatens the very viability of the pipeline and the facility."

30. IGPC and IGPC Co-op acted maliciously in their campaign of false and misleading statements made against NRG which were all made with the intent to cause injury, harm and loss to NRG.

31. As a direct result of the false and misleading statements made by IGPC and IGPC Co-op, the Town of Aylmer opposed the renewal of the NRG Franchise Agreement. On February 12, 2009, the Ontario Energy Board ("OEB") conducted a hearing in the Town of Aylmer.

32. In connection with that OEB hearing, the Town of Aylmer:



- (a) prepared and filed pre-filed evidence opposing the renewal of the NRG franchise agreement;
- (b) introduced oral and documentary evidence at the OEB hearing to oppose the renewal of the NRG franchise agreement; and
- (c) prepared and filed written submissions dated February 27, 2009 opposing the renewal of the NRG franchise agreement.

33. On May 5, 2009, the Board refused NRG's request for a 20 year term on the basis that disputed allegations made by the Town of Aylmer and IGPC pertaining to quality of service (for which there was no supporting evidence), financial viability, and the possible alignment of franchise agreements, demonstrated "unusual circumstances" and warranted a term substantially less than the standard term specified in the Model Franchise Agreement. The OEB therefore renewed the NRG franchise agreement for a period limited to 3 years expiring February 27, 2012.

34. In making its Decision and Order, the OEB relied heavily on the grounds advanced by the Town of Aylmer and IGPC, which were allegations that a 3 year renewal term was required:

- (a) to give NRG a probationary period to rebuilt customer confidence regarding quality of service;
- (b) to align the renewal period of the NRG franchise agreement with the Town of Aylmer with those of neighbouring municipalities; and
- (c) alleged risks to the financial viability of NRG.

35. The consequences of the OEB's refusal to grant NRG's request for a 20 year franchise term include:

- (a) NRG may be at risk of losing its financing;
- (b) NRG must now amortize its remaining asset base over a 3 year period instead of a 20 year period, which will cause its rate base and the rate it charges to customers to increase significantly and place a burden on ratepayers; and
- (c) NRG will be precluded from spending money on capital assets.

36. IGPC and IGPC Co-op acted in a planned and considered way to make false and misleading statements against NRG. Their actions were undertaken for the improper collateral purpose of exerting pressure on NRG to pursue and advance IGPC and IGPC Co-op's own financial gain, while placing NRG at financial risk, with reckless disregard for the injury, harm and losses caused to NRG.

37. NRG has suffered and will continue to suffer losses, including loss of reputation, loss of goodwill, and loss of customer revenue all as a result of the actions of IGPC and IGPC Co-op described herein. Moreover, NRG has incurred costs and will incur future costs in order to mitigate the losses it has suffered and will in future suffer as a result of the actions of IGPC and IGPC Co-op. IGPC and IGPC Co-op are liable for all of the losses and costs that NRG has incurred and will incur in the future.

38. IGPC and IGPC Co-op were served with a libel notice pursuant to s. 5(1) of the *Libel and Slander Act*, R.S.O. 1990, c.L.12 and have refused to retract, or apologize for, any of the words complained of in the Press Release.

39. NRG pleads that it is entitled to an award of punitive damages as a result of the high-handed and malicious conduct of IGPC and IGPC Co-op, including the wanton disregard of the rights and interests of NRG.

40. NRG proposes that the trial of the action be held at Toronto.

October 16, 2009

**LENCZNER SLAGHT ROYCE**

**SMITH GRIFFIN LLP**

Barristers

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Solicitors for the Plaintiff

NATURAL RESOURCES GAS LIMITED  
Plaintiff

-and- IGPC ETHANOL INC. et al  
Defendants

CV-09-389242

Court File No.

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
TORONTO

**STATEMENT OF CLAIM**

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Lawyers for the Plaintiff

TAB 12

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

NATURAL RESOURCE GAS LIMITED

Plaintiff

and

IGPC ETHANOL INC. and INTEGRATED GRAIN  
PROCESSORS CO-OPERATIVE INC.

Defendants

**STATEMENT OF DEFENCE**

1. The Defendants admit the allegations contained in paragraphs 3-4, 7, 11 [second sentence] and 38 of the Statement of Claim.
2. The Defendants deny the allegations contained in paragraphs 8-11 [first sentence] and 12-37 of the Statement of Claim.
3. The Defendants have no knowledge in respect of the allegations contained in paragraphs 2 and 5-6 of the Statement of Claim.

Parties and Background

4. Integrated Grain Processors Co-operative Inc. ("IGPC Co-op") is a co-operative formed on April 4, 2002 by Ontario corn farmers who were interested in finding new markets for the sale of their produce.

5. IGPC Ethanol Inc. ("IGPC") is an Ontario corporation and subject to the Ontario *Business Corporations Act*, R.S.O. 1990, c. B.16 and all of the duties and obligations set out therein. IGPC is a wholly-owned subsidiary of IGPC.

6. Natural Resource Gas Limited ("NRG") is an Ontario corporation engaged in the business of producing and distributing natural gas. NRG has distributed gas in and/ or around the Town of Aylmer since in or about 1984.

7. The distribution of natural gas in Ontario is a regulated industry subject to the authority of the Ontario Energy Board ("OEB").

#### Decision to Build Aylmer Ethanol Facility

8. In or about the year 2006, IGPC decided to construct an ethanol production facility in Aylmer, Ontario at an estimated cost of \$140 million to be largely financed through commercial bank loans and investment agreements with the Government of Canada and Ontario. Agreements were entered into with the banks and various stakeholders (including provincial and federal governments), which agreements required IGPC to meet certain construction milestones and to perform certain obligations contained in and designated as "Material Contracts", related to the construction of the Facility.

9. The Facility would be a boon to the local economy in that it would provide jobs to residents in the Aylmer area and a market for local corn farmers to sell their produce. The Facility, during the construction period, was expected to be one of the largest

employers in the area, and would continue to be a significant employer once it was operational.

10. IGPC estimated the cost to develop and construct the Facility to be approximately \$140,000,000. In order to finance the Facility, IGPC raised approximately \$65,000,000 from traditional bank financing plus another approximately \$40,000,000 from other investment vehicles, plus additional financing from the provincial and federal governments.

#### Natural Gas Supply to the Facility

11. Natural gas is essential to operate an ethanol facility. Securing and ensuring the delivery of natural gas was therefore at all times critical to IGPC's ability to complete the Facility in a timely manner and was required to satisfy IGPC's lenders.

12. NRG, as the sole supplier of natural gas in the area, was obligated (pursuant to provincial regulations) to supply natural gas to the Facility. However, NRG's existing pipelines could not provide a sufficient quantity of natural gas to the Facility. A new pipeline therefore had to be built. The cost of building the pipeline was estimated by professional engineers retained by NRG to be approximately \$9,100,000.

13. IGPC and NRG entered into two master contracts with respect to constructing the pipeline and delivering gas to the Facility.

14. The first contract was the Gas Delivery Contract ("GDC"). The GDC set out the terms and conditions under which NRG would deliver and IGPC would pay for the delivery of natural gas.



15. The second contract was the Pipeline Cost Recovery Agreement ("PCRA"). The PCRA set out the terms and conditions under which the new pipeline would be constructed.

16. Both the GDC and the PCRA were Material Contracts. Both contracts also required approval by the Ontario Energy Board ("OEB"). The OEB approved the contracts on February 2, 2007.

17. The PCRA provided that the \$9,100,000 construction cost was to be supported by two mechanisms: (a) a payment by IGPC to NRG of approximately \$3,800,000; and, (b) the provision by IGPC to NRG of a Letter of Credit in the amount of approximately \$5,300,000.

18. The PCRA also contained a construction schedule that included deadlines for key milestones and completion of the pipeline.

#### NRG Misconduct and Delays

19. IGPC met or exceeded all of its material obligations to NRG with respect to financing the construction of the pipeline.

20. NRG, however, failed to meet its obligations, failed to deal with IGPC in good faith, and generally caused difficulties with and delays in constructing the pipeline.

21. The PCRA contemplated that NRG would execute a Consent & Assignment ("Consent") in favour of the institutions financing the Facility. The Consent provided that NRG consented to continuing to provide natural gas to the Facility as long as IGPC was

not in default under the GDC. It became critical in or about June of 2007 for NRG to execute the Consent. The availability of financing for the Facility, including from various government authorities, was contingent upon NRG executing the Consent in a timely fashion.

22. NRG was aware of its obligation to execute the Consent and of the importance of same to IGPC and its financing.

23. NRG nonetheless refused to sign the Consent & Assignment. IGPC therefore brought an emergency motion before the OEB on June 29, 2007 seeking an Order requiring NRG to execute the required Consent (the "First NRG Hearing").

24. The OEB issued an Order on June 29, 2007 requiring NRG to sign the Consent. NRG nonetheless still refused for an additional week to sign before finally doing so, which resulted in the OEB convening a compliance hearing. The OEB decision from the compliance hearing called NRG's behaviour "capricious" and noted that there was no apparent reason for its refusal to comply with the OEB Order. The OEB therefore ordered NRG to comply and took the extraordinary step of imposing on NRG an administrative monetary penalty in the maximum amount permissible in law for its misconduct.

25. IGPC spent the next several months attempting to get NRG to meet its obligations under the PCRA and to take the steps required to move forward with construction of the pipeline. These efforts were not successful as NRG was either unwilling or unable to deal with IGPC in a manner that would move construction of the pipeline forward.

26. NRG demanded on or about January 31, 2008 (at which time NRG ought to have been on the brink of beginning pipeline construction) that IGPC provide a Letter of Credit in the amount of \$32,000,000, rather than the approximately \$5,300,000 that the PCRA contemplated.

27. NRG's demand was without justification under the PCRA.

#### Second NRG Hearing

28. Following NRG's unreasonable demand and NRG's refusal to modify that demand following communications with IGPC, IGPC wrote to the OEB on February 8, 2008 and requested another hearing before the OEB.

29. The OEB agreed to hold another hearing, which proceeded on February 28, 2008 in the Town of Aylmer (the "Second NRG Hearing"). IGPC and NRG participated as parties, and the Town of Aylmer also participated as an intervenor.

30. NRG sought at the OEB hearing to justify the various amounts that went into its demand for the \$32,000,000 Letter of Credit. The OEB rejected virtually all of NRG's arguments, finding that the costs demanded were inconsistent with the PCRA, speculative, or costs that should be borne by NRG. The Letter of Credit that IGPC ultimately provided was in the amount of approximately \$5,200,000.

#### Press Release

31. IGPC issued on February 11, 2008 the Press Release that is the subject of this action. The Press Release was issued on the same day as the OEB advised that the

Second NRG Hearing would be held, and was part of IGPC's effort to keep its stakeholders informed about the progress of the Facility.

32. IGPC issued the Press Release in order to advise the Facility's many stakeholders of the substantial problems that NRG's conduct had caused and of the threat this conduct posed to the successful completion of the Facility. Issuing the Press Release was a matter of good corporate conduct.

33. Integrated Grain Processors Inc. had no involvement in and did not publish or approve the Press Release.

#### Defences

34. The defendants plead and rely upon the following defences:

- (a) Justification, as to statements of fact in the Press Release;
- (b) Fair comment, as to matters of opinion in the Press Release; and,
- (c) Qualified Privilege, as to all statements in the Press Release.

#### Justification

35. The Press Release is substantially true. The fact is that, at the time that the Press Release was issued:

- (a) NRG's conduct was causing or threatening delays in construction of the pipeline and reasonably suggested that the pipeline might not be completed;

- (b) if the pipeline was not completed on time, the completion of the Facility would be jeopardized and the entire project was threatened;
- (c) NRG acted without lawful right (as the OEB later confirmed) in improperly in demanding the \$32,000,000 Letter of Credit, when the PCRA contemplated a Letter of Credit of only \$5,300,000; and,
- (d) NRG had demonstrated that it could not or would not pay third-party suppliers for materials to be used in the pipeline.

Fair Comment

36. In addition and in the alternative, the statements in the Press Release are fair comments. Many of the impugned statements were comments, including that timely completion of the pipeline was threatened, that IGPC had concluded that NRG was unable or unwilling to complete the pipeline and that NRG's conduct threatened the very viability of the Facility.

37. The timely completion of the pipeline and corresponding success of the Facility were matters of significant public interest, both in the local community and beyond. The numerous stakeholders including employees, farmers, local businesses, banks and governments were all substantially invested and interested in the Facility.

38. The comments in the Press Release were also based on facts. NRG had missed deadlines, failed to pay suppliers, unreasonably refused to sign basic agreements and made unreasonable demands with respect to the Letter of Credit. Comments to the

effect that both the pipeline and Facility were being threatened were fair inferences and/or conclusions from these facts.

39. Any person could, and IGPC did, honestly express these comments on the basis of the existing facts, all as set out above.

40. The Press Release was not issued out of or motivated in any way by malice.

#### Qualified Privilege

41. In addition and in the alternative, the impugned statements are protected by qualified privilege. The statements were fairly made in furtherance of both a public duty and the protection of a private interest.

42. IGPC had a duty to advise the Facility's stakeholders of the problems with NRG. The stakeholders and public in general had a corresponding interest in receiving the information.

43. The defendants deny that the plaintiff has suffered any of the damages as alleged, and put the plaintiff to the strict proof thereof.

#### Causation

44. In any event, there is no causation in law of the damages alleged by NRG. All of the impugned statements in the Press Release were also made by IGPC in the course of the various OEB hearings, either in written materials filed in advance of the hearings or in submissions in the hearings themselves.

45. The Town of Aylmer participated as an intervenor in all of the relevant OEB hearings, including both the First NRG Hearing and Second NRG Hearing. The Town received all of the other parties' submissions and made submissions of its own at these various hearings.

46. All of the complained-of statements in the Press Release were repeated in and asserted by IGPC at the Second NRG hearing, such that any damage to NRG's reputation with the Town would have occurred in any event of the Press Release.

47. The materials that IGPC filed with the OEB and its submissions to the OEB are privileged and cannot ground a defamation action. There is therefore no causation in law from any statements in the Press Release.

48. The IGPC materials and submissions were also a matter of public record that any person could obtain through the OEB.

#### Limitation Period

49. The defendants plead that NRG's claim is statute barred. Section 6 of the *Libel and Slander Act*, R.S.O. 1990, c. L.12, requires that NRG's action be commenced "within three months after the libel has come to the knowledge of the person defamed".

50. NRG had knowledge of the Press Release and alleged defamatory effect since at least February 21, 2008, the date on which it served a libel notice on IGPC. The within action was not commenced until October 16, 2009, more than 19 months after NRG had knowledge of the Press Release and alleged defamation.

51. NRG's claim is therefore statute-barred and ought to be dismissed.

52. The Defendants ask that this action be dismissed with costs.

January 29, 2010

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NATURAL RESOURCE GAS LTD.  
Plaintiff

-and- IGPC ETHANOL INC. et al  
Defendants

Court File No. CV-09-389242

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**PROCEEDING COMMENCED AT**  
**TORONTO**

**STATEMENT OF DEFENCE**

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TAB 13

**POST CONSTRUCTION FINANCIAL REPORT**  
**Ethanol Pipeline**

	Actual Costs	Original Budget	Over/(Under)	%
<b>Total Material</b>	956,242	1,145,855	(189,613)	-17%
<b>Prime Contractor</b>	3,188,173	3,564,400	(376,227)	-11%
<b>Total Labour</b>	2,267,948	2,173,800	94,148	4%
<b>Total Other</b>	110,142	237,000	(126,858)	-54%
<b>Interest</b>	113,260	250,000	(136,740)	-55%
<b>Contingencies</b>	132,000	1,023,237	(891,237)	-87%
<b>SUB TOTAL</b>	6,767,765	8,394,292	(1,626,527)	-19%
<b>Customer Transfer Station</b>	748,105	250,000	498,105	199%
<b>Custody Transfer Station</b>	884,003	500,000	384,003	77%
<b>NET PROJECT COSTS</b>	8,399,873	9,144,292	(744,419)	-8%

Material - Pipe and construction material lower than forecast due to hard negotiations with supplier by our experienced and senior project manager

Prime Contractor/contingencies - below budget due to hands on management by project manager and our senior project manager negotiated at length to get a closed contract so there would be no extras.

Other costs - budget included \$125,000 for Temporary Land Use & Damages which did not occur (again due to hands on project manager)

Customer Transfer Station - the original forecast supplied by Union Gas was a project cost of \$640,000 with the Aid to Construct portion of \$185,000; the final amount supplied by Union Gas was \$700,000 which included \$60,000 cost for land and the full amount was considered the Aid to Construct portion.

Custody Transfer Station - payment was not received from IGPC to go forward with work; IGPC was directed by the Board to deal with Lakeside directly; all future negotiations and management of this aspect were handled directly by IGPC.