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Our File # 339583-000

By electronic filing

May 4, 2015

Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th floor
Toronto, ON M4P 1E4

Dear Ms. Walli

Re: **Natural Resource Gas Limited ("NRG")**
Board File #: **EB-2014-0053**
EB-2014-0361
EB-2015-0044

Pursuant to paragraph 1 of Procedural Order No. 3 dated March 13, 2015, our client, Canadian Manufacturers & Exporters ("CME"), continues to have intervenor status in these proceedings. In that connection, we are writing to seek some guidance from the Board pertaining to our participation in the oral hearing scheduled for May 14 and May 15, 2015.

In this proceeding, the Board seeks further argument as to whether NRG's status, as a natural gas distributor, warrants a different treatment from Union Gas Limited's ("Union") other non-compliant direct purchase customers. If so, then the Board seeks argument on the impact of this on setting an appropriate penalty charge to be applied to NRG.

The thrust of NRG's position, in support of a reduction in the penalty amount from the $50.50/Gj approved by the Board to a penalty rate more in line with Union's cost of gas of $7.12/Gj, is that Union has an obligation to act in the public interest when assessing penalty amounts and to reduce penalty charges to mitigate the realization of a "windfall". The "windfall" is the difference between all of the penalty amounts either paid or to be paid by NRG and other non-compliant direct purchasers at $50.50/Gj and the actual costs Union incurred to remedy that non-compliance at $7.12/Gj.

If the Board finds favour with NRG's position, then it follows that the Board's allocation of that "windfall" exclusively to the system gas customer sub-set of Union's ratepayers, which excludes NRG and others, is wrong and must be reviewed. The mitigation of the penalty charges which NRG seeks must come from a portion of the "windfall" dollars which have been allocated to Union's customers in a manner which excludes NRG and other compliant and non-compliant direct purchasers.

The point is that the relief NRG seeks, in this case, in and of itself, reflects either an explicit or implicit allegation that an allocation of the "windfall" to exclude NRG as a non-compliant direct purchaser is wrong.

To grant the relief NRG seeks, the Board must, of necessity, review and vary, to some extent, its allocation of the "windfall" to the exclusive benefit of system gas users. Put another way, NRG's allegation that Union has an obligation to reduce penalty charges to mitigate the occurrence of a "windfall" and the incorrect allocation of that "windfall" to exclude NRG are 2 sides of the same "windfall" coin. These 2 matters are inextricably intertwined and inseverable.

At the hearing, we wish to support NRG's position that Union has an obligation to reduce penalties to mitigate "windfall" gains and the inextricably intertwined corollary that granting the relief NRG seeks requires a revision, to some degree, of the "windfall" amounts the Board allocated to the Purchase Gas Variance Account so as to exclude NRG and others.

We submit that if NRG's arguments prevail at the hearing, then the Board is not limited to revising its prior allocation of the "windfall" to provide relief solely to NRG. We submit that the "review" of an allocation of the "windfall" which excluded NRG and other compliant and non-compliant direct purchasers, being the review which is embedded in the relief NRG seeks, can be broader than simply adjusting that allocation to provide relief to NRG but to no other direct purchasers.

We submit that CME and others who have direct purchasers in their constituencies should be free to argue that a revision of the Board's prior allocation of "windfall" amounts should not be limited solely to providing a benefit to NRG. Rather, CME and others should be allowed to submit that the revision of the "windfall" amount stemming from the position advocated by NRG should be broader so as to benefit not only NRG, but also all other non-compliant and compliant direct purchasers, as well as all system gas users.

The foregoing is the scope of the "revision" relief which the Board is empowered to grant in the event NRG's arguments in this proceeding prevail.

We are writing to confirm that we will be permitted to cross-examine and make submissions to this effect at the oral hearing in May. We respectfully submit that the Board should allow us and other parties, if so advised, to elaborate on these points at the oral hearing rather than rejecting them by way of a letter decision prior to the outset of the oral hearing. That said, we would appreciate receiving some direction from the Board regarding the arguability of the points which we wish to raise.

Please contact us if the Board requires any further elaboration of these points prior to the commencement of the oral hearing on May 14, 2015.

Yours very truly

Borden Ladner Gervais LLP

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