



**EB-2005-0445**

**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 THE WILSHER  
TRUST under section 43 of the *Ontario Energy Board Act, 1998*  
seeking leave for THE WILSHER TRUST to acquire more than  
20 percent of the voting securities of Natural Resource Gas  
Limited.

### **DECISION AND ORDER**

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

On July 22, 2005, THE WILSHER TRUST (the "Trust" or the "Applicant") filed an Application under section 43(2)(a) of the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Sched. B (the "Act"), for an Order of the Ontario Energy Board (the "Board") approving the Applicant's acquisition of more than 20 percent of the voting securities of Natural Resource Gas Limited ("NRG"). The Board has assigned file number EB-2005-0445 to the Application.

The Board issued a Notice of Application on August 18, 2005. The Applicant has served and published the Notice as directed by the Board.

In response to the Notice of Application, Enbridge Gas Distribution Inc. ("Enbridge") filed a letter dated September 22, 2005, requesting intervenor status. Enbridge stated that it intended to monitor the proceedings, but reserved the right to determine the extent of its participation following an examination of the pre-filed and amended evidence. By letter dated October 18, 2005, the Board confirmed the status of Enbridge as an intervenor.

## Background

NRG carries on the business of selling and distributing natural gas within Ontario. On November 4, 2002, the Trust was created. Common shares in NRG were subsequently converted into non-voting securities and additional voting shares were issued to the Trust. As a result, the Trust acquired more than 20 percent of the voting securities of NRG.

On July 22, 2005, more than two and a half years after the acquisition took place, the Applicant filed this Application with the Board. The Application states that “The transfer of more than 20 per cent of the voting securities of NRG without Board approval was made inadvertently. This is largely because the transaction was not a typical divestiture. A transfer of shares was also required.”

The Application states that:

- As soon as it became apparent to the Applicant that Board approval may be required, the Applicant notified Board staff and indicated that this Application would be forthcoming;
- The operation of NRG remains unchanged, and the transaction has had no impact on customers, suppliers, employees or the communities served by NRG;
- The transaction has no cost consequences or rate impacts to NRG’s customers. NRG has, subsequent to the transaction, completed a rate hearing in which no issues arose regarding costs or rate impacts from the transfer;
- Since the transaction, NRG’s reliability and service quality have remained at its previous high levels; and
- The strong equity of NRG remains unchanged as a result of the transaction.

## Board Findings

Section 43(2) (a) of the Act states:

- 2) No person, without first obtaining an order from the Board granting leave, shall,
  - (a) acquire such number of voting securities of a gas transmitter, gas distributor or storage company that together with voting securities already held by such person and one or more affiliates or associates of that person, will in the aggregate exceed 20 per cent of the voting securities of a gas transmitter, gas distributor or storage company;

The Board has received no objection to the Application. The Board accepts that the transfer of more than 20 per cent of the voting securities of NRG without Board approval was made inadvertently, and that the Applicant has acted in good faith throughout the application process. Based on the Applicant's evidence, the Board finds that the subject transaction has no adverse impact on the factors identified in the Board's objectives as set out in section 2 of the Act.

**THE BOARD THEREFORE ORDERS THAT THE WILSHER TRUST** is granted leave to acquire more than 20 percent of the voting securities of Natural Resource Gas Limited.

ISSUED at Toronto, November 3, 2005

ONTARIO ENERGY BOARD

*Original Signed by*

Gordon Kaiser  
Vice Chair and Presiding Member

Appendix A  
to  
Decision and Order  
  
EB-2005-0445  
  
November 3, 2005

**THE WILSHER TRUST**  
**Leave to Acquire Shares of Natural Resource Gas Limited**  
**EB-2005-0445**

**APPLICANT & LIST OF INTERVENORS**

November 3, 2005

**Applicant**

**Rep. And Address for Service**

THE WILSHER TRUST

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**Intervenors**

**Rep. And Address for Service**

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