



**City of Kingston  
Report to Council  
Report Number 25-064**

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**To:** Mayor and Members of Council  
**From:** Lanie Hurdle, Chief Administrative Officer  
**Resource Staff:** None  
**Date of Meeting:** February 4, 2025  
**Subject:** Franchise Agreement - Enbridge Gas Inc.

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**Council Strategic Plan Alignment:**

Theme: Corporate business

Goal: See above

**Executive Summary:**

On behalf of the City of Kingston, Utilities Kingston provides natural gas services in central Kingston while residents in the areas of the city that were the former Kingston Township and Pittsburgh Township are served by Enbridge Gas Inc. (Enbridge). Enbridge, and its predecessor Union Gas, has provided gas distribution services within this area since 1955.

The purpose of this report is to provide information so that Council can decide whether or not to enter into a new Franchise Agreement between the City of Kingston and Enbridge Gas Inc. for the City of Kingston boundary.

Effective January 1, 1998, the former City of Kingston, the Township of Pittsburgh and the Township of Kingston became the new City of Kingston (the City). Enbridge (formerly Union Gas) holds a Certificate of Public Convenience and Necessity for the former Township of Pittsburgh and Township of Kingston.

In 2003, the Ontario Energy Board (OEB) issued an order which mandated a Model Franchise Agreement be established for a period of 20 years between the City and Enbridge for the area previously known as the Township of Pittsburgh.

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In 2005, the same type of OEB order was issued with respect to establishing a 20-year Franchise Agreement between the City of Kingston and Enbridge for the area previously known as the Township of Kingston.

The City of Kingston and Utilities Kingston had objected to the form of Franchise Agreement and the service boundaries referred to in the agreement, and therefore, the City never signed the Franchise Agreements. Although agreements were never technically signed, Enbridge has been operating under the terms of the template Franchise Agreement since 2003.

The first OEB order, which was for a 20-year term, expired in 2023. Since that time, City staff have been working with Enbridge to amend the OEB template Franchise Agreement to reflect that the municipality is serviced by both Enbridge and Utilities Kingston on behalf of the City of Kingston.

Enbridge had previously considered the possibility of an amendment to the template Franchise Agreement such that it would refer to the Certificate of Public Convenience and Necessity (CPCN) which defines the areas of the city serviced by Enbridge. Enbridge has since communicated to the City that their formal position is to proceed with the standard OEB Model Franchise Agreement without that amendment.

The OEB is responsible for granting exclusive territorial rights to a gas distributor to provide gas service within a municipality. Both a Franchise Agreement with the municipality and a CPCN from the OEB are needed to distribute, store and transmit gas in a municipality. Historically, the OEB has rejected attempts to clarify geographic boundaries in the Franchise Agreement itself, as this would necessitate an amendment to both the Franchise Agreement and CPCN any time even a single property is added to or removed from the service area. Therefore, exclusive of the Franchise Agreement, a gas distributor can apply to the OEB to amend its CPCN at any time. Although it is rare that the OEB would consider amendments to the Franchise Agreement, it did agree to amendments in the City of Kitchener agreement established in 2016. That agreement is for a 20-year term and it is unknown if the next Franchise Agreement will continue to be amended.

This report is being presented to Council for consideration of Option 1 which would direct staff to proceed in the execution of the OEB template Model Franchise Agreement, exclusive of a reference to address the limited-service area or Option 2 which would direct staff not to execute the OEB template Model Franchise Agreement and to submit correspondence to the OEB requesting an amendment to the Franchise Agreement to reflect the different service areas serviced by Enbridge and Utilities Kingston (such as the OEB did in the case of Kitchener in 2016).

Enbridge indicated that, as part of its OEB application, it intends to acknowledge that the City of Kingston has requested an amendment to the Franchise Agreement to address the limited-service area if that continues to be the position of the City.

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**Recommendation:**

**Option 1:**

**That** Council approve the Franchise Agreement with Enbridge Gas Inc. and draft by-law attached to Report Number 25-064 report and authorize the submission thereof to the Ontario Energy Board, for the designated geographic area in the existing Certificates of Public Convenience and Necessity, for approval pursuant to the provisions of Section 9 of the *Municipal Franchises Act*; and

**That** Council request that the Ontario Energy Board make an Order declaring and directing that the assent of the municipal electors to the form of Franchise Agreement and draft by-law attached to Report Number 25-064 is not necessary pursuant to the provisions of Section 9(4) of the *Municipal Franchises Act*.

**Option 2:**

**That** Council not approve the Franchise Agreement with Enbridge Gas Inc. and draft by-law attached to Report Number 25-064; and

**That** Council direct staff to submit correspondence to the Ontario Energy Board reaffirming the City's objection to the standard language in the Franchise Agreement and requesting an amendment to the Franchise Agreement to reflect the different service areas serviced by Enbridge and Utilities Kingston.

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**Authorizing Signatures:**

ORIGINAL SIGNED BY CHIEF ADMINISTRATIVE OFFICER

Lanie Hurdle, Chief  
Administrative Officer

**Consultation with the following Members of the Corporate Management Team:**

Paige Agnew, Commissioner, Growth & Development Services	Not required
Jennifer Campbell, Commissioner, Community Services	Not required
Neil Carbone, Commissioner, Corporate Services	Not required
David Fell, President & CEO, Utilities Kingston	<input checked="" type="checkbox"/>
Brad Joyce, Commissioner, Infrastructure, Transportation & Emergency Services	Not required
Desirée Kennedy, Chief Financial Officer & City Treasurer	<input checked="" type="checkbox"/>

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**Options/Discussion:**

While Utilities Kingston provides natural gas services in central Kingston, on behalf of the City of Kingston, residents in the west and east ends of the city are served by Enbridge Gas Inc. (Enbridge). Enbridge currently serves about 24,000 customers within these areas of the City of Kingston and the company has been operating in Kingston since 1955. Enbridge has Franchise Agreements with 340 municipalities in Ontario. Since 2000, the Ontario Energy Board (OEB) has directed that the 2000 Model Franchise Agreement serve as a template for such agreements between the OEB-regulated gas utilities and municipalities.

In 2003, the OEB issued an order which mandated a template Franchise Agreement be established for a period of 20 years between the City and Enbridge for the area that was previously known as the Township of Pittsburgh. The City refused to sign the agreement, and the order expired in 2023. While the 20-year timeframe stipulated in the OEB order has expired, terms of the Franchise Agreement ensure that the Franchise Agreement remains in force until a new agreement is executed (or the OEB orders a renewal). The automatic continuation does not prevent Enbridge from applying to the OEB under the *Municipal Franchises Act* seeking an Order to approve the gas franchise renewal.

In 2005, the same type of OEB order was issued with respect to establishing 20-year Franchise Agreement between the City of Kingston and Enbridge for the area previously known as the Township of Kingston.

As noted in January 14, 2025 [Report Number 25-033](#), various forms of energy supply such as electricity and natural gas are critical to meet short and medium energy needs of the growing population and businesses in Kingston. Strong relationships with natural gas distributors and other utilities are key to efficient service delivery, economic development and public safety.

In Ontario, the majority of natural gas distributors are regulated by the OEB, which operates under the authority of the *Ontario Energy Board Act, 1998*, to ensure safety, reliability and fair prices for consumers.

The OEB adopted the Model Franchise Agreement model in 2000 to standardize the terms and conditions under which OEB-regulated gas utilities operate within municipalities across Ontario, subject to compliance with the *Municipal Franchises Act*, R.S.O. 1990, c. M.55 (the MFA). The MFA establishes the framework for how these agreements (franchises) are negotiated, approved, and operated. Before a natural gas distributor and municipality can enter into a Franchise Agreement, the terms, conditions, and duration must be approved by the OEB.

The OEB is responsible for granting exclusive territorial rights to a gas distributor to provide gas service within a municipality. The MFA sets out the requirements for the allocation of municipal territories to gas distributors, including a requirement to obtain municipal consent to the construction and operation of gas works in the municipality on terms and conditions approved by the OEB.

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Before Franchise Agreements or renewals are reviewed and approved by the OEB and subject to the renewal guidelines, Council is required to pass a resolution that does at least 3 things:

- approves the form of draft by-law and Franchise Agreement
- authorizes the submission of the draft by-law and Franchise Agreement to the OEB for approval
- requests that the OEB make an Order declaring and directing that the assent of the municipal electors to the draft by-law and Franchise Agreement is not necessary pursuant to the provisions of Section 9(4) of the *Municipal Franchises Act*

The OEB is required to hold a public hearing upon an application for an Order to renew a Franchise Agreement. If a municipality does not support executing a Franchise Agreement with a gas distributor, an Order of the OEB renewing a Franchise Agreement is deemed to be a valid by-law of the municipality.

City staff had previously been working with Enbridge on staff's request to include in the Franchise Agreement a reference to the Certificate of Public Convenience and Necessity (CPCN) to clearly define areas of service to distinguish from the central area that is serviced by Utilities Kingston. A CPCN is granted by the OEB and gives a particular company an exclusive right to supply gas and to expand gas service within a specific area within a municipality. Under section 8(2) of the *Municipal Franchises Act*, a CPCN must be granted by the OEB before any works can be constructed or natural gas supplied, even if a signed Franchise Agreement exists. The exact area where a gas distributor is permitted to construct gas works is defined by the CPCN.

Currently, Enbridge has two (2) CPCNs which cover both former Pittsburgh Township and Kingston Township areas. With this proposed Franchise Agreement, Enbridge would also update its CPCN which would include both former township areas within one (1) CPCN certificate. It is important to note that a Franchise Agreement is not required for natural gas providers to request amendments to the CPCN through the OEB which dictates service boundaries. An amendment to the CPCN requires a separate process which is open to the public.

Any proposed amendment to the terms of the Model Franchise Agreement is subject to the OEB approval. Based on research, the OEB will only approve modifications to the Model Franchise Agreement in very limited, unique circumstances where a deviation from the standard terms is necessary or justified for one municipality and gas distributor distinct from all others. The legislature has empowered the OEB with broad authority and jurisdiction to determine reasonable terms and conditions to govern gas franchises in the public interest.

Enbridge has communicated their formal position to proceed with applying to the OEB for the renewal of the Model Franchise Agreement in its standard form without the City's requested amendment to address the limited service area because the applied-for CPCN will specifically identify Enbridge's limited service area. The OEB's Natural Gas Facilities Handbook (issued in 2022) and attached as Exhibit F states that a CPCN will define the specific area within a

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municipality where a utility is permitted to construct natural gas works. Any application to change the CPCN in the future would be based on stakeholder input and OEB oversight and approval.

Should Council choose to move forward with Option 1 to execute the Model Franchise Agreement without amendments, the CPCN would dictate the service boundaries as currently exists servicing the west and east ends of the city.

Should Council choose not to execute the Model Franchise Agreement without an amendment at this time, Enbridge will proceed with its application to the OEB under the *Municipal Franchises Act*, as all providers are required to have a Franchise Agreement between the gas distributor and the municipality. Council can opt to reiterate the City's desire for the requested amendment to the Franchise Agreement by way of correspondence directly to the OEB and await an order from the OEB to allow Enbridge's operation in the CPCN service area.

### **Existing Policy/By-Law**

[\*Municipal Franchises Act, R.S.O. 1990, Chapter M.55\*](#)

### **Financial Considerations**

Franchise Agreements do have financial implications for both the gas distributors and municipalities who are party to them. Commonly expressed concerns regarding gas franchises include the cost-allocation provisions under the Model Franchise Agreement, and the restriction on municipal authority to impose fees and charges on gas distributors for use of public property. Section 9 of O.Reg. 584/06 under the *Municipal Act, 2001* provides that municipalities do not have the power to impose a fee or charge on a gas distributor for services or activities, costs payable, or the use of property with respect to pipes, equipment, machinery or other works that are or will be located on a municipal highway; and are or will be used as part of the business of the gas distributor.

Natural gas distributors are also subject to *the Assessment Act* (Ontario). Currently the City receives tax revenue from Enbridge, based on pipeline assessment. In 2024, the City received \$812,000 in property taxes.

The depreciated book value of the City of Kingston's gas distribution infrastructure is approximately \$50 million dollars and the natural gas utility returns are approximately \$2 million per year to the City's Municipal Capital Reserve Fund.

### **Contacts:**

Lanie Hurdle, Chief Administrative Officer, 613-546-4291 extension 1231

### **Other Staff Consulted:**

Alan McLeod, Deputy City Solicitor

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Jenna Morley, Partner, Loopstra Nixon LLP

David Fell, President & CEO, Utilities Kingston

Randy Murphy, Chief Financial Officer, Utilities Kingston

Jeff Walker, Manager, Taxation and Revenue

**Exhibits Attached:**

Exhibit A – Draft By-law Enbridge Franchise Agreement

Exhibit B – OEB Order - Kingston Pittsburgh Township, 2003

Exhibit C – OEB Order - Kingston Township Franchise Agreement, 2005

Exhibit D – CPCN Township of Pittsburgh (March 28, 1956)

Exhibit E – CPCN Kingston Township (March 28, 1956)

Exhibit F – Gas Franchise Handbook

**A By-Law to authorize The Corporation of the City of Kingston to authorize a Franchise Agreement between The Corporation of the City of Kingston (the “Corporation”) and Enbridge Gas Inc.**

**Passed:** XXX, 2025

**Whereas** the Council of The Corporation of the City of Kingston deems it expedient to enter into the attached franchise agreement (the "Franchise Agreement") with Enbridge Gas Inc.;

**And whereas** the Ontario Energy Board by its Order issued pursuant to the Municipal Franchises Act on the day of , 2025 has approved the terms and conditions upon which and the period for which the franchise provided in the Franchise Agreement is proposed to be granted, and has declared and directed that the assent of the municipal electors in respect of this By-Law is not necessary;

**Therefore be it resolved that** the Council of the Corporation of the City of Kingston hereby enacts as follows:

1. That the Franchise Agreement between The Corporation of the City of Kingston and Enbridge Gas Inc., for the designated geographic area in the existing Certificates of Public Convenience and Necessity, attached hereto and forming part of this by-law, is hereby authorized and the franchise provided for therein is hereby granted.
2. That the Mayor and City Clerk are hereby authorized and instructed on behalf of The Corporation of the City of Kingston to enter into and execute under its corporate seal and deliver the Franchise Agreement, which is hereby incorporated into and forming part of this By-Law.
3. This By-Law shall come into force and take effect on the date of its passing.

Given First and Second Readings , 2025

Given Third Reading and Passed , 2025

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**Janet Jaynes**  
**City Clerk**

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**Bryan Paterson**  
**Mayor**

## 2000 Model Franchise Agreement

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THIS AGREEMENT effective this            day of            , 20

BETWEEN:

**THE CORPORATION OF THE CITY OF KINGSTON**

hereinafter called the "Corporation"

- and -

**ENBRIDGE GAS INC.**

hereinafter called the "Gas Company"

WHEREAS the Gas Company desires to distribute, store and transmit gas in the Municipality upon the terms and conditions of this Agreement;

AND WHEREAS by by-law passed by the Council of the Corporation (the "By-law"), the duly authorized officers have been authorized and directed to execute this Agreement on behalf of the Corporation;

THEREFORE, the Corporation and the Gas Company agree as follows:

### Part I - Definitions

**1. In this Agreement**

- (a) "decommissioned" and "decommissions" when used in connection with parts of the gas system, mean any parts of the gas system taken out of active use and purged in accordance with the applicable CSA standards and in no way affects the use of the term 'abandoned' pipeline for the purposes of the *Assessment Act*;
- (b) "Engineer/Road Superintendent" means the most senior individual employed by the Corporation with responsibilities for highways within the Municipality or the person designated by such senior employee or such other person as may from time to time be designated by the Council of the Corporation;

- (c) "gas" means natural gas, manufactured gas, synthetic natural gas, liquefied petroleum gas or propane-air gas, or a mixture of any of them, but does not include a liquefied petroleum gas that is distributed by means other than a pipeline;
- (d) "gas system" means such mains, plants, pipes, conduits, services, valves, regulators, curb boxes, stations, drips or such other equipment as the Gas Company may require or deem desirable for the distribution, storage and transmission of gas in or through the Municipality;
- (e) "highway" means all common and public highways and shall include any bridge, viaduct or structure forming part of a highway, and any public square, road allowance or walkway and shall include not only the travelled portion of such highway, but also ditches, driveways, sidewalks, and sodded areas forming part of the road allowance now or at any time during the term hereof under the jurisdiction of the Corporation;
- (f) "Model Franchise Agreement" means the form of agreement which the Ontario Energy Board uses as a standard when considering applications under the *Municipal Franchises Act*. The Model Franchise Agreement may be changed from time to time by the Ontario Energy Board;
- (g) "Municipality" means the territorial limits of the Corporation on the date when this Agreement takes effect, and any territory which may thereafter be brought within the jurisdiction of the Corporation;
- (h) "Plan" means the plan described in Paragraph 5 of this Agreement required to be filed by the Gas Company with the Engineer/Road Superintendent prior to commencement of work on the gas system; and
- (i) whenever the singular, masculine or feminine is used in this Agreement, it shall be considered as if the plural, feminine or masculine has been used where the context of the Agreement so requires.

## Part II - Rights Granted

### 2. To provide gas service

The consent of the Corporation is hereby given and granted to the Gas Company to distribute, store and transmit gas in and through the Municipality to the Corporation and to the inhabitants of the Municipality.

### 3. To Use Highways

Subject to the terms and conditions of this Agreement the consent of the Corporation is hereby given and granted to the Gas Company to enter upon all highways now or at any time hereafter under the jurisdiction of the Corporation and to lay, construct, maintain, replace, remove, operate and repair a gas system for the distribution, storage and transmission of gas in and through the Municipality.

### 4. Duration of Agreement and Renewal Procedures

(a) If the Corporation has not previously received gas distribution services, the rights hereby given and granted shall be for a term of 20 years from the date of final passing of the By-law.

or

(b) If the Corporation has previously received gas distribution services, the rights hereby given and granted shall be for a term of 20 years from the date of final passing of the By-law provided that, if during the 20 year term of this Agreement, the Model Franchise Agreement is changed, then on the 7<sup>th</sup> anniversary and on the 14<sup>th</sup> anniversary of the date of the passing of the By-law, this Agreement shall be deemed to be amended to incorporate any changes in the Model Franchise Agreement in effect on such anniversary dates. Such deemed amendments shall not apply to alter the 20 year term.

(c) At any time within two years prior to the expiration of this Agreement, either party may give notice to the other that it desires to enter into negotiations for a renewed franchise upon such terms and conditions as may be agreed upon. Until such renewal has been settled, the terms and conditions of this Agreement shall continue, notwithstanding the expiration of this Agreement. This shall not preclude either party from applying to the Ontario Energy Board for a renewal of the Agreement pursuant to section 10 of the *Municipal Franchises Act*.

### Part III – Conditions

#### 5. Approval of Construction

- (a) The Gas Company shall not undertake any excavation, opening or work which will disturb or interfere with the surface of the travelled portion of any highway unless a permit therefor has first been obtained from the Engineer/Road Superintendent and all work done by the Gas Company shall be to his satisfaction.
- (b) Prior to the commencement of work on the gas system, or any extensions or changes to it (except service laterals which do not interfere with municipal works in the highway), the Gas Company shall file with the Engineer/Road Superintendent a Plan, satisfactory to the Engineer/Road Superintendent, drawn to scale and of sufficient detail considering the complexity of the specific locations involved, showing the highways in which it proposes to lay its gas system and the particular parts thereof it proposes to occupy.
- (c) The Plan filed by the Gas Company shall include geodetic information for a particular location:
  - (i) where circumstances are complex, in order to facilitate known projects, including projects which are reasonably anticipated by the Engineer/Road Superintendent, or
  - (ii) when requested, where the Corporation has geodetic information for its own services and all others at the same location.
- (d) The Engineer/Road Superintendent may require sections of the gas system to be laid at greater depth than required by the latest CSA standard for gas pipeline systems to facilitate known projects or to correct known highway deficiencies.
- (e) Prior to the commencement of work on the gas system, the Engineer/Road Superintendent must approve the location of the work as shown on the Plan filed by the Gas Company, the timing of the work and any terms and conditions relating to the installation of the work.
- (f) In addition to the requirements of this Agreement, if the Gas Company proposes to affix any part of the gas system to a bridge, viaduct or other structure, if the Engineer/Road Superintendent approves this proposal, he may require the Gas Company to comply with special conditions or to enter into a separate agreement as a condition of the approval of this part of the construction of the gas system.

- (g) Where the gas system may affect a municipal drain, the Gas Company shall also file a copy of the Plan with the Corporation's Drainage Superintendent for purposes of the *Drainage Act*, or such other person designated by the Corporation as responsible for the drain.
- (h) The Gas Company shall not deviate from the approved location for any part of the gas system unless the prior approval of the Engineer/Road Superintendent to do so is received.
- (i) The Engineer/Road Superintendent's approval, where required throughout this Paragraph, shall not be unreasonably withheld.
- (j) The approval of the Engineer/Road Superintendent is not a representation or warranty as to the state of repair of the highway or the suitability of the highway for the gas system.

## 6. **As Built Drawings**

The Gas Company shall, within six months of completing the installation of any part of the gas system, provide two copies of "as built" drawings to the Engineer/Road Superintendent. These drawings must be sufficient to accurately establish the location, depth (measurement between the top of the gas system and the ground surface at the time of installation) and distance of the gas system. The "as built" drawings shall be of the same quality as the Plan and, if the approved pre-construction plan included elevations that were geodetically referenced, the "as built" drawings shall similarly include elevations that are geodetically referenced. Upon the request of the Engineer/Road Superintendent, the Gas Company shall provide one copy of the drawings in an electronic format and one copy as a hard copy drawing.

## 7. **Emergencies**

In the event of an emergency involving the gas system, the Gas Company shall proceed with the work required to deal with the emergency, and in any instance where prior approval of the Engineer/Road Superintendent is normally required for the work, the Gas Company shall use its best efforts to immediately notify the Engineer/Road Superintendent of the location and nature of the emergency and the work being done and, if it deems appropriate, notify the police force, fire or other emergency services having jurisdiction. The Gas Company shall provide the Engineer/Road Superintendent with at least one 24 hour emergency contact for the Gas Company and shall ensure the contacts are current.

**8. Restoration**

The Gas Company shall well and sufficiently restore, to the reasonable satisfaction of the Engineer/Road Superintendent, all highways, municipal works or improvements which it may excavate or interfere with in the course of laying, constructing, repairing or removing its gas system, and shall make good any settling or subsidence thereafter caused by such excavation or interference. If the Gas Company fails at any time to do any work required by this Paragraph within a reasonable period of time, the Corporation may do or cause such work to be done and the Gas Company shall, on demand, pay the Corporation's reasonably incurred costs, as certified by the Engineer/Road Superintendent.

**9. Indemnification**

The Gas Company shall, at all times, indemnify and save harmless the Corporation from and against all claims, including costs related thereto, for all damages or injuries including death to any person or persons and for damage to any property, arising out of the Gas Company operating, constructing, and maintaining its gas system in the Municipality, or utilizing its gas system for the carriage of gas owned by others. Provided that the Gas Company shall not be required to indemnify or save harmless the Corporation from and against claims, including costs related thereto, which it may incur by reason of damages or injuries including death to any person or persons and for damage to any property, resulting from the negligence or wrongful act of the Corporation, its servants, agents or employees.

**10. Insurance**

- (a) The Gas Company shall maintain Comprehensive General Liability Insurance in sufficient amount and description as shall protect the Gas Company and the Corporation from claims for which the Gas Company is obliged to indemnify the Corporation under Paragraph 9. The insurance policy shall identify the Corporation as an additional named insured, but only with respect to the operation of the named insured (the Gas Company). The insurance policy shall not lapse or be cancelled without sixty (60) days' prior written notice to the Corporation by the Gas Company.
- (b) The issuance of an insurance policy as provided in this Paragraph shall not be construed as relieving the Gas Company of liability not covered by such insurance or in excess of the policy limits of such insurance.
- (c) Upon request by the Corporation, the Gas Company shall confirm that premiums for such insurance have been paid and that such insurance is in full force and effect.

## 11. Alternative Easement

The Corporation agrees, in the event of the proposed sale or closing of any highway or any part of a highway where there is a gas line in existence, to give the Gas Company reasonable notice of such proposed sale or closing and, if it is feasible, to provide the Gas Company with easements over that part of the highway proposed to be sold or closed sufficient to allow the Gas Company to preserve any part of the gas system in its then existing location. In the event that such easements cannot be provided, the Corporation and the Gas Company shall share the cost of relocating or altering the gas system to facilitate continuity of gas service, as provided for in Paragraph 12 of this Agreement.

## 12. Pipeline Relocation

- (a) If in the course of constructing, reconstructing, changing, altering or improving any highway or any municipal works, the Corporation deems that it is necessary to take up, remove or change the location of any part of the gas system, the Gas Company shall, upon notice to do so, remove and/or relocate within a reasonable period of time such part of the gas system to a location approved by the Engineer/Road Superintendent.
- (b) Where any part of the gas system relocated in accordance with this Paragraph is located on a bridge, viaduct or structure, the Gas Company shall alter or relocate that part of the gas system at its sole expense.
- (c) Where any part of the gas system relocated in accordance with this Paragraph is located other than on a bridge, viaduct or structure, the costs of relocation shall be shared between the Corporation and the Gas Company on the basis of the total relocation costs, excluding the value of any upgrading of the gas system, and deducting any contribution paid to the Gas Company by others in respect to such relocation; and for these purposes, the total relocation costs shall be the aggregate of the following:
  - (i) the amount paid to Gas Company employees up to and including field supervisors for the hours worked on the project plus the current cost of fringe benefits for these employees,
  - (ii) the amount paid for rental equipment while in use on the project and an amount, charged at the unit rate, for Gas Company equipment while in use on the project,
  - (iii) the amount paid by the Gas Company to contractors for work related to the project,

- (iv) the cost to the Gas Company for materials used in connection with the project, and
  - (v) a reasonable amount for project engineering and project administrative costs which shall be 22.5% of the aggregate of the amounts determined in items (i), (ii), (iii) and (iv) above.
- (d) The total relocation costs as calculated above shall be paid 35% by the Corporation and 65% by the Gas Company, except where the part of the gas system required to be moved is located in an unassumed road or in an unopened road allowance and the Corporation has not approved its location, in which case the Gas Company shall pay 100% of the relocation costs.

#### **Part IV - Procedural And Other Matters**

##### **13. Municipal By-laws of General Application**

The Agreement is subject to the provisions of all regulating statutes and all municipal by-laws of general application, except by-laws which have the effect of amending this Agreement.

##### **14. Giving Notice**

Notices may be delivered to, sent by facsimile or mailed by prepaid registered post to the Gas Company at its head office or to the authorized officers of the Corporation at its municipal offices, as the case may be.

##### **15. Disposition of Gas System**

- (a) If the Gas Company decommissions part of its gas system affixed to a bridge, viaduct or structure, the Gas Company shall, at its sole expense, remove the part of its gas system affixed to the bridge, viaduct or structure.
- (b) If the Gas Company decommissions any other part of its gas system, it shall have the right, but is not required, to remove that part of its gas system. It may exercise its right to remove the decommissioned parts of its gas system by giving notice of its intention to do so by filing a Plan as required by Paragraph 5 of this Agreement for approval by the Engineer/Road Superintendent. If the Gas Company does not remove the part of the gas system it has decommissioned and the Corporation requires the removal of all or any part of the decommissioned gas system for the purpose of altering or improving a highway or in order to facilitate the construction of utility or other works in any highway, the Corporation may remove and dispose of so much of the decommissioned gas system as the Corporation may require for such purposes and neither party shall have recourse against the other for any loss, cost, expense or damage occasioned thereby. If the Gas Company has

not removed the part of the gas system it has decommissioned and the Corporation requires the removal of all or any part of the decommissioned gas system for the purpose of altering or improving a highway or in order to facilitate the construction of utility or other works in a highway, the Gas Company may elect to relocate the decommissioned gas system and in that event Paragraph 12 applies to the cost of relocation.

#### 16. **Use of Decommissioned Gas System**

- (a) The Gas Company shall provide promptly to the Corporation, to the extent such information is known:
  - (i) the names and addresses of all third parties who use decommissioned parts of the gas system for purposes other than the transmission or distribution of gas; and
  - (ii) the location of all proposed and existing decommissioned parts of the gas system used for purposes other than the transmission or distribution of gas.
- (b) The Gas Company may allow a third party to use a decommissioned part of the gas system for purposes other than the transmission or distribution of gas and may charge a fee for that third party use, provided
  - (i) the third party has entered into a municipal access agreement with the Corporation; and
  - (ii) the Gas Company does not charge a fee for the third party's right of access to the highways.
- (c) Decommissioned parts of the gas system used for purposes other than the transmission or distribution of gas are not subject to the provisions of this Agreement. For decommissioned parts of the gas system used for purposes other than the transmission and distribution of gas, issues such as relocation costs will be governed by the relevant municipal access agreement.

#### 17. **Franchise Handbook**

The Parties acknowledge that operating decisions sometimes require a greater level of detail than that which is appropriately included in this Agreement. The Parties agree to look for guidance on such matters to the Franchise Handbook prepared by the Association of Municipalities of Ontario and the gas utility companies, as may be amended from time to time.

18. **Other Conditions**

None.

19. **Agreement Binding Parties**

This Agreement shall extend to, benefit and bind the parties thereto, their successors and assigns, respectively.

IN WITNESS WHEREOF the parties have executed this Agreement effective from the date written above.

**THE CORPORATION OF THE CITY OF KINGSTON**

Per: \_\_\_\_\_  
Bryan Paterson, Mayor

Per: \_\_\_\_\_  
Janet Jaynes, City Clerk

**ENBRIDGE GAS INC.**

Per: \_\_\_\_\_  
Mark Kitchen, Director, Regulatory Affairs

Per: \_\_\_\_\_  
Jean-Benoit Trahan, Director, Eastern Region Operations & Gazifère

Ontario Energy  
Board

Commission de l'Énergie  
de l'Ontario



E.B.A. 825

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

**AND IN THE MATTER OF** an application by Centra Gas (Ontario) Inc., (now Union Gas Limited) for a franchise renewal within the City of Kingston to serve the area of the former Township of Pittsburgh.

### ORDER

Union Gas Limited ("Union"), formerly Centra Gas Ontario Inc., filed an application under sections 9 and 10 of the *Municipal Franchises Act* (the "Application") dated July 31, 1997 with the Ontario Energy Board (the "Board"), for approval of the terms and conditions and for renewal or extension of the term of the right to construct and operate works for the distribution and supply of gas in the former Township of Pittsburgh. The former Township of Pittsburgh is now part of the City of Kingston ("Kingston"). Union has a Certificate of Public Convenience and Necessity for the former Township of Pittsburgh (F.B.C. 59). Kingston intervened and opposed Union's application. The Board assigned this Application Board File No. E.B.A. 825.

A hearing of the Application was held commencing December 11, 1999. Written argument was submitted by the parties on January 21, 2000 with oral submissions completed on February 2, 2000. The Board issued its Decision with Reasons and Order on June 23, 2000 approving Union's Application. Paragraph 4.0.24 of the Decision stated "Once the 2000 Model Franchise Agreement has been approved and issued by the Board, the Board will issue an order renewing the right of Union to operate works for the distribution of gas in the geographic area of the City of Kingston that was formerly the Township of Pittsburgh

for the period and on the terms and conditions set out in the 2000 Model Franchise Agreement.”

Kingston appealed the Board’s Decision with Reasons and Order to the Divisional Court. Kingston’s appeal was dismissed by the Divisional Court. A subsequent appeal to the Court of Appeal was also dismissed as was a motion for leave to appeal to the Supreme Court of Canada. Since the appeal process is now complete, it is now necessary for the Board to issue its order in accordance with the Board’s Decision with Reasons dated June 23, 2000.

**THE BOARD THEREFORE ORDERS THAT:**

1. The right of Union Gas Limited to operate works for the distribution of gas in that portion of the City of Kingston previously known as the Township of Pittsburgh is renewed.
2. The renewal shall be for a period of 20 years from the date of this Order.
3. The renewal shall be upon the terms and conditions set out in Appendix A to this Order.

**ISSUED** at Toronto, July 22, 2003.

ONTARIO ENERGY BOARD



Peter H. O'Dell  
Assistant Board Secretary

**APPENDIX "A" TO  
BOARD ORDER  
E.B.A. 825  
DATED July 22, 2003**

## Franchise Agreement

THIS AGREEMENT effective as of this 22 day of July, 2003

BETWEEN:

**THE CORPORATION OF THE CITY OF KINGSTON**

hereinafter called the "Corporation"

- and -

**UNION GAS LIMITED**

hereinafter called the "Gas Company"

WHEREAS the Gas Company desires to distribute, store and transmit gas in the Municipality upon the terms and conditions of this Agreement;

AND WHEREAS the Ontario Energy Board has issued an order pursuant to s. 10(2) of the *Municipal Franchises Act* renewing the right of the Gas Company to operate works for the distribution of gas in the geographic area of the City of Kingston that was formerly the Township of Pittsburgh on the terms and conditions set out herein;

AND WHEREAS s. 10(5) of the *Municipal Franchises Act* provides that an order of the Ontario Energy Board made under section 10(2) of the *Municipal Franchises Act* renewing or extending the term of the right, shall be deemed to be a valid by-law of the municipality concerned assented to by the municipal electors for the purposes of the *Municipal Franchises Act* and of section 58 of the *Public Utilities Act*.

THEREFORE the right of the Gas Company to operate works for the distribution of gas in the geographic area of the City of Kingston that was formerly the Township of Pittsburgh is renewed for the period and on the terms and conditions as follows and the Corporation and the Gas Company are deemed to agree as follows:

### Part I - Definitions

#### 1. In this Agreement

- (a) "decommissioned" and "decommissions" when used in connection with parts of the gas system, mean any parts of the gas system taken out of active use and purged in accordance with the applicable CSA standards and in no way affects the use of the term 'abandoned' pipeline for the purposes of the *Assessment Act*;

- (b) "Engineer/Road Superintendent" means the most senior individual employed by the Corporation with responsibilities for highways within the Municipality or the person designated by such senior employee or such other person as may from time to time be designated by the Council of the Corporation;
- (c) "gas" means natural gas, manufactured gas, synthetic natural gas, liquefied petroleum gas or propane-air gas, or a mixture of any of them, but does not include a liquefied petroleum gas that is distributed by means other than a pipeline;
- (d) "gas system" means such mains, plants, pipes, conduits, services, valves, regulators, curb boxes, stations, drips or such other equipment as the Gas Company may require or deem desirable for the distribution, storage and transmission of gas in or through the Municipality;
- (e) "highway" means all common and public highways and shall include any bridge, viaduct or structure forming part of a highway, and any public square, road allowance or walkway and shall include not only the travelled portion of such highway, but also ditches, driveways, sidewalks, and sodded areas forming part of the road allowance now or at any time during the term hereof within the geographic area of the former Township of Pittsburgh and under the jurisdiction of the Corporation;
- (f) "Model Franchise Agreement" means the form of agreement which the Ontario Energy Board uses as a standard when considering applications under the *Municipal Franchises Act*. The Model Franchise Agreement may be changed from time to time by the Ontario Energy Board;
- (g) "Municipality" means the geographic area formerly known as the Township of Pittsburgh within the territorial limits of the Corporation on the date when this Agreement takes effect;
- (h) "Plan" means the plan described in Paragraph 5 of this Agreement required to be filed by the Gas Company with the Engineer/Road Superintendent prior to commencement of work on the gas system; and
- (i) whenever the singular, masculine or feminine is used in this Agreement, it shall be considered as if the plural, feminine or masculine has been used where the context of the Agreement so requires.

**Part II - Rights Granted**

**2. To provide gas service**

The consent of the Corporation is hereby given and granted to the Gas Company to distribute, store and transmit gas in and through the Municipality to the Corporation and to the inhabitants of the Municipality.

**3. To Use Highways**

Subject to the terms and conditions of this Agreement the consent of the Corporation is hereby given and granted to the Gas Company to enter upon all highways now or at any time hereafter under the jurisdiction of the Corporation and to lay, construct, maintain, replace, remove, operate and repair a gas system for the distribution, storage and transmission of gas in and through the Municipality.

**4. Duration of Agreement and Renewal Procedures**

- (a) The rights hereby given and granted shall be for a term of 20 years from the date the Ontario Energy Board's final Order approving the terms of this Agreement are issued (the "Effective Date"), provided that, if during the 20 year term of this Agreement, the Model Franchise Agreement is changed, then on the 7<sup>th</sup> anniversary and on the 14<sup>th</sup> anniversary of the Effective Date, this Agreement shall be deemed to be amended to incorporate any changes in the Model Franchise Agreement in effect on such anniversary dates. Such deemed amendments shall not apply to alter the 20 year term.
- (b) At any time within two years prior to the expiration of this Agreement, either party may give notice to the other that it desires to enter into negotiations for a renewed franchise upon such terms and conditions as may be agreed upon. Until such renewal has been settled, the terms and conditions of this Agreement shall continue, notwithstanding the expiration of this Agreement. This shall not preclude either party from applying to the Ontario Energy Board for a renewal of the Agreement pursuant to section 10 of the *Municipal Franchises Act*.

**Part III - Conditions**

**5. Approval of Construction**

- (a) The Gas Company shall not undertake any excavation, opening or work which will disturb or interfere with the surface of the travelled portion of any highway unless a permit therefore has first been obtained from the

Engineer/Road Superintendent and all work done by the Gas Company shall be to his satisfaction.

- (b) Prior to the commencement of work on the gas system, or any extensions or changes to it (except service laterals which do not interfere with municipal works in the highway), the Gas Company shall file with the Engineer/Road Superintendent a Plan, satisfactory to the Engineer/Road Superintendent, drawn to scale and of sufficient detail considering the complexity of the specific locations involved, showing the highways in which it proposes to lay its gas system and the particular parts thereof it proposes to occupy.
- (c) The Plan filed by the Gas Company shall include geodetic information for a particular location:
  - (i) where circumstances are complex, in order to facilitate known projects, including projects which are reasonably anticipated by the Engineer/Road Superintendent, or
  - (ii) when requested, where the Corporation has geodetic information for its own services and all others at the same location.
- (d) The Engineer/Road Superintendent may require sections of the gas system to be laid at greater depth than required by the latest CSA standard for gas pipeline systems to facilitate known projects or to correct known highway deficiencies.
- (e) Prior to the commencement of work on the gas system, the Engineer/Road Superintendent must approve the location of the work as shown on the Plan filed by the Gas Company, the timing of the work and any terms and conditions relating to the installation of the work.
- (f) In addition to the requirements of this Agreement, if the Gas Company proposes to affix any part of the gas system to a bridge, viaduct or other structure, if the Engineer/Road Superintendent approves this proposal, he may require the Gas Company to comply with special conditions or to enter into a separate agreement as a condition of the approval of this part of the construction of the gas system.
- (g) Where the gas system may affect a municipal drain, the Gas Company shall also file a copy of the Plan with the Corporation's Drainage Superintendent for purposes of the *Drainage Act*, or such other person designated by the Corporation as responsible for the drain.

- (h) The Gas Company shall not deviate from the approved location for any part of the gas system unless the prior approval of the Engineer/Road Superintendent to do so is received.
- (i) The Engineer/Road Superintendent's approval, where required throughout this Paragraph, shall not be unreasonably withheld.
- (j) The approval of the Engineer/Road Superintendent is not a representation or warranty as to the state of repair of the highway or the suitability of the highway for the gas system.

**6. As Built Drawings**

The Gas Company shall, within six months of completing the installation of any part of the gas system, provide two copies of "as built" drawings to the Engineer/Road Superintendent. These drawings must be sufficient to accurately establish the location, depth (measurement between the top of the gas system and the ground surface at the time of installation) and distance of the gas system. The "as built" drawings shall be of the same quality as the Plan and, if the approved pre-construction plan included elevations that were geodetically referenced, the "as built" drawings shall similarly include elevations that are geodetically referenced. Upon the request of the Engineer/Road Superintendent, the Gas Company shall provide one copy of the drawings in an electronic format and one copy as a hard copy drawing.

**7. Emergencies**

In the event of an emergency involving the gas system, the Gas Company shall proceed with the work required to deal with the emergency, and in any instance where prior approval of the Engineer/Road Superintendent is normally required for the work, the Gas Company shall use its best efforts to immediately notify the Engineer/Road Superintendent of the location and nature of the emergency and the work being done and, if it deems appropriate, notify the police force, fire or other emergency services having jurisdiction. The Gas Company shall provide the Engineer/Road Superintendent with at least one 24 hour emergency contact for the Gas Company and shall ensure the contacts are current.

**8. Restoration**

The Gas Company shall well and sufficiently restore, to the reasonable satisfaction of the Engineer/Road Superintendent, all highways, municipal works or improvements which it may excavate or interfere with in the course of laying, constructing, repairing or removing its gas system, and shall make good any settling or subsidence thereafter caused by such excavation or interference. If the Gas

Company fails at any time to do any work required by this Paragraph within a reasonable period of time, the Corporation may do or cause such work to be done and the Gas Company shall, on demand, pay the Corporation's reasonably incurred costs, as certified by the Engineer/Road Superintendent.

**9. Indemnification**

The Gas Company shall, at all times, indemnify and save harmless the Corporation from and against all claims, including costs related thereto, for all damages or injuries including death to any person or persons and for damage to any property, arising out of the Gas Company operating, constructing, and maintaining its gas system in the Municipality, or utilizing its gas system for the carriage of gas owned by others. Provided that the Gas Company shall not be required to indemnify or save harmless the Corporation from and against claims, including costs related thereto, which it may incur by reason of damages or injuries including death to any person or persons and for damage to any property, resulting from the negligence or wrongful act of the Corporation, its servants, agents or employees.

**10. Insurance**

- (a) The Gas Company shall maintain Comprehensive General Liability Insurance in sufficient amount and description as shall protect the Gas Company and the Corporation from claims for which the Gas Company is obliged to indemnify the Corporation under Paragraph 9. The insurance policy shall identify the Corporation as an additional named insured, but only with respect to the operation of the named insured (the Gas Company). The insurance policy shall not lapse or be cancelled without sixty (60) days' prior written notice to the Corporation by the Gas Company.
- (b) The issuance of an insurance policy as provided in this Paragraph shall not be construed as relieving the Gas Company of liability not covered by such insurance or in excess of the policy limits of such insurance.
- (c) Upon request by the Corporation, the Gas Company shall confirm that premiums for such insurance have been paid and that such insurance is in full force and effect.

**11. Alternative Easement**

The Corporation agrees, in the event of the proposed sale or closing of any highway or any part of a highway where there is a gas line in existence, to give the Gas Company reasonable notice of such proposed sale or closing and, if it is feasible, to provide the Gas Company with easements over that part of the highway proposed to be sold or closed sufficient to allow the Gas Company to preserve any part of the

gas system in its then existing location. In the event that such easements cannot be provided, the Corporation and the Gas Company shall share the cost of relocating or altering the gas system to facilitate continuity of gas service, as provided for in Paragraph 12 of this Agreement.

## 12. Pipeline Relocation

- (a) If in the course of constructing, reconstructing, changing, altering or improving any highway or any municipal works, the Corporation deems that it is necessary to take up, remove or change the location of any part of the gas system, the Gas Company shall, upon notice to do so, remove and/or relocate within a reasonable period of time such part of the gas system to a location approved by the Engineer/Road Superintendent.
- (b) Where any part of the gas system relocated in accordance with this Paragraph is located on a bridge, viaduct or structure, the Gas Company shall alter or relocate that part of the gas system at its sole expense.
- (c) Where any part of the gas system relocated in accordance with this Paragraph is located other than on a bridge, viaduct or structure, the costs of relocation shall be shared between the Corporation and the Gas Company on the basis of the total relocation costs, excluding the value of any upgrading of the gas system, and deducting any contribution paid to the Gas Company by others in respect to such relocation; and for these purposes, the total relocation costs shall be the aggregate of the following:
  - (i) the amount paid to Gas Company employees up to and including field supervisors for the hours worked on the project plus the current cost of fringe benefits for these employees,
  - (ii) the amount paid for rental equipment while in use on the project and an amount, charged at the unit rate, for Gas Company equipment while in use on the project,
  - (iii) the amount paid by the Gas Company to contractors for work related to the project,
  - (iv) the cost to the Gas Company for materials used in connection with the project, and

- (v) a reasonable amount for project engineering and project administrative costs which shall be 22.5% of the aggregate of the amounts determined in items (i), (ii), (iii) and (iv) above.
- (d) The total relocation costs as calculated above shall be paid 35% by the Corporation and 65% by the Gas Company, except where the part of the gas system required to be moved is located in an unassumed road or in an unopened road allowance and the Corporation has not approved its location, in which case the Gas Company shall pay 100% of the relocation costs.

#### **Part IV - Procedural And Other Matters**

##### **13. Municipal By-laws of General Application**

The Agreement is subject to the provisions of all regulating statutes and all municipal by-laws of general application, except by-laws which have the effect of amending this Agreement.

##### **14. Giving Notice**

Notices may be delivered to, sent by facsimile or mailed by prepaid registered post to the Gas Company at its head office or to the authorized officers of the Corporation at its municipal offices, as the case may be.

##### **15. Disposition of Gas System**

- (a) If the Gas Company decommissions part of its gas system affixed to a bridge, viaduct or structure, the Gas Company shall, at its sole expense, remove the part of its gas system affixed to the bridge, viaduct or structure.
- (b) If the Gas Company decommissions any other part of its gas system, it shall have the right, but is not required, to remove that part of its gas system. It may exercise its right to remove the decommissioned parts of its gas system by giving notice of its intention to do so by filing a Plan as required by Paragraph 5 of this Agreement for approval by the Engineer/Road Superintendent. If the Gas Company does not remove the part of the gas system it has decommissioned and the Corporation requires the removal of all or any part of the decommissioned gas system for the purpose of altering or improving a highway or in order to facilitate the construction of utility or other works in any highway, the Corporation may remove and dispose of so much of the decommissioned gas system as the Corporation may require for

such purposes and neither party shall have recourse against the other for any loss, cost, expense or damage occasioned thereby. If the Gas Company has not removed the part of the gas system it has decommissioned and the Corporation requires the removal of all or any part of the decommissioned gas system for the purpose of altering or improving a highway or in order to facilitate the construction of utility or other works in a highway, the Gas Company may elect to relocate the decommissioned gas system and in that event Paragraph 12 applies to the cost of relocation.

**16. Use of Decommissioned Gas System**

- (a) The Gas Company shall provide promptly to the Corporation, to the extent such information is known:
  - (i) the names and addresses of all third parties who use decommissioned parts of the gas system for purposes other than the transmission or distribution of gas; and
  - (ii) the location of all proposed and existing decommissioned parts of the gas system used for purposes other than the transmission or distribution of gas.
- (b) The Gas Company may allow a third party to use a decommissioned part of the gas system for purposes other than the transmission or distribution of gas and may charge a fee for that third party use, provided
  - (i) the third party has entered into a municipal access agreement with the Corporation; and
  - (ii) the Gas Company does not charge a fee for the third party's right of access to the highways.
- (c) Decommissioned parts of the gas system used for purposes other than the transmission or distribution of gas are not subject to the provisions of this Agreement. For decommissioned parts of the gas system used for purposes other than the transmission and distribution of gas, issues such as relocation costs will be governed by the relevant municipal access agreement.

**17. Franchise Handbook**

The Parties acknowledge that operating decisions sometimes require a greater level of detail than that which is appropriately included in this Agreement. The Parties agree to look for guidance on such matters to the Franchise Handbook prepared by the Association of Municipalities of Ontario and the gas utility companies, as may be amended from time to time.

**18. Other Conditions**

None.

**19. Agreement Binding Parties**

This Agreement shall extend to, benefit and bind the parties thereto, their successors and assigns, respectively.

Ontario Energy  
Board

Commission de l'Énergie  
de l'Ontario



RP-2003-0244  
EB-2003-0304

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

**AND IN THE MATTER OF** an Application by Union Gas Limited under section 10 of the *Municipal Franchises Act*, R.S.O. 1990, c. M.55 for an order renewing the right to operate works for distribution and transmission of gas and to extend or add to the works in the area of the City of Kingston formerly known as the Township of Kingston;

**AND IN THE MATTER OF** an Application by Union Gas Limited for an order dispensing with the assent of the municipal electors of the City of Kingston regarding the by-law.

**By delegation, before:** Mark C. Garner

### **DECISION AND ORDER**

Union Gas Limited (Union) has filed an application dated December 2, 2003 with the Ontario Energy Board under s. 10 of the *Municipal Franchises Act*, R.S.O. 1990, c. M.55 (MFA) for an order of the Board approving the terms and conditions upon which and the period for which the Corporation of the City of Kingston is, by by-law to grant to Union the right to operate works for the distribution and transmission of gas, and the right to extend and add to the works in the area of the City of Kingston formerly known as the Township of Kingston.

The Board has assigned file number RP-2003-0244/EB-2003-0304 to the application (Application).

Union holds a Certificate of Public Convenience and Necessity for the Township of Kingston (F.B.C. 62). Union and the Corporation of the Township of Kingston entered into a franchise agreement dated January 17, 1989 (E.B.A. 501) which has been extended and expires on January 17, 2005.

Effective January 1, 1998, the former City of Kingston, the Township of Pittsburgh and the Township of Kingston became the new City of Kingston.

Union has indicated its desire to renew the franchise agreement, however, there is no agreement between Union and the Corporation of the City of Kingston on the terms and conditions of a franchise agreement applicable to that area of the City of Kingston that was formerly the Township of Kingston.

The franchise agreement proposed by Union is in the form of the 2000 Model Franchise Agreement approved by the Board as a standard form of franchise agreement.

The nearest neighbouring gas distributor is Utilities Kingston. It owns and operates a gas distribution system that serves the area in the City of Kingston as it existed prior to 1998. Utilities Kingston does not have a Certificate of Public Convenience and Necessity for the former Township of Kingston.

The Council of the Corporation of the City of Kingston has not passed a resolution supporting a by-law for the franchise agreement with Union.

On April 19, 2004 the Board received a letter from Union requesting that the Board, in the absence of a resolution from the City, commence the proceeding for Union's application to renew its franchise agreement for the area in question.

On September 1, 2004 the Board issued Notice of Application. Union served and published the Notice of Application in accordance with the Board's Letter of Direction.

On September 22, 2004, the Board received a notice of intervention from the City of Kingston (the City). The City, in its notice of intervention, informed the Board that the Council of the City of Kingston passed a motion, dated June 15, 2004, not to enter into the franchise agreement which is the subject of this application.

Procedural Order No. 1 was issued on November 24, 2004. No submissions objecting to the written hearing were filed with the Board. The City and the Applicant filed written submissions in accordance with the Procedural Order No. 1.

#### Position of the Parties

The Intervenor's position is that the Board does not have the power to issue orders under s. 10 of the MFA.

The City further maintained that the approval of the Application will represent "the infringement on the rights of all municipalities with respect to the delivery of public utility". The Intervenor also discussed the purpose of the consolidation of Ontario municipalities upon the direction of the province which was, in its opinion, to improve the efficiency and effectiveness of service delivery in Ontario's municipalities. The City further submitted that Board's approval of the Union's application would not improve the efficiency and effectiveness of service delivery and therefore would not be consistent with the direction of the province regarding the purpose of municipal amalgamation.

Union's submission focused on the issue of jurisdiction of the Board under s. 10 of the MFA. Its position is that the Board has jurisdiction to renew the franchise agreement pursuant to s. 10 of the MFA. Union supported its position by pre-filed evidence. Union referred to the fact that, in the year 2000, the Board granted its approval under s. 10 of the MFA to Union's application to renew a franchise agreement for the area of former Township of Pittsburgh in the amalgamated City of Kingston in almost exactly the same circumstances. Union also pointed that the Board's decision was affirmed by both the Divisional Court and the Court of Appeal for Ontario.

Union also maintained that public convenience and necessity requires that Union's existing franchise for the area of the former Township of Kingston be renewed, because Union is the only party with an existing infrastructure and that no other party, including the Kingston Utilities, can provide the service.

#### Board's Findings

I find that the Board does have a jurisdiction under s. 10 of the MFA. In particular, the Board has the jurisdiction to determine public convenience and necessity under s. 10 of the MFA.

This finding is consistent with its Decision with Reasons EBA 825, dated June 23, 2000, in the matter of application by Union for a franchise renewal within the City of Kingston to serve the area of the former Township of Pittsburgh. I also note that the EBA 825 decision was appealed by the City, on the same grounds that are stated in the City's submissions in the current Application. The EBA 825 decision was upheld by both the Divisional Court and the Court of Appeal for Ontario.

Accordingly, I find that public convenience and necessity require that the Board renew Union's right to operate works for the distribution and transmission of gas

Ontario Energy Board

and the right to extend and add works in the area of the City of Kingston formerly known as the Township of Kingston. I also find that the provisions of the 2000 Model Franchise Agreement constitute acceptable terms and conditions on which Union's rights are renewed.

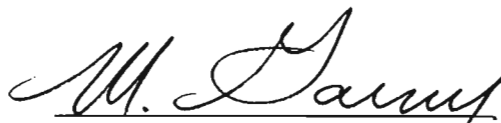
Based on the information provided in the application, granting the application is in the public interest.

**IT IS ORDERED THAT:**

1. Union Gas Limited's right to operate works for the distribution and transmission of gas in the area of the City of Kingston formerly known as the Township of Kingston and its right to extend or add to these works is renewed for a term of 20 years from the date of the issuance of this order in accordance with the terms and conditions other than section 4 set out in the document titled "2000 Model Franchise Agreement" attached as Appendix A.

**DATED** at Toronto January, 14, 2005.

ONTARIO ENERGY BOARD

A handwritten signature in cursive script, appearing to read "M. Garner", is written over a horizontal line.

Mark Garner, Managing Director  
Market Operations

**APPENDIX A  
TO BOARD DECISION AND ORDER  
RP-2003-0244  
EB-2003-0304**

**DATED: January 14, 2005**



- (b) "Engineer/Road Superintendent" means the most senior individual employed by the Corporation with responsibilities for highways within the Municipality or the person designated by such senior employee or such other person as may from time to time be designated by the Council of the Corporation;
- (c) "gas" means natural gas, manufactured gas, synthetic natural gas, liquefied petroleum gas or propane-air gas, or a mixture of any of them, but does not include a liquefied petroleum gas that is distributed by means other than a pipeline;
- (d) "gas system" means such mains, plants, pipes, conduits, services, valves, regulators, curb boxes, stations, drips or such other equipment as the Gas Company may require or deem desirable for the distribution, storage and transmission of gas in or through the Municipality;
- (e) "highway" means all common and public highways and shall include any bridge, viaduct or structure forming part of a highway, and any public square, road allowance or walkway and shall include not only the travelled portion of such highway, but also ditches, driveways, sidewalks, and sodded areas forming part of the road allowance now or at any time during the term hereof within the geographic area of the former Township of Kingston under the jurisdiction of the Corporation;
- (f) "Model Franchise Agreement" means the form of agreement which the Ontario Energy Board uses as a standard when considering applications under the *Municipal Franchises Act*. The Model Franchise Agreement may be changed from time to time by the Ontario Energy Board;
- (g) "Municipality" means the geographic area formerly known as the Township of Kingston within the territorial limits of the Corporation on the date when this Agreement takes effect;
- (h) "Plan" means the plan described in Paragraph 5 of this Agreement required to be filed by the Gas Company with the Engineer/Road Superintendent prior to commencement of work on the gas system; and
- (i) whenever the singular, masculine or feminine is used in this Agreement, it shall be considered as if the plural, feminine or masculine has been used where the context of the Agreement so requires.

**Part II - Rights Granted**

**2. To provide gas service**

The consent of the Corporation is hereby given and granted to the Gas Company to distribute, store and transmit gas in and through the Municipality and to the inhabitants of the Municipality.

**3. To Use Highways**

Subject to the terms and conditions of this Agreement the consent of the Corporation is hereby given and granted to the Gas Company to enter upon all highways now or at any time hereafter under the jurisdiction of the Corporation and to lay, construct, maintain, replace, remove, operate and repair a gas system for the distribution, storage and transmission of gas in and through the Municipality.

**4. Duration of Agreement and Renewal Procedures**

(a) If the Corporation has not previously received gas distribution services, the rights hereby given and granted shall be for a term of 20 years from the date of final passing of the By-Law.

or

(b) If the Corporation has previously received gas distribution services, the rights hereby given and granted shall be for a term of 20 years from the date of final passing of the By-law provided that, if during the 20 year term of this Agreement, the Model Franchise Agreement is changed, then on the 7<sup>th</sup> anniversary and on the 14<sup>th</sup> anniversary of the date of the passing of the By-law this Agreement shall be deemed to be amended to incorporate any changes in the Model Franchise Agreement in effect on such anniversary dates. Such deemed amendments shall not apply to alter the 20 year term.

(c) At any time within two years prior to the expiration of this Agreement, either party may give notice to the other that it desires to enter into negotiations for a renewed franchise upon such terms and conditions as may be agreed upon. Until such renewal has been settled, the terms and conditions of this Agreement shall continue, notwithstanding the expiration of this Agreement. This shall not preclude either party from applying to the Ontario Energy Board for a renewal of the Agreement pursuant to section 10 of the *Municipal Franchises Act*.

**Part III – Conditions**

**5. Approval of Construction**

- (a) The Gas Company shall not undertake any excavation, opening or work which will disturb or interfere with the surface of the travelled portion of any highway unless a permit therefore has first been obtained from the Engineer/Road Superintendent and all work done by the Gas Company shall be to his satisfaction.
- (b) Prior to the commencement of work on the gas system, or any extensions or changes to it (except service laterals which do not interfere with municipal works in the highway), the Gas Company shall file with the Engineer/Road Superintendent a Plan, satisfactory to the Engineer/Road Superintendent, drawn to scale and of sufficient detail considering the complexity of the specific locations involved, showing the highways in which it proposes to lay its gas system and the particular parts thereof it proposes to occupy.
- (c) The Plan filed by the Gas Company shall include geodetic information for a particular location:
  - (i) where circumstances are complex, in order to facilitate known projects, including projects which are reasonably anticipated by the Engineer/Road Superintendent, or
  - (ii) when requested, where the Corporation has geodetic information for its own services and all others at the same location.
- (d) The Engineer/Road Superintendent may require sections of the gas system to be laid at greater depth than required by the latest CSA standard for gas pipeline systems to facilitate known projects or to correct known highway deficiencies.
- (e) Prior to the commencement of work on the gas system, the Engineer/Road Superintendent must approve the location of the work as shown on the Plan filed by the Gas Company, the timing of the work and any terms and conditions relating to the installation of the work.
- (f) In addition to the requirements of this Agreement, if the Gas Company proposes to affix any part of the gas system to a bridge, viaduct or other structure, if the Engineer/Road Superintendent approves this proposal, he may require the Gas Company to comply with special conditions or to enter into a separate agreement as a condition of the approval of this part of the construction of the gas system.

- (g) Where the gas system may affect a municipal drain, the Gas Company shall also file a copy of the Plan with the Corporation's Drainage Superintendent for purposes of the *Drainage Act*, or such other person designated by the Corporation as responsible for the drain.
- (h) The Gas Company shall not deviate from the approved location for any part of the gas system unless the prior approval of the Engineer/Road Superintendent to do so is received.
- (i) The Engineer/Road Superintendent's approval, where required throughout this Paragraph, shall not be unreasonably withheld.
- (j) The approval of the Engineer/Road Superintendent is not a representation or warranty as to the state of repair of the highway or the suitability of the highway for the gas system.

**6. As Built Drawings**

The Gas Company shall, within six months of completing the installation of any part of the gas system, provide two copies of "as built" drawings to the Engineer/Road Superintendent. These drawings must be sufficient to accurately establish the location, depth (measurement between the top of the gas system and the ground surface at the time of installation) and distance of the gas system. The "as built" drawings shall be of the same quality as the Plan and, if the approved pre-construction plan included elevations that were geodetically referenced, the "as built" drawings shall similarly include elevations that are geodetically referenced. Upon the request of the Engineer/Road Superintendent, the Gas Company shall provide one copy of the drawings in an electronic format and one copy as a hard copy drawing.

**7. Emergencies**

In the event of an emergency involving the gas system, the Gas Company shall proceed with the work required to deal with the emergency, and in any instance where prior approval of the Engineer/Road Superintendent is normally required for the work, the Gas Company shall use its best efforts to immediately notify the Engineer/Road Superintendent of the location and nature of the emergency and the work being done and, if it deems appropriate, notify the police force, fire or other emergency services having jurisdiction. The Gas Company shall provide the Engineer/Road Superintendent with at least one 24 hour emergency contact for the Gas Company and shall ensure the contacts are current.

8. **Restoration**

The Gas Company shall well and sufficiently restore, to the reasonable satisfaction of the Engineer/Road Superintendent, all highways, municipal works or improvements which it may excavate or interfere with in the course of laying, constructing, repairing or removing its gas system, and shall make good any settling or subsidence thereafter caused by such excavation or interference. If the Gas Company fails at any time to do any work required by this Paragraph within a reasonable period of time, the Corporation may do or cause such work to be done and the Gas Company shall, on demand, pay the Corporation's reasonably incurred costs, as certified by the Engineer/Road Superintendent.

9. **Indemnification**

The Gas Company shall, at all times, indemnify and save harmless the Corporation from and against all claims, including costs related thereto, for all damages or injuries including death to any person or persons and for damage to any property, arising out of the Gas Company operating, constructing, and maintaining its gas system in the Municipality, or utilizing its gas system for the carriage of gas owned by others. Provided that the Gas Company shall not be required to indemnify or save harmless the Corporation from and against claims, including costs related thereto, which it may incur by reason of damages or injuries including death to any person or persons and for damage to any property, resulting from the negligence or wrongful act of the Corporation, its servants, agents or employees.

10. **Insurance**

- (a) The Gas Company shall maintain Comprehensive General Liability Insurance in sufficient amount and description as shall protect the Gas Company and the Corporation from claims for which the Gas Company is obliged to indemnify the Corporation under Paragraph 9. The insurance policy shall identify the Corporation as an additional named insured, but only with respect to the operation of the named insured (the Gas Company). The insurance policy shall not lapse or be cancelled without sixty (60) days' prior written notice to the Corporation by the Gas Company.
- (b) The issuance of an insurance policy as provided in this Paragraph shall not be construed as relieving the Gas Company of liability not covered by such insurance or in excess of the policy limits of such insurance.
- (c) Upon request by the Corporation, the Gas Company shall confirm that premiums for such insurance have been paid and that such insurance is in full force and effect.

**11. Alternative Easement**

The Corporation agrees, in the event of the proposed sale or closing of any highway or any part of a highway where there is a gas line in existence, to give the Gas Company reasonable notice of such proposed sale or closing and, if it is feasible, to provide the Gas Company with easements over that part of the highway proposed to be sold or closed sufficient to allow the Gas Company to preserve any part of the gas system in its then existing location. In the event that such easements cannot be provided, the Corporation and the Gas Company shall share the cost of relocating or altering the gas system to facilitate continuity of gas service, as provided for in Paragraph 12 of this Agreement.

**12. Pipeline Relocation**

- (a) If in the course of constructing, reconstructing, changing, altering or improving any highway or any municipal works, the Corporation deems that it is necessary to take up, remove or change the location of any part of the gas system, the Gas Company shall, upon notice to do so, remove and/or relocate within a reasonable period of time such part of the gas system to a location approved by the Engineer/Road Superintendent.
- (b) Where any part of the gas system relocated in accordance with this Paragraph is located on a bridge, viaduct or structure, the Gas Company shall alter or relocate that part of the gas system at its sole expense.
- (c) Where any part of the gas system relocated in accordance with this Paragraph is located other than on a bridge, viaduct or structure, the costs of relocation shall be shared between the Corporation and the Gas Company on the basis of the total relocation costs, excluding the value of any upgrading of the gas system, and deducting any contribution paid to the Gas Company by others in respect to such relocation; and for these purposes, the total relocation costs shall be the aggregate of the following:
  - (i) the amount paid to Gas Company employees up to and including field supervisors for the hours worked on the project plus the current cost of fringe benefits for these employees,
  - (ii) the amount paid for rental equipment while in use on the project and an amount, charged at the unit rate, for Gas Company equipment while in use on the project,
  - (iii) the amount paid by the Gas Company to contractors for work related to the project,

- (iv) the cost to the Gas Company for materials used in connection with the project, and
  - (v) a reasonable amount for project engineering and project administrative costs which shall be 22.5% of the aggregate of the amounts determined in items (i), (ii), (iii) and (iv) above.
- (d) The total relocation costs as calculated above shall be paid 35% by the Corporation and 65% by the Gas Company, except where the part of the gas system required to be moved is located in an unassumed road or in an unopened road allowance and the Corporation has not approved its location, in which case the Gas Company shall pay 100% of the relocation costs.

#### Part IV - Procedural And Other Matters

##### 13. Municipal By-laws of General Application

The Agreement is subject to the provisions of all regulating statutes and all municipal by-laws of general application, except by-laws which have the effect of amending this Agreement.

##### 14. Giving Notice

Notices may be delivered to, sent by facsimile or mailed by prepaid registered post to the Gas Company at its head office or to the authorized officers of the Corporation at its municipal offices, as the case may be.

##### 15. Disposition of Gas System

- (a) If the Gas Company decommissions part of its gas system affixed to a bridge, viaduct or structure, the Gas Company shall, at its sole expense, remove the part of its gas system affixed to the bridge, viaduct or structure.
- (b) If the Gas Company decommissions any other part of its gas system, it shall have the right, but is not required, to remove that part of its gas system. It may exercise its right to remove the decommissioned parts of its gas system by giving notice of its intention to do so by filing a Plan as required by Paragraph 5 of this Agreement for approval by the Engineer/Road Superintendent. If the Gas Company does not remove the part of the gas system it has decommissioned and the Corporation requires the removal of all or any part of the decommissioned gas system for the purpose of altering or improving a highway or in order to facilitate the construction of utility or other works in any highway, the Corporation may remove and dispose of so much of the decommissioned gas system as the Corporation may require for such purposes and neither party shall have recourse against the other for any

loss, cost, expense or damage occasioned thereby. If the Gas Company has not removed the part of the gas system it has decommissioned and the Corporation requires the removal of all or any part of the decommissioned gas system for the purpose of altering or improving a highway or in order to facilitate the construction of utility or other works in a highway, the Gas Company may elect to relocate the decommissioned gas system and in that event Paragraph 12 applies to the cost of relocation.

16. **Use of Decommissioned Gas System**

- (a) The Gas Company shall provide promptly to the Corporation, to the extent such information is known:
  - (i) the names and addresses of all third parties who use decommissioned parts of the gas system for purposes other than the transmission or distribution of gas; and
  - (ii) the location of all proposed and existing decommissioned parts of the gas system used for purposes other than the transmission or distribution of gas.
- (b) The Gas Company may allow a third party to use a decommissioned part of the gas system for purposes other than the transmission or distribution of gas and may charge a fee for that third party use, provided
  - (i) the third party has entered into a municipal access agreement with the Corporation; and
  - (ii) the Gas Company does not charge a fee for the third party's right of access to the highways.
- (c) Decommissioned parts of the gas system used for purposes other than the transmission or distribution of gas are not subject to the provisions of this Agreement. For decommissioned parts of the gas system used for purposes other than the transmission and distribution of gas, issues such as relocation costs will be governed by the relevant municipal access agreement.

17. **Franchise Handbook**

The Parties acknowledge that operating decisions sometimes require a greater level of detail than that which is appropriately included in this Agreement. The Parties agree to look for guidance on such matters to the Franchise Handbook prepared by the Association of Municipalities of Ontario and the gas utility companies, as may be amended from time to time.

18. **Other Conditions**

None.

19. **Agreement Binding Parties**

This Agreement shall extend to, benefit and bind the parties thereto, their successors and assigns, respectively.

IN WITNESS WHEREOF the parties have executed this Agreement effective from the date written above.

**THE CORPORATION OF THE  
CITY OF KINGSTON**

Per:

\_\_\_\_\_  
Isabel Turner, Mayor

Per:

\_\_\_\_\_  
Carolyn Downs, Clerk

**UNION GAS LIMITED**

Per:

\_\_\_\_\_  
Christine Jackson, Assistant Secretary

F.B.C. No. 59.

ONTARIO FUEL BOARD

IN THE MATTER OF The Municipal Franchises Act, R.S.O. 1950, Chapter 249, and amendments thereto;

AND IN THE MATTER OF an application by Lakeland Natural Gas Limited for a certificate of public convenience and necessity to construct works and to supply gas to the inhabitants of the Township of Pittsburgh.

B E F O R E:

A. R. CROZIER, Chairman	}	Thursday, the 23rd day
D. M. TREADGOLD, Q.C., Commissioner		of February, 1956.
W. R. HOWARD, Commissioner		

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

UPON THE APPLICATION OF Lakeland Natural Gas Limited (hereinafter referred to as the "Applicant") for a certificate pursuant to the provisions of The Municipal Franchises Act, R.S.O. 1950, Chapter 249, Section 8 and amendments thereto, and at a public hearing of such application by the Board at the City of Toronto on the 23rd day of February, 1956, after due notice of such hearing had been given as directed by the Board, in the presence of counsel for the Applicant, and upon consideration of the evidence and exhibits produced at the hearing and upon hearing what was alleged by counsel aforesaid:

1. THIS BOARD DOTH ORDER that a Certificate of Public Convenience and Necessity be and the same is hereby granted to Lakeland Natural Gas Limited for the supply of natural gas to the inhabitants of the Township of Pittsburgh, and for the construction of the works necessary therefor.

2. AND THIS BOARD DOTH FURTHER ORDER that the costs of this hearing are fixed at \$ 20.<sup>00</sup> and shall be paid

forthwith by the Applicant to the Board.

DATED at Toronto this 28<sup>th</sup> day of March, 1956.

ONTARIO FUEL BOARD

*[Signature]*  
*[Signature]*  
*W. R. Howard*

ONTARIO FUEL BOARD

IN THE MATTER OF The Municipal Franchises Act, R.S.O. 1950, Chapter 249, and amendments thereto;

AND IN THE MATTER OF an application by Lakeland Natural Gas Limited for a certificate of public convenience and necessity to construct works and to supply gas to the inhabitants of the Township of Kingston.

B E F O R E:

A. R. CROZIER, Chairman	}	THURSDAY, THE 23RD DAY
D. M. TREADGOLD, Q.C., Commissioner		OF FEBRUARY, 1956.
W. R. HOWARD, Commissioner		

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

UPON THE APPLICATION OF Lakeland Natural Gas Limited (hereinafter referred to as the "Applicant") for a certificate pursuant to the provisions of The Municipal Franchises Act, R.S.O. 1950, Chapter 249, Section 8 and amendments thereto, and at a public hearing of such application by the Board at the City of Toronto on the 23rd day of February, 1956, after due notice of such hearing had been given as directed by the Board, in the presence of counsel for the Applicant, and upon consideration of the evidence and exhibits produced at the hearing and upon hearing what was alleged by counsel aforesaid:

1. THIS BOARD DOTH ORDER that a Certificate of Public Convenience and Necessity be and the same is hereby granted to Lakeland Natural Gas Limited for the supply of natural gas to the inhabitants of the Township of Kingston, and for the construction of the works necessary therefor.

2. AND THIS BOARD DOTH FURTHER ORDER that the costs of this hearing are fixed at \$ 20.<sup>00</sup> and shall be paid

forthwith by the Applicant to the Board.

DATED at Toronto this 28<sup>th</sup> day of March, 1956.

ONTARIO FUEL BOARD

A. J. Jones

W. J. Macpherson

W. R. Howard

# **GAS FRANCHISE HANDBOOK**

developed by

**A JOINT COMMITTEE  
OF GAS COMPANY**

and

**MUNICIPAL SECTOR  
REPRESENTATIVES**



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## NATURAL GAS FRANCHISE HANDBOOK

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Provincial legislation requires that there be a Franchise Agreement between the Municipal Corporation and the Gas Company serving that Municipality. In April 2001, the Ontario Energy Board issued the revised 2000 Model Franchise Agreement to serve as a model for such agreement.

A joint committee comprised of Gas Company and Municipal Sector Representatives has developed this revised Franchise Handbook as a supplement to the 2000 Model Franchise Agreement. This Franchise Handbook is meant to serve as a consolidated guide to deal with operating issues that sometimes require a greater level of detail than appears in the Franchise Agreement itself.

Although your current Franchise Agreement may not be the 2000 Model Franchise Agreement, the contents of this Franchise Handbook describe how the Gas Company intends to carry out its activities within the Municipality and is intended to represent good operating practice. Where there is any conflict between your Franchise Agreement and this Handbook, it is the Franchise Agreement that takes precedence. The Gas Company has staff available to expand on the matters covered in this Franchise Handbook and answer any questions that might arise.

The Board acknowledges the efforts of the participants in producing the revised Franchise Handbook.

*The following are subjects which are more complex and not easily summarized in a Handbook. Reference should be made to Sections 11, 13 and 16 of the 2000 Model Franchise Agreement.*

- *Alternative Easements*
- *Municipal By-laws of General Application*
- *Use of Decommissioned Gas System*

*Full copies of the 2000 Model Agreement may be obtained at [www.oeb.gov.on.ca](http://www.oeb.gov.on.ca) or contact your local Gas Company.*



Floyd Laughren  
Chair – Ontario Energy Board  
May 2002

## THE FRANCHISE HANDBOOK WORK TEAM



Wilfred Teper (left)  
*Ontario Energy  
Board*

Bob Foulds (right)  
*Municipal Sector  
Representative*



David Shantz  
*Municipal Sector  
Representative*



David Sword (left)  
*Union Gas Representative*

Nick Thalassinos (right)  
*Enbridge Consumers Gas  
Representative*

Pat Vanini  
(no photo available)  
*Municipal Sector  
Representative*

Neil McKay (left)  
*Ontario Energy Board*

Hugh Thomas (right)  
*Union Gas Representative*



## DEFINITION OF HIGHWAY

For purposes of the Franchise Agreement ‘highway’ means all common and public highways and shall include any bridge, viaduct or structure forming part of a highway, and any public square, road allowance or walkway and shall include not only the travelled portion of such highway, but also ditches, driveways, sidewalks, and sodded areas forming part of the road allowance.

## RIGHT TO USE HIGHWAYS

Subject to the terms and conditions of the Franchise Agreement the consent of the Municipality is granted to the Gas Company to enter upon all highways now or at any time hereafter under the jurisdiction of the Municipal Corporation and to lay, construct, maintain, replace, remove, operate and repair a gas system for the distribution, storage and transmission of gas in and through the Municipality.

The Gas Company attempts to minimize inconvenience and disruption caused by pipeline construction and maintenance activities through pre-construction planning, on the job supervision, discussions with municipal representatives and/or property owners or occupants, and timely restoration of property.

## COMPENSATION FOR DAMAGES

The Gas Company will be responsible for, and will repair promptly or pay compensation for, any damage it causes during surveying or construction or that may result from inspection, maintenance work or emergency repairs.

This includes damage to crops, fences, tile drains, culverts, trees and access routes. Well qualified, independent appraisers and consultants are often used to assess fair compensation for damages. Any crop loss or damage will be measured, appraised and compensated for as soon as possible after cleanup has been satisfactorily completed.

## PLANNING FOR CONSTRUCTION

To facilitate proper system expansion and maintenance, the Gas Company will actively participate in each Municipality's Public Utilities Coordinating Committee (PUCC). One of the mandates of the PUCC will be to develop an approved highway cross-section that outlines a standard pipeline location within the highway for each utility's plant.

The Gas Company will adhere to the standard line location wherever feasible, and will acquire approval from the Engineer/Road Superintendent prior to deviating from the standard location. In addition the PUCC will act as a forum to minimize construction conflicts between the road authority and various utilities including cable companies and municipal water and sewer works.



*Working on the proposed projects plans to be submitted to the Engineers or Road Superintendent of the Municipality.*



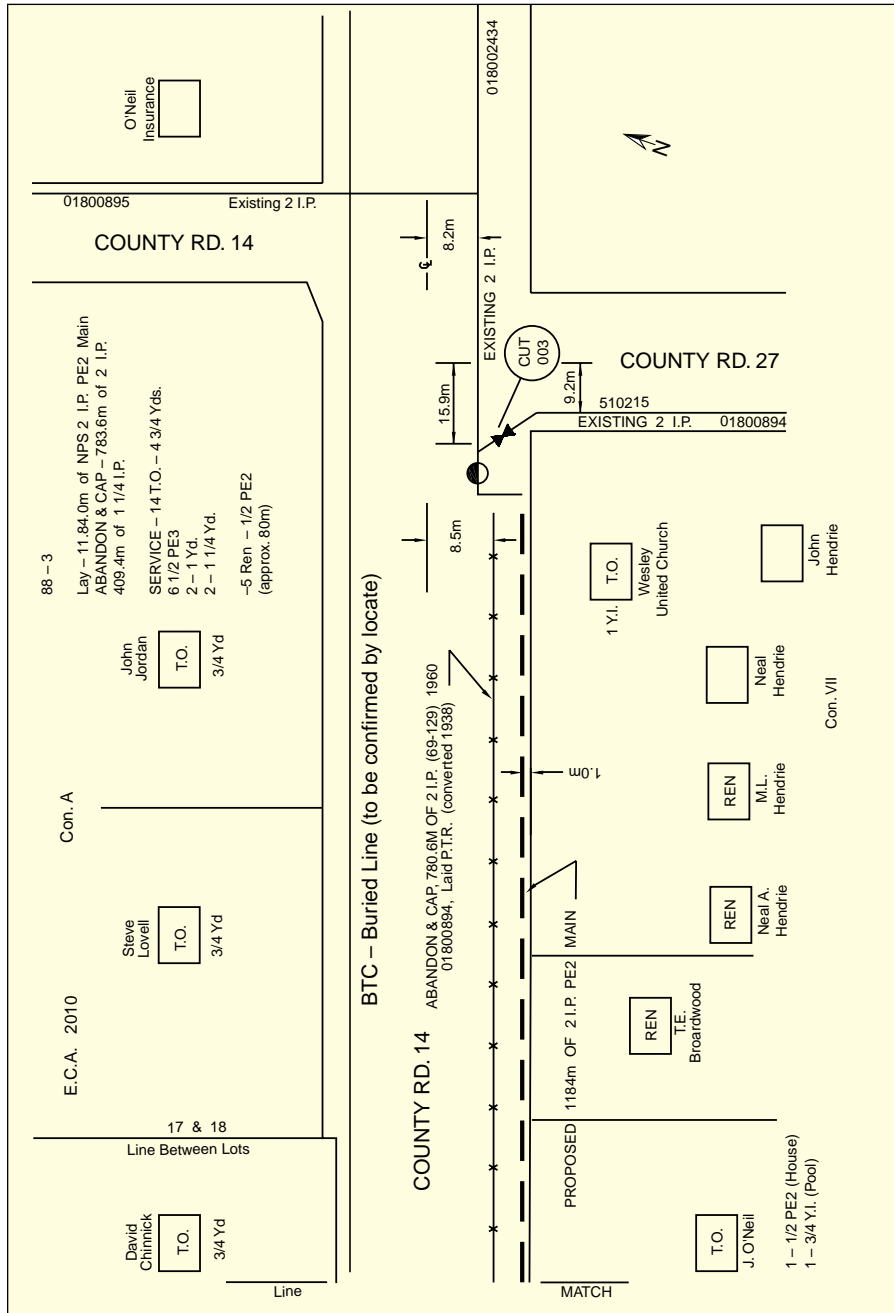
*Engineers check plans to minimize construction conflicts.*

## PLANS AND DRAWINGS

Before installing any gas main on a highway, the Gas Company will submit a plan/drawing of the proposed work (similar to the Sample Plan, Figure 1 on page 6) to the Engineer/Road Superintendent for approval. Such approval will not be unreasonably withheld from the Gas Company. This drawing will show the proposed location and alignment of the works to be installed. Route selection involves judgement as well as technical expertise. The Gas Company is very willing to meet with the Engineer/Road Superintendent to arrive at a line location that is acceptable to both parties.

Where circumstances are complex, and in order to facilitate known or reasonably anticipated projects, or when requested because the Municipality has geodetic information for its own services and all others at the same location, the plan filed by the Gas Company shall include geodetic information.

Sample Plan  
Figure 1

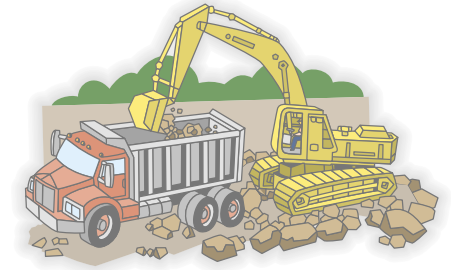


**WORK ON THE HIGHWAY**

The Gas Company shall not undertake any work that will disturb or interfere with the surface of the travelled portion of the highway unless a permit has been first obtained from the Engineer/Road Superintendent and all work done shall be to his/her satisfaction.

In all other circumstances, except Emergency Situations referred to on page 13, the Gas Company, before entering on any highway within the Municipality shall adhere to the requirements of the Municipality in terms of:

- (1) 'giving notice',
- (2) providing an explanation satisfactory to the Engineer/Road Superintendent, and
- (3) where required, obtaining the appropriate approval(s).



**Pavement Cuts**

All crossings of the travelled portion of the road will be constructed by boring, jacking or similar methods. In circumstances where these methods are not feasible, approval to open cut will be requested from the Engineer/Road Superintendent prior to construction. Such approval will not be withheld unreasonably. All pavement cuts will be repaired at the expense of the Gas Company.

The Municipality may specify a reasonable degree of compaction and the types of backfill necessary to properly restore the excavation and sub-base of the road. Also, the Engineer/Road Superintendent may specify the type, thickness and method of pavement cut restoration, both temporary and permanent. The Gas Company shall make good any settling or subsidence thereafter caused by such excavation. Where there is an agreement to do so, the Municipality may carry out the repairs and invoice the Gas Company.

**WORK ON THE HIGHWAY**  
*(continued)*

**Driveways & Sidewalks**

Every effort will be made to bore under paved driveways and sidewalks in an attempt to minimize any inconvenience to the local residents. Any damage that occurs as a result of installation of the gas system will be promptly repaired by the Gas Company to a condition as good or better than it was prior to the construction work and the responsibility for such repairs will be borne by the Gas Company.

**Minimizing Inconvenience**

The Gas Company will make every effort to minimize any inconvenience during construction. Residents of the local area will be notified prior to construction, and driveways will be obstructed as little as possible. The Municipality may provide guidance and procedures with regard to temporary traffic lane closing, barricading of excavations, detours and partial road closures. Every construction crew is staffed with people who are capable of answering inquiries brought forward by local residents.



*Workers  
move quickly  
to minimize  
any  
inconvenience  
during  
construction.*

**LOCATION AND DEPTH OF PLANT**

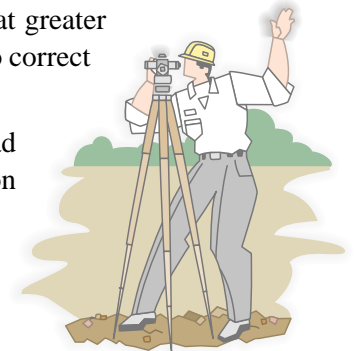
The location of the gas system must be approved by the Engineer/Road Superintendent and his approval shall not be unreasonably withheld. The Gas Company has standard locations for gas lines in specific types of rural or urban environments.

While the locations of utilities will vary in certain municipalities, the diagrams, (Figure 2 on page 10 and Figure 3 on page 11) are typical cross sections for utility locations in a 26-metre road allowance.

The depth of plant must be in accordance with the latest CSA standard and applicable Ontario Regulations at the time of construction. Depth as defined in the latest CSA standards and applicable Ontario Regulations should not be solely relied upon to locate the gas system as the depth of cover may have changed since installation. (see Figure 2, page 10 and Figure 3, page 11).

The Engineer/Road Superintendent may require sections of the gas system to be laid at greater depth to facilitate known projects or to correct known highway deficiencies.

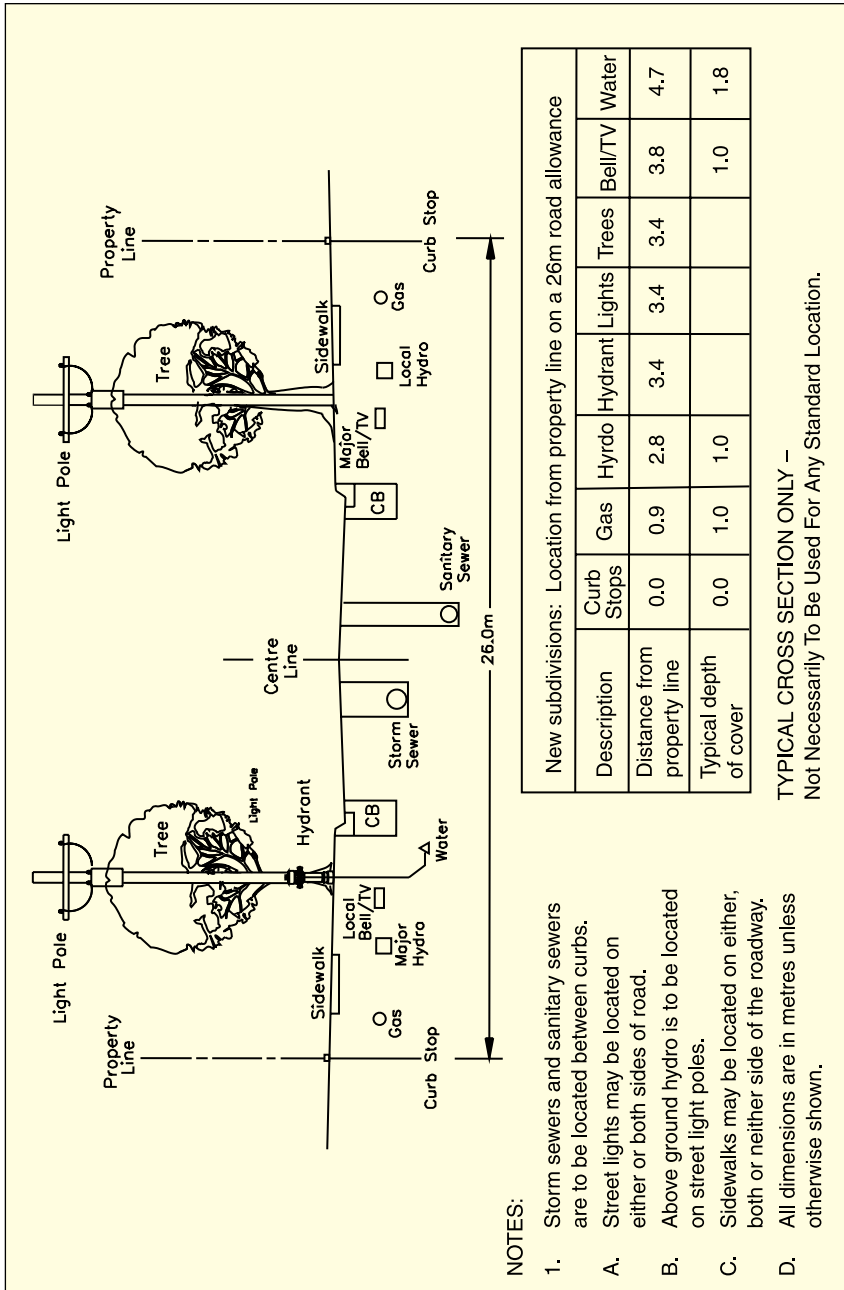
The approval of the Engineer/Road Superintendent is not a representation or warranty as to the state of repair of the highway or the suitability of the highway for the gas system.



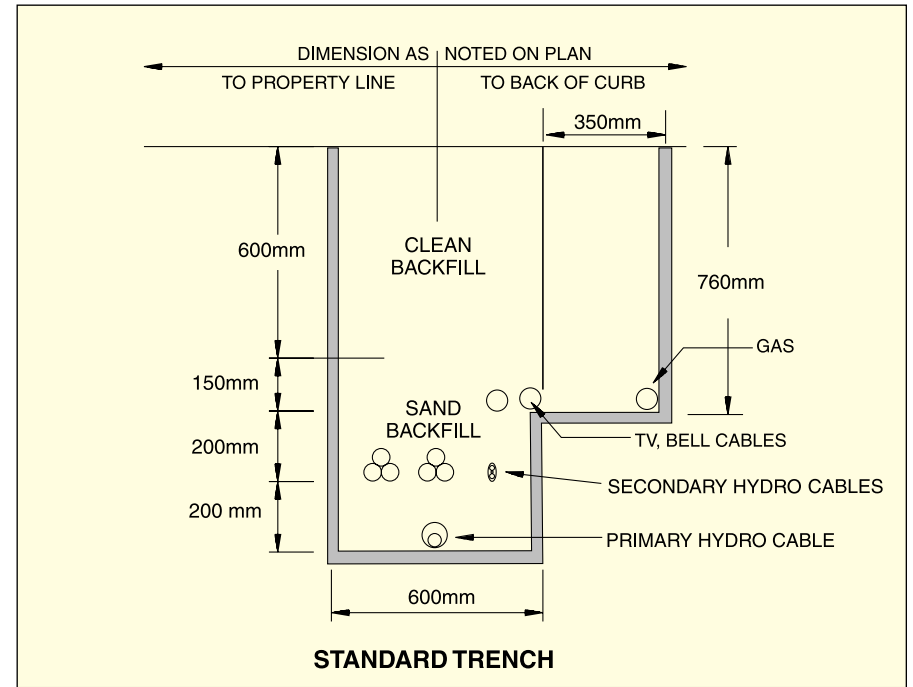
**EASEMENTS**

Occasionally the Gas Company will install pipelines that need to cross private property. In these cases, easements will be obtained from the landowner prior to construction.

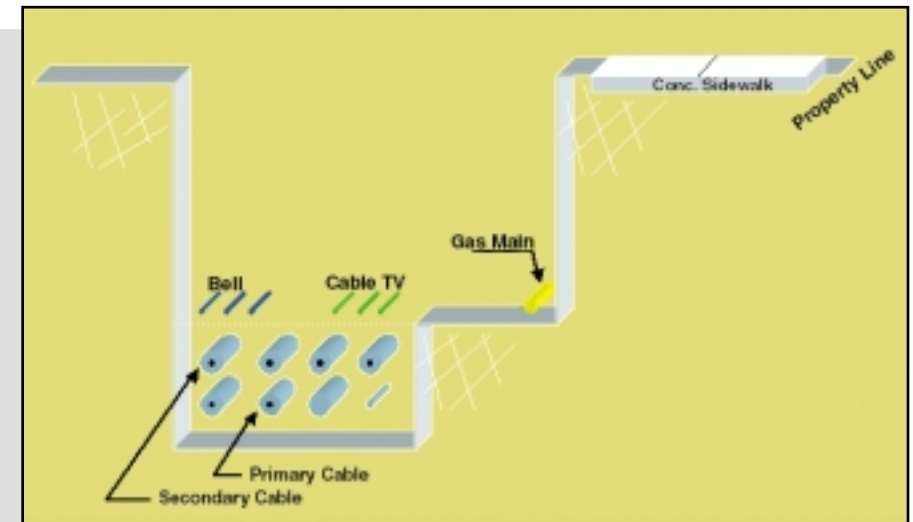
Typical Road Cross Section  
Figure 2



Typical Joint Trench Profile  
Figure 3



Standard Joint Trench Sketch



## DITCHES AND DRAINS

Before installing any plant in the area of a drain or ditch, a copy of the plan for the installation as filed with the Engineer/Road Superintendent will be filed with the Drainage Superintendent. Wherever possible, gas lines will be installed completely under or completely over the ditch so as to not interfere with the carrying capacity of the ditch. Subsurface drains and surface drains will be restored to their original condition after construction. Ditch banks and stream banks will be restored to promote quick vegetation and minimize the possibility of erosion.



*Attaching  
gas line on  
a bridge.*

## BRIDGES, VIADUCTS OR OTHER STRUCTURES

If the Engineer/Road Superintendent approves of a proposal (he/she may disapprove) to affix any part of the gas system to a bridge, viaduct or other structure, he/she may require special conditions or a separate agreement as a condition of approval.

## EMERGENCY SITUATIONS

In the event of an emergency involving the gas system, the Gas Company will notify the local authorities, as deemed appropriate, (e.g. Engineer/Road Superintendent, police, fire, ambulance or emergency measures organizations having jurisdiction) immediately upon becoming aware of the severity of the situation. The Gas Company will make every reasonable effort to control the situation as quickly as possible and will consider claims for extraordinary expenses incurred by the Municipality during the emergency. The Gas Company will provide the Engineer/Road Superintendent with at least one 24-hour emergency contact for the Gas Company and shall ensure the contacts are current.

## POST-CONSTRUCTION CLEANUP

The cleanup and restoration operations will be performed under the supervision of the Gas Company staff. These staff will be available to discuss with local residents and Municipal representatives any problem that may arise during construction. Gas Company staff have full authority to require that the construction crews and/or all the contractors carry out their work in accordance with the agreements reached with each landowner and in accordance with all relative directives and guidelines of the Ontario Energy Board or the Engineer/Road Superintendent.

## PLANTS, TREES, VEGETATION, GRASS OR SOD

Damage caused by the Gas Company to plants, trees, vegetation, grass or sod will be minimized during the construction period with the Gas Company bearing full responsibility for any damages. The Gas Company will not cut, trim or interfere with any trees on the road allowance without the approval of the Engineer/Road Superintendent. Restoration will be completed as promptly as possible, allowing for supply and weather constraints.

## PIPELINE RELOCATION

The location of the gas system may conflict with the Municipality's plans to reconstruct or alter roads or Municipal utilities. In these instances, the Gas Company will work with the Municipality to relocate its gas system, with the cost of the relocation to be shared as outlined in the Franchise Agreement. In most circumstances the cost of relocating the gas system will be shared 65% Gas Company and 35% Municipality. In the event your Municipality has a pre-1987 agreement or special legislation, the cost sharing may vary. The Engineer/Road Superintendent must approve the proposed new location of the gas system. The Gas Company will then relocate its gas system within a reasonable period of time.

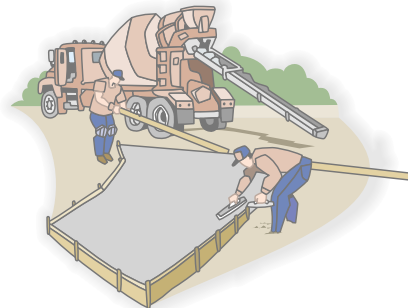
If any part of the gas system is located on a bridge, viaduct or other structure, the Gas Company will alter or relocate that part of the gas system at its sole expense.

In the event the gas system is located in an unassumed road or in an unopened road allowance and the Municipality has not approved its location, the Gas Company will pay 100% of the relocation costs.

## ENCASEMENT OF THE GAS SYSTEM

The Municipality will not knowingly build or permit anyone to build without the Gas Company's permission any structure over or encasing any part of the gas system within the highway. Structures would include, but not be limited to, buildings, culverts, vaults, catch basins, utility poles and anchors, and retaining walls.

The construction of roadways, sidewalks and driveways over the gas system would not constitute encasement.

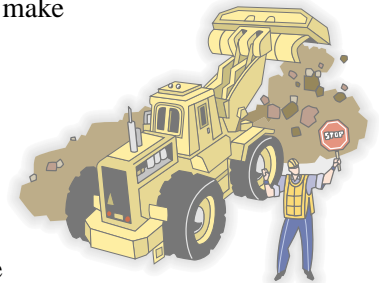


## MAINTENANCE OF THE GAS SYSTEM

The Gas Company accepts full responsibility for the construction and installation, maintenance and repair of the gas system. All work done on the gas system must meet all requirements as described by the appropriate government codes. The Ontario Energy Board, the TSSA and the Canadian Standards Association require that all standards and regulations relating to both the protection of the environment and public safety are carried out. If requested, Gas Company representatives will provide copies of the relevant codes/documents. The system is maintained by trained personnel who are available at all times to keep the gas system in good operating condition.

## WORK IN THE VICINITY OF THE GAS SYSTEM

Prior to working in the vicinity of gas systems, Municipalities and their agents should make themselves familiar with any required procedures and restrictions. This is necessary to ensure the safety of the general public, the safety of workers carrying out excavation, prevention of damage to gas lines and property, and to ensure the work activities take place in a compatible fashion.



Areas to become familiar with include, but are not limited to:

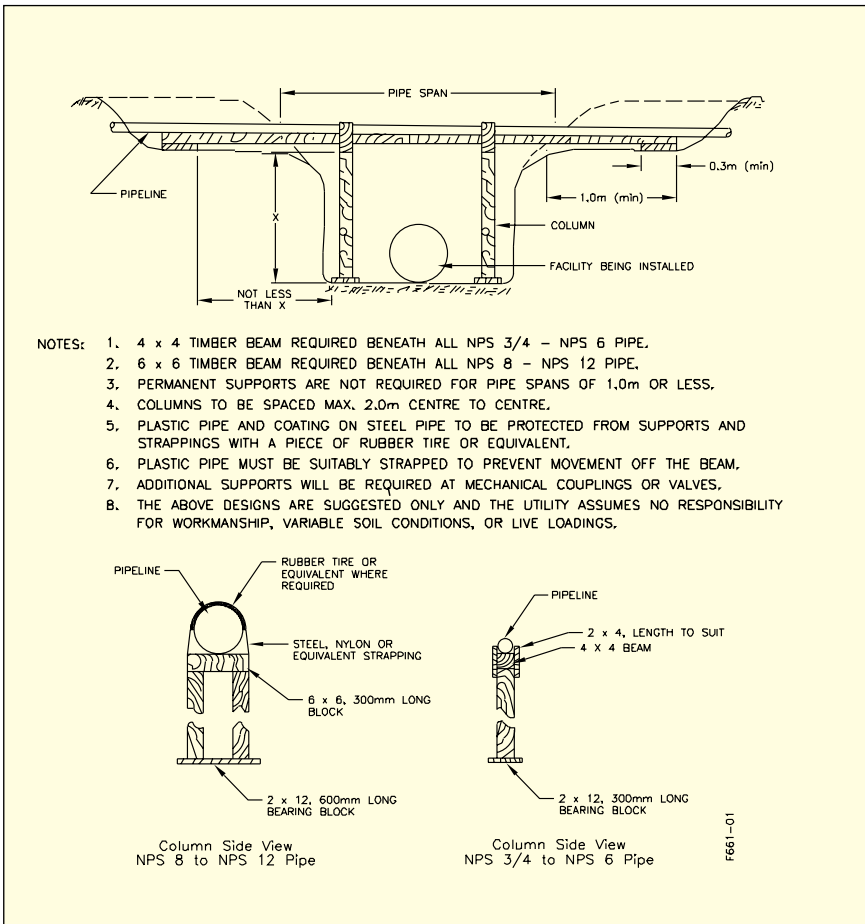
- *Guidelines for excavations in the vicinity of gas systems*
- *Requirements when blasting in the vicinity of gas systems*
- *Requirements when pile driving in the vicinity of gas systems*
- *Requirements when exposing gas systems*

For more information on these areas, please contact your local Gas Company.

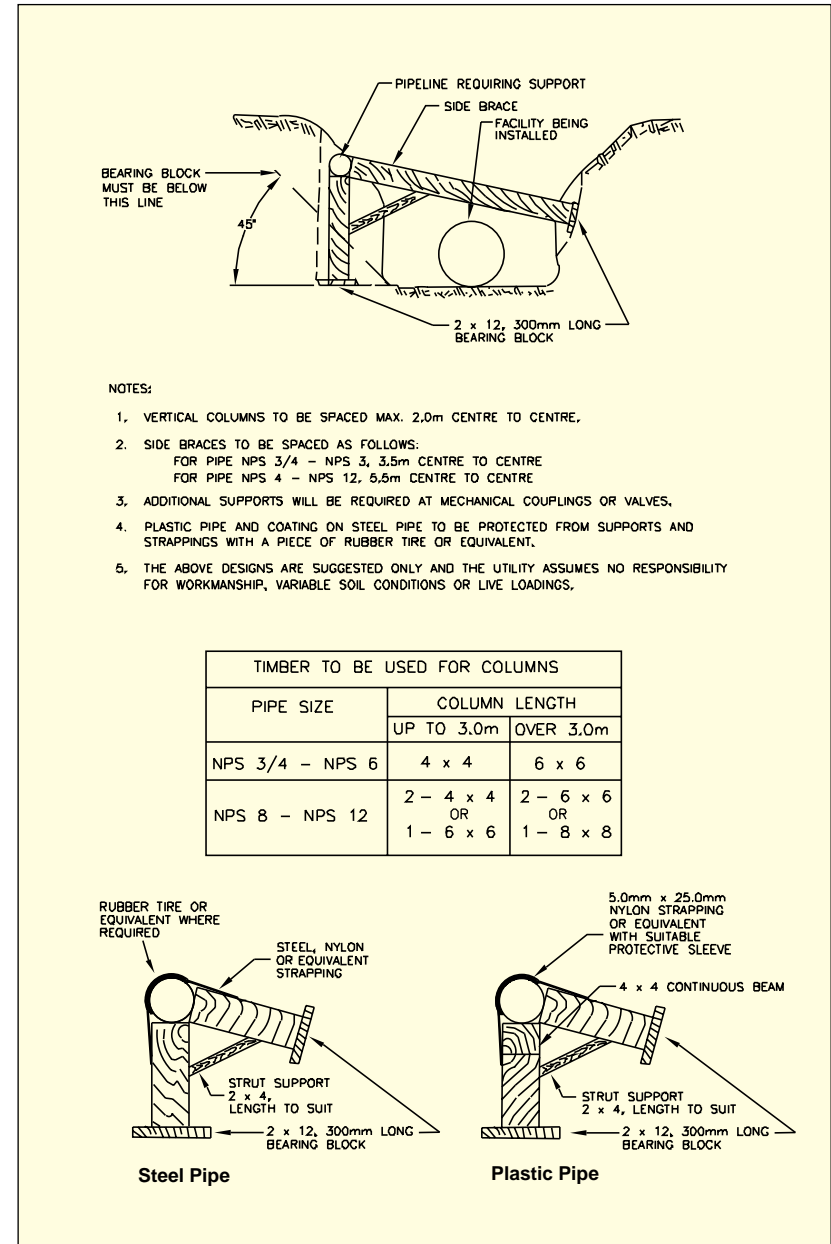
## PIPELINE SUPPORTS

Prior to excavating below gas pipelines, a suitable support must be installed to prevent the pipeline from deflecting. Figures 4 and 5 (shown on pages 16 and 17) show a variety of support designs. These designs are suggestions only as conditions vary at each job site. In the event Municipal work involves support of the gas system, the proposed work shall be reviewed and approved by the Gas Company and approval will not be unreasonably withheld.

**Typical Pipeline Support Crossing Trench**  
Figure 4



**Typical Pipeline Support Parallel to Trench**  
Figure 5









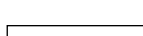

## LOCATION OF THE GAS SYSTEM FOR OTHERS

In order to facilitate work to be undertaken by others, the Gas Company will identify, on the surface of the ground, the location of any of its gas system in a prompt and accurate manner. The cost of this locate service will be borne by the Gas Company. The Gas Company requires hand digging near its pipelines as specified on the locate form.

The chart below illustrates the standard colours that are used in Ontario to identify the various utilities.

Buried Public Utilities will be identified in the field by the following fluorescent colours.

Permanent line markers are installed along pipelines in rural areas.

	Ontario Hydro Local Hydro Traffic Systems
	Gas Lines, Oil Lines, Steam Lines
	Water Systems
	Telephone Lines, Telegraph Lines, Police and Fire Communications, Cable TV Lines
	Sanitary Sewers, Storm Sewers
	Temporary Survey
	Proposed Excavation
	Reclaimed Water, Irrigation & Slurry Lines

### Cautionary Note:

Individuals are reminded that the location of the gas system is identified on the surface of the ground. If you are working above, below or in the vicinity of the gas system you are required to meet the requirements of the various Ontario regulations/guidelines that apply and these can be provided by the Gas Company.