

500 Consumers Road  
North York, Ontario  
M2J 1P8  
PO Box 650  
Scarborough ON M1K 5E3

**Lesley Austin**  
Regulatory Coordinator  
Regulatory Proceedings  
phone: (416) 495-6505  
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**VIA COURIER AND RESS**

December 23, 2008

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street, 27<sup>th</sup> Floor  
Toronto, Ontario  
M4P 1E4

Dear Ms. Walli:

**Re: Enbridge Gas Distribution Inc. ("Enbridge") Application for Franchise  
Renewal with the Town of Innisfil ("Town")**

Enbridge wishes to apply to the Ontario Energy Board (the "Board") for an order granting approval for the renewal of its franchise with the Town, using the 2000 Model Franchise Agreement. The agreement between the Town and Enbridge is set to expire on February 3, 2009. In addition, we are also seeking an interim order pursuant to Section 10 (4) of the *Municipal Franchises Act*.

Enbridge is submitting this application through the Board's RESS system; as well please find enclosed two paper copies and one cd of the following:

1. The aforementioned application
2. Schedule A – A map showing the location of the Town of Innisfil
3. Schedule B – The current By-Law 004-99 and Franchise Agreement – February 3, 1999
4. Schedule C – Board Order – EBA 847 approving the current Franchise Agreement – December 23, 1998
5. Schedule D - The Certificate of Public Convenience and Necessity for the former Township of Innisfil (E.B.C. 53) – August 11, 1966
6. Schedule E - The Certificate of Public Convenience and Necessity for the former Village of Cookstown (E.B.C. 104) – January 8, 1979
7. Schedule F – The draft Resolution from the Town, the form of the by-law and the proposed franchise agreement
8. Schedule G – A copy of the letter executed by the Town of Innisfil consenting to the extension of the current franchise agreement for a period of six months from the expiry date of February 3, 2009.

Enbridge looks forward to receiving the direction from the Board in this matter.

2008-12-22  
Ms. Kirsten Walli  
Page 2

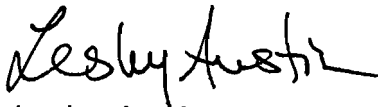
The contact information for this matter follows below:

Corporation of the Town of Innisfil  
2101 Innisfil Beach Road  
Innisfil, Ontario L9S 1A1  
Tel: (705) 436-3710  
Fax: (705) 436-7120  
**Attn: John D. Leach**  
**Town Clerk**

Enbridge Gas Distribution Inc. (Head Office)  
500 Consumers' Road  
Toronto, Ontario M2J 1P8  
Tel: (416) 495-5499 or 1-888-659-0685  
Fax: (416) 495-6072  
Email: EGDRRegulatoryProceedings@Enbridge.com  
**Attn: Tania Persad**  
**Senior Legal Counsel, Regulatory**

Enbridge Gas Distribution Inc. (Regional Office)  
6 Colony Court  
Brampton, Ontario L6T 4E4  
Tel: (905) 458-2135  
Fax: (905) 458-2129  
**Attn: John Finkbiner**  
**Manager Sales Development**  
**Central Region West**

Sincerely,



Lesley Austin  
Regulatory Coordinator

Attachment

cc: Tania Persad – EGD, Senior Legal Counsel, Regulatory  
John Finkbiner – Manager Sales Development – Central Region West

**ONTARIO ENERGY BOARD**

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  
Enbridge Gas Distribution Inc. for an order extending  
the term of the right to construct or operate works for  
the distribution of gas, and the right to extend or add  
to the works, in the Town of Innisfil.

**A P P L I C A T I O N**

1. Enbridge Gas Distribution Inc. (the "Applicant") is an Ontario corporation with its head office in the City of Toronto.
2. The Corporation of the Town of Innisfil ("Corporation") is a municipal Ontario corporation with its head office at 2101 Innisfil Beach Road, Innisfil, Ontario, L9S 1A1. The Corporation's Town Clerk is Mr. John D. Leach. Attached hereto and marked as Schedule "A" is a map showing the geographical location of the Town of Innisfil ("Municipality").
3. The Applicant and the Corporation are party to a municipal gas franchise agreement. Attached hereto and marked as Schedule "B" is a copy of the franchise agreement and by-law 004-99 enacted February 3, 1999. Also attached as Schedule "C" is the Ontario Energy Board's Order EBA 847 granting approval for the agreement dated December 23, 1998.
4. The Applicant possesses two certificates of public convenience and necessity ("Certificate") for the geographical area of the Corporation permitting it to distribute, store and transmit gas in the Municipality. Attached hereto and marked as Schedule "D" is the Certificate for the former Township of Innisfil, E.B.C. 53, August 11, 1966. Also attached hereto and marked as Schedules "E" is the Certificate for the former Village of Cookstown, E.B.C. 104, January 8, 1979. These two municipalities were amalgamated on January 1, 1991 to become the Town of Innisfil.
5. The Applicant wishes to renew its municipal gas franchise with the Corporation and to continue serving the Municipality in accordance with the Certificate. The Applicant respectfully submits that it is in the public interest to do so. Attached hereto and marked as Schedule "F" is a draft resolution, the form of the Corporation's by-law granting to the Applicant the franchise renewal and a copy of the proposed franchise agreement between the Applicant and the Corporation ("the Agreement").

6. The proposed municipal gas franchise agreement is in the form of the Ontario Energy Board ("Board") approved 2000 Model Franchise Agreement, with no amendments and is for a term of twenty years.
7. Although negotiations commenced in April 2008, the renewal process between the Corporation and the Applicant has taken longer than foreseen. In the Board's *Performance Standards for Processing Applications* it is noted that the Board requires 90 calendar days for a written hearing and 205 calendar days for an oral hearing in municipal franchise or certificate applications. Attached as Schedule "G" to this application is evidence of concurrence on the part of the Corporation by letter dated the 18<sup>th</sup> day of December, 2008 to extend the current franchise agreement to August 3, 2009, or until the renewal is obtained.
8. The Applicant hereby applies to the Board, pursuant to Section 9 of the *Municipal Franchises Act*, R.S.O. c. M.55, for:
  - i) an Order renewing the Applicant's right to distribute, store, and transmit gas in and through the Municipality for such period of time and upon the terms set out in the Agreement, or as may otherwise be prescribed by the Board;
  - ii) an Order directing and declaring that the assent of the municipal electors to the terms and conditions of the franchise agreement is not necessary; and
  - iii) an Interim Order granting the extension of the term of the right to construct or operate works for the distribution of gas in the Town of Innisfil and of the right to extend or add to such works. More specifically, the Company applies for an Interim Order, pursuant to subsection 10(4) of the Act, for an extension of the right for a period of six months, or such other shorter time period required to permit the Board sufficient time to process the renewal request.

9. The persons affected by this application are the customers and other residents in the Municipality. Because of the number of such persons, it is impractical to set out their names and addresses herein.

DATED at Toronto this 23<sup>rd</sup> day of December, 2008.

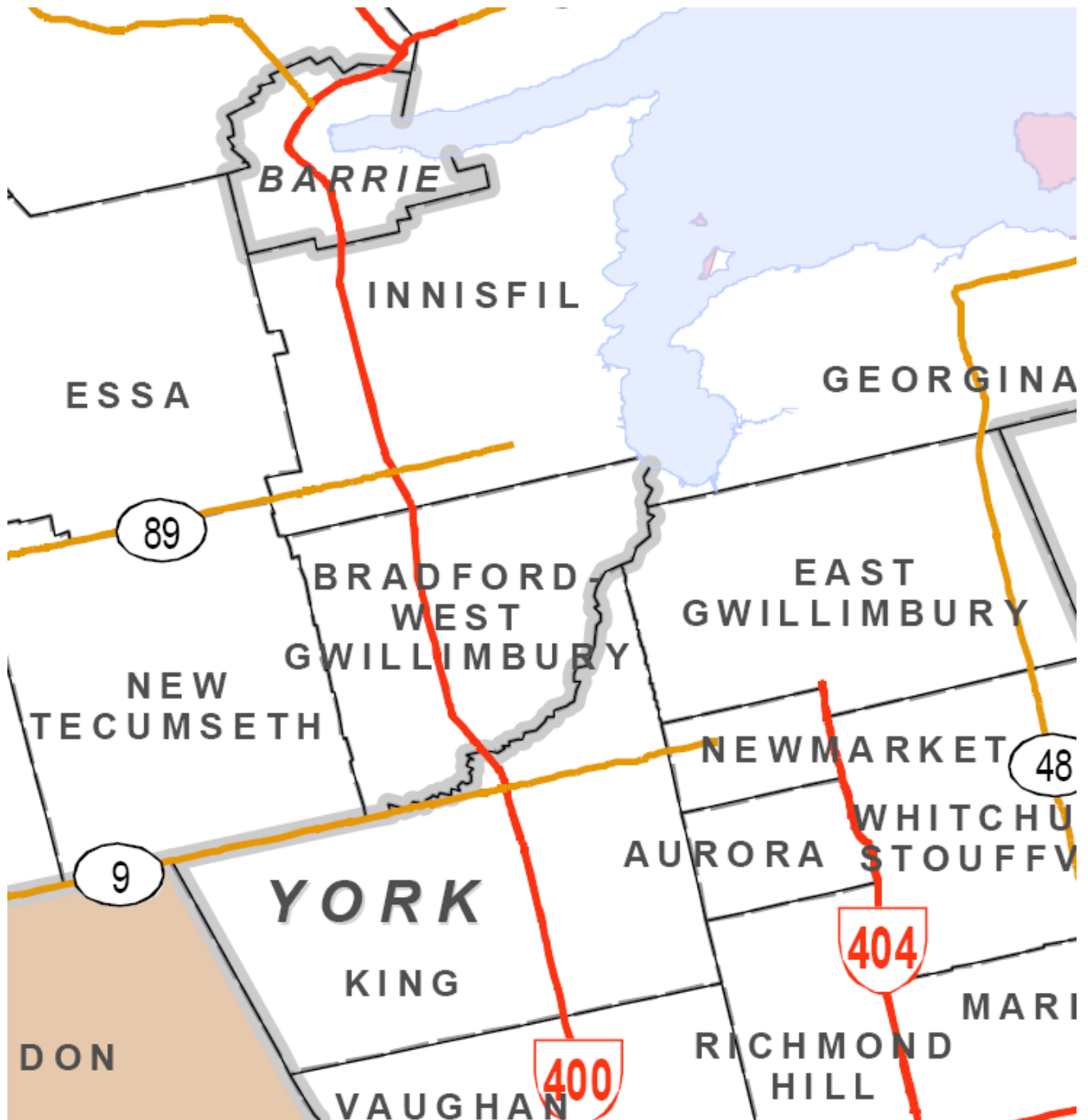
ENBRIDGE GAS DISTRIBUTION INC.  
500 Consumers Road  
Toronto ON M2J 1P8  
by its Solicitor



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Tania Persad  
Senior Legal Counsel, Regulatory  
Tel: (416) 495-5891  
Fax: (416) 495-5994  
E-mail: Tania.Persad@enbridge.com

Mailing Address:  
P.O. Box 650  
Toronto ON M1K 5E3



**ORIGINAL**

**CERTIFIED**

Schedule B

**THE CORPORATION OF THE TOWN OF INNISFIL**

**BY-LAW NO. 004-99**

**A By-Law of The Corporation of the Town of Innisfil to authorize a Franchise Agreement between The Corporation of the Town of Innisfil and The Consumers' Gas Company Ltd.**

WHEREAS the Council of The Corporation of the Town of Innisfil deems it expedient to enter into the attached Franchise Agreement with The Consumers' Gas Company Ltd, and;

WHEREAS the Ontario Energy Board by its Order issued pursuant to The Municipal Franchises Act on the 23rd day of December, 1998 has approved the terms and conditions upon which and the period for which the franchise provided for in the attached agreement is proposed to be granted, and has declared and directed that the assent of the municipal electors in respect of this By-Law in not necessary, and;

WHEREAS The Consumers' Gas Company Ltd. has provided The Corporation of the Town of Innisfil with a consent to the repeal of the By-Laws hereafter referred to:

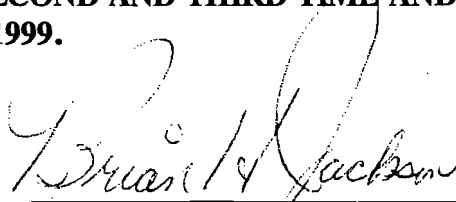
NOW THEREFORE the Council of The Corporation of the Town of Innisfil enacts as follows.

1. That the attached Franchise Agreement between The Corporation of the Town of Innisfil and The Consumers' Gas Company Ltd. is hereby authorized and the franchise therein is hereby granted for a period of ten (10) years to expire in December, 2008.
2. That the Mayor and Clerk are hereby authorized and instructed on behalf of The Corporation of the Town of Innisfil to enter into and execute under its corporate seal and deliver the aforesaid agreement, which agreement is hereby incorporated into and shall form part of this By-Law.
3. That the Agreement referred to in Schedule 'A' annexed hereto and forming part of this by-law is hereby approved insofar as it applies to any area within the present geographic limits of The Corporation.

to By-Law No. 004-99

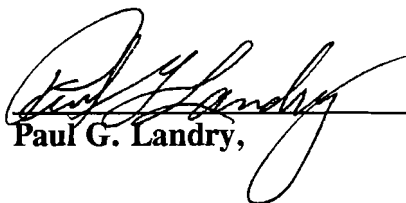
4. That By-Law No. 5-89 of the former Township of Innisfil and By-Law 034-98 of the Town of Innisfil, is hereby repealed.
5. Any by-law or part of any by-law passed by the former Municipalities of the Township of Innisfil, Village of Cookstown, Township of West Gwillimbury, the Township of Tecumseth and the Township of Essa, passed by the former Municipalities to authorize a franchise agreement with The Consumers' Gas Company Ltd. and which is in conflict with the provisions of this by-law, is repealed.

**READ A FIRST, AND TAKEN AS READ A SECOND AND THIRD TIME AND FINALLY  
PASSED THIS 3RD, DAY OF FEBRUARY, 1999.**



Brian H. Jackson,

Mayor



Paul G. Landry,

Clerk

I, Helen E. Cyr, Acting Clerk of the Corporation of the  
Town of Innisfil do hereby certify under my hand and  
seal of the said Corporation, the above to be a true  
and correct copy of *Bylaw 004-99*  
*adopted Feb. 3/99.*  
DATE HELEN E. CYR

*Mar. 9/99*  
Stroud, Ontario

*Helen Cyr*  
Acting Clerk



## SCHEDULE "A"

to By-Law No. 004-99

By-Law No. 5-89 passed by the Council of the Corporation of the Town of Innisfil on the 25th day of January, 1989.

By-Law No. 5-79 passed by the Council of the Corporation of the Village of Cookstown on the 19th day of March, 1979.

The portion of By-Law No. 81-9 passed by the Council of the Corporation of the Township of Essa on the 9th day of April, 1981 that pertains to the geographic area of the Township of Essa that was annexed to the Town of Innisfil pursuant to the County of Simcoe Act, 1993.

The portion of By-Law No. 80-37 passed by the Council of the Corporation of the Township of West Gwillimbury on the 5th day of March, 1980 that pertains to the geographic area of the Township of West Gwillimbury that was annexed to the Town of Innisfil pursuant to the County of Simcoe Act, 1993.

**THE CONSUMERS' GAS COMPANY LTD.**

**FRANCHISE AGREEMENT**

THIS AGREEMENT made this 3rd day of February, 1999

BETWEEN:

**THE CORPORATION OF THE TOWN OF INNISFIL**

hereinafter called the "Corporation"

- and -

**THE CONSUMERS' GAS COMPANY LTD.**

hereinafter called the "Gas Company"

**WHEREAS** the Gas Company desires to distribute and sell 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 Mayor and the Clerk have been authorized and directed to execute this Agreement on behalf of the Corporation;

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

**I Definitions**

**1. In this Agreement:**

- (a) "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;
- (b) "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 supply, transmission and distribution of gas in or through the Municipality;
- (c) "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;
- (d) "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;
- (e) "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.

## **II Rights Granted**

1. To provide gas service.

The consent of the Corporation is hereby given and granted to the Gas Company to supply gas in the Municipality to the Corporation and to the inhabitants of the Municipality.

2. To use road allowances.

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 supply, distribution and transmission of gas in and through the Municipality.

3. Duration of Agreement and Renewal Procedures.

The rights hereby given and granted shall be for a term of ten (10) years\* from the date of final passing of the By-law.

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. Nothing herein stated shall 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**.

## **III Conditions**

1. Approval of Construction.

Before beginning construction of or any extension or change to the gas system (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 location, showing the highways in which it proposes to lay its gas system and the particular parts thereof it proposes to occupy. Geodetic information will not be required except in complex urban intersections in order to facilitate known projects, being projects which are reasonably anticipated by the Engineer/Road Superintendent. The Engineer/Road Superintendent may require sections of the gas system to be laid at a greater depth than required by CAN/CSA- Z184-M92 to facilitate known projects. The location of the work as shown on the said plan must be approved by the Engineer/Road Superintendent before the commencement of the work and the timing, terms and conditions relating to the installation of such works shall be to his satisfaction.

Notwithstanding the provisions of the above noted paragraph, in the event it is proposed to affix a part of the gas system to a bridge, viaduct or structure, the Engineer/Road Superintendent may, if the Engineer/Road Superintendent approves of such location, require special conditions or a separate agreement.

No excavation, opening or work which shall disturb or interfere with the surface of the travelled portion of any highway shall be made or done unless a permit therefor has first been obtained from the Engineer/Road Superintendent and all works shall be done to his satisfaction.

\*The rights given and granted for a first agreement shall be for a term of 20 years. The rights given and granted for any subsequent agreement shall be for a term of not more than 15 years, unless both parties agree to extend the term to a term of 20 years maximum.

The Engineer/Road Superintendent's approval, where required throughout this section, shall not be withheld unreasonably.

2. As Built Drawings.

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. After completion of the construction, where plans were initially filed, an "as built" plan of equal quality to the pre-construction plan or certification that the pre-construction plan is "as built" will be filed with the Engineer/Road Superintendent.

3. Emergencies.

In the event of an emergency involving the gas system, the Gas Company will proceed with the work and in any instance where prior approval of the Engineer/Road Superintendent is normally required, 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 having jurisdiction.

4. 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 any reasonable account therefor as certified by the Engineer/Road Superintendent.

5. 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.

6. 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 to provide, if it is feasible, 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 will share, as provided in clause III, 7 of this Agreement, in the cost of relocating or altering the gas system to facilitate continuity of gas service.

7. Pipeline Relocation.

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.

Where any part of the gas system relocated in accordance with this section is located on a bridge, viaduct or structure, the Gas Company shall alter or relocate, at its sole expense, such part of the gas system.

Where any part of the gas system relocated in accordance with this section 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:

- (a) 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,
- (b) 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,
- (c) the amount paid by the Gas Company to contractors for work related to the project,
- (d) the cost to the Gas Company for materials used in connection with the project, and
- (e) a reasonable amount for project engineering and project administrative costs which shall be 22.5% of the aggregate of the amounts determined in items (a), (b), (c) and (d) above.

The total relocation costs as calculated above shall be paid 35% by the Corporation and 65% by the Gas Company.

8. Notice to Drainage Superintendent.

In a case where the gas system may affect a municipal drain, the Gas Company shall file with the Drainage Superintendent, for purposes of the **Drainage Act**, or other person responsible for the drain, a copy of the plan required to be filed with the Engineer/Road Superintendent.

**IV Procedural And Other Matters**

1. Municipal By-laws of General Application.

This Agreement and the respective rights and obligations hereunto of the parties hereto are hereby declared to be subject to the provisions of all regulating statutes and all municipal by-laws of general application and to all orders and regulations made thereunder from time to time remaining in effect save and except by-laws which impose permit fees and by-laws which have the effect of amending this Agreement.

2. Giving Notice.

Notices may be given by delivery or by mail, and if mailed, by prepaid registered post, to the Gas Company at its head office or to the Clerk of the Corporation at its municipal offices, as the case may be.

3. Disposition of Gas System.

During the term of this Agreement, if the Gas Company abandons a part of its gas system affixed to a bridge, viaduct or structure, the Gas Company shall, at its sole expense, remove that part of its gas system affixed to the bridge, viaduct or structure.

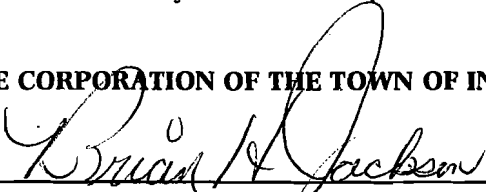
If at any time the Gas Company abandons any other part of its gas system, it shall deactivate that part of its gas system in the Municipality. Thereafter, the Gas Company shall have the right, but nothing herein contained shall require it, to remove its gas system. If the Gas Company fails to remove its gas system and the Corporation requires the removal of all or any of the 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 deactivated 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.

4. Agreement Binding Parties.

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


IN WITNESS WHEREOF the parties hereto have duly executed these presents with effect from the date first above written.

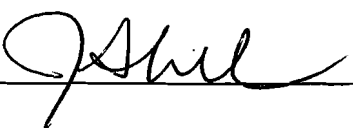
THE CORPORATION OF THE TOWN OF INNISFIL

  
\_\_\_\_\_  
Mayor, Brian H. Jackson

  
\_\_\_\_\_  
Clerk Paul G. Landry

THE CONSUMERS' GAS COMPANY LTD.

  
\_\_\_\_\_  
Glenn J. Hills  
Vice President,  
Regulatory & Legal

  
\_\_\_\_\_  
John S. Williamson  
Senior Legal Counsel  
& Corporate Secretary



DATED 3rd day of February 1999

THE CORPORATION OF THE TOWN OF INNISFIL

- and -

THE CONSUMERS' GAS COMPANY LTD.

FRANCHISE AGREEMENT

THE CONSUMERS' GAS COMPANY LTD.

Atria III, Suite 1100  
2225 Sheppard Avenue East  
North York, Ontario  
M2J 5C2

Attention: Legal Department



**COPY**

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

**AND IN THE MATTER OF** an Application by The Consumers' Gas Company Ltd. for an Order renewing the terms and conditions upon which the Corporation of the Town of Innisfil is, by by-law, to grant to The Consumers' Gas Company Ltd. rights to construct and to operate works for the distribution of gas; to extend or add to the works; and to supply gas to inhabitants of the Town of Innisfil; and the period for which such rights are granted;

**AND IN THE MATTER OF** an Application by The Consumers' Gas Company Ltd. for an Order dispensing with the assent of the municipal electors of the Corporation of the Town of Innisfil regarding the by-law.

**BEFORE:** H. G. Morrison  
Presiding Member

G. A. Dominy  
Vice-Chair and Member

### **ORDER**

The Consumers' Gas Company Ltd. ("Enbridge Consumers Gas") filed an Application ("the Application") dated December 18, 1997 with the Ontario Energy Board ("the Board") under section 10 of the Municipal Franchises Act ("the Act") for an order approving the terms and conditions upon which and the period for which Enbridge Consumers Gas is to be granted the right to construct and operate works for the distribution of gas; to extend or add to the works; and to supply gas to the inhabitants of the Town of Innisfil ("the Municipality"). The Board has assigned this Application Board File No. E.B.A. 847.



The Town of Innisfil results from the amalgamations on January 1, 1991 of the Township of Innisfil, the Village of Cookstown and portions of the Township of West Gwillimbury and the Township of Tecumseth. On January 1, 1994 a portion of the Township of Essa was also annexed to the Town of Innisfil. Enbridge Consumers Gas has existing franchise agreements with each of the aforementioned municipalities. The earliest predecessor franchise agreement to expire is for that portion of the Township of Tecumseth amalgamated to the Town of Innisfil. The expiry date of this franchise was January 9, 1998. Although Enbridge Consumers Gas has indicated its desire to renew the franchise agreement, at this time there is no resolution between Enbridge Consumers Gas and the Town of Innisfil on the terms and conditions of the franchise agreement. Consumers Gas currently holds Certificates of Public Convenience and Necessity for the former Township of Innisfil (E.B.C. 53); the Township of Tecumseth (F.B.C. 153); the Village of Cookstown (E.B.C. 104); the Township of West Gwillimbury (F.B.C. 319); and the Township of Essa (E.B.C. 315).

Enbridge Consumers Gas also requested, pursuant to section 10(4) of the Act, that the Board grant an interim order so as to preserve Enbridge Consumers Gas' franchise rights in the Municipality beyond the January 9, 1998 franchise expiration date and until such time as the Application is dealt with by the Board. The Board assigned this interim renewal application Board File No. E.B.A. 847-01 and issued an Interim Order on January 7, 1998 extending the existing franchise for a period of six months.

By a letter dated June 1, 1998 Enbridge Consumers Gas indicated it had been unable to come to an agreement on the consolidation of a franchise agreement for the Township of Innisfil. On June 22, 1998 The Board was provided with a copy of a letter from Enbridge Consumers Gas countersigned by the Town of Innisfil, indicating the Municipality's consent to a further extension of the existing franchise agreement. The Board issued a second Interim Order, E.B.A. 847-02, granting an additional six month extension. The Interim Order expires December 31, 1998.

On October 20, 1998, a Notice of Application and Written Hearing, accompanied by a Letter of Direction from the Board Secretary, was issued. No interventions, other than from the Municipality, were received by the Board. Board Staff and the Municipality filed

submissions. Enbridge Consumers Gas filed reply submissions on December 11, 1998. No other comments or submissions were received by the Board.

The Town of Innisfil and Enbridge Consumers Gas have not been able to reach an agreement on the term of the franchise, or the method of renewing and consolidating the individual franchises that were in effect prior to amalgamation. The Town of Innisfil submitted two proposed solutions for consideration by the Board. The first was to consolidate the existing franchise agreements as they expired beginning with the franchise that governed the amalgamated portion of the Township of Tecumseth. This would have the effect of rolling forward the franchise and incorporating the expiring portions of former municipalities into a consolidated franchise based on a 15 year period. In the alternative, the Town sought approval for a consolidated franchise for the entire Town of Innisfil based on the expiry of the longest running existing franchise (Township of Innisfil), which is December 14, 2008.

While the Board has generally sought to renew franchises for a period of not less than 15 years, the Municipality submitted that unusual circumstances exist in this Application which support a reduction in term. The Municipality argued that the expiring franchise agreement, which formed the basis of Enbridge Consumers Gas' proposed renewal for the entire township, makes up an insignificant portion of the geographical area of the Municipality and actual household gas service provided by Enbridge Consumers Gas.

Enbridge Consumers Gas argued that renewal of each of the pre-amalgamated franchise agreements would be administratively burdensome and costly. The Company submitted that there were no unusual circumstances specific to the Municipality which would make deviation from a 15 year term necessary. The Company submitted that consolidation of franchise agreements involving amalgamations based on the earliest expiry date of any pre-existing agreement was equitable and in keeping with public policy.

Board Staff, while not able to identify the harm that would be visited upon the Municipality if it were to renew for a longer period, submitted that circumstances warranted consideration of a different term in this case.

Having reviewed the positions of the parties to this Application, the Board finds, in keeping with its general policy with respect to amalgamated franchise areas, that the franchise agreements for the separate parts of the amalgamated municipality should be amalgamated into a single franchise agreement.

The Board has stressed in previous applications the necessity to avoid changes to the Model Agreement unless there are “very unusual circumstances specific to a municipality”. The Board notes that the expiring franchise relates to a very small geographical portion of the Municipality, and contains only 3 of the approximately 7,300 households served by Enbridge Consumer Gas. The Board also notes that the map provided by the Municipality shows that the land covered by the expiring franchise is a very small portion of the amalgamated Town of Innisfil.

While the Board previously rejected a proposed 10 year agreement where it was not persuaded that there was evidence to support that specific term, the Board finds in the present case that the choice of a ten year term is not an arbitrary one. At the time of the filing of this Application there were 11 years remaining in the franchise for the Township of Innisfil, an agreement which covers the vast majority of existing service. Given the small size of the expiring franchise in relation to the Municipality and the very limited number of customers served in that area, the request of the Town of Innisfil to consolidate the franchise based on a renewal date equal to that of the former Township of Innisfil is reasonable.


The Board notes that subsequent to the filing of this Application the Municipal Franchises Act has been amended by Schedule E of Bill 35 (S.O. c. 15, 1998). Under the amendment section 9(1)(b) allowing the municipality to grant “the right to supply gas to a municipal corporation or to the inhabitants of a municipality” was repealed, as were the part of section 10 which reads “or to supply gas to a municipal corporation or to the inhabitants of a municipality.” The effect of these amendments are to remove the need for the municipality to grant rights to supply gas. The Board, therefore, makes no order respecting the supply of gas.

**THE BOARD THEREFORE ORDERS THAT:**

1. The terms and conditions upon which the Corporation of the Town of Innisfil is by By-law to grant to the Enbridge Consumers Gas the right to construct and operate works for the distribution of gas and to extend or add to the works to the inhabitants of the Town of Innisfil, as stated in the proposed Franchise Agreement attached as Appendix 'A', are approved, with the exception of the period.
2. The period of the Franchise Agreement shall be ten (10) years.
3. The assent of the municipal electors of the Corporation of the Town of Innisfil to the proposed By-law is not necessary.
4. The Board's costs of and incidental to these proceedings shall be fixed at \$600.00 and shall be paid by Enbridge Consumers Gas forthwith upon the issuance of the Board's invoice.

**ISSUED** at Toronto, December 23, 1998.

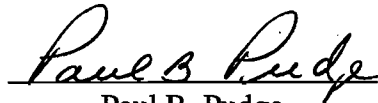
**ONTARIO ENERGY BOARD**

  
Paul B. Pudge  
Board Secretary

APPENDIX 'A' TO

BOARD ORDER NO. E.B.A. 847

DATED December 23, 1997.

A handwritten signature in cursive script, reading "Paul B. Pudge", written over a horizontal line.

Paul B. Pudge  
Board Secretary

**THE CONSUMERS' GAS COMPANY LTD.**

**FRANCHISE AGREEMENT**

THIS AGREEMENT made this  
BETWEEN:

day of

, 19

**THE CORPORATION OF THE  
TOWN OF INNISFIL**

hereinafter called the "Corporation"

- and -

**THE CONSUMERS' GAS COMPANY LTD.**

hereinafter called the "Gas Company"

**WHEREAS** the Gas Company desires to distribute and sell 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 Mayor and the Clerk have been authorized and directed to execute this Agreement on behalf of the Corporation;

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

**I Definitions**

**1. In this Agreement:**

- (a) "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;
- (b) "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 supply, transmission and distribution of gas in or through the Municipality;
- (c) "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;
- (d) "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;
- (e) "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.

## **II Rights Granted**

1. To provide gas service.

The consent of the Corporation is hereby given and granted to the Gas Company to supply gas in the Municipality to the Corporation and to the inhabitants of the Municipality.

2. To use road allowances.

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 supply, distribution and transmission of gas in and through the Municipality.

3. Duration of Agreement and Renewal Procedures.

The rights hereby given and granted shall be for a term of twenty (20) years\* from the date of final passing of the By-law.

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. Nothing herein stated shall 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**.

## **III Conditions**

1. Approval of Construction.

Before beginning construction of or any extension or change to the gas system (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 location, showing the highways in which it proposes to lay its gas system and the particular parts thereof it proposes to occupy. Geodetic information will not be required except in complex urban intersections in order to facilitate known projects, being projects which are reasonably anticipated by the Engineer/Road Superintendent. The Engineer/Road Superintendent may require sections of the gas system to be laid at a greater depth than required by CAN/CSA- Z184-M92 to facilitate known projects. The location of the work as shown on the said plan must be approved by the Engineer/Road Superintendent before the commencement of the work and the timing, terms and conditions relating to the installation of such works shall be to his satisfaction.

Notwithstanding the provisions of the above noted paragraph, in the event it is proposed to affix a part of the gas system to a bridge, viaduct or structure, the Engineer/Road Superintendent may, if the Engineer/Road Superintendent approves of such location, require special conditions or a separate agreement.

No excavation, opening or work which shall disturb or interfere with the surface of the travelled portion of any highway shall be made or done unless a permit therefor has first been obtained from the Engineer/Road Superintendent and all works shall be done to his satisfaction.

\*The rights given and granted for a first agreement shall be for a term of 20 years. The rights given and granted for any subsequent agreement shall be for a term of not more than 15 years, unless both parties agree to extend the term to a term of 20 years maximum.

The Engineer/Road Superintendent's approval, where required throughout this section, shall not be withheld unreasonably.

2. As Built Drawings.

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. After completion of the construction, where plans were initially filed, an "as built" plan of equal quality to the pre-construction plan or certification that the pre-construction plan is "as built" will be filed with the Engineer/Road Superintendent.

3. Emergencies.

In the event of an emergency involving the gas system, the Gas Company will proceed with the work and in any instance where prior approval of the Engineer/Road Superintendent is normally required, 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 having jurisdiction.

4. 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 any reasonable account therefor as certified by the Engineer/Road Superintendent.

5. 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.

6. 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 to provide, if it is feasible, 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 will share, as provided in clause III, 7 of this Agreement, in the cost of relocating or altering the gas system to facilitate continuity of gas service.



7. Pipeline Relocation.

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.

Where any part of the gas system relocated in accordance with this section is located on a bridge, viaduct or structure, the Gas Company shall alter or relocate, at its sole expense, such part of the gas system.

Where any part of the gas system relocated in accordance with this section 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:

- (a) 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,
- (b) 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,
- (c) the amount paid by the Gas Company to contractors for work related to the project,
- (d) the cost to the Gas Company for materials used in connection with the project, and
- (e) a reasonable amount for project engineering and project administrative costs which shall be 22.5% of the aggregate of the amounts determined in items (a), (b), (c) and (d) above.

The total relocation costs as calculated above shall be paid 35% by the Corporation and 65% by the Gas Company.

8. Notice to Drainage Superintendent.

In a case where the gas system may affect a municipal drain, the Gas Company shall file with the Drainage Superintendent, for purposes of the **Drainage Act**, or other person responsible for the drain, a copy of the plan required to be filed with the Engineer/Road Superintendent.

**IV Procedural And Other Matters**

1. Municipal By-laws of General Application.

This Agreement and the respective rights and obligations hereunto of the parties hereto are hereby declared to be subject to the provisions of all regulating statutes and all municipal by-laws of general application and to all orders and regulations made thereunder from time to time remaining in effect save and except by-laws which impose permit fees and by-laws which have the effect of amending this Agreement.

2. Giving Notice.

Notices may be given by delivery or by mail, and if mailed, by prepaid registered post, to the Gas Company at its head office or to the Clerk of the Corporation at its municipal offices, as the case may be.

3. Disposition of Gas System.

During the term of this Agreement, if the Gas Company abandons a part of its gas system affixed to a bridge, viaduct or structure, the Gas Company shall, at its sole expense, remove that part of its gas system affixed to the bridge, viaduct or structure.

If at any time the Gas Company abandons any other part of its gas system, it shall deactivate that part of its gas system in the Municipality. Thereafter, the Gas Company shall have the right, but nothing herein contained shall require it, to remove its gas system. If the Gas Company fails to remove its gas system and the Corporation requires the removal of all or any of the 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 deactivated 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.

4. Agreement Binding Parties.

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

IN WITNESS WHEREOF the parties hereto have duly executed these presents with effect from the date first above written.

**THE CORPORATION OF THE  
TOWN OF INNISFIL**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Clerk

**THE CONSUMERS' GAS COMPANY LTD.**

\_\_\_\_\_  
\_\_\_\_\_

THE ONTARIO ENERGY BOARD

IN THE MATTER of The Municipal Franchises Act, R.S.O.1960, Chapter 255 and amendments thereto;

AND IN THE MATTER of an application by The Consumers' Gas Company for a certificate of public convenience and necessity to construct works and to supply natural gas to the Township of Innisfil, in the County of Simcoe.

B E F O R E:

A.R. Crozier, Chairman	} Friday, the 10th
A.B. Jackson, Vice Chairman	

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

UPON the Application of The Consumers' Gas Company (hereinafter called the Applicant) for a certificate pursuant to the provisions of The Municipal Franchises Act, R.S.O. 1960, Chapter 255 and amendments thereto and upon the hearing of such Application by the Board at the City of Toronto, on the 10th day of June, 1966, after due notice had been given as directed by the Board, in the presence of Counsel for the Applicant, no one else appearing upon consideration of the evidence and exhibits produced at the hearing and upon hearing what was alleged by Counsel for the Applicant

1. THIS BOARD DOETH ORDER that a Certificate of Public Convenience and Necessity be and the same is hereby granted to The Consumers' Gas Company for the supply of natural gas to the inhabitants of the Township of Innisfil and for the construction of the works necessary therefor.

2. This Board fixes the costs of this Application at \$25.00 payable forthwith by the Applicant.

DATED AT TORONTO this 11th day of Aug., A.D. 1966.

THE ONTARIO ENERGY BOARD

*Ray Sealer*  
Board Secretary.



IN THE MATTER OF The Municipal  
Franchises Act, R.S.O. 1970,  
Chapter 289;

AND IN THE MATTER OF an application  
by The Consumers' Gas Company for a  
certificate of public convenience and  
necessity to construct works to  
supply gas and to supply gas to the  
inhabitants of the Village of  
Cookstown in the County of Simcoe.

BEFORE: S. J. Wychowanec )  
Vice Chairman and )  
Presiding Member )  
October 19, 1978  
H. R. Chatterson )  
Member )

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

UPON the application of The Consumers' Gas  
Company for a certificate of public convenience and  
necessity to construct works to supply gas and to supply  
gas to the inhabitants of the Village of Cookstown;

AND UPON the application having been heard at  
Toronto on July 24, 1978 and on August 1, 1978, in the  
presence of counsel for the Applicant and counsel for the  
Board, no one else appearing, and the Board having handed  
down Reasons for Decision on October 19, 1978, in which the  
application was granted conditional upon the Applicant  
filing with the Board a letter under seal from Cookslane  
Developments Limited to contain a firm undertaking to

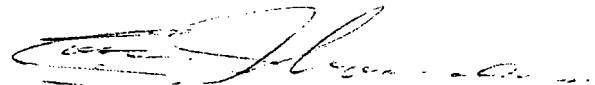
proceed with a certain construction project in the Village of Cookstown and a timetable for the completion thereof, and the letter having been received on December 21, 1978;

1. IT IS ORDERED that a certificate of public convenience and necessity be and the same is hereby granted to The Consumers' Gas Company to construct works to supply gas and to supply gas in the Village of Cookstown in the County of Simcoe;

2. AND IT IS FURTHER ORDERED that the costs of and incidental to this proceeding are fixed at \$625.<sup>00</sup> to be now paid by the Applicant.

ISSUED at Toronto this 8th day of January, 1979.

ONTARIO ENERGY BOARD



S.A.C. Thomas  
Secretary to the Board

THE CORPORATION OF THE TOWN OF INNISFIL

**RESOLUTION**

---

Moved by \_\_\_\_\_

Seconded by \_\_\_\_\_

BE IT RESOLVED:

1. That this Council approves the form of draft By-law (including the franchise agreement forming part thereof) attached hereto and authorizes the submission thereof to the Ontario Energy Board for approval pursuant to the provisions of Section 9 of the Municipal Franchises Act.
2. That this Council requests the Ontario Energy Board to make an order dispensing with the assent of the municipal electors of the attached draft By-law (including the franchise agreement forming part thereof) pursuant to the provisions of Section 9(4) of the Municipal Franchises Act.

Certified to be a true copy of a resolution passed by the Council of the Corporation of the Town of Innisfil on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ .

---

Clerk

THE CORPORATION OF THE TOWN OF INNISFIL (“CORPORATION”)

BY-LAW NUMBER \_\_\_\_\_

**A BY-LAW TO AUTHORIZE A FRANCHISE AGREEMENT  
BETWEEN THE CORPORATION AND  
ENBRIDGE GAS DISTRIBUTION INC.**

---

**WHEREAS** the Council of the Corporation deems it expedient to enter into the attached franchise agreement with Enbridge Gas Distribution Inc.;

**AND WHEREAS** the Ontario Energy Board by its Order issued pursuant to The Municipal Franchises Act on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ has approved the terms and conditions upon which and the period for which the franchise provided for in the attached 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;

**NOW THEREFORE BE IT ENACTED:**

- 1. That the attached franchise agreement between the Corporation Enbridge Gas Distribution Inc. is hereby authorized and the franchise provided for therein is hereby granted.
- 2. That the Mayor and the Clerk are hereby authorized and instructed on behalf of the Corporation to enter into and execute under its corporate seal and deliver the aforesaid agreement, which agreement is hereby incorporated into and shall form part of this By-law.

**Read the first and second time this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ .**

\_\_\_\_\_  
**Clerk** **Mayor**

**Read the third time and ENACTED AND PASSED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ .**

\_\_\_\_\_  
**Clerk** **Mayor**

## **SCHEDULE "A"**

By-Law No. 004-99 enacted and passed by the Council of the Corporation of the Town of Innisfil the 3<sup>rd</sup> day of February, 1999.



## Model Franchise Agreement

THIS AGREEMENT effective this       day of       , 20       .

BETWEEN: The Corporation of the Town of Innisfil hereinafter called the  
"Corporation"

- and -

Enbridge Gas Distribution 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 this agreement, the Model Franchise Agreement is changed, then on the 7th anniversary and on the 14th 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 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. 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 TOWN OF INNISFIL

By: \_\_\_\_\_

By: \_\_\_\_\_

Duly Authorized Officer

ENBRIDGE GAS DISTRIBUTION INC.

By: \_\_\_\_\_

By: \_\_\_\_\_

DATED this                      day of                      , 20                      .

THE CORPORATION OF THE

TOWN OF INNISFIL

- and -

ENBRIDGE GAS DISTRIBUTION INC.

FRANCHISE AGREEMENT

**ENBRIDGE GAS DISTRIBUTION INC.**

500 Consumers Road  
North York, Ontario  
M2J 1P8

Attention: Regulatory Affairs Department

## Schedule G

6 Colony Court  
Brampton, Ontario L6T 4E4  
Canada

John Finkbiner  
Manager Sales Development  
Tel 905-458-2135  
Fax 905-458-2129  
Email John.Finkbiner@enbridge.com

November 24, 2008

**VIA E-MAIL DELIVERY**

File No. 2-294-G

Mr. John D. Leach  
Clerk  
The Corporation of the  
Town of Innisfil  
2101 Innisfil Beach Road  
Innisfil, Ontario L9S 1A1

Dear Mr. Leach:

**Re: Franchise Agreement Renewal between the Town of Innisfil ("Municipality")  
and Enbridge Gas Distribution Inc. ("Enbridge")**

The current franchise agreement between the Town and Enbridge is scheduled to expire on February 3, 2009. Please accept this letter as a request from Enbridge to extend the current franchise agreement until August 3, 2009.

In the process to renew the current franchise agreement the Town and Enbridge have met several times and are progressing towards having the resolution signed by the Town, which will give Enbridge approval to proceed with filing the renewal application with the Ontario Energy Board ("Board").

In the meantime, and with your consent, Enbridge Gas Distribution wishes to file an application with the Board under Section 10 (2) of the *Municipal Franchises Act* for an Interim Order to extend the term of the right to operate works for the distribution of gas to the Town until August 3, 2009 or until the renewal can be obtained. Please note that if the Board approves the renewal before this extension has expired, the terms and conditions of the newly negotiated agreement will replace this extension.

Page 2  
November 11, 2008

Please confirm your agreement to the above by signing and dating a copy of this letter and returning it to Enbridge by facsimile at (416) 495-6072. If you have any questions please feel free to call me directly at (905) 458-2135.


Sincerely,

John Finkbiner  
Manager, Sales Development – GTA West

Acknowledged, agreed, and accepted by The Corporation of the Town of Innisfil

this 18th day of December, 2008.

Per: \_\_\_\_\_

  
John D. Leach  
Town Clerk

Title: \_\_\_\_\_

Approved By \_\_\_\_\_

CR- 523.08 - Dec 17/08

CW- 320.08 Item 5.1

Date: December 3/08

Rpt. 56.08