



EB-2010-0062

IN THE MATTER OF the *Ontario Energy Board Act 1998*,
S.O. 1998, c.15, (Schedule B) (as amended);

AND IN THE MATTER OF the *Municipal Franchises Act*,
R.S.O. 1980, c.309 (as amended);

AND IN THE MATTER OF an application for the renewal of
a franchise agreement between Natural Resources Gas
Limited and the Corporation of the Town of Aylmer;

AND IN THE MATTER OF Rules 42, 44.01 and 45.01 of the
Board's Rules of Practice and Procedure.

BEFORE: Paul Sommerville
Presiding Member

Ken Quesnelle
Member

**DECISION AND ORDER ON MOTION
TO REVIEW THE BOARD'S EB-2008-0413 DECISION**

On March 22, 2010, Natural Resources Gas Limited ("NRG") filed a Notice of Motion seeking a review of the Board's Decision in EB-2008-0413 ("the franchise Decision"). The franchise Decision limited NRG's franchise agreement with the Town of Aylmer to a term of three years. NRG's Motion seeks to have the Board vary that decision to lengthen it to a term of twenty years. The Motion was filed pursuant to Rules 42, and 44.01 of the Board's *Rules of Practice and Procedure*.

In support of its motion NRG argues that a franchise term that is of such short duration is extremely unusual, and that it compromises the Company's ability to plan its activities appropriately. It seeks to have the term of the franchise agreement extended to 20 years.

Board Findings

The Panel has decided to deny the Motion without a hearing, pursuant to Section 45.01 of the Board's Rules of Practice and Procedure. In our view the Motion does not meet the threshold required for further consideration. The reasons for our finding are:

1. The Motion is not timely. More than a year has passed since the decision complained of was issued. It is the Board's expectation that all of the parties that participated in the franchise renewal hearing have settled into the operationalization of the resultant decision and are governing themselves according to it. Those parties are entitled to a measure of certainty arising from the Board's Decision, which is one reason for limiting the time permitted for the filing of a request for a review of a decision. It is true that the Board has the power to abrogate this time limitation, pursuant to Rule 7 but in these circumstances the Board does not believe it is reasonable or appropriate to do so. The Company has not provided any compelling reason for its lateness, nor has it addressed any implications associated with granting a review at this late date.
2. The changed circumstances referenced in the Notice of Motion refer to activities which have been undertaken since the date of the Board's Decision. The Board is heartened by the positive steps the applicant has taken to use this period to improve its working relationships and its practices, but these are not circumstances which would cause the Board to interfere with the franchise Decision.
3. The Decision complained of is a highly detailed and focused decision, comprising over 15 pages on the single subject matter of the terms and conditions governing the franchise renewal. The Decision contains the Panel's consideration of the record, the law and the issues related to the length of the renewed franchise agreement. The Panel was fully aware that a three year term for the franchise agreement was unusual. In making its decision the original Panel took into account all of the factors raised by the Company in this Motion and rejected them.

The Board notes that the Applicant can bring an application for a renewal of the franchise agreement within one year of its expiration. That period will begin on February 27, 2011, and the Board will consider that application at that time.

THE BOARD THEREFORE ORDERS THAT:

The motion to review is dismissed.

DATED at Toronto, May 11, 2010

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary