



Board Staff Submissions

Natural Gas Resources Limited.

**Application for Approval of Franchise Agreement with the
Town of Aylmer**

EB-2012-0072

October 26, 2012

Overview

On February 22, 2012, Natural Resources Gas Limited (“NRG”) filed an application with the Ontario Energy Board under the *Municipal Franchises Act*, R.S.O. 1990, c. M55 as amended (the “Act”). The application is for an order of the Board renewing NRG’s right to operate works and add to works for the distribution of gas in the Town of Aylmer (“Town”) for a period of 20 years. The Board has assigned file number EB-2012-0072 to the application.

The form of the franchise agreement proposed by NRG is a 2000 Model Franchise Agreement (“MFA”). The MFA was developed in a Board initiated a generic proceeding with the intent of developing a new Model Franchise Agreement for use across the Province. The Board saw merit in applying a consistent approach to franchise renewals given the hundreds of municipalities which have agreements with gas utilities. The proceeding culminated in a RP-1999-0048 Report to the Board, dated December 29, 2000 and the approved MFA.

NRG holds a Certificate of Public Convenience and Necessity to operate works and add to works for the distribution of gas in the geographical area comprising the Town (E.B.C. 111).

The Town has not passed a authorizing a franchise agreement between the Corporation of the Town and NRG.

Board staff support the approval of the proposed MFA with the Town, for the term of 20 years as proposed by NRG.

The Proceeding

On March 29, 2012 the Board issued a Notice of Application. NRG served and published the Notice of Application as directed by the Board. The Town and Integrated

Grain Processor's Cooperative ("IGPC") requested intervenor status and the Board granted those requests. Neither party requested eligibility for cost awards.

NRG's prefiled evidence indicated that there had been negotiations between NRG and the Town related to the MFA.

On May 1, 2012, the Board issued Procedural Order No. 1 and ordered that NRG report to the Board on the progress of its settlement discussions with intervenors by May 11, 2012.

On May 11, 2012 NRG filed a letter with the and reported that the negotiations were still ongoing and proposed a further update to the Board be filed in the week of May 21, 2012.

On May 15, 2012 the Board issued Procedural Order No. 2 and ordered that NRG file a further report on file a further update by May 25, 2012. On May 25, 2012 NRG informed the Board that it had been unable to reach an agreement with the Town.

On June 7, 2012, the Board issued Procedural Order No. 3 and asked that NRG provide a proposed issues list for the proceeding, and invited comments by intervenors and Board staff. NRG was also provided an opportunity to reply to any comments. NRG filed a proposed Issues List with the Board on June 13, 2012. Intervenors and Board staff filed comments on the proposed Issues List on June 20, 2012 and on June 27, 2012 NRG replied to comments on the its proposed Issues List. The Board considered all written submissions related to the proposed Issues List . The Board issued a Decision on the Issues List and Procedural Order No. 4 on July 26, 2012.

The Board also set the timeline for filing written interrogatories by Board Staff and intervenors by August 9, 2012 and filing responses by NRG by August 23, 2012.

Procedural Order No. 5 was issued on September 17, 2012 to set the timeline for written submissions. NRG filed Argument in Chief on October 5, 2012. Pursuant to the Procedural Order No. 5 Board staff and intervenor submissions are to be filed by October 19, 2012. The record will be completed with NRG's reply submissions to be filed by November 2, 2012.

Submissions

These Board staff submissions address the issues in the Board approved Issues List.

Issue 1. Is there any reason, based on the following factors, that the standard terms and conditions in the MFA should not be used in this case?

- (a) regulatory compliance by Natural Resources Gas Limited (NRG); and*
- (b) NRG's security deposit policy*

Board staff submit that the MFA should be approved as the form of agreement between NRG and the Town.

Board staff submit that approval of the MFA is consistent with the historical development of franchise agreements leading to the MFA in use today. The MFA sets out the obligations of the Franchisee in regard to the technical, construction, safety, and operational aspects of the system within the municipality. In Board staff's view, the scope of issues to be addressed within a franchise agreement should be limited to those that are related to the terms and conditions embedded within the MFA.

Further, in Board staff's view the purpose of the MFA is to ensure coordination between the municipality and the utility with regards to construction, operation and maintenance of the system.

With respect to NRG's regulatory compliance and NRG's security deposit policy Board staff submit that these matters have been addressed as part of previous proceedings before the Board, as discussed below. Also, in Board staff's view, it may be more appropriate to address new or outstanding regulatory compliance matters through other regulatory filings such as the annual rate filings of the Company. Therefore, Board staff sees no merit in departing from the standard terms and conditions of the MFA as applied for by NRG.

On February 27, 2009, the Board approved a three year extension of NRG's existing franchise agreement for a limited three year term (EB-2008-0413) ("Franchise Decision"). As part of the Franchise Decision, the Board ordered NRG to: i. amend its security deposit policy; ii. file an application for new distribution rates; and iii. keep the Town apprised of any regulatory applications or Board proceedings in which it would be involved. As these conditions have been fulfilled by NRG Board staff has no outstanding concerns regarding these issues.

Issue 2. What conditions of approval, if any, are to be attached to Board's order, if the Board approves the application?

Section 10(2) of the Act is clear that the Board "...may make an order renewing or extending the term of the right for such period of time and upon such terms and conditions as may be prescribed by the Board ...". In Board staff's view no additional conditions should be attached to the Board's order approving this application. The standardized conditions and terms contained in the MFA are sufficient for the purpose of franchise agreements between gas utilities and municipalities and have been relied upon on a province wide basis since the MFA was developed in 2000.

Issue 3. If the Board approves the application, what is the appropriate term for the Board's order?

Board staff notes that the duration of a renewed agreement under the MFA is twenty years. This is the term that has been used for both new and renewed municipal franchises since the MFA was approved in 2000. Board staff submit that a twenty year term is appropriate term for NRG's franchise agreement with the Town of Aylmer and therefore agrees with NRG's submission supporting a twenty year term franchise agreement.

Issue 4. If the Board does not approve the application, what are the implications?

It is Board staff's position that failing to renew the franchise could potentially impact the ability of NRG to provide distribution works and result in a loss of service to new or existing customers.

No other party has come forward to replace or act on behalf of NRG. Although the Board does not have the jurisdiction under the Act to supplant NRG with another distribution service provider, the Board does have the authority, under section 43(1) of the OEB Act to grant leave to a gas distribution company to sell, lease or otherwise dispose of its gas distribution system. Board staff note that no application under section 43(1) was filed with the Board and therefore there is no imminent alternative to ensure continued natural gas service to the Town in the event that the Board does not approve the application.

Issue 5. Who should bear the costs of this proceeding?

Board staff takes no position on the issue of who should bear the cost of the proceeding.

All of which is respectfully submitted.

October 26, 2012