



EB-2012-0072

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 Natural Resource Gas Limited for an order renewing or extending the right to operate works for the distribution of gas under section 10 of the *Municipal Franchises Act*, R.S.O. 1990, c. M.55, as amended.

BEFORE: Ken Quesnelle
Presiding Member

Cynthia Chaplin
Vice Chair

Marika Hare
Member

DECISION WITH REASONS

December 13, 2012

Introduction

Natural Resource Gas Limited (“NRG”) filed an application dated February 22, 2012 with the Ontario Energy Board (the “Board”) under section 10 of the *Municipal Franchises Act*, R.S.O. 1990, c. M.55, as amended (the “Act”), 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.

In addition, NRG requested an order of the Board extending the term of its existing Municipal Gas Franchise Agreement with the Town beyond its expiry date of February 27, 2012 to permit sufficient time to process this application. The Board assigned file number EB-2012-0072 to the application.

On February 27, 2012 the Board issued an Interim Decision and Order extending the Municipal Gas Franchise Agreement between NRG and the Town dated February 27, 1984¹ until such time that the Board makes a final determination on the franchise renewal application.

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 of Aylmer (E.B.C. 111).

The form of the franchise agreement proposed by NRG is the 2000 Model Franchise Agreement (“MFA”).

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

By way of this Decision and Order the Board approves the application for the proposed MFA with the Town, for the term of 20 years as proposed by NRG.

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

¹ On February 27, 2009, the Board approved a three year extension of NRG’s existing franchise agreement on for a limited three year term (EB-2008-0413). This decision was appealed at the Divisional Court by NRG; the appeal was dismissed.

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 ordering NRG to report to the Board on the progress of its settlement discussions with intervenors by May 11, 2012.

On May 11, 2012, NRG reported that the negotiations were still ongoing and proposed that 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 ordering NRG to file a further report on the status of negotiations by May 25, 2012. On May 25, 2012 NRG informed the Board that it had been unable to reach an agreement with the intervenors.

On June 7, 2012, the Board issued Procedural Order No. 3 directing NRG to provide a proposed issues list for the proceeding, and inviting comments by intervenors and Board staff. NRG was also provided an opportunity to reply to any comments. The Board issued a final Issues List with Procedural Order No. 4 on July 26, 2012.

Procedural Order No. 4 also set out the timeline for written interrogatories and responses. The discovery process was concluded on August 23, 2012.

Procedural Order No. 5 was issued on September 17, 2012 and set the timeline for written submissions. NRG filed Argument in Chief on October 5, 2012. Board staff and intervenors filed written submissions on October 26, 2012. The record was completed with NRG's reply submissions filed on November 9, 2012.

Scope of the Proceeding

The following issues were approved by the Board for consideration in NRG's application:

1. Is there any reason, based on the following factors, that the standard terms and conditions in the Model Franchise Agreement should not be used in this case?
 - a) regulatory compliance by Natural Resources Gas Limited (NRG); and

- b) NRG's security deposit policy
2. What conditions of approval, if any, are to be attached to Board's order, if the Board approves the application?
 3. If the Board approves the application, what is the appropriate term for the Board's order?
 4. If the Board does not approve the application, what are the implications?
 5. Who should bear the costs of this proceeding?

When determining the issues list the Board considered a number of additional issues proposed by the Town and IGPC, which the Board determined were beyond the scope of the proceeding:

In the Board's view, the following proposed issues are beyond the scope of a franchise agreement proceeding: limiting the geographic territory of the franchise within the municipality (IGPC proposed issue 6); issues related to the development of a new cost allocation study, issues related to the "retractable" feature of NRG's Class "C" shares" and complete separation of NRG's utility gas distribution business from its non-utility ancillary businesses as proposed by the (Town proposed issue 5). These issues have either been reviewed and decided by the Board in recent proceedings or are more appropriately addressed in other proceedings such as NRG rate proceedings.²

In addition, the Board determined that it would not reconsider the 2009 Franchise Decision as proposed by the Town.

As part of its submissions the Town summarized its overall position indicating that it would not sign a franchise agreement with NRG until:

- (a) NRG takes significant steps to address the current issues respecting IGPC's proposed expansion of the Ethanol plant and related gas supplies;
- (b) NRG takes significant steps to address the current disparities between NRG's price and quality of gas supply within the Town of Aylmer and that provided elsewhere in the Province; and

² EB-2012-0072, Decision on Issues List and Procedural Order No. 4, July 26, 2012.

- (c) The alignment of the periods of all franchises in the NRG service area has been achieved.³

IGPC raised similar issues as the Town, including the alignment of the term of other municipal franchise agreements in the area with that of the Town's, the current commodity prices being paid by NRG's customers, the cost of the existing pipeline to serve IGPC, future distribution service requirements, and NRG's ownership structure.

NRG in its reply submitted that issues related to rates, construction costs of the pipeline serving the ethanol plant, future service to the plant and NRG's corporate structure are outside the scope of the current proceeding or are being addressed as part of other proceedings.

The Board finds that Issues related to NRG's rates, commodity prices, its corporate structure, and future service to IGPC ethanol plant are outside of the scope of this proceeding. There are other ongoing proceedings related to many of the concerns raised by the Town and IGPC, and these matters are more appropriately resolved through those other proceedings. The proceedings include the annual IRM rate filing, the Board's motion on pipeline construction contributions from IGPC, and IGPC's application with respect to its capital contribution and future service from NRG.⁴ NRG was also directed by the Board in the company's last cost of service proceeding to undertake an independent review of its local gas supply arrangements.⁵

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

³ EB-2012-0072, Legal Submissions by the Town of Aylmer, paragraph 48, page 19, October 26, 2012.

⁴ NRG's annual rate filing under IRM EB-2012-0342; Board Motion on determining customer contributions to pipeline construction costs EB-2012-0396; IGPC application for gas distribution service and compliance matters related to pipeline construction costs EB-2012-0406.

⁵ EB-2010-0018

NRG submitted that there are no reasons to depart from the standard terms and conditions of the MFA. NRG pointed out that it has made the changes to its security deposit policy as directed by the Board in its franchise renewal granted in 2009 and that it has met its regulatory compliance obligations. NRG also noted that no other party led evidence with respect to these issues.

The Town and IGPC opposed the approval of the MFA. The Town cited a general lack of customer support and continued interference with the development of the IGPC ethanol plant as reasons for its opposition to the approval of the MFA.

IGPC challenged both the quality and service reliability of NRG. IGPC cited the historical issues of NRG's conduct towards IGPC as well as past proceedings and outstanding issues that it has with NRG. Board staff submitted that the purpose of the MFA is to ensure coordination between the municipality and the utility with respect to construction, operation and maintenance of the system and that the standard terms and conditions in the MFA serve that purpose. Board staff submitted that the issues of regulatory compliance and NRG's security deposit policy have largely been addressed within the context of other regulatory proceedings before the Board.

Board staff also submitted that it may be more appropriate to address new or outstanding regulatory compliance matters and the company's customer service policies through other regulatory filings or audits.

Board Findings

NRG applied to the Board under Section 10 of the Act for an order of the Board renewing the term of the right to operate works for the distribution of gas for a period of 20 years, upon such terms and conditions as set out in the NRG Preferred Agreement, which is based upon the MFA developed by the Board and modified to include one of the conditions being sought by the Town.

Section 10 of the Act states:

10. (1) Where the term of a right referred to in clause 6 (1) (a), (b) or (c) that is related to gas or of a right to operate works for the distribution of gas has expired or will expire within one year, either the municipality or the party having the right may apply to the Ontario Energy Board for an order for a renewal of or an extension of the term of the right.

(2) The Ontario Energy Board has and may exercise jurisdiction and power necessary for the purposes of this section and, if public convenience and necessity appear to require it, 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, or if public

convenience and necessity do not appear to require a renewal or extension of the term of the right, may make an order refusing a renewal or extension of the right.

(3) The Board shall not make an order under subsection (2) until after the Board has held a public hearing upon application therefor and of which hearing such notice shall be given in such manner and to such persons and municipalities as the Board may direct.

(4) Despite subsection (3), where an application has been made under subsection (1) and the term of the right has expired or is likely to expire before the Board disposes of the application, the Board, on the written request of the applicant, and without holding a public hearing, may make such order as may be necessary to continue the right until an order is made under subsection (2).

(5) An order of the Board heretofore or hereafter made under subsection (2) renewing or extending the term of the right or an order of the Board under subsection (4) shall be deemed to be a valid by-law of the municipality concerned assented to by the municipal electors for the purposes of this Act and of section 58 of the *Public Utilities Act*.

(6) An application may not be made under this section in respect of a right that has expired before the 2nd day of December, 1969. R.S.O. 1990, c. M.55, s. 10 (6).

Under the Act the Board can approve a franchise agreement over the objections of the parties if that agreement, in the view of the Board meets the test of public convenience and necessity. The Board has established standard terms and conditions under a model franchise agreement which it has found in many previous cases to meet this test.

The Board first developed a standard municipal franchise agreement through a proceeding in 1987 (E.B.O. 125) which was revised in 2000 as the 2000 Model Franchise Agreement. The purpose of both of these proceedings was to standardize franchise agreements, with a focus on the year to year operational arrangements between the municipality and the utility, including issues related to rights of way, construction schedules, and communications between the municipality and the utility. The Board saw merit in applying a consistent approach to franchise renewals given the hundreds of municipalities which have agreements with gas utilities. The MFA has served as the basis for new and renewed franchise agreements over that period.

The MFA sets out the obligations of the franchise holder in regard to the technical, construction, safety, and operational aspects of the distribution system within the municipality. The Board finds that adherence to the conditions of the 2000 MFA will ensure that these functions are properly carried out.

The Board finds that there is no reason for the Board to deviate from the standard provisions of the MFA to address issues related to the security deposit policy or regulatory compliance, or the other matters raised by the Town and IGPC. As Board staff pointed out, these issues have been resolved or are being addressed through other proceedings. Future compliance issues, if they arise, are also appropriately dealt with through the Board's compliance process and not through modifications to the MFA.

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

The Town took the position that it would not sign the franchise agreement unless NRG met conditions to resolve outstanding concerns regarding expansion of the ethanol plant; address "alleged pricing disparities for its services in contrast to the prices offered by other distributors"; and align the terms of all franchise agreements in NRG's service area.

Board staff submitted that 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. In staff's view, the standard 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 across the province since the MFA was developed in 2000.

Board Findings

The Board finds that no additional conditions, other than those of the MFA are required. Earlier in this Decision, the Board has determined that the issues and proposed conditions raised by the Town and IGPC are not within the scope of the Franchise Agreement and are better addressed elsewhere.

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

NRG submitted that a 20 year renewal period is the standard that the Board has held under MFA and there is no reason to depart from this standard. In addition NRG

indicated that there would be potential consequences to a shorter period, such as increased financial risk to borrow funds, reduced amortization periods and the undermining of any incentive to add capital assets to its system.

Board staff supported NRG's request for a 20 year renewal period based on the standard established in the MFA.

Both the Town and IGPC opposed the approval of a 20 year term. The Town and IGPC submitted that a shorter term will not and has not affected NRG's ability to raise any required capital or expand its system as necessary.

The Town also sought a shorter term in order to align the renewal period of Aylmer's franchise with those of the surrounding municipalities.⁶ The Town submitted that the three year approval granted by the Board in its 2009 franchise renewal for the Town was in part to allow for Aylmer's franchise renewal period to coincide with several other municipalities with pending renewals. Aligning the franchise renewal period with other municipalities being served by NRG would, according to the Town, allow those municipalities to exercise greater collective influence upon NRG.

The Town suggested two ways that the Board could align the Aylmer franchise with those of other municipalities being served by NRG:

- (c) Adjourn the current proceeding and allow the current extension Order to remain in place until such time as it could be joined with the other municipalities seeking a renewal
- (d) Set an expiry date for the franchise renewal in this proceeding that coincides with expiry date of the last of the franchise agreements within NRG's service area (extending any other franchise renewals that came up in the intervening period to the same date).⁷

IGPC supported the Town with respect to the alignment of the franchise renewal period with other municipalities served by NRG.

NRG submitted that the Town and IGPC mischaracterized the Board's 2009 franchise renewal findings. NRG submitted that while the Board accepted alignment as an issue,

⁶ Please note that the sub-issue of franchise agreement term alignment for all municipalities within NRG's service area is addressed here under Issue 3 and not under Issue 4.

⁷ EB-2012-0072, Legal Submissions by the Town of Aylmer, paragraph 36, pages 12-13, October 26, 2012.

the Board did not set the three year renewal period to align Alymer's franchise with those of the other municipalities being served by NRG.

Board Findings

The Board finds that a 20 year franchise renewal period as established in the MFA is appropriate in this case. No other party has come forward to support the Town's position regarding alignment. The Board finds there is no compelling reason to expose NRG to the uncertainty of a shorter term.

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

As the Board has approved the application, this issue is moot.

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

Board staff did not take any position on the issue of who should bear the costs of the proceeding.

NRG submitted that the cost of the proceeding should be borne entirely by the Town and IGPC. NRG argued that the Town's and IGPC's participation did not add value to the proceeding and that "their actions and choices caused the costs to be incurred" and that both the Town and IGPC advanced certain issues which were determined not to be part of this application "...despite the Board's clear rulings on what is - and what is not - in scope of the proceeding". NRG concluded that it should not have to pay the costs of the proceeding and should not bear the cost of the intervenors' participation.

The Town stated that the municipal taxpayers should not bear the cost of this proceeding. The Town also noted that costs should be paid by NRG and not passed on to the NRG's ratepayers.

IGPC submitted that it was NRG's actions and refusal to respond through the discovery phase that was the cause of delays and increased costs. IGPC also asked in their submissions that under these circumstances that the Board reconsider IGPC's eligibility for a cost award. NRG objected to this request.

Board Findings

The Board finds that NRG should pay its own costs for this application, as would any other gas distributor filing for a franchise renewal with the Board. The Board does not find that NRG should pay for either the Town's or IGPC's costs. These entities are not normally eligible for cost awards, and the Board sees no reason in this case to deviate from that policy.

IT IS ORDERED THAT:

1. By this order the Board grants to Natural Resource Gas Limited the right to construct and operate works for the distribution, transmission and storage of natural gas and the right to extend and add to the works, within the Town of Aylmer, pursuant to terms and conditions, and the period that are set out in the franchise agreement attached as Appendix A.

DATED at Toronto, **December 13, 2012**

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

Appendix A

To

Decision with Reasons

Natural Resource Gas Limited

EB-2012-0072

Franchise Agreement

December 13, 2012

FRANCHISE AGREEMENT

THIS AGREEMENT effective this 28th day of February, 2012.

BETWEEN:

CORPORATION OF THE TOWN OF AYLMER
hereinafter called the “**Corporation**”

-and –

NATURAL RESOURCE 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 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:

ARTICLE 1 – DEFINITIONS

1.1 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 3.1 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.

ARTICLE 2 – RIGHTS GRANTED

2.1 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.

2.2 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.

2.3 Duration of Agreement and Renewal Procedures.

- (a) 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.
- (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*.

ARTICLE 3 – CONDITIONS

3.1 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.

3.2 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.

3.3 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.

3.4 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 the Corporation's reasonably incurred costs, as certified by the Engineer/Road Superintendent.

3.5 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.

3.6 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 3.5. 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.

3.7 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 3.8 of this Agreement.

3.8 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.

ARTICLE 4 – PROCEDURAL AND OTHER MATTERS

4.1 Municipal By-laws of General Application

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

4.2 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.

4.3 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 3.1 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 3.8 applies to the cost of relocation.

4.4 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.

4.5 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.

4.6 Agreement Binding Parties

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

4.7 Cost Allocation Study

NRG will complete and file a new cost allocation study for consideration and determination by the Ontario Energy Board by no later than the second cost-of-service rate proceeding following the date of the Agreement.

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

**THE CORPORATION OF THE TOWN OF
AYLMER**

By: _____

By: _____

NATURAL RESOURCE GAS LIMITED

By: _____
J. Robert Cowan, Co-Chair