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OSLER

Toronto

May 30, 2014

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Our Matter Number: 1144688

Ottawa

Sent By Electronic Mail, Regular Mail and RESS Electronic Filing

Calgary

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
27-2300 Yonge Street
Toronto, ON M4P 1E4

New York

Dear Ms. Walli:

EB-2012-0476 – Application for Franchise Renewal Order – Natural Resource Gas Limited and Norfolk County

Please find enclosed an Application by Natural Resource Gas Limited (NRG) for an Order of the Board with respect to a proposed Franchise Agreement between NRG and Norfolk County.

NRG will provide a copy of this Application to Norfolk County and will await further directions from the Board regarding this process. NRG respectfully requests that the application proceed by way of a written hearing.

Should you have any questions or require any additional information, please do not hesitate to contact me.

Yours very truly,



Patrick G. Welsh
Associate
PW:

Enclosures (6)

c: Keith Robicheau, *Norfolk County*
Richard King, *Osler*
Laurie O'Meara, *NRG*

ONTARIO ENERGY BOARD

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

AND IN THE MATTER OF an Application by Natural Resource Gas Limited for an Order under section 10(2) of the Act renewing the terms and conditions upon which, and the period for which Norfolk County is to grant 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 in Norfolk County;

AND IN THE MATTER OF an Application by Natural Resource Gas Limited for an Order under section 10(5) of the Act renewing the term of the right in such a manner that is deemed to be a valid by-law of Norfolk County assented to by the municipal electors.

**APPLICATION OF
NATURAL RESOURCE GAS LIMITED**

May 30, 2014

OSLER, HOSKIN & HARCOURT LLP
Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Richard J. King
Tel: 416.862.6626

Patrick G. Welsh
Tel: 416.862.5951
Fax: 416.862.6666

Counsel for Natural Resource Gas Limited

Background

1. Natural Resource Gas Limited (“NRG”), is an Ontario corporation and carries on the business of, among other things, owning and operating natural gas distribution facilities in Norfolk County (the “County”).
2. The County is a municipal corporation incorporated under the laws of Ontario. A map showing the location of the County is attached as Schedule “A”.
3. NRG and the former Township of Norfolk had an existing franchise agreement dated December 14, 1982, which granted NRG the right to construct and operate works for the distribution of gas within the former Township of Norfolk’s municipal boundaries and to supply gas to the former Township of Norfolk’s residents (the “Existing Franchise Agreement”). NRG’s franchise rights expired on December 6, 2012, on account of the authorizing municipal by-law being dated December 6, 1982.
4. The former Township of Norfolk no longer exists. In 2001, the Township of Norfolk, along with the Township of Delhi, Town of Simcoe, and the western half of the City of Nanticoke were amalgamated to form the Town of Norfolk, which then immediately changed its name to the County of Norfolk.
5. NRG has a Certificate of Public Convenience and Necessity from the Ontario Energy Board (the “Board”) granting it the right to construct works to supply gas and to supply gas in the former Township of Norfolk (E.B.C. 111 and 119, issued May 5, 1982, attached as Schedule “B”).

Procedural History

6. On December 21, 2012, counsel for NRG requested an interim extension of the Existing Franchise Agreement with the County in order to allow for an opportunity to negotiate the renewal of the Existing Franchise Agreement using a 20-year franchise agreement based on the Board's Model Franchise Agreement, a copy of which is attached as Schedule "C" (the "Proposed Franchise Agreement").

7. In its December 21, 2012 Application, NRG also applied to the Board for an Order made pursuant to Section 10 of the Act 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 Proposed Franchise Agreement. NRG indicated that in the event that the matter was not resolved via a negotiated agreement between NRG and the County, it would file updated evidence in support of this Application and would ask the Board to proceed to process the Application.

8. On January 11, 2013, the Board granted NRG an interim order continuing NRG's right to operate in the County pursuant to section 10(4) of the Act until such time as the Board makes a final determination on NRG's franchise renewal application regarding the County. This "final determination" would either be (i) an order being made under section 10(2) of the Act in respect of the Application or (ii) an agreement being reached between NRG and the Corporation on a new municipal franchise agreement.

The franchise renewal process with Norfolk County has stalled

9. On November 14, 2012, NRG approached the County to negotiate the renewal of the Existing Franchise Agreement using the Proposed Franchise Agreement. As noted, the Proposed Franchise Agreement is based on the Board's Model Franchise Agreement.

10. Between November and December 2012, NRG also began the process of renewing its franchise agreements with other municipalities.¹ To date, NRG has worked closely and collaboratively with these municipalities such that it has been able to submit (on a consent basis) franchise renewal applications for approval by the Board for all of the municipalities except for Norfolk County.

11. On February 19, 2014, counsel for NRG sent a letter to Norfolk County requesting confirmation that the County intended to move forward with the franchise renewal process (Schedule “D”).

12. On February 26, 2014, the County replied to NRG’s letter, indicating that a by-law would be put before Norfolk County’s Council on March 25, 2014 (Schedule “E”).

13. NRG’s counsel sent follow-up e-mails on April 7, 2014 and April 29, 2014, noting that there had been four Council meetings since the February 26 correspondence.² NRG was informed that a draft by-law had not been put before Council in March or April and that it was unlikely that the issue would be brought to Council in May.

14. On May 7, 2014, counsel for NRG indicated that NRG would be referring the franchise renewal to the Board.

¹ See EB-2012-0444, EB-2012-0445, EB-2012-0446, EB-2012-0447, and EB-2012-0475.

² Norfolk County held Council Meetings on March 11, March 25, April 8, and April 22:
<http://www.norfolkcounty.ca/government/council-meetings/>

Public convenience and necessity militate in favour of an Order from the Board renewing the Franchise Agreement between the County and NRG

15. NRG submits that, in the circumstances, it is appropriate for the Board to make an order renewing the terms and conditions upon which, and the period for which Norfolk County is to grant to NRG 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 in Norfolk County pursuant to section 10(2) of the Act for the following reasons:

- (a) Over the past 18 months, NRG has attempted to work with Norfolk County to advance the franchise renewal process without success;
- (b) On multiple occasions, NRG has been assured that materials were forthcoming, only to find out, after repeated inquiries on each occasion, that the franchise renewal process had not advanced at all;
- (c) As NRG understands it, there is no disagreement in principle with the terms, conditions and duration of the Proposed Franchise Agreement, but rather, a combination of Norfolk County having other pressing matters before it and having insufficient resources to advance the franchise renewal process;
- (d) The terms, conditions and duration of the Proposed Franchise Agreement are those of the Board. They are based exclusively on the Board's Model Franchise Agreement, therefore the Board ought not to have any concerns about whether or not the terms and conditions of the Proposed Franchise Agreement are in the public interest;

- (e) Public convenience and necessity appear to require the Board's intervention in this matter because Norfolk County does not appear to have sufficient resources to advance the franchise renewal process;
- (f) The Existing Franchise Agreement has been extended by the Board through an Interim Order which has been in effect for almost 15 months. NRG submits that it is not desirable for interim relief to continue indefinitely. Rather, NRG submits that it is in the public interest to have the matter finally determined;
- (g) The Board has the discretion, jurisdiction and clear authority to order the relief requested, pursuant section 10 of the Act and the Board's decision in E.B.O. 125;³ and,
- (h) Granting the relief requested is consistent with the principle of liberal construction (enshrined in Rule 2.01 of the Board's *Rules of Practice and Procedure*) aimed at securing "the most just, expeditious, and efficient determination on the merits of every proceeding before the Board."

Address and Contact Information

16. The address and contact information of the County is:

Norfolk County
50 Colborne St. South
Simcoe, ON N3Y 4H3
Attention: Keith Robicheau, County Manager
keith.robicheau@norfolkcounty.ca
Tel: 519-426-5870 ext. 1225
Fax: 519-426-8573

³ *In the Matter of the Ontario Energy Board's review of franchise agreements and certificates of public convenience and necessity*, E.B.O. 125 (May 21, 1986) at para. 2.13.

17. The contact information for NRG is:

Osler, Hoskin & Harcourt LLP
1 First Canadian Place, Suite 6300
Toronto, ON M5X 1B8
Attention: Patrick Welsh
pwelsh@osler.com
Tel: 416-862-5951
Fax: 416-862-6666

Relief Requested

18. NRG now applies to the Board for:

- (a) An Order under section 10(2) of the Act renewing the terms and conditions, and the period for which, the County is to grant NRG 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; and,
- (b) An Order pursuant to section 10(5) of the Act deeming such an Order to be a valid by-law of the County assented to by the municipal electors.

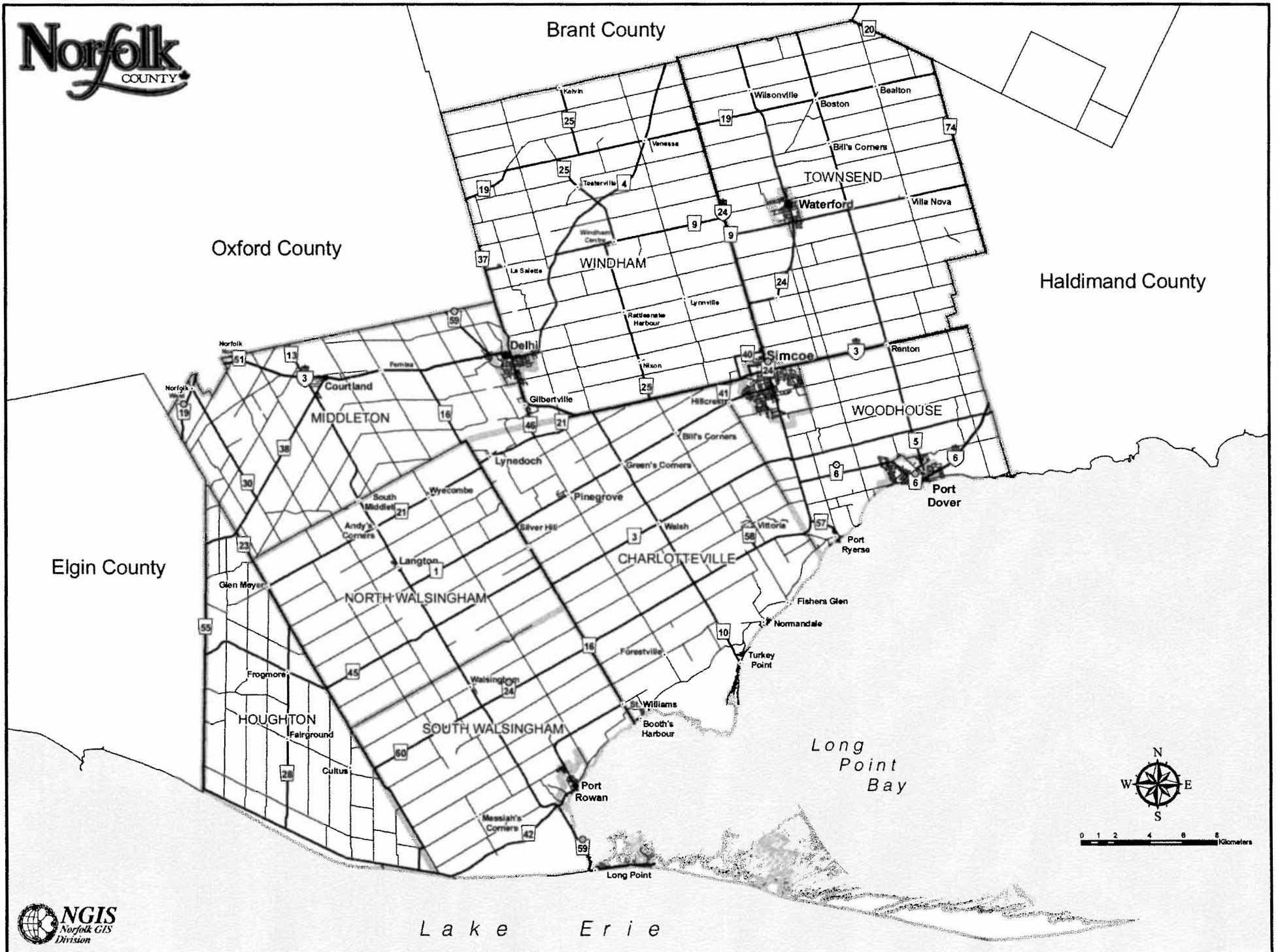
ALL OF WHICH IS RESPECTFULLY SUBMITTED.

May 30, 2014



Patrick G. Welsh

Tab A



Tab B



IN THE MATTER OF the Municipal
Franchises Act, R.S.O. 1980, c. 309;

AND IN THE MATTER OF applications by
Natural Resources Gas Limited for
certificates of public convenience
and necessity to construct works to
supply and to supply gas in the
Townships of Southwest Oxford, North
Dorchester, South Dorchester,
Westminster, Norfolk and Bayham, the
Villages of Belmont, Port Burwell,
Springfield and Vienna and the Town
of Aylmer.

BEFORE: R. H. Clendining)
Chairman and)
Presiding Member)
H. R. Chatterson) October 15, 1981
Member)
R. R. Perdue)
Member)

CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY

UPON the applications of Natural Resource Gas
Limited ("NRG") for certificates of public convenience
and necessity to construct works to supply gas in the
municipalities referred to above;

AND UPON the applications having been heard in
Toronto on September 9, 1981, in the presence of counsel
for NRG, for Union Gas Limited and for the Board, no one
else appearing, and Reasons for Decision having been
delivered on October 15, 1981:

IT IS ORDERED THAT a certificate of public convenience and necessity be and the same is hereby granted to NRG to construct works to supply and to supply gas in:

1. the Village of Belmont
2. the Township of South Dorchester
3. the Village of Port Burwell
4. the Town of Aylmer
5. the Village of Springfield
6. the Village of Vienna
7. those areas of the Townships of Southwest Oxford, North Dorchester, Westminster, Norfolk and Bayham set out in Appendix "A" to this Order.

ISSUED at Toronto this 5th day of May, 1982.

ONTARIO ENERGY BOARD

Imelda Walker

Imelda Walker
Assistant Board Secretary

E.B.C. 111 and 119 dated May 5th,
1982.

Imelda Walker
Imelda Walker
Assistant Board Secretary

TOWNSHIP OF WESTMINSTER

ALL AND SINGULAR those certain parcels or tracts of land and premises situate, lying and being in the Township of Westminster, in the Country of Middlesex, and being composed of the following:

1. The whole of Lots 3, 4, 5 and 6 in Concession 8.
2. The whole of Lots 1, 2, 3, 4, 5 and 6, in Concession 7.
3. The whole of Lots 1, 2 and 3 in each of Concessions 3, 4, 5 and 6.
4. The south halves of Lots 4, 5 and 6, in Concession 6.
5. Those parts of Lots 1, 2, 3 and 4 in Concession 2 lying south of Highway 401.
6. That part of the east half of Lot 5 in Concession 2 lying south of Highway 401.
7. Those customers on the west side of Highway 74 to a depth of 200 feet from the said Highway, from the dividing line between the north and south halves of Lot 1 in Concession 1 to Highway 401 lying in Lot 1 in Concession 2.

8. The north half of Lot 1 in Concession 1.
9. The whole of Lot 1 in the Broken Front Concession.

TOWNSHIP OF NORTH DORCHESTER

ALL AND SINGULAR those certain parcels or tracts of land and premises situate, lying and being in the Township of North Dorchester, in the County of Middlesex, and being composed of the following:

1. The whole of Lot 24 in Concession A.
2. The north half of Lot 24, in Concession B.
3. Those customers along the east side of Highway 74 to a depth of 200 feet from the said Highway, from the dividing line between the north and south halves of Lot 24, in Concession B to Highway 401 lying in Lot 24, in Concession 1.
4. Those parts of Lots 21, 22, 23 and 24, in Concession 1 lying south of Highway 401.
5. The whole of Lots 21, 22, 23 and 24 in each of Concessions 2, 3, 4, 5 and 6.
6. The west half of the southerly quarter of Lot 20 in Concession 5.
7. The whole of Lot 20, in Concession 6, save and except the northeasterly quarter thereof.

8. The south halves of Lots 11, 12, 13, 14, 15, 16, 17, 18 and 19, in Concession 6.
9. The whole of Lots 6, 7, 8, 9 and 10 in each of Concessions 2, 3, 4, 5 and 6.
10. Those parts of Lots 6, 7, 8, 9 and 10 in Concession 1 lying South of Highway 401.
11. The south halves of Lots B, 1, 2, 3, 4 and 5, in Concession 6.
12. The whole of Lot A in each of Concessions 2, 3, 4, 5 and 6.
13. That part of Lot A, in Concession 1 lying south of Highway 401.

TOWNSHIP OF SOUTHWEST OXFORD

ALL AND SINGULAR those certain parcels or tracts of land and premises situate, lying and being in the Township of Southwest Oxford in the County of Oxford, formerly in the Township of Dereham in the County of Oxford, and being composed of the following:

1. The whole of Lots 15 to 23, both inclusive, in Concession 1.
2. The whole of Lot 24, in Concession 1, save and except that part of the said Lot lying north of Highway 401.

3. The whole of Lots 15 to 28, both inclusive, in each of Concessions 2 to 12, both inclusive.
4. The southerly quarter of Lot 14, in Concession 10.
5. The southerly quarter of Lot 14, in Concession 11.

TOWNSHIP OF BAYHAM

ALL AND SINGULAR that certain parcel or tract of land and premises situate, lying and being in the Township of Bayham, in the County of Elgin, and being composed of the whole of the said Township of Bayham, saving and excepting therefrom the following:

1. The whole of Lots 15, 16, 17, 18, 19, 20 and 21, in Concession 11.
2. The whole of Lots 20, 21, 22, 23, 24 and 25, in Concession 10.
3. The whole of Lots 20, 21, 22, 23, 24, 25, 26, 27 and 28, in Concession 9.
4. The southerly 200 feet of Lots 17, 18 and 19, in Concession 9.
5. The northerly 200 feet of Lots 17, 18 and 19 in Concession 8.
6. The north half of Lot 20, in Concession 8.

7. Those parts of Lots 21, 22, 23 and 24, in Concession 8 lying north of the road which runs in a generally easterly and westerly direction through such Lots and commonly known as Ridge Road. However, the property of Mr. John Siemens Jr., R.R.1, Eden, Ontario (part of Lot 23, Concession 8) is to continue to be served by Natural Resource Gas Limited.
8. The whole of Lots 26, 27 and 28, in Concession 8.

TOWNSHIP OF NORFOLK

ALL AND SINGULAR those certain parcels or tracts of land and premises situate, lying and being in the Township of Norfolk, in the Regional Municipality of Haldimand-Norfolk (formerly in the Township of Houghton, in the County of Norfolk) and being composed of all of the lands and premises situate, lying and being in the lands formerly known as the Township of Houghton, save and except the following:

1. The whole of Gore Lot A.
2. The north half of Gore Lot B.

(FORMERLY MIDDLETON)

ALL AND SINGULAR those certain parcels or tracts of land and premises situate, lying and being in the Township of

Norfolk, in the Regional Municipality of Haldimand-Norfolk, formerly in the Township of Middleton, in the County of Norfolk, and being composed of the following:

1. The south quarters of Lots 1 and 2, in Concession 1, North of Talbot Road.
2. The whole of Lots 1 and 2, in each of Concessions 1 and 2, South of Talbot Road.

(FORMERLY NORTH WALSHINGHAM)

ALL AND SINGULAR those certain parcels of tracts of land and premises situate, lying and being in Township of Norfolk, in the Regional Municipality of Haldimand-Norfolk, formerly in the Township of North Walsingham in the County of Norfolk, and being composed of the following:

1. The whole of Lot 1 in each of Concessions 11, 12, 13 and 14.
2. The whole of Lot 1 in Concession 10, save and except all of the southerly 200 feet of the said Lot except the westerly 200 feet of the said southerly 200 feet.
3. The whole of Lot 1 in Concession 9, save and except all of the northerly 200 feet of the said lot except the westerly 200 feet of the said northerly 200 feet.

4. The whole of Lots 1 in each of Concessions 7 and 8.
5. The south halves of each of Lots 2, 3, 4 and 5 in Concession 7.

(FORMERLY SOUTH WALSINGHAM)

ALL AND SINGULAR those certain parcels or tracts of land and premises situate, lying and being in the Township of Norfolk, in the Regional Municipality of Haldimand-Norfolk, formerly in the Township of South Walsingham, in the County of Norfolk, and being composed of the following:

1. The whole of Lots 1, 2, 3, 4 and 5, in each of Concessions 1, 2, 3, 4, 5 and 6.
2. The whole of Lots 1, 2, 3, 4 and 5, in each of Ranges A and B.
3. The whole of Marsh Lots 1, 2, 3, 4 and 5.
4. The whole of Gore Lot E, in Concession 3.
5. The whole of Gore Lot D in Concession 2.
6. The whole of Gore Lot C in Concession 1.
7. The whole of Gore Lot B, in Range A.
8. The whole of Gore Lot A, in Range B.
9. The whole of Marsh Lot in front of Gore Lot A, Range B.

Tab C

FRANCHISE AGREEMENT

THIS AGREEMENT effective this ____ day of _____, 20__.

BETWEEN:

CORPORATION OF NORFOLK COUNTY
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.

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

**THE CORPORATION OF NORFOLK
COUNTY**

By: _____

By: _____

**NATURAL RESOURCE GAS
LIMITED**

By: _____

Tab D

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OSLER

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Calgary

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February 19, 2014

Patrick G. Welsh
Direct Dial: 416.862.5951
PWelsh@osler.com
Our Matter Number: 1144688

Sent By Electronic Mail and Regular Mail

Norfolk County
50 Colborne St. South
Simcoe, ON N3Y 4H3

Attention: Scott Zerbes, Senior Municipal Technologist, Engineering Division

Dear Mr. Zerbes:

Natural Resource Gas Franchise Renewal with Norfolk County

We act as regulatory counsel to Natural Resource Gas Limited (NRG) and are assisting NRG with its renewal of a franchise agreement to distribute, store and transmit natural gas in Norfolk County. It is our understanding that you have been communicating with Dr. Phil Walsh, who has also been assisting NRG in this matter.

On December 12, 2013, Dr. Walsh sent a follow-up e-mail asking for an update on the status of the renewals of Norfolk County's franchise agreement.

As you may be aware, NRG began the process of renewing its franchise agreement with Norfolk County in December of 2012, and Dr. Walsh has been following up with Norfolk County on a regular basis. At this juncture, NRG requires confirmation that Norfolk County intends to move forward with this process within a reasonable timeframe.

Please advise when Norfolk County intends to submit the by-law approving Norfolk County's franchise agreement with NRG for first and second reading. Given that Norfolk County has had ample time to consider this matter, it is NRG's expectation that Norfolk County will submit its by-law for first and second reading by the end of April 2014.

We would appreciate a response by **March 6, 2014**, including a confirmation that a by-law will be finalized and submitted to Norfolk County's council for first and second reading by April 30, 2014.

Please note that the franchise agreement is a standard form agreement developed and approved by the Ontario Energy Board (OEB). They are normally entered into voluntarily by a gas utility and a municipality. However, it is open to a utility to refer the agreement to the OEB for approval where, for whatever reason, a franchise agreement cannot be concluded between a utility and a municipality. This authority is granted to the OEB under the *Municipal Franchises Act*.

If we do not hear from Norfolk County by **March 6, 2014**, NRG will refer the franchise agreement to the OEB for approval.

Please do not hesitate to contact me if you have any questions.

Yours very truly,



Patrick G. Welsh
Associate
PW:

c: Richard King, *Osler*
Laurie O'Meara, *NRG*

Tab E

Welsh, Patrick

From: Welsh, Patrick [PWelsh@osler.com]
Sent: Wednesday, May 07, 2014 8:50 AM
To: Scott Zerbes
Subject: RE: Natural Resource Gas Limited Franchise Agreement with Norfolk County

Hi Scott,

Further to my letter that I sent in February (attached to this e-mail for convenience), this process began in December of 2012, and on more than one occasion we have been told that Norfolk would be advancing the process. NRG began renewing its Franchise Agreements with other municipalities around the same time (November/December 2012), and Norfolk remains the only municipality where no progress has been made.

Since NRG and Norfolk have been unable to conclude a Franchise Agreement at this time, I must refer the Franchise Agreement to the Board for approval.

Please contact me via phone or e-mail if you wish to discuss this further.

Regards,

Pat

Patrick G. Welsh
Tel: (416) 862-5951 | pwelsh@osler.com
Osler, Hoskin & Harcourt LLP | Osler.com

From: Scott Zerbes [<mailto:Scott.Zerbes@norfolkcounty.ca>]
Sent: Friday, May 02, 2014 2:37 PM
To: Welsh, Patrick
Subject: RE: Natural Resource Gas Limited Franchise Agreement with Norfolk County

Hi Pat

Yes I saw Andy. I don't think he has dealt with these at all from the sounds of it. If I could pass it on I would, unfortunately it doesn't work like that around here. I will see what I can do.
thanks

Scott Zerbes
Senior Municipal Technologist
Engineering Division
Norfolk County
Ph:519-582-2100 ext 1605

From: Welsh, Patrick [<mailto:PWelsh@osler.com>]
Sent: April-30-14 10:36 AM
To: Scott Zerbes
Subject: RE: Natural Resource Gas Limited Franchise Agreement with Norfolk County

Hi Scott,

Again, your candour is appreciated. Were you able to see the Clerk yesterday afternoon? Given your workload and upcoming wedding, it may make sense to escalate this to the Clerk, especially if you don't think this will otherwise make it onto an agenda in May.

Regards,

Pat

Patrick G. Welsh

Tel: (416) 862-5951 | pwelsh@osler.com
Osler, Hoskin & Harcourt LLP | Osler.com

From: Scott Zerbes [<mailto:Scott.Zerbes@norfolkcounty.ca>]
Sent: Tuesday, April 29, 2014 10:46 AM
To: Welsh, Patrick
Subject: RE: Natural Resource Gas Limited Franchise Agreement with Norfolk County

Truthfully , no, no chance of that. I'm in school next week and get married the week after and 3 tenders to complete in between!! I will try and see the clerk this aft. At tender closing.

Thanks

Scott Zerbes
Senior Municipal Technologist
Engineering Division
Norfolk County
Ph:519-582-2100 ext 1605

From: Welsh, Patrick [<mailto:PWelsh@osler.com>]
Sent: April-29-14 10:28 AM
To: Scott Zerbes
Subject: RE: Natural Resource Gas Limited Franchise Agreement with Norfolk County

Hi Scott,

Thanks for the follow up, and I understand the situation. I'd be happy to discuss the process over the phone and provide you with copies of what other municipalities have done (I think I sent a few completed applications last time?) if that can assist in moving this along. Do you anticipate being able to have this in front of council for May 13?

Best,

Pat

From: Scott Zerbes [<mailto:Scott.Zerbes@norfolkcounty.ca>]
Sent: Tuesday, April 29, 2014 10:23 AM
To: Welsh, Patrick
Subject: RE: Natural Resource Gas Limited Franchise Agreement with Norfolk County

Hi Pat

Sorry for the delay but this is our busy time. I started the report to Council but after our last email about specifics, it got sidetracked. I am not familiar with this process and quite frankly it was dropped on my desk. We are trying to arrange a meeting with the new county clerk and see if he can provide some guidance. I do not have a timeframe at this time. I will try and move forward with it when I can.

Thanks

Scott Zerbes
Senior Municipal Technologist

Engineering Division
Norfolk County
Ph:519-582-2100 ext 1605

From: Welsh, Patrick [<mailto:PWelsh@osler.com>]
Sent: April-29-14 9:49 AM
To: Scott Zerbes
Subject: FW: Natural Resource Gas Limited Franchise Agreement with Norfolk County

Hi Scott,

I am writing to follow up on my e-mail sent earlier this month. NRG wants to move this process along, as this began in 2012 and Norfolk is the only municipality that hasn't been able to provide us with the materials we need to file with the Board. Please let me know if you have any questions so that we can move this along. I am happy to discuss over the phone if that's more convenient for you.

I see that since our last correspondence, there have been four council meetings (March 11 and 25; April 8 and 22). NRG expects that this issue will be before Council at its next meeting if a by-law has not already been brought before Council for first and second reading.

Thanks,

Pat

OSLER

Patrick G. Welsh
Associate

416.862.5951 DIRECT
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pwelsh@osler.com

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

osler.com

From: Welsh, Patrick [<mailto:PWelsh@osler.com>]
Sent: Monday, April 07, 2014 8:18 AM
To: Scott Zerbes
Subject: RE: Natural Resource Gas Limited Franchise Agreement with Norfolk County

Hi Scott,

I hope you're well. I am writing to follow up on progress towards the resolution and by-law regarding the proposed franchise agreement between Norfolk County and NRG. Was Council able to pass a resolution and if so are there any materials from Council's meeting on the 25th?

Thanks,

Pat

Patrick G. Welsh
Tel: (416) 862-5951 | pwelsh@osler.com
Osler, Hoskin & Harcourt LLP | Osler.com

From: Scott Zerbes [<mailto:Scott.Zerbes@norfolkcounty.ca>]
Sent: Wednesday, February 26, 2014 10:33 AM
To: Welsh, Patrick
Subject: RE: Natural Resource Gas Limited Franchise Agreement with Norfolk County

Ok, now I am really confused. This is the first report I have ever done as know one else in the County wants to look after it!!!!

I will see what I can do.

Thanks

Scott Zerbes
Senior Municipal Technologist
Engineering Division
Norfolk County
Ph:519-582-2100 ext 1605

From: Welsh, Patrick [<mailto:PWelsh@osler.com>]
Sent: February-26-14 9:49 AM
To: Scott Zerbes
Subject: RE: Natural Resource Gas Limited Franchise Agreement with Norfolk County

Scott:

Thank you very much for your timely response. It is very much appreciated.

The franchise renewal process is fairly confusing, so as a brief reminder:

- The Ontario Energy Board needs to “approve” the terms of the by-law, so in practice this means that Council (assuming it agrees in principle to renew the franchise agreement) should subject the by-law to first and second reading but not pass the by-law until the Board has approved it
- NRG will submit the application to the Board for its approval, which will (hopefully) include
 - A Council Resolution from Norfolk County:
 - Approving the form of the draft by-law and franchise agreement
 - Authorizing submission of the draft by-law to the Board
 - Requesting that the Board make an Order declaring and directing that the assent of the municipal electors to the draft by-law and franchise agreement is not necessary pursuant to s. 9(4) of the *Municipal Franchises Act*
 - Presenting the by-law to Council for first and second reading
 - The form of the by-law having been read a first and second time

I have attached NRG’s application for the renewal of a franchise agreement with the Municipality of Bayham for your reference. I have also attached a copy of Union Gas’s franchise renewal with the City of Greater Sudbury as an additional reference. Both of these franchise renewals were very straightforward. The process becomes less straightforward in situations where municipalities have fully enacted the by-law or have executed the franchise agreement before enacting its by-law.

Once the Board approves the form of the draft by-law, Norfolk County can subject the by-law to its third and final reading, enact the by-law, and then sign and execute the franchise agreement.

Please do not hesitate to contact me if you have any questions. I look forward to working with you on this matter.

Regards,

Pat

Patrick G. Welsh

Tel: (416) 862-5951 | pwelsh@osler.com
Osler, Hoskin & Harcourt LLP | Osler.com

From: Scott Zerbes [<mailto:Scott.Zerbes@norfolkcounty.ca>]
Sent: Wednesday, February 26, 2014 9:26 AM
To: Welsh, Patrick
Subject: RE: Natural Resource Gas Limited Franchise Agreement with Norfolk County

Patrick

I am in the process of completing a report to council to enact a By-law. The report will go to committee on March 18 and then to Council on the 25th.

Assuming the By-law is passed I should be able to get the agreements signed shortly there after.

Trusting you find this in order.

Thanks

Scott Zerbes

Senior Municipal Technologist

Engineering Division

Norfolk County

Ph:519-582-2100 ext 1605

From: Welsh, Patrick [<mailto:PWelsh@osler.com>]
Sent: February-19-14 8:20 PM
To: Scott Zerbes
Subject: Natural Resource Gas Limited Franchise Agreement with Norfolk County

Dear Mr. Zerbes,

Please find attached an electronic copy of my letter to you. A paper copy is being sent via regular mail.

I look forward to hearing from you soon.

Kind regards,

OSLER

Patrick G. Welsh
Associate

416.862.5951 DIRECT
416.862.6666 FACSIMILE
pwelsh@osler.com

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