

Rep: OEB
Doc: 113K2
Rev: 0

E.B.A. 19

IN THE MATTER OF The Municipal Franchises Act, R.S.O.
1960, Chapter 255, Section 9, as amended;

AND IN THE MATTER OF an application by Northern Ontario
Natural Gas Company Limited for approval of proposed by-law
No. 5 - 1962 of the Corporation of the Town of Coniston,
authorizing the execution of an agreement between the said
Corporation and the applicant granting to them a franchise for
the distribution of natural gas in the Town of Coniston,

AND IN THE MATTER OF an application by Northern Ontario
Natural Gas Company Limited for an Order declaring and
directing that the assent of the municipal electors of the
Corporation of the Town of Coniston is not necessary to the
final passing of such by-law.

BEFORE:

A. R. CROZIER, Chairman

J. J. WINGFELDER, Commissioner

Monday, the 9th day of July, 1962

ORDER

UPON the Application of Northern Ontario Natural Gas Company Limited under section 9 of The Municipal Franchises Act for:

- (a) approval of the terms and conditions upon which and the period for which the right to construct and operate works for the distribution of natural gas and the right to supply natural gas to the Corporation of the Town of Coniston and to the inhabitants thereof, are to be granted to Northern Ontario Natural Gas Company Limited and for;
- (b) a declaration and direction pursuant to Section 9 of The Municipal Franchises Act that the assent of the Municipal electors of the said Town of Coniston to the passing of a By-Law granting the rights above described is not necessary after notice being duly given to the parties interested as directed by the Board and the matter coming on for hearing before the Board on the 9th day of July, 1962, in the presence of Counsel for the Applicant and in the presence of Mr. Fern Leblanc, Councillor of the Town of Coniston, no one else appearing and upon hearing read the application and the proposed by-law and franchise agreement filed, and the proof of service thereof and upon hearing the evidence adduced, and upon hearing Counsel aforesaid,

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1. THIS BOARD DOTH ORDER THAT the terms and conditions upon which and the period for which the right to construct and operate works for the distribution of natural gas in the Town of Coniston and the right to supply natural gas to the Corporation of the Town of Coniston and to the inhabitants thereof are to be granted to Northern Ontario Natural Gas Company Limited by the proposed By-Law and franchise agreement attached hereto as Schedule "A" hereof be and the same are hereby approved.
2. AND THIS BOARD DOTH HEREBY DECLARE AND DIRECT THAT pursuant to the provisions of Section 9 of The municipal Franchises Act, the assent of the Municipal electors of the Town of Coniston to the proposed By-Law attached hereto as Schedule "A" hereof is not necessary.
3. The Board fixes the costs of this Application at \$25.00 payable forthwith by the Applicant.

DATED at Toronto this 12th day of July, 1962.

ONTARIO ENERGY BOARD

<signed J.J. Wingfelder>

Secretary

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BY-LAW NO. 5 - 1962

Being a By-Law of the Corporation of the TOWN OF CONISTON to authorize a Franchise Agreement between the Corporation and Northern Ontario Natural Gas Company Limited.

THE COUNCIL OF THE CORPORATION OF THE TOWN OF CONISTON ENACTS AS FOLLOWS:

1. That the proposed franchise agreement with Northern Ontario Natural Gas Company Limited be and the same is hereby approved and authorized and the franchise provided for therein granted.

2. That the Mayor and Clerk are hereby authorized and instructed on behalf of The Corporation to enter into, execute, seal with the Corporate seal and deliver in the form approved, with or without amendment, by the Ontario Energy Board, the agreement set forth in the schedule hereto between the Corporation and Northern Ontario Natural Gas Company Limited, which agreement in the form so approved, is hereby incorporated in and shall form part of this By-Law.

3. This By-Law shall not come into force,

(a) until the assent of the electors of the CORPORATION OF THE TOWN OF CONISTON has been obtained pursuant to sub-section 1 of section 3 of The Municipal Franchises Act; or

(b) until such assent has been dispensed with by order of the Ontario Energy Board pursuant to subsection 4 of section 9 of The Municipal Franchises Act.

READ A FIRST TIME THIS 17th DAY OF April A.D., 1962

READ A SECOND TIME THIS 17th DAY OF April A.D., 1962

"M. O. Beauchemin" "P. R. Olivier" Mayor CLERK (SEAL)

READ A THIRD TIME AND FINALLY PASSED THIS DAY OF 19

CLERK

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SCHEDULE TO BY-LAW No. 5 - 1962.

AGREEMENT MADE IN QUADRUPLICATE THIS DAY OF 19

BETWEEN:

THE CORPORATION OF THE TOWN OF CONISTON

hereinafter called the "Corporation"

OF THE FIRST PART

AND:

NORTHERN ONTARIO NATURAL GAS COMPANY LIMITED,

a company incorporated under the laws of the Province of Ontario and having its Head Office in the City of Toronto in the said Province

hereinafter called the "Gas Company"

OF THE SECOND PART

In consideration of the undertakings and agreements hereinafter expressed and upon the terms hereinafter set forth, the Corporation and the Gas Company mutually covenant and agree as follows:

1. In this agreement:

(a) "Board" means the Ontario Energy Board and, if and so long as any of the powers of the Ontario Energy Board shall be transferred to and remain vested in any other board or body to the extent that such powers are required to be exercised for the purpose of this agreement.

(b) "gas" means natural gas, manufactured gas or any liquified petroleum gas, and includes any mixture of natural gas, manufactured gas or liquified petroleum gas, but does not include a liquified petroleum gas that is distributed by a means other than a pipe line;

(c) "gas distribution system" means such plants, stations, mains, pipes, conduits, valves, regulators, drips and other appurtenances, structures, apparatus, equipment, appliances and works as the Gas Company may from time to time require or deem desirable for the supply and distribution of gas in or through the municipality;

(d) "Engineer" means from time to time the employee of the Corporation designated by the Corporation for the purposes of this agreement, or, failing such designation, the senior employee of the Corporation for the time being charged with the administration of public works and highways in the municipality.

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(e) "municipality" means and Includes the locality (within the meaning of The Municipal Act) under and subject to the jurisdiction of the Corporation and any territory which may at any time or from time to time hereafter be brought within the jurisdiction of the Corporation by annexation or otherwise;

- (f) "Public Property" means all roads, highways, streets, lanes, sidewalks, bridges and other land owned by the municipality from time to time within the municipality;

2. The Corporation hereby grants to the Gas Company the franchise, right and privilege to construct and operate a gas distribution system within the municipality and to supply gas to the Corporation and to the inhabitants of the municipality and to enter upon any public property for the purpose of the construction, operation, maintenance and repair of the gas distribution system and the transmission of gas in and through the municipality.

3. The franchise hereby granted shall be for the term of thirty years from and after the final passing of the By-Law of the Corporation authorizing the execution of this agreement.

4. If the Gas Company fails to commence the construction of the gas distribution system within five years after the execution of this agreement, this agreement may be terminated by either of the parties hereto by giving written notice to that effect to the other party, and in the event of such termination by either of the said parties the Gas Company shall be under no further obligation to the Corporation under the terms of this agreement in damages or otherwise, except as provided in paragraphs 8 and 9 hereof.

5. Before beginning construction of a gas distribution system in the municipality, the Gas Company shall file with the Engineer a plan showing the public property upon, under or over which it proposes to construct the gas distribution system or any part thereof, together with written specifications of all mains, pipes and works proposed to be laid or constructed by it specifying the materials and dimensions thereof and the depth at which same are to be laid, and before beginning the construction of any extension, addition or change to or in such gas distribution system the Gas Company shall file with the Engineer similar plans and specifications relating to such extension, addition or change provided that the provisions of this paragraph shall not apply to lateral service pipes constructed by the Gas Company.

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6. Except in the event of emergency no excavation, opening or work which shall disturb or interfere with the surface of any public property shall be made or done unless a permit therefor has first been obtained from the Engineer and all such works shall be done under his supervision and to his satisfaction.

7. The location of all pipes and works on public property shall be subject to the approval of the Engineer and all such pipes and works, whenever it may be reasonable and practicable, shall be laid in and along the sides of such public property.

8. The Gas Company shall restore all public property which it may excavate or interfere with in the course of construction, repair or removal of the gas distribution system or any part thereof as nearly as possible to the same condition in which it existed prior to the commencement of the work to the satisfaction of the Engineer, and shall make good any settling or subsidence caused by any such excavation.

9. The Gas Company shall and does hereby agree to indemnify and save harmless the Corporation from and against all losses, damages, charges and expenses which the Corporation may suffer or incur or be put to or for which it may become liable as a result of or by reason of the construction, maintenance, repairing, operation or removal by the Gas Company of the gas distribution system or any portion or portions thereof.

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10. If In the course of constructing, reconstructing, changing, altering or improving any public property, it becomes necessary to take up, remove or change the location of appliances or works placed on or under the public property by the Gas Company, the Gas Company shall remove and relocate such appliances or works, and the cost thereof shall be apportioned in the manner prescribed by the Public Service Works on Highways Act, R.S.O. 1950 Chapter 318 Section 2 and amendments thereto.

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11. The Gas Company at all times shall use proper and practicable means to prevent the escape or leakage of gas from its mains and pipes and the causing of any damage or injury therefrom to any person or property.

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12. The rates to be charged and collected by the Gas Company for gas supplied by it under this franchise shall be the rates fixed by the Board, or in case there shall be no such Board then such rates as may from time to time be fixed by any other person or body having jurisdiction to fix such rates.

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13. The Gas Company at its own expense will tap Its main and connect the same at the adjacent street line with the customers' service line.

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14. The Corporation will not build or permit any commission or other public utility or person to build any structure or structures encasing any mains or pipes of the Gas Company.

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15. In the event of the Gas Company being prevented from carrying out its obligations under this agreement by reason of any cause beyond its control, the Gas Company shall be relieved from such obligations while such disability continues and in the event of a dispute as to the existence of such disability such dispute shall be determined as hereinafter provided. The provisions of this paragraph 15 shall not, however, relieve the Gas Company from any of its obligations as set out in paragraph 9 hereof.

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16. In the event of any dispute or disagreement between the parties hereto as to the meaning or interpretation of anything herein contained or as to the performance or non-performance by either of such parties of any of the provisions hereof or as to the respective rights and obligations of the parties hereto hereunder, either of such parties may refer such dispute or disagreement to arbitration under the provisions of paragraph 17 hereof.

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17. Whenever The Municipal Arbitrations Act, R.S.O. 1950, Chapter 244, shall extend and apply to the municipality any references to arbitration pursuant to the provisions of this agreement shall

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be to the Official Arbitrator appointed under that Act and shall be governed by the provisions of that Act. At any other time the procedure upon an arbitration pursuant to the provisions of paragraph 16 hereof shall be as follows:

Within twenty days after the written request of either of the parties hereto for arbitration each of them shall appoint one arbitrator and the two so appointed shall, within twenty days after the expiring of such twenty day period, select a third. In case either of the parties hereto shall fail to name an arbitrator within twenty days after the said written request for arbitration, the arbitrator appointed shall be the only arbitrator. In case the two arbitrators so appointed are unable to agree on a third arbitrator within twenty days after the expiry of the first twenty day period above mentioned, application shall be made as soon as reasonably possible to any Judge of the Supreme Court of

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Ontario for the appointment of such third arbitrator. The Arbitrator or arbitrators so appointed shall have all the powers accorded arbitrators by the Arbitration Act, R.S.O. 1950, Chapter 20 as from time to time amended, or any Act in substitution therefor. The decision of the said arbitrator or arbitrators (or of a majority of such arbitrators) shall be final and binding on the parties hereto.

18. At any time within the twelve month period commencing twenty-four months and ending twelve months prior to the termination of the term of the franchise hereby granted the Gas Company may by notice given to the Corporation request that the Corporation grant to the Gas Company a new franchise upon such terms as may be agreed upon and subject to the approval of the Board. The Corporation shall, by notice in writing given to the Gas Company within three months of the date of the request for a new franchise, advise the Gas Company as to whether or not it is willing to grant a new franchise to permit the Gas Company to carry on its business in the municipality. If the Corporation fails to grant a new franchise on terms agreeable to both parties hereto then the Gas Company may at its option either:

(a) sell or dispose of the gas distribution system forthwith to any person, firm or corporation and at such price and on such conditions as the Gas Company may deem advisable; or

(b) within twelve months following such termination of the term of this franchise remove the gas distribution system or any portion or portions thereof from the public property, provided that failure to effect such removal shall not deprive the Gas Company of title to the gas distribution system or any portion or portions thereof.

19. This agreement may be amended with the consent of the Corporation and the Gas Company and the approval of the Board.

20. Any notice or request to be given or made hereunder to or of either of the parties hereto shall be deemed to be sufficiently given or made if reduced to writing and mailed by prepaid registered post to the Gas Company at its Head Office or to the clerk for the time being of the Corporation at the municipal offices of the Corporation, as the case may be, or to such other address as the party to whom the same is to be given or made may hereafter have designated by notice given in the manner provided in this paragraph; and any notice or request so given or made shall be

deemed to have been given or made on the day following the date of the mailing of the same within Ontario.

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21. This agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. This agreement may only be assigned by the Gas Company with the consent of the Corporation; provided that the Gas Company may, without the consent of the Corporation, assign, mortgage, pledge or charge this agreement as security for bonds, debentures or other indebtedness of the Gas Company and on any enforcement of such security.

22. IN WITNESS WHEREOF the Gas Company has hereunto caused its corporate seal to be affixed and this agreement to be signed by its proper officers in that behalf and the Corporation has hereunto caused its corporate seal to be affixed and this agreement to be signed by its Mayor and clerk.

THE CORPORATION OF
TOWN OF CONISTON

MAYOR

CLERK

NORTHERN ONTARIO NATURAL GAS COMPANY
LIMITED

Vice-President