

Rep: OEB
Doc: 113T4
Rev: 0

E.B.A. 234

IN THE MATTER OF The Municipal Franchises Act, R.S.O.
1970, Chapter 289, Section 9;

AND IN THE MATTER OF an application by Northern and
Central Gas Corporation Limited for approval of proposed
by-law No. 77-7 of the Corporation of the Township of Matilda
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 Township of Matilda;

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

BEFORE: D. M. Treadgold Presiding Member

S. J. Wychowanec Member

Tuesday, the 16th day of August, 1977.

ORDER

UPON the application of Northern and Central Gas Corporation Limited dated May 13, 1977 for approval of the terms and conditions upon which and the period for which the right to supply gas to the Corporation of the Township of Matilda and to its inhabitants is to be granted to the Applicant and for a declaration and direction that the assent of the municipal electors in respect of the related by-law is not necessary;

Was Page 2. See Image [\[OEB:113T3-0:2\]](#)

10

AND UPON the application having been heard at Toronto on August 16, 1977 in the presence of counsel for the Applicant, no one else appearing, and the application having been granted orally at the conclusion of the hearing, subject to condition:

11

1. IT IS ORDERED that the terms and conditions upon which and the period for which the right to construct and operate works for the distribution of gas in the Township of Matilda and to supply gas to the Corporation of the Township of Matilda and to its inhabitants is proposed to be granted to the Applicant by the proposed by-law and franchise agreement attached hereto and marked as Schedule A are hereby approved subject to being amended as provided in paragraph 2 of this order.

12

2. THIS ORDER IS CONDITIONAL upon, prior to the final passing of the proposed by-law, the proposed by-law being amended by deleting the words "Ontario Energy Board" in the second line of paragraph 4(c) and substituting therefor the words "Township of Matilda".

13

3. AND IT IS HEREBY DECLARED AND DIRECTED that the assent of the municipal electors of the Township of Matilda in respect of the amended by-law is not necessary.

Was Page 3. See Image [\[OEB:113T3-0:3\]](#)

14

4. AND IT IS FURTHER ORDERED that the costs of the Board in this proceeding are fixed at \$112.00 to be now paid by the Applicant.

15

ISSUED at Toronto, this 8th day of September, 1977.

16

ONTARIO ENERGY BOARD

17

<signed>

S. A. C. Thomas
Secretary to the Board

Was Page 0. See Image [\[OEB:113T3-0:4\]](#)

18

BY-LAW NO. 77-7

19

Being a By-Law of the Corporation of the TOWNSHIP OF MATILDA to authorize a Franchise Agreement between the Corporation and Northern and Central Gas Corporation Limited

THE COUNCIL OF THE CORPORATION OF THE TOWNSHIP OF MATILDA ENACTS AS
FOLLOWS:

1. That the proposed franchise agreement with Northern and Central Gas Corporation Limited be and the same is hereby approved and authorized and the franchise provided for therein granted.
2. That the Reeve 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 and Central Gas Corporation Limited, which agreement in the form so approved, is hereby incorporated in and shall form part of the By-Law.
3. That By-Law 57-735 is hereby repealed.
4. That this by-law shall not come into force until the last of the following events has occurred:
 - (a) the assent of the electors of the Township of Matilda has been obtained thereto pursuant to subsection 1 of section 3 of The Municipal Franchises Act, or 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; and
 - (b) the terms and conditions upon which and the period for which the proposed franchise is to be granted have been approved by the Ontario Energy Board as provided in section 9 of The Municipal Franchises Act; and
 - (c) Northern and Central Gas Corporation has provided the Township of Matilda with written consent to the repeal by the Council of the Township of Matilda of the said By-Law 57-735.

READ A FIRST TIME THIS 3rd DAY OF MARCH A.D., 1977

READ A SECOND TIME THIS 3rd DAY OF MARCH A.D., 1977

<signed> <signed>

READ A THIRD TIME AND FINALLY PASSED THIS 6th DAY OF October A.D., 1977

<signed> <signed>

CERTIFIED a true copy of By-Law 77-7 duly passed by the Council of the Township of Matilda,
October 6th, 1977

<signed>

34

Was Page 1. See Image [\[OEB:113T3-0:5\]](#)

35

The Corporation of the TOWNSHIP OF MATILDA

36

SCHEDULE TO BY-LAW NO. 77-7

37

Agreement made in quadruplicate this 6th day of October 1977

38

BETWEEN:

39

The Corporation of the TOWNSHIP OF MATILDA

40

hereinafter called the
"Corporation" of the FIRST PART

41

AND

42

Northern and Central Gas Corporation 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

43

hereinafter called the "Gas
Company" of the SECOND PART

44

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

45

1. In this agreement:

46

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

47

(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 liquefied petroleum gas that is distributed by means other than a pipeline;

48

(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

Was Page 2. See Image [\[OEB:113T3-0:6\]](#)

49

supply and distribution of gas in or through the municipality;

50

- (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;

51

- (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;

52

- (f) "Public Property" means all roads, highways, streets, lanes, sidewalks, bridges, including untravelled portions, public squares, road allowances and other public land owned by the Municipality from time to time within the Municipality.

53

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 for the transmission of gas in and through the Municipality and to perform any other services that may be necessary in connection with the transmission and supply of gas in the Municipality.

54

3. The franchise hereby granted shall be for the term of thirty (30) years from and after the third reading of the By-Law of the Corporation authorizing the execution of this agreement.

Was Page 3. See Image [\[OEB:113T3-0:7\]](#)

55

4. The Corporation agrees, in the event of the sale of any public property or the closing of any street or lane under which the Gas Company has laid a portion of its distribution system, to give the Gas Company reasonable notice of such sale or closing and to provide the Gas Company with easements over that part of the property sold or street or lane closed, sufficient to allow the Gas Company to continue the said distribution system in its then location, and to enter upon the said property to maintain and repair the distribution system. If the Corporation fails to grant such an easement the Corporation agrees, at its cost, to provide an easement over contiguous property and to pay for the installation of a replacement system.

56

5. Before beginning construction of a gas distribution system in the Municipality, save and except lateral service pipes, 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 before beginning construction of any extension, addition, or change to or in such distribution system, the Gas

company shall file with the Engineer similar plans and specifications relating to such extension, addition or change.

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 the Engineer has approved the Gas Company's location plan for such construction and all such works shall be done to his satisfaction.

57

Was Page 4. See Image [\[OEB:113T3-0:8\]](#)

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.

58

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.

59

9. In the event of the Company's failing at any time to do any work required by Section 8, the Corporation may notify the Company in writing that such work has not been done, and after a reasonable period of time, have such work done, and charge to and collect from the Company the cost thereof, and the Company shall pay any account therefor certified by said Engineer.

60

10. The 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 by reason of any damage or injury to persons or property resulting from the imprudence, neglect or want of skill of the employees or agents of the Company in connection with the construction, repair, maintenance or operation by the Company of any of its works in the Municipality.

61

11. The Company shall use its best endeavours to minimize the interference with public travel while carrying out its duties.

62

12. 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.

63

Was Page 5. See Image [\[OEB:113T3-0:9\]](#)

13. 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.

64

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

65

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 12 hereof.

16. In the event of any dispute or disagreement between the parties or as to the performance or non-performance by either of such parties hereto hereunder, either of such parties may refer such dispute or disagreement to arbitration under the provisions of paragraph 17 hereof.

17. Whenever the Municipal Arbitrations Act, R.S.O. 1970, Chapter 286, shall extend and apply to the Municipality any reference to arbitrations pursuant to the provisions of this agreement shall be to the Official Arbitrator appointed under the Act and shall be governed by the provisions of the 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 expiry of such twenty-day period, select a third. In case either of the parties hereto fails 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 Ontario for the appointment of such third arbitrator. The arbitrator or arbitrators so appointed shall have all the powers accorded arbitrators by The Arbitrations Act, R.S.O. 1970, Chapter 25, 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.

Was Page 6. See Image [\[OEB:113T3-0:10\]](#)

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.

19. If the Corporation fails to grant a new franchise on terms agreeable to both parties hereto and the Ontario Energy Board has not made an order for a renewal of or an extension of the term of the right, 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

73

Was Page 7. See Image [OEB:113T3-0:11]

74

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.

75

Should the Municipality, at any time after a lapse of one year from termination, require the removal of all or any of the Company's said facilities for the purposes of altering or improving the highway or in order to facilitate the construction of utility or other works in the highway, the Municipality may remove or dispose of so much of the Company's said facilities as the Municipality may require for such purposes, and neither party shall have recourse against the other for any loss or expense occasioned thereby.

76

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

77

21. 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 4th day following the date of mailing of the same within Ontario.

78

22. 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.

Was Page 8. See Image [OEB:113T3-0:12]

79

23. This agreement supersedes a previous agreement between the Corporation and the Gas Company, dated April 4, 1958.

80

24. 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 Clerk and Reeve.

81

THE CORPORATION OF THE TOWNSHIP OF
MATILDA

82

<signed>

<signed>

83

NORTHERN AND CENTRAL GAS CORPORATION
LIMITED

84

<signed>
Vice President

85

<signed>
Assistant Secretary

86