

Rep: OEB  
Doc: 11KGQ  
Rev: 0

E.B.A. 77

ONTARIO ENERGY BOARD

IN THE MATTER OF section 9 of The Municipal Franchises  
Act, R.S.O. 1960, Chapter 255,

AND IN THE MATTER OF an application by Farmers' Gas  
Company Limited, for approval of the terms and conditions  
upon which and the period for which a proposed bylaw of The  
Corporation of the Township of Colchester South grants to  
Farmers' Gas Company Limited the right to lay down, maintain  
and use pipes and other necessary works for the transmission  
and distribution of gas within a part of the municipality as  
described in the said proposed bylaw together with the right to  
bring in, produce, distribute, supply and sell gas to residents of  
the municipality,

AND IN THE MATTER OF an application by Farmers' Gas  
Company Limited for an Order directing that the assent of the  
Electors of the Township of Colchester South is not necessary in  
connection with such proposed bylaw.

BEFORE:

A. R. CROZIER, Chairman

E. A. ALLCUT, Member

Tuesday, the 27th day of September, 1966.

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**ORDER**

UPON the Application of Farmers' Gas Company Limited, dated the 22nd day of October, 1965, under Section 9 of The Municipal Franchises Act, R.S.O. 1960, Chapter 255, 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 certain portions of the Corporation of the Township of Colchester South and to the inhabitants thereof, are to be granted to Farmers' Gas Limited and for

Was Page 2. See Image [OEB:11KGP-0:2]

- (b) a declaration and direction pursuant to Section 9 of The Municipal Franchises Act that the assent of the municipal electors of the said Township of Colchester South to the passing of a proposed bylaw granting the rights above described is not necessary;

after notice being duly given as directed by the Board and the matter coming on for hearing before the Board on the 27th day of September, 1966 in the Municipal Building, Harrow, Ontario, in the presence of Mr. G. J. Karry, Counsel for the Applicant and of Mr. R. A. Wright and Mr. S. J. Putman, President and Secretary-Treasurer, respectively, of Farmers' Gas Company Limited and of Mr. N. J. Bondy, Reeve of the Township of Colchester South, and other interested persons, none of whom appeared in opposition to the Application, and upon hearing read the Application and the proposed bylaw and franchise agreement filed, and the proof of service thereof and upon hearing the evidence adduced and perusing the exhibits filed and upon hearing Counsel aforesaid.

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 certain portions of the Township of Colchester South and to the inhabitants thereof are to be granted to Farmers' Gas Company Limited by the proposed bylaw and franchise agreement attached hereto as Schedule "A" be and the same are hereby approved, provided that the franchise agreement include the following clause:

"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

Was Page 3. See Image [OEB:11KGP-0:3]

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 or abandon

the gas distribution system or any portion or portions thereof located on the public property"

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 Township of Colchester South to the said bylaw attached hereto as Schedule "A", when amended in accordance with this Order, is not necessary.

3. AND THIS BOARD DOTH FURTHER ORDER THAT the costs of this hearing fixed at #25 shall be paid forthwith by the Applicant to the Board.

DATED at Toronto this 6th day of October, 1966.

ONTARIO ENERGY BOARD

<signed>

Board Secretary

Was Page 1. See Image [OEB:11KGP-0:4]

SCHEDULE "A" TO THE WITHIN AGREEMENT DATED THE 18th DAY OF OCTOBER, A.D. 1965 MADE BETWEEN THE CORPORATION OF THE TOWNSHIP OF COLCHESTER SOUTH AND FARMERS' GAS COMPANY LIMITED.

BY-LAW NUMBER 109

THE CORPORATION OF THE TOWNSHIP OF COLCHESTER SOUTH

A By-law authorizing Farmers' Gas Company Limited, to lay down, maintain and use pipes and other necessary works for the transmission and distribution of gas on the area described in Schedule "A" attached hereto, under the jurisdiction of the Council of The Corporation of the Township of Colchester South, together with the right to transmit gas in and through the Municipality and to bring in, produce, distribute, supply and sell gas to residents of the Municipality.

FINALLY PASSED the      day of      , 1965.

WHEREAS Farmers' Gas Company Limited, (hereinafter referred to as "the Company", and which term shall include its successors and assigns), is engaged in the business of producing, purchasing, transmitting, distributing, supplying and selling gas.

AND WHEREAS the Company has requested the Council of The Corporation of the Township of Colchester South to grant it a franchise or right to lay down, maintain and use pipes and other necessary works for the transmission and distribution of gas on, in, under, along, and across any highway located within the area described in Schedule "A" within the Township of Colchester South (hereinafter referred to as "the Municipality") together with the right to transmit gas in and through the Municipality and to bring in, produce, distribute, supply and sell gas to residents of the Municipality.

AND WHEREAS the Council deems not advisable to grant the said request subject to the terms and

conditions hereinafter set forth.

BE IT THEREFORE ENACTED by the Council of The Corporation of the Township of Colchester South as follows:-

1. Full right, power, permission, consent and authority of the Municipality are hereby given, granted, conferred, and assured unto the Company, its successors and assigns, to lay down, maintain, and use pipes and other necessary works for the transmission and distribution of gas on, in, under, along or across any Highway within the Municipality described in Schedule "A" which is under the jurisdiction of the Council of the Municipality, including therein the right from time to time and at any time, to survey, construct, lay, maintain, inspect, alter, repair, renew, remove, abandon, replace, reconstruct, extend, use and operate in, through, upon, under, along and across the same or any of them or any part or parts of them, such transmission and distribution mains, pipes, lines, services and works (with any and all necessary or incidental apparatus, attachments, appliances, arrangements cathodic protection, regulators, valves, curb-boxes, safety appliances and other suchlike appurtenances) which the Company may desire from time to time and at any time for the transmission of gas in and through the Municipality and for a gas distribution system and any extension or extensions from time to time thereto and together with the further right from time to time and at any time to enter upon, open up, dig, trench, use and occupy such highways or any part or parts of them for any of the purposes aforesaid and further together with the right from time to time and at all times to use and operate a gas transmission and distribution system in the Municipality and to transmit gas in and through the Municipality and to provide gas service to any resident or residents of the Municipality, and to bring in, transmit, produce, distribute, supply and sell gas in and through the Municipality for fuel, heat and power.

Was Page 2. See Image [OEB:11KGP-0:5]

2. All new (or renewal) mains, pipes, lines and works installed by the Company under this By-law shall be constructed and laid in accordance with good engineering and construction practices. Except in case of emergency,

- (a) no excavation, opening or work (exclusive of service connections from the street main to the property line) which will disturb or interfere with the travelled surface of any highway shall be undertaken or commenced by the Company without written notice to such officer of the Municipality as may from time to time be appointed by the Council of the Municipality for the purpose of general supervision over its highways (hereinafter referred to as "the said officer of the Municipality", which term shall include the person acting in his stead in the event of his absence from duty), such notice to be given at least 24 hours in advance of commencing such work unless otherwise agreed to by the said officer of the Municipality, and

- (b) before laying or installing any new (or renewal) mains, pipes, lines and works (exclusive of service connections from the street main to the property line), the Company shall first file with the said officer of the Municipality a preliminary map or plan showing what it proposes to lay or install and the proposed location thereof and shall also check with and obtain the written approval of the said officer of the Municipality as to such proposed location.

Not later than three months after the close of each of its fiscal years the Company shall file with the Clerk of the Municipality, maps or plans showing the location and size of all mains, pipes, lines and works laid or installed by the Company in the highways during its previous fiscal year, exclusive however of service connections from the street main to the property line.

3. In so far as is reasonably practicable, all lines and works constructed or installed by the Company shall be placed underground, and, except where it shall be necessary to cross a highway, along the sides of the highway. All lines and works constructed by the Company shall be so constructed as when completed not to obstruct or interfere with or render more difficult or dangerous the use of the highway or any municipal sewers, water-pipes, drains, bridges, culverts or ditches thereon or therein, or other municipal works or improvements thereon or therein or the improvement or repair thereof, or with the roads or bridges to property fronting thereon, and wherever any such line shall be carried across an open drainage ditch, it shall be carried either wholly under the bottom thereof or above the top thereof, so as not in any way to interfere with the carrying capacity of such ditch.

Was Page 3. See Image [OEB:11KGP-0:6]

4. Upon the laying down of any lines or works or the taking up of any lines or works, or the moving of any lines or works from place to place in any highway, the Company shall, at its own expense and with all reasonable expedition, restore the highway at the point of entry as close as reasonably practicable to the condition in which it existed immediately prior to such entry and leave the same in as safe and good a state of repair as it was before it was entered upon or opened. The Company shall further make good any settling or subsidence thereafter caused by any excavation made by it, to the satisfaction of the Reeve or other officer of the Municipality above mentioned.

5. In the event that the Municipality in pursuance of its statutory powers shall deem it expedient to alter the construction of any highway or of any municipal drain, ditch, bridge, culvert or other municipal works or improvements thereon or therein and in the course thereof it shall become reasonably necessary that the location of a main, line, pipe or works of the Company laid or operated under this by-law should be altered at a specified point to facilitate the work of the Municipality, then upon receipt of reasonable notice in writing from the Clerk of the Municipality specifying the alteration desired, the Company shall, at its own expense, alter or re-locate its main, pipe, line or works at the point specified.

6. The Company shall make no charge for tapping its main or laying service lines in the highways.

7. The Company shall and does hereby at all times indemnify and save harmless the Municipality from and against all loss, damage, injury or expense which the Municipality may bear, suffer or be put to by reason of any damage to property or injury to persons caused by the construction, repair, maintenance, removal or operation by the Company of any of its mains, pipes, lines or works in the Municipality unless such loss, damage, injury or expense is occasioned by Act of God or by the act, neglect or default of some person, firm or corporation other than the Company, its servants, contractors, sub-contractors, agents or employees.

8. The rates to be charged and paid for gas sold by the Company in the Municipality and the meter

rentals and other charges, if any, to be paid by ultimate consumers of gas in the Municipality, shall be such as shall from time to time be fixed by Order of the Ontario Energy Board or other rate-fixing Body having jurisdiction in such matters.

Was Page 4. See Image [OEB:11KGP-0:7]

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9. The rights and privileges, duties and obligations arising out of this By-law and the Agreement hereinafter referred to shall be subject to any applicable statute, regulation, laws, order and direction of any governmental authority having jurisdiction in the premises and now or hereafter in effect during the term of this By-law.

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10. The rights and privileges hereby granted shall continue and remain in force for a period of thirty (30) years from the date when this By-law takes effect.

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11. In this By-law,

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"Gas" means natural gas, manufactured gas or any liquefied petroleum gas, and includes any mixtures 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 pipeline.

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"Highway" or "Highways" mean and include a common and public highway, street, avenue, boulevard, drive-way, lane, alley, square, place, sidewalk, bridge, viaduct or trestle and any other structure incidental thereto, now or at any time during the term of this By-law under the jurisdiction of the Municipality.

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"Municipality" means the Township of Clouchester South as constituted on the date when this By-law takes effect or as it may from time to time be constituted during the term of this By-law.

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12. It is recognized that gas is a public utility, the use of which may be essential to the proper development of any new area of sub-division. The Municipality therefore agrees to notify the Company of each new plan of sub-division before the same has been approved by the Council and to take any reasonable steps to ensure that in each new plan of sub-division adequate provision is made for the reservation of lands for gas regulator sites. In so far as is reasonably practicable, the Company shall endeavour to construct its mains in new areas of sub-division at the same time as the Municipality is constructing its public services therein.

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13. Unless the assent of the Municipal Electors is dispensed with by the Ontario Energy Board, this By-law shall not take effect unless and until it has been assented to by the Municipal Electors of the Municipality as provided for by The Municipal Act with respect to By-laws requiring the assent of the Electors or as may be provided for by special legislation providing for the obtaining of the said assent at a time other than the day fixed for taking the poll at the annual municipal election.

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Upon the assent of the Municipal Electors having been obtained or dispensed with as above, this By-law

and the powers and privileges hereby granted shall still not take effect and be binding unless and until formally accepted by the Company in an Agreement which will legally bind the Company to perform, observe and comply with all the agreements, obligations, terms and conditions herein contained and unless and until such Agreement, when so accepted shall have been executed under the corporate seal of The Corporation of the Township of Blenheim by the Reeve and Clerk who are hereby authorized and empowered so to do. Upon the aforesaid provisions having been complied with, this By-law shall come into force and take effect.

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THE CORPORATION OF THE TOWNSHIP OF  
COLCHESTER SOUTH

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<signed>  
Reeve

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<signed>  
Clerk

Was Page 0. See Image [\[OEB:11KGP-0:9\]](#)

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SCHEDULE "A" TO THE WITHIN AGREEMENT DATED                      MADE BETWEEN THE  
CORPORATION OF THE TOWNSHIP OF COLCHESTER SOUTH AND FARMERS' GAS  
COMPANY LIMITED.

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ALL AND SINGULAR that certain parcels or tracts of lands and premises situate, lying and being in the Township of Colchester South, in the County of Essex, Province of Ontario; all of Lots thirty-three (33) to fifty-seven (57) inclusive, Front Concession, all of Lot sixteen (16) all of Lots Eighteen to Twenty (18-20) inclusive, in the Gore, save and except that portion of the above-mentioned lots that lie within one-half a mile of the southerly right-of-way of the Queen's Highway 18, and all of lot Seventeen (17) of the Gore, together with the right to bring in, produce, distribute, supply and sell gas to residents of such municipality.