

July 19, 2018

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

Dear Ms. Walli:

**Re: Town of South Bruce Peninsula
Franchise Agreement
OEB File No. EB-2017-0126**

On May 24, 2018, the Ontario Energy Board issued its Decision and Order which approved the above-noted franchise agreement and the related Certificate of Public Convenience and Necessity. The bylaw to authorize the franchise agreement was given 3rd and final reading by the council of the Town of South Bruce Peninsula on June 5, 2018.

During the process of executing the approved franchise agreement, we noticed that there was an error in the Other Conditions clause of the approved franchise agreement. The franchise agreement approved by the Ontario Energy Board (which was contained within Union's application and attached to the municipality's bylaw) for the Town of South Bruce Peninsula is in the form to be used for lower-tier municipalities located in Union's Northern service area. The Town of South Bruce Peninsula is considered to be a lower-tier municipality located in Union's Southern service area. The difference is the Other Conditions clause.

The Model Franchise Agreement for lower-tier municipalities in Union's Northern service area contains the following Other Conditions clause:

*18. Other Conditions
None.*

The Model Franchise Agreement for lower-tier municipalities in Union's Southern service area contains the following Other Conditions clause related to cost sharing of relocations:

*18. Other Conditions
Notwithstanding the cost sharing arrangements described in Paragraph 12, if any part of the gas system altered or relocated in accordance with Paragraph 12 was constructed or installed prior to January 1, 1981, the Gas Company shall alter or relocate, at its sole expense, such part of the gas system at the point specified, to a location satisfactory to the Engineer/Road Superintendent.*

On June 18, 2018, Union Gas contacted the municipality on this issue and asked them to confirm that the municipality is okay with correcting the Other Conditions clause of the franchise agreement and that this correction does not change the intent of their Bylaw 07-2017.

Union Gas received a letter today from the municipality (see Attachment A which includes Union's June 18th letter to the municipality) stating that they consent to the change to correct the Other Conditions clause of the franchise agreement.

Attachment B to this letter is a corrected version of the franchise agreement between Union Gas and the Town of South Bruce Peninsula. We ask the Ontario Energy Board to re-issue the Decision and Order and approve the corrected franchise agreement.

Should you have any questions, please do not hesitate to contact me. I look forward to receipt of your instructions.

Yours truly,

[Original signed by]

Patrick McMahon
Supervisor, Regulatory Research and Records
pmcmahon@uniongas.com
(519) 436-5325

Encl.



Town of
SOUTH BRUCE PENINSULA

Box 310, 315 George Street, Wiarton, Ontario N0H 2T0 Tel: (519) 534-1400 Fax: (519) 534-4862
1-877-534-1400

July 19, 2018

Union Gas
Patrick McMahon
Supervisor, Regulatory Research and Records
PO Box 2001, 50 Keil Drive N
Chatham ON N7M 5M1
pmcmahon@uniongas.com

Dear Mr. McMahon:

Re: Franchise Agreement, Town of South Bruce Peninsula, OEB File EB-2017-0126

Further to your letter dated June 18, 2018 wherein you explained that clause 18 of the Franchise Agreement required correction, please be advised that the Town has adopted By-Law 64-2018 authorizing the clause to be changed. A copy of the by-law is attached for your reference.

We look forward to the receipt of a corrected agreement for our signature, upon the re-issue of the OEB Decision and Order.

I trust you will find this to be in order. Should you require anything further in this regard, please do not hesitate to contact our office.

Yours very truly,

Angie Cathrae, Clerk
Town of South Bruce Peninsula
PO Box 310, 315 George Street
Warton ON N0H 2T0
519-534-1400 ext 122
Toll Free 1-877-534-1400
sbpen@bmts.com

Enclosure (1)

The Corporation of the Town of South Bruce Peninsula

By-Law Number 64-2018

**A By-Law to Authorize the Amendment to a
Paragraph Contained within a Franchise
Agreement between the Corporation of the
Town of South Bruce Peninsula and Union Gas
Limited**

Whereas Section 8 of the Municipal Act, 2001, Chapter 25, as amended, provides that Section 8 shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues;

And whereas Section 9 of the Municipal Act, 2001, Chapter 25, as amended, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

And whereas the Ontario Energy Board by its Order issued pursuant to the Municipal Franchise Act on the 24th day of May, 2018 has approved the terms and conditions upon which and the period for which the franchise provided in the Franchise Agreement is proposed to be granted and has declared and directed that the assent of the municipal electors in respect of the by-law was not necessary;

And whereas the Town deemed it expedient to enter into a Franchise Agreement with Union Gas Limited and did execute said agreement by giving third reading on June 5, 2018;

And whereas there is requirement by Union Gas to change a paragraph contained within the executed Franchise Agreement;

And whereas there is requirement by the Ontario Energy Board for the Town to give consent that the change to the Paragraph in the Franchise Agreement is permitted and that this correction does not change the intent of By-Law 07-2017 which authorized the Franchise Agreement and its execution.

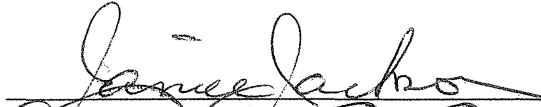
Now therefore the Corporation of the Town of South Bruce Peninsula enacts as follows:

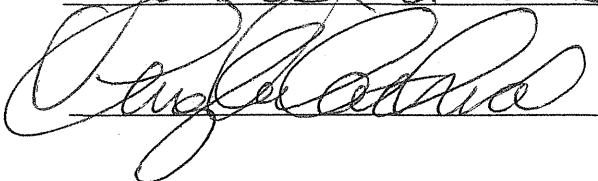
1. **That** the Franchise Agreement between the Corporation of the Town of South Bruce Peninsula and Union Gas Limited as contained in By-Law 07-2017 is hereby amended by changing Paragraph 18:
 18. Other Conditions
None.

to read as follows:

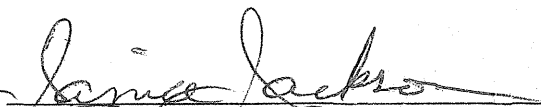
18. Other Conditions
Notwithstanding the cost sharing arrangements described in Paragraph 12, if any part of the gas system altered or relocated in accordance with Paragraph 12 was constructed or installed prior to January 1, 1981, the Gas Company shall alter or relocate, at its sole expense, such part of the gas system at the point specified, to a location satisfactory to the Engineer/Road Superintendent.
2. **That** the Franchise Agreement containing Paragraph 18 as authorized herein is hereby attached to By-Law 07-2017.
3. **That** it is hereby agreed that the change to the Franchise Agreement Paragraph 18 does not change the intent of By-Law 07-2017.
4. **That** this by-law shall come into force and take effect as of the final passing thereof.

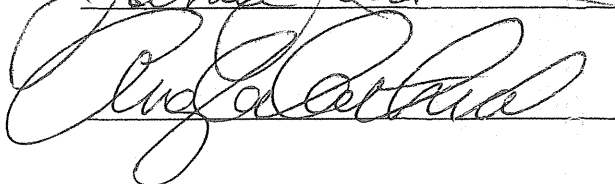
Read a first and second time this 17th day of July, 2018.




_____ Clerk

Read a third time and finally passed this 17th day of July, 2018.




_____ Clerk

June 18, 2018

Angie Cathrae, Manager of Legislative Services / Clerk
Town of South Bruce Peninsula
315 George Street
Wiarton, ON N0H 2T0

Dear Ms. Cathrae:

**Re: Franchise Agreement
Town of South Bruce Peninsula
Ontario Energy Board File No. EB-2017-0126**

On May 24, 2018, the Ontario Energy Board issued its Decision and Order which approved the above-noted franchise agreement and the related Certificate of Public Convenience and Necessity. The bylaw to authorize the franchise agreement was given 3rd and final reading by the council of the Town of South Bruce Peninsula on June 5, 2018.

During the process of executing the approved franchise agreement, we noticed that there was an error in the Other Conditions clause of the approved franchise agreement. The franchise agreement approved by the Ontario Energy Board for the Town of South Bruce Peninsula is in the form to be used for lower-tier municipalities located in Union's Northern service area. The Town of South Bruce Peninsula is considered to be a lower-tier municipality located in Union's Southern service area. The difference is the Other Conditions clause.

The Model Franchise Agreement for lower-tier municipalities in Union's Northern service area contains the following Other Conditions clause:

18. *Other Conditions*
None.

The Model Franchise Agreement for lower-tier municipalities in Union's Southern service area contains the following Other Conditions clause related to cost sharing of relocations:

18. *Other Conditions*
Notwithstanding the cost sharing arrangements described in Paragraph 12, if any part of the gas system altered or relocated in accordance with Paragraph 12 was constructed or installed prior to January 1, 1981, the Gas Company shall alter or relocate, at its sole expense, such part of the gas system at the point specified, to a location satisfactory to the Engineer/Road Superintendent.

I have attached a section of the Ontario Energy Board's Report of the Board in EBO 125 dated May 21, 1986 which explains the determination of the Other Conditions clause and the OEB's decision to continue the policy of Union paying 100% of relocation costs in its southern operations area for pipe installed prior to 1981.

I have attached a revised copy of the Franchise Agreement which reflects changes on pages 9 and 10 to allow for the insertion of the corrected Clause 18 (Other Conditions).

We have contacted the Ontario Energy Board and they have advised that we only need to get confirmation from the Town of South Bruce Peninsula that you are okay with correcting the Other Conditions clause of the franchise agreement and that this correction does not change the intent of your Bylaw 07-2017.

Upon receipt of a letter from the municipality to that affect, Union Gas will then ask the Ontario Energy Board to re-issue the Decision and Order with the corrected franchise agreement attached. Given the changes on pages 9 and 10, we will need to have the municipality sign and seal the revised version of the Franchise Agreement once the OEB re-issues its Decision and Order.

If you could provide us with a letter confirming that the municipality is okay with correcting the Other Conditions clause of the approved franchise agreement, then we will ask the Ontario Energy Board to vary the original Decision and Order and approve the corrected franchise agreement. Union Gas will then send you 4 copies of the corrected franchise agreement and ask you to sign and seal each copy.

Thank you for your ongoing co-operation in this matter. Should you have any questions, please do not hesitate to contact me.

Yours truly,

[Original signed by]

Patrick McMahon
Supervisor, Regulatory Research and Records
pmcmahon@uniongas.com
(519) 436-5325

Encl.

REPORT OF THE BOARD

E.B.O. 125

IN THE MATTER OF the Ontario Energy Board Act, R.S.O. 1980, Chapter 332, Sections 13 and 15, and the Municipal Franchises Act R.S.O. 1980, Chapter 309;

AND IN THE MATTER OF the Ontario Energy Board's review of franchise agreements and certificates of public convenience and necessity.

BEFORE:

R. W. Macaulay, Q.C.
Chairman and Presiding Member

M. C. Rounding
Member

P. E. Boisseau
Member

May 21, 1986

0-7729-1545-8

The Northern and Central Franchise Area:

- 5.26 Virtually all of Northern's gas pipeline system was laid after 1957. Nearly all (134 out of 137) of Northern's franchise agreements are under the 50 per cent formula of the PSWHA. Of these, 133 are silent on the question of relocation costs. In three agreements with counties, Northern pays all relocation costs but two of these apply only to new pipe laid after a specified date. The policy of Northern is to bill the municipality 100 per cent of the costs of relocation due to non-road works.
- 5.27 Northern's net capital budget for line relocations averages about \$158,000 per year, after allowing for an average annual contribution from municipalities of about \$76,000. The annual average municipal share per relocation (24 average annual relocations over the 3 year period 1983/84/85) is about \$3,200.

The Union Gas Franchise Area:

- 5.28 The distribution system of Union came about in part from the amalgamation of many small older local gas utilities, each with its own methods of operation and often lacking technical sophistication. Some of these had been operating from as early as the turn of the century. For

this reason, many years prior to 1980, each time the relocation of a Union pipeline was required by a municipality, whether for road-works or non-road projects, Union was replacing pipe that was obsolete or that had not been laid to any right of way location standards. Union did not consider it appropriate to charge the municipality for such relocations. Consequently Union had traditionally paid 100 per cent of all relocation costs.

5.29 However, all lines installed after 1957 are cathodically protected and coated or are plastic and, as a result, have indefinite life. In addition, much of the remaining pre-1957 pipe has been cathodically protected, giving it longer life as well. Consequently, relocations of Union's gas lines have evolved from the replacement of old and corroded pipes to the replacement of newer protected pipes. The evidence was that 84 percent of all the lines are newer than 1957; 16 percent of the system is old pipe, but only 7 percent is unprotected. Of pipe relocated in 1985, 21 percent was newer than 1957.

5.30 Union has 285 franchise agreements with municipalities, of which 215 stipulate that Union pays all relocation costs resulting from municipal roadwork and non-road projects such as

sewer works. Of the remaining 70 agreements, 53 are silent, but Union has usually paid 100 percent of relocation costs before it introduced, in 1981, its new policy of applying the PSWHA.

- 5.31 Because an increasingly large proportion of its gas pipelines was of indefinite life, Union in 1981 discontinued its policy of paying 100 percent of relocation costs. A new policy was introduced of applying the PSWHA in those agreements which were silent on relocations costs, and requiring its application in new agreements.
- 5.32 This unilateral action on the part of Union has not sat well with the municipalities in question. Union has invoiced twelve municipalities whose agreements are silent on relocation costs during the past five years, but only three have paid.
- 5.33 In addition, seventeen agreements specifically applying the PSWHA have been signed since 1980. Twelve of these were approved by the Ontario Energy Board but only three of these agreements are operative while nine are currently under review by the Board.
- 5.34 Union currently budgets about \$1.3 million for its share of annual relocation costs. Assuming

the PSWHA applies across Union's franchise area (and that pre-1957 pipe is eliminated from consideration as agreed to by Union during the hearing) the portion of the \$1.3 million attributable to municipal relocations to be shared with municipalities is approximately \$260,000 based on 1957 and newer pipe comprising 20 per cent of total line relocations. The municipal share, based on 50 per cent of the labour costs, averages out to about 30 per cent of the total relocation costs. The municipal 30 per cent share of the \$260,000 is about \$75,000 spread among all municipalities in the Union franchise area requiring the relocation of post-1956 pipe. On the other hand, should all municipal relocations in a year be for reasons other than roadwork, resulting in the municipality paying 100 per cent of relocation costs, the municipalities would be billed a maximum of \$260,000. In this PSWHA scenario, the relocation costs borne by the municipalities range from \$75,000 to \$260,000. Both figures represent small percentages of the total annual roadwork costs for the municipalities in Southwestern Ontario. Based on 66 average annual relocations over the past three years and the municipalities paying 100 per cent of the \$260,000, the average annual municipal cost per relocation would have been about \$4,000.

Position of the Utilities

- 5.35 The position of the three utilities is as expressed in the ONGA brief: the sharing of the costs of relocations for highway improvement should be governed by the provisions of the PSWHA. Relocations not for the purposes of highway improvement should be paid for entirely by the municipality.
- 5.36 Despite the unanimity of the gas utilities in support of the PSWHA provisions, the municipalities have generally opposed the use of the PSWHA and in some cases have successfully negotiated more favourable terms even though the PSWHA has been the standard provision for sharing relocation costs, as in the cases of Consumers' and Northern.
- 5.37 Contrary to Consumers' assertion that relocation cost sharing is not negotiable, four municipalities in the Consumers' area have negotiated cost sharing in their agreements: one municipality bears no costs and three municipalities pay only 10 per cent of labour costs.
- 5.38 Similarly, four municipalities in the Northern area have negotiated cost sharing in their agreements. Three of these bear no costs for relocations of gas line and one municipality

bears no costs for relocation on one specific road, otherwise the PSWHA applies to any municipal works.

5.39 The municipalities in the Union franchise area have been conditioned over many years to expect that Union would continue to pay all relocation costs. While this practice gave the municipalities less concern about control over new pipeline works and future relocations, which in turn eased the process for local approvals, it did provide an incentive to Union to adhere more closely to standard locations wherever possible and thereby minimize the likelihood of future relocations. With the introduction of the PSWHA provision, particularly with respect to the re-interpretation of the silence of existing agreements on the question of relocation costs (pre-1981 Union pays, 1981 and after PSWHA applies), Union has been confronted by municipal resistance in an ambiance of betrayal and mistrust.

5.40 Consequently, while Union subscribes to the PSWHA provision for all pipe installed within Union's system subsequent to 1957, it has offered to continue to pay 100 per cent of the cost when pipe laid prior to 1957 must be relocated because of road and sewer work.

- 5.41 Union acknowledges that current relocations are generally in the downtown core areas where streets are being reconstructed and where old pipe is predominantly encountered.

Position of Municipalities - Consumers' Franchise Area

- 5.42 Although Consumers' is the largest gas distributor in Ontario, the following municipalities are the only ones in Consumers' franchise area which participated or submitted briefs in the hearing.
- 5.43 The Regional Municipality of Ottawa-Carleton has no existing user agreement with Consumers'. Relocation costs have been administered pursuant to the PSWHA.
- 5.44 The RMOC contends that the municipal road authority has responsibilities that differ little from those of the Ministry of Transportation and Communications. The RMOC, on behalf of itself and the City of Ottawa, proposed the MTC formula, in that it provides greater cost certainty and more equitable distribution of relocation costs.
- 5.45 The City of St. Catharines presently has an agreement with Consumers' which is silent on the subject of relocation costs, and hence the

PSWHA applies. However, it contended that the PSWHA should also apply to non-road works as is the case in the agreement between Consumers' and the City of Niagara.

- 5.46 Consumers' operates in the City of North York under a number of Private Acts dealing with the Consumers' Gas Company of Toronto. The present arrangement is silent on relocation costs, and so the PSWHA applies. The City of North York recommends that the Consumers' Gas Acts be amended to provide that "the Company shall pay an equal share of any of the costs associated with the relocation of a gas pipeline at any time that the municipality performs work within the municipal road allowances. The cost payable by the Company shall not be restricted to 1/2 of the cost of labour and labour-saving equipment".

Positions of Municipalities - Northern Franchise Area

- 5.47 All the municipal representation (FONOM, City of Sudbury, Regional Municipality of Sudbury) support the application of the MTC formula for much the same reasons as RMOC: that municipal roads are comparable to provincial highways and each road authority, or municipality or the Province (MTC), should be reimbursed similarly.

Positions of Municipalities - Union Franchise Area

5.48 The largest municipal representation at the hearing by far was from Union's franchise area (Town of Blenheim, SWOMC, Townships of London and of Zorra, Counties of Oxford and of Lambton and City of London). The unanimous position of that group was that Union should continue to "pay all". There were a variety of qualifications such as:

- . at least for pipe laid up to 1981, when Union changed its policy and began applying the PSWHA provision;
- . subject to the municipality paying all relocation costs during the first five years of a new gas line according to the MTC formula;
- . if the PSWHA is to apply, it should be restricted to the cost of relocation of pipe laid in the future and necessitated by any municipal works. The cost of relocation of pipe already laid should be borne entirely by Union; or
- . if the PSWHA is applied, it should be subject to all pipeline having a useful life of 25 years, after expiration of which, Union pays all. In this case, pre-1961 pipe would qualify for the Union-pay-all provision.

- 5.49 These municipalities were concerned that the implementation of the PSWHA and its resulting costs would mean that needed roadwork projects would have to be curtailed. It is evident that the municipalities in Union's franchise area are in agreement with the municipalities in the franchise areas of Consumers' and Northern in favouring the MTC formula, particularly since Union's old pipe is automatically excluded by the 5-year moratorium on paying the relocation costs of new pipe.

Position of the Board

- 5.50 The municipality's share of gas pipeline relocation costs varies from 0 to 100 per cent as a result of franchise agreements negotiated at different times and under different circumstances.
- 5.51 Many factors influence the terms of the agreements. Some agreements reflect the readiness of a municipality to concede to a gas distributor's standard relocation cost provision in order to get gas service for its impatient citizens. Sometimes specific proposals by the gas distributor for new gas lines can be a significant influence when new agreements and, to a lesser extent, renewals are concurrently being negotiated. Other agreements, particularly at the upper tier municipal level where a

new franchise is being established, show a similar urgency on the part of the gas company to relax and even dispense with municipal relocation cost sharing so that a gas pipeline system expansion, not directly related to new gas service in a municipality, may proceed.

5.52 A municipality does not have the same position of negotiating strength as do MTC, Ontario Hydro, or a private landowner, because, unlike the latter group, the municipality does not negotiate a specific agreement each time there is a new encroachment by a gas utility. As a matter of fact, a franchise negotiation is an infrequent event for any municipality.

5.53 The Board has concluded from the evidence that, generally, the upper-tier municipalities are in a better negotiating position, particularly with respect to relocation cost provisions, than the lower-tier municipalities. However, both upper- and lower-tier municipalities may find themselves in vulnerable negotiating positions with a gas distributor when specific proposals for gas lines are associated with a new agreement or a renewal.

5.54 The use of the PSWHA provision for allocating relocation costs is a last resort: in the absence of a specific agreement between the

parties, this is how costs will be shared. But there is a basic onus on the parties to negotiate an agreement that is realistic, relevant and consistent relative to prevailing conditions and practices.

5.55 The utilities have adopted the PSWHA as a given and have presented it to the municipalities as a non-negotiable method "prescribed by the legislature --- and in effect for over 60 years". The Board finds it significant that neither the Ministry of Transportation and Communications nor Ontario Hydro have generally adopted this method but have established their own unique formulae which are standard for each organization and to which the gas utilities are parties.

5.56 Union, in proposing to change from "Union pays" to the PSWHA formula, has argued that the latter will make the municipalities more responsible and less wasteful by avoiding unnecessary demands for relocations. Union cited as evidence of this, the significant reduction in relocation activity beginning in 1981 when it unilaterally introduced and began applying the PSWHA.

5.57 However, use of the PSWHA formula has not discouraged relocations in the Consumers' area,

the annual number of which has consistently exceeded that of Union, even during the pre-1981 period and despite the fact that each has about the same length of pipe in the ground. It seems to the Board that the reduction of relocation activity in the Union area may have resulted more from a reaction of uncertainty, confusion and resentment to this unilateral imposition by Union of a dramatic change from Union's traditional practice.

- 5.58 In the last five years, only four out of fourteen municipalities which have been billed in Union's franchise area have paid their share of relocation costs as interpreted by Union. In twelve of these fourteen municipal agreements there is silence on the matter of relocation costs and the PSWHA is invoked because of that silence. Despite Union's claim that "It [the PSWHA formula] is well understood by those who use it and provides an incentive towards a cooperative approach in municipal planning," there has been strong evidence presented during the hearing to refute both claims. In particular, there is neither a consensus on what does or should qualify under "cost of labour and labour-saving equipment" (City of Chatham/Union) nor a rapport conducive to good municipal planning (RMOC/Consumers').

- 5.59 Despite the attempt to define the cost of labour in the PSWHA, the costs to be distributed continue to be subjects of disagreement between the municipalities and the gas companies.
- 5.60 The municipalities interpret the cost of labour as set out in the PSWHA to be those costs as incurred directly by the gas company or by its contractor in performing relocation work. Contrary to the gas companies, the municipalities do not agree that the cost of labour should include such items as the cost of fill, sod or asphalt used in restoring the excavation conducted by the gas company or its contractor. Further, municipalities disagree that the cost of labour should include any administrative or overhead charges or the cost of any materials unless these materials displace manual labour conducted by a workman on the site of relocation.
- 5.61 It is evident to the Board that a cost sharing formula in which the cost of labour is not the criterion of relocation cost sharing would be a vast improvement. The municipal share of total relocation costs has been estimated by Consumers' to vary between 29 and 37 per cent. Union's evidence shows the actual municipal share over the past four years to vary from 27 to 34 per cent, with an average of 29 per cent.

- 5.62 The evidence also shows that Union's material costs are, on average, 15 per cent of the total relocation cost. This suggests to the Board that while the material costs are significant they are not so large that it would be greatly to the municipalities' disadvantage if they were included in a formula for total cost sharing, as opposed to one which involved only the cost of labour.
- 5.63 The 60 year old PSWHA method of relocation cost allocation has outlived its usefulness and begs to be allowed to revert to its intended secondary role as a back-up provision activated only in default of an agreement on the method of allocating relocation costs.
- 5.64 The Ontario Hydro formula did not receive any significant support from anyone. While it works well for Hydro because each agreement is project specific, the task of maintaining records of pipeline age was not viewed with any enthusiasm.
- 5.65 The use of the MTC formula has been favoured by the municipalities. The Board acknowledges that there is little, if any, difference between the responsibilities of road authorities, be they municipalities or a province, except that the latter has consolidated the responsibility for the King's Highways within one body,

the Ministry of Transportation and Communications. However, the MTC agreements, like the Ontario Hydro agreements, are specific to individual pipelines, whereas the franchise agreements between the municipalities and the gas distributors refer to an entire developing pipeline network. Thus, if the MTC formula were used, the municipality would have to rely almost entirely on the gas utility to identify the age of specific pipe that may be subject to relocation.

5.66 Two other major utilities, telephones and electric power, are obliged to use municipal lands. Bell Canada ((1880) 43 Vict., chapter 67 and Railway Act, R.S.C. 1970, chapter R-2, section 318) and Ontario Hydro (Power Corporation Act, R.S.O. 1980, chapter 384, subsection 23(2)) both provide comprehensive services and have special powers to enter any municipal lands, but they are required to obtain municipal consent as to the location of their works. There is no franchise agreement or, in general, any road-user agreement with a municipality. However, in practice, both normally proceed under the provisions of the PSWHA regarding the costs of relocation of telephone and electric plant when requested by a municipality.

5.67 The Board notes with interest that both Bell Canada and Ontario Hydro accept the principle and practice of cost sharing for relocations.

5.68 The Board views the question of relocation costs in the following terms. All utilities - natural gas, electric power, telephone - share common municipal rights of way. An orderly and responsible occupancy by each utility member is therefore imperative. The privilege is balanced with duties. That, after all, is what a franchise agreement is all about, namely the granting of a right and the identification of the terms and conditions of occupancy. There is also an implied onus on the utility company to be a fair and responsible corporate citizen in the municipal right of way. The growth and development of municipalities place increasing and frequent demands on municipal rights of way and their users. Each user utility, by its very presence in the right of way, must be prepared to relocate its plant when necessary and requested to do so by the municipality. Future relocation is one of the risks associated with the right to enter and occupy any municipal roadway.

5.69 As so aptly stated in FONOM's final submission:

Utilities enjoy the same indulgence of being permitted to place pipes on property not owned by them whether the right is granted by the MTC, a private landowner or a municipality ... the corresponding burden on the grantor of such right should be no greater.

5.70 In the franchise areas of the three gas utilities, the percentage of the total costs of relocation which are borne by the municipalities vary enormously:

0 (the utility pays all);
6 (10 per cent of labour costs);
30 (50 per cent of labour costs);
100 (the municipality pays all).

5.71 It is important that any method of allocating relocation costs be simple, clear and fair. The Board therefore concludes that a prescribed or standard method of allocating the costs of pipeline relocations in Ontario in future franchise agreements should be in accordance with the following guidelines:

1. The agreement provision for relocation costs should be negotiable.
2. Agreements should not be silent on the disposition of relocation costs.
3. There should be no distinction made between relocations due to roadwork and non-roadwork.
4. There should be a monetary incentive to encourage the municipality to consider alternatives to gas-line relocation.

5. Relocation costs should be shared by the gas utility and the municipality, with the major portion of costs being borne by the gas utility.
6. The cost sharing method should be simple, preferably a fixed percentage of the total relocation costs, exclusive of any upgrading costs, to each party.
7. There should be an established range of percentages within which a fixed percentage may be negotiated; the lower limit would be close to 0 per cent, and the upper limit would reflect the average upper limits under current cost-sharing arrangements.

5.72 None of the formulae for relocation cost payments (Utility Pays, PSWHA, MTC or Ontario Hydro) discussed meet these recommended guidelines and, consequently, none are recommended by the Board. Rather, the Board recommends that, for all pipeline relocations in a municipal right of way necessitated by any municipal works, the municipality should bear a share of the total cost of relocation within the range of up to 35 per cent, the exact figure to be negotiated by the municipality and gas utility. The average municipal share, on this basis,

would be about 20 per cent of the total relocation cost. The Board recommends that the proposed Municipal Franchise Agreement Committee established by this Report consider developing a more precise formula within this range.

- 5.73 The Board recommends that the negotiated cost sharing should begin with new franchises and renewals starting immediately, including existing franchise agreements which have not yet been approved by the Board or have not yet been signed.
- 5.74 Existing agreements with specific relocation cost provisions and those agreements which are silent and to which the PSWHA provision has been consistently applied should be allowed to continue unchanged to the end of their terms. However, the Board would urge both parties to an agreement to consider renegotiation of that provision in view of the guidelines listed above.
- 5.75 The Board also believes that its recommendation should apply to existing agreements which are silent on the question of relocation costs, but which have been subject to unilateral policy change by Union in its interpretation of silence. The Board recommends that Union continue to pay 100 per cent of the cost when pipe

REPORT OF THE BOARD

laid prior to 1981 must be relocated because of road and sewer works. While Union's preference is to limit this policy to pre-1957 pipe, the Board believes that the Union policy in effect up to 1981 (Union pays) has a more compelling rationale which reflects the legitimate municipal expectations up to that time.

REPORT OF THE BOARD

Table 1

Relocation Provisions per Gas Franchise
Agreements in Ontario

	<u>Utility Pays</u>	<u>PSWHA Explicit</u>	<u>Silent</u>	<u>Other</u>	<u>Total</u>
Consumers'	1(a)	17	134(b)	3(c)	155
Northern	3	1(d)	133	0	137(e)
Union: Perpetual	32	0	50	0	82
Fixed Term	183	17	3	0	203
Total	215	17(f)	53(g)	0	285(h)
Total	219	35	320	3	577

(a) Mississauga City (annexed portion from Town of Oakville).

(b) Includes one perpetual agreement, Mississauga City un-annexed part.

(c) Municipality pays 10 per cent of labour costs.

(d) PSWHA applies to relocations necessitated by constructing or improving any public property in Township of Hope agreement with exception of one specific road where Northern pays 100 per cent of cost.

(e) Letter of Mr. George Laidlaw of November 29, 1985 amending total number of franchises.

(f) New or renewed agreements signed since 1980. Twelve of 17 have been approved by the Board but 9 of these are currently under appeal. In effect, only 3 are approved and operative. During the past 5 years, Union invoiced 2 municipalities, 1 has paid.

(g) Formerly, Union paid 100 per cent in most cases. Because these agreements are silent, Union's new policy since 1981 is that the PSWHA applies. During the past 5 years, Union has invoiced 12 municipalities, only 3 have paid.

(h) Letter of Mr. John Jolley of December 19, 1985 plus attached schedules 1-12.

2000 Model Franchise Agreement

THIS AGREEMENT effective this day of , 20

BETWEEN:

THE CORPORATION OF THE TOWN OF SOUTH BRUCE PENINSULA

hereinafter called the "Corporation"

- and -



uniongas

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:

Part I - Definitions

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 5 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.

Part II - Rights Granted

2. 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.

3. 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.

4. Duration of Agreement and Renewal Procedures

- (a) If the Corporation has not previously received gas distribution services, the rights hereby given and granted shall be for a term of 20 years from the date of final passing of the By-law.

or

- (b) If the Corporation has previously received gas distribution services, 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 of 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.
- (c) 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*.

Part III – Conditions

5. 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 therefore 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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 9. 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.

11. **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 it 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 12 of this Agreement.

12. **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.

Part IV - Procedural And Other Matters

13. Municipal By-laws of General Application

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

14. 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.

15. 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 5 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 12 applies to the cost of relocation.

16. 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.

17. 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.

18. Other Conditions

Notwithstanding the cost sharing arrangements described in Paragraph 12, if any part of the gas system altered or relocated in accordance with Paragraph 12 was constructed or installed prior to January 1, 1981, the Gas Company shall alter or relocate, at its sole expense, such part of the gas system at the point specified, to a location satisfactory to the Engineer/Road Superintendent.

19. 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 THE TOWN OF
SOUTH BRUCE PENINSULA**

Per: _____
Janice Jackson, Mayor

Per: _____
Angie Cathrae, Clerk

UNION GAS LIMITED

Per: _____
David G. Simpson, Vice President
Regulatory, Lands and Public Affairs

Per: _____
Michael G.P. Shannon, Vice President
Distribution Operations

2000 Model Franchise Agreement

THIS AGREEMENT effective this day of , 20

BETWEEN:

THE CORPORATION OF THE TOWN OF SOUTH BRUCE PENINSULA

hereinafter called the "Corporation"

- and -



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:

Part I - Definitions

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*;

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- (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 5 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.

Part II - Rights Granted

2. 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.

3. 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.

4. Duration of Agreement and Renewal Procedures

- (a) If the Corporation has not previously received gas distribution services, the rights hereby given and granted shall be for a term of 20 years from the date of final passing of the By-law.

or

- (b) If the Corporation has previously received gas distribution services, 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 of 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.
- (c) 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*.

Part III – Conditions

5. 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 therefore 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.
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- (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.

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6. As Built Drawings

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7. 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.

8. 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.

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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.

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- (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 9. 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.
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11. **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 it 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 12 of this Agreement.

12. **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.

Part IV - Procedural And Other Matters

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- (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 5 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 12 applies to the cost of relocation.

16. 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.

17. 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.

18. Other Conditions

Notwithstanding the cost sharing arrangements described in Paragraph 12, if any part of the gas system altered or relocated in accordance with Paragraph 12 was constructed or installed prior to January 1, 1981, the Gas Company shall alter or relocate, at its sole expense, such part of the gas system at the point specified, to a location satisfactory to the Engineer/Road Superintendent.

19. 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 THE TOWN OF
SOUTH BRUCE PENINSULA**

Per: _____
Janice Jackson, Mayor

Per: _____
Angie Cathrae, Clerk

UNION GAS LIMITED

Per: _____
David G. Simpson, Vice President
Regulatory, Lands and Public Affairs

Per: _____
Michael G.P. Shannon, Vice President
Distribution Operations