



Enbridge Gas Inc.
50 Keil Drive North
Chatham, Ontario, Canada
N7M 5M1

March 26, 2019

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

Dear Ms. Walli:

**Re: Enbridge Gas Inc.
Application for Renewal of Franchise Agreement
Town of Smooth Rock Falls**

Attached is an Application by Enbridge Gas Inc. for Orders of the Ontario Energy Board with respect to a Franchise Agreement with the Town of Smooth Rock Falls. An agreement has been reached between Enbridge Gas Inc. and the Town of Smooth Rock Falls with regards to the terms and conditions of the proposed Franchise Agreement.

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

Yours truly,

[Original Signed By]

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

Encl.

ONTARIO ENERGY BOARD

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

AND IN THE MATTER OF an Application by Enbridge Gas Inc. for an Order approving the terms and conditions upon which, and the period for which, the Corporation of the Town of Smooth Rock Falls is, by by-law, to grant to Enbridge Gas Inc. the right to construct and operate works for the distribution, transmission and storage of natural gas and the right to extend and add to the works in the Town of Smooth Rock Falls;

AND IN THE MATTER OF an Application by Enbridge Gas Inc. for an Order directing and declaring that the assent of the municipal electors of the Town of Smooth Rock Falls to the by-law is not necessary.

APPLICATION

1. Enbridge Gas Inc. ("Enbridge Gas"), a regulated public utility, is a corporation incorporated under the laws of the Province of Ontario, with its offices in the City of Toronto and the Municipality of Chatham-Kent.
2. The Corporation of the Town of Smooth Rock Falls ("Municipality") is a municipal corporation incorporated under the laws of the Province of Ontario. Attached hereto and marked as Schedule "A" is a map showing the geographical location of the Municipality and a customer density representation of Enbridge Gas' service area. Enbridge Gas currently serves approximately 646 customers in the Municipality.
3. The Town of Smooth Rock Falls, established in 1929, is a lower-tier municipality in the District of Cochrane.
4. Enbridge Gas has a Franchise Agreement with the Town of Smooth Rock Falls (approved by Order RP-1999-0020) which expires October 11, 2019 and a Certificate of Public Convenience and Necessity for the Town of Smooth Rock Falls (FBC 24 dated April 20, 1956) which are attached as Schedule "B".
5. Enbridge Gas applied to the Council of the Municipality for a renewal of the franchise agreement permitting Enbridge Gas to construct and operate works for the distribution, transmission and storage of natural gas and the right to extend and add to the works in the Town of Smooth Rock Falls

6. On March 18, 2019, the Council of the Municipality gave approval to the form of a Franchise Agreement in favour of Enbridge Gas and authorized Enbridge Gas to apply to the Ontario Energy Board for approval of the terms and conditions upon which and the period for which the Franchise Agreement is proposed to be granted.
7. Attached hereto as Schedule "C" is a copy of the Resolution of the Council of the Municipality approving the form of the draft by-law and Franchise Agreement, authorizing this submission to the Ontario Energy Board, and requesting an Order declaring and directing that the assent of the municipal electors to the by-law and Franchise Agreement is not necessary.
8. Attached hereto as Schedule "D" is a copy of By-law 2019-08 and the proposed Franchise Agreement. The Town of Smooth Rock Falls has provided first and second reading of its by-law.
9. Enbridge Gas does not have any Franchise Agreements with or Certificates of Public Convenience and Necessity for municipalities that are immediately adjacent to the Municipality. Enbridge Gas does have Franchise Agreements with and Certificates of Public Convenience and Necessity for the nearby municipalities of the Town of Cochrane, the Township of Fauquier-Strickland and the Township of Moonbeam. There is no other natural gas distributor nearby.
10. The proposed Franchise Agreement covers the same territory as that covered by the existing Franchise Agreement, is in the form of the 2000 Model Franchise Agreement with no amendments, and is for a term of twenty (20) years.
11. The address of the Municipality is as follows:

Town of Smooth Rock Falls
142 First Avenue, P.O. Box 249
Smooth Rock Falls, ON P0L 2B0
Attention: Véronique Dion, Municipal Clerk
Telephone: (705) 338-2717 ext 7
Email: vdion@townsrf.ca

The address for Enbridge Gas' region operations office is:

Enbridge Gas Inc.
36 Charles St. E., Box 3040
North Bay, ON P1B 8K7
Attention: Luke Skaarup, Director, Northern Region Operations
Telephone: (705) 475-7913
Email: lskaarup@uniongas.com

12. The English language newspaper having the highest circulation in the Town of Smooth Rock Falls is the *Cochrane Times Post*. The French language newspaper having the highest circulation in the Town of Smooth Rock Falls is *La Presse Communautaire*. These are the newspapers used by the Municipality for its notices.
13. Enbridge Gas now applies to the Ontario Energy Board for:
 - (a) an Order under s.9(3) approving the terms and conditions upon which, and the period for which, the Municipality is, by by-law, to grant Enbridge Gas the right to construct and operate works for the distribution, transmission and storage of natural gas and the right to extend and add to the works; and
 - (b) an Order pursuant to s.9(4) directing and declaring that the assent of the municipal electors of the Municipality is not necessary for the proposed franchise agreement by-law under the circumstances.

DATED at the Municipality of Chatham-Kent, in the Province of Ontario this 26th day of March, 2019.

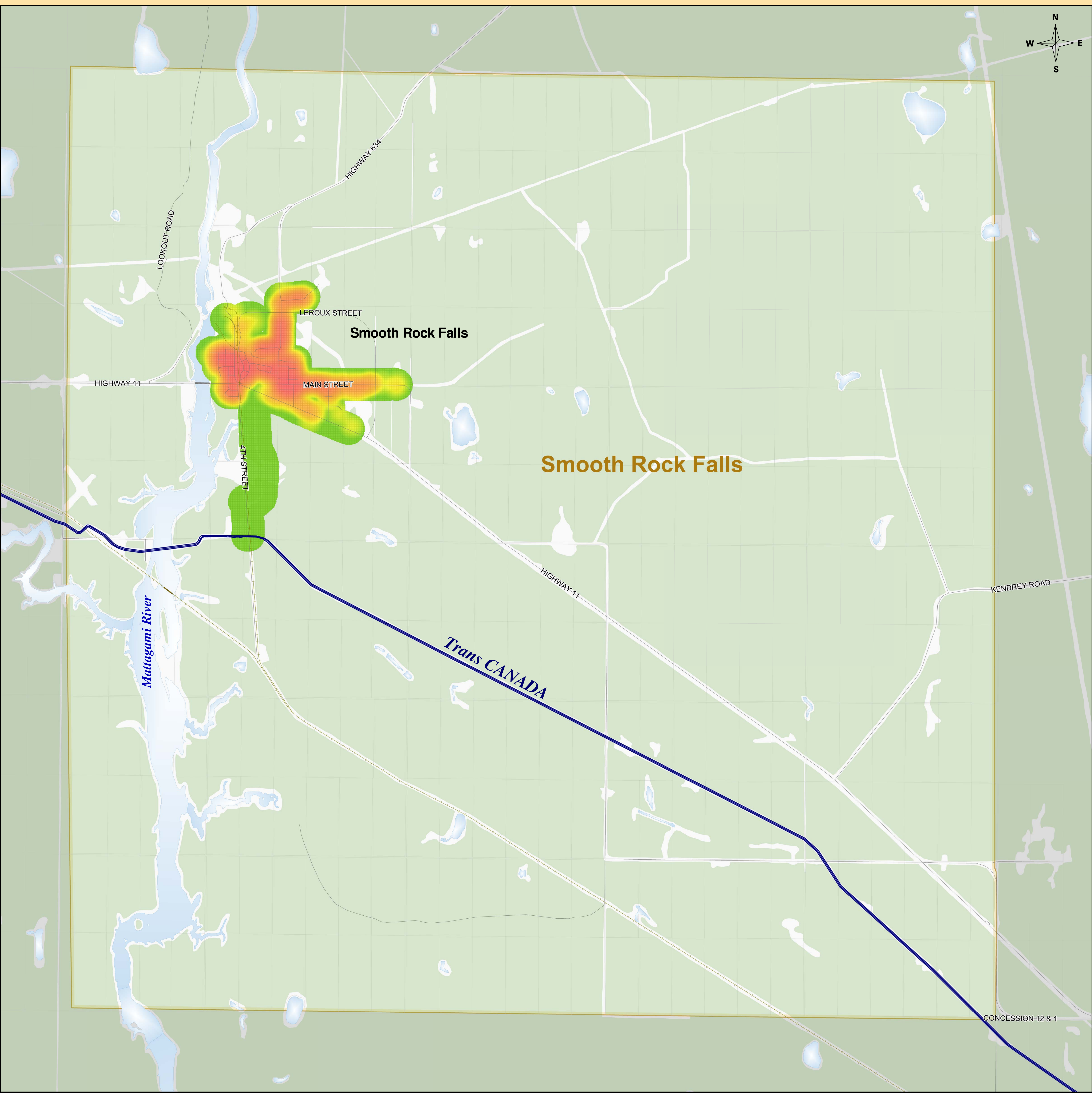
ENBRIDGE GAS INC.

[Original Signed By]

Patrick McMahon
Specialist, Regulatory Research and Records

Comments respecting this Application should be directed to:

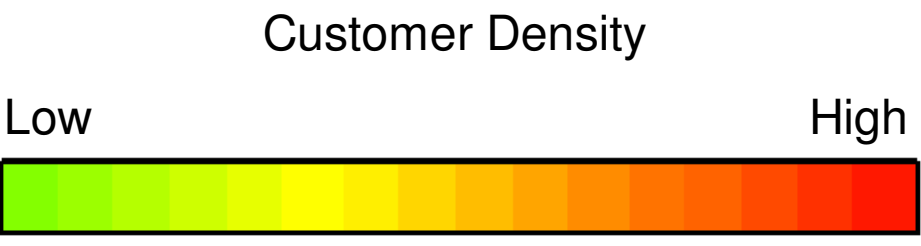
Mr. Patrick McMahon
Specialist, Regulatory Research and Records
Enbridge Gas Inc.
50 Keil Drive North
Chatham, ON N7M 5M1
pmcmahon@uniongas.com
Telephone: (519) 436-5325



Town of Smooth Rock Falls

Legend

- Enbridge Gas Pipeline Coverage Area
- Town of Smooth Rock Falls
- Roads
- Railway
- Municipal and Township Boundaries
- First Nation Boundaries



Disclaimer:
The map is provided with no warranty express or Implied and is subject to change at any time. Any Person using the Density Map shall do so at its own Risk and the Density Map is not intended in any way As a tool to locate underground infrastructure for the purposes of excavation



Location map





Ontario

RP-1999-0020

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

AND IN THE MATTER OF an Application by Union
Gas Limited for an Order approving the terms and
conditions upon which the Corporation of the Town of
Smooth Rock Falls is, by by-law, to grant to Union Gas
Limited rights to construct and operate works for the
distribution of gas; to extend or add to the works; and the
period for which such rights are granted;

AND IN THE MATTER OF an Application by Union
Gas Limited for an Order dispensing with the assent of
the municipal electors of the Corporation of the Town of
Smooth Rock Falls regarding the by-law.

BEFORE: G. A. Dominy
Vice-Chair and Presiding Member

S. K. Halladay
Member

ORDER

Union Gas Limited ("Union") filed an Application ("the Application") dated March 12, 1999, with the Ontario Energy Board ("the Board") under the Municipal Franchises Act, as amended, ("the Act") for an Order approving the terms and conditions upon which and the period for which the Corporation of the Town of Smooth Rock Falls (the "Municipality") is, by by-law, to grant to Union the right to construct and operate works for the distribution of gas and to extend or add to the works in the Municipality.

A resolution was passed by the Council of the Municipality, dated November 9, 1998, approving the form of a draft by-law ("the By-law") authorizing the Franchise

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Agreement between Union and the Municipality. Union also requested the Board to declare and direct, pursuant to section 9(4) of the Act, that the assent of the municipal electors to the By-law is not necessary.

Union is presently serving the Municipality and has a Certificate of Public Convenience and Necessity for the Town of Smooth Rock Falls (F.B.C. 24). The existing franchise agreement (E.B.A. 328) will expire on December 10, 1999.

Union and the Municipality agreed to rely on the model gas franchise agreement which was negotiated by the Municipal Franchise Agreement Committee, pursuant to recommendations in the Board's E.B.O 125 Report, to provide a standard form of franchise agreement acceptable to the municipalities and to the gas distribution companies. The Franchise Agreement is attached as Appendix "A".

On July 26, 1999, the Board issued Notice of Application and Notice of Written Hearing, accompanied by a Letter of Direction from the Board Secretary. No parties intervened or expressed concern with the proposed Franchise Agreement. Written submissions were received from Board Staff on September 3, 1999 supporting the Application. Reply submissions were received from Union on September 3, 1999.

After reviewing the evidence and the submissions of the parties, the Board finds the Application to be in the public interest.

THE BOARD THEREFORE ORDERS THAT:

1. The terms and conditions upon which the Corporation of the Town of Smooth Rock Falls is by By-law to grant to Union Gas Limited the right to construct and operate works for the distribution of gas and to extend or add to the works in the Town of Smooth Rock Falls as stated in the proposed Franchise Agreement, attached as Appendix 'A', are approved.

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2. The assent of the municipal electors of the Corporation of the Town of Smooth Rock Falls to the proposed By-law is not necessary.
3. The Board's costs of and incidental to these proceedings shall be fixed at \$600.00 and shall be paid by Union forthwith upon the issuance of the Board's invoice.

ISSUED at Toronto, September 16, 1999.

ONTARIO ENERGY BOARD

A handwritten signature in dark ink, appearing to read 'P. O'Dell', is written over a horizontal line.

Peter H. O'Dell
Assistant Board Secretary

APPENDIX 'A' TO
BOARD ORDER NO. RP-1999-0020

DATED September 16, 1999.



Peter H. O'Dell
Assistant Board Secretary

FRANCHISE AGREEMENT

THIS AGREEMENT made this day of , 19
BETWEEN:

hereinafter called the "Corporation"

- and -

UNION GAS LIMITED, a company
incorporated under the laws of the Province of Ontario
and having its Head Office in the City of Chatham, in
the said province.

hereinafter called the "Gas Company"

WHEREAS the Gas Company desires to distribute and sell 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 and the Clerk have been authorized and directed to execute this Agreement on behalf
of the Corporation;

THEREFORE the Corporation and the Gas Company agree as follows:

I. Definitions

1. In this Agreement:

- (a) "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;
- (b) "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 supply, transmission and distribution of gas in or through the Municipality;
- (c) "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;
- (d) "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;
- (e) "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.

II. Rights Granted

1. To provide gas service.

The consent of the Corporation is hereby given and granted to the Gas Company to supply gas in the Municipality to the Corporation and to the inhabitants of the Municipality.

2. To use road allowances.

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 supply, distribution and transmission of gas in and through the Municipality.

3. Duration of Agreement and Renewal Procedures.

The rights hereby given and granted shall be for a term of 20 years from the date of final passing of the By-law.

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. Nothing herein stated shall 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.

III. Conditions

1. Approval of Construction.

Before beginning construction of or any extension or change to the gas system (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 location, showing the highways in which it proposes to lay its gas system and the particular parts thereof it proposes to occupy. Geodetic information will not be required except in complex urban intersections in order to facilitate known projects, being projects which are reasonably anticipated by the Engineer/Road Superintendent. The Engineer/Road Superintendent may require sections of the gas system to be laid at a greater depth than required by CAN/CSA-Z184-M92 to facilitate known projects. The location of the work as shown on the said plan must be approved by the Engineer/Road Superintendent before the commencement of the work and the timing, terms and conditions relating to the installation of such works shall be to his satisfaction.

Notwithstanding the provisions of the above noted paragraph, in the event it is proposed to affix a part of the gas system to a bridge, viaduct or structure, the Engineer/Road Superintendent may, if the Engineer/Road Superintendent approves of such location, require special conditions or a separate agreement.

No excavation, opening or work which shall disturb or interfere with the surface of the travelled portion of any highway shall be made or done unless a permit therefor has first been obtained from the Engineer/Road Superintendent and all works shall be done to his satisfaction.

The Engineer/Road Superintendent's approval, where required throughout this section, shall not be withheld unreasonably.

2. As Built Drawings.

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. After completion of the construction, where plans were initially filed, an "as built" plan of equal quality to the preconstruction plan or certification that the preconstruction plan is "as built" will be filed with the Engineer/Road Superintendent.

3. Emergencies

In the event of an emergency involving the gas system, the Gas Company will proceed with the work and in any instance where prior approval of the Engineer/Road Superintendent is normally required, 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 having jurisdiction.

4. Restoration

The Gas Company shall well and sufficiently restore, to the reasonable satisfaction of the Engineer/Road Superintendent, all highways, municipal works or improvements which it may excavate or interfere with in the course of laying, constructing, repairing or removing its gas system, and shall make good any settling or subsidence thereafter caused by such excavation or interference. If the Gas Company fails at any time to do any work required by this paragraph within a reasonable period of time, the Corporation may do or cause such work to be done and the Gas Company shall, on demand, pay any reasonable amount therefor as certified by the Engineer/Road Superintendent.

5. Indemnification

The Gas Company shall, at all times, indemnify and save harmless the Corporation from and against all claims, including costs related thereto, for all damages or injuries including death to any person or persons and for damage to any property, arising out of the Gas Company operating, constructing, and maintaining its gas system in the Municipality, or utilizing its gas system for the carriage of gas owned by others. Provided that the Gas Company shall not be required to indemnify or save harmless the Corporation from and against claims, including costs related thereto, which it may incur by reason of damages or injuries including death to any person or persons and for damage to any property, resulting from the negligence or wrongful act of the Corporation, its servants, agents or employees.

6. 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 to provide, if it is feasible, 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 will share, as provided in clause III, 7 of this Agreement, in the cost of relocating or altering the gas system to facilitate continuity of gas service.

7. Pipeline Relocation

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.

Where any part of the gas system relocated in accordance with this section is located on a bridge, viaduct or structure, the Gas Company shall alter or relocate, at its sole expense, such part of the gas system.

Where any part of the gas system relocated in accordance with this section 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:

- (a) 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,
- (b) 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,
- (c) the amount paid by the Gas Company to contractors for work related to the project,
- (d) the cost to the Gas Company for materials used in connection with the project, and
- (e) a reasonable amount for project engineering and project administrative costs which shall be 22.5% of the aggregate of the amounts determined in items (a), (b), (c) and (d) above.

The total relocation costs as calculated above shall be paid 35% by the Corporation and 65% by the Gas Company.

8. Notice to Drainage Superintendent

In a case where the gas system may affect a municipal drain, the Gas Company shall file with the Drainage Superintendent, for purposes of the Drainage Act, or other person responsible for the drain, a copy of the plan required to be filed with the Engineer/Road Superintendent.

IV Procedural And Other Matters

1. Municipal By-laws of General Application.

This Agreement and the respective rights and obligations hereunto of the parties hereto are hereby declared to be subject to the provisions of all regulating statutes and all municipal by-laws of general application and to all orders and regulations made thereunder from time to time remaining in effect save and except by-laws which impose permit fees and by-laws which have the effect of amending this Agreement.

2. Giving Notice

Notices may be given by delivery or by mail, and if mailed, by prepaid registered post, to the Gas Company at its head office or to the Clerk of the Corporation at its municipal offices, as the case may be.

3. Disposition of Gas System

During the term of this Agreement, if the Gas Company abandons a part of its gas system affixed to a bridge, viaduct or structure, the Gas Company shall, at its sole expense, remove that part of its gas system affixed to the bridge, viaduct or structure.

If at any time the Gas Company abandons any other part of its gas system, it shall deactivate that part of its gas system in the Municipality. Thereafter, the Gas Company shall have the right, but nothing herein contained shall require it, to remove its gas system. If the Gas Company fails to remove its gas system and the Corporation requires the removal of all or any of the 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 deactivated 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.

4. Agreement Binding Parties

This Agreement shall extend to, benefit and bind the parties thereto, their successors and assigns, respectively.

IN WITNESS WHEREOF the parties hereto have duly executed these presents with effect from the date first above written.

THE CORPORATION OF THE

Clerk

UNION GAS LIMITED

ONTARIO FUEL BOARD

IN THE MATTER OF The Municipal Franchises
Act, R.S.O. 1950, Chapter 249, and amend-
ments thereto;

AND IN THE MATTER OF an application by
Northern Ontario Natural Gas Company
Limited for a certificate of public con-
venience and necessity to construct works
and to supply gas to the inhabitants of
the Town of Smooth Rock Falls.

B E F O R E:

A. R. CROZIER, Chairman	}	Tuesday, the 10th day
T. H. SIMPSON, Q.C., Vice-Chairman		of April, 1956.
W. R. HOWARD, Commissioner		

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

UPON THE APPLICATION OF Northern Ontario Natural Gas Company Limited (hereinafter referred to as the "Applicant") for a certificate pursuant to the provisions of The Municipal Franchises Act, R.S.O. 1950, Chapter 249, Section 8 and amendments thereto, and at a public hearing of such application by the Board at the City of Toronto on the 10th day of April, 1956, after due notice of such hearing had been given as directed by the Board, in the presence of counsel for the Applicant and upon consideration of the evidence and exhibits produced at the hearing and upon hearing what was alleged by counsel aforesaid:

1. THIS BOARD DOTH ORDER that a Certificate of Public Convenience and Necessity be and the same is hereby granted to Northern Ontario Natural Gas Company Limited for the supply of natural gas to the inhabitants of the Town of Smooth Rock Falls and for the construction of the works necessary therefore.

2. AND THIS BOARD DOTH FURTHER ORDER that the costs of this hearing are fixed at \$ 20⁰⁰ and shall be

paid forthwith by the Applicant to the Board.

DATED at Toronto this 20th day of April, 1956.

ONTARIO FUEL BOARD

J. R. Rogers

J. D. Simpson
VICE CHAIRMAN

W. Howard

IN THE MATTER OF The Municipal
Franchises Act, R.S.O. 1950,
Chapter 249, and amendments
thereto;

AND IN THE MATTER OF an application
by Northern Ontario Natural Gas
Company Limited for a certificate
of public convenience and necessity
to construct works and to supply
gas to the inhabitants of the Town
of Smooth Rock Falls.

CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY

McCarthy & McCarthy,
330 University Ave.,
Toronto - Ontario.

COMMITTEE OF THE WHOLE / COUNCIL
TOWN OF SMOOTH ROCK FALLS

DATE: 18 Mar 2019

RESOLUTION NO.: 2019-064

AGENDA ITEM NO.: 9.1

MOVED BY: Patrick Roberts

SECONDED BY: Sue Perras

BE IT HEREBY RESOLVED THAT this Council approves the form of draft by-law and franchise agreement attached hereto and authorizes the submission thereof to the Ontario Energy Board for approval pursuant to the provisions of Section 9 of the *Municipal Franchises Act*.

AND FURTHER THAT this Council requests that the Ontario Energy Board make an Order declaring and directing that the assent of the municipal electors to the attached draft by-law and franchise agreement pertaining to the Corporation of the Town of Smooth Rock Falls is not necessary pursuant to the provisions of Section 9(4) of the *Municipal Franchises Act*.

DECLARED THE MOTION



CARRIED



DEFEATED



TABLED

Michel Arseneault
MAYOR (Acting Mayor)

	FOR	AGAINST
Michel Arseneault		
Daniel Alie		
Joanne Landry		
Sue Perras		
Marc Blais		

DECLARATION OF CONFLICT OF INTEREST

DISCLOSED HIS/HER INTEREST(S)

VACATED HIS/HER SEAT

ABSTAINED FROM DISCUSSION AND DID NOT VOTE ON THIS QUESTION

THE CORPORATION OF THE TOWN OF SMOOTH ROCK FALLS

BY-LAW #2019-08

A BY-LAW TO AUTHORIZE A FRANCHISE AGREEMENT BETWEEN
THE CORPORATION OF THE TOWN OF SMOOTH ROCK FALLS
and
ENBRIDGE GAS INC.

WHEREAS the Council of the Corporation of the Town of Smooth Rock Falls deems it expedient to enter into the attached franchise agreement (the "Franchise Agreement") with Enbridge Gas Inc.;

AND WHEREAS the Ontario Energy Board by its Order issued pursuant to the *Municipal Franchises Act* on the _____ day of _____, 20____ 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 this By-Law is not necessary:

NOW THEREFORE the Council of the Corporation of the Town of Smooth Rock Falls enacts as follows:

1. **THAT** the Franchise Agreement between the Corporation of the Town of Smooth Rock Falls and Enbridge Gas Inc. attached hereto and forming part of this by-law, is hereby authorized and the franchise provided for therein is hereby granted.
2. **THAT** the Mayor and Clerk be and they are hereby authorized and instructed on behalf of the Corporation of the Town of Smooth Rock Falls to enter into and execute under its corporate seal and deliver the Franchise Agreement, which is hereby incorporated into and forming part of this By-Law.
3. **THAT** the following by-law be hereby repealed:
 - By-law #99-25 for the Corporation of the Town of Smooth Rock Falls, passed in Council on the 11th day of October, 1999.
4. **THAT** this by-law shall come into force and take effect as of the final passing thereof.

READ THIS FIRST AND SECOND TIME this 18th day of March, 2019.



MAYOR – Michel Arseneault



CLERK – Véronique Dion

READ A THIRD AND FINAL TIME this _____ day of _____, 2019.

MAYOR – Michel Arseneault

CLERK – Véronique Dion

2000 Model Franchise Agreement

THIS AGREEMENT effective this day of , 2019

BETWEEN:

THE CORPORATION OF THE TOWN OF SMOOTH ROCK FALLS

hereinafter called the "Corporation"

- and -

ENBRIDGE GAS INC.

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 therefor has first been obtained from the Engineer/Road Superintendent and all work done by the Gas Company shall be to his satisfaction.
- (b) Prior to the commencement of work on the gas system, or any extensions or changes to it (except service laterals which do not interfere with municipal works in the highway), the Gas Company shall file with the Engineer/Road Superintendent a Plan, satisfactory to the Engineer/Road Superintendent, drawn to scale and of sufficient detail considering the complexity of the specific locations involved, showing the highways in which it proposes to lay its gas system and the particular parts thereof it proposes to occupy.
- (c) The Plan filed by the Gas Company shall include geodetic information for a particular location:
 - (i) where circumstances are complex, in order to facilitate known projects, including projects which are reasonably anticipated by the Engineer/Road Superintendent, or
 - (ii) when requested, where the Corporation has geodetic information for its own services and all others at the same location.
- (d) The Engineer/Road Superintendent may require sections of the gas system to be laid at greater depth than required by the latest CSA standard for gas pipeline systems to facilitate known projects or to correct known highway deficiencies.
- (e) Prior to the commencement of work on the gas system, the Engineer/Road Superintendent must approve the location of the work as shown on the Plan filed by the Gas Company, the timing of the work and any terms and conditions relating to the installation of the work.
- (f) In addition to the requirements of this Agreement, if the Gas Company proposes to affix any part of the gas system to a bridge, viaduct or other structure, if the Engineer/Road Superintendent approves this proposal, he may require the Gas Company to comply with special conditions or to enter into a separate agreement as a condition of the approval of this part of the construction of the gas system.

- (g) Where the gas system may affect a municipal drain, the Gas Company shall also file a copy of the Plan with the Corporation's Drainage Superintendent for purposes of the *Drainage Act*, or such other person designated by the Corporation as responsible for the drain.
- (h) The Gas Company shall not deviate from the approved location for any part of the gas system unless the prior approval of the Engineer/Road Superintendent to do so is received.
- (i) The Engineer/Road Superintendent's approval, where required throughout this Paragraph, shall not be unreasonably withheld.
- (j) The approval of the Engineer/Road Superintendent is not a representation or warranty as to the state of repair of the highway or the suitability of the highway for the gas system.

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

None.

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 SMOOTH ROCK FALLS**

Per:

Michel Arsenault, Mayor

Per:

Véronique Dion, Clerk

ENBRIDGE GAS INC.

Per:

Mark Kitchen, Director
Regulatory Affairs

Per:

Luke Skaarup, Director,
Northern Region Operations