

IN THE MATTER OF *the Municipal Franchise Act, R.S.O. 1990, c.M55, as amended;*

AND IN THE MATTER OF an Application by OM Limited Partnership for an Order approving the terms and conditions upon which, and the period for which, the Corporation of the County of Norfolk has, by by-law, granted to OMLP 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 County of Norfolk.

AFFIDAVIT OF SERVICE OF SCOTT LEWIS


I, Scott Lewis, of the City of London in the County of Middlesex, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am an authorized representative of OM Limited Partnership ("OMLP") and as such have knowledge of the matters to which I hereinafter depose.
2. I served The Corporation of the County of Norfolk with the Decision and Order for OMLP's application for the approval of a natural gas franchise agreement with the Corporation of Norfolk County which grants to OM Limited Partnership 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 for a period of 20 years.
3. Attached hereto are copies of the Purolator bill of lading addressed to The Corporation of the County of Norfolk; tracking details confirming the packages as delivered (Appendix "A") and a copy of the Decision and Order (Appendix "B").

SWORN BEFORE ME at the City)
of London, in the County of)
Middlesex, on July 11th, 2019)



A Commissioner, etc.
TIMOTHY TERENCE MCCULLOUGH



SCOTT LEWIS



Appendix "A"

Tracking Details

Shipment Status

Shipment Created

Picked Up

In Transit

Delivered

Package Status

Package Tracking Number: 27082026058

[View proof of delivery and signature](#)



Delivered

Monday, June 17, 2019 12:45 p.m.

Received By: Lori

Service	Purolator Express
Est. Shipment Weight	1 lb.
Shipment Date	Jun 14, 2019

From	London, ON, CA
To	Simcoe, ON, CA


Shipment Summary

Tracking #	Deliver By	Status
27082026058	Jun 17, 2019	Delivered

Packages 1 to 1 of 1

History

Date	Local Time	City	Description
Jun 17, 2019	12:45 p.m.	Brantford, ON	Shipment delivered to LORI at: RECEPTION
Jun 17, 2019	8:25 a.m.	Brantford, ON	On vehicle for delivery
Jun 14, 2019	11:02 p.m.	Toronto Sort Ctr/ctr Tri, ON	Arrived at sort facility
Jun 14, 2019	2:54 p.m.	London, ON	Picked up by Purolator at London


A Commissioner, etc.
TIMOTHY TERENCE MCCUAUGH

SENDER ACCOUNT NO.
N° DE COMPTE DE L'EXPÉDITEUR
7243825 (519) 4337719

SENDER (FROM) / EXPÉDITEUR (DE)
LAGASCO INC
STREET ADDRESS / ADRESSE (N° ET RUE)
1030 ADELAIDE ST. S. UNIT B
CITY / VILLE LONDON ON N6E1R6
PROV./STATE/ÉTAT POSTAL / ZIP

RECEIVER (TO) / DESTINATAIRE (À)
The Corporation of the County of Norfolk
STREET ADDRESS / ADRESSE (N° ET RUE)
50 Colborne St. South
CITY / VILLE Simcoe ON N3Y4H3
PROV./STATE/ÉTAT POSTAL / ZIP

ATTN: (NAME / DEPT.) À L'ATTENTION DE (NOM / SERVICE)
Andy Grozelle ()
IMPORTANT - TELEPHONE

DESCRIPTION (INCLUDING DANGEROUS GOODS / INCLUANT MARCHANDISES DANGEREUSES)
Documents
SENDER REFERENCE (IF ANY) / REF. DE L'EXPÉD. OMLP
PICK UP / CUELLETTE - N° DE CONF. ☒ DG ☐ MD

SENDER SIGNATURE / SIGNATURE DE L'EXPÉDITEUR
X *Jim Fumato* X
SEE CONDITIONS OF CARRIAGE ON REVERSE / CONDITIONS DE TRANSPORT AU VERSO

SHIP MODE / MODE DE TRANSPORT
AIR ☐ GROUND ☐
AÉRIEN ☐ ROUTIER ☐

PKG/EMBALLAGE
PURO-LETTER ☐ 9 AM ☐
PURO-PAK ☐ 10:30 AM ☐
OTHER ☐ SAT. ☐

RECEIVER OR THIRD PARTY ACCOUNT NO. / N° DE COMPTE DU DESTINATAIRE OU TIERS
RECEIVER DESTINATAIRE ☐ 3RD PARTY TIERS ☐

SHIPMENT / DÉTAILS / EXPÉDITION
#Nets PCS (4 MAXIMUM) WEIGHT / POIDS KG LB

DECLARED VALUE / VALEUR DÉCLARÉE
(SURCHARGE APPLIES OVER \$100)
(SUPPLÉMENT AU-DESSUS DE 100 \$)
\$ \$5,000 MAX
MAX \$ 000 \$
SEE CONDITIONS OF CARRIAGE ON REVERSE /
CONDITIONS DE TRANSPORT AU VERSO

BILL OF LADING NO.
N° DE CONNAISSANCE
NON NEGOCIABLE 2708 202 6058

Purolator
1 888 SHIP-123 www.purolator.com

COURIER AIR/ALS INITIALS DU COURRIER
COURIER ROUTE ITINÉRAIRE DU COURRIER
MO DY/JR YR/MN
1701 6 14 A
NO. N° TYPE ☐ VISA ☐ MC ☐ AMEX
EXP. DATE D'EXP.

CHARGES
FRAIS
TOTAL AMOUNT / MONTANT TOTAL

THIRD PARTY BILLING NAME & ADDRESS / FACTURATION À UN TIERS (NOM & ADRESSE)

LIMITATION OF LIABILITY - IMPORTANT - PLEASE READ
THE AMOUNT OF ANY LOSS OR DAMAGE FOR WHICH THE CARRIER MAY BE LIABLE SHALL NOT EXCEED \$500 PER POUND (OR \$4.41 PER KILOGRAM) COMPUTED ON THE TOTAL WEIGHT OF THE SHIPMENT UNLESS A HIGHER VALUE IS DECLARED ON THE FACE OF THE BILL OF LADING BY THE CONSIGNEE (SENDER). MAXIMUM DECLARED VALUE SHALL NOT EXCEED \$500. ALSO NOTE CAREFULLY CONDITIONS ON BACK HEREOF INCLUDING LIMITATIONS AND EXCLUSIONS OF CARRIER'S LIABILITY, WHICH ARE HEREBY ACCEPTED.

LIMITATION DE RESPONSABILITÉ - IMPORTANT - LIREZ ÉCLAIRÉ
LE MONTANT DE TOUTE PÉRIE OU DOMMAGE DONT LE TRANSPORTÉUR POURRAIT ÊTRE RESPONSABLE NE DONT PAS EXCÉDER \$500 À LA LIVRE (OU \$4.41 À LE KILOGRAMME) CALCULÉ SUR LE POIDS TOTAL DE L'ÉCHÉMENT, À MOINS QU'UNE VALEUR SUPÉRIEURE N'AIT ÉTÉ DÉCLARÉE SUR LE TITRE DU CONNAISSANCE PAR L'EXPÉDITEUR. LA VALEUR DÉCLARÉE MAXIMALE NE DÉPASSERA PAS \$ 500. À LUS VEUILLEZ PRÉNDRE CONNAISSANCE DES CONDITIONS AU VERSO, 2 COMPRENS LES LIMITATIONS ET EXCLUSIONS DE RESPONSABILITÉ DU TRANSPORTÉUR, QUI SONT ACCEPTÉES PAR LES PRÉSENTES.

PLEASE REFER TO BILL OF LADING NUMBER FOR SHIPMENT STATUS / INQUIRIES
POUR TOUT RENSEIGNEMENT, VEUILLEZ NOUS COMMUNIQUER LE NUMÉRO DE CONNAISSANCE.



Ontario
Energy
Board | Commission
de l'énergie
de l'Ontario

Appendix "B"

DECISION AND ORDER

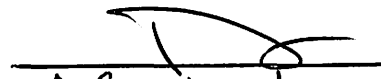
EB-2019-0104

OM LIMITED PARTNERSHIP

**Application for a Municipal Franchise Agreement with Norfolk
County**

By Delegation, before: Pascale Duguay

June 13, 2019


A Commissioner, etc
TIMOTHY TERENCE MCCALLUM

INTRODUCTION AND SUMMARY

This Decision and Order approves OM Limited Partnership's (OMLP) application for a natural gas franchise agreement with Norfolk County in the form of the 2000 Model Franchise Agreement, with no amendments, for a twenty-year term.

THE PROCESS

OMLP filed an application with the Ontario Energy Board (OEB) on March 7, 2019 under section 9 of the *Municipal Franchises Act*. The application was for an order of the OEB granting OMLP's 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 Norfolk County.

The OEB held a written hearing. A notice of hearing was published in the local newspaper on April 10, 2019. Enbridge Gas Inc. (Enbridge Gas) applied and was awarded intervenor status.

In accordance with Procedural Order No. 1, issued April 26, 2019, Enbridge Gas filed interrogatories and OMLP responded to those interrogatories. OEB staff filed a letter on May 1, 2019 stating that OEB staff would not be asking interrogatories.

In accordance with Procedural Order No. 2, issued May 3, 2019, both Enbridge Gas and OEB staff filed written submissions on May 21, 2019. OMLP filed a reply submission on May 27, 2019.

In this Decision and Order, a reference to Norfolk County is a reference to the municipal corporation or its geographical area, as the context requires.

BACKGROUND

OMLP is a corporation incorporated under the laws of the Province of Ontario, with its head office in the City of London.

Norfolk County is a municipal corporation incorporated under the laws of the Province of Ontario.

OMLP currently has two limited certificates of public convenience and necessity relating to Norfolk County. Specifically, the certificates of public convenience and necessity allow OMLP to construct facilities for the purpose of supplying natural gas on:

- Concession Road 8 from County Road 23 to W Quarter Line Road, Norfolk County (EB-2017-0289-A)
- The north half of Lot 2, Concession 7, Norfolk County (EB-2017-0289-B)

OMLP applied to Norfolk County for a franchise agreement, based on a proposed franchise agreement in the form of the OEB-approved 2000 Model Franchise Agreement, with no amendments, for a term of twenty years. On December 18, 2018, Norfolk County passed By-law No. 2018-103 to authorize the execution of an agreement with OMLP to construct facilities to provide natural gas services to the Maricann Facility on Concession Road 8. On February 5, 2019, Norfolk County and OMLP executed the franchise agreement in the form of the OEB-approved 2000 Model Franchise Agreement, with no amendments, for a term of twenty years.

THE APPLICATION

With the application, OMLP filed Norfolk County's executed by-law granting the franchise agreement and an executed copy of the franchise agreement. OMLP did not file a resolution signed by the municipality.

A number of issues were raised with respect to the application. These issues are set out below, together with the positions of the parties on each of them.

1. OMLP's Filing of a Dated and Executed Franchise Agreement

Both OEB staff and Enbridge Gas noted that the franchise agreement between OMLP and Norfolk County had been dated and executed prior to OEB approval, which is inconsistent with the process set out in E.B.O. 125.¹ Enbridge Gas submitted that the OEB's directions to natural gas distributors are that municipalities are supposed to put

¹ E.B.O. 125 Report of the Board: Ontario Energy Board Review of Franchises & Certificates, "How a Franchise Agreement is Established", Section 2.11 (May 21, 1986).

proposed franchise agreements through first and second readings prior to submitting them to the OEB so that the municipality is finalizing its by-law and executing the final approved version of the franchise agreement.² In its submission, OEB staff also raised this issue but indicated that, while there was an inconsistency with the general process set out in E.B.O. 125, the inconsistency was not significant enough to prevent the franchise agreement for OMLP with Norfolk County from being granted.

In its reply submission, OMLP highlighted that it was aware of the aforementioned inconsistency and that, prior to filing its application, it had contacted and received advice from OEB staff as to how to address the matter of the already dated and executed franchise agreement and by-law. OMLP submitted that OEB staff suggested filing the application with the executed franchise agreement and by-law.

2. Effective Date of the Franchise Agreement

Enbridge Gas sought clarity from OMLP on the matter regarding the effective date of the franchise agreement.³ Specifically, Enbridge Gas requested, through interrogatories, that OMLP confirm its understanding that the effective date of any franchise agreement would be the later date of (i) the Decision and Order issued by the OEB approving the franchise agreement, and (ii) the date of passing the by-law approving the franchise agreement. In its interrogatory response, OMLP noted that the effective date of any franchise agreement would be the later of the date of the Decision and Order issued by the OEB or the date of the passing of the by-law approving the franchise agreement.⁴ However, for determining the term of the agreement, OMLP would consider it to be twenty years from the date of final execution of the franchise agreement or such other date as determined by the OEB.⁵

Enbridge Gas submitted that “as agreed by OMLP in response to Enbridge IR #1(c), the effective date of the franchise agreement approved for OMLP should be the later of the date of the OEB Decision and Order approving the franchise agreement or the date of

² Enbridge Gas Submission, p. 1, para. 4.

³ For context, the by-law was enacted and passed on December 18, 2018, the franchise agreement signed on February 5, 2019, and this Decision and Order issued on June 13, 2019.

⁴ OMLP Response to Enbridge Gas Interrogatory C, p. 2.

⁵ OMLP Response to Enbridge Gas Interrogatory D, p. 2.

the 3rd and final reading of the municipal bylaw approving the franchise agreement.”⁶ OEB staff submitted that, in this case, the effective date of the franchise agreement between OMLP and Norfolk County should simply be the date of any Decision and Order issued by the OEB approving the franchise agreement. OEB staff’s reasoning for this was consistent with Enbridge Gas’ submission in that, according to the *Municipal Franchises Act*, a municipal by-law with a signed franchise agreement would not be valid prior to the OEB approving the terms and conditions of the agreement. Through its reply submission, OMLP supported OEB staff’s submission regarding the effective date.

3. Clause 4 – Duration of Agreement and Renewal Procedures

As part of the 2000 Model Franchise Agreement, clause 4 discusses the duration of the agreement and renewal procedures. Specifically, clauses 4(a) and 4(b) are as follows:

- 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.
- b) If the Corporation has previously received gas distribution services, 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.⁷

In interrogatories, Enbridge Gas requested OMLP to confirm that clause 4(b) of the franchise agreement was applicable for the agreement between Norfolk County and OMLP. OMLP noted that the clause may be open to interpretation with respect to from whom Norfolk County has received gas distribution services. However, OMLP stated in its response that it would abide by the terms in clause 4(b) of the franchise agreement.⁸ In its submission, Enbridge Gas submitted that clause 4(b) automatically applies given

⁶ Enbridge Gas Submission, p. 1, para. 5.

⁷ 2000 Model Franchise Agreement, p. 3.

⁸ OMLP Response to Enbridge Gas Interrogatory F, p. 2.

that Enbridge Gas has been providing gas distribution services within Norfolk County for many years.

OEB staff submitted that “[i]f the phrase from clause 4(b), ‘if the Corporation has previously received gas distribution services’, were to mean gas distribution service from the same distributor that the municipality is signing the agreement with, OEB staff’s view would be that clause 4(a) would apply as OMLP has not previously provided gas distribution services in Norfolk County.”⁹ In its reply submission, OMLP submitted that it takes the view that clause 4(a) would apply as OMLP had not previously provided gas distribution services in Norfolk County.¹⁰ OMLP did not provide reasoning for why it did not support Enbridge Gas’ submission of clause 4(b) being applicable in this matter.

4. Assent of the Municipal Electors

Enbridge Gas requested that OMLP, through interrogatories, provide a copy of the resolution or by-law of Norfolk County which confirmed that the municipality was in agreement that the assent of the municipal electors of the municipality is not necessary for the proposed franchise agreement. In its response, OMLP noted that it had put in a request in its application that the OEB direct and declare that the assent of the municipal electors is not necessary for the franchise by-law under the circumstances.¹¹

OEB staff submitted that, as per the OEB’s typical practice, in this proceeding, the OEB should dispense with the assent of the municipal electors.¹² Contrasting this view was Enbridge Gas’ submission which stated that there is no evidence, typically in the form of a municipal resolution, on the record of this proceeding that Norfolk County agrees with, or has made, such request.¹³ OMLP did not address this aspect of the submission filed by Enbridge Gas.

⁹ OEB Staff Submission, pp. 5-6.

¹⁰ OMLP Reply Submission, p. 1, para. 3.

¹¹ OMLP Response to Enbridge Gas Interrogatory G, p. 2.

¹² OEB Staff Submission, p. 5.

¹³ Enbridge Gas Submission, p. 1, para. 6.

5. Timing of Approvals and Construction of Gas Distribution Facilities

In addition to asking interrogatories pertaining to clause 4, the effective date of the franchise agreement, assent of the municipal electors, and OMLP filing an executed franchise agreement, Enbridge Gas also inquired as to whether OMLP had constructed natural gas facilities prior to approval of the franchise agreement. In its response to this interrogatory, OMLP noted that it had obtained approvals by Norfolk County prior to constructing the facilities. However, OMLP also noted that, as soon as it became aware that it needed a franchise agreement, it approached Norfolk County and made an application to the OEB.

Enbridge Gas submitted that it was unclear when OMLP began constructing facilities within Norfolk County prior to submitting the franchise agreement application, but it appears, according to Enbridge Gas, that OMLP has moved forward with its construction activity prior to getting a franchise agreement approved by the OEB.¹⁴ OMLP did not address this matter in its reply submission.

OEB FINDINGS

The OEB approves OMLP's application for a natural gas franchise agreement with Norfolk County in the form of the 2000 Model Franchise Agreement, with no amendments, for a twenty-year term. Considering the regulatory context in which E.B.O. 125 was issued, the OEB is of the view that clause 4(a) applies in this proceeding as this is an initial municipal franchise agreement between a corporation and a natural gas distributor.

Both OEB staff and Enbridge Gas noted that the municipal franchise agreement between OMLP and Norfolk County was dated and executed prior to OEB approval. While the OEB agrees that this is not generally consistent with E.B.O. 125, the OEB considers this to be an administrative matter that does not warrant denying the application, as a municipal by-law with a signed municipal franchise agreement would not be valid prior to the OEB approving it in any event. The OEB also finds that the effective date of the municipal franchise agreement will be the date of this Decision and

¹⁴ Enbridge Gas Submission, p. 2, paras. 7 and 8.

Order and that the municipal franchise agreement will be in effect for a period of twenty years. The OEB also declares that the assent of the municipal electors is not necessary as is usually the case in municipal franchise agreement proceedings. No one other than Enbridge Gas intervened in this proceeding and, to the knowledge of the OEB, no substantive issues have been raised in Norfolk County with respect to the *Municipal Franchises Act* from electors. As is usually the case in municipal franchise agreement proceedings, it would appear this is a matter where the assent of the electors should appropriately be dispensed with.

Enbridge Gas raised an issue that OMLP proceeded with the construction of the facilities prior to obtaining OEB approval of the proposed municipal franchise agreement. The OEB first notes that the OEB made a determination in another proceeding¹⁵ that the pipeline to serve the Maricann Facility on Concession Road 8 does not require leave to construct from the OEB. The OEB also notes that section 8 of the *Municipal Franchises Act* provides that a certificate of public convenience and necessity is required prior to the construction of any works to supply natural gas in a municipality. This was previously obtained by OMLP in the above-referenced proceeding. While an application for a municipal franchise agreement is usually made concurrent with an application for a certificate of public convenience and necessity, this was not the case here. OMLP also stated that consent was received from Norfolk County of the proposed municipal franchise agreement prior to the construction of the facilities. The application was also in the form of the 2000 Model Franchise Agreement, with no amendments. For these reasons, while the approval by the OEB of the municipal franchise agreement prior to the construction of the facilities would have been desirable, it would not be in the public interest to deny the application as the costs of doing so would clearly outweigh the benefits.

¹⁵ EB-2017-0289

IT IS ORDERED THAT:

1. The terms and conditions upon which, and the period for which, Norfolk County has, by by-law, granted to OM Limited Partnership 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 municipality, as set out in the municipal franchise agreement attached as Schedule A, are approved. A current map of Norfolk County is attached as Schedule B.
2. The assent of the municipal electors to the by-law is not necessary.
3. OM Limited Partnership shall pay the OEB's costs incidental to this proceeding upon receipt of the OEB's invoice.

DATED at Toronto, June 13, 2019

ONTARIO ENERGY BOARD

Original Signed By

Pascale Duguay
Manager, Application Policy and Climate Change

SCHEDULE A

EB-2019-0104

DATED: June 13, 2019

Franchise Agreement



Ontario Energy Board

Ontario

Model Franchise Agreement

THIS AGREEMENT effective this 5th day February of 20 19.

BETWEEN:

Corporation of Norfolk County
hereinafter called the "Corporation"

- and -

OM Limited Partnership
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 11 - 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 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 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 bylaws 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. 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 NOFOLK COUNTY

By: Kushl Gapp
Duly Authorize Officer

OM ENERGY GP INC.
ON BEHALF OF OM LIMITED PARTNERSHIP

By: Jane Lowrie
Jane Lowrie
President

SCHEDULE B

EB-2019-0104

DATED: June 13, 2019

Map of Norfolk County

