

Ontario Energy
Board
P.O. Box 2319
27th. Floor
2300 Yonge Street
Toronto ON M4P 1E4
Telephone: 416- 481-1967
Facsimile: 416- 440-7656
Toll free: 1-888-632-6273

Commission de l'Énergie
de l'Ontario
C.P. 2319
27e étage
2300, rue Yonge
Toronto ON M4P 1E4
Téléphone: 416- 481-1967
Télécopieur: 416- 440-7656
Numéro sans frais: 1-888-632-6273



File

BY PRIORITY POST ONLY

May 17, 2006

Ms. Shari Lynn Spratt
Supervisor Regulatory Proceedings
Enbridge Gas Distribution Inc.
500 Consumers Road
Toronto, ON M2J 1P8

LETTER OF DIRECTION

Dear Ms. Spratt:

Re: **Enbridge Gas Distribution Inc.**
Franchise Approval – Decision and Order
Board File No. EB-2006-0028

The Board has now issued its Decision and Order in this matter and an executed copy is enclosed.

You are directed:

1. to serve immediately a copy of the Decision and Order for the franchise approval on the Clerk of the Town of Tay Valley Township by courier or by registered mail;
2. to file with the Board affidavit evidence demonstrating the above service immediately upon completion, with the Decision and Order and courier waybill information or original Post Office Registration Receipt(s) (where applicable) attached as appendices; and

To file with the Board a duly certified copy of the by-law after third reading and an executed copy of the franchise agreement, as soon as these are available.

Yours truly,

Peter H. O'Dell
Assistant Board Secretary

Encl.



EB-2006-0028

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 Distribution Inc. for an order approving the terms and conditions upon which, and the period for which, the Corporation of Tay Valley Township is, by by-law, to grant Enbridge Gas Distribution Inc. the right to construct and operate works for the distribution of gas, and the right to extend and add to the works in Tay Valley Township;

AND IN THE MATTER OF an application by Enbridge Gas Distribution Inc. for an order declaring and directing that the assent of the municipal electors of Tay Valley Township to the by-law is not necessary.

By delegation, before: Mark C. Garner.

DECISION AND ORDER

Enbridge Gas Distribution Inc. ("EGDI") filed an application dated February 9, 2006 and amended on February 21, 2006 with the Ontario Energy Board (the "Board") under the *Municipal Franchises Act*, R.S.O. 1990, c. M.55, as amended, for an order of the Board approving the terms and conditions upon which, and the period for which, the Corporation of Tay Valley Township (the "Municipality") is, by by-law, to grant to EGDI the right to construct and operate works for the distribution of gas, and the right to extend and add to the works in the Municipality. EGDI has also applied for an order of the Board declaring and directing that the assent of the electors of the Municipality to the by-law is not necessary. The Board assigned file number EB-2006-0028 to this application.

EGDI submitted a copy of a letter from the Municipality indicating that a resolution was passed by the Municipality approving the draft by-law and requesting that the Board declare and direct that the assent of the municipal electors to the by-law is not necessary.

The Board's Notice of Application and Notice of Written Hearing was published on March 10, 2006. There were no intervenors.

EGDI is presently serving the Municipality and holds a Certificate of Public Convenience and Necessity for the portion of the Municipality that comprises the former Township of Bathurst (F.B.C. 316).

The proposed franchise agreement is in the form of the 2000 Model Franchise Agreement approved by the Board as a standard form of agreement.

Based on the information provided in the application, granting the application is in the public interest. Further, in all the circumstances, the assent of the municipal electors can properly be dispensed with.

IT IS ORDERED THAT:

1. The terms and conditions upon which, and the period for which, the Corporation of Tay Valley Township is, by by-law, to grant to Enbridge Gas Distribution Inc. the right to construct and operate works for the distribution of gas, and the right to extend and add to the works, as set out in the franchise agreement attached as Appendix A, are approved.
2. The assent of the municipal electors of Tay Valley Township to the by-law is not necessary.

DATED at Toronto, May, 17, 2006.

ONTARIO ENERGY BOARD



Mark C. Garner
Managing Director, Market Operations

**APPENDIX A
TO BOARD DECISION AND ORDER
EB-2006-0028**

DATED: May 17, 2006

FRANCHISE AGREEMENT

Model Franchise Agreement

THIS AGREEMENT effective this day of , 20 .

BETWEEN: The Corporation of Tay Valley Township hereinafter called the

"Corporation"

- and -

Enbridge Gas Distribution 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

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.

- 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,

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.

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.

DATED this day of , 2005.

THE CORPORATION OF TAY VALLEY TOWNSHIP

- and -

ENBRIDGE GAS DISTRIBUTION INC.

FRANCHISE AGREEMENT

Enbridge Gas Distribution Inc.
500 Consumers Road
North York, Ontario
M2J 1P8

Attention: Regulatory Affairs Department