



DECISION AND ORDER

EB-2021-0238

SIX NATIONS NATURAL GAS LIMITED

**Application for Certificates of Public Convenience and Necessity
for and Municipal Franchise Agreements with the County of Brant
and Norfolk County**

BY DELEGATION, BEFORE: Pascale Duguay
Manager
Natural Gas

December 16, 2021

1 OVERVIEW

This is a Decision and Order of the Ontario Energy Board (OEB) on an application filed by Six Nations Natural Gas Limited (SNNG) for an order approving certificates of public convenience and necessity (certificates) for and municipal franchise agreements (franchise agreements) with the County of Brant and Norfolk County (Application). The Application also sought an order permitting SNNG to amend the areas covered by the certificates in the future by way of a motion to review and vary (motion to review) under Part VII of the *OEB's Rules of Practice and Procedure*.

SNNG was established in 1989 and has been providing on-reserve natural gas services to approximately 2,500 members and businesses of Six Nations Grand River Territory and Mississauga's of the Credit First Nation on Six Nations Indian Reserve No. 40 (Reserve). The Reserve is bordered, in part, by Bateman Line, in the County of Brant and Indian Line, in Norfolk County.

The OEB grants SNNG's application for certificates for and franchise agreements with the County of Brant and Norfolk County. The certificates authorize SNNG to serve approximately 16 off-reserve customers (Off-Reserve customers) in an area that is adjacent to customers that it currently serves on the Reserve. As part of its reply submissions, SNNG withdrew its request that it be permitted to seek to amend the areas covered by the certificates in the future by way of a motion to review.

2 CONTEXT AND PROCESS

SNNG filed the Application on August 30, 2021, under sections 8 and 9 of the *Municipal Franchises Act* (MFA) for:

1. An order approving certificates to construct works and supply gas to the Off-Reserve customers on Bateman Line, County of Brant and Indian Line, Norfolk County
2. An order permitting SNNG, by motion to review, to seek to amend the areas covered by the certificates in the future to connect additional off-reserve customers on Bateman Line, County of Brant and Indian Line, Norfolk County
3. An order approving natural gas franchise agreements with the County of Brant and Norfolk County
4. An order directing and declaring that the assent of the municipal electors of the County of Brant and Norfolk County is not necessary in relation to granting the natural gas franchise agreements

The OEB issued a Notice of Hearing on September 17, 2021. Enbridge Gas Inc. (Enbridge Gas) applied for, and was granted, intervenor status. Enbridge Gas currently holds certificates for the requested service territory, although it is not serving any customers in the immediate vicinity.¹ In its request for intervenor status, Enbridge Gas indicated that it is most likely more economic and practical for SNNG to serve the Off-Reserve Customers² that are covered by the proposed certificates in the Application.

The OEB proceeded by way of a written hearing. Enbridge Gas and OEB staff filed interrogatories on October 22, 2021 and SNNG responded to them on November 5, 2021. Enbridge Gas and OEB staff filed submissions on November 19, 2021 and SNNG filed its reply submission on December 2, 2021.

¹ Enbridge Gas certificates EB-2003-0047 and EB-2017-0108-A1

² Enbridge Gas, Intervention Request Letter, p. 2, para. 7

3 FRANCHISE AGREEMENTS

Under the MFA, the OEB may approve municipal by-laws granting one or more gas utilities the right to distribute gas in a municipality. The OEB's [2000 Model Franchise Agreement](#) establishes the specific terms and conditions of a typical franchise agreement between the municipality and the utility. The OEB expects that franchise agreements will be based on the 2000 Model Franchise Agreement unless there is a compelling reason for deviation.

SNNG applied to the OEB for approval of its proposed franchise agreements with the County of Brant and Norfolk County. Through the proposed franchise agreements, the County of Brant and Norfolk County would grant to SNNG 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 each of the counties.

With the application, SNNG filed each county's draft by-law granting the proposed franchise agreement and a copy of each county's resolution approving the form of the draft by-law and franchise agreement, and authorizing SNNG's request for an order declaring and directing that the assent of the municipal electors to the by-law and franchise agreement is not necessary.

Through the interrogatory process, Enbridge Gas and OEB staff noted that the draft franchise agreements proposed by SNNG depart from the 2000 Model Franchise Agreement in certain minor respects. In its draft franchise agreement, SNNG inadvertently included in paragraph 2 the explanatory introduction used to differentiate between the two choices presented in paragraph 2.³ In its draft franchise agreement with both counties, SNNG deleted the explanatory introduction used to differentiate between the two choices presented in paragraph 4 and inserted a special condition at paragraph 18 which is only associated with franchise agreements between legacy Union Gas Limited and municipalities in southern Ontario.⁴

OEB staff submitted that there are no compelling reasons to deviate from the Model Franchise Agreement in this case and the OEB should require SNNG to correct the draft franchise agreements with the counties of Norfolk and Brant and arrange with those counties to put the corrected draft franchise agreements through third reading. Enbridge Gas submitted that the paragraph 2 amendment is not justified by assuming

³ SNNG's response to OEB staff 5 (a)

⁴ SNNG's response to OEB staff 5 (b) (i) and (ii)

that the alternative wording does not alter the substantive terms of the paragraph from the 2000 Model Franchise Agreement. Enbridge Gas also submitted that the inclusion of the special condition at paragraph 18 only causes confusion and should be eliminated.

In its reply submission, SNNG argued that the inclusions and deletions of explanatory language do not alter the substantive terms of any provision of the 2000 Model Franchise Agreement and do not constitute an amendment. SNNG further submitted that making non-substantive revisions to the draft franchise agreements would impose an additional administrative burden, cost and delay upon the counties and SNNG. SNNG submitted that if the OEB finds the inclusion and removal of non-substantive explanatory language constitutes an amendment to the 2000 Model Franchise Agreement, then the OEB should find that the benefit of approving the franchise agreements in their current form are substantively outweighed by the administrative burden, cost and delay of requiring amendment.

Findings

I find that it is in the public interest to approve SNNG's application requesting approval of its franchise agreements with the County of Brant and Norfolk County.

Both Enbridge Gas and OEB staff noted that the proposed franchise agreements depart from the 2000 Model Franchise Agreement in certain respects. While I consider that the changes do not alter the substantive terms of the 2000 Model Franchise Agreement, they do constitute an amendment to the 2000 Model Franchise Agreement. While I am not persuaded that the changes were necessary or required, I will however accept SNNG's position to approve the franchise agreements in the form as originally proposed for economic and regulatory efficiency and expediency, on an exception basis.

I expect SNNG and other applicants to follow the form of the 2000 Model Franchise Agreement when filing future applications for the approval of franchise agreements unless there is a compelling reason for deviation. I also note that any proposed changes should be outlined as part of a filed application as well as the reasons for including any such deviations.

4 CERTIFICATES

4.1 Technical and Financial Capacity

In response to an interrogatory⁵, SNNG stated that it “has been operating safely and reliably for over 30 years without major incident” and confirmed that:

- It maintains construction, operation, maintenance, and emergency procedures and pipeline integrity management and public awareness plans which are Technical Standards and Safety Authority compliant and consistent with those of other utilities operating in Ontario
- No additional debt or equity is required with respect to the proposed natural gas facilities for the newly certificated areas

OEB staff submitted that SNNG has the technical and financial capabilities to construct, operate and maintain the natural gas facilities in the areas covered by the certificates.

Findings

This application is SNNG’s first application to the OEB for a certificate. While there are currently no formal filing requirements for certificate applications, the OEB included a requirement in the context of the final guidelines for potential projects to expand access to natural gas that non rate-regulated natural gas distributors provide information about their technical expertise and financial capability.⁶ The OEB has also reviewed financial and technical matters in the context of certificate applications in other decisions previously issued by the OEB.⁷

SNNG has been operating safely and reliably for over 30 years without major incident. Given SNNG’s long standing history of providing natural gas services to customers on-Reserve, I accept OEB staff’s position that SNNG has the technical and financial capabilities to construct, operate and maintain a natural gas facility.

4.2 Certificates and Description of Service Territory

Section 8 of the MFA requires that no person shall construct any works to supply natural gas in any municipality without the approval of the OEB, and that such approval shall

⁵ SNNG’s response to OEB Staff-1

⁶ EB-2019-0255

⁷ EB-2005-0473

not be given unless public convenience and necessity appear to require that such approval be given. The OEB's approval is in the form of a certificate.

SNNG stated that it received requests for natural gas service from customers living adjacent to the Reserve due to gaps in the geographic service area of Enbridge Gas and its predecessor. SNNG applied to the OEB for certificates for the County of Brant and Norfolk County to provide natural gas services to the Off-Reserve customers.

The draft certificates proposed by SNNG in the Application are limited to seven specific civic addresses on Bateman Line and nine specific civic addresses Indian Line. In response to an interrogatory from OEB staff, SNNG filed revised draft certificates for the County of Brant and Norfolk County describing the proposed service territory as a geographical area and in a manner that could be placed on the public record.⁸

In its submission, OEB staff noted that the proposed service territories in the revised draft certificates are slightly larger than those included in the draft certificates filed in the Application. SNNG submitted that the revised certificates contain the most narrow service territory description which uses metes and bounds and which do not contain personal information.

Enbridge Gas and OEB staff also noted a typographical error in SNNG's revised draft certificate for Norfolk County and submitted that SNNG should confirm and correct the error in Norfolk County's draft certificate. Subject to the typographical correction, OEB staff submitted that the OEB should grant SNNG's draft certificates filed with its interrogatory responses, which defines the proposed service area using metes and bounds.

With its reply submission, SNNG filed revised certificates correcting the typographical error noted by Enbridge Gas and OEB staff. SNNG submitted that the OEB should grant the certificates in the form attached with its submission. SNNG also submitted in accordance with section 8 of the MFA, public convenience and necessity require that the Application be approved. Enbridge Gas did not comment on the approval of SNNG's draft certificates.

Findings

I find it in the public interest to grant certificates to SNNG for the County of Brant and Norfolk County. I accept OEB staff and SNNG's proposal to approve the certificates

⁸ SNNG's response to OEB Staff-4 (d)

filed as part of SNNG's reply submission, which defines the proposed service area using metes and bounds. I also note that Enbridge Gas did not contest the application stating that, upon review of the costs to extend their existing infrastructure, Enbridge Gas believes it is most likely more economic and practical for SNNG to attach the Off-Reserve customers to their system.

The OEB is issuing certificates (attached as Schedule C and E) to SNNG for the County of Brant and Norfolk County. The certificates authorize SNNG to serve the Off-Reserve customers living adjacent to the Reserve on Bateman Line and Indian Line.

New certificates, attached as Schedule G and H to this Decision and Order, are also granted to Enbridge Gas for the County of Brant and Norfolk County. The new certificates exclude the areas granted to SNNG from Enbridge Gas's existing service territory in the counties. The attached certificates to Enbridge Gas cancels and supersedes EB-2003-0047 and EB-2017-0108-A1.

4.3 Motion to Review

With the Application, SNNG requested, for administrative efficiency, that with the terms of any order by the OEB issuing certificates provide that SNNG may seek to amend such order to permit the connection and service of additional customers on Bateman Line and/or Indian Line, by way of a motion to review.

In its reply submission, SNNG withdrew its request that the OEB's order provide for the amendment by way of a motion to review.

5 ORDER

IT IS ORDERED THAT:

1. The terms and conditions upon which, and the period for which, the County of Brant is, by by-law, to grant to Six Nations Natural Gas Limited 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, as set out in the municipal franchise agreement attached as Schedule A, are approved.
2. The assent of the municipal electors of the County of Brant to the by-law is not necessary.
3. The terms and conditions upon which, and the period for which, Norfolk County is, by by-law, to grant to Six Nations Natural Gas Limited 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, as set out in the municipal franchise agreement attached as Schedule B, are approved.
4. The assent of the municipal electors of Norfolk County to the by-law is not necessary.
5. A certificate of public convenience and necessity, attached as Schedule C to this Decision and Order, is granted to Six Nations Natural Gas Limited to construct works or supply natural gas in the County of Brant, limited to certain areas. A map of Six Nations Natural Gas Limited's service territory in the County of Brant is attached as Schedule D.
6. A certificate of public convenience and necessity, attached as Schedule E to this Decision and Order, is granted to Six Nations Natural Gas Limited to construct works or supply natural gas in Norfolk County, limited to certain areas. A map of Six Nations Natural Gas Limited's service territory in Norfolk County is attached as Schedule F.
7. A certificate of public convenience and necessity, attached as Schedule G to this Decision and Order, is granted to Enbridge Gas Inc. to construct works or supply natural gas in the County of Brant except for the areas granted to Six Nations

Natural Gas Limited. This new certificate of public convenience and necessity cancels and supersedes EB-2003-0047.

8. A certificate of public convenience and necessity, attached as Schedule H to this Decision and Order, is granted to Enbridge Gas Inc. to construct works or supply natural gas in Norfolk County, limited to certain areas. This new certificate of public convenience and necessity cancels and supersedes EB-2017-0108-A1.
9. Six Nations Natural Gas Limited shall pay the OEB's costs incidental to this proceeding upon receipt of the OEB's invoice.

DATED at Toronto December 16, 2021

ONTARIO ENERGY BOARD

Original Signed By

Christine E. Long
Registrar

SCHEDULE A

MUNICIPAL FRANCHISE AGREEMENT WITH THE COUNTY OF BRANT

SIX NATIONS NATURAL GAS LIMITED

EB-2021-0238

DECEMBER 16, 2021

Franchise Agreement

THIS AGREEMENT effective this _____ day of _____, 2021.

BETWEEN:

**CORPORATION OF THE COUNTY OF
BRANT**
hereinafter called the "**Corporation**"

- and -

**SIX NATIONS NATURAL GAS COMPANY
LIMITED**
hereinafter called the "**Gas Company**"

WHEREAS the Gas Company desires to distribute, store and transmit gas in the Municipality upon the terms and conditions of this Agreement;

AND WHEREAS by by-law passed by the Council of the Corporation (the "**By-law**"), the duly authorized officers have been authorized and directed to execute this Agreement on behalf of the Corporation;

THEREFORE the Corporation and the Gas Company agree as follows:

Part I - Definitions

1. In this Agreement:

- a. "**decommissioned**" and "**decommissions**" when used in connection with parts of the gas system, mean any parts of the gas system taken out of active use and purged in accordance with the applicable CSA standards and in no way affects the use of the term 'abandoned' pipeline for the purposes of the *Assessment Act*;
- b. "**Engineer/Road Superintendent**" means the most senior individual employed by the Corporation with responsibilities for highways within the Municipality or the person designated by such senior employee or such other person as may from time to time be designated by the Council of the Corporation;
- c. "**gas**" means natural gas, manufactured gas, synthetic natural gas, liquefied petroleum gas or propane-air gas, or a mixture of any of them, but does not include a liquefied petroleum gas that is distributed by means other than a pipeline;

- d. **"gas system"** means such mains, plants, pipes, conduits, services, valves, regulators, curb boxes, stations, drips or such other equipment as the Gas Company may require or deem desirable for the distribution, storage and transmission of gas in or through the Municipality;
- e. **"highway"** means all common and public highways and shall include any bridge, viaduct or structure forming part of a highway, and any public square, road allowance or walkway and shall include not only the travelled portion of such highway, but also ditches, driveways, sidewalks, and sodded areas forming part of the road allowance now or at any time during the term hereof under the jurisdiction of the Corporation;
- f. **"Model Franchise Agreement"** means the form of agreement which the Ontario Energy Board uses as a standard when considering applications under the *Municipal Franchises Act*. The Model Franchise Agreement may be changed from time to time by the Ontario Energy Board;
- g. **"Municipality"** means the territorial limits of the Corporation on the date when this Agreement takes effect, and any territory which may thereafter be brought within the jurisdiction of the Corporation;
- h. **"Plan"** means the plan described in Paragraph 5 of this Agreement required to be filed by the Gas Company with the Engineer/Road Superintendent prior to commencement of work on the gas system; and
- i. whenever the singular, masculine or feminine is used in this Agreement, it shall be considered as if the plural, feminine or masculine has been used where the context of the Agreement so requires.

Part II - Rights Granted

2. To provide gas service:

The consent of the Corporation is hereby given and granted to the Gas Company to distribute, store and transmit gas in and through the Municipality to the Corporation and to the inhabitants of the Municipality.

3. To Use Highways.

Subject to the terms and conditions of this Agreement the consent of the Corporation is hereby given and granted to the Gas Company to enter upon all highways now or at any time hereafter under the jurisdiction of the Corporation and to lay, construct, maintain, replace, remove, operate and repair a gas system for the distribution, storage and transmission of gas in and through the Municipality.

4. Duration of Agreement and Renewal Procedures.

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

- b. 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 gassystem.

- 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. Other Conditions

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

19. Agreement Binding Parties

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

IN WITNESS WHEREOF the parties have executed this Agreement effective from the date written above.

The Corporation of the County of Brant

By:

Name: David Bailey

Title: Mayor

By:

Name: Heather Boyd

Title: Clerk

Six Nations Natural Gas Limited

By:

Name: ●

Title: ●

SCHEDULE B
MUNICIPAL FRANCHISE AGREEMENT WITH NORFOLK COUNTY
SIX NATIONS NATURAL GAS LIMITED
EB-2021-0238
DECEMBER 16, 2021

FRANCHISE AGREEMENT

THIS AGREEMENT effective this _____ day of _____, 2021.

BETWEEN:

**THE CORPORATION OF NORFOLK
COUNTY**
hereinafter called the “**Corporation**”

- and -

**SIX NATIONS NATURAL GAS COMPANY
LIMITED**
hereinafter called the “**Gas Company**”

WHEREAS the Gas Company desires to distribute, store and transmit gas in the Municipality upon the terms and conditions of this Agreement;

AND WHEREAS by by-law passed by the Council of the Corporation (the “By-law”), the duly authorized officers have been authorized and directed to execute this Agreement on behalf of the Corporation;

THEREFORE the Corporation and the Gas Company agree as follows:

Part I – Definitions

1. In this Agreement:

- a. “**decommissioned**” and “**decommissions**” when used in connection with parts of the gas system, mean any parts of the gas system taken out of active use and purged in accordance with the applicable CSA standards and in no way affects the use of the term ‘abandoned’ pipeline for the purposes of the *Assessment Act*;
- b. “**Engineer/Road Superintendent**” means the most senior individual employed by the Corporation with responsibilities for highways within the Municipality or the

person designated by such senior employee or such other person as may from time to time be designated by the Council of the Corporation;

- c. “**gas**” means natural gas, manufactured gas, synthetic natural gas, liquefied petroleum gas or propane-air gas, or a mixture of any of them, but does not include a liquefied petroleum gas that is distributed by means other than a pipeline;
- d. “**gas system**” means such mains, plants, pipes, conduits, services, valves, regulators, curb boxes, stations, drips or such other equipment as the Gas Company may require or deem desirable for the distribution, storage and transmission of gas in or through the Municipality;
- e. “**highway**” means all common and public highways and shall include any bridge, viaduct or structure forming part of a highway, and any public square, road allowance or walkway and shall include not only the travelled portion of such highway, but also ditches, driveways, sidewalks, and sodded areas forming part of the road allowance now or at any time during the term hereof under the jurisdiction of the Corporation;
- f. “**Model Franchise Agreement**” means the form of agreement which the Ontario Energy Board uses as a standard when considering applications under the *Municipal Franchises Act*. The Model Franchise Agreement may be changed from time to time by the Ontario Energy Board;
- g. “**Municipality**” means the territorial limits of the Corporation on the date when this Agreement takes effect, and any territory which may thereafter be brought within the jurisdiction of the Corporation;
- h. “**Plan**” means the plan described in Paragraph 5 of this Agreement required to be filed by the Gas Company with the Engineer/Road Superintendent prior to commencement of work on the gas system; and
- i. whenever the singular, masculine or feminine is used in this Agreement, it shall be considered as if the plural, feminine or masculine has been used where the context of the Agreement so requires.

Part II – Rights Granted

2. To provide gas service:

If the corporation has not previously received gas distribution services, 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. 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. 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. Other Conditions

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

19. Agreement Binding Parties

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

IN WITNESS WHEREOF the parties have executed this Agreement effective from the date written above.

The Corporation of Norfolk County

By: _____

Name: Kristal Chopp

Title: Mayor

By: _____

Name: Teresa Olsen

Title: Clerk

Six Nations Natural Gas Limited

By: _____

Name:

Title:

SCHEDULE C

**CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE
COUNTY OF BRANT**

SIX NATIONS NATURAL GAS LIMITED

EB-2021-0238

DECEMBER 16, 2021

EB-2021-0238-C

Certificate of Public Convenience and Necessity

The Ontario Energy Board grants

Six Nations Natural Gas Limited

approval under section 8 of the *Municipal Franchises Act*, R.S.O. 1990, c. M.55, as amended, to construct works to supply natural gas in the

County of Brant

as it is constituted on the date of this Decision and Order, in the area:

1. Located on Concession 3, Burch Tract, Lot 37, Brantford Township, for 408 metres west of Bateman Line and for 2020 metres between Sour Springs Road and Burtch Road in Brant County.

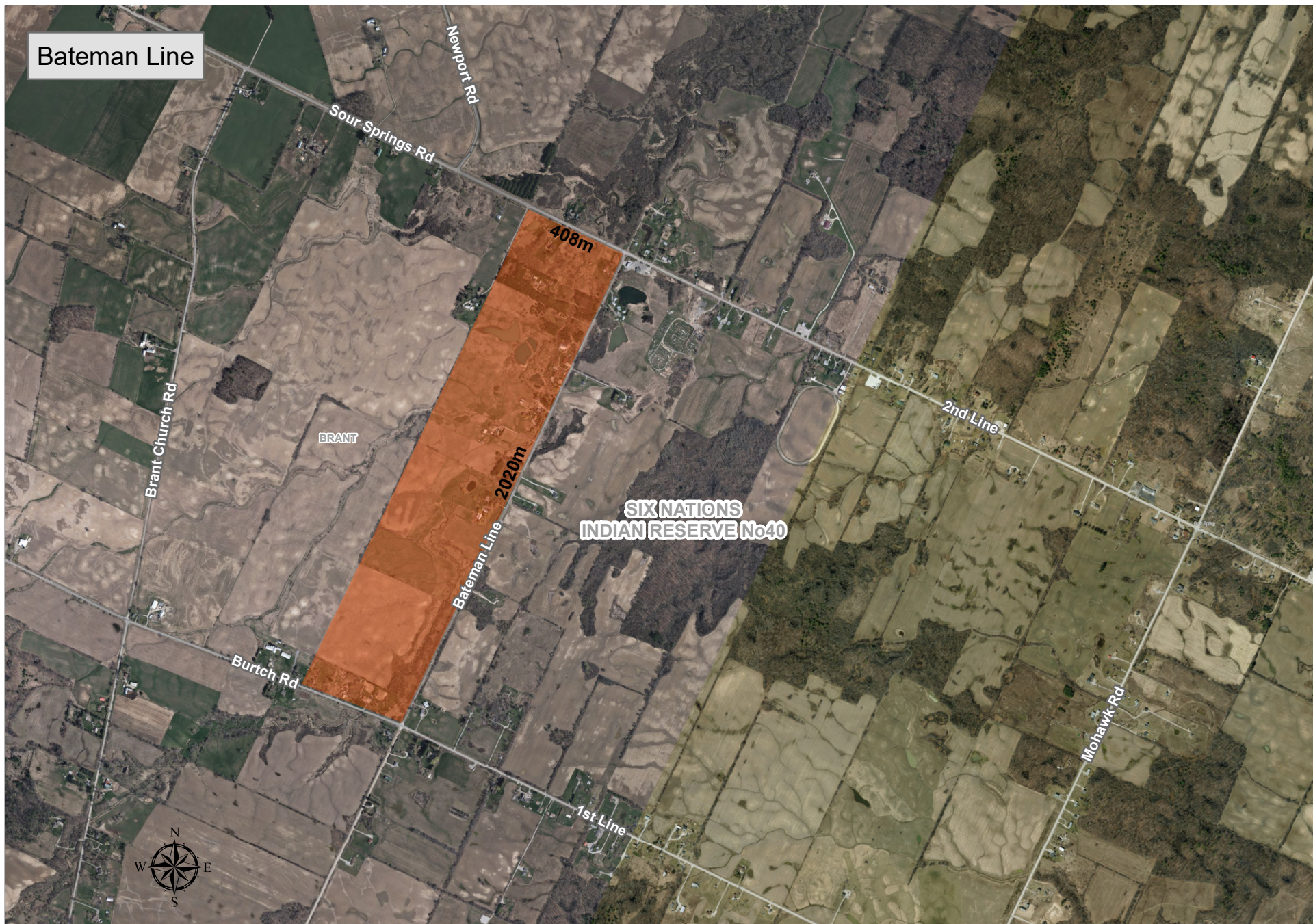
DATED at Toronto, December 16, 2021

ONTARIO ENERGY BOARD

Original Signed By

Pascale Duguay
Manager, Natural Gas

SCHEDULE D
SERVICE TERRITORY MAP FOR THE COUNTY OF BRANT
SIX NATIONS NATURAL GAS LIMITED
EB-2021-0238
DECEMBER 16, 2021



Bateman Line

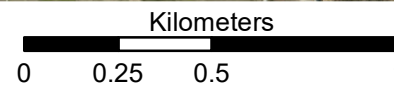
BRANT

SIX NATIONS
INDIAN RESERVE No 40



2017 Orthophoto
First Base Solutions Inc.

Proposed Service Territories Bateman Line



SCHEDULE E

**CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR
NORFOLK COUNTY**

SIX NATIONS NATURAL GAS LIMITED

EB-2021-0238

DECEMBER 16, 2021

EB-2021-0238-E

Certificate of Public Convenience and Necessity

The Ontario Energy Board grants

Six Nations Natural Gas Limited

approval under section 8 of the *Municipal Franchises Act*, R.S.O. 1990, c. M.55, as amended, to construct works to supply natural gas in

Norfolk County

as it is constituted on the date of this Decision and Order, in the area:

1. Located on Concession 2, Lot 23 & Concession 3, Lot 24 intersecting the Township of Townsend, for 210 metres south of Indian Line and for 1640 metres between Cemetery Road and County Line in Norfolk County.

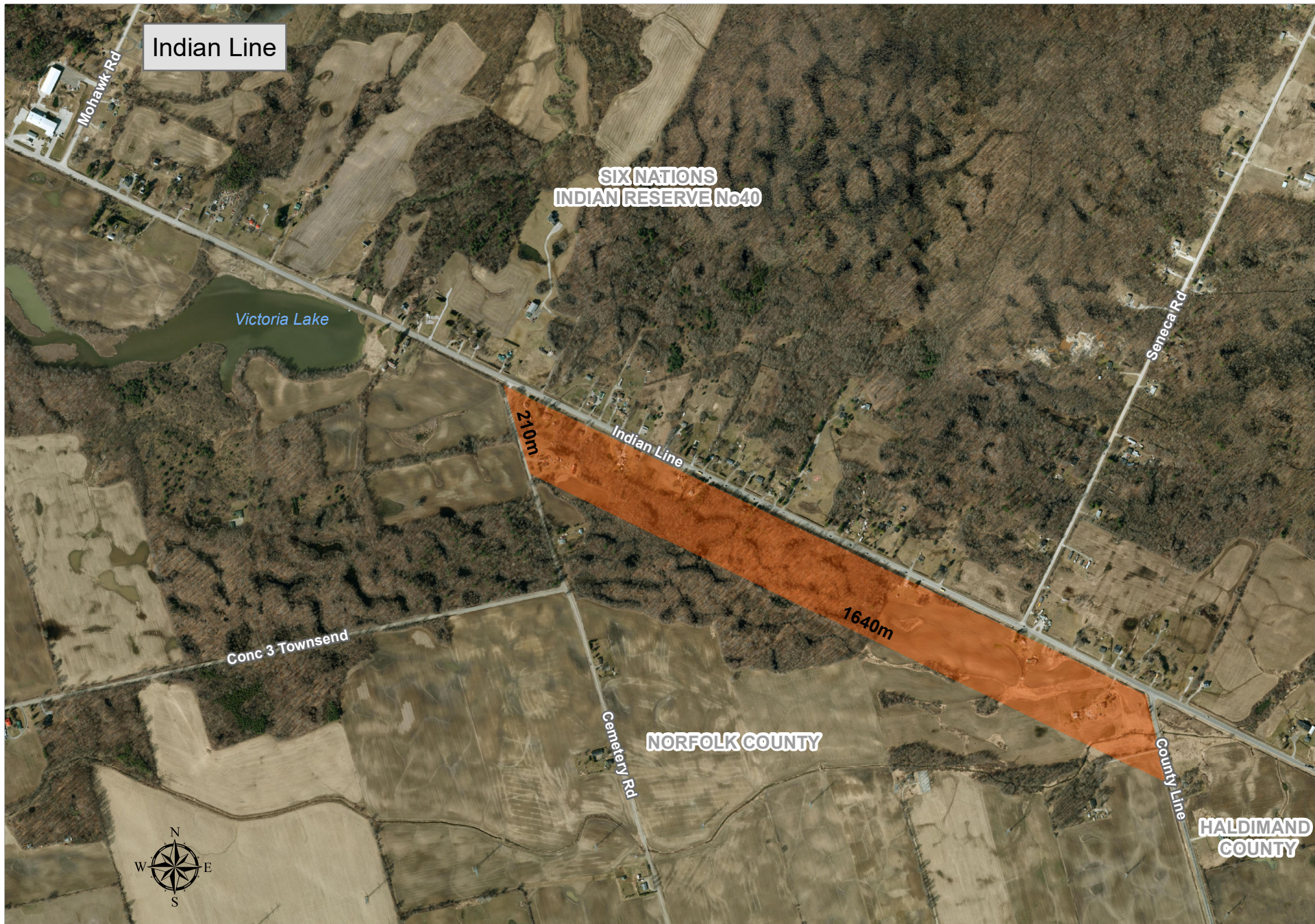
DATED at Toronto, December 16, 2021

ONTARIO ENERGY BOARD

Original Signed By

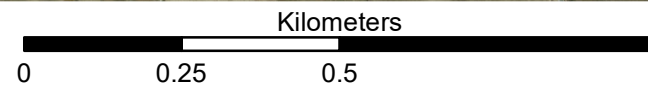
Pascale Duguay
Manager, Natural Gas

SCHEDULE F
SERVICE TERRITORY MAP FOR NORFOLK COUNTY
SIX NATIONS NATURAL GAS LIMITED
EB-2021-0238
DECEMBER 16, 2021



2010 Orthophoto
First Base Solutions Inc.

 Proposed Service Territories Indian Line



SCHEDULE G

**CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE
COUNTY OF BRANT**

ENBRIDGE GAS INC.

EB-2021-0238

DECEMBER 16, 2021

EB-2021-0238-G

Certificate of Public Convenience and Necessity

The Ontario Energy Board grants

Enbridge Gas Inc.

approval under section 8 of the *Municipal Franchises Act*, R.S.O. 1990, c. M.55, as amended, to construct works to supply natural gas in the

County of Brant

as it is constituted on the date of this Decision and Order, except in the area:

1. Located on Concession 3, Burch Tract, Lot 37, Brantford Township, for 408 metres west of Bateman Line and for 2020 metres between Sour Springs Road and Burtch Road in Brant County.

DATED at Toronto, December 16, 2021

ONTARIO ENERGY BOARD

Original Signed By

Pascale Duguay
Manager, Natural Gas

SCHEDULE H

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR
NORFOLK COUNTY

ENBRIDGE GAS INC.

EB-2021-0238

DECEMBER 16, 2021

Certificate of Public Convenience and Necessity

The Ontario Energy Board grants

Enbridge Gas Inc.

approval under section 8 of the *Municipal Franchises Act*, R.S.O. 1990, c. M.55, as amended, to construct works to supply natural gas in

Norfolk County

as it is constituted on the date of this Decision and Order, in the following areas:

All of the former Townships of Windham and Charlotteville

All of the former Townships of Woodhouse and Townsend, excluding those parts lying in Haldimand County and in the area:

- Located on Concession 3, Burch Tract, Lot 37, Brantford Township, for 408 metres west of Bateman Line and for 2020 metres between Sour Springs Road and Burtch Road in Brant County.

All of the former Township of Middleton, excluding those parts lying in Oxford County and excluding the following:

- Concession North Side of Talbot Road East – South quarter of Lots 142 and 143
- Concession South Side of Talbot Road East – All of Lots 142 and 143
- Concession 2 South Side of Talbot Road East – All of Lot 1

All of the former Township of Walsingham, excluding those parts lying in the following:

- The Whole of Marsh Lots 1 to 5 (Inclusive)
- Concession B – All of Lots 1 to 5 (Inclusive)
- Concession A – All of Lots 1 to 5 (Inclusive)
- Concessions 1 to 6 – All of Lots 1 to 5 (Inclusive)

- Concession 7 – All of Lots 1 and 3 (but including 220 and 230 8th Concession Road located within the northern half of Lot 3), and the south halves of Lots 2, 4 and 5
- Concession 8 – All of Lot 1
- Concession 11 – All of Lot 1
- Concession 12 – All of Lot 1
- Concession 13 – All of Lot 1
- Concession 14 – All of Lot 1

Former Township of Houghton:

- All of Gore Lot A
- The north half of Gore Lot B

DATED at Toronto, December 16, 2021

ONTARIO ENERGY BOARD

Original Signed By

Pascale Duguay
Manager, Natural Gas