



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

May 11, 2023

Ms. Nancy Marconi  
Registrar  
Ontario Energy Board  
2300 Yonge Street, 27<sup>th</sup> Floor  
Toronto, ON M4P 1E4

Dear Ms. Marconi:

**Re: Enbridge Gas Inc.  
Application for Renewal of Franchise Agreement – City of Orillia  
Ontario Energy Board File No. EB-2023-0126**

In accordance with instructions set out by the Ontario Energy Board's Letter of Direction dated May 9, 2023, enclosed is my Affidavit of Service related to the Notice of Hearing / Application in regard to the above-noted proceeding.

Should you have any questions on this submission, please do not hesitate to contact me.

Yours truly,

Patrick McMahon  
Technical Manager  
Regulatory Research and Records  
[patrick.mcmahon@enbridge.com](mailto:patrick.mcmahon@enbridge.com)  
(519) 436-5325

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

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

**AND IN THE MATTER OF** an Application by Enbridge Gas Inc. for an Order directing and declaring that the assent of the municipal electors of the City of Orillia to the by-law approving the franchise agreement is not necessary;

**AND IN THE MATTER OF** an Application by Enbridge Gas Inc. for an Order cancelling and superseding the existing Certificates of Public Convenience and Necessity held by Enbridge Gas Inc. for the former Town of Orillia and the former Township of Orillia and replacing them with a single Certificate of Public Convenience and Necessity to construct works to supply natural gas in the City of Orillia.

### AFFIDAVIT OF SERVICE

I, Patrick McMahon, of the Municipality of Chatham-Kent, in the Province of Ontario, make oath and say as follows:

1. I am an employee in the Chatham Office of Enbridge Gas Inc., the Applicant in the matter referred to in the preamble to this my Affidavit and I have personal knowledge of the matters herein deposed to.
2. By Courier, at Chatham, Ontario, on May 9, 2023, I did cause to be sent to the City of Orillia a true copy of the Notice of Hearing / Application issued by the Ontario Energy Board on May 9, 2023 and a true copy of the Application dated April 25, 2023 to the above preamble and a covering letter, attached hereto as Exhibit "A".
3. The courier bill of lading is attached hereto as Exhibit "B".
4. Pursuant to the May 9, 2023 Letter of Direction, a copy of the Notice, the application and evidence is available for public review upon request to Enbridge Gas and as evidenced by the print screen attached hereto as Exhibit "C" a copy of this material has been posted to the Enbridge Gas website at <https://www.enbridgegas.com/about-enbridge-gas/regulatory>
5. I make this Affidavit in good faith and for no improper purpose.

SWORN BEFORE ME, at the )  
 City of Toronto in the Province )  
 of Ontario this 11<sup>th</sup> day of May, 2023 )

\_\_\_\_\_  
 Patrick McMahon

\_\_\_\_\_  
 A Commissioner, etc.



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

Exhibit A

May 9, 2023

This is Exhibit "A" to the Affidavit of Patrick McMahon sworn before me this 11th day of May, 2023.

Dan Kirby  
Assistant City Solicitor - Real Estate and Contract Law  
City of Orillia  
50 Andrew Street South, Suite 300  
Orillia, ON L3V 7T5

A Commissioner, etc.

Dear Mr. Kirby:

**Re: Enbridge Gas Inc.  
Application for Approval of Franchise Agreement – City of Orillia  
Ontario Energy Board File No. EB-2023-0126**

In accordance with instructions set out by the Ontario Energy Board's Letter of Direction dated May 9, 2023, Enbridge Gas now serves upon you a copy of the Notice of Hearing together with a copy of the relevant Application for approval of the Franchise Agreement between Enbridge Gas and the City of Orillia.

The Ontario Energy Board will be arranging for publication of the Notice of Hearing in the *Orillia Today* newspaper on Thursday, May 18, 2023.

Yours truly,

*[Original Signed By]*

Patrick McMahon  
Technical Manager  
Regulatory Research and Records  
[patrick.mcmahon@enbridge.com](mailto:patrick.mcmahon@enbridge.com)  
(519) 436-5325

Encl.

# ONTARIO ENERGY BOARD NOTICE

## Enbridge Gas Inc. has applied for the renewal of its natural gas franchise agreement with, and a certificate of public convenience and necessity for, the City of Orillia.

**Learn more. Have your say.**

Enbridge Gas Inc. has applied to the Ontario Energy Board for:

1. An order approving the renewal of a natural gas franchise agreement with the City of Orillia which would grant to Enbridge Gas Inc. the right to construct, operate and add to the natural gas distribution system and to distribute, store and transmit natural gas within the City of Orillia for a period of 20 years.
2. An order directing and declaring that the assent of the municipal electors of the City of Orillia is not required in relation to the by-law approving the natural gas franchise agreement.
3. An order granting a new certificate of public convenience and necessity to Enbridge Gas Inc. to construct works to supply gas in the City of Orillia, and cancelling Enbridge Gas Inc.'s existing certificates of public convenience and necessity for the former municipalities within the City of Orillia.

### THE ONTARIO ENERGY BOARD WILL HOLD A PUBLIC HEARING

The Ontario Energy Board (OEB) will hold a public hearing to consider Enbridge Gas's application. At the end of this hearing, the OEB will decide whether to grant Enbridge Gas's requests.

The OEB is an independent and impartial public agency. We make decisions that serve the public interest. Our goal is to promote a financially viable and efficient energy sector that provides you with reliable energy services at a reasonable cost.

### CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

In order to construct any works to distribute natural gas in Ontario, a person must comply with the requirements of the *Municipal Franchises Act* (Act). This Act requires that a person that intends to construct any works to supply natural gas within a municipality must first receive approval from the OEB, in the form of a certificate of public convenience and necessity (certificate). Where the OEB has issued a certificate for an area within which there is currently no natural gas distribution service, another person can apply for a certificate to construct works to supply that area.

### BE INFORMED AND HAVE YOUR SAY

You have the right to information regarding this application and to be involved in the process.

- You can review the application filed by Enbridge Gas on the OEB's website now
- You can file a letter with your comments, which will be considered during the hearing
- You can become an active participant (called an intervenor). Apply by **May 29, 2023**
- At the end of the process, you can review the OEB's decision and its reasons on our website

The OEB does not intend to provide for an award of costs for this hearing.

### LEARN MORE

Our file number for this application is **EB-2023-0126**. To learn more about this hearing, find instructions on how to file a letter with your comments or become an intervenor, or to access any document related to this case, please enter the file number **EB-2023-0126** on the OEB website: [www.oeb.ca/participate](http://www.oeb.ca/participate). You can also phone our Public Information Centre at 1-877-632-2727 with any questions.

### ORAL VS. WRITTEN HEARINGS

There are two types of OEB hearings– oral and written. The OEB intends to proceed with this application by way of a written hearing. If you think an oral hearing is needed, you can write to the OEB to explain why by **May 29, 2023**.

### PRIVACY

*If you write a letter of comment, your name and the content of your letter will be put on the public record and the OEB website. However, your personal telephone number, home address and e-mail address will be removed. If you are a business, all your information will remain public. If you apply to become an intervenor, all information will be public.*

*This hearing will be held under sections 8, 9(3) and 9(4) of the Municipal Franchises Act, R.S.O. 1990, c. M.55.*



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



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

April 25, 2023

Ms. Nancy Marconi  
Registrar  
Ontario Energy Board  
2300 Yonge Street, 27<sup>th</sup> Floor  
Toronto, ON M4P 1E4

Dear Ms. Marconi:

**Re: Enbridge Gas Inc.  
Application for Renewal of Franchise Agreement / CPCN  
City of Orillia**

Attached is an Application by Enbridge Gas Inc. for Orders of the Ontario Energy Board with respect to a Franchise Agreement with and a Certificate of Public Convenience and Necessity for the City of Orillia. An agreement has been reached between Enbridge Gas Inc. and the City of Orillia with regards to the terms and conditions of the proposed Franchise Agreement.

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

Yours truly,

**Patrick  
McMahon** Digitally signed by  
Patrick McMahon  
Date: 2023.04.25  
15:50:27 -04'00'

Patrick McMahon  
Technical Manager  
Regulatory Research and Records  
[patrick.mcmahon@enbridge.com](mailto:patrick.mcmahon@enbridge.com)  
(519) 436-5325

Encl.

## **ONTARIO ENERGY BOARD**

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

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

**AND IN THE MATTER OF** an Application by Enbridge Gas Inc. for an Order directing and declaring that the assent of the municipal electors of the City of Orillia to the by-law is not necessary; and

**AND IN THE MATTER OF** an Application by Enbridge Gas Inc. for an Order cancelling and superseding the existing Certificates of Public Convenience and Necessity held by Enbridge Gas Inc. for the former Town of Orillia and the former Township of Orillia and replacing them with a single Certificate of Public Convenience and Necessity to construct works to supply natural gas in the City of Orillia.

### **APPLICATION**

1. Enbridge Gas Inc. (Enbridge Gas), a regulated public utility, is a corporation incorporated under the laws of the Province of Ontario, with its offices in the City of Toronto and the Municipality of Chatham-Kent.
2. The Corporation of the City of Orillia (Municipality) is a municipal corporation incorporated under the laws of the Province of Ontario. Attached hereto and marked as Schedule "A" is a map showing the geographical location of the Municipality and a customer density representation of Enbridge Gas' service area. Enbridge Gas currently serves approximately 13,050 customers within the City of Orillia. Enbridge Gas and its predecessors have been providing access to gas distribution services within the City of Orillia since approximately 1956.
3. The City of Orillia is a single-tier municipality located within Simcoe County. The former Town of Orillia annexed portions of the Township of Orillia in 1967 and was incorporated as a city in 1969.
4. Enbridge Gas has an existing franchise agreement (effective April 28, 2003) and associated by-law (By-law 2002-126) with the City of Orillia which is attached as Schedule "B".

5. Enbridge Gas has Certificates of Public Convenience and Necessity for the former Town of Orillia (FBC 90) and the former Township of Orillia (FBC 256), which are attached as Schedules “C(1)” and “C(2)”. These Certificates cover all areas of the current City of Orillia and the request by Enbridge Gas for a single Certificate to cover all of the Municipality does not change the area currently covered by Certificates issued for the former municipalities.
6. The former Township of Orillia was split into three parts that ended up being annexed into the City of Orillia, the Township of Severn and the Township of Oro-Medonte. As a result, Certificate FBC 256 was applicable to each of these municipalities until new Certificates could be issued. New Certificates (EB-2016-0365 and EB-2016-0377) were issued to Enbridge Gas Distribution and Union Gas in 2016 related to the Township of Oro-Medonte. A new Certificate (EB-2022-0232) was issued to Enbridge Gas Inc. in 2022 for the Township of Severn. As a result, Certificate FBC 256 can be cancelled once a new Certificate is issued for the City of Orillia.
7. Enbridge Gas applied to the Council of the Municipality for a franchise agreement permitting Enbridge Gas to construct and operate works for the distribution, transmission and storage of natural gas and the right to extend and add to the works in the City of Orillia.
8. On April 17, 2023, the Council of the Municipality gave approval to the form of a Franchise Agreement in favour of Enbridge Gas and authorized Enbridge Gas to apply to the Ontario Energy Board for approval of the terms and conditions upon which and the period for which the franchise agreement is proposed to be granted.
9. Attached hereto as Schedule "D" is a copy of the Resolution of the Council of the Municipality (and the related Council Committee report CS-23-15) approving the form of the draft by-law and franchise agreement, authorizing this submission to the Ontario Energy Board, and requesting an Order declaring and directing that the assent of the municipal electors to the by-law and franchise agreement is not necessary.
10. Attached hereto as Schedule “E” is a copy of the proposed draft By-law and the proposed franchise agreement.
11. Enbridge Gas has franchise agreements with and Certificates of Public Convenience and Necessity for the Township of Oro-Medonte, the Township of Ramara, and the Township of Severn, which are immediately adjacent to the Municipality. There is no other natural gas distributor in the areas adjacent to the City of Orillia.
12. The proposed franchise agreement is in the form of the 2000 Model Franchise Agreement with no amendments and is for a term of twenty (20) years.

13. The address of the Municipality is as follows:

City of Orillia  
50 Andrew Street South, Suite 300  
Orillia, ON L3V 7T5  
Attention: Dan Kirby, Assistant City Solicitor - Real Estate and Contract Law  
Telephone: (705) 418-3203  
Email: [dkirby@orillia.ca](mailto:dkirby@orillia.ca)

The address for Enbridge Gas' regional operations office is:

Enbridge Gas Inc.  
1211 Amber Drive  
Thunder Bay, ON P7B 6M4  
Attention: Nicole Lehto, Director, Northern Region Operations  
Email: [nicole.lehto@enbridge.com](mailto:nicole.lehto@enbridge.com)

14. The newspaper having the highest circulation in the City of Orillia is *Orillia Today*. This is the newspaper used by the Municipality for its notices.
15. Enbridge Gas now applies to the Ontario Energy Board for:
- (a) an Order pursuant to s.9(3) approving the terms and conditions upon which, and the period for which, the City of Orillia is, by by-law, to grant Enbridge Gas the right to construct and operate works for the distribution, transmission and storage of natural gas and the right to extend and add to the works; and
  - (b) an Order pursuant to s.9(4) directing and declaring that the assent of the municipal electors of the City of Orillia is not necessary for the proposed franchise agreement by-law under the circumstances; and
  - (c) an Order pursuant to s.8 cancelling and superseding the existing Certificates of Public Convenience and Necessity held by Enbridge Gas Inc. for the former Town of Orillia and the former Township of Orillia and replacing them with a single Certificate of Public Convenience and Necessity to construct works to supply natural gas in the City of Orillia.



**DATED** at the Municipality of Chatham-Kent, in the Province of Ontario this 25<sup>th</sup> day of April, 2023.

**ENBRIDGE GAS INC.**

**Patrick  
McMahon**

Digitally signed by  
Patrick McMahon  
Date: 2023.04.25  
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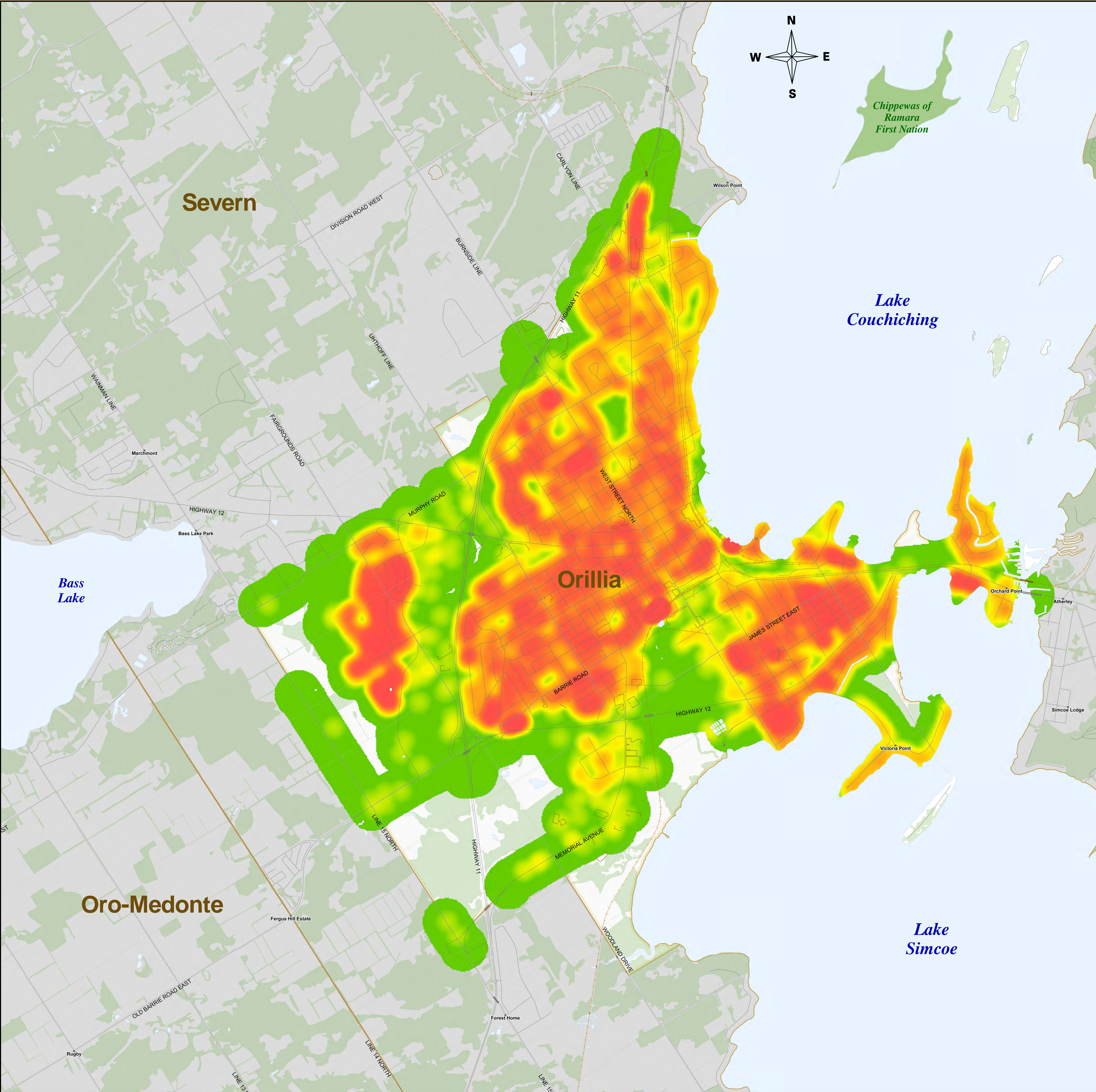
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Patrick McMahon  
Technical Manager  
Regulatory Research and Records

Comments respecting this Application should be directed to:

Mr. Patrick McMahon  
Technical Manager, Regulatory Research and Records  
Enbridge Gas Inc.  
50 Keil Drive North  
Chatham, ON N7M 5M1  
[patrick.mcmahon@enbridge.com](mailto:patrick.mcmahon@enbridge.com)  
Telephone: (519) 436-5325

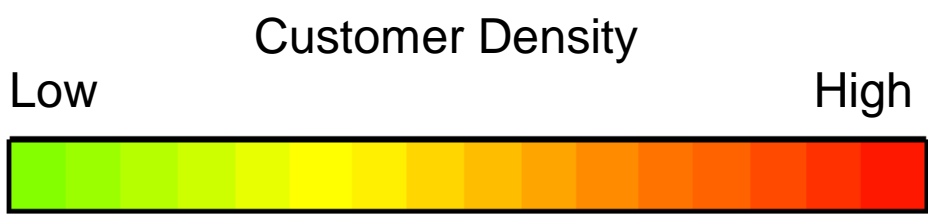




City of Orillia



- Legend
- Enbridge Gas Pipeline Coverage Area
  - City of Orillia
  - Roads
  - Railways
  - Municipal and Township Boundaries
  - First Nation Boundaries



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



Location map



**BY-LAW NUMBER 2002-126 OF THE CITY OF ORILLIA****A BY-LAW TO AUTHORIZE A FRANCHISE AGREEMENT BETWEEN THE CORPORATION OF THE CITY OF ORILLIA AND UNION GAS LIMITED**

WHEREAS the Council of The Corporation of the City of Orillia deems it expedient to enter into the attached franchise agreement (the "Franchise Agreement") with Union Gas Limited;

AND WHEREAS the Ontario Energy Board by its Order issued pursuant to The Municipal Franchises Act on the 17 day of April, 2003, has approved the terms and conditions upon which and the period for which the franchise provided in the Franchise Agreement is proposed to be granted, and has declared and directed that the assent of the municipal electors in respect of this By-law is not necessary.

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF ORILLIA HEREBY ENACTS AS FOLLOWS:

1. THAT the Franchise Agreement between The Corporation of the City of Orillia and Union Gas Limited, attached as Schedule "A" hereto and forming part of this by-law, is hereby authorized and the franchise provided for therein is hereby granted.
2. THAT the Mayor and Clerk be and they are hereby authorized and instructed on behalf of The Corporation of the City of Orillia to enter into and execute under its corporate seal and deliver the Franchise Agreement, which is hereby incorporated into and forming part of this By-law.
3. THAT the following by-laws be and the same are hereby repealed:
  - 1) By-law Number 1998-94 of The Corporation of the City of Orillia, passed in Council on the 20<sup>th</sup> day of July, 1998,
  - 2) By-law Number 1976-169 of The Corporation of the City of Orillia, passed in Council on the 8<sup>th</sup> day of November, 1976.

BY-LAW read a first and second time this 23<sup>rd</sup> day of September, A.D. 2002.

[Original Signed By Ron Stevens]

MAYOR

[Original Signed By Laura Lee]

CLERK

BY-LAW read a third time and finally passed this 28 day of April, A.D. 2003.

[Original Signed By Ron Stevens]

MAYOR

[Original Signed By Laura Lee]

CLERK

CERTIFIED TO BE A TRUE AND CORRECT  
COPY OF BY-LAW NUMBER 2002-126

[Original Signed By Laura Lee]

CITY CLERK

DATE

## **2000 Model Franchise Agreement**

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THIS AGREEMENT effective this 28 day of April, ~~2002~~ <sup>2003</sup>.

BETWEEN:

**THE CORPORATION OF THE CITY OF ORILLIA**

hereinafter called the "Corporation"

- and -



**union gas**

**LIMITED**

hereinafter called the "Gas Company"

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

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

THEREFORE the Corporation and the Gas Company agree as follows:

### **Part I - Definitions**

**1. In this Agreement**

- (a) "decommissioned" and "decommissions" when used in connection with parts of the gas system, mean any parts of the gas system taken out of active use and purged in accordance with the applicable CSA standards and in no way affects the use of the term 'abandoned' pipeline for the purposes of the *Assessment Act*;

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

## **Part II - Rights Granted**

### **2. To provide gas service**

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

### **3. To Use Highways**

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

### **4. Duration of Agreement and Renewal Procedures**

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

or

- (b) If the Corporation has previously received gas distribution services, the rights hereby given and granted shall be for a term of 20 years from the date of final passing of the By-law provided that, if during the 20 year term of this Agreement, the Model Franchise Agreement is changed, then on the 7<sup>th</sup> anniversary and on the 14<sup>th</sup> anniversary of the date of the passing of the By-law, this Agreement shall be deemed to be amended to incorporate any changes in the Model Franchise Agreement in effect on such anniversary dates. Such deemed amendments shall not apply to alter the 20 year term.
- (c) At any time within two years prior to the expiration of this Agreement, either party may give notice to the other that it desires to enter into negotiations for a renewed franchise upon such terms and conditions as may be agreed upon. Until such renewal has been settled, the terms and conditions of this Agreement shall continue, notwithstanding the expiration of this Agreement. This shall not preclude either party from applying to the Ontario Energy Board for a renewal of the Agreement pursuant to section 10 of the *Municipal Franchises Act*.

### Part III – Conditions

#### 5. Approval of Construction

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

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

## 6. **As Built Drawings**

The Gas Company shall, within six months of completing the installation of any part of the gas system, provide two copies of "as built" drawings to the Engineer/Road Superintendent. These drawings must be sufficient to accurately establish the location, depth (measurement between the top of the gas system and the ground surface at the time of installation) and distance of the gas system. The "as built" drawings shall be of the same quality as the Plan and, if the approved pre-construction plan included elevations that were geodetically referenced, the "as built" drawings shall similarly include elevations that are geodetically referenced. Upon the request of the Engineer/Road Superintendent, the Gas Company shall provide one copy of the drawings in an electronic format and one copy as a hard copy drawing.

## 7. **Emergencies**

In the event of an emergency involving the gas system, the Gas Company shall proceed with the work required to deal with the emergency, and in any instance where prior approval of the Engineer/Road Superintendent is normally required for the work, the Gas Company shall use its best efforts to immediately notify the Engineer/Road Superintendent of the location and nature of the emergency and the work being done and, if it deems appropriate, notify the police force, fire or other emergency services having jurisdiction. The Gas Company shall provide the Engineer/Road Superintendent with at least one 24 hour emergency contact for the Gas Company and shall ensure the contacts are current.



8. **Restoration**

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

9. **Indemnification**

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

10. **Insurance**

- (a) The Gas Company shall maintain Comprehensive General Liability Insurance in sufficient amount and description as shall protect the Gas Company and the Corporation from claims for which the Gas Company is obliged to indemnify the Corporation under Paragraph 9. The insurance policy shall identify the Corporation as an additional named insured, but only with respect to the operation of the named insured (the Gas Company). The insurance policy shall not lapse or be cancelled without sixty (60) days' prior written notice to the Corporation by the Gas Company.
- (b) The issuance of an insurance policy as provided in this Paragraph shall not be construed as relieving the Gas Company of liability not covered by such insurance or in excess of the policy limits of such insurance.
- (c) Upon request by the Corporation, the Gas Company shall confirm that premiums for such insurance have been paid and that such insurance is in full force and effect.

## 11. Alternative Easement

The Corporation agrees, in the event of the proposed sale or closing of any highway or any part of a highway where there is a gas line in existence, to give the Gas Company reasonable notice of such proposed sale or closing and, if it is feasible, to provide the Gas Company with easements over that part of the highway proposed to be sold or closed sufficient to allow the Gas Company to preserve any part of the gas system in its then existing location. In the event that such easements cannot be provided, the Corporation and the Gas Company shall share the cost of relocating or altering the gas system to facilitate continuity of gas service, as provided for in Paragraph 12 of this Agreement.

## 12. Pipeline Relocation

- (a) If in the course of constructing, reconstructing, changing, altering or improving any highway or any municipal works, the Corporation deems that it is necessary to take up, remove or change the location of any part of the gas system, the Gas Company shall, upon notice to do so, remove and/or relocate within a reasonable period of time such part of the gas system to a location approved by the Engineer/Road Superintendent.
- (b) Where any part of the gas system relocated in accordance with this Paragraph is located on a bridge, viaduct or structure, the Gas Company shall alter or relocate that part of the gas system at its sole expense.
- (c) Where any part of the gas system relocated in accordance with this Paragraph is located other than on a bridge, viaduct or structure, the costs of relocation shall be shared between the Corporation and the Gas Company on the basis of the total relocation costs, excluding the value of any upgrading of the gas system, and deducting any contribution paid to the Gas Company by others in respect to such relocation; and for these purposes, the total relocation costs shall be the aggregate of the following:
  - (i) the amount paid to Gas Company employees up to and including field supervisors for the hours worked on the project plus the current cost of fringe benefits for these employees,
  - (ii) the amount paid for rental equipment while in use on the project and an amount, charged at the unit rate, for Gas Company equipment while in use on the project,
  - (iii) the amount paid by the Gas Company to contractors for work related to the project,

- (iv) the cost to the Gas Company for materials used in connection with the project, and
  - (v) a reasonable amount for project engineering and project administrative costs which shall be 22.5% of the aggregate of the amounts determined in items (i), (ii), (iii) and (iv) above.
- (d) The total relocation costs as calculated above shall be paid 35% by the Corporation and 65% by the Gas Company, except where the part of the gas system required to be moved is located in an unassumed road or in an unopened road allowance and the Corporation has not approved its location, in which case the Gas Company shall pay 100% of the relocation costs.

#### **Part IV - Procedural And Other Matters**

##### **13. Municipal By-laws of General Application**

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

##### **14. Giving Notice**

Notices may be delivered to, sent by facsimile or mailed by prepaid registered post to the Gas Company at its head office or to the authorized officers of the Corporation at its municipal offices, as the case may be.

##### **15. Disposition of Gas System**

- (a) If the Gas Company decommissions part of its gas system affixed to a bridge, viaduct or structure, the Gas Company shall, at its sole expense, remove the part of its gas system affixed to the bridge, viaduct or structure.
- (b) If the Gas Company decommissions any other part of its gas system, it shall have the right, but is not required, to remove that part of its gas system. It may exercise its right to remove the decommissioned parts of its gas system by giving notice of its intention to do so by filing a Plan as required by Paragraph 5 of this Agreement for approval by the Engineer/Road Superintendent. If the Gas Company does not remove the part of the gas system it has decommissioned and the Corporation requires the removal of all or any part of the decommissioned gas system for the purpose of altering or improving a highway or in order to facilitate the construction of utility or other works in any highway, the Corporation may remove and dispose of so much of the decommissioned gas system as the Corporation may require for such purposes and neither party shall have recourse against the other for any

loss, cost, expense or damage occasioned thereby. If the Gas Company has not removed the part of the gas system it has decommissioned and the Corporation requires the removal of all or any part of the decommissioned gas system for the purpose of altering or improving a highway or in order to facilitate the construction of utility or other works in a highway, the Gas Company may elect to relocate the decommissioned gas system and in that event Paragraph 12 applies to the cost of relocation.

#### 16. **Use of Decommissioned Gas System**

- (a) The Gas Company shall provide promptly to the Corporation, to the extent such information is known:
  - (i) the names and addresses of all third parties who use decommissioned parts of the gas system for purposes other than the transmission or distribution of gas; and
  - (ii) the location of all proposed and existing decommissioned parts of the gas system used for purposes other than the transmission or distribution of gas.
- (b) The Gas Company may allow a third party to use a decommissioned part of the gas system for purposes other than the transmission or distribution of gas and may charge a fee for that third party use, provided
  - (i) the third party has entered into a municipal access agreement with the Corporation; and
  - (ii) the Gas Company does not charge a fee for the third party's right of access to the highways.
- (c) Decommissioned parts of the gas system used for purposes other than the transmission or distribution of gas are not subject to the provisions of this Agreement. For decommissioned parts of the gas system used for purposes other than the transmission and distribution of gas, issues such as relocation costs will be governed by the relevant municipal access agreement.

#### 17. **Franchise Handbook**

The Parties acknowledge that operating decisions sometimes require a greater level of detail than that which is appropriately included in this Agreement. The Parties agree to look for guidance on such matters to the Franchise Handbook prepared by the Association of Municipalities of Ontario and the gas utility companies, as may be amended from time to time.

#### 18. **Other Conditions**

None.

19. **Agreement Binding Parties**

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

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

**THE CORPORATION OF THE  
CITY OF ORILLIA**

Per: *[Original Signed By Ron Stevens]*

---

Ron Stevens, Mayor

Per: *[Original Signed By Laura Lee]*

---

Laura S. Lee, Clerk

**UNION GAS LIMITED**

Per: *[Original Signed By Christine Jackson]*

---

~~Paul Rietdyk, Director~~

**Christine Jackson  
Assistant Secretary**

## ONTARIO FUEL BOARD

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

AND IN THE MATTER OF an application by  
Northern Ontario Natural Gas Company Limited  
for a certificate of public convenience and necessity  
to construct works and to supply gas to the inhabi-  
tants of the Town of Orillia.

## B E F O R E:

A. R. CROZIER, Chairman	)	
T. H. SIMPSON, Q. C., Vice-Chairman	)	THURSDAY, the 20th
L. R. MacTAVISH, Q. C., Commissioner	)	
W. R. HOWARD, Commissioner	)	day of December, 1956.
D. M. TREADGOLD, Q. C., Commissioner	)	

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

UPON THE APPLICATION OF Northern Ontario Natural  
Gas Company Limited (hereinafter referred to as the "Applicant")  
for a certificate pursuant to the provisions of The Municipal  
Franchises Act, R.S.O. 1950, Chapter 249, Section 8 and amend-  
ments thereto, and at a public hearing of such application by the  
Board at the City of Toronto on the 6th and 11th days of December,  
1956, after due notice of such hearing had been given as directed by  
the Board, in the presence of counsel for the Applicant and for  
Consumer's Gas Company Limited, and in the presence of  
W. M. Cramp, Mayor, Kenneth C. Curtis, Deputy Reeve, and other  
members of Council of the Corporation of the Town of Orillia and  
W. L. Moore, Town Solicitor and H.E.M. Payne, Clerk-Treasurer,  
and upon consideration of the evidence and exhibits produced at the  
hearing and upon hearing what was alleged by counsel aforesaid,  
this Board was pleased to direct this matter to stand over for

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

2. AND THIS BOARD DOTH FURTHER ORDER that the costs of this hearing are fixed at \$175.00 and shall be paid forthwith by the Applicant to the Board.

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

ONTARIO FUEL BOARD

A. R. Crozier

T. H. Simpson

L. R. MacTavish

D. M. Treadgold

W. R. Howard

ONTARIO FUEL BOARD

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

AND IN THE MATTER OF an application  
by Northern Ontario Natural Gas Company  
Limited for a certificate of Public Con-  
venience and Necessity to construct works  
and to supply gas to the inhabitants of the  
Town of Orillia.

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CERTIFICATE OF PUBLIC CONVENIENCE  
AND NECESSITY

---

McCarthy & McCarthy  
330 University Ave.  
Toronto 1 - Ontario



ONTARIO FUEL BOARD

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

AND IN THE MATTER OF an application by Northern Ontario Natural Gas Company Limited for a Certificate of Public Convenience and Necessity to construct works and to supply gas to the inhabitants of the Township of Orillia.

B E F O R E:

A. R. CROZIER, Chairman	)	Friday, the 9th day of
J. J. WINGFELDER, Commissioner	)	May, 1958.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

UPON THE APPLICATION OF Northern Ontario Natural Gas Company Limited (hereinafter referred to as the "Applicant") for a certificate pursuant to the provisions of The Municipal Franchises Act, R.S.O. 1950, Chapter 249, Section 8 and amendments thereto, and at a public hearing of such application by the Board at the City of Toronto on the 9th day of May, 1958, after due notice of such hearing had been given as directed by the Board in the presence of counsel for the applicant, no one else appearing, and upon consideration of the evidence and exhibits produced at the hearing and upon hearing what was alleged by counsel aforesaid:

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

2. AND THIS BOARD DOTH FURTHER ORDER that the Certificate of Public Convenience and Necessity hereby granted may be assigned by Northern Ontario Natural Gas Company Limited to Montreal Trust Company, the trustee under the deed of trust and mortgage, dated as of June 1, 1958, to be made between Northern Ontario Natural Gas Company Limited and Montreal Trust Company, as trustee, and to such person, firm or corporation to whom Montreal Trust Company, as trustee, may assign such Certificate in execution of the trusts under the said deed of trust and mortgage, together with, in each case, all rights and

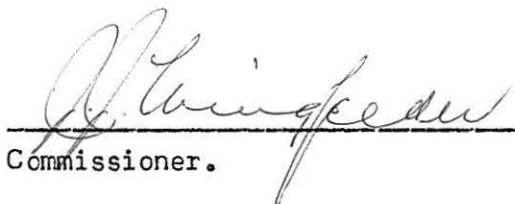
powers, statutory or otherwise, which flow from or are evidenced by such Certificate.

3. AND THIS BOARD DOETH FURTHER ORDER that the costs of this hearing are fixed at \$10.00 and shall be paid forthwith by the Applicant to the Board.

DATED at Toronto this *28th* day of *July* ~~June~~, 1958.

ONTARIO FUEL BOARD:

  
Chairman

  
Commissioner.



## City of Orillia

The following resolution was adopted by the Council of the Corporation of the City of Orillia at its meeting held on April 17, 2023:

"THAT as recommended in Report CS-23-15 dated March 21, 2023 from the Corporate Services Department, the form of draft by-law and franchise agreement attached as Schedule "A" to the report be approved and the submission thereof to the Ontario Energy Board for approval pursuant to the provisions of Section 9 of the *Municipal Franchises Act* be authorized;

AND THAT the Ontario Energy Board be requested to issue an Order declaring and directing that the assent of the municipal electors to the draft by-law and franchise agreement attached as Schedule "A" to the report pertaining to the Corporation of the City of Orillia is not necessary pursuant to the provisions of Section 9(4) of the *Municipal Franchises Act*;

AND THAT the Mayor and Clerk be authorized to execute the franchise agreement attached as Schedule "A" to the report."

(Resolution No. 2023-108)

Certified to be a true and correct copy of a resolution adopted by the Council of the Corporation of the City of Orillia at its meeting held on April 17, 2023.

[Original Signed By]

\_\_\_\_\_  
Kristine Preston  
Deputy Clerk

Date: April 18, 2023

## CITY OF ORILLIA

**TO:** Council Committee – April 3, 2023  
**FROM:** Corporate Services Department  
**DATE:** March 21, 2023  
**REPORT NO:** CS-23-15  
**SUBJECT:** Adoption of Gas Distribution Agreement with Enbridge Gas Inc.

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### Recommended Motion

**THAT Council approve the form of draft by-law and franchise agreement attached as Schedule “A” to the report and authorizes the submission thereof to the Ontario Energy Board for approval pursuant to the provisions of Section 9 of the *Municipal Franchises Act*;**

**AND THAT Council request that the Ontario Energy Board to issue an Order declaring and directing that the assent of the municipal electors to the draft by-law and franchise agreement attached as Schedule “A” to the report pertaining to the Corporation of the City of Orillia is not necessary pursuant to the provisions of Section 9(4) of the *Municipal Franchises Act*;**

**AND THAT the Mayor and Clerk be authorized to execute the franchise agreement attached as Schedule “A” to the report.**

### Purpose

To seek Council’s approval to facilitate the renewal of a long-term gas distribution franchise agreement which sets out the terms and conditions under which Enbridge may distribute, store, and transmit natural gas within the City of Orillia.

### Background & Key Facts

- The *Municipal Franchises Act* (Ontario) requires a by-law to enable public utilities to operate within a municipality. The by-law must set forth the terms and conditions under which the utility may provide services. To facilitate the drafting of these terms and conditions for natural gas utilities, the Association of Municipalities of Ontario (“AMO”) and the natural gas industry have adopted a model gas distribution agreement, or a model “franchise agreement”.
- Enbridge Gas Inc. (“Enbridge”) currently provides natural gas services within Orillia pursuant to an existing franchise agreement executed by its predecessor, Union Gas Limited. The existing agreement expires on April 28, 2023. Enbridge seeks to enter a new agreement with the municipality. The terms of the new

agreement are the same as the existing one, both being based on the model franchise agreement adopted in 2000.

- Without success, staff tried to negotiate amendments to the model franchise agreement to, among other things, abridge the term and decrease the sharing of relocation expenses. Staff reviewed the adoption of franchise agreements by other municipalities, all of which are consistent with the model franchise agreement. Staff submits that the real leverage for negotiating changes to the agreement comes at the stage of negotiation between AMO and the natural gas industry.
- Either party to an existing franchise agreement may apply to the Ontario Energy Board for dispensation of the by-law requirement, where such an agreement has expired for a renewal or extension of the term. The Ontario Energy Board has authority to order costs.
- The proposed agreement sets out the following terms:
  - The City consents to the distribution, storage and transmission of gas by Enbridge within the Orillia;
  - The City grants Enbridge the right to enter upon all roads and walkways under the municipal jurisdiction to lay, construct, maintain, replace, remove, operate and repair its gas system;
  - Enbridge agrees to indemnify the City for all damages or injuries arising out of the operation, construction and maintenance of its gas system in Orillia, excepting damage or injury caused by a wrongful act or negligence of the City;
  - The term of the agreement is 20 years from the date of final passing of the authorizing by-law; and
  - Within two years of the agreement's expiration, either party may give notice to the other that it seeks to enter into negotiations for a renewed agreement.

### **Options & Analysis**

#### **Option 1 – Recommended**

**THAT Council approve the form of draft by-law and franchise agreement attached as Schedule “A” to the report and authorizes the submission thereof to the Ontario Energy Board for approval pursuant to the provisions of Section 9 of the Municipal Franchises Act;**



**AND THAT Council request that the Ontario Energy Board to issue an Order declaring and directing that the assent of the municipal electors to the draft by-law and franchise agreement attached as Schedule "A" to the report pertaining to the Corporation of the City of Orillia is not necessary pursuant to the provisions of Section 9(4) of the Municipal Franchises Act;**

**AND THAT the Mayor and Clerk be authorized to execute the franchise agreement attached as Schedule "A" to the report.**

The approval of the draft form of by-law and franchise agreement will result in status quo. The approval will likely preclude the matter from being the subject of an Ontario Energy Board hearing, which may result in costs.

## **Option 2**

**THAT Council reject the form of draft by-law and franchise agreement attached as Schedule "A" to the report;**

**AND THAT Council direct staff to identify new terms and conditions for the supply of natural gas services within the City of Orillia;**

**AND THAT Council direct staff to hire external legal counsel to oppose the extension or renewal of the existing franchise agreement dated April 28, 2003 at a cost of \$100,000.00 with funds appropriated from the Tax Rate Stabilization reserve.**

If Council rejects the draft form of by-law and franchise agreement, Enbridge will apply to the Ontario Energy Board for a renewal or extension of the term of the existing agreement. This move is unlikely to result in better terms for the City: the model franchise agreement has already been sanctioned by the Ontario Energy Board and a review of publicly available caselaw identifies no grounds for unilaterally ordering more favorable terms and conditions to the city. The City would require external counsel for representation before the Ontario Energy Board, which staff estimate will cost approximately \$100,000.00.

This option is not recommended.

## **Financial Impact**

If Council approves the recommended option, the financial impact of the franchise agreement will be limited to situations where relocation of gas system infrastructure is required for the purpose of improving highways or municipal works according to the cost-splitting mechanism in the franchise agreement (35% and 65% to the City and Enbridge, respectively). This is, however, not a new financial impact and reflects the franchise agreement already in place. Enbridge has advised that this split has been in place since 1987.

Should Council approve Option 2, staff would request \$100,000 for retaining external legal counsel.

### **Consultation**

The City Solicitor, General Manager of Environment and Infrastructure Services, and General Manager of Development Services and Engineering have been extensively consulted throughout the discussions with Enbridge.

### **Economic Development Impact**

If Council approves the recommended option, there will be no economic development impact.

### **Communications Plan**

Communication requirements have not been identified at this time.

### **Relation to Formal Plans, City of Orillia Policy Manual and/or Guiding Legislation**

If Council approves the recommended option, the City must notify Enbridge in the event of any sale of roads where there is natural gas infrastructure in place to allow Enbridge to reserve an easement therein. This is not a new modification to formal plans, however, as it reflects the franchise agreement already in place.

No changes are anticipated to the City's Policy Manual. The franchise agreement is necessitated by the Municipal Franchises Act (Ontario).

### **Conclusion**

The franchise agreement is based on the model form of agreement, and Staff are able to identify no material variance between municipalities. The ability to modify terms to this model agreement substantially arise in discussions between the AMO and natural gas industry. Approving the recommended option will be adopting the status quo.

### **Schedules**

- Schedule "A" - Draft Bylaw
- Schedule "B" - Franchise Agreement
- Schedule "C" - Resolution Documents

Prepared by & Key Contact: Dan Kirby  
Assistant City Solicitor

Approved by: Amanpreet Sidhu  
GM Corporate Services and City Solicitor

**BY-LAW NUMBER 2023-0XX OF THE CITY OF ORILLIA****A BY-LAW TO AUTHORIZE A FRANCHISE AGREEMENT BETWEEN THE CORPORATION OF THE CITY OF ORILLIA AND ENBRIDGE GAS INC.**

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

AND WHEREAS the Ontario Energy Board by its Order issued pursuant to the *Municipal Franchises Act* on the XX day of XX, 2023 has approved the terms and conditions upon which and the period for which the franchise provided in the Franchise Agreement is proposed to be granted, and has declared and directed that the assent of the municipal electors in respect of this By-law is not necessary:

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF ORILLIA ENACTS AS FOLLOWS:

1. THAT the Franchise Agreement between the Corporation of the City of Orillia and Enbridge Gas Inc. attached hereto and forming part of this by-law, is hereby authorized and the franchise provided for therein is hereby granted.
2. THAT the Mayor and Clerk are hereby authorized and instructed on behalf of the Corporation of the City of Orillia to enter into and execute under its corporate seal and deliver the Franchise Agreement, which is hereby incorporated into and forming part of this By-law.
3. THAT By-law Number 2002-126 for the Corporation of the City of Orillia, passed in Council on the 28<sup>th</sup> day of April, 2003 be repealed.

BY-LAW introduced and passed this x<sup>th</sup> day of Month, A.D. 2023.

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CLERK



# **2000 Model Franchise Agreement**

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THIS AGREEMENT effective this                      day of                      , 2023

BETWEEN:

## **THE CORPORATION OF THE CITY OF ORILLIA**

hereinafter called the "Corporation"

- and -

## **ENBRIDGE GAS INC.**

hereinafter called the "Gas Company"

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

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

THEREFORE the Corporation and the Gas Company agree as follows:

### **Part I - Definitions**

#### **1. In this Agreement**

- (a) "decommissioned" and "decommissions" when used in connection with parts of the gas system, mean any parts of the gas system taken out of active use and purged in accordance with the applicable CSA standards and in no way affects the use of the term 'abandoned' pipeline for the purposes of the *Assessment Act*;
- (b) "Engineer/Road Superintendent" means the most senior individual employed by the Corporation with responsibilities for highways within the Municipality or the person designated by such senior employee or such other person as may from time to time be designated by the Council of the Corporation;

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

## **Part II - Rights Granted**

### **2. To provide gas service**

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

### **3. To Use Highways**

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

### **4. Duration of Agreement and Renewal Procedures**

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

or

- (b) If the Corporation has previously received gas distribution services, the rights hereby given and granted shall be for a term of 20 years from the date of final passing of the By-law provided that, if during the 20 year term of this Agreement, the Model Franchise Agreement is changed, then on the 7<sup>th</sup> anniversary and on the 14<sup>th</sup> anniversary of the date of the passing of the By-law, this Agreement shall be deemed to be amended to incorporate any changes in the Model Franchise Agreement in effect on such anniversary dates. Such deemed amendments shall not apply to alter the 20 year term.
- (c) At any time within two years prior to the expiration of this Agreement, either party may give notice to the other that it desires to enter into negotiations for a renewed franchise upon such terms and conditions as may be agreed upon. Until such renewal has been settled, the terms and conditions of this Agreement shall continue, notwithstanding the expiration of this Agreement. This shall not preclude either party from applying to the Ontario Energy Board for a renewal of the Agreement pursuant to section 10 of the *Municipal Franchises Act*.

### **Part III – Conditions**

#### **5. Approval of Construction**

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

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

**6. As Built Drawings**

The Gas Company shall, within six months of completing the installation of any part of the gas system, provide two copies of "as built" drawings to the Engineer/Road Superintendent. These drawings must be sufficient to accurately establish the location, depth (measurement between the top of the gas system and the ground surface at the time of installation) and distance of the gas system. The "as built" drawings shall be of the same quality as the Plan and, if the approved pre-construction plan included elevations that were geodetically referenced, the "as built" drawings shall similarly include elevations that are geodetically referenced. Upon the request of the Engineer/Road Superintendent, the Gas Company shall provide one copy of the drawings in an electronic format and one copy as a hard copy drawing.

**7. Emergencies**

In the event of an emergency involving the gas system, the Gas Company shall proceed with the work required to deal with the emergency, and in any instance where prior approval of the Engineer/Road Superintendent is normally required for the work, the Gas Company shall use its best efforts to immediately notify the Engineer/Road Superintendent of the location and nature of the emergency and the work being done and, if it deems appropriate, notify the police force, fire or other emergency services having jurisdiction. The Gas Company shall provide the Engineer/Road Superintendent with at least one 24 hour emergency contact for the Gas Company and shall ensure the contacts are current.

## 8. **Restoration**

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

## 9. **Indemnification**

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

## 10. **Insurance**

- (a) The Gas Company shall maintain Comprehensive General Liability Insurance in sufficient amount and description as shall protect the Gas Company and the Corporation from claims for which the Gas Company is obliged to indemnify the Corporation under Paragraph 9. The insurance policy shall identify the Corporation as an additional named insured, but only with respect to the operation of the named insured (the Gas Company). The insurance policy shall not lapse or be cancelled without sixty (60) days' prior written notice to the Corporation by the Gas Company.
- (b) The issuance of an insurance policy as provided in this Paragraph shall not be construed as relieving the Gas Company of liability not covered by such insurance or in excess of the policy limits of such insurance.
- (c) Upon request by the Corporation, the Gas Company shall confirm that premiums for such insurance have been paid and that such insurance is in full force and effect.

## 11. **Alternative Easement**

The Corporation agrees, in the event of the proposed sale or closing of any highway or any part of a highway where there is a gas line in existence, to give the Gas Company reasonable notice of such proposed sale or closing and, if it is feasible, to provide the Gas Company with easements over that part of the highway proposed to be sold or closed sufficient to allow the Gas Company to preserve any part of the gas system in its then existing location. In the event that such easements cannot be provided, the Corporation and the Gas Company shall share the cost of relocating or altering the gas system to facilitate continuity of gas service, as provided for in Paragraph 12 of this Agreement.

## 12. **Pipeline Relocation**

- (a) If in the course of constructing, reconstructing, changing, altering or improving any highway or any municipal works, the Corporation deems that it is necessary to take up, remove or change the location of any part of the gas system, the Gas Company shall, upon notice to do so, remove and/or relocate within a reasonable period of time such part of the gas system to a location approved by the Engineer/Road Superintendent.
- (b) Where any part of the gas system relocated in accordance with this Paragraph is located on a bridge, viaduct or structure, the Gas Company shall alter or relocate that part of the gas system at its sole expense.
- (c) Where any part of the gas system relocated in accordance with this Paragraph is located other than on a bridge, viaduct or structure, the costs of relocation shall be shared between the Corporation and the Gas Company on the basis of the total relocation costs, excluding the value of any upgrading of the gas system, and deducting any contribution paid to the Gas Company by others in respect to such relocation; and for these purposes, the total relocation costs shall be the aggregate of the following:
  - (i) the amount paid to Gas Company employees up to and including field supervisors for the hours worked on the project plus the current cost of fringe benefits for these employees,
  - (ii) the amount paid for rental equipment while in use on the project and an amount, charged at the unit rate, for Gas Company equipment while in use on the project,
  - (iii) the amount paid by the Gas Company to contractors for work related to the project,

- (iv) the cost to the Gas Company for materials used in connection with the project, and
  - (v) a reasonable amount for project engineering and project administrative costs which shall be 22.5% of the aggregate of the amounts determined in items (i), (ii), (iii) and (iv) above.
- (d) The total relocation costs as calculated above shall be paid 35% by the Corporation and 65% by the Gas Company, except where the part of the gas system required to be moved is located in an unassumed road or in an unopened road allowance and the Corporation has not approved its location, in which case the Gas Company shall pay 100% of the relocation costs.

#### **Part IV - Procedural And Other Matters**

##### **13. Municipal By-laws of General Application**

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

##### **14. Giving Notice**

Notices may be delivered to, sent by facsimile or mailed by prepaid registered post to the Gas Company at its head office or to the authorized officers of the Corporation at its municipal offices, as the case may be.

##### **15. Disposition of Gas System**

- (a) If the Gas Company decommissions part of its gas system affixed to a bridge, viaduct or structure, the Gas Company shall, at its sole expense, remove the part of its gas system affixed to the bridge, viaduct or structure.
- (b) If the Gas Company decommissions any other part of its gas system, it shall have the right, but is not required, to remove that part of its gas system. It may exercise its right to remove the decommissioned parts of its gas system by giving notice of its intention to do so by filing a Plan as required by Paragraph 5 of this Agreement for approval by the Engineer/Road Superintendent. If the Gas Company does not remove the part of the gas system it has decommissioned and the Corporation requires the removal of all or any part of the decommissioned gas system for the purpose of altering or improving a highway or in order to facilitate the construction of utility or other works in any highway, the Corporation may remove and dispose of so much of the decommissioned gas system



as the Corporation may require for such purposes and neither party shall have recourse against the other for any loss, cost, expense or damage occasioned thereby. If the Gas Company has not removed the part of the gas system it has decommissioned and the Corporation requires the removal of all or any part of the decommissioned gas system for the purpose of altering or improving a highway or in order to facilitate the construction of utility or other works in a highway, the Gas Company may elect to relocate the decommissioned gas system and in that event Paragraph 12 applies to the cost of relocation.

#### **16. Use of Decommissioned Gas System**

- (a) The Gas Company shall provide promptly to the Corporation, to the extent such information is known:
  - (i) the names and addresses of all third parties who use decommissioned parts of the gas system for purposes other than the transmission or distribution of gas; and
  - (ii) the location of all proposed and existing decommissioned parts of the gas system used for purposes other than the transmission or distribution of gas.
- (b) The Gas Company may allow a third party to use a decommissioned part of the gas system for purposes other than the transmission or distribution of gas and may charge a fee for that third party use, provided
  - (i) the third party has entered into a municipal access agreement with the Corporation; and
  - (ii) the Gas Company does not charge a fee for the third party's right of access to the highways.
- (c) Decommissioned parts of the gas system used for purposes other than the transmission or distribution of gas are not subject to the provisions of this Agreement. For decommissioned parts of the gas system used for purposes other than the transmission and distribution of gas, issues such as relocation costs will be governed by the relevant municipal access agreement.

#### **17. Franchise Handbook**

The Parties acknowledge that operating decisions sometimes require a greater level of detail than that which is appropriately included in this Agreement. The Parties agree to look for guidance on such matters to the Franchise Handbook prepared by the Association of Municipalities of Ontario and the gas utility companies, as may be amended from time to time.

18. **Other Conditions**

None.

19. **Agreement Binding Parties**

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

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

**THE CORPORATION OF THE CITY OF ORILLIA**

Per:

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Steve Clarke, Mayor

Per:

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Gayle Jackson, Chief Administrative Officer / Clerk

**ENBRIDGE GAS INC.**

Per:

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Mark Kitchen, Director, Regulatory Affairs

Per:

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Nicole Lehto, Director, Northern Region Operations

Exhibit B

This is Exhibit "B" to the Affidavit of  
Patrick McMahon sworn before me  
this 11th day of May, 2023.

City of Orillia  
50 Andrew Street South, Suite 300  
Orillia, ON L3V 7T5


(705) 418-3203

A Commissioner, etc.

Attention: Dan Kirby  
Assistant City Solicitor - Real Estate and Contract Law

FROM/DE: UNION GAS (LLSS NSI) 50 KEIL DR N APT/SUITE DOCK A CHATHAM, ONTARIO N7L3V9 519-436-4600  SIN: NET72339691 PIN: NET72339691 REF: WGT: 0.90 LBS DWT: 0.90 LBS DIM: 1X1X1 INCHES		TO/A: CITY OF ORILLIA 50 ANDREW ST S SUITE 300 ORILLIA, ON L3V7T5 705-418-3203  ATTN: DAN KIRBY		<b>V</b>
INSTRUCTIONS:		GRD		
		PREPAID		

**L3V7T5  
BARRIE**



LQL3V7T5AANET72339691

NET72339691      PIN: 1/1      DATE: 05/09/2023      LOOMIS-EXPRESS.COM

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## Regulatory Information

FRANCHISES✓	OTHER REGULATORY PROCEEDINGS	RATE CASES AND GRAM
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- Application
- Notice of Application

A Commissioner, etc.