



uniongas

A Spectra Energy Company

File 6

RECEIVED

APR 29 2009

ONTARIO ENERGY BD

April 28, 2009

Ms. Kirsten Walli *29/4/09*
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: Franchise Agreement and Certificate of Public Convenience and Necessity
Municipality of North Perth
Board File Nos. EB-2009-0098 and EB-2009-0099**

As per the Board's Letter of Direction dated April 15, 2009, enclosed is my Affidavit of Service and Publication in regard to the above-noted proceeding.

Yours truly,

Gail Marvell

Gail Marvell
Regulatory Librarian
Regulatory Research and Records

Encl.

*Letter of Direction
re Affidavit of
Publication &
Service complied
with
The list to web
Banner - Apr 22
Apr 29 - objection
May 6 - participate
May 13 - submissions
April 30, 2009*

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

AND IN THE MATTER OF an Application by Union Gas Limited for an Order approving the terms and conditions upon which, and the period for which, the Corporation of the Municipality of North Perth is, by by-law, to grant to Union 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 Municipality of North Perth;

AND IN THE MATTER OF an Application by Union Gas Limited for an Order directing and declaring that the assent of the municipal electors of the Municipality of North Perth to the by-law is not necessary;

AND IN THE MATTER OF an Application by Union Gas Limited for an Order cancelling and replacing the existing Certificates of Public Convenience and Necessity for the Municipality of North Perth.

-: AFFIDAVIT OF SERVICE AND PUBLICATION :-

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

1. I am an employee in the Head Office of Union Gas Limited, 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 April 16, 2009, I did cause to be sent to the Municipality of North Perth a true copy of the Notice of Application and Notice of Written Hearing issued by the Board on April 15, 2009, to the above preamble, together with a copy of the Application and a covering letter, attached hereto as Exhibit "A".
3. I did cause to be sent to the newspaper which, according to the best information available, has the highest paid circulation in the above municipality, a true copy of the Notice of Application and Notice of Written Hearing issued by the Board on April 15, 2009, to the above preamble, together with a covering letter, attached hereto as Exhibit "B", for publication in one issue. Such publication was effected as follows:

The Listowel Banner – published on April 22, 2009.

4. The courier bill of lading are attached hereto as Exhibit "C".
5. I make this Affidavit in good faith and for no improper purpose.

SWORN BEFORE ME, at the)
Municipality of Chatham-Kent)
in the Province of Ontario,)
this 28 day of April 2009)

Gail Marvell
Gail Marvell

Mary Jane Patrick
A Commissioner, etc.

Mary Jane Dorothy Patrick, a Commissioner, etc.,
Province of Ontario, for Westcoast Energy Inc.,
and its subsidiaries and affiliates.
Expires November 23, 2011.



uniongas

A Spectra Energy Company

April 16, 2009

Ms. Patricia Berfelz
The Municipality of North Perth
330 Wallace Avenue North
Listowel, ON N4W 1L3

Dear Ms. Berfelz:

**RE: Notice of Application and Notice of Written Hearing
Franchise Agreement – Municipality of North Perth
Ontario Energy Board File Nos. – EB-2009-0098 and EB-2009-0099**

In accordance with instructions set out by the Ontario Energy Board's Letter of Direction dated April 15, 2009, Union Gas now serves upon you a copy of the Notice of Application and Notice of Written Hearing, together with a copy of the relevant Application for the Franchise Agreement between Union and Municipality of North Perth.

We will be arranging for publication of this Notice of Application in the near future.

Yours very truly,

[Original signed by]

Patrick McMahon
Manager, Regulatory Research and Records
pmcmahon@uniongas.com
(519) 435-5325

PM/gm

Encl.

THIS IS EXHIBIT A TO THE AFFIDAVIT
OF GAIL MARVELL

SWORN BEFORE ME THIS 28 DAY OF
April 2009

Mary Jane Patrick
A COMMISSIONER, ETC.

Mary Jane Dorothy Patrick, a Commissioner, etc.,
Province of Ontario, for Westcoast Energy Inc.,
and its subsidiaries and affiliates.
Expires November 23, 2011.



EB-2009-0098
EB-2009-0099

**NOTICE OF APPLICATION
AND
NOTICE OF WRITTEN HEARING**

**GAS FRANCHISE APPROVAL AND APPROVAL TO ESTABLISH
A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
FOR THE MUNICIPALITY OF NORTH PERTH**

Union Gas Limited (the "Applicant") has filed an application dated March 27, 2009 with the Ontario Energy Board (the "Board") under section 9 of the *Municipal Franchises Act*, R.S.O. 1990, c. M.55, as amended (the "Act"), for an order of the Board approving the terms and conditions upon which and the period for which the Corporation of the Municipality of North Perth (the "Corporation") is, by by-law, to grant to the Applicant the right to construct and operate works for the distribution of gas and the right to extend and add to the works in the Municipality of North Perth (the "Municipality"). The Applicant has also applied for an order of the Board declaring and directing that the assent of the municipal electors to the by-law is not necessary.

The Applicant has also applied, pursuant to section 8 of the Act, for an order of the Board that supersedes those parts of the existing Certificate of Public Convenience and Necessity ("Certificate") E.B.C. 29 associated with the former municipalities within the Municipality and establishes a single Certificate for the Municipality.

The Board has assigned the following file numbers to this matter: EB-2009-0098 (for the franchise agreement) and EB-2009-0099 (for the certificate).

On January 1, 1998, the former Township of Wallace, the former Township of Elma and the former Town of Listowel were amalgamated to form the Town of

North Perth. On July 7, 2005, the Town of North Perth changed its name to the Municipality of North Perth.

The Applicant currently holds franchise agreements with the former municipalities now within the Municipality. The Applicant also holds a Certificate (E.B.C. 29) which covers the three former municipalities now within the Municipality as well as other municipalities outside of the Municipality.

The application will be decided by the Manager, Facilities Applications, who has been delegated this authority pursuant to section 6 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15 (Schedule B). The Manager, Facilities Applications does not intend to provide for an award of costs when deciding this application.

Copies of the application and pre-filed evidence will be available for public inspection at the Board's offices, the Applicant's offices, and at the office of the Corporation at the addresses indicated below.

The Board intends to proceed with the application by way of a written hearing unless a party satisfies the Board that there is a good reason for not holding a written hearing. If you object to the Board holding a written hearing in this matter, you must provide written reasons why an oral hearing is necessary. Any submissions objecting to a written hearing must be received by the Board within **7 days** of the publication date of this Notice.

If you wish to participate in the written hearing, you must make a written submission that is received by the Board no later than **14 days** after the publication date of this Notice, with a copy to the Applicant, at the addresses below. If the Applicant wishes to respond to the written submissions, such response must be received by the Board no later than **21 days** after the publication date of this Notice. All submissions must be received by the Board Secretary by **4:45 p.m.** on the required dates.

All filings to the Board must quote file number EB-2009-0098 / EB-2009-0099, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format filed through the Board's web portal at www.errr.oeb.gov.on.ca. Filings must clearly state the sender's name, postal address and telephone number and, if available, a fax number and e-mail address. Please use the document naming

address. Please use the document naming conventions and document submission standards outlined in the RESS Document Guideline found on the "e-Filing Services" webpage of the Board's website at www.oeb.gov.on.ca. If the web portal is not available, you may e-mail your document to Boardsec@oeb.gov.on.ca. Those who do not have internet access are required to submit all filings on a CD or diskette in PDF format, along with two paper copies. Those who cannot provide an electronic version of their filing are required to file 7 paper copies.

IF YOU DO NOT FILE A WRITTEN SUBMISSION OBJECTING TO A WRITTEN HEARING OR DO NOT PARTICIPATE IN THE HEARING BY FILING WRITTEN SUBMISSIONS IN ACCORDANCE WITH THIS NOTICE, THE BOARD MAY PROCEED WITHOUT YOUR PARTICIPATION AND YOU WILL NOT BE ENTITLED TO FURTHER NOTICE IN THIS PROCEEDING.

ADDRESSES
(for viewing of copies of application)

Ontario Energy Board
P.O. Box 2319, 27th Floor
2300 Yonge Street
Toronto ON M4P 1E4

Attn: Ms. Kirsten Walli
Board Secretary

Tel: 1-888-632-6273 (Toll free)
Fax: 416-440-7656

Union Gas Limited
(Head Office)
50 Keil Drive North
Chatham ON N7M 5M1

Attn: Mr. Patrick McMahon
Manager, Regulatory
Research and Records

Tel: 519-436-5325
Fax: 519-436-4641

**Corporation of the Municipality
of North Perth**
330 Wallace Avenue North
Listowel ON N4W 1L3

Attn. Ms. Patricia Berfelz
Clerk

Tel: 519-291-2950
Fax: 519-291-1804

Union Gas Limited
(District Office)
109 Commissioners Road
London ON N6A 4P1

Attn. Mr. Shawn Khoshaien
District Manager

Tel: 519-667-4109
Fax: 519-667-4299

DATED at Toronto, April 15, 2009

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary



uniongas

A Spectra Energy Company

March 27, 2009

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

Dear Ms. Walli:

**Re: The Corporation of the Municipality of North Perth
Franchise Agreement and Certificate of Public Convenience and Necessity**

Attached is an Application by Union Gas Limited for Orders of the Board with respect to a Franchise Agreement and a Certificate of Public Convenience and Necessity with the Corporation of the Municipality of North Perth. An agreement has been reached between Union and the Municipality of North Perth with regards to the terms and conditions of the proposed Franchise Agreement.

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

Yours truly,

[Original signed by]

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

PM/gm

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 Union Gas Limited for an Order approving the terms and conditions upon which, and the period for which, the Corporation of the Municipality of North Perth is, by by-law, to grant to Union 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 Municipality of North Perth;

AND IN THE MATTER OF an Application by Union Gas Limited for an Order directing and declaring that the assent of the municipal electors of the Municipality of North Perth to the by-law is not necessary;

AND IN THE MATTER OF an Application by Union Gas Limited for an Order superseding those parts of E.B.C. 29 related to the former Township of Wallace, the former Township of Elma and the former Town of Listowel within the Municipality of North Perth and replacing them with a single Certificate of Public Convenience and Necessity for the amalgamated Corporation of the Municipality of North Perth.

APPLICATION

1. Union Gas Limited ("Union"), a regulated public utility, is a corporation incorporated under the laws of the Province of Ontario, with its head office at the Municipality of Chatham-Kent, in the Province of Ontario.
2. The Corporation of the Municipality of North Perth (the "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 location of the Municipality.
3. Union applied to the Council of the Municipality for a franchise permitting Union to construct and operate works for the distribution, transmission and storage of natural gas and the right to extend and add to the works in the Municipality of North Perth.
4. On March 16, 2009, the Council of the Municipality gave approval to the form of a Franchise Agreement in favour of Union 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.

5. Attached hereto as Schedule "B" is a copy of the Resolution of the Council of the Municipality approving the form of the proposed Franchise Agreement and requesting the Ontario Energy Board to direct and declare that the assent of the municipal electors is not necessary.
6. Attached hereto as Schedule "C" is the form of By-law No.51-2009 authorizing a Franchise Agreement between the Municipality and Union and a copy of the proposed Franchise Agreement.
7. On January 1, 1998, the former Township of Wallace, the former Township of Elma and the former Town of Listowel were amalgamated to form the Town of North Perth by Minister's Order dated June 26, 1997. On July 7, 2005, the Town of North Perth changed its name to the Municipality of North Perth.
8. Union has Franchise Agreements with the former Township of Wallace (E.B.A. 659, dated May 9, 1994) which expires May 9, 2009, the former Township of Elma (E.B.A. 673, dated April 25, 1994) which expires April 25, 2009 and the former Town of Listowel (E.B.A. 655, dated April 6, 1994) which expires April 6, 2009. These Franchise Agreements were based on the 1987 Model Franchise Agreement. The 1987 Model Franchise Agreement provides for the continuation of the terms and conditions of the existing Franchise Agreement until a renewal has been agreed to, as long as negotiations have been initiated with the Municipality.
9. Union has a Certificate of Public Convenience and Necessity, E.B.C. 29, for the former Township of Wallace, the former Township of Elma and the former Town of Listowel, granting Union the right to construct works to supply natural gas within the said municipalities. E.B.C. 29 was issued for 25 communities on May 1, 1963.
10. Union has Certificates and Franchise Agreements for the Township of Perth East, the Township of West Perth, the former Village of Brussels, the former Township of Grey, the former Township of McKillop, the former Town of Seaforth and the former Township of Tuckersmith (now the Municipality of Huron East), the Township of Howick, the Town of Minto and the Township of Mapleton, which are immediately adjacent to the Municipality. The nearest natural gas utility other than Union is Enbridge Gas Distribution Inc.
11. The proposed Franchise Agreement covers the same territory as that covered by the existing Franchise Agreements.
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:

The Municipality of North Perth
330 Wallace Avenue North
Listowel, ON N4W 1L3
Attention: Ms. Patricia Berfelz, Clerk
Telephone: (519) 291-2950 Fax: (519) 291-1804

The address for Union's district office is:

Union Gas Limited
109 Commissioners Road
London, Ontario N6A 4P1
Attention: Shawn Khoshaien, District Manager, London/Sarnia
Telephone: (519) 667-4109 Fax: (519) 667-4299

14. Union now applies to the Ontario Energy Board for:

- (a) an Order under s.9(3) approving the terms and conditions upon which, and the period for which, the Municipality is, by by-law, to grant Union 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;
- (b) an Order pursuant to s.9(4) directing and declaring that the assent of the municipal electors of the Municipality is not necessary for the proposed franchise by-law under the circumstances; and
- (c) an Order superseding those parts of E.B.C. 29 related to the former Township of Wallace, the former Township of Elma and the former Town of Listowel within the Municipality of North Perth and replacing them with a single Certificate of Public Convenience and Necessity for the amalgamated Corporation of the Municipality of North Perth.

DATED at the Municipality of Chatham-Kent, in the Province of Ontario this 27th day of March, 2009.

UNION GAS LIMITED

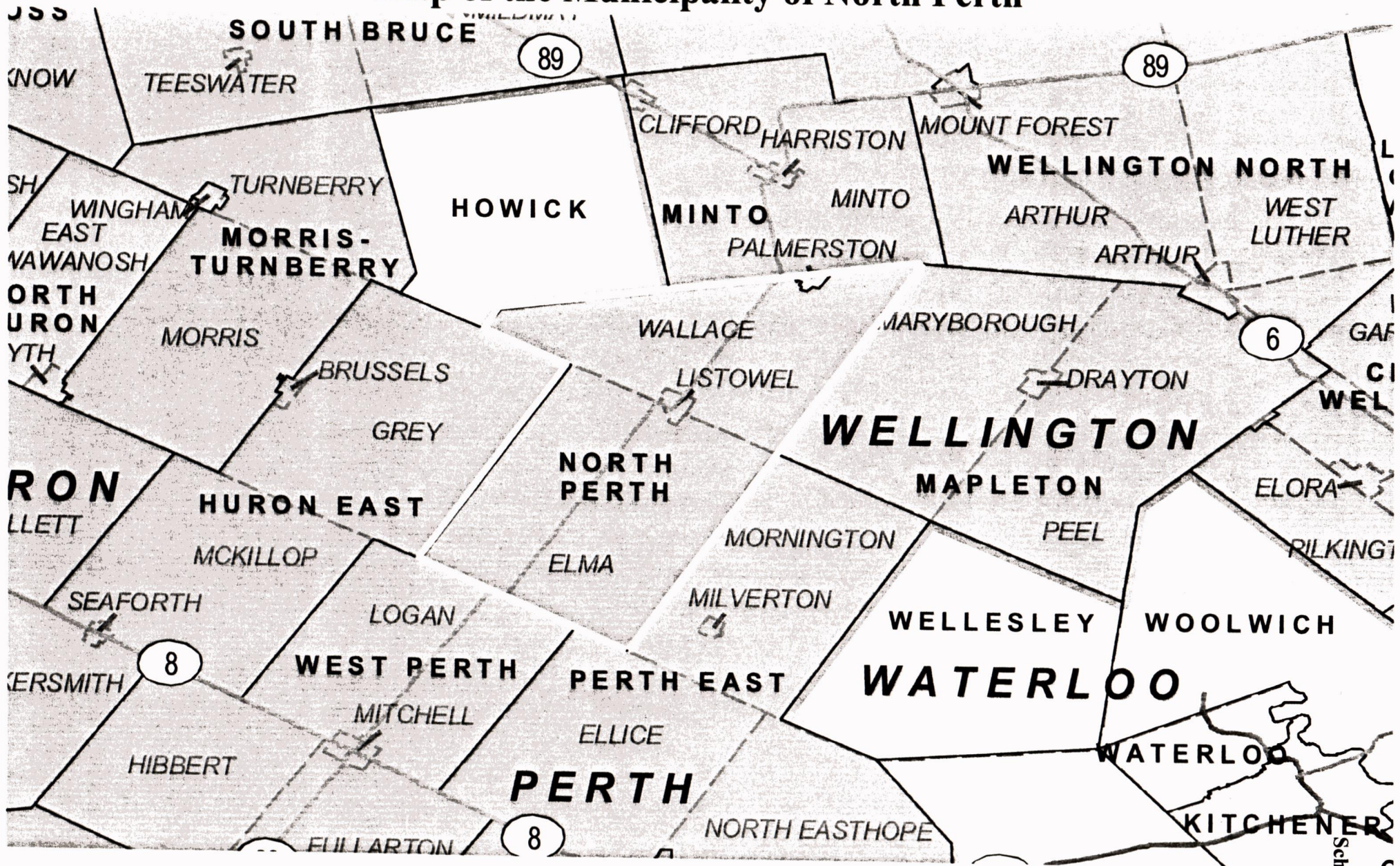
[Original signed by]

Dan Jones
Assistant General Counsel

Comments respecting this Application should be directed to:

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

Map of the Municipality of North Perth



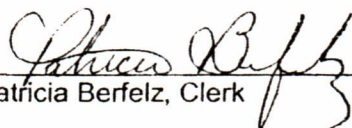
THE CORPORATION OF MUNICIPALITY OF NORTH PERTH

RESOLUTION

RESOLVED THAT:

1. This Council approves the form of draft by-law and franchise agreement attached hereto and authorizes the submission thereof to the Ontario Energy Board for approval pursuant to the provisions of Section 9 of The Municipal Franchises Act.
2. This Council requests that the Ontario Energy Board make an Order declaring and directing that the assent of the municipal electors to the attached draft by-law and franchise agreement pertaining to the Corporation of the Municipality of North Perth is not necessary pursuant to the provisions of Section 9(4) of the Municipal Franchises Act.

I HEREBY CERTIFY the foregoing to be a true copy of a Resolution passed by the Council of the Corporation of the Municipality of North Perth on the 16th day of March, 2009.


Patricia Berfelz, Clerk

THE CORPORATION OF THE MUNICIPALITY OF NORTH PERTH

BY-LAW NUMBER 51-2009

**A BY-LAW TO AUTHORIZE A FRANCHISE AGREEMENT
BETWEEN THE CORPORATION OF THE MUNICIPALITY OF NORTH PERTH
and UNION GAS LIMITED**

WHEREAS the Council of the Corporation of the Municipality of North Perth 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 _____ day of _____, 20____ has approved the terms and conditions upon which and the period for which the franchise provided in the Franchise Agreement is proposed to be granted, and has declared and directed that the assent of the municipal electors in respect of this By-Law is not necessary;

NOW THEREFORE the Council of the Corporation of the Municipality of North Perth enacts as follows:

1. **THAT** the Franchise Agreement between the Corporation of the Municipality of North Perth and Union Gas Limited, attached hereto and forming part of this by-law, is hereby authorized and the franchise provided for therein is hereby granted.

2. **THAT** the Mayor and Clerk be and they are hereby authorized and instructed on behalf of the Corporation of the Municipality of North Perth 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:

By-law #.93-8 for the former Corporation of the Town of Listowel, passed in Council on the 6th day of April, 1994;

By-law #93-20 for the former Corporation of the Township of Elma, passed in Council on the 25th day of April, 1994;

By-law #13-1993 for the former Corporation of the Township of Wallace, passed in Council on the 9th day of May, 1994.

4. **THAT** this by-law shall come into force and take effect as of the final passing thereof.

Read a first time this 16th day of March, 2009.

Read a second time this 16th day of March, 2009.

Read a third time and finally passed this _____ day of _____, 200____.

THE CORPORATION OF THE MUNICIPALITY OF NORTH PERTH

 Ed Hollinger, Mayor

 Patricia Berfelz, Clerk

2000 Model Franchise Agreement

THIS AGREEMENT effective this day of , 20

BETWEEN:

THE CORPORATION OF THE MUNICIPALITY OF NORTH PERTH

hereinafter called the "Corporation"

- and -



uniongas

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 7th anniversary and on the 14th anniversary of the date of the passing of the By-law, this Agreement shall be deemed to be amended to incorporate any changes in the Model Franchise Agreement in effect on such anniversary dates. Such deemed amendments shall not apply to alter the 20 year term.
- (c) At any time within two years prior to the expiration of this Agreement, either party may give notice to the other that it desires to enter into negotiations for a renewed franchise upon such terms and conditions as may be agreed upon. Until such renewal has been settled, the terms and conditions of this Agreement shall continue, notwithstanding the expiration of this Agreement. This shall not preclude either party from applying to the Ontario Energy Board for a renewal of the Agreement pursuant to section 10 of the *Municipal Franchises Act*.

Part III – Conditions

5. Approval of Construction

- (a) The Gas Company shall not undertake any excavation, opening or work which will disturb or interfere with the surface of the travelled portion of any highway unless a permit 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

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
MUNICIPALITY OF NORTH PERTH**

Per:

Ed Hollinger, Mayor

Per:

Patricia Berfelz, Clerk

UNION GAS LIMITED

Per:

Rick. Birmingham, Vice President

Per:

Curt Bernardi, Assistant Secretary



uniongas

A Spectra Energy Company

April 17, 2009

Via Email

Natasha Davidson
Listowel Banner and Independent Plus
185 Wallace Avenue North
P.O. Box 97
Listowel, ON N4W 3H2

Dear Natasha:

**Re: Notice of Application and Notice of Written Hearing
Municipality of North Perth
Board File Nos. EB-2009-0098 and EB-2009-0099**

Pursuant to instructions issued to us in the Ontario Energy Board's Letter of Direction dated April 15, 2009, we hereby request that you publish, in English, the enclosed Notice of Application and Notice of Written Hearing, headed with the Ontario Government logo and the words "Ontario Energy Board" and "Commission de l'Energie de l'Ontario", as set out in the English Notice, in one (1) Published Issue of your newspaper at the earliest possible publication date.

Please contact me directly with respect to the size and cost of the publication, as well as the date of publication, before the Notice is published. I would also like the opportunity to review the Proof before publication.

Kindly send the Tear Sheet as proof of publication to my attention immediately after publication, as my Affidavit of Service and Publication in this matter must be forwarded to the Ontario Energy Board promptly.

Also, in order to ensure prompt payment, please send the invoice to my attention. I can be reached as follows:

Gail Marvell
Regulatory Research and Records
Union Gas Limited
50 Keil Drive N.
Chatham, Ontario N7M 5M1
Telephone: (519) 436-4600 Extension 2161
Fax: (519) 436-4641
Email: landerson@uniongas.com

THIS IS EXHIBIT B TO THE AFFIDAVIT
OF GAIL MARVELL
SWORN BEFORE ME THIS 28 DAY OF
April 2009
Mary Jane Patrick
A COMMISSIONER, ETC.

Mary Jane Dorothy Patrick, a Commissioner, etc.,
Province of Ontario, for Westcoast Energy Inc.,
and its subsidiaries and affiliates.
Expires November 23, 2011.

Thank you for your attention to this matter.

Yours truly,

[Original signed by]

Gail Marvell
Regulatory Librarian
Regulatory Research and Records

/gm

Attach.



NOTICE OF APPLICATION AND
NOTICE OF WRITTEN HEARING

**GAS FRANCHISE APPROVAL AND APPROVAL TO ESTABLISH A
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR
THE MUNICIPALITY OF NORTH PERTH**

EB-2009-0098
EB-2009-0099

Union Gas Limited (the "Applicant") has filed an application dated March 27, 2009 with the Ontario Energy Board (the "Board") under section 9 of the *Municipal Franchises Act*, R.S.O. 1990, c. M.55, as amended (the "Act"), for an order of the Board approving the terms and conditions upon which and the period for which the Corporation of the Municipality of North Perth (the "Corporation") is, by by-law, to grant to the Applicant the right to construct and operate works for the distribution of gas and the right to extend and add to the works in the Municipality of North Perth (the "Municipality"). The Applicant has also applied for an order of the Board declaring and directing that the assent of the municipal electors to the by-law is not necessary.

The Applicant has also applied, pursuant to section 8 of the Act, for an order of the Board that supersedes those parts of the existing Certificate of Public Convenience and Necessity ("Certificate") E.B.C. 29 associated with the former municipalities within the Municipality and establishes a single Certificate for the Municipality.

The Board has assigned the following file numbers to this matter: EB-2009-0098 (for the franchise agreement) and EB-2009-0099 (for the certificate).

On January 1, 1998, the former Township of Wallace, the former Township of Elma and the former Town of Listowel were amalgamated to form the Town of North Perth. On July 7, 2005, the Town of North Perth changed its name to the Municipality of North Perth.

The Applicant currently holds franchise agreements with the former municipalities now within the Municipality. The Applicant also holds a Certificate (E.B.C. 29) which covers the three former municipalities now within the Municipality as well as other municipalities outside of the Municipality.

The application will be decided by the Manager, Facilities Applications, who has been delegated this authority pursuant to section 6 of the *Ontario Energy Board Act*, 1998, S.O. 1998, c.15 (Schedule B). The Manager, Facilities Applications does not intend to provide for an award of costs when deciding this application.

Copies of the application and pre-filed evidence will be available for public inspection at the Board's offices, the Applicant's offices, and at the office of the Corporation at the addresses indicated below.

The Board intends to proceed with the application by way of a written hearing unless a party satisfies the Board that there is a good reason for not holding a written hearing. If you object to the Board holding a written hearing in this matter, you must provide written reasons why an oral hearing is necessary. Any submissions objecting to a written hearing must be received by the Board within **7 days** of the publication date of this Notice.

If you wish to participate in the written hearing, you must make a written submission that is received by the Board no later than **14 days** after the publication date of this Notice, with a copy to the Applicant, at the addresses below. If the Applicant wishes to respond to the written submissions, such response must be received by the Board no later than **21 days** after the publication date of this Notice. All submissions must be received by the Board Secretary by **4:45 p.m.** on the required dates.

All filings to the Board must quote file number EB-2009-0098 / EB-2009-0099, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format filed through the Board's web portal at www.omb.gov.on.ca. Filings must clearly state the sender's name, postal address and telephone number and, if available, a fax number and e-mail address. Please use the document naming conventions and document submission standards outlined in the RESS Document Guideline found on the "e-Filing Services" webpage of the Board's website at www.omb.gov.on.ca. If the web portal is not available, you may e-mail your document to Boardsec@omb.gov.on.ca. Those who do not have internet access are required to submit all filings on a CD or diskette in PDF format, along with two paper copies. Those who cannot provide an electronic version of their filing are required to file 7 paper copies.

IF YOU DO NOT FILE A WRITTEN SUBMISSION OBJECTING TO A WRITTEN HEARING OR DO NOT PARTICIPATE IN THE HEARING BY FILING WRITTEN SUBMISSIONS IN ACCORDANCE WITH THIS NOTICE, THE BOARD MAY PROCEED WITHOUT YOUR PARTICIPATION AND YOU WILL NOT BE ENTITLED TO FURTHER NOTICE IN THIS PROCEEDING.

ADDRESSES

(for viewing of copies of application)

Ontario Energy Board
P.O. Box 2319, 27th Floor
2300 Yonge Street
Toronto ON M4P 1E4
Attn: Ms. Kirsten Walli
Board Secretary
Tel: 1-888-632-6273 (Toll free)
Fax: 416-440-7656

The Corporation of the Municipality of North Perth
330 Wallace Avenue North
Listowel, ON N4W 1L3
Attn: Ms. Patricia Berfelz
Clerk
Tel: 519-291-2950
Fax: 519-291-1804

**Union Gas Limited
(Head Office)**
50 Keil Drive North
Chatham ON N7M 5M1
Attn: Mr. Patrick McMahon, Manager
Regulatory Research and Records
Tel: 519-436-5325
Fax: 519-436-4641

**Union Gas Limited
(District Office)**
109 Commissioners Rd.
London, ON N6A 4P1
Attn: Mr. Shawn Khoshaien, District Manager,
London/Sarnia
Tel: 519-667-4109
Fax: 519-667-4299

DATED at Toronto, April 15, 2009
ONTARIO ENERGY BOARD
Original signed by
Kirsten Walli, Board Secretary

Ms. Patricia Berfelz
The Municipality of North Perth
330 Wallace Avenue North
Listowel, ON N4W 1L3

D54AQTU00002



THIS IS EXHIBIT C TO THE AFFIDAVIT
OF CAIL MARUELL
SWORN BEFORE ME THIS 28 DAY OF
April 2009
Mary Jane Patrick
A COMMISSIONER, ETC.