



**uniongas**

A Spectra Energy Company

OEB BOARD SECRETARY	
File No: 2009-0098	Sub File: 16
Panel:	
Licensing:	
Other:	R.C. N.M. M.N. - legal

**RECEIVED**

JUN 24 2009

**ONTARIO ENERGY BD**

June 23, 2009

*12/4/09*

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street, 27<sup>th</sup> Floor  
Toronto, Ontario M4P 1E4

Dear Ms. Walli:

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

As per the Board's Letters of Direction dated June 18 and June 16, 2009 with respect to the approval of the Franchise Agreement and issuing a single Certificate of Public Convenience and Necessity for the amalgamated Municipality, enclosed is my Affidavit of Service in regard to the above-noted proceeding.

Yours truly,

*Gail Marvell*

Gail Marvell  
Regulatory Librarian  
Regulatory Research and Records

Encl.

*Letter of Direction  
& Affidavit  
of Service of  
Dec & Order  
received and  
completed on  
June 24/09  
J. Schaefer  
July 5/09*

**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.


**-: AFFIDAVIT OF SERVICE :-**

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 June 22, 2009, I did cause to be sent to the Municipality of North Perth a true copy of the Decisions and Orders issued by the Board on June 16 and June 18, 2009, 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. 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 23<sup>rd</sup> day of June, 2009 )

  
Gail Marvell

  
A Commissioner, etc.

Brigitte Bernice Jones, a Commissioner, Etc.,  
Province of Ontario, for Union Gas Limited  
And its subsidiaries and affiliates.  
Expires November 8, 2011.



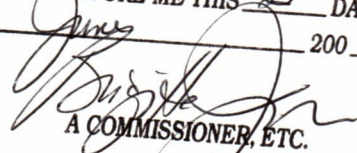
**uniongas**

A Spectra Energy Company

June 22, 2009

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

THIS IS EXHIBIT A TO THE AFFIDAVIT  
OF GAIL MARUELL  
SWORN BEFORE ME THIS 23<sup>rd</sup> DAY OF  
June 2009



A COMMISSIONER, ETC.

Brigitte Bernice Jones, a Commissioner, E  
Province of Ontario, for Union Gas Limited  
And its subsidiaries and affiliates.  
Expires November 8, 2011.

Dear Ms. Berfelz:

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

The Ontario Energy Board has issued its Decisions and Orders dated June 18, 2009 and June 16, 2009 respectively, which approve the above-noted Franchise Agreement and the Certificate of Public Convenience and Necessity. Union now serves upon you a copy of the Decisions and Orders.

The attached Certificate of Public Convenience and Necessity (EB-2009-0099) for the amalgamated Corporation of the Municipality of North Perth replaces the Certificates that had been in place for the former municipalities incorporated into the Municipality of North Perth.

Enclosed are four (4) copies of the Franchise Agreement and four (4) copies of the By-law to authorize the Franchise Agreement. We ask that you enter the approval date of the Decision and Order into the second paragraph of the By-law and request that your Council give the By-law third and final reading. Please return **all four (4)** executed copies of the Franchise Agreement and By-law to my attention.

Upon receipt of the above, Union Gas will execute the Franchise Agreement and return one (1) executed copy of the Franchise Agreement and corresponding By-law to your attention.

Thank you for your co-operation in this matter.

Yours truly,

*[Original signed by]*

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

PM/la

Encl.



EB-2009-0098

**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.

**By delegation, before:** Neil McKay

### **DECISION AND ORDER**

Union Gas Limited ("Union") 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 Union 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"). Union 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.

- 2 -

The Board has assigned file number EB-2009-0098 to this application.

Union submitted a resolution passed by the Council of the Municipality on March 16, 2009 approving the form of the draft by-law and requesting that the Board declare and direct that the assent of the municipal electors to the by-law is not necessary.

The Board's Notice of Application and Hearing was published as directed by the Board. There were no intervenors.

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 previously held franchise agreements with the former municipalities now within the Municipality. These expired during the period April 6, 2009 to May 9, 2009. The Applicant also holds a Certificate (EB-2009-0099) for the Municipality.

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

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

**IT IS ORDERED THAT:**

1. The terms and conditions upon which, and the period for which, the Corporation of 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, as set out in the franchise agreement attached as Appendix A, are approved.
2. The assent of the municipal electors of the Municipality of North Perth to the by-law is not necessary.

**DATED** at Toronto, June 18, 2009

ONTARIO ENERGY BOARD

*Original Signed By*

Neil McKay  
Manager, Natural Gas Applications

**APPENDIX "A"**  
**TO BOARD DECISION AND ORDER**  
**EB-2009-0098**

**DATED: June 18, 2009**

**FRANCHISE AGREEMENT**

## 2000 Model Franchise Agreement

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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 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**

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



EB-2009-0099

**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 cancelling or superseding parts of an existing Certificate of Public Convenience and Necessity for certain geographic areas that now form part of the Municipality of North Perth and replacing these with a single Certificate of Public Convenience and Necessity.

**By delegation, before:** Neil McKay

### DECISION AND ORDER

Union Gas Limited ("Union") has filed an application dated March 27, 2009 with the Ontario Energy Board (the "Board") under section 8 of the *Municipal Franchises Act*, R.S.O. 1990, c. M.55, as amended (the "Act"), for an order of the Board that supersedes the parts of the existing Certificate of Public Convenience and Necessity ("Certificate") E.B.C. 29 associated with the former municipalities within the Municipality of North Perth (the "Municipality") and establishes a single Certificate for the Municipality.

The Board has assigned File No. EB-2009-0099 to this application. The Board's Notice of Application and Written Hearing was published as directed by the Board. There were no intervenors.

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 previously held franchise agreements with the former municipalities now within the Municipality. These expired during the period April 6, 2009 to May 9, 2009.

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 Board finds that it is in the public interest to grant the application and that public convenience and necessity requires that approval be given.

**IT IS THEREFORE ORDERED THAT:**

1. The parts of the existing Certificate of Public Convenience and Necessity E.B.C. 29 covering the former Township of Wallace, the former Township of Elma and the former Town of Listowel now within the Municipality of North Perth are superseded by the certificate attached as Appendix A to this Decision and Order.
2. A Certificate of Public Convenience and Necessity, attached as Appendix A to this Decision and Order, is granted to Union Gas Limited to construct works to supply gas in the Municipality of North Perth.

**DATED** at Toronto, June 16, 2009

**ONTARIO ENERGY BOARD**

*Original Signed By*

Neil McKay  
Manager, Natural Gas Applications

**APPENDIX A**

**TO BOARD DECISION AND ORDER**

**EB-2009-0099**

**DATED: June 16, 2009**

**Certificate of Public Convenience and Necessity for  
the Municipality of North Perth**

**EB-2009-0099**

## **Certificate of Public Convenience and Necessity**

The Ontario Energy Board hereby grants

### **Union Gas Limited**

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

### **Municipality of North Perth**

This certificate replaces the parts of Certificate E.B.C. 29 currently held by Union Gas Limited that is associated with the former Township of Wallace, the former Township of Elma and the former Town of Listowel that are now within the Municipality of North Perth.

**DATED** at Toronto, June 16, 2009

ONTARIO ENERGY BOARD

*Original Signed By*

Neil McKay  
Manager, Facilities Applications

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 6<sup>th</sup> day of April, 1994;

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

By-law #13-1993 for the former Corporation of the Township of Wallace, passed in Council on the 9<sup>th</sup> 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 16<sup>th</sup> day of March, 2009.

Read a second time this 16<sup>th</sup> day of March, 2009.

Read a third time and finally passed this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

THE CORPORATION OF THE MUNICIPALITY OF NORTH PERTH

\_\_\_\_\_  
Ed Hollinger, Mayor

\_\_\_\_\_  
Patricia Berfelz, Clerk

- (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.

## **2000 Model Franchise Agreement**

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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*;

## **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**

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**

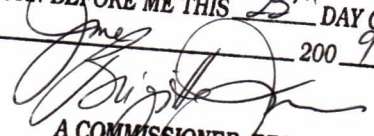
Per:

\_\_\_\_\_  
Rick. Birmingham, Vice President

Per:

\_\_\_\_\_  
Curt Bernardi, Assistant Secretary

THIS IS EXHIBIT B TO THE AFFIDAVIT  
OF CAIL MARVELL  
SWORN BEFORE ME THIS 23<sup>rd</sup> DAY OF  
June 2009



A COMMISSIONER, ETC.  
Brigitte Bernice Jones, a Commissioner, Etc.,  
Province of Ontario, for Union Gas Limited  
And its subsidiaries and affiliates.  
Expires November 8, 2011.

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

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