



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

February 26, 2025

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

Dear Ms. Marconi:

**Re: Enbridge Gas Inc.
Application for Approval of Franchise Agreement and CPCN
City of Kingston**

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

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

Yours truly,

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

Encl.

ONTARIO ENERGY BOARD

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

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

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

AND IN THE MATTER OF an Application by Enbridge Gas Inc. for an Order cancelling and superseding the F.B.C. 59 Certificate of Public Convenience and Necessity held by Enbridge Gas Inc. related to the former Township of Pittsburgh and the F.B.C. 62 Certificate of Public Convenience and Necessity held by Enbridge Gas Inc. related to the former Township of Kingston and replacing them with a Certificate of Public Convenience and Necessity to construct works to supply natural gas in the current City of Kingston.

APPLICATION

1. Enbridge Gas Inc. (Enbridge Gas), a regulated public utility, is a corporation incorporated under the laws of the Province of Ontario, with its offices in the City of Toronto and the Municipality of Chatham-Kent.
2. The Corporation of the City of Kingston (Municipality) is a municipal corporation incorporated under the laws of the Province of Ontario. Attached hereto and marked as Schedule "A1" is a map showing the geographical location of the Municipality and a customer density representation of Enbridge Gas' service area. Enbridge Gas currently serves approximately 24,600 customers in the City of Kingston. Enbridge Gas and its predecessors have been providing gas distribution services within the City of Kingston since approximately 1955.
3. The City of Kingston is a single-tier municipality located in but independent from the County of Frontenac. On January 1, 1998, the former City of Kingston was amalgamated with the former Township of Kingston and the former Township of Pittsburgh to form the current City of Kingston. Attached hereto and marked as Schedule "A2" is a map showing the boundaries of these former municipalities prior to amalgamation.

4. Enbridge Gas currently has franchise agreements and Certificates of Public Convenience and Necessity (CPCNs) to provide gas distribution services within the former Township of Kingston and the former Township of Pittsburgh areas within the City of Kingston.
5. On June 22, 2003, the Ontario Energy Board approved a 20-year franchise agreement for Union Gas Limited to provide service within the former Township of Pittsburgh (E.B.A. 825 attached as Schedule “B1”). On January 14, 2005, the Ontario Energy Board approved a 20-year franchise agreement for Union Gas Limited to provide service within the former Township of Kingston (RP-2003-0244 / EB-2003-0304 attached as Schedule “B2”). Both of these approvals were issued pursuant to Section 10 of the *Municipal Franchises Act*.
6. Enbridge Gas has CPCNs to allow the provision of gas services within the former Township of Pittsburgh (F.B.C. 59, dated March 28, 1956 attached as Schedule “C1”) and within the former Township of Kingston (F.B.C. 62, dated March 28, 1956 attached as Schedule “C2”). The current request for a new CPCN addresses changes to the municipal boundaries and municipal name since the F.B.C. 59 and F.B.C. 62 CPCNs were issued.
7. As noted in the draft proposed CPCN attached as Schedule “C3”, Enbridge Gas is applying to maintain its existing service areas within the City of Kingston. Based on our review of available mapping records, Enbridge Gas believes that its existing service areas can be described as follows:

Former Township of Pittsburgh

Concession East of Caraquí River – Lot C-D, Lot 1 to Lot 22

First and Broken Front – Lot 1 to Lot 20

Concession 1 – Lot A to Lot E

Concession 2 – Lot 1 to Lot 38

Concession 3 – Lot 1 to Lot 38

Concession 4 – Lot 1 to Lot 38

Concession 5 – Lot 1 to Lot 38

Concession 6 – Lot 9 to Lot 38

Concession 7 – Lot 20 to Lot 38

Concession 8 – Lot 23 to Lot 38

Concession 9 – Lot 26 to Lot 38

Concession 10 – Lot 29 to Lot 38

Concession 11 – Lot 33 to Lot 38

Former Township of Kingston

Broken Front – Gore, Lot 1 to Lot 13

Concession 1 – Gore, Lot 1 to Lot 14

Concession 2 – Mile Square Lot, Lot 1 to Lot 14, Lot 15 to Lot 17 (part)

Concession 3 – Lot 1 to Lot 17, Lot 18 to Lot 24 (part)

Concession 3 Western Division – Lot 2 to Lot 10

Concession 4 – Lot 1 to Lot 37

Concession 4 Western Division – Lot 2 to Lot 13

Concession 5 – Lot 1 to Lot 41
Concession 5 Western Division – Lot 2 to Lot 14
Concession 6 – Lot 1 to Lot 41
Concession 6 Western Division – Lot 2 to Lot 17
Concession 7 – Lot 1 to Lot 11, Lot 41
Concession 7 Western Division – Lot 2 to Lot 19
Concession West of Cataraqui River – Lot 9 to Lot 11

8. On September 12, 2022, the City of Kingston was notified that Enbridge Gas was initiating the process to renew our franchise agreement with the Municipality. The City of Kingston was informed that the initiation of the franchise agreement renewal discussions was being triggered by the existing franchise agreement between Union Gas Limited and the City of Kingston related to gas distribution within the former Township of Pittsburgh that was scheduled to expire on July 22, 2023.
9. At that time and pursuant to the Natural Gas Facilities Handbook, Enbridge Gas informed the City of Kingston that the current Model Franchise Agreement was to be used as the model for such renewals. Enbridge Gas provided the City of Kingston with a draft bylaw, a draft resolution and the Model Franchise Agreement to be used for the renewal process. The City of Kingston was also provided with a copy of the Gas Franchise Handbook as an explanatory supplement to the Model Franchise Agreement.
10. Discussions continued for several months between Enbridge Gas and the City of Kingston in order to come to an agreement with respect to the use of the Model Franchise Agreement and confirmation that Enbridge Gas' service area would continue to be determined through the CPCN.
11. Enbridge Gas applied to the Council of the Municipality for a franchise agreement permitting Enbridge Gas to construct and operate works for the distribution, transmission and storage of natural gas and the right to extend and add to the works in the City of Kingston.
12. On February 4, 2025, the Council of the Municipality gave approval to the form of a Franchise Agreement in favour of Enbridge Gas and authorized Enbridge Gas to apply to the Ontario Energy Board for approval of the terms and conditions upon which and the period for which the franchise agreement is proposed to be granted.
13. Attached hereto as Schedule "D" is a copy of the Resolution of the Council of the Municipality approving the form of the draft by-law and franchise agreement, authorizing this submission to the Ontario Energy Board, and requesting an Order declaring and directing that the assent of the municipal electors to the by-law and franchise agreement is not necessary.
14. Attached hereto as Schedule "E" is a copy of the draft form of By-law 2025-96 and the proposed franchise agreement. The City of Kingston has provided first and second readings of its by-law.

15. Enbridge Gas has franchise agreements with and CPCNs for the Township of Loyalist and the Township of Leeds and the Thousand Islands which are immediately adjacent to the City of Kingston. The only other natural gas distributor in the area is Utilities Kingston which provides multi-utility services within the City of Kingston, including gas distribution services in Central Kingston.
16. 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.
17. The address of the Municipality is as follows:

City of Kingston
216 Ontario Street
Kingston, ON K7L 2Z3
Attention: Janet Jaynes, City Clerk
Telephone: (613) 546-4291 ext. 1262
Email: jjaynes@cityofkingston.ca

The address for Enbridge Gas' regional operations office is:

Enbridge Gas Inc.
500 Consumers Road
North York, ON M2J 1P8
Attention: Neil MacNeil, Director, Regional Operations
Email: neil.macneil@enbridge.com

18. Enbridge Gas believes that publishing the Notice in the local newspaper, on the OEB web site, on the Enbridge Gas' web site and on the municipality's web site will provide a broad awareness of this application. The newspaper having the highest circulation in the City of Kingston is the *Kingston Whig-Standard*. This is the newspaper used by the Municipality for its notices.
19. Enbridge Gas 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 City of Kingston is, by by-law, to grant Enbridge Gas the right to construct and operate works for the distribution, transmission and storage of natural gas and the right to extend and add to the works;
 - (b) an Order pursuant to s.9(4) directing and declaring that the assent of the municipal electors of the City of Kingston is not necessary for the proposed franchise agreement by-law under the circumstances; and

- (c) an Order pursuant to s.8 cancelling and superseding the F.B.C. 59 Certificate of Public Convenience and Necessity held by Enbridge Gas Inc. related to the former Township of Pittsburgh and the F.B.C. 62 Certificate of Public Convenience and Necessity held by Enbridge Gas Inc. related to the former Township of Kingston and replacing them with a Certificate of Public Convenience and Necessity to construct works to supply natural gas in the current City of Kingston in the areas previously known as the Township of Pittsburgh and the Township of Kingston.

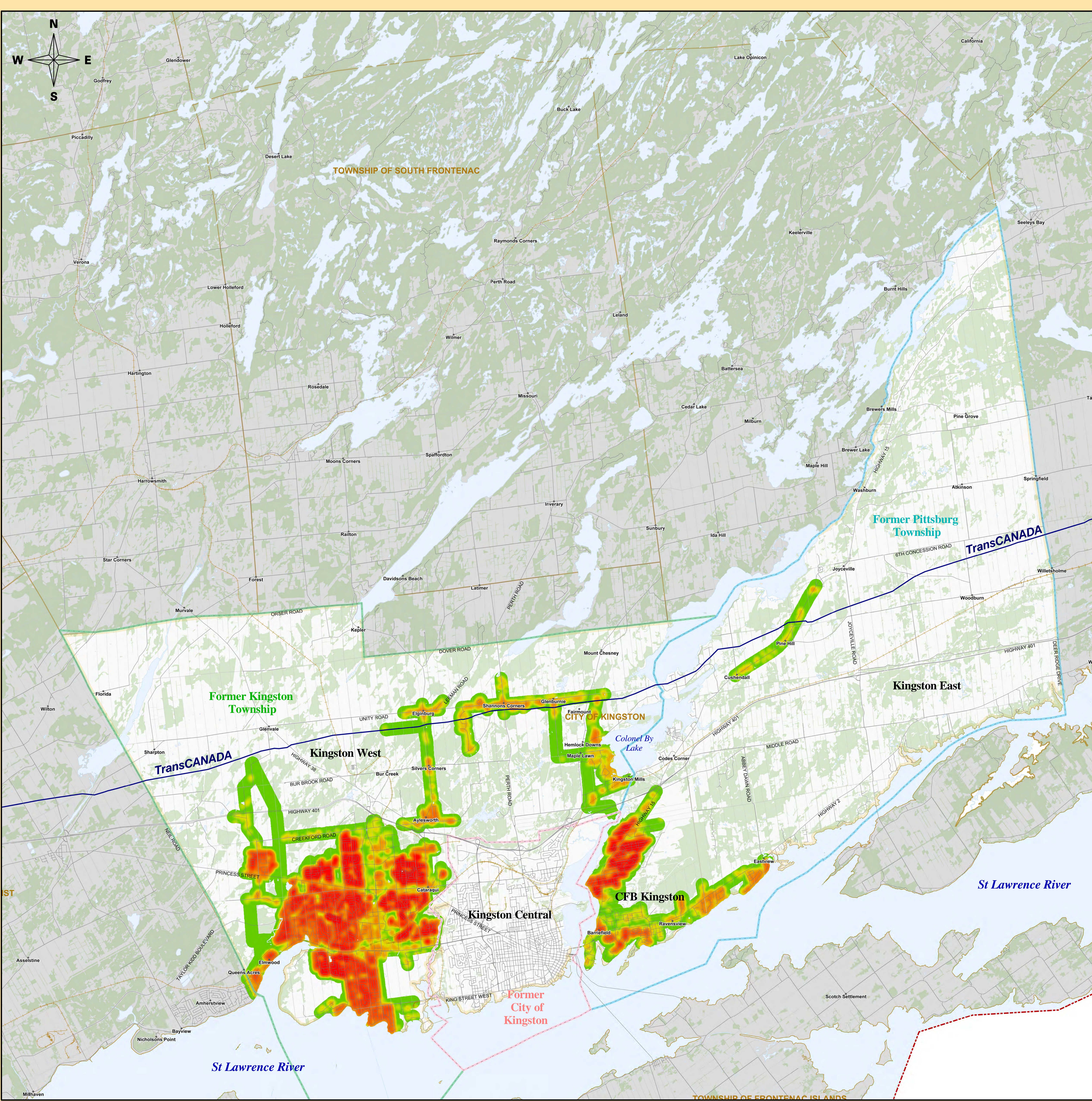
DATED at the Municipality of Chatham-Kent, in the Province of Ontario this 26th day of February, 2025.

ENBRIDGE GAS INC.

Patrick McMahon
Technical Manager
Regulatory Research and Records

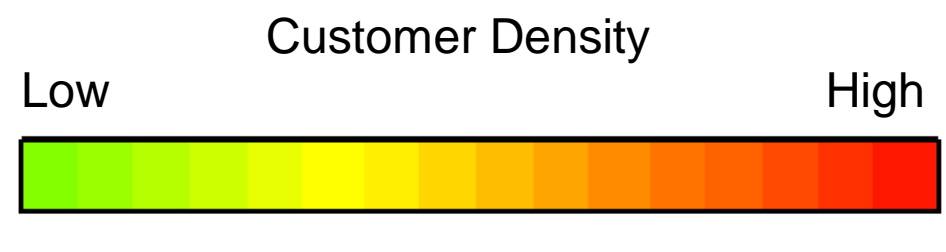
Comments respecting this Application should be directed to:

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

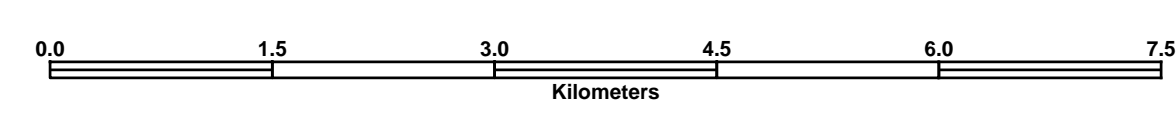


Legend

- Enbridge Gas Pipeline Coverage Area
- City of Kingston
- Former City of Kingston
- Former Pittsburg Township
- Former Kingston Township
- Roads
- Railways
- Municipal and Township Boundaries
- First Nation Boundary

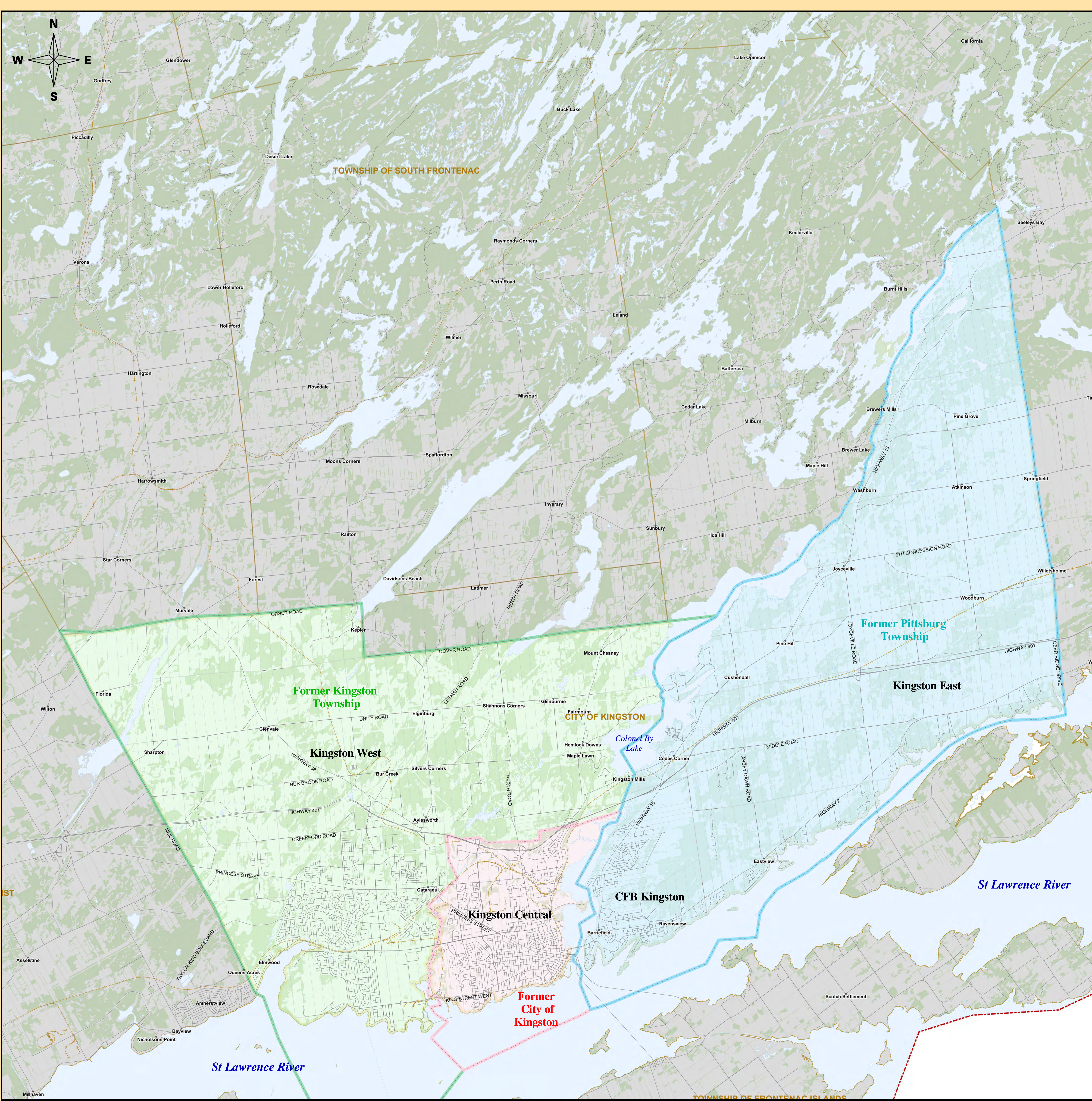


City of Kingston



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





City of Kingston



- Legend**
- City of Kingston
 - Former City of Kingston
 - Former Pittsburg Township
 - Former Kingston Township
 - Roads
 - Railways
 - Municipal and Township Boundaries
 - First Nation Boundary

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



Ontario Energy
Board

Commission de l'Énergie
de l'Ontario



E.B.A. 825

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 Centra Gas (Ontario) Inc., (now Union Gas Limited) for a franchise renewal within the City of Kingston to serve the area of the former Township of Pittsburgh.

ORDER

Union Gas Limited ("Union"), formerly Centra Gas Ontario Inc., filed an application under sections 9 and 10 of the *Municipal Franchises Act* (the "Application") dated July 31, 1997 with the Ontario Energy Board (the "Board"), for approval of the terms and conditions and for renewal or extension of the term of the right to construct and operate works for the distribution and supply of gas in the former Township of Pittsburgh. The former Township of Pittsburgh is now part of the City of Kingston ("Kingston"). Union has a Certificate of Public Convenience and Necessity for the former Township of Pittsburgh (F.B.C. 59). Kingston intervened and opposed Union's application. The Board assigned this Application Board File No. E.B.A. 825.

A hearing of the Application was held commencing December 11, 1999. Written argument was submitted by the parties on January 21, 2000 with oral submissions completed on February 2, 2000. The Board issued its Decision with Reasons and Order on June 23, 2000 approving Union's Application. Paragraph 4.0.24 of the Decision stated "Once the 2000 Model Franchise Agreement has been approved and issued by the Board, the Board will issue an order renewing the right of Union to operate works for the distribution of gas in the geographic area of the City of Kingston that was formerly the Township of Pittsburgh

for the period and on the terms and conditions set out in the 2000 Model Franchise Agreement.”

Kingston appealed the Board’s Decision with Reasons and Order to the Divisional Court. Kingston’s appeal was dismissed by the Divisional Court. A subsequent appeal to the Court of Appeal was also dismissed as was a motion for leave to appeal to the Supreme Court of Canada. Since the appeal process is now complete, it is now necessary for the Board to issue its order in accordance with the Board’s Decision with Reasons dated June 23, 2000.

THE BOARD THEREFORE ORDERS THAT:

1. The right of Union Gas Limited to operate works for the distribution of gas in that portion of the City of Kingston previously known as the Township of Pittsburgh is renewed.
2. The renewal shall be for a period of 20 years from the date of this Order.
3. The renewal shall be upon the terms and conditions set out in Appendix A to this Order.

ISSUED at Toronto, July 22, 2003.

ONTARIO ENERGY BOARD



Peter H. O'Dell
Assistant Board Secretary

**APPENDIX "A" TO
BOARD ORDER
E.B.A. 825
DATED July 22, 2003**

Franchise Agreement

THIS AGREEMENT effective as of this 22 day of July, 2003

BETWEEN:

THE CORPORATION OF THE CITY OF KINGSTON

hereinafter called the "Corporation"

- and -

UNION GAS LIMITED

hereinafter called the "Gas Company"

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

AND WHEREAS the Ontario Energy Board has issued an order pursuant to s. 10(2) of the *Municipal Franchises Act* renewing the right of the Gas Company to operate works for the distribution of gas in the geographic area of the City of Kingston that was formerly the Township of Pittsburgh on the terms and conditions set out herein;

AND WHEREAS s. 10(5) of the *Municipal Franchises Act* provides that an order of the Ontario Energy Board made under section 10(2) of the *Municipal Franchises Act* renewing or extending the term of the right, shall be deemed to be a valid by-law of the municipality concerned assented to by the municipal electors for the purposes of the *Municipal Franchises Act* and of section 58 of the *Public Utilities Act*.

THEREFORE the right of the Gas Company to operate works for the distribution of gas in the geographic area of the City of Kingston that was formerly the Township of Pittsburgh is renewed for the period and on the terms and conditions as follows and the Corporation and the Gas Company are deemed to 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 within the geographic area of the former Township of Pittsburgh and 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 geographic area formerly known as the Township of Pittsburgh within the territorial limits of the Corporation on the date when this Agreement takes effect;
- (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) The rights hereby given and granted shall be for a term of 20 years from the date the Ontario Energy Board's final Order approving the terms of this Agreement are issued (the "Effective Date"), 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 Effective Date, 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.
- (b) At any time within two years prior to the expiration of this Agreement, either party may give notice to the other that it desires to enter into negotiations for a renewed franchise upon such terms and conditions as may be agreed upon. Until such renewal has been settled, the terms and conditions of this Agreement shall continue, notwithstanding the expiration of this Agreement. This shall not preclude either party from applying to the Ontario Energy Board for a renewal of the Agreement pursuant to section 10 of the *Municipal Franchises Act*.

Part III – Conditions

5. Approval of Construction

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

Engineer/Road Superintendent and all work done by the Gas Company shall be to his satisfaction.

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

- (h) The Gas Company shall not deviate from the approved location for any part of the gas system unless the prior approval of the Engineer/Road Superintendent to do so is received.
- (i) The Engineer/Road Superintendent's approval, where required throughout this Paragraph, shall not be unreasonably withheld.
- (j) The approval of the Engineer/Road Superintendent is not a representation or warranty as to the state of repair of the highway or the suitability of the highway for the gas system.

6. As Built Drawings

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

7. Emergencies

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

8. Restoration

The Gas Company shall well and sufficiently restore, to the reasonable satisfaction of the Engineer/Road Superintendent, all highways, municipal works or improvements which it may excavate or interfere with in the course of laying, constructing, repairing or removing its gas system, and shall make good any settling or subsidence thereafter caused by such excavation or interference. If the Gas

Company fails at any time to do any work required by this Paragraph within a reasonable period of time, the Corporation may do or cause such work to be done and the Gas Company shall, on demand, pay the Corporation's reasonably incurred costs, as certified by the Engineer/Road Superintendent.

9. Indemnification

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

10. Insurance

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

11. Alternative Easement

The Corporation agrees, in the event of the proposed sale or closing of any highway or any part of a highway where there is a gas line in existence, to give the Gas Company reasonable notice of such proposed sale or closing and, if it is feasible, to provide the Gas Company with easements over that part of the highway proposed to be sold or closed sufficient to allow the Gas Company to preserve any part of the

gas system in its then existing location. In the event that such easements cannot be provided, the Corporation and the Gas Company shall share the cost of relocating or altering the gas system to facilitate continuity of gas service, as provided for in Paragraph 12 of this Agreement.

12. Pipeline Relocation

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

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

Part IV - Procedural And Other Matters

13. Municipal By-laws of General Application

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

14. Giving Notice

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

15. Disposition of Gas System

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

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

16. Use of Decommissioned Gas System

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

17. Franchise Handbook

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

18. Other Conditions

None.

19. Agreement Binding Parties

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

Ontario Energy
Board

Commission de l'Énergie
de l'Ontario



RP-2003-0244
EB-2003-0304

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 under section 10 of the *Municipal Franchises Act*, R.S.O. 1990, c. M.55 for an order renewing the right to operate works for distribution and transmission of gas and to extend or add to the works in the area of the City of Kingston formerly known as the Township of Kingston;

AND IN THE MATTER OF an Application by Union Gas Limited for an order dispensing with the assent of the municipal electors of the City of Kingston regarding the by-law.

By delegation, before: Mark C. Garner

DECISION AND ORDER

Union Gas Limited (Union) has filed an application dated December 2, 2003 with the Ontario Energy Board under s. 10 of the *Municipal Franchises Act*, R.S.O. 1990, c. M.55 (MFA) for an order of the Board approving the terms and conditions upon which and the period for which the Corporation of the City of Kingston is, by by-law to grant to Union the right to operate works for the distribution and transmission of gas, and the right to extend and add to the works in the area of the City of Kingston formerly known as the Township of Kingston.

The Board has assigned file number RP-2003-0244/EB-2003-0304 to the application (Application).

Union holds a Certificate of Public Convenience and Necessity for the Township of Kingston (F.B.C. 62). Union and the Corporation of the Township of Kingston entered into a franchise agreement dated January 17, 1989 (E.B.A. 501) which has been extended and expires on January 17, 2005.

Effective January 1, 1998, the former City of Kingston, the Township of Pittsburgh and the Township of Kingston became the new City of Kingston.

Union has indicated its desire to renew the franchise agreement, however, there is no agreement between Union and the Corporation of the City of Kingston on the terms and conditions of a franchise agreement applicable to that area of the City of Kingston that was formerly the Township of Kingston.

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

The nearest neighbouring gas distributor is Utilities Kingston. It owns and operates a gas distribution system that serves the area in the City of Kingston as it existed prior to 1998. Utilities Kingston does not have a Certificate of Public Convenience and Necessity for the former Township of Kingston.

The Council of the Corporation of the City of Kingston has not passed a resolution supporting a by-law for the franchise agreement with Union.

On April 19, 2004 the Board received a letter from Union requesting that the Board, in the absence of a resolution from the City, commence the proceeding for Union's application to renew its franchise agreement for the area in question.

On September 1, 2004 the Board issued Notice of Application. Union served and published the Notice of Application in accordance with the Board's Letter of Direction.

On September 22, 2004, the Board received a notice of intervention from the City of Kingston (the City). The City, in its notice of intervention, informed the Board that the Council of the City of Kingston passed a motion, dated June 15, 2004, not to enter into the franchise agreement which is the subject of this application.

Procedural Order No. 1 was issued on November 24, 2004. No submissions objecting to the written hearing were filed with the Board. The City and the Applicant filed written submissions in accordance with the Procedural Order No. 1.

Position of the Parties

The Intervenor's position is that the Board does not have the power to issue orders under s. 10 of the MFA.

The City further maintained that the approval of the Application will represent "the infringement on the rights of all municipalities with respect to the delivery of public utility". The Intervenor also discussed the purpose of the consolidation of Ontario municipalities upon the direction of the province which was, in its opinion, to improve the efficiency and effectiveness of service delivery in Ontario's municipalities. The City further submitted that Board's approval of the Union's application would not improve the efficiency and effectiveness of service delivery and therefore would not be consistent with the direction of the province regarding the purpose of municipal amalgamation.

Union's submission focused on the issue of jurisdiction of the Board under s. 10 of the MFA. Its position is that the Board has jurisdiction to renew the franchise agreement pursuant to s. 10 of the MFA. Union supported its position by pre-filed evidence. Union referred to the fact that, in the year 2000, the Board granted its approval under s. 10 of the MFA to Union's application to renew a franchise agreement for the area of former Township of Pittsburgh in the amalgamated City of Kingston in almost exactly the same circumstances. Union also pointed that the Board's decision was affirmed by both the Divisional Court and the Court of Appeal for Ontario.

Union also maintained that public convenience and necessity requires that Union's existing franchise for the area of the former Township of Kingston be renewed, because Union is the only party with an existing infrastructure and that no other party, including the Kingston Utilities, can provide the service.

Board's Findings

I find that the Board does have a jurisdiction under s. 10 of the MFA. In particular, the Board has the jurisdiction to determine public convenience and necessity under s. 10 of the MFA.

This finding is consistent with its Decision with Reasons EBA 825, dated June 23, 2000, in the matter of application by Union for a franchise renewal within the City of Kingston to serve the area of the former Township of Pittsburgh. I also note that the EBA 825 decision was appealed by the City, on the same grounds that are stated in the City's submissions in the current Application. The EBA 825 decision was upheld by both the Divisional Court and the Court of Appeal for Ontario.

Accordingly, I find that public convenience and necessity require that the Board renew Union's right to operate works for the distribution and transmission of gas

and the right to extend and add works in the area of the City of Kingston formerly known as the Township of Kingston. I also find that the provisions of the 2000 Model Franchise Agreement constitute acceptable terms and conditions on which Union's rights are renewed.

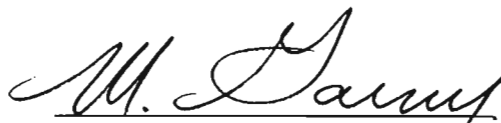
Based on the information provided in the application, granting the application is in the public interest.

IT IS ORDERED THAT:

1. Union Gas Limited's right to operate works for the distribution and transmission of gas in the area of the City of Kingston formerly known as the Township of Kingston and its right to extend or add to these works is renewed for a term of 20 years from the date of the issuance of this order in accordance with the terms and conditions other than section 4 set out in the document titled "2000 Model Franchise Agreement" attached as Appendix A.

DATED at Toronto January, 14, 2005.

ONTARIO ENERGY BOARD

A handwritten signature in cursive script, appearing to read "M. Garner", written in black ink.

Mark Garner, Managing Director
Market Operations

**APPENDIX A
TO BOARD DECISION AND ORDER
RP-2003-0244
EB-2003-0304**

DATED: January 14, 2005

2000 Model Franchise Agreement

THIS AGREEMENT effective this day of , 20

BETWEEN:

THE CORPORATION OF THE CITY OF KINGSTON

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 within the geographic area of the former Township of Kingston 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 geographic area formerly known as the Township of Kingston within the territorial limits of the Corporation on the date when this Agreement takes effect;
- (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 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

None.

19. **Agreement Binding Parties**

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

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

**THE CORPORATION OF THE
CITY OF KINGSTON**

Per:

Isabel Turner, Mayor

Per:

Carolyn Downs, Clerk

UNION GAS LIMITED

Per:

Christine Jackson, Assistant Secretary

ONTARIO FUEL BOARD

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

AND IN THE MATTER OF an application by Lakeland Natural Gas Limited for a certificate of public convenience and necessity to construct works and to supply gas to the inhabitants of the Township of Pittsburgh.

B E F O R E:

A. R. CROZIER, Chairman	}	Thursday, the 23rd day
D. M. TREADGOLD, Q.C., Commissioner		of February, 1956.
W. R. HOWARD, Commissioner		

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

UPON THE APPLICATION OF Lakeland Natural Gas Limited (hereinafter referred to as the "Applicant") for a certificate pursuant to the provisions of The Municipal Franchises Act, R.S.O. 1950, Chapter 249, Section 8 and amendments thereto, and at a public hearing of such application by the Board at the City of Toronto on the 23rd day of February, 1956, after due notice of such hearing had been given as directed by the Board, in the presence of counsel for the Applicant, and upon consideration of the evidence and exhibits produced at the hearing and upon hearing what was alleged by counsel aforesaid:

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

2. AND THIS BOARD DOTH FURTHER ORDER that the costs of this hearing are fixed at \$ 20.⁰⁰ and shall be paid

forthwith by the Applicant to the Board.

DATED at Toronto this 28th day of March, 1956.

ONTARIO FUEL BOARD

[Signature]

[Signature]

W. R. Howard

ONTARIO FUEL BOARD

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

AND IN THE MATTER OF an application by Lakeland Natural Gas Limited for a certificate of public convenience and necessity to construct works and to supply gas to the inhabitants of the Township of Kingston.

B E F O R E:

A. R. CROZIER, Chairman	}	THURSDAY, THE 23RD DAY
D. M. TREADGOLD, Q.C., Commissioner		OF FEBRUARY, 1956.
W. R. HOWARD, Commissioner		

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

UPON THE APPLICATION OF Lakeland Natural Gas Limited (hereinafter referred to as the "Applicant") for a certificate pursuant to the provisions of The Municipal Franchises Act, R.S.O. 1950, Chapter 249, Section 8 and amendments thereto, and at a public hearing of such application by the Board at the City of Toronto on the 23rd day of February, 1956, after due notice of such hearing had been given as directed by the Board, in the presence of counsel for the Applicant, and upon consideration of the evidence and exhibits produced at the hearing and upon hearing what was alleged by counsel aforesaid:

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

2. AND THIS BOARD DOTH FURTHER ORDER that the costs of this hearing are fixed at \$ 20.⁰⁰ and shall be paid

forthwith by the Applicant to the Board.

DATED at Toronto this 28th day of March, 1956.

ONTARIO FUEL BOARD

A. P. Jones

W. J. Macpherson

W. R. Howard

EB-2025-0XXX

Certificate of Public Convenience and Necessity

The Ontario Energy Board grants

Enbridge Gas Inc.

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

City of Kingston

within the areas previously identified as the former Township of Pittsburgh and the former Township of Kingston.

This certificate of public convenience and necessity cancels and supersedes the the F.B.C. 59 Certificate of Public Convenience and Necessity issued on March 28, 1956 related to the former Township of Pittsburgh and the F.B.C. 62 Certificate of Public Convenience and Necessity issued on March 28, 1956 related to the former Township of Kingston.

DATED at Toronto, _____, 2025

ONTARIO ENERGY BOARD

Theodore Antonopoulos
Vice President
Major Applications



Office of the City Clerk

I hereby certify that the following is a true and correct copy of Resolution Number 2025-77 with respect to Franchise Agreement – Enbridge Gas Inc., approved by Kingston City Council at its regular meeting on February 4, 2025:

That Council approve the Franchise Agreement with Enbridge Gas Inc. and draft By-Law attached as Exhibit A to Report Number 25-064 and authorize the submission thereof to the Ontario Energy Board, for the designated geographic area in the existing Certificates of Public Convenience and Necessity, for approval pursuant to the provisions of Section 9 of the Municipal Franchises Act; and

That Council request that the Ontario Energy Board make an Order declaring and directing that the assent of the municipal electors to the form of Franchise Agreement and draft By-Law attached as Exhibit A to Report Number 25-064 is not necessary pursuant to the provisions of Section 9(4) of the Municipal Franchises Act.

**Dated at Kingston, Ontario
this 10th day of February, 2025.**

[Original Signed By Janet Jaynes]

Janet Jaynes, City Clerk

**Reporting Out
City of Kingston
Meeting Number 2025-06
City Council Meeting**

Resolution Number 2025-77

Title: Franchise Agreement - Enbridge Gas Inc.

Date: Tuesday, February 4, 2025

Option 1:

That Council approve the Franchise Agreement with Enbridge Gas Inc. and draft by-law attached as Exhibit A to Report Number 25-064 and authorize the submission thereof to the Ontario Energy Board, for the designated geographic area in the existing Certificates of Public Convenience and Necessity, for approval pursuant to the provisions of Section 9 of the Municipal Franchises Act; and

That Council request that the Ontario Energy Board make an Order declaring and directing that the assent of the municipal electors to the form of Franchise Agreement and draft by-law attached as Exhibit A to Report Number 25-064 is not necessary pursuant to the provisions of Section 9(4) of the Municipal Franchises Act.

CARRIED



I, **Janet Jaynes** hereby certify this to be a true and correct copy of **By-Law Number 2025-96, "A By-Law to authorize The Corporation of the City of Kingston to authorize a Franchise Agreement between The Corporation of the City of Kingston (the "Corporation") and Enbridge Gas Inc."**, which By-Law received first and second reading by the Council of The Corporation of the City of Kingston on February 4, 2025

[Original Signed By Janet Jaynes]

Dated at Kingston, Ontario
this 10th day of February, 2025

Janet Jaynes, City Clerk
The Corporation of the City of Kingston

By-Law Number 2025-96

A By-Law to authorize The Corporation of the City of Kingston to authorize a Franchise Agreement between The Corporation of the City of Kingston (the "Corporation") and Enbridge Gas Inc.

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

Whereas the Ontario Energy Board by its Order issued pursuant to the Municipal Franchises Act on the ____ day of _____, 2025 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;

Therefore be it resolved that the Council of The Corporation of the City of Kingston hereby enacts as follows:

1. That the Franchise Agreement between The Corporation of the City of Kingston and Enbridge Gas Inc., for the designated geographic area in the existing Certificates of Public Convenience and Necessity, 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 City Clerk are hereby authorized and instructed on behalf of The Corporation of the City of Kingston 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. This By-Law shall come into force and take effect on the date of its passing.

Given First and Second Reading: February 4, 2025

2000 Model Franchise Agreement

THIS AGREEMENT effective this day of , 2025

BETWEEN:

THE CORPORATION OF THE CITY OF KINGSTON

hereinafter called the "Corporation"

- and -

ENBRIDGE GAS INC.

hereinafter called the "Gas Company"

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

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

THEREFORE, the Corporation and the Gas Company agree as follows:

Part I - Definitions

1. In this Agreement

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

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

Part II - Rights Granted

2. To provide gas service

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

3. To Use Highways

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

4. Duration of Agreement and Renewal Procedures

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

or

(b) If the Corporation has previously received gas distribution services, the rights hereby given and granted shall be for a term of 20 years from the date of final passing of the By-law provided that, if during the 20 year term of this Agreement, the Model Franchise Agreement is changed, then on the 7th anniversary and on the 14th anniversary of the date of the passing of the By-law, this Agreement shall be deemed to be amended to incorporate any changes in the Model Franchise Agreement in effect on such anniversary dates. Such deemed amendments shall not apply to alter the 20 year term.

(c) At any time within two years prior to the expiration of this Agreement, either party may give notice to the other that it desires to enter into negotiations for a renewed franchise upon such terms and conditions as may be agreed upon. Until such renewal has been settled, the terms and conditions of this Agreement shall continue, notwithstanding the expiration of this Agreement. This shall not preclude either party from applying to the Ontario Energy Board for a renewal of the Agreement pursuant to section 10 of the *Municipal Franchises Act*.

Part III – Conditions

5. Approval of Construction

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

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

6. **As Built Drawings**

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

7. **Emergencies**

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

8. **Restoration**

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

9. **Indemnification**

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

10. **Insurance**

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

11. **Alternative Easement**

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

12. **Pipeline Relocation**

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

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

Part IV - Procedural And Other Matters

13. Municipal By-laws of General Application

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

14. Giving Notice

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

15. Disposition of Gas System

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

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

16. **Use of Decommissioned Gas System**

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

17. **Franchise Handbook**

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

18. **Other Conditions**

None.

19. **Agreement Binding Parties**

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

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

THE CORPORATION OF THE CITY OF KINGSTON

Per: _____
Bryan Paterson, Mayor

Per: _____
Janet Jaynes, City Clerk

ENBRIDGE GAS INC.

Per: _____
Mark Kitchen, Director, Regulatory Affairs

Per: _____
Neil MacNeil, Director, Regional Operations