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Shari Lynn Spratt
Supervisor Regulatory Proceedings
Regulatory Affairs
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VIA COURIER AND RESS

December 4, 2008

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

Dear Ms. Walli:

**Re: Enbridge Gas Distribution Inc. ("Enbridge") Application for
Franchise Agreement with the Township of East Garafraxa ("Township")**

Enbridge wishes to apply to the Ontario Energy Board (the "Board") for an order granting approval for a franchise agreement with the Township, using the 2000 Model Franchise Agreement.

History

Enbridge applied to the Board on March 1, 1995 for a franchise agreement and certificate of public convenience and necessity ("certificate"), Board file numbers EBA 698 and EBC 223. By oral hearing and decision the Board approved a franchise agreement between Enbridge and the Township on June 29, 1995 and on July 20, 1995 the Board issued an Order approving the franchise agreement.

With respect to a certificate, the Board indicated that it would approve a certificate once the Company could provide a letter from the Ministry of Municipal Affairs confirming that draft plan approval had been given for at least another 390 lots in the area of the proposed service. Draft plan approval was filed with the Board on June 10, 1997, a letter from Enbridge, then operating as The Consumers' Gas Company Ltd. ("Consumers"), dated August 21, 1997 confirmed the number of draft plan approved lots exceeded the number required by the Board, and on September 21, 1997 the Board approved the certificate provided Consumers substantially complete construction of the gas mains proposed in the Application within twenty-four months following the issuance of the Board's Certificate, otherwise the certificate would expire. Enbridge is now providing gas to in excess of 500 homes and to a school in East Garafraxa.

Unfortunately, subsequent to approval of the franchise agreement and issuance of the certificate two years later a by-law authorizing the franchise agreement between Enbridge and the Municipality was never passed, nor the franchise agreement executed – an oversight possibly due to the lapse of two years between approvals.

Relief Sought

Enbridge is submitting this application now, using the 2000 Model Franchise Agreement, in order to fill this gap and be compliant with Board procedures.

The application and supporting documentation have been filed through the Board's Regulatory Electronic Submission System; as well please find enclosed two paper copies of the following:

1. The aforementioned application
2. Schedule A – A map showing the location of the Township of East Garafraxa
3. Schedule B – Board Order – EBA 698 approving the current Franchise Agreement – July 20, 1995
4. Schedule C - The Certificate of Public Convenience and Necessity for the Township of East Garafraxa (E.B.C. 223) – September 2, 1997
5. Schedule D – The signed Resolution from the Township, the form of the by-law, and the proposed franchise agreement

Contacts

The contact information for this matter follows below:

Corporation of the Township of East Garafraxa
R.R. #3,
Orton, Ontario L0N 1N0
Tel: (519) 928-5298
Fax: (519) 941-1802
Attn: Sandra Stone
CAO/Clerk-Treasurer

Enbridge Gas Distribution Inc. (Head Office)
500 Consumers' Road
Toronto, Ontario M2J 1P8
Tel: (416) 495-5499 or 1-888-659-0685
Fax: (416) 495-6072
Email: EGDRRegulatoryProceedings@Enbridge.com
Attn: Tania Persad
Senior Legal Counsel, Regulatory

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Ms. Kirsten Walli
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Enbridge Gas Distribution Inc. (Regional Office)
6 Colony Court
Brampton, Ontario L6T 4E4
Tel: (905) 458-2135
Fax: (905) 458-2129
Attn: John Finkbiner
Manager Sales Development
Central Region West

Enbridge looks forward to receiving direction from the Board in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Shari Lynn Spratt".

Shari Lynn Spratt
Supervisor Regulatory Proceedings

Enclosures

cc: Tania Persad – Senior Legal Counsel, Regulatory
John Finkbiner – Manager Sales Development – Central Region West

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 Distribution Inc. for an order extending
the term of the right to construct or operate works for
the distribution of gas, and the right to extend or add
to the works, in the Township of East Garafraxa.

A P P L I C A T I O N

1. Enbridge Gas Distribution Inc. (the "Applicant") is an Ontario corporation with its head office in the City of Toronto.
2. The Corporation of the Township of East Garafraxa ("Corporation") is a municipal Ontario corporation with its head office at R.R. #3, Orton, Ontario, L0N 1N0. The Corporation's CAO/Clerk-Treasurer is Ms. Susan Stone. Attached hereto and marked as Schedule "A" is a map showing the geographical location of the Township of East Garafraxa ("Municipality").
3. The Applicant and the Corporation are party to an Ontario Energy Board ("Board") Order approving a franchise agreement dated July 20, 1995, which agreement was never executed by the parties, likely due to inadvertence and the passage of time between issuance of the Order and the Certificate. Attached hereto and marked as Schedule "B" is a copy of the Board Order.
4. The Applicant possesses a certificate of public convenience and necessity dated September 2, 1997 (the "Certificate") permitting the Applicant to distribute, store and transmit gas in the part of the Municipality. A copy of the Certificate is attached hereto and marked as Schedule "C".
5. The Applicant wishes to acquire a municipal gas franchise with the Corporation and to serve the Municipality in accordance with the Certificate. The Applicant respectfully submits that it is in the public interest to do so. Attached hereto and marked as Schedule "D" is a signed resolution, the form of the Corporation's by-law granting to the Applicant the franchise renewal, and a copy of the proposed franchise agreement between the Applicant and the Corporation ("the Agreement").

6. The proposed municipal gas franchise agreement is in the form of the Board approved 2000 Model Franchise Agreement, with no amendments and is for a term of twenty years.
7. The Applicant hereby applies to the Board, pursuant to Section 9 of the *Municipal Franchises Act*, R.S.O. c. M.55, for:
 - i) an Order renewing the Applicant's right to distribute, store, and transmit gas in and through the Municipality for such period of time and upon the terms set out in the Agreement, or as may otherwise be prescribed by the Board;
 - ii) an Order directing and declaring that the assent of the municipal electors to the terms and conditions of the franchise agreement is not necessary; and
8. The persons affected by this application are the customers and other residents in the Municipality. Because of the number of such persons, it is impractical to set out their names and addresses herein.

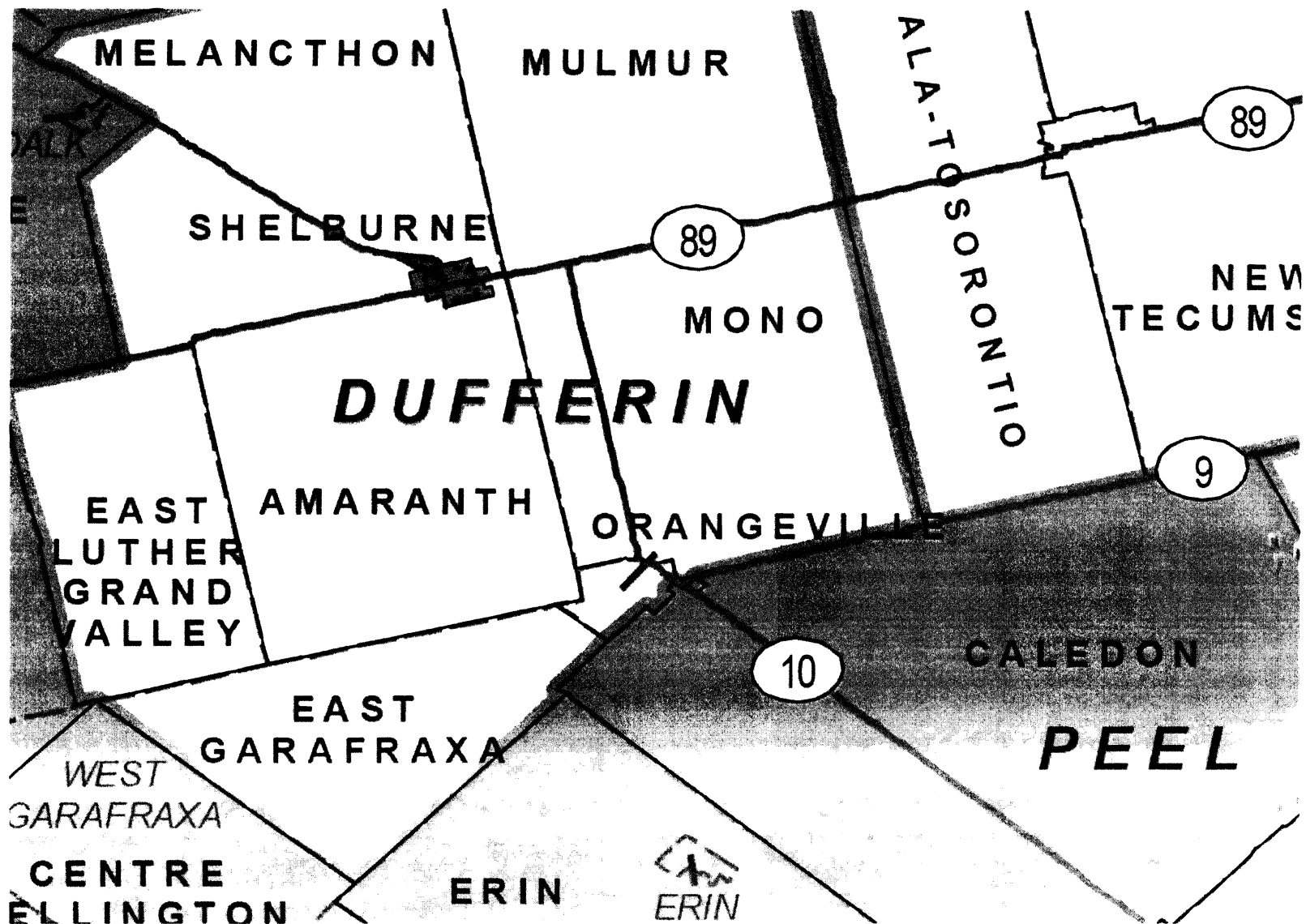
DATED at Toronto this 2nd day of December, 2008.

ENBRIDGE GAS DISTRIBUTION INC.
500 Consumers Road
Toronto ON M2J 1P8
by its Solicitor



Tania Persad
Senior Legal Counsel, Regulatory
Tel: (416) 495-5891
Fax: (416) 495-5994
E-mail: Tania.persad@enbridge.com

Mailing Address:
P.O. Box 650
Toronto ON M1K 5E3





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

AND IN THE MATTER OF an Application by The Consumers' Gas Company Ltd. for an order approving the terms and conditions upon which and the period for which the Corporation of the Township of East Garafraxa is, by by-law, to grant to The Consumers' Gas Company Ltd. rights to construct and to operate works for the distribution of gas and to supply gas to the inhabitants of the said municipality;

AND IN THE MATTER OF an Application by The Consumers' Gas Company Ltd. for an order dispensing with the assent of the municipal electors of the Corporation of the Township of East Garafraxa regarding the said by-law.

O R D E R

The Consumers' Gas Company Ltd. ("Consumers Gas") filed an Application dated March 1, 1995 with the Ontario Energy Board ("the Board") under section 9 of the Municipal Franchises Act (the "Act") for approval of the terms and conditions upon which, and the period for which, the right to construct and operate works for the distribution of gas in the Township of East Garafraxa, and the right to supply gas to the inhabitants of the Township of East Garafraxa is to be granted to Consumers Gas.

A resolution was passed by the Council of the Corporation of the Township of East Garafraxa, dated December 6, 1994, approving the form of a draft by-law ("the Draft By-law") authorizing a franchise agreement ("the Franchise Agreement") between Consumers Gas and the Corporation of the Township of East Garafraxa, and requesting the Board to dispense with the assent of the municipal electors to the Draft By-law.

The Franchise Agreement is attached as Appendix "A".

Consumers Gas also requested that the Board declare and direct, pursuant to section 9(4) of the Act, that the assent of the municipal electors to the Draft By-law is not necessary.

The Notices of Application were served on all parties as directed by the Board.

The Application was heard in Toronto on June 20, 21, and 22, 1995, in the presence of counsel for Consumers Gas and counsel for Board Staff. The Board issued an oral decision on June 29, 1995, finding the Application to be in the public interest.

THE BOARD THEREFORE ORDERS THAT:

1. THE BOARD APPROVES the terms and conditions upon which, and the period for which, the right to construct and operate works for the distribution of gas in the Township of East Garafraxa and its inhabitants is to be granted, as stated in the proposed Franchise Agreement attached as Appendix "A".
2. THE BOARD DECLARES AND DIRECTS that the assent of the municipal electors of the Township of East Garafraxa to the Draft By-law is not necessary.
3. The Board's costs shall be paid by Consumers Gas forthwith upon the issuance of the Board's invoice.

ISSUED at Toronto, July 20, 1995

ONTARIO ENERGY BOARD

A handwritten signature in dark ink, appearing to read "Paul B. Pudge", is written over a horizontal line.

Paul B. Pudge

Board Secretary

Appendix "A" to Board Order E.B.A.
698, dated July 20, 1995.

A handwritten signature in cursive script, appearing to read "Paul B. Pudge". The signature is written in dark ink and is positioned above the printed name.

Paul B. Pudge

Board Secretary

THE CONSUMERS' GAS COMPANY LTD.

FRANCHISE AGREEMENT

THIS AGREEMENT made this day of , 19
BETWEEN:

THE CORPORATION OF THE TOWNSHIP
OF EAST GARAFRAXA

hereinafter called the "Corporation"

- and -

THE CONSUMERS' GAS COMPANY LTD.

hereinafter called the "Gas Company"

WHEREAS the Gas Company desires to distribute and sell 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 and the Clerk have been authorized and directed to execute this Agreement on behalf of the Corporation:

THEREFORE the Corporation and the Gas Company agree as follows:

I Definitions--

1. In this Agreement:

- (a) "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;
- (b) "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 supply, transmission and distribution of gas in or through the Municipality;
- (c) "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;
- (d) "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;
- (e) "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.

II Rights Granted

1. To provide gas service.

The consent of the Corporation is hereby given and granted to the Gas Company to supply gas in the Municipality to the Corporation and to the inhabitants of the Municipality.

2. To use road allowances.

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 supply, distribution and transmission of gas in and through the Municipality.

3. Duration of Agreement and Renewal Procedures.

The rights hereby given and granted shall be for a term of * years from the date of final passing of the By-law.

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. Nothing herein stated shall 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**.

III Conditions

1. Approval of Construction.

Before beginning construction of or any extension or change to the gas system (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 location, showing the highways in which it proposes to lay its gas system and the particular parts thereof it proposes to occupy. Geodetic information will not be required except in complex urban intersections in order to facilitate known projects, being projects which are reasonably anticipated by the Engineer/Road Superintendent. The Engineer/Road Superintendent may require sections of the gas system to be laid at a greater depth than required by C.S.A. Z184-M1986 to facilitate known projects. The location of the work as shown on the said plan must be approved by the Engineer/Road Superintendent before the commencement of the work and the timing, terms and conditions relating to the installation of such works shall be to his satisfaction.

Notwithstanding the provisions of the above noted paragraph, in the event it is proposed to affix a part of the gas system to a bridge, viaduct or structure, the Engineer/Road Superintendent may, if the Engineer/Road Superintendent approves of such location, require special conditions or a separate agreement.

No excavation, opening or work which shall disturb or interfere with the surface of the travelled portion of any highway shall be made or done unless a permit therefor has first been obtained from the Engineer/Road Superintendent and all works shall be done to his satisfaction.

The Engineer/Road Superintendent's approval, where required throughout this section, shall not be withheld unreasonably.

2. As Built Drawings.

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. After completion of the construction, where plans were initially filed, an "as built" plan of equal quality to the pre-construction plan or certification that the pre-construction plan is "as built" will be filed with the Engineer/Road Superintendent.

3. Emergencies.

In the event of an emergency involving the gas system, the Gas Company will proceed with the work and in any instance where prior approval of the Engineer/Road Superintendent is normally required, 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 having jurisdiction.

* The rights given and granted for a first agreement shall be for a term of 20 years. The rights given and granted for any subsequent agreement shall be for a term of not more than 15 years, unless both parties agree to extend the term to a term of 20 years maximum.

4. 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 any reasonable account therefor as certified by the Engineer/Road Superintendent.

5. 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.

6. 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 to provide, if it is feasible, 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 will share, as provided in clause III, 7 of this Agreement, in the cost of relocating or altering the gas system to facilitate continuity of gas service.

7. Pipeline Relocation.

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.

Where any part of the gas system relocated in accordance with this section is located on a bridge, viaduct or structure, the Gas Company shall alter or relocate, at its sole expense, such part of the gas system.

Where any part of the gas system relocated in accordance with this section 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:

- (a) 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,
- (b) 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,
- (c) the amount paid by the Gas Company to contractors for work related to the project,
- (d) the cost to the Gas Company for materials used in connection with the project, and
- (e) a reasonable amount for project engineering and project administrative costs which shall be 22.5% of the aggregate of the amounts determined in items (a), (b), (c) and (d) above.

The total relocation costs as calculated above shall be paid 35% by the Corporation and 65% by the Gas Company.

3. Notice to Drainage Superintendent.

In a case where the gas system may affect a municipal drain, the Gas Company shall file with the Drainage Superintendent, for purposes of the Drainage Act, or other person responsible for the drain, a copy of the plan required to be filed with the Engineer/Road Superintendent.

IV Procedural And Other Matters

1. Municipal By-laws of General Application.

This Agreement and the respective rights and obligations hereunto of the parties hereto are hereby declared to be subject to the provisions of all regulating statutes and all municipal by-laws of general application and to all orders and regulations made thereunder from time to time remaining in effect save and except by-laws which impose permit fees and by-laws which have the effect of amending this Agreement.

2. Giving Notice.

Notices may be given by delivery or by mail, and if mailed, by prepaid registered post, to the Gas Company at its head office or to the Clerk of the Corporation at its municipal offices, as the case may be.

3. Disposition of Gas System.

During the term of this Agreement, if the Gas Company abandons a part of its gas system affixed to a bridge, viaduct or structure, the Gas Company shall, at its sole expense, remove that part of its gas system affixed to the bridge, viaduct or structure.

If at any time the Gas Company abandons any other part of its gas system, it shall deactivate that part of its gas system in the Municipality. Thereafter, the Gas Company shall have the right, but nothing herein contained shall require it, to remove its gas system. If the Gas Company fails to remove its gas system and the Corporation requires the removal of all or any of the 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 deactivated 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.

4. Agreement Binding Parties.

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

IN WITNESS WHEREOF the parties hereto have duly executed these presents with effect from the date first above written.

THE CORPORATION OF THE TOWNSHIP OF EAST GARAFRAXA

Clerk

THE CONSUMERS' GAS COMPANY LTD.



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

AND IN THE MATTER OF an Application by
The Consumers' Gas Company Ltd. for a
certificate of public convenience and necessity to
construct works to supply gas and to supply gas
to the inhabitants of the Corporation of the
Township of East Garafraxa.

BEFORE: G.A. Dominy
Vice-Chair and Presiding Member

H.G. Morrison
Member

**ORDER GRANTING A CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY**

The Consumers' Gas Company Ltd. ("Consumers Gas") filed with the Ontario Energy Board ("the Board") an Application dated March 1, 1995 ("the Application") under section 8 of the Municipal Franchises Act, for a certificate of public convenience and necessity to construct works to supply gas and to supply gas to the Township of East Garafraxa.

The Board's Notice of Application, dated April 3, 1995, was served on all parties as directed by the Board. The Board issued a Procedural Order dated May 4, 1995 and a Notice of Hearing dated June 13, 1995.

The Application was heard in Toronto on June 20, 21 and 22, 1995 in the presence of counsel for Consumers Gas and counsel for Board Staff. The Board issued an oral decision on June 29, 1995, in which the Board approved the Application subject to a letter from the Ministry of Municipal Affairs or the approving authority, confirming

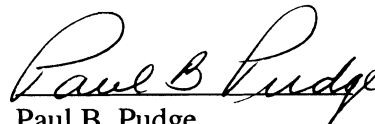
that draft plan approval had been given for at least another 390 lots in the area of the proposed service. The draft plan approval from the Town of Orangeville was filed with the Board on June 10, 1997. A letter from counsel for Consumers Gas, dated August 21, 1997, confirmed that the number of draft plan approved lots now exceeds the number required by the Board. Accordingly the Board now finds that the application is in the public interest and hereby approves the granting of a certificate of public convenience and necessity.

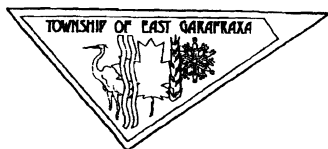
THEREFORE THE BOARD ORDERS THAT:

1. A Certificate of Public Convenience and Necessity ("the Certificate") is granted to Consumers' Gas to construct works to supply gas and to supply gas in the Township of East Garafraxa.
2. If Consumers' Gas should fail to substantially complete construction of the gas mains proposed in the Application within twenty-four months following the issuance of the Board's Certificate, the Certificate shall expire.
3. The Board's costs shall be paid by Consumers' Gas forthwith upon the issuance of the Board's invoice.

ISSUED at Toronto, September 2, 1997

ONTARIO ENERGY BOARD


Paul B. Pudge
Board Secretary



TOWNSHIP OF EAST GARAFRAXA

DATE: November 12, 2008

MOVED BY

SECONDED BY

Be it Resolved

COUNCIL APPROVES THE FORM OF DRAFT BY-LAW (INCLUDING THE FRANCHISE AGREEMENT FORMING PART THEREOF) ATTACHED HERETO AND AUTHORIZES THE SUBMISSION THEREOF TO THE ONTARIO ENERGY BOARD FOR APPROVAL PURSUANT TO THE PROVISIONS OF SECTION 9 OF THE MUNICIPAL FRANCHISES ACT;

AND THAT COUNCIL OF THE TOWNSHIP OF EAST GARAFRAXA REQUESTS THE ONTARIO ENERGY BOARD TO MAKE AN ORDER DISPENSING WITH THE ASSENT OF THE MUNICIPAL ELECTORS OF THE ATTACHED DRAFT BY-LAW (INCLUDING THE FRANCHISE AGREEMENT FORMING PART THEREOF) PURSUANT TO THE PROVISIONS OF SECTION 9(4) OF THE MUNICIPAL FRANCHISES ACT.

I hereby certify that this is true copy of the original document which has not been altered in any way.

Susan M. Stone Date: *Nov. 18/08*
 Susan M. Stone, CAO/Clerk Treasurer,
 Commissioner of Oaths, Twp. of East Garafraxa

CARRIED

MAYOR

Recorded VoteYEANAYABSTAIN

Deputy Mayor Guy Gardhouse
 Councillor Allan Boynton
 Councillor Tom Nevills
 Councillor Frances Pinkney
 Mayor Allen Taylor

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THE CORPORATION OF THE TOWNSHIP OF EAST GARAFRAXA
("CORPORATION")

BY-LAW NUMBER _____

**A BY-LAW TO AUTHORIZE A FRANCHISE AGREEMENT
BETWEEN THE CORPORATION AND
ENBRIDGE GAS DISTRIBUTION INC.**

WHEREAS the Council of the Corporation deems it expedient to enter into the attached franchise agreement with Enbridge Gas Distribution Inc.;

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 for in the attached 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 BE IT ENACTED:

1. That the attached franchise agreement between the Corporation Enbridge Gas Distribution Inc. is hereby authorized and the franchise provided for therein is hereby granted.
2. That the Mayor and the Clerk are hereby authorized and instructed on behalf of the Corporation to enter into and execute under its corporate seal and deliver the aforesaid agreement, which agreement is hereby incorporated into and shall form part of this By-law.

Read the first and second time this _____ day of _____, 20____ .

Clerk

Mayor

Read the third time and ENACTED AND PASSED this _____ day of _____, 20____ .

Clerk

Mayor

Model Franchise Agreement

THIS AGREEMENT effective this day of , 2005.

BETWEEN: The Corporation of the Township of East Garafraxa hereinafter
called the

"Corporation"

- and -

Enbridge Gas Distribution 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 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 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. 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 TOWNSHIP OF EAST
GARAFRAXA

By: _____

By: _____

Duly Authorized Officer

ENBRIDGE GAS DISTRIBUTION INC.

By: _____

By: _____

DATED this day of , 2008.

THE CORPORATION OF THE
TOWNSHIP OF EAST GARAFRAXA

- and -

ENBRIDGE GAS DISTRIBUTION INC.

FRANCHISE AGREEMENT

Enbridge Gas Distribution Inc.
500 Consumers Road
North York, Ontario
M2J 1P8

Attention: Regulatory Affairs Department

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