




TO: GENERAL COMMITTEE

SUBJECT: ENBRIDGE GAS FRANCHISE AGREEMENT

PREPARED BY AND
KEY CONTACT: M. NUGENT
POLICY AND STANDARDS SUPERVISOR (Ext. 4301)

SUBMITTED BY: B. PARKIN, P. Eng.
DIRECTOR OF CORPORATE ASSET MANAGEMENT 

GENERAL MANAGER
APPROVAL: R. J. FORWARD, MBA, M.Sc., P. Eng.
GENERAL MANAGER OF INFRASTRUCTURE & GROWTH MANAGEMENT 

CHIEF ADMINISTRATIVE
OFFICER APPROVAL: CARLA LADD
CHIEF ADMINISTRATIVE OFFICER 

RECOMMENDED MOTION

1. That the form of draft by-law attached as Appendix "A" and the model franchise agreement between the Corporation and Enbridge Gas Distribution Inc. attached as Appendix "B" to Staff Report CAM002-13 be approved, and that such documents be submitted to the Ontario Energy Board for approval pursuant to the provisions of Section 9 of the Municipal Franchises Act.
2. That the Ontario Energy Board be requested to make an order declaring and directing that the assent of the municipal electors to the attached by-law (including the franchise agreement forming part thereof) is not necessary pursuant to Section 9(4) of the Municipal Franchises Act.
3. That the Mayor and City Clerk be authorized to execute any and all agreements and ancillary documents, relating to the franchise agreement that may be requisite, following receipt of the necessary approval by the Ontario Energy Board, and that the City Clerk be authorized to prepare a by-law authorizing same.

PURPOSE & BACKGROUND

4. The purpose of this report is to seek Council's approval to enter into a new Franchise Agreement with Enbridge Gas Distribution Inc. (Enbridge). The current agreement with Enbridge (formerly the Consumers Gas Company) will expire in January 25, 2014.
5. The Municipal Franchise Act requires a franchise agreement between a Municipal Corporation and the Gas Company serving the municipality. Under the Act, the supply and distribution of natural gas in Ontario is regulated by the Ontario Energy Board (OEB).
6. Franchise Agreements establish the rights to install, maintain, distribute, store, and transmit gas to the Corporation and inhabitants within the municipality and the right to utilize municipal rights-of way, and to establish conditions of occupancy.
7. The Corporation has had two, twenty year concurrent Franchise Agreements in place with Enbridge since 1957. In early 1999, the Corporation entered into a fifteen (15) year Franchise Agreement with Enbridge.
8. Over the years, the form of agreement that is used between municipalities and natural gas suppliers has been standardized to the point that the OEB endorses a single specific Model Franchise Agreement.

9. The Model Franchise Agreement was developed by the OEB with the input from the Association of Municipalities of Ontario (AMO) and the gas industry. The original franchise model was sanctioned by the OEB in 1987. In 1999, AMO obtained approval from the OEB to work with the gas industry to update the model agreement. The revised agreement negotiated between AMO and the gas industry was approved by the OEB in early 2000 and is currently utilized.
10. Enbridge renews all municipal franchise agreements in Ontario using the 2000 model agreement, a copy of which is attached to this report as Appendix B.

ANALYSIS

11. The Municipal Franchise Act establishes that in order for a municipality to grant a gas distributor the right to occupy a municipal highway (by laying a pipeline along a municipal right-of-way), or to construct or operate a public utility (natural gas or other gas works), or to supply gas to the corporation or its inhabitants, a by-law must, unless waived by the OEB, receive the assent of the municipal electors.
12. The approved by-law will be submitted to the OEB for approval since the OEB has jurisdiction over the delivery of natural gas. The Municipal Franchise Act requires that consent of the municipal electors be obtained, but also provides that the OEB may dispense with this requirement. Since the provision of natural gas in the City is a well established service in the City, and this is a renewal only, it is reasonable to request that the OEB dispense with this requirement.
13. The new franchise agreement with Enbridge follows the same terms and conditions contained in the 2000 Model Gas Franchise Agreement. In accordance with the Municipal Franchises Act, all agreements are subject to OEB approval and the OEB can hold a public hearing prior to any approval.
14. The general form of the proposed draft by-law is provided as Appendix A. The by-law makes reference to the Model Franchise Agreement (Appendix B) that outlines the terms and conditions of the new agreement. This will be included as Schedule A of the by-law.
15. A summary of the changes in the new agreement are listed in Appendix C. The proposed agreement has updated provisions that make it more beneficial to the Corporation.
16. The Corporation will continue to impose fees or charges to recover reasonable costs for issuing gas related municipal consents and road activity permits as permitted by Regulation 584/06 to the Municipal Act and the current fees by-law.

ENVIRONMENTAL MATTERS

17. There are no environmental matters related to the recommendation.

ALTERNATIVES

18. The following Alternative is available for consideration by General Committee:

Alternative #1 General Committee could submit a written appeal to the Ontario Energy Board providing sufficient evidence as to why the OEB should deviate from the model franchise agreement.

This alternative is not recommended as other municipalities that have appealed to the OEB have not been granted flexibility.

FINANCIAL

19. There are no financial implications for the Corporation resulting from the proposed recommendation

LINKAGE TO 2010 – 2014 COUNCIL STRATEGIC PLAN

20. The recommendation(s) included in this Staff Report are not specifically related to the goals identified in the 2010-2014 City Council Strategic Plan.

APPENDIX "A"

THE CORPORATION OF THE CITY OF BARRIE ("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 and 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 _____, 2013.

Clerk

Mayor

Read the third time and ENACTED AND PASSED this _____ day of _____, 2013.

Clerk

Mayor

APPENDIX "B"

Model Franchise Agreement

THIS AGREEMENT effective this day of , 2013.

BETWEEN: The Corporation of the City of Barrie 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 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. 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 BARRIE

By: _____

By: _____

Duly Authorized Officer

ENBRIDGE GAS DISTRIBUTION INC.

By: _____

By: _____

DATED this day of , 2013.

THE CORPORATION OF THE
CITY OF BARRIE

- and -

ENBRIDGE GAS DISTRIBUTION INC.

FRANCHISE AGREEMENT

ENBRIDGE GAS DISTRIBUTION INC.
500 Consumers Road
North York, Ontario
M2J 1P8

Attention: Regulatory Affairs Department

APPENDIX C

Summary of Changes in New Agreement

Definitions

- Decommissioned parts of the gas system has been defined to 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;

Rights Granted

Duration of Agreement and Renewal Procedure:

- The standard agreement term is 20 years a change from the existing term of 15 years. Under the new agreement if there is any update to the Model Franchise Agreement over the term, any new provisions will deem to take effect on the 7th and 14th anniversary of the date of the agreement. Under the new agreement, either party may give notice of a desire to renew and may apply to the OEB for a renewal.

Conditions

Approval of Construction:

- The new agreement includes specific wording which would allow the City to request geodetic control information or to install plant at greater depths than CSA standards.

As-Built Drawings:

- The new agreement requires submission of as-builts within six months of installation for any part of the system. The City may also request copies in electronic format.

Insurance Requirement:

- The new agreement specifically requires Enbridge to maintain Comprehensive General Liability Insurance, at all times, that indemnifies the City from and against all liabilities resulting from the gas system and works undertaken within the municipal rights-of-way, excluding those that are a result of a negligent act by the City. The original agreement did not provide for this.

Pipeline Relocation:

- 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.

Procedural Matters

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.

Use of Decommissioned Gas System:

- The new agreement gives Enbridge the authority to allow a third party to use a decommissioned gas system for purposes other than distribution of gas and to charge a fee for use of the system. The fee cannot however, include a cost for use of the highway. The third party must also have a Municipal Access Agreement in place with the Corporation.