

THE CORPORATION OF THE CITY OF BROCKVILLE

BY-LAW NO. 111 - 97

**BY-LAW TO AUTHORIZE A FRANCHISE
AGREEMENT BETWEEN THE CORPORATION AND
THE CONSUMERS' GAS COMPANY**

WHEREAS the Council of the Corporation of the City of Brockville deems it expedient to enter into the attached franchise agreement with The Consumers' Gas Company Ltd.; and

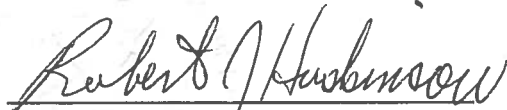
WHEREAS the Ontario Energy Board by its Order issued pursuant to The Municipal Franchises Act on the 25th day of July, 1997 has approved the terms and conditions upon which and the period for which the franchise provided for in the attached agreement is proposed to be granted, and has declared and directed that the assent of the municipal electors in respect of this By-law is not necessary; and

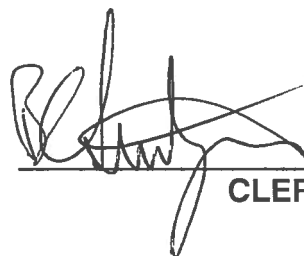
WHEREAS The Consumers' Gas Company Ltd. has provided the Corporation with a consent to the repeal of the By-law hereinafter referred to:

NOW THEREFORE BE IT ENACTED:

1. That the attached franchise agreement between the Corporation and The Consumers' Gas Company Ltd. 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.

ENACTED AND PASSED THIS 25th DAY OF NOVEMBER, 1997.


MAYOR


CLERK

1996 12 09

REPORT TO COUNCIL - DECEMBER 17, 1996

96-287-12

RENEWAL OF FRANCHISE -
CONSUMERS GAS

W.A.G. MONTGOMERY, C.E.T.
DIRECTOR OF OPERATIONS
C. J. COSGROVE, P. ENG.
MUNICIPAL ENGINEER

RECOMMENDATION

THAT Council approve the form of draft by-law attached hereto, including the Franchise Agreement with the Consumers Gas Company Ltd. and Letter of Understanding forming part thereof, and authorize 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 request the Ontario Energy Board to make an order dispensing with the assent of the municipal electors of the draft by-law, including all attachments, pursuant to the provisions of Section 9(4) of the Municipal Franchises Act.

ORIGIN

The renewal of the franchise with Consumers Gas, originally approved for a 20-year term in 1976, was initially brought to the Finance/Administration Committee at the July 22, 1996 meeting. However, at that meeting staff requested that the matter be tabled pending further review.

ANALYSIS

The proposed Franchise Agreement is appended to this report as Attachment 1.

Of particular concern to staff was Clause 1 of Section IV of the Agreement, which prohibits the imposition of permit fees. As Council is aware, staff were considering bringing forward a recommendation to implement a fee for Excavation Permits. (The fee has since been approved by Council.)

Staff were of the opinion that Bill 26, the Savings and Restructuring Act, provided municipalities with the ability to charge all utility companies, including natural gas utilities, fees for Excavation Permits.

Lengthy discussions have been held throughout the fall with Consumers Gas, who maintain that natural gas utilities remain exempt from permit fees under Bill 26. Despite assistance from the City's solicitor, it became apparent that Bill 26 was sufficiently vague that this issue, if pursued, would only be resolved through a lengthy legal process.

Given that a new Municipal Act is currently moving through the legislative process, hopefully with a clarification on the issue of permit fees and natural gas utilities, staff agreed with Consumers Gas to propose the inclusion of a Letter of Understanding (Attachment 2) with the Franchise Agreement.

This letter would allow the future implementation of permit fees, should this be permitted by regulation, at any time during the 20-year duration of the proposed Franchise Agreement.

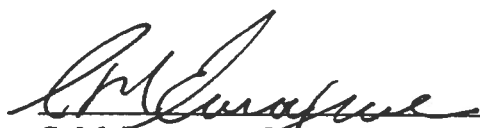
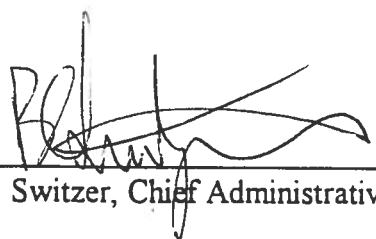
Should Council support the recommendations contained within this report, the draft by-law (Attachment 3), Franchise Agreement and Letter of Understanding would be submitted to the Ontario Energy Board for approval.

FINANCIAL CONSIDERATIONS

There are no direct financial costs to the City with respect to the Franchise Agreement. Fees for natural gas usage are passed on to the consumers, directly.

Under deregulation, users can enter into separate agreements with other consortiums. If they are successful in acquiring natural gas at a lower cost, they can achieve a rebate.

If municipalities are clearly given the ability to charge permit fees to natural gas utilities, the City would realize an estimated \$6,000.00 in additional Excavation Permit revenues on an annual basis (100 permits @ \$60.00/permit).


C. M. Larocque, Treasurer
B. C. Switzer, Chief Administrative Officer/Clerk

BY-LAW NUMBER _____

**A BY-LAW TO AUTHORIZE A FRANCHISE AGREEMENT
BETWEEN THE CORPORATION AND
THE CONSUMERS' GAS COMPANY LTD.**

WHEREAS the Council of the Corporation deems it expedient to enter into the attached franchise agreement with The Consumers' Gas Company Ltd:

AND WHEREAS the Ontario Energy Board by its Order issued pursuant to The Municipal Franchises Act on the _____ day of _____, 19____ 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;

AND WHEREAS The Consumers' Gas Company Ltd. has provided the Corporation with a consent to the repeal of the By-law hereinafter referred to:

NOW THEREFORE BE IT ENACTED:

1. That the attached franchise agreement between the Corporation and The Consumers' Gas Company Ltd. 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.
3. That the By-law referred to in Schedule "A" annexed hereto and forming part of this By-law is hereby repealed insofar as it applies to any area within the present geographic limits of the Corporation.

ENACTED AND PASSED this 25 day of

November, 1997

Clerk

Mayor

THE CONSUMERS' GAS COMPANY LTD.

FRANCHISE AGREEMENT

THIS AGREEMENT made this
BETWEEN:

25

day of

November

1997

THE CORPORATION OF THE
CITY OF BROCKVILLE

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 Mayor 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:

1 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 twenty (20)* 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 CAN/CSA- Z184-M92 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 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.

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.

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.

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.

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.

Procedural And Other Matters

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.

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.

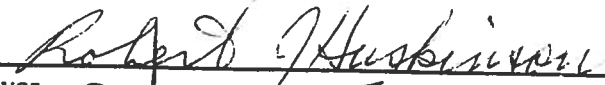
If at any time the Gas Company abandons any other part of its gas system, it shall deactivate that part of its gas system in the Municipality. Thereafter, the Gas Company shall have the right, but nothing herein contained shall require it, to remove its gas system. If the Gas Company fails to remove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

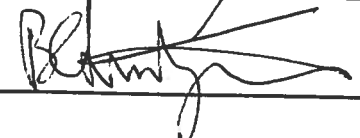
4. Agreement Binding Parties.

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 CITY OF BROCKVILLE



Mayor


Clerk

THE CONSUMERS' GAS COMPANY LTD.



400 Coventry Road
Ottawa, Ontario K1K 2C7

Delivered via Courier

January 23, 1997

The Corporation of the City of Brockville
Box 5000
Victoria Building
1 King St W
Brockville ON
K8V 5V8

Attention: Brian C. Switzer
Chief Administrative Officer/Clerk

Re: The Consumers' Gas Company Ltd. Franchise Renewal with
The City of Brockville - Ontario Energy Board File No. E.B.A. 764

The Consumers' Gas Company Ltd. (the "Company") acknowledges receipt of a certified resolution of the City of Brockville (the "City") approving the terms of the renewal of the Company's franchise to distribute natural gas within municipal boundaries, in accordance with the terms and conditions of the Company's franchise agreement.

The Company confirms that the form of agreement approved by the City is the standard form franchise agreement (the "Model Franchise Agreement") which was approved by the Ontario Energy Board (the "OEB") following a generic multi-party hearing to review the terms of franchise agreements and certificates of public convenience and necessity ("E.B.O. 125").

The Company further acknowledges that during the term of the agreement the City reserves its right to provide submissions to the OEB with respect to proposed changes to the Model Franchise Agreement, which submissions may include a request that the OEB convene a generic hearing to review the terms of the Model Franchise Agreement. The Company agrees that the approval by the City of the Model Franchise Agreement is "without prejudice" to any position the City may wish to adopt before the OEB concerning an amendment to the Model Franchise Agreement in effect at that time, and that the City has the right to request the agreement to be amended to reflect any changes to the Model Franchise Agreement approved by the OEB.

Richard H. Rakus, P.Eng.
Regional General Manager
Tel. (613) 748-6810

Letter to Brian Switzer
Chief Administrative Officer/Clerk
City of Brockville
Page 2 of 2

We are hopeful that the foregoing addresses concerns expressed by municipal officials for the City of Brockville with respect to future amendments to the *Municipal Act*. The Company looks forward to continuing service to the constituents of the City of Brockville.

Yours truly,

R.H. Rakus, P. Eng.
General Manager

IN WITNESS WHEREOF the parties have set their hands and seals this
27th day of FEBRUARY, 1998.7

The Consumers' Gas Company Ltd.

Per: _____

L.W. YUELL
SENIOR VICE PRESIDENT
BUSINESS SUPPORT

Per: _____

N.B. LOBERG
VICE PRESIDENT
CORPORATE AFFAIRS

The Corporation of the City of Brockville

Per: _____

MAYOR

Per: _____

CLERK



Consumers Gas

400 Coventry Road
Ottawa, Ontario K1K 2C7

November 4, 1997

The Corporation of the City of Brockville
Box 5000
Victoria Building
1 King Street West
Brockville, Ontario
K6V 7A5

Attention: Brian C. Switzer
Chief Administrative Officer

ROUTING & REQUEST

Please...

- ☐ Read
- ☐ Handle
- ☐ Approve

And...

- ☐ Forward
- ☐ Return
- ☐ Keep or Toss
- ☐ Review with Me

To:

*Permy - Please list
a Bill on next Council
Agenda (use Company
format). We can
then sign.*

From:

Brian

Date: *97/11/13*

Post-It™ 7664 ©3M 1993

Dear Mr. Switzer:

The Ontario Energy Board has approved the renewal of the franchise between the City of Brockville and Consumers Gas. Attached are five copies of the By-law and Franchise Agreement that I would ask be executed by the Mayor and yourself. All five copies of the By-law and Franchise Agreement should be sent to my attention so that I can arrange to have Consumers Gas execute same.

Thank you for your assistance in this matter.

Yours truly,

R.H. Rakus, P. Eng.
General Manager

Enclosures

Richard H. Rakus, P.Eng.
Regional General Manager
Tel. (613) 748-6810
Fax. (613) 748-6842

copy.

Please be advised that Council of the City of Brockville at their regular meeting of December 17, 1996 endorsed the following resolution:

96-287-12
RENEWAL OF FRANCHISE -
CONSUMERS GAS

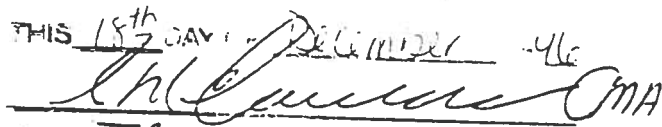
W.A.G. MONTGOMERY, C.E.T.
DIRECTOR OF OPERATIONS
C. J. COSGROVE, P. ENG.
MUNICIPAL ENGINEER

Moved by: Councillor R. J. Huskinson

THAT Council approve the form of draft by-law attached hereto, including the Franchise Agreement with the Consumers Gas Company Ltd. and Letter of Understanding forming part thereof, and authorize 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 request the Ontario Energy Board to make an order dispensing with the assent of the municipal electors of the draft by-law, including all attachments, pursuant to the provisions of Section 9(4) of the Municipal Franchises Act.

CARRIED

CERTIFIED TRUE COPY
THIS 18th DAY OF DECEMBER 1996

TREASURER, CITY OF BROCKVILLE