

IGUA/ACIG

03 December 1999

The Secretary
Ontario Energy Board
26th Floor
2300 Yonge Street
Toronto, ON, M4P 1E4

Dear Sirs:

**Re: RP 1999-0048 - Model Natural Gas
Franchise Proceeding**

Enclosed is the submission of the Industrial Gas Users Association in respect to the referenced proceeding.

Yours truly

Peter L. Fournier
President

cc: Rick Birmingham, Union Gas
Janet Holder, Enbridge Consumers Gas

**Ontario Energy Board
RP 1999-0048
Model Natural Gas Franchise Agreement**

**SUBMISSION OF THE INDUSTRIAL
GAS USERS ASSOCIATION (“IGUA”)**

General:

IGUA limits its submission to three issues:

- 1) Payment of Permit Fees
- 2) Compensation for use of Municipal Right-of-Way
- 3) Duration of New and Renewable Franchise Agreements

Permit Fees

IGUA opposes the position of the Association of Municipalities of Ontario [“AMO”], which proposes that a new Section III(9)(a) be added. The AMO proposes that the gas utility pay a flat fee of \$350 for every permit the municipality would issue to it, and that the amount of the flat fee be increased annually to match changes in the annual Consumer Price Index.

In IGUA’s view, the proposed fee is both unnecessary and unjustified. The gas utility is one of a number of public service utility operations¹ in the community which, in sum, provide the services matrix upon which our communities depend. These are monopoly services which must be made available to the residential, commercial and industrial members of the community in a fair and non-discriminatory basis, as economically as possible.

Like water and sewer services, natural gas distribution is an in-ground service. Many installation and maintenance operations necessarily require that the gas utility cross and dig into municipal rights-of-way, in the same way as do the municipal water and sewer services. If the utility must pay a \$350 fee for a permit before a permit will be issued, several results will automatically follow:

- a) the introduction of fees will undoubtedly impose delays on the provision of gas company services; and
- b) the gas company will undoubtedly seek to pass the fee charge through to its customers.

¹ Water, sewer, hydro, telephone, garbage collection, cable.

In IGUA's view, neither result is desirable. In particular, if the proposed fee is tacked-on to each new residential installation, it could adversely impact the attachment of new gas service customers, making the cost prohibitive for some prospective customers.

Use of Municipal Rights-of-Way

The AMO also proposes a new Section III(9)(b), which would impose a new fee on the natural gas utility, to the amount of \$250 per kilometer of pipeline located within the municipal boundary, said to compensate the municipality for the "use of a scarce and valuable public asset". IGUA strongly opposes this fee proposal.

In IGUA's view, this proposal is an odious attempt by the municipalities for a cash grab from the natural gas utility. Considering that the gas utility in "mature" service areas will have gas mains on virtually every street in the built-up area, the fee burden on the gas utility could be substantial. It goes without saying that the gas utility would have to pass through to its customers the full impact of that annual fee.

That this is no more than an attempted revenue grab is demonstrated by the fact that there does not appear to be any justification for the quantum of the proposed fee. It appears that the AMO proposal would apply the same fee regardless of location. It appears they would apply the same compensation for the use of a kilometer of streets in downtown Toronto as for a kilometer in a less developed community where land usage and land values are lower. Further, the per kilometer fee proposal would penalize the utility wherever it ran distribution lines where customer take-offs were spaced further apart than in more densely urbanized areas. The proposed fee could also result in service being denied to prospective new customers if the imposition of the fee would make the attachment uneconomic for the utility.

The imposition of the proposed fee would generate revenues for the municipality that would be, for all intents and purposes, a tax. But the result would be an indirect tax for which the elected officers of the municipal government would not have to justify to its ratepayers. It would effectively be "taxation without representation".

Comment:

IGUA agrees with the position of the gas utilities that the utilities already pay substantial amounts, in the form of municipal taxes, to the municipalities in which they hold franchise rights. Those tax revenues adequately compensate the municipalities for gas utility use of municipal rights-of-way, and for the administration and management of permits issued to the gas company. The proposed new fees should only be considered for implementation if it was mandated through legislation that any such fees paid by the gas utility would be fully deductible from the municipal taxes payable by the utility to the municipality levying the subject fees.

Duration of New and Renewable Franchise Agreements

In IGUA's view, the initial term of new franchise agreements should, at a minimum, be of sufficient duration to permit investment decisions by the utility and initial users which permit the orderly development of the utility within the franchise territory. A term of at least 25 years would appear to be appropriate.

The term for renewed franchise agreements should be of sufficient duration that the utility can conduct its planning and ongoing operations over a reasonable period. A term of at least 15 years would be appropriate.

IGUA would not be opposed to the implementation of "perpetual" franchise terms, provided that there was a mechanism established which would permit, on application, the Ontario Energy Board to review of the franchise rights of the utility if there is reasonable doubt that the utility has maintained certain required standards of service to the community in question.

All of which is respectfully submitted.

Dated this date, Friday the 3rd of December, 1999, in
the City of Ottawa, in the Province of Ontario.

THE INDUSTRIAL GAS USERS ASSOCIATION

Peter L. Fournier, President