OTTAWA-CARLETON

RP-1999-0048

ONTARIO ENERGY BOARD

IN THE MATTER of a Model Natural
Gas Franchise Agreement

REPLY OF THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON

The Regional Municipality of Ottawa-Carleton
111 Lisgar Street
Ottawa, Ontario K2P 2L7

Attention: Lorne A. Ross, Manager, Surface Projects
Environment and Transportation Department
Telephone: (613) 560-6094, extension 1114
Fax: (613) 739-9757
E-Mail: rosslo@rmoc.on.ca

By its Counsel
Ernest L. McArthur
Telephone: (613) 560-6025, extension 1220
Fax: (613) 560-1383
E-Mail: mcarthurer@rmoc.on.ca

DATED: February 11, 2000

RP-1999-0048

ONTARIO ENERGY BOARD

IN THE MATTER of a Model Natural
Gas Franchise Agreement

REPLY OF THE
REGIONAL MUNICIPALITY OF OTTAWA-CARLETON

1. The Regional Municipality of Ottawa-Carleton ("the Region") has read the Replies of the Association of Municipalities of Ontario (AMO) and the City of Toronto, and the Memorandum to the Board dated the 11th day of February, 2000 submitted jointly by AMO and the gas companies.

2. The Region adopts the submissions made in these documents, subject to the following exception:

   - duration of "initial" or new Agreements

3. In this Reply the Region will address the following matters, in response to the submissions made on behalf of the gas companies (primarily that filed on January 25, 2000, with that date), or questions raised by the Ontario Energy Board ("the Board"):

   - duration of Agreements
   - relocation costs
   - abandonment
   - compensation
   - specific Board questions

- an error made in its submission of December 3, 1999

Duration of Agreements:

4. While the Region adopts the joint AMO-Gas proposal submitted to the Board as to duration for agreements renewed, it is opposed to the proposed 20 year term for new or initial Gas Franchise Agreements.

5. A 20 year commitment by the municipality without redress during that time amounts to an abrogation of its road management responsibilities. Reference is made to the Region's submission of December 3, 1999, paragraphs C-1 and C-2.

6. Where gas pipes have been in the ground for a long time and the municipality wishes to formalize that presence by way of an initial Agreement, there are no "security" or "investment" or "return" reasons for an initial 20 year term.

7. Even where the installation is new, for the reasons already stated, the municipality's ownership rights and management obligations ought not to be subrogated to those of the user in the from of a 20 year commitment.

8. With respect, the owner must set a term for the use of its property which is commensurate with its obligations for, and responsibilities to, that property. It ought not to be the entity seeking permission to use that property which sets the term, especially when the proposed use is for the benefit entirely of the user.

9. The Region adopts the submissions made by the City of Toronto on this issue in its Reply.

Relocation Costs:

10. AMO chose not to make this an issue in the renegotiation of a new Gas Franchise Agreement. The existing Agreement allocates relocation costs at 65% to the gas company and 35% to the municipality. In responding to questions, the gas companies

relied on that allocation of costs, and referred to E.B.O. 125 (May 21, 1986) in which the Board arrived at its recommendation in accordance with seven guidelines enunciated in section 5-7 of its Order, number 4 of which is as follows:

> "4. There should be a monetary incentive to encourage the municipality to consider alternatives to gas-line relocation."

11. If this means that a municipality would consider asking a gas company to relocate its lines without due thought and simply because the gas company is to pay for that relocation, the Region is unaware of any evidence of this. In fact, the serious road management and cost implications for the municipality in a relocation preclude such a request without good reason.

12. Under the existing Agreement the gas companies pay 100% of the cost of relocation on or from a bridge. There is no evidence that the absence of an "incentive" has resulted in unnecessary bridge gas line relocations.

13. In response to questions from panel members, the Region takes the position that:

    - the gas company knows that relocation of its lines within the right-of-way is a distinct possibility.
    - the gas company, with this knowledge, requests use of the right-of-way for its plant.
    - the gas company must therefore pay the cost of relocation.
    - in no other business, with respect, would an entity ask for the use of another's land and at the same time ask the land owner to assume some of the cost of that presence (unless the land owner was deriving a direct benefit from the use).
    - relocation costs are no different from other utility related right-of-way costs, which should be paid by the user, not the taxpayer.
    - but for the gas presence there would be no relocation cost.

14. To ensure that all private utilities are treated equally, Regional Council and many other Canadian municipalities have adopted the third Federation of Canadian Municipalities

("FCM") principle, which is that telecommunication and private utility companies pay 100% of relocation costs, where required for bona fide municipal purposes.

15. This is the FCM position on behalf of all Canadian municipalities at the CRTC telecommunication hearings. With respect, while all municipalities and gas companies are free to negotiate whatever deal suits their particular circumstances, surely a Model Franchise Gas Agreement in Ontario should not close the door to the application of the FCM's third principle in Ontario. To do so would virtually ensure that gas companies are treated differently.

16. If the Board decides that municipal tax payers should share the gas company's relocation costs, the Region requests that consideration be given to the sliding scale presented in paragraph B-20 of its submission dated December 3, 1999.

Abandonment:

17. The Region refers to its submission dated December 3, 1999 wherein it requested in its suggested re-write of IV-3 that abandoned pipe remain in the road until the road is reconstructed, at which time it be removed by the gas company at its cost. If not removed it will become the municipality's property.

18. The Region also proposed that non-gas users and non-gas use by a gas company of gas pipe require a separate municipal access agreement.

19. The Region raises these two matters in Reply because of the gas companies' apparent concurrence on both aspects of this issue:

    - removal should only be at reconstruction; and
    - separate municipal access agreements for "non-gas users" (and the Region requests, for "non-gas use" by the gas company).

    See No. 10 "Summary of the gas companies' Previous Positions" dated and filed with the Board on January 25, 2000.

20. The Region supports the submission made in the City of Toronto's Reply with respect to "non-gas use". That is, if the gas company uses its plant for other than the transmission of gas, a new Agreement is required.

Compensation:

21. The Region characterizes "compensation" for the use of its rights-of-way as,

- permit fees (administrative costs);
- costs (arising from the gas presence); and
- the road use licence fee.

22. In response to Board questions, the Region submits that there is ample authority for all three categories of compensation in the *Municipal Act*.

- Section 220.1 - fees for services, cost recovery, and land use.
- Section 308 3 - charges for use of the highway.
- Section 111 - assistance to commercial enterprise prohibited. Specifically, giving property, leasing below market value, exempting from any charge or fee.

23. Questions were asked of s.220.1(4)(e) which the gas companies claim exempt them from municipal fees. With respect, while pipes may be used to "transport" gas, a request to use municipal land has nothing whatsoever to do with "transportation". It is a property or land use matter. The proposed charge or fee relates to use of municipal land, and has no connection with, and is totally unrelated to, whatever is installed in the ground, or its purpose.

24. The gas companies submit on page 2 that their payment of taxes should exempt them from municipal claims to compensation. First, the payment of taxes does not entitle any commercial entity to free use of the right-of-way. Such a claim is entirely without merit. Secondly, whether or not the gas companies should be assessed for property taxes is a matter for Queens Park, not for the Board, and is irrelevant to the issue of fair and reasonable compensation for use of the right-of-way.

25. Also on page 2, the gas companies make the submission that compensation should not be paid because it will affect gas rates, and will "shift costs from the municipal taxpayer to the gas rate payer". That this shift should occur is obvious, and exactly what should happen.

26. The gas submission on page 4 assumes non-payment by the electric competition. As AMO has advised, this is not the legislative intention.

27. On pages 3 and 4 of their document filed on January 25, 2000, the gas companies suggest that payment would be inequitable because municipally owned utilities do not pay the cost of road use. First, this assumes there is benefit in transferring money from one municipal pocket to the other. Secondly, it assumes non-payment by water and sewer users. While there is some basis for the first assumption, there is little for the second. Ottawa-Carleton, and perhaps most municipalities now, are working towards, or have achieved, a situation where users of water and sewer pay a rate based on cost.

28. On page 1 of the same submission the gas companies equate public "interest" or "benefit" with the gas company's interest. With respect, the AMO, Toronto and Ottawa-Carleton submissions clearly indicate that "public interest" must be defined more broadly, and among other things, might surely include an examination of why gas companies and their customers are subsidized by the municipal taxpayer.

Board Questions:

29. Water and sewer in Ottawa-Carleton make payments in lieu of taxes, which in each of 1998 and 1999 amounted to approximately $5 million.

30. There are many businesses in Ottawa-Carleton which pay far more in property taxes than is paid by the gas companies. Perhaps this was not the question.

31. The Ontario Good Roads Association ("OGRA") Report, and the Lee and Lauter Report, referred to respectively in paragraphs B-12 and B-17 of the Region's

submission have been provided to Board staff. The OGRA Report can be found on its Web Site at *www.ogra.org*

32. The Region and the gas companies were asked for some estimate of the amount which might be recovered in Ottawa-Carleton, if the gas companies were to pay for road cut permit fees, the costs of their presence on the right-of-way, and a road use licence fee.

33. The setting of a permit fee is unique to each municipality. The Region can only guess at what might be an average permit fee at this time, but for the purpose of "averaging", if we use OGRA's proposed permit fee of $200 for Cities and Towns (at paragraph B-13, Table 1 of the Region's submission) and 2000 permits annually, the total for permit fees on all Regional and local roads in Ottawa-Carleton may be in the vicinity of $400,000.00 annually.

34. Relocation costs are project specific.

35. Pavement degradation costs, assuming an average cut size of 10 metres square and an average pavement life of 6 years, using Table 3 at paragraph B-17 of the Region's submission, for all Regional and local roads in Ottawa-Carleton, approximately are $320,000.00 annually.

36. Work around costs within the City of Ottawa only, at $150.00 per km for 885 kms are $132,750.00 annually (see the Region's submission at paragraph B-27).

37. A road use licence fee for 885 km of pipe within only the City of Ottawa at $2.50 per metre is $2,212,250.00 (see paragraph B-35 and Annex A of the Region's submission).

Correction:

38. In its submission of December 3, 1999 the Region in paragraphs B-29 to B-35 suggested an initial "road use licence" fee of $2.50 per metre, but recognized a possible range of $2.00 to $20.00 per metre. In paragraph B-35 it endorsed the $2.50 per metre proposed by AMO, as an initial fee.

39. However, AMO actually proposed $250.00 per kilometre which is not $2.50 per metre, but only 25 cents per metre. As far as the Region is aware 25 cents per metre does not anywhere near represent the true value of any right-of-way.

40. If the MTO is using this figure of 25 cents per metre or $250.00 annually per kilometre, then it must be reflective of its costs only, and not a road use licence fee. As AMO states in number 2 of its submission, unnumbered paragraph 3, "this amount was carefully calculated by MTO to reflect the resources of time and money used to obtain and manage the highway system". Thus as a true "cost" recovery, it is unrelated to the "road use licence fee" which is the subject of AMO's number 2 "Compensation for the Use of Municipal Highways".

41. Which is why the Region has stressed, and continues to stress, that for the sake of simplicity and comprehension, "compensation" comes in the three forms described by it in paragraph 21 above, and must be carefully distinguished.

42. The confusion arising from adopting another's figures is indicative of the theme underlying the municipal submissions, which is that each municipality must establish by by-law its own supportable amounts for permit fees, costs, and road use licence fee.

43. The Region stands by its proposed "road use licence fee" of between $2.00 and $20.00 per linear metre, and $2.50 as a short-term starter. For some areas, the value may exceed the above range.

Conclusion:

44. The Region requests again that the Board recognize the Region's authority to manage its roads, and create a Model Gas Franchise Agreement which does not prevent it from doing so.

All of which is submitted respectfully this 11th day of February, 2000.

The Regional Municipality of Ottawa-Carleton
111 Lisgar Street
Ottawa, Ontario K2P 2L7

Attention: Lorne A. Ross, Manager, Surface Projects
Environment and Transportation Department
Telephone: (613) 560-6094, extension 1114
Fax: (613) 739-9757
E-Mail: rosslo@rmoc.on.ca

By its Counsel
Ernest L. McArthur
Telephone: (613) 560-6025, extension 1220
Fax: (613) 560-1383
E-Mail: mcarthurer@rmoc.on.ca