# Summary of Discussions
# Between the Municipal Order of Government (AMO)
# and the Gas Companies
# Regarding Amendments to the Model Gas Franchise Agreement

**September 24, 1999**

**Association of Municipalities of Ontario**
**Enbridge Consumers Gas**
**Union Gas**
**Natural Resource Gas Ltd. (NRG)**

# Overview

Representatives of Enbridge Consumers Gas, Union Gas and Natural Resource Gas Ltd. (NRG), (the "gas companies") have met with representatives of the Association of Municipalities of Ontario (AMO) to undertake discussions regarding amendments to the Model Gas Franchise Agreement and the Franchise Handbook. *(Natural Resources Gas did not participate in all of the meetings, however was kept informed of developments on an ongoing basis.)* In these discussions, AMO represents the interests of the municipal order of government, on behalf of its member municipalities. These meetings have been beneficial. The Gas Companies and AMO now have a better understanding of each other's issues and concerns.

The following is a summary of the positions of the parties on various issues raised during the discussions. The report is divided into six major sections, as follows:

A-1. Proposed Changes to the Franchise Agreement Supported by Both Parties

A-2. Proposed Changes to the Franchise Agreement Not Supported By Both Parties

B-1. Proposed Amendments to the Franchise Handbook Supported by Both Parties

B-2. Proposed Amendments to the Franchise Handbook Not Supported by Both Parties

C: Other Issues raised by AMO

D: Additional Notes

## SECTION A-1.
## Proposed Changes to the Franchise Agreement Supported by Both Parties

Both the Gas Companies and AMO recognize that certain changes will help to update and clarify the intent of the Model Franchise Agreement. The agreed-upon changes are as follows:

1. Address the fact that the title of "Clerk" is not universally used throughout the Province by removing the reference to "Clerk" in the preamble so that the clause would read:

   *"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."*

2. Address the question of "supply" and "sell". Recent legislative changes to the *Municipal Franchises Act* have removed the need for the municipality to grant rights to supply gas and similarly to sell gas. In addition, it is acknowledged that the Gas Companies are primarily distribution, storage and transmission companies. Accordingly it is agreed that:

    - The preamble be amended by deleting the word *"sell"* and adding the words *"store and transmit"* so that the clause will read: *"Whereas the Gas Company desires to distribute, store and transmit gas in the Municipality..."*.

    - Amend Section I (1)(b) by deleting the word *"supply"* and adding the word *"storage"* so that the clause will read: *"…may require or deem desirable for the distribution, storage and transmission of gas in or…."*

    - Amend Section II (l) by deleting the word *"supply"* and adding the *words "distribute, store and transmit"* so that the clause will read: *"…Gas Company to distribute, store and transmit gas in and through the Municipality to the Corporation and …."*

    - Amend Section II (2) by deleting the word *"supply"* and adding the word *"storage"* so that the clause will read: *".... and repair a gas system for the distribution, storage and transmission of gas..."*

3. Address the inconsistency in the current Model Agreement by amending the title in Section II (2) by deleting the words *"road allowances"* and adding the word *"highways"* so that it will read: *"To use Highways"*.

4. Clarify Section II (2) by adding the following words to the beginning of the section so that it would read: *"Subject to the terms and conditions of this agreement, the consent of the Corporation…"*

5. Clarify the intention of the first line of Section III (1) by inserting two commas so that it will read: "*Before beginning construction of, or any extension or change to, the gas system....".*

6. Update the agreement to ensure that it refers to the current construction standard so that the sentence in III (1) will read: *"The Engineer/Road Superintendent may, to facilitate known projects, require sections of the gas system to be laid at a greater depth than required by the latest CSA standard for gas pipeline systems."*

7. Clarify the contacts in the event of an emergency by changing the last two lines of III (3) to read: *"…notify the police force, fire or other emergency services having jurisdiction."* and adding an additional sentence stating that *"The Gas Company shall provide the Engineer/Road Superintendent with one or more 24 hour emergency contacts for the Gas Company and shall ensure the contacts are current."*

8. Clarify the purpose of the Franchise Handbook by making reference to it in the Franchise Agreement under Section IV. It would be added as Section IV-4 and would read:

   *"The Parties acknowledge that operating decisions sometimes require a greater level of detail than that which is appropriately included in the Model Agreement. Guidance on such matters may, by agreement between the Gas Companies and AMO, be provided in a Franchise Handbook. Such a Handbook can, by agreement of the parties, be amended from time to time as experience requires, to reflect changing technology."*

9. Modernize the gender in the agreement by adding Section I (1)(f) which will read: *"(f) 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."*

10. Clarify the process for utilizing deactivated gas pipes as a telecommunications conduit or for any other purposes, by adding an item #5 in Section IV of the Model Franchise Agreement:

    *"**5. Use of Decommissioned Gas Pipes for purposes other than the transmission and distribution of gas***

    *The Gas Company shall provide promptly to the Corporation, to the extent the information is known:*
    - *The names and addresses of all third parties who utilize decommissioned gas pipes for purposes other than the transmission and distribution of gas;*
    - *The location of all proposed and existing decommissioned pipes utilized for purposes other than the transmission and distribution of gas.*

    *The Gas Company may allow a third party to utilize a decommissioned gas pipe for purposes other than the transmission and distribution of gas and may charge a fee for that third party use, provided:*
    - *The third party has entered into a Municipal Access Agreement with the Corporation;*
    - *The Gas Company does not charge a fee for the third party's right of access to the highways; and*
    - *Decommissioned gas pipes used for purposes other than the transmission and distribution of gas are not subject to the provisions of the Model Franchise Agreement. For decommissioned gas pipes 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. "*

11. Alter the wording in the 12th line of Section III (1)(a) immediately following the words *"known projects"* so that it will read: *"…known projects or to correct known highway deficiencies."*

# SECTION A-2.
# Proposed Changes to the Franchise Agreement Not Supported By Both Parties

During the discussions held to date, additional changes to the Model Franchise were raised by one party or another for which no consensus position could be found. The issues that require resolution are as follows:

## 1. Permit Fees

**AMO's Position:** AMO is proposing that the words *"save and except by-laws which impose permit fees and by-laws which have the effect of amending this Agreement"* be deleted from Section IV- 1 of the Model Franchise Agreement. In addition, AMO is proposing that a new Section III (9)(a) [as renumbered] be added which would read:

*"The Gas Company will pay a flat fee of $350 for each permit issued by the Corporation and this fee will be adjusted on January 1st of each year by the percentage change in the All Canada Consumer Price Index for the immediately preceding November, or the Corporation may introduce a schedule of permit fees which may have different values depending upon the location of the utility in the highway, the nature of the highway and the nature of the development along the highway. Such permit fees shall include the costs for administering the allocation of space on the highway, the costs of administering the permit system, including but not limited to inspection and complaint tracking, and the costs of reduction in the service life of pavements or other improvements on the highway which are affected by the activities of the Gas Company."*

AMO has outlined the significant changes in the municipal/provincial financial relationship and the clear intention of section 220.1 of the *Municipal Act*, both of which were covered in detail by the municipalities who were party to E.B.A. 767, 768, 769 and 783 and Ontario Energy Board staff who made representations during the same hearings. AMO pointed out that it does not accept the "we already pay taxes" argument advanced by the gas companies. AMO notes that municipalities are simply asking for the ability to recover the costs of a service rendered to a company seeking a specific service from the municipality – that service being the review and approval of a site-specific request to undertake work on the municipal Right-of-Way, a cost that should not continue to be borne by the taxpayer. AMO points out that residents who pay taxes are still required to pay the fee involved when they seek a zoning amendment, a septic tank inspection or any similar service. Ratepayer does not necessarily equal property taxpayer. It acknowledges that the customers and ratepayers expect the parties to contain gas rates and property tax rates. AMO does not feel it is appropriate for non-consumers of gas product to subsidize consumers. In these competitive times, where municipalities increasingly face competition for economic development, both the private and public sector must seek ways of more efficiently, effectively and fairly allocating costs and raising revenue. It is no longer acceptable for the taxpayer to carry this burden for the gas consumer.

AMO's proposal simply implements cost accounting - the precursor to performance-based management. In addition, AMO notes that the Gas Companies currently pay the MTO an encroachment fee for processing applications for use of its Rights-of-Way.

**Gas Companies' Position:** The Gas Companies do not support any amendments to the Model Franchise Agreement that would allow for the imposition of rights-of-way fees or permit charges. Together, Enbridge Consumers Gas and Union Gas currently pay approximately $63 million a year in municipal taxes on land, buildings and underground pipes.

The Gas Companies believe that there is already a mismatch between the municipal taxes they pay and the benefits they receive in municipal services. Unlike most businesses resident within a municipality, the gas companies do not benefit from many of the services for which taxes are levied. Pipelines do not benefit directly from services such as garbage pick-up, water and sewer services, recreational services and transit. The gas companies would not ask that other taxpayers pay for the costs that might be provided to the natural gas companies by a municipality. Any potential costs related to gas operations are more than covered by the significant dollars paid to municipalities in the form of property taxes on our underground pipelines.

The companies also reinforce the fact that any new fees on the gas companies would directly increase natural gas rates. Gas customers expect that the companies will contain gas rates, just as they expect the municipality to contain tax rates. The companies do not believe it is in the public interest to shift costs from the tax bill to the gas bill.

In addition, the companies submit that the application of any new municipal levies on gas distribution companies would create undue competitive impacts. In the energy sector, electric utilities are gas companies' main competitors. It is therefore very important that a level playing field exist for gas and electricity distribution companies. Discussions are now taking place at the Ontario Energy Board (OEB) to ensure that equal rules apply to affiliates of municipal electric utilities and natural gas companies.

While electric utilities pay municipal taxes on their buildings, they pay no property taxes on their systems of poles, underground plant, and distribution wires. Natural gas companies pay taxes on both their buildings and their systems of underground pipes. As the legislation reforming electric utilities (Bill 35) does not permit any property taxes on electricity distribution, it appears that current tax inequities will be perpetuated for some time. Any new fees levied on gas companies would exacerbate current inequities.

The new *Energy Competition Act* will establish a competitive energy market by the year 2000. This Act was designed to create jobs, increase opportunities for investment, and ensure a safe and reliable supply of energy at the lowest possible cost. Any new municipal fees or permit charges would jeopardize the government's intentions in this regard.

The gas companies are aware that an exchange of service responsibilities has occurred between the Province and the municipal sector. They are also aware that municipalities have several new responsibilities. As the same time, the Province has adopted some major funding responsibilities and has created special municipal financial assistance for highways and other local services. The gas companies understand that the new impact of this service realignment has been a topic of debate between the Province and municipalities. However, they do not believe that its resolution is central to the matter of any new levies on natural gas distribution.

## 2. Compensation for the use of Municipal Rights-of-Way

**AMO's Position:** AMO proposes that municipalities be paid compensation for use of the Highway. AMO is proposing that a new Section III-9 (b) [as renumbered] be added which would read:

*" The Gas Company will pay the Corporation annual compensation of $250 for each kilometre of pipeline and the prorated amount for each part of a kilometre of pipeline within the highway and this compensation will be adjusted on January 1st of each year by the percentage change in the All Canada Consumer Price Index for the immediately preceding November.*

AMO notes that municipalities have gone to considerable lengths to obtain Rights-of-Way which are of sufficient width to accommodate the travelling public, drainage works and the myriad of pipes, poles and wires that are located within most Rights-of-Way. AMO points out that municipalities have the responsibility to ensure there is proper corridor management in the same manner that they are required to ensure there is proper planning and it is only reasonable that they receive fair compensation for use of a scarce and valuable public asset. AMO notes that the Gas Companies continue to pay compensation for the use of Provincial Rights-of-Way and propose that the initial compensation be $250 per kilometre.

Given the fact that:

(1) the Gas Companies currently compensate the MTO for use of its Rights-of-Way;
(2) municipal governments face physical costs such as pavement degradation costs, inconvenience and additional construction costs, lost opportunity costs and traffic delay costs;
(3) municipal highways provide the same accommodation for the gas lines as do the MTO Rights-of-Way;
(4) municipalities spend considerable time, effort and money obtaining and managing this valuable resource; and
(5) municipal governments are entitled to receive revenue over and above direct costs associated with highways as compensation from corporations using public property for profit, as is currently the case for federal and provincial governments;

AMO is of the opinion that annual per kilometre compensation to the municipal order of government is reasonable under the circumstances.

**Gas Companies' Position:** The Gas Companies' positions on the issue of ROW fees mirror their positions on permit fees, as outlined above.

### 3. Duration of New and Renewal Franchise Agreements

**AMO's Position:** AMO points out that the O.E.B., in EBO 125, stated it was of the opinion that *"a first time agreement should be of a duration of not less than fifteen and no longer than twenty years, and that in the case of renewals, a ten to fifteen year term therefore, seems to be adequate."* As a result of restructuring (30% fewer municipalities), there are a significant number of new municipalities that have assumed multiple gas franchise agreements with provisions and renewal dates that vary. It is AMO's position that the Innisfil decision (EBA 847), where the Board accepted the argument for a ten-year renewal term, outlines the major reasons why there needs to be more flexibility and more attention paid to the Board's opinion in EBO 125 where it stated that *"in the case of renewals, a ten to fifteen year term seems to be adequate."*

AMO is prepared to accept the ten to fifteen year renewal term provided its proposal for wording that would allow a Franchise Agreement to be amended if there is a legislative change that alters, in a substantial way, a material aspect of the legal regime under which the Franchise Agreement was concluded, is inserted in the agreement (see Clause C1). If this is not the case AMO is of the opinion that a maximum ten-year term for renewal franchise agreements is appropriate.

AMO points out that the municipal sector has little interest in perpetual franchise agreements. They are of the opinion that fixed period agreements force the parties to address issues of concern and conclude discussions while perpetual agreements may open the door for procrastination and stalling. AMO notes that some individuals in the legal community are of the opinion that a perpetual franchise agreement offends what is known as the rule against perpetuities and that if it does, as a matter of law, a perpetual agreement will have been considered to have expired at the end of twenty-one years. In addition, AMO points out that perpetual agreements are an explicit violation of OEB requirements that Franchise Agreements be limited in their term.

**Gas Companies' Position:** The Gas Companies take the position that a long franchise renewal duration is critical to the development and expansion of natural gas infrastructure across Ontario. Enbridge Consumers Gas and Union Gas have made large investments in municipalities across Ontario. A long duration of franchise renewal is necessary to protect these investments and to provide a secure climate for making future investments.

The companies point out that there is a standard time period over which the companies evaluate the economic feasibility of capital investments in the gas distribution system. Under the OEB feasibility guidelines for system expansion, investments to provide service to residential customers are generally evaluated over a period of 40 years or more.

These timelines coincide with the period over which the gas companies recover the costs of an investment in the distribution system. For a typical expansion project involving a mix of commercial and residential customers, the costs of the project will generally be greater than the revenues for at least 15 years. It is well beyond the 15-year-mark that costs are recovered, and the companies realize a return on the original investment.

The gas companies believe that the increased risk involved in a shorter duration of franchise renewal would ultimately hinder their ability to add new customers through expansion of the gas system. With an increased risk of return on investment, the feasibility of expansion into new communities would be reduced. Under these circumstances, many unserved municipalities and their communities would continue to be deprived of the opportunity to receive natural gas.

The Gas Companies are of the opinion that there is merit in perpetual franchise agreements. They note that perpetual agreements would recognize the long payback to their large investments in natural gas infrastructure and note that various municipalities across Ontario have benefited from extensive natural gas expansion within their communities under the terms of a perpetual franchise. The gas companies also believe that a perpetual right to occupy the road allowance within a franchise agreement does not prohibit the parties from addressing issues of concern, particularly operating issues that can be addressed on a regular basis.

## 4. Insurance and Liability

**AMO's Position:** AMO feels that provisions respecting insurance coverage should be made more specific and reflect wording which is standard to municipal agreements. AMO is proposing to add new wording in Section III of the Franchise Agreement regarding insurance provisions. The following wording is proposed:

*" The Gas Company shall maintain insurance in sufficient amount and description as will protect the Gas Company and the Corporation from claims for damages, personal injury including death, and for claims from property damage which may arise from the Gas Company's operations within the boundaries of the Corporation under this Agreement, including the use or maintenance of the gas system on or in the Highways, or any act or omission of the Gas Company's agents or employees while engaged in the work of placing, maintaining, renewing or removing the gas system, and such coverage shall include all costs, charges and expenses reasonably incurred with any injury or damage.*

*In addition to the insurance requirements outlined above, the Gas Company covenants and agrees that the limits of liability for personal injury, death, bodily injury and property damage, including loss of use thereof, combined shall be maintained at an appropriate level, but in any event not less than $25,000,000 for each occurrence.*

*Prior to execution of this Agreement by the Corporation, the Gas Company shall provide evidence that:*

*(1) the Comprehensive General Liability Insurance extends to cover the contractual obligations of the Gas Company as stated within this Agreement,*
*(2) the Insurance is in the name of the Gas Company; and*
*(3) that the Corporation is an additional named insured thereunder. In addition, the policies shall provide that they cannot be cancelled or lapsed without at least thirty (30) days notice to the Corporation by registered mail."*

**Gas Companies' Position:** The gas companies believe that the current wording of the Model Agreement Section III (5) is adequate and clearly protects the municipality from claims. The gas companies are in the best position to judge how to maintain adequate insurance to fulfill the terms of Section III of the Model Agreement. The gas companies are also concerned that an overly prescriptive approach will lead to excessive and unnecessary costs.

## 5. Geodetic Information

**AMO's Position:** Given the increased complexity of the works within the highway, AMO is of the opinion that Geodetic Information is desirable. AMO acknowledges the Gas Companies' concern over the considerable expense that would be incurred if they were required to produce geodetic information for a significant portion of the existing gas system. On the other hand, AMO is of the opinion that the current wording in III (1)(a) which states that "*Geodetic information will not be required except in complex urban intersections in order to facilitate known projects…*" is too restrictive, particularly when one considers that advances in GIS systems and digital surveying technology will continue to make this information more easily available in the future. In order to address this situation, AMO is proposing that the sentence beginning in the 7$^{th}$ line of III (1)(a) be deleted and the following substituted:

*"In recognition of the complexity of the works within the Highway, the Engineer/Road Superintendent, acting reasonably, may require geodetic information."*

**Gas Companies' Position:** As the companies generally do not possess geodetic information, it would be very costly to develop or obtain geodetic information for general use. Safety considerations dictate that physical locates must be conducted prior to working in close proximity to gas pipes. Geodetic information is not sufficient to determine the exact location of the gas plant. Therefore, a requirement to provide geodetic information could create unnecessary costs for the gas companies and its customers.

The current Model Agreement already requires that the companies provide geodetic information in certain complex urban intersections [III (1)(a)]. This limited requirement is valid and strikes an appropriate balance between the needs of municipalities and the costs incurred by the companies and its customers.

## 6. As-Built Drawings and Municipal Approvals

**AMO's Position:** AMO is of the opinion that, given the complexity of the works within the municipal Rights-of-Way, "as built" drawings, geodetically referenced, may be necessary and are proposing that the second sentence of III (2) be deleted and the following sentence substituted:

*" The Gas Company shall, within two months of completing the installation of any part of the gas system, provide two copies of 'as built' drawings to the Engineer/Road Superintendent sufficient to accurately establish the location, elevation, and distance of the gas system. If requested by the Engineer/Road Superintendent, acting reasonably, the elevations shall be geodetic referenced. If requested, one copy of the drawings shall be in an electronic format acceptable to the Engineer/Road Superintendent and one shall be a hard copy drawing."*

**Gas Companies' Position:** Section III (2) already provides municipal officials with effective control over plant location and with official records indicating actual plant location. The companies work closely with all municipalities to meet municipal requirements and provide satisfactory information. There is no need to alter the wording of the Model Agreement. (Also see response to issue A-2 (5).)

## 7. No Warranty as to Condition of Highway

**AMO's Position:** Section III (1)(a) of the Model Agreement gives the municipality important control over the location of the gas system in the highway. In exercising this approval power, the municipalities want to be explicitly clear that the approved location in the road allowance is to be taken by the gas company on an "as is basis". The approval required by Section III (1)(a) of the Model Agreement is related to the municipalities' standard cross-sections and anticipated road system works. It is not to be taken as representation that the location is suitable for the gas company's purpose. It may be that in the course of a gas system installation, the approved location is found to be impractical for environmental or other reasons. For the purpose of providing clarification, AMO proposes to add an additional sentence to Section III (1)(a) of the Model Agreement so that this section will read:

*"…shall be to his satisfaction. This approval is not a representation or warranty as to the state of repair of the highway, the suitability of the highway for any business activity or purpose whatsoever, or the presence or absence of hazardous substances on or under the highway and the Gas Company agrees to use the highway at its own risk, on an 'as is' basis."*

**Gas Companies' Position:** The Gas Companies take the view that the determination of responsibility for environmental impacts should continue to be judged on the basis of the circumstances surrounding any particular occurrence. The gas companies are concerned that AMO's proposed clause may pre-determine responsibility for any adverse environmental impacts.

## SECTION B-1.
## Proposed Amendments to the Franchise Handbook Supported by Both Parties

The Gas Companies and AMO have not conducted a thorough review of the Franchise Handbook. As the Handbook is a guide to implementing the Model Agreement, changes to the Handbook can only be finalized once discussions regarding the Model Agreement are complete. However, the items listed below represent preliminary proposals for change.

1. **The parties agree** that the following wording can be added to the preamble of the Franchise Handbook:

   *"This Franchise Handbook can be updated on an ongoing basis provided proposed changes are consistent with the Model Agreement in place at the time, and provided the gas companies and AMO agree to any such changes. The gas companies and AMO have made an agreement to meet on an as required basis, or at a minimum every three years, to discuss proposed amendments to this Handbook."*

2. **The parties agree** that the reference to depth of plant on Page 3 should be amended so that it will read:

   *"The depth of plant is in accordance with the CSA Z166-96 Gas Pipeline Systems Standard, as may be amended from time to time. A greater depth may be required to facilitate known projects."*

3. **The parties agree** that the references to Codes under the Section dealing with "Maintenance of the Gas System" on page 11 of the Handbook should be amended to acknowledge the codes currently in effect as may be amended from time to time.

4. **The parties agree** that the issue of whether and how Figure 1 on Page 3 might be augmented by an additional diagram setting out a typical cross-section of utility location in a rural situation should be referred for further discussion to the group that will review the Handbook.

5. **The parties agree** that the reference to depth of plant on Page 3 can be amended so that the end of the sentence would read: *"…facilitate known projects or to correct known highway deficiencies."*

6. **The parties agree** that the Section dealing with Planning and Construction on page 5 of the Handbook should include a statement regarding cost sharing arrangements for the local Public Utilities Coordinating Committee (PUCC). The following wording would be appropriate: *"The PUCC membership will determine a cost sharing arrangement related to operation of the PUCC. The Gas Company and municipality will accept responsibility for their respective shares of the PUCC's budget established by the members."*

7. **The parties agree** that additional wording should be added to the section dealing with pavement cuts on pages 6 and 7 of the Handbook to ensure that costs related to roadwork are minimized. The following wording would be appropriate: *"The Gas Company, municipality, and other members of the PUCC will make every effort to minimize costs related to road cuts and repairs. Working through the PUCC, the Gas Company and municipality should seek to minimize road cuts in the traveled portion of the highway, particularly during the first five years after the surface of the highway is laid, and to eliminate duplication and unnecessary cost in road repair work."*

## SECTION B-2.
## Proposed Amendments to the Franchise Handbook Not Supported by Both Parties

### 1. Geodetic Information

**AMO's Position:** AMO is of the opinion that, given the complexity of the works within municipal rights-of-way, it is essential that, wherever possible, the Gas Company, when providing locates, include depth of cover. AMO is proposing that the words *"absolutely essential"* in the 6th line of the first paragraph under *"Location of the Gas Plant for Others"* on page 10 of the Handbook be deleted so that the sentence will read: *"Where the Engineer/Road Superintendent, acting reasonably, requires that the depth of cover over the system be known, the Gas Company will provide this information."*

**Gas Companies' Position:** See response to issue A-2 (5) (Geodetic Information) above.

### 2. Permit Fees and ROW Fees

**AMO's Position:** AMO is of the opinion that, given its submission relating to the imposition of permit fees [Section A-2 (1) of this report] and compensation for use of municipal Rights-of-Way [Section A-2 (2) of this report], the title of the second Section on Page 11 of the Handbook should be amended to read "Permit Fees and Compensation for use of the Highway". In addition, AMO proposes that the paragraph under this section read:

*"The Gas Company is 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. In particular, the Gas Company will pay a fee for each permit issued by the Corporation and annual compensation for each kilometre of pipeline and the prorated amount for each part of a kilometre of pipeline within the highway. If the Corporation chooses to use a flat permit fee, rather than a schedule of fees representing actual costs for different situations, the amount of the permit fee will be $350 and the annual per kilometre compensation will be $250. Both amounts will be adjusted on January 1st of each year by the percentage change in the All Canada Consumer Price Index for the immediately preceding November."*

**Gas Companies' Position:** See response to issue A-2 (1 and 2) above.

# SECTION C.
# Other Issues raised by AMO

**AMO** points out that municipalities are becoming more aware of the complexities involved in use of their Rights-of-Way and that they wish to be more consistent in the requirements placed upon users of municipal Rights-of-Way. It is the intention of municipalities to develop agreements and processes which treat all utilities using Municipal Rights-of-Way in a similar manner. In order to achieve a more consistent approach to all utilities, the municipal sector has proposed a more significant rewrite of the Model Franchise Agreement, incorporating language found in other agreements pertaining to use of highways.

**The Gas Companies** do not agree that the Model Gas Franchise Agreement should necessarily be the same as other municipal ROW agreements. There are safety considerations and other unique considerations in operating a gas system that do not necessarily apply to other utilities such as telecommunication providers.

In addition, the gas companies do not believe it is practical or reasonable from a process perspective to attempt to implement the same agreement for every type of municipal ROW user at this time. Waiting for all ROW occupants to develop the same agreement could take years and may never happen. For example, to the gas companies' knowledge, there is no official process in place at all to develop a ROW agreement for electric utilities. Holding the Model Franchise up until such a process has begun and been completed is unreasonable and potentially harmful to the efficient development and operation of the natural gas distribution system across Ontario.

Regardless of this difference in views between AMO and the Gas Companies, AMO has made the following proposals and the gas companies' responses are indicated below each proposal.

### 1. Legislative Change

**AMO's Position:** As mentioned earlier, AMO is prepared to abide by the guidelines in EBO 125 where the OEB states *"that in the case of renewals a ten to fifteen year term therefore, seems to be adequate"* providing the clause noted below is inserted in the Franchise Agreement. If that is not the case, it is AMO's submission that renewal terms should be for a period not exceeding ten years. Given the fact that legislative changes can have a dramatic affect on the situation, AMO prefers the ten to fifteen year term for renewals and the language regarding Legislative Change set out below.

AMO proposes that a new Section IV-4 be added and the balance of Section IV renumbered accordingly. AMO proposes that the Section read as follows:

***"Legislative Change***

*If at any time subsequent to the parties entering into this Agreement:*

*(i) the provincial or federal government or a regulatory authority, acting within its jurisdiction, enacts or repeals any legislation or regulation, or orders, directs or mandates anything which pertains to the subject matter of this Agreement, or*

*(ii) there is rendered any decision of a court of final appeal or tribunal which pertains to the subject matter of this Agreement;*

*that results in the alteration, in a substantial way, of a material aspect of the legal regime under which this Agreement was concluded, then either party may notify the other of its intention to require the other party to enter into good faith negotiations to amend this Agreement or to enter into a new Agreement reflecting such legislative or regulatory action or court or tribunal decision, as the case may be. If within six months of the giving of such a notice a new Agreement has not been concluded and presented to the Ontario Energy Board for approval, then either party may apply to the Board for an amendment to this Agreement to reflect the legislative or regulatory action or court or tribunal decision, as the case may be, and section 10 of the Municipal Franchises Act will apply mutatis mutandis to such application to the Board."*

**Gas Companies' Position:** The gas companies do not believe it is in the interest of the companies or of gas customers to potentially subject the Model Agreement to revisions every time there is a change in legislation or regulations that "pertain to the subject matter of the Agreement". AMO's proposals would substantially increase the risk associated with investments in natural gas distribution, thereby placing upward pressure on rates and inhibiting further investment and system expansion. The proposals would also create an uncertain and unstable environment for gas company operations.

## 2. Default

**AMO's Position:** That a new Section IV-5 be added and the balance of Section IV renumbered accordingly. AMO is of the opinion that the Franchise Agreement should contain the type of language that one would regularly see in an agreement of this nature specifying what will happen in the event either party defaults on its obligations or the Gas Company finds itself in financial difficulties. Accordingly, AMO is proposing that the following be added to the Franchise Agreement.

***"Remedy in the event of Default***

*a) If the Corporation defaults in any of its obligations under this Agreement and fails to correct the default within sixty (60) days of written notice from the Gas Company or fails to commence correcting the default within sixty (60) days of written notice from the Gas Company and fails to complete the correction within a reasonable time after the written notice is received, the Gas Company may, at its option, after written notice to the Corporation:*

*(i) perform the obligation at the Corporation's expense; or*

*(ii) take action for an order of specific performance directing the Corporation to fulfill its obligations under this Agreement, and, if successful, all legal costs related to such Court action shall be paid by the Corporation to the Gas Company on a solicitor/client basis.*

*b) If the Gas Company defaults in any of its obligations under this Agreement and fails to correct the default within sixty (60) days of written notice from the Corporation or fails to commence correcting the default within sixty (60) days of written notice from the Corporation and fails to complete the correction within a reasonable time after the written notice is received, the Corporation may, at its option, after written notice to the Gas Company:*

*(i) perform the obligation at the Gas Company's expense; or*

*(ii) take action for an order of specific performance directing the Gas Company to fulfill its obligations under this Agreement, and, if successful, all legal costs related to such Court action shall be paid by the Gas Company to the Corporation on a solicitor/client basis.*

*c) If the Gas Company defaults, repeatedly and persistently, in its obligations under this Agreement in a material way or in a manner that puts at risk the safety of any person or that has put at risk the safety of any person or if there is a filing by or against the Gas Company in any court of an uncontested petition in bankruptcy or insolvency or for reorganization or for the appointment of a liquidator of the Gas Company's property, or if the Gas Company makes an assignment or petitions for or enters into an arrangement for the benefit of creditors and any such petition remains undismissed after thirty (30) days or stayed on appeal, then the Corporation may, at its option, terminate this Agreement on sixty (60) days notice to the Gas Company."*

**Gas Companies' Position:** The gas companies do not believe it is in the interest of the companies or gas customers to potentially subject the Model Agreement to termination each time the municipality claims the company is in default of any provisions within the Agreement. AMO's proposal would substantially increase the risk associated with investments in natural gas distribution, thereby placing upward pressure on rates and inhibiting further investment and system expansion.

The gas companies also note that they have a long history of successfully cooperating with municipalities on operating issues, through PUCCs and other means. The wording of the current Model Agreement, and the companies' long history of service and good relations with the municipalities together provide sufficient incentive to operate in a manner that meets the municipalities' needs. It is unnecessary and risky to suggest that the municipality could terminate the franchise as a result of a relatively minor operating issue.

### 3. Abandoned Gas Pipe

**AMO's Position:** In order to establish reasonable timelines relating to disposition (abandonment) of the gas system, AMO proposes that Section IV (3)(b) of the Model Agreement be deleted and the following sections substituted therefor:

*"(b) Whenever the Gas Company ceases to use and will not in future use ("abandons") any portion of the gas system in, on, under, over, along or across a Highway, it shall, within thirty (30) days of such abandonment, file with the Corporation a statement in writing giving, in detail, the location of the gas system that has been abandoned.*

*(c) In the event of abandonment as contemplated in paragraph (b) above, the Corporation may, at its option, decide whether the gas system that cannot be removed without significantly disturbing the Highway shall:*

*(i) remain in the Highway in which case it will be surrendered by the Gas Company and become the absolute property of the Corporation; or*

*(ii) be removed from the Highway by the Gas Company within a reasonable period of time and the Highway restored to its pre-removal condition. In the event it has not been removed within sixty (60) days, the Corporation may complete the removal and restoration, charging all costs to the Gas Company and ownership of the abandoned portion of the gas system will vest in the Corporation without compensation.*

**Gas Companies' Position:** The gas companies take the position that the current wording in Section IV (3) of the Model Franchise Agreement strikes an appropriate balance between the interests of the companies and municipalities. The current wording provides for removal of abandoned pipe where necessary, and for the proper deactivation of such pipe. Requiring that all abandoned pipe be removed within 60 days of abandonment could give rise to unnecessary and excessive costs.

## SECTION D.
## Additional Notes

The parties agree that existing Section IV-4 of the Model Agreement should remain and be renumbered so that it is the last article in Section IV.