

**IN THE MATTER OF** the *Municipal Franchises Act*, R.S.O. 1990, c.M55, as amended;

**AND IN THE MATTER OF** proposed changes to the Model Franchise Agreement

**BEFORE:** Sheila K. Halladay  
Presiding Member

Floyd Laughren  
Chair and Member

Judy B. Simon  
Member

A. Catherina Spoel  
Member

Appendices: Ontario Regulation 61/01  
2000 Model Franchise Agreement  
(Revised)

1. **BACKGROUND**

1.1 On December 31, 2000 the Panel issued its Report to the Board with respect to proposed changes to the 1987 Model Franchise Agreement.

1.2 The 1987 Model Franchise Agreement provided that the Gas Company was subject to “all municipal by-laws of general application and 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”. (emphasis added)

1.3 With respect to the imposition of fees the Panel recommended that the municipality:

- should be permitted to charge fees which reasonably reflect the costs incurred by the municipality in issuing permits to the Gas Companies;
- should not be permitted to charge fees for the use of municipal rights-of-way; and

- should not be permitted to charge fees for any long-term damage to the roadway resulting from the installation or maintenance of the gas works located on them.

- 1.4 The 2000 Model Franchise Agreement, adopted by the Board, reflects the Panel's recommendations.
- 1.5 On March 16, 2001 the Government filed O. Reg. 61/01 made under the *Municipal Act*. This regulation amends O. Reg. 26/96 which lists circumstances in which municipalities may not impose fees and charges under section 220.1 of the *Municipal Act*.
- 1.6 The new regulation states that a municipality cannot impose a fee or a charge on a generator, transmitter, distributor or retailer in the electricity sector or a producer, distributor, transmitter or storage company in the gas sector for services or activities, costs payable or the use of property with respect to equipment located on a municipal highway.

## **2. PANEL RECOMMENDATIONS**

2.1 While the Panel believes that there is no legal need to change the 2000 Model Franchise Agreement, the Panel is of the view that changes to the 2000 Model Franchise Agreement are preferable for a number of reasons.

- The 2000 Model Franchise Agreement may be misleading, because it makes reference to permit fees that the municipality is not presently legally entitled to charge.
- Deleting reference to fees does not affect a municipality's legal ability to validly pass a by-law to charge such fees. If, in the future the legislation is changed to allow municipalities to charge permit fees, the proposed amendments to the 2000 Model Franchise Agreement would not prevent the municipality from charging such fees.

2.2 The Panel also notes that Gas Companies are reluctant to sign the 2000 Model Franchise Agreement with municipalities, because it makes reference to permit fees. As a result, there is a backlog of interim franchise orders that must be processed by the Board.

2.3 The Panel therefore recommends that Paragraph 13 of the 2000 Model Franchise Agreement be amended to delete reference to fees, so that it reads as follows:

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.

THIS REPORT IS RESPECTFULLY SUBMITTED, April 11, 2001

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Sheila K. Halladay  
Presiding Member

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Floyd Laughren  
Member and Chair

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Judy Simon  
Member

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A. Catherina Spoel  
Member