# 6
# FRANCHISE AGREEMENT WITH ENBRIDGE GAS DISTRIBUTION

**The Transportation and Works Committee recommends the adoption of the recommendations contained in the following report, February 20, 2006, from the Commissioner of Transportation and Works:**

## 1. RECOMMENDATIONS

It is recommended that:

1. Council approve the form of draft by-law (including the Model Franchise Agreement forming part thereof) attached hereto and authorizes the submission thereof to the Ontario Energy Board for approval pursuant to the provisions of Section 9 of the *Municipal Franchises Act*.

2. Council request the Ontario Energy Board to make an order dispensing with the assent of the municipal electors of the attached draft by-law (including the Model Franchise Agreement forming part thereof) pursuant to the provisions of Section 9 (4) of the *Municipal Franchises Act*.

## 2. PURPOSE

The intention of this report is to seek Council's approval for execution of the new Model Franchise Agreement with Enbridge Gas Distribution Inc. (Enbridge) per (*Attachment 1*).

## 3. BACKGROUND

In 1957, the Region entered into a 20-year Franchise Agreement with Consumers' Gas Company Ltd. The purpose of the agreement was to permit the company to enter onto Regional road allowances to install and maintain their distribution system, and to establish conditions of occupancy. A copy of the 1957 agreement is provided as *Attachment 2* to this report.

The agreement expired in 1977 and was never renewed. However, in the letter dated January 21, 1993 from the Region's Director of Planning and Design Branch, to our Region's Solicitor, discussions to sign a new agreement were sought by the gas company but one was never completed.

The Region's ability to enter into a gas franchise agreement is covered under the *Municipal Franchises Act* (MFA). The MFA assigns responsibility for renewing or refusing to renew a franchise agreement with the Ontario Energy Board (OEB).

As a result of concerns regarding municipal franchise agreements and renewals, the OEB established a Municipal Franchise Agreement Committee in 1986 to develop a model agreement.

The Association of Municipalities of Ontario (AMO) helped to develop the Model Franchise Agreement in consultation with the gas industry and the original model was sanctioned by the OEB in 1987. In 1999, AMO obtained approval from the OEB to work with the gas industry to update the Model Franchise Agreement in light of the fact that many of the municipalities' original franchise agreements were coming up for renewal. The revised agreement negotiated between AMO and the gas industry was approved by the OEB in early 2000.

The proposed new Model Franchise Agreement with Enbridge follows the same terms and conditions contained in the 2000 Model Gas Franchise Agreement. A copy of the proposed agreement is provided as *Attachment 1* to this report.

## 4. ANALYSIS

The Model Franchise Agreement defines the way in which the gas company works within the Regional right-of-way to ensure Regional interests are protected and that the utility does not interfere with Regional initiatives.

### 4.1 Summary of Changes in New Agreement

While a number of housekeeping changes have been made to update terminology and references to technical standards, the following summarizes key differences between the existing and proposed agreements:

- Duration of Agreement and Renewal
  Both the original and new agreement provide for a 20-year term. However, under the new agreement if there is any update to the Model Franchise Agreement over the term, any new provisions will deem to take effect on the 7 and 14 anniversary of the date of the agreement. With respect to renewal, the existing agreement required Enbridge to notify the Region of a desire to renew and the Region could, but was not obligated to, renew for further periods not exceeding 20 years. Under the new agreement, either party may give notice of a desire to renew and may apply to the OEB for a renewal.

- Approval of Construction
  While the requirements generally associated with approval are similar between both agreements, the new agreement includes specific wording which would allow the Region to request geodetic information or to lay pipes at greater depths than CSA standards. Additionally, if Enbridge wishes to install any part of their system on a structure, under the new agreement, the Region can request a separate agreement.

- As-Built Drawings
  The existing agreement requires as-built drawings only if there is any variation to the original design location. The new agreement requires submission of as-builts within six months of installation for any part of the system. The Region may also request copies electronically.

- Indemnification and Insurance
  Both agreements contain indemnification clauses. However, the new agreement specifically requires Enbridge to carry insurance with the Region named as an additional insured. The original agreement did not provide for this.

- Pipeline Relocation
  If the Region requires relocation of any gas system as a result of municipal work (road reconstruction), the new agreement provides for the sharing of relocation costs based on 35% Region and 65% Enbridge. The agreement also clearly indicates items to be included in the cost of relocation. Relocation of structures is 100% Enbridge's cost. The existing agreement was silent on cost sharing and consequently provisions of *The Public Service Works on Highways Act* have been followed under the current agreement. Through this Act, the cost of labour and equipment for relocation are shared equally between the Region and Enbridge. The cost of material is not included in the cost of construction under *The Public Service Works on Highways Act* but it will be included under the proposed agreement. Consequently, while the new agreement has more favourable provisions for the Region from a percentage perspective, the calculation of costs for construction is actually higher. An analysis of recent invoices received from Enbridge, was conducted by other municipalities. It was found that costs to the municipality for relocation under this new cost sharing arrangement would have been very similar.

- Use of Decommissioned Gas System
  The new agreement gives Enbridge the authority to allow a third party to use a decommissioned gas system for purposes other than distribution of gas and to charge a fee for use of the system. The fee cannot however, include a cost for use of the highway. The third party must also have a Municipal Access Agreement with the Region. The existing agreement does not provide for this eventuality.

In summary, the proposed agreement has updated provisions that make it more beneficial to the Region.

## 5. FINANCIAL IMPLICATIONS

There are no financial implications beyond our current cost-sharing arrangement with gas. Although the cost sharing arrangement is moving from a 50/50 cost apportionment on labour and labour-saving devices to a 35/65 arrangement on the total cost of the relocation, similar overall costs are expected.

## 6. LOCAL MUNICIPAL IMPACT

The Towns of Markham, Richmond Hill and Aurora as well as the City of Vaughan, have all executed similar franchise agreements based on the Model Franchise Agreement.

## 7. CONCLUSION

The Region's original Franchise Agreement with Enbridge has expired. The attached proposed new agreement conforms to a Model Franchise Agreement negotiated between AMO and the gas industry in 1999 and approved by the OEB in 2000. The Franchise Agreement meets the approval of the Region's Legal Department. It is, therefore, recommended that Regional Council endorse the agreement for submission to the OEB. In accordance with the Municipal Franchises Act, all agreements are subject to OEB approval. The OEB will hold a public hearing prior to any approval. However, the Region can request that the OEB dispense with this requirement. This request has been embodied in the recommendations.

The Senior Management Group has reviewed this report.

*(The attachments referred to in this clause were included in the agenda for the March 1, 2006 Committee meeting.)*