

BY-LAW NO. 1764

BEING A BY-LAW of the Corporation of the City of North Bay to authorize a Franchise agreement between the Corporation and Northern Ontario Natural Gas Company Limited.

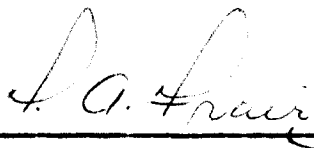
THE COUNCIL OF THE CORPORATION OF THE CITY OF NORTH BAY ENACTS AS FOLLOWS:

1. That the Mayor and Clerk are hereby authorized and instructed on behalf of the Corporation to enter into, execute, seal with the Corporate seal and deliver in the form approved, with or without amendment, by the Ontario Fuel Board, the agreement set forth in the schedule hereto between the Corporation and Northern Ontario Natural Gas Company Limited, which agreement in the form so approved, is hereby incorporated in and shall form part of this By-law.

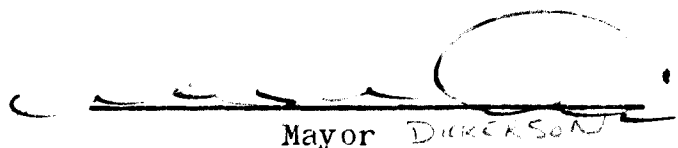
2. This By-law shall not come into force,  
(a) until the assent of the electors of the City of North Bay has been obtained pursuant to subsection 1 of section 3 of the Municipal Franchise Act; or  
(b) until such assent has been dispensed with by order of the Ontario Fuel Board pursuant to subsection 4 of section 9 of the Municipal Franchise Act.

Read a first time this 13th day of June, 1955.

Read a second time this 13th day of June, 1955.

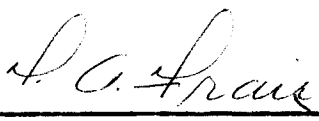


Clerk

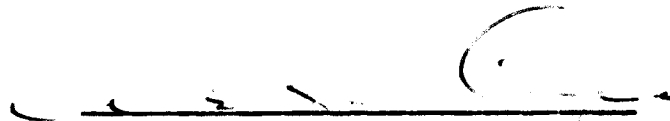


Mayor DICKERSON

Read a third time and finally passed this 9th day of Aug. 1955.



Clerk



Mayor DICKERSON

SCHEDULE TO BY-LAW NO. 1764

AGREEMENT MADE IN QUADRUPLICATE THIS DAY OF 1955.

BETWEEN:

NORTHERN ONTARIO NATURAL GAS COMPANY LIMITED

a Company incorporated under the laws of the Province of Ontario and having its head office in the City of , in the said Province

hereinafter called the "GAS COMPANY"

OF THE FIRST PART

AND:

THE CORPORATION OF THE CITY OF NORTH BAY

hereinafter called the "CORPORATION"

OF THE SECOND PART.

WHEREAS in this agreement:

- (a) "Gas" means natural gas, manufactured gas or any liquified petroleum gas, and includes any mixture of natural gas, manufactured gas or liquified petroleum gas, but does not include a liquified petroleum gas that is distributed by a means other than a pipe line:
- (b) "Municipality" means and includes the said City of North Bay and all additional territory and lands which may at any time or from time to time hereafter be added or annexed thereto or comprised therein:
- (c) "Public property" means all roads, highways, streets, lanes, sidewalks, bridges and other public places from time to time within the Municipality:
- (d) "Engineer" means from time to time such employee of the Corporation as the Corporation shall have designated as such for the purposes of this agreement, or, failing such designation, the senior employee of the Corporation for the time being charged with the administration of public works and highways in the Municipality:

- (e) "Regulating statute" means The Ontario Fuel Board Act, 1954, as from time to time amended and so long as the said Act shall remain in effect, but if the said Act shall be repealed shall mean thereafter any Ontario statute or statutes from time to time in effect which shall have been enacted for the purpose of controlling or regulating the production, storage, transmission, distribution, sale, disposal, supply and/or use of gas in Ontario; and
- (f) "Board" means the Ontario Fuel Board and, if and so long as any of the powers of the Ontario Fuel Board shall be transferred to and remain vested in any other board or body, shall also mean and include such other board or body to the extent that such powers are required to be exercised for the purposes of this agreement.
- (g) "Gas distribution system" means such plants, stations, mains, pipes, conduits, valves, drips, and other appurtenances, structures, apparatus, equipment, appliances and works as the Gas Company may from time to time require or deem desirable for the supply and distribution throughout and beyond the Municipality of gas for any purpose for which it may now or hereafter be used.
- (h) "Performance date" means -
  - (a) the one hundred and twentieth day after the Gas Company shall first become able to take delivery of natural gas (in quantities adequate for the purposes of the gas distribution system) out of a gas pipe line at a point therein which is in the vicinity of the Municipality; or
  - (b) two years from the date of the execution of this agreement, provided that the Gas Company shall receive from the Corporation an extension of the said Performance Date from year to year for a period not exceeding a further three years upon approval of the Board of each such yearly extension, whichever date is earlier.

AND WHEREAS the Gas Company wishes to distribute and sell gas within the Municipality:

AND WHEREAS by by-law of the Corporation the mayor and clerk have been authorized and directed on behalf of the Corporation and under its seal to execute and deliver this agreement:

WITNESSETH as follows:

1. The Corporation hereby grants to the Gas Company, during the period and upon and subject to the terms and conditions hereinafter set out, a franchise to enter upon and use the public property for the purpose of constructing, maintaining and operating a gas distribution system in the Municipality, with the right within the Municipality to establish, construct, lay, extend, maintain, operate and repair the same.

2. From time to time before laying any mains or pipes or constructing any other portions of the said gas distribution system (or extending or adding to any portion thereof) on or in any of the public property the Gas Company shall file with the Engineer:

(a) a plan prepared to scale and showing the proposed location on or in the public property of such mains, pipes, portions, extensions or additions; and

(b) written specifications of such mains, pipes, portions, extensions or additions, specifying the dimensions thereof, the materials comprising the same, and the depths to which any of such mains or pipes are to be laid.

3. In the laying of its pipes and mains and in the construction of all other portions of the said gas distribution system, and in the maintenance, repairing, operation and removal of any thereof, the Gas Company shall:

(a) use its best endeavours to minimize interference with public travel; and

(b) promptly from time to time after excavation of or other interference with any of the public property, restore the

same to the satisfaction of the Engineer as nearly as possible to its former condition.

4. The Gas Company shall and does hereby agree to indemnify and save harmless the Corporation from and against all losses, damages, charges and expenses which the Corporation may suffer or incur or be put to or for which it may become liable as a result of or by reason of the construction, maintenance, repairing, operation or removal by the Gas Company of the said gas distribution system or any portion or portions thereof.

5. The Gas Company shall at all times use proper and practicable means to prevent the escape or leakage of gas from its mains and pipes and the causing of any damage or injury therefrom to any person or property.

6. The Gas Company shall well and sufficiently restore forthwith to as good condition as they were in before to the satisfaction of the Engineer all public property and highways which it may excavate or interfere with in the course of laying, constructing, removing or repairing of its mains, pipes, regulators, valves, curb boxes, safety appliances and other appurtenances necessary for the transportation and supply of gas and shall make good any settling or subsidence thereafter caused by such excavation and shall well and sufficiently indemnify and save harmless the said Corporation from all costs, damages, charges and expenses it may be put to or rendered liable for by reason of or through the construction, repair, maintenance or operation by the said Gas Company of any of its works in the said Municipality, and further, in the event of the Gas Company failing at any time to do any work required by this section the Corporation may forthwith have such work done and charge to and collect from the Gas Company the cost thereof and the Gas Company shall on demand pay any reasonable account therefor certified by the said Engineer.

7. No excavation, opening or work which shall disturb or interfere with the surface of any public property shall be made or done unless

a permit therefor has first been obtained from the said Engineer and all such works shall be done under <sup>his</sup> supervision on behalf of the Municipality to his satisfaction.

8. The location of all pipes and works on said public property shall be subject to the direction and approval of the said Engineer and all such pipes and works whenever it may be reasonable and practicable shall be laid in and along the sides of said public property.

9. The Gas Company at its own expense will tap its main and connect the same at the adjacent street line with the customer's service line.

10. For the gas supplied by it under the franchise hereby granted the Gas Company shall charge the rates from time to time fixed under and as provided in the regulating statute.

11. The franchise hereby granted shall remain in full force and effect for the period from the date hereof until the expiry of twenty years after the performance date, provided, however, that:

(i) this franchise agreement may at the option of the Gas Company be renewed prior to the expiration of the said term of twenty years by notice in writing to the Corporation, for a further period of ten years on the same terms and conditions as herein contained, or on terms and conditions agreed upon by the Corporation and the Gas Company, provided always that any such renewal shall not be valid unless the terms and conditions of the same are approved by the Board.

(ii) subject to the provisions of paragraph 12 hereof, the said franchise shall terminate and this agreement shall become null and void upon the performance date if the Gas Company shall have failed meanwhile to commence the construction of a gas distribution system in the Municipality with adequate and appropriate plans for completion thereof

and payment therefor and with the approval of the Board given under Section 8 of The Municipal Franchises Act, R.S.O. 1950, Chapter 249, or, if such approval be no longer necessary at the time of such commencement, with such approval (if any) as may at such time be necessary under any applicable statute.

12. The termination pursuant to clause (ii) of paragraph 11 hereof of this agreement and the franchise hereby granted shall be postponed by a period equal to:

- (a) the time during which the Gas Company is prevented from commencing the construction therein referred to by reason of acts of God, or the Queen's enemies, fires, strikes, lockouts, floods, wind, lightning, accidents, wars, insurrections and any other circumstance, whether of a similar or dissimilar nature, beyond the control of the Gas Company in the exercise of reasonable diligence; provided, however, that lack of funds shall not be deemed to be a circumstance beyond the control of the Gas Company; and
- (b) the duration of any war in which Canada shall be involved and which shall commence prior to the performance date.

13. This agreement and the respective rights and obligations hereunder of the parties hereto are hereby declared to be subject to the provisions of the regulating statute and to all orders and regulations made thereunder and from time to time remaining in effect; and in the event of any dispute or disagreement between the parties hereto as to the meaning or interpretation of anything herein contained or as to the performance or non-performance by either of such parties of any of the provisions hereof or as to the respective rights and obligations of the parties hereto hereunder, either of such parties may refer such dispute or disagreement to arbitration under the provisions of paragraph 15 hereof.

14. At any time or times within the period of twelve months following the termination of the franchise hereby granted (including any extension of the period thereof agreed upon as provided in clause (i) of paragraph 11 hereof) the Gas Company may remove the said gas distribution system or any portion or portions thereof from the public property, but failure to effect any such removal shall not deprive the Gas Company of its title to the said system or any portion or portions thereof. At any time following such termination the Corporation may, by notice given to the Gas Company, require the Gas Company to sell the said gas distribution system, or such portion thereof as shall not have been removed as hereinbefore in this paragraph provided, to the Corporation or to any person, firm or corporation designated in such notice by the Corporation; and with all reasonable dispatch after the giving of such notice the Gas Company shall sell such system or such portion thereof accordingly, at such price as may be agreed between the parties hereto or, if the parties hereto shall be unable to agree upon such price and one of them shall refer the determination thereof to arbitration under the provisions of paragraph 15 hereof, at such price as the arbitrator or arbitrators appointed under the said paragraph 15 shall fix as fairly representing the value of such gas distribution system or such portion thereof, as a going concern and as though the Gas Company were still entitled to use the public property for the operation of such system or portion.

15. Whenever The Municipal Arbitrations Act, R.S.O. 1950, Chapter 244 shall extend and apply to the Municipality any references to arbitration pursuant to the provisions of paragraph 13 or paragraph 14 hereof shall be to the Official Arbitrator appointed under that Act and shall be governed by the provisions of that Act. At any other time the procedure upon an arbitration pursuant to the provisions of the said paragraph 13 or the said paragraph 14 shall be as follows:



Within twenty days after the written request of either of the parties hereto for arbitration, each of them shall appoint one arbitrator and the two so appointed shall, within twenty days after the expiring of such twenty-day period, select a third. In case either of the parties hereto shall fail to name an arbitrator within twenty days after the said written request for arbitration, the arbitrator appointed shall be the only arbitrator. In case the two arbitrators so appointed are unable to agree on a third arbitrator within twenty days after the expiry of the first twenty day period above mentioned, application shall be made as soon as reasonably possible to any Judge of the Supreme Court of Ontario for the appointment of such third arbitrator. The arbitrator or arbitrators so appointed shall have all the powers accorded arbitrators by The Arbitration Act, R.S.O. 1950, Chapter 20 as from time to time amended, or any Act in substitution therefor. The decision of the said arbitrator or arbitrators (or of a majority of such arbitrators) shall be final and binding on the parties hereto.

16. Any notice or request to be given or made hereunder to or of either of the parties hereto shall be deemed to be sufficiently given or made if reduced to writing and mailed by prepaid registered post to the Gas Company at its Head Office or to the clerk for the time being of the Corporation at the municipal offices of the Corporation, as the case may be, or to such other address as the party to whom the same is to be given or made may hereafter have designated by notice given in the manner provided in this paragraph; and any notice or request so given or made shall be deemed to have been given or made on the day following the date of the mailing of the same within Ontario.

17. This agreement shall enure to the benefit of and bind the parties hereto and their respective successors. This agreement

shall be assignable by the Gas Company but only with the consent of the Corporation and upon any such assignment shall enure to the benefit of and bind the assignee.

IN WITNESS WHEREOF the Gas Company has hereunto caused its corporate seal to be affixed and this agreement to be signed by its proper officers in that behalf and the Corporation has hereunto caused its corporate seal to be affixed and this agreement to be signed by its mayor and clerk.

NORTHERN ONTARIO NATURAL GAS COMPANY LIMITED

Per:

.....  
President

.....  
Secretary

THE CORPORATION OF THE CITY OF NORTH BAY

Per:

*[Handwritten signature]*  
.....  
Mayor

*[Handwritten signature]*  
.....  
Clerk