

BY-LAW NO. 1031

A BY-LAW TO AUTHORIZE A FRANCHISE  
AGREEMENT BETWEEN THE CORPORATION  
AND THE CONSUMERS' GAS COMPANY OF  
TORONTO

THE COUNCIL OF THE CORPORATION OF THE VILLAGE OF  
COBDEN ENACTS AS FOLLOWS:

1. That the proposed franchise agreement with The Consumers' Gas Company of Toronto be and the same is hereby approved and authorized and the franchise provided for therein granted.
2. That the Reeve and Clerk are hereby authorized and instructed on behalf of the Corporation to enter into, execute, seal with the corporate seal and deliver the agreement set forth in the Schedule hereto between the Corporation and The Consumers' Gas Company of Toronto, which agreement is hereby incorporated in and shall form part of this by-law.
3. This by-law shall not come into force and take effect unless and until
  - (a) the assent of the electors of the Village of Cobden have been obtained thereto pursuant to subsection 1 of section 3 of The Municipal Franchises Act; or until such assent has been dispensed with by order of the Ontario Fuel Board pursuant to The Municipal Franchises Act, subsection 4 of section 9;
  - (b) the terms and conditions upon which and the period for which such franchise is to be granted have first been approved by the Ontario Fuel Board as provided in Section 9 of The Municipal Franchises Act.

Read the first and second time this 9<sup>th</sup> day of Sept  
1957.

H. B. McInnes  
Reeve

J. S. Sisson  
Clerk

Read the third time and passed, this 6<sup>th</sup> day of Nov  
1957.

H. B. McInnes  
Reeve

J. S. Sisson  
Clerk

THIS AGREEMENT made the *6<sup>th</sup>* day of *November* 1957.

B E T W E E N:

THE CONSUMERS' GAS COMPANY OF TORONTO  
Hereinafter called the "Company"

OF THE FIRST PART

- and -

THE CORPORATION OF THE VILLAGE OF  
COBDEN

Hereinafter called the "Village"

OF THE SECOND PART

WHEREAS the Company desires to distribute and sell gas (which term shall mean and include 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 means other than a pipe line) in the Village of Cobden upon the terms and conditions hereinafter set forth.

AND WHEREAS by by-law duly passed by the Municipal Council of the Village of Cobden with the requisite assent thereto of the Ontario Fuel Board, the Reeve and Clerk of the Village have been authorized and directed to execute, seal and deliver this Agreement on behalf of the Village;

NOW THEREFORE THIS AGREEMENT WITNESSETH that for valuable consideration the parties hereto mutually covenant and agree as follows:

1. The consent, permission and authority of the said Village of Cobden are hereby given and granted to the Company to supply gas to the Village and to the inhabitants thereof and to enter upon all highways now or at any time hereafter within the jurisdiction of the Village and to lay, maintain, operate and repair such mains and pipes as the Company may require thereon for the transmission and supply of gas in and through the Village for fuel purposes together with the right to construct, maintain and repair all necessary regulators, valves, curb boxes, safety appliances and other appurtenances that may be necessary in connection with the transmission and supply of gas in the Village.

2. The Company shall well and sufficiently restore forthwith to as good condition as they were in before the commencement of the Company's operations to the satisfaction of the Village Engineer (which term means from time to time such employee of the Village as the Village shall have designated as such for the purposes of this agreement, or failing such designation, the senior employee of the Village for the time being charged with the administration of public works and highways in the Municipality) all highways which it may excavate or interfere within the course of laying, constructing, or repairing or removing of its mains, pipes, regulators, valves, curb boxes, safety appliances and other appurtenances and shall make good any settling or subsidence thereafter caused by such excavation, and further, in the event of the Company failing at any time to do any work required by this Section the Village may forthwith have such work done and charged to and collect from the Company the cost thereof and the Company shall on demand pay any reasonable account therefor certified by the Village Engineer.

3. The Company shall at all times wholly indemnify the Village from and against all loss, damage and injury and expense to which the Village may be put by reason of any damage or injury to persons or property caused by the construction, repair, maintenance or operation by the Company of any of its works in the said Village as well as against any damage or injury resulting from the imprudence, neglect or want of skill of the employees or agents of the Company in connection with the construction, repair, maintenance or operation by the Company of any of its works in the Village unless the cause of such loss, cost, damage, injury or expense can be traced elsewhere.

4. Except in the event of emergency no excavation, opening or work which shall disturb or interfere with the surface of any highway 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 his supervision and to his satisfaction.

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

6. The Company before beginning any new work in the said Village under this Agreement, save and except lateral service pipes, shall file with the Village Engineer a plan drawn to scale showing the highways in which it proposes to lay mains and pipes, and the particular parts thereof it proposes to occupy for any of such purposes together with definite written specifications of the mains, pipes and works proposed to be laid or constructed by it, specifying the materials and dimensions thereof and the depth at which the same are to be laid, and similar plans and specifications shall be filed with the said Village of all extensions of, or additions to such mains, pipes or works before any such extensions or additions shall be begun. Provided further that the Company shall provide the Village Engineer with a revised plan of the location of any main should there be any alteration in the plan originally filed with the Village Engineer.

7. If in the course of constructing, reconstructing, changing, altering or improving any highway, it becomes necessary to take up, remove or change the location of appliances or works placed on or under the highway by the Company, the Company shall remove and relocate such appliances or works, and the cost thereof shall be apportioned in the manner prescribed by the Public Service Works on Highways Act, R. S. O. 1950 Chapter 318 Section 2 and amendments thereto.

8. The Company shall use at all times 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.

9. The rates to be charged and collected by the Company for gas supplied by it under this franchise shall be the rates fixed

by the Ontario Fuel Board having jurisdiction to fix rates under The Ontario Fuel Board Act, or in case there shall be no such Board then such rates as may from time to time be fixed by any other person or body having jurisdiction to fix such rates; any such application hereunder may be made by either party hereto on notice to the other.

10. The Company will at its own expense tap its mains and connect the same with the Company's meter in the customers' buildings, provided that the Company's meter is located at a distance not greater than fifty (50') feet from the street line. Provided that should any customers require the meter to be located at a distance greater than fifty (50') feet from the street line such customers shall pay the additional cost of installing the meter at such greater distance.

11. The Village will not build or permit any Commission or other public utility or person to build any structure or structures encasing any mains or pipes of the Company.

12.(a) This agreement and the respective rights and obligations hereunto 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 12 (b) hereof.

(b) 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 12 (a) 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 12 (a) 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.

13. If the Company fails to commence the construction of the works necessary to distribute gas in the Village within 12 months after natural gas is first available in quantities adequate for the purposes of the gas distribution system out of a gas transmission line at a point therein which is in the vicinity of the Village or fails within 6 months thereafter to deliver gas through the said distribution system this agreement and any and all rights granted hereunder shall be null and void, and in such event the Company shall in no wise be liable to the Village under the terms of this Agreement in damages or otherwise, save and except under the provisions of paragraph 2 and 3 hereof.

PROVIDED however, that the Company and the Village may by agreement extend the time within which the Company must perform pursuant to this clause 13 from year to year for a period not exceeding 3 years with the approval of the Ontario Fuel Board.

14. In the event of the Company being prevented from carrying out its obligations under this agreement by reason of any caused beyond its control, the Company shall be relieved from such obligations while such disability continues and in the event of a dispute as to the existence of such disability such dispute shall be determined as hereinbefore provided. Provided, however, that the provisions of this clause 14 shall not relieve the Company from any of its obligations as set out in paragraph 3 hereof.

15. The franchise hereby granted shall be for the term of twenty (20) years from and after the final passing of the by-law; provided that if at any time prior to the expiration of the said term of twenty (20) years or prior to the expiration of any renewal thereof, the Company shall notify the Village in writing that it desires a renewal thereof for a further period, the Council may but shall not be obliged to renew by By-law this agreement from time to time, for further periods not exceeding twenty (20) years at any one time.

16. The Company shall pay the costs, charges and expenses of the Village and of its Solicitor of and incidental to the preparation and passing of such by-law and this agreement.

17. For the purpose of this agreement and of any matters arising out of the same the Village shall act by the Council thereof.

18. This agreement and the said by-law is subject to all statutes, orders and rules made or to be made by lawfully constituted authority having jurisdiction in the premises.

19. Wherever the word "highway" is used in this Agreement or in the said by-law it shall mean common and public highways and shall include any street or bridge forming part of a highway or on or over and across which a highway passes and

any public square, or road allowance and shall include not only the travelled portion of such highway but also ditches, driveways, sidewalks and sodded areas forming part of the road allowance.

20. Upon the expiration of this franchise or any renewal thereof the Company shall have the right, but nothing herein contained shall require it, to remove its mains, pipes, plants and works laid in the said highways and public places and for such purpose shall have one (1) year to effect such removal. Provided that should the Company fail to remove its mains, pipes, plants and works laid in the said highway and public places in the Village within one (1) year from the date of the expiration of this franchise such mains, pipes, plants and works shall become the exclusive property of the Village. Provided further that forthwith upon the expiration of this franchise or any renewal thereof the Company shall disconnect the mains and pipes in the Village from the distribution system.

21. Any notice to be given under any of the provisions hereof may be effectually given to the Village by delivering the same to the Village Clerk or by sending the same to him by registered mail, postage prepaid, addressed to "The Clerk of the Corporation of the Village of Cobden, Cobden, Ontario", and to the Company by delivering the same to its manager or other Chief Officer in charge of its place of business in the Village of Cobden, or by sending the same by registered mail, postage prepaid, addressed to "The Consumers' Gas Company of Toronto, 19 Toronto Street, Toronto 1, Ontario." If any notice is sent by mail the same shall be deemed to have been given on the day succeeding the posting thereof.

22. This agreement shall extend to, benefit and bind the parties thereto, their successors and assigns, respectively.

IN WITNESS WHEREOF the said Company has hereunto caused its corporate seal to be affixed and these presents signed by its proper officers in that behalf and the said Corporation has hereunto caused its corporate seal to be affixed and these presents signed by the Reeve and Clerk.

THE CONSUMERS' GAS COMPANY OF TORONTO

*Colby*  
VICE-PRESIDENT & GENERAL MANAGER  
*McGee*  
ASSISTANT SECRETARY

THE CORPORATION OF THE VILLAGE OF COBDEN

*Reeve W.B. McLaughlin* *clerk J. Lamm*