

THE CORPORATION OF THE CITY OF NORTH BAY

BY-LAW NO. 5-93

A BY-LAW TO GRANT PRIVILEGES TO TRANSCANADA  
PIPELINES LIMITED.

WHEREAS Section 3 of the Municipal Franchises Act, R.S.O. 1990, Chapter M.55 provides, inter alia, that a "municipal corporation shall not grant to any person nor shall any person acquire the right to use or occupy any of the highways of the municipality except as provided in the Municipal Act, or to construct or operate any part of a transportation system or public utility in the municipality or to supply to the corporation or to the inhabitants of the municipality or any of them, gas, steam or electric light, heat or power, unless a by-law setting forth the terms and conditions upon which and the period for which such right is to be granted or acquired has been assented to by the municipal electors";

AND WHEREAS Section 64 (1) of the Ontario Municipal Board Act, R.S.O. 190, Chapter O.28 provides that where "under any general or special Act, it is requisite that the assent of the electors of a municipality...first be obtained to the exercise by a municipality of any of its powers...or passing of any by-law the Board shall not approve the exercise of such power,...or the by-law until such assent has been obtained, unless the Board after due inquiry is satisfied that such assent may under all the circumstances properly be dispensed with, and the Board may, in any such case by its order, declare and direct that the assent of the electors of the qualified electors shall not be requisite to be obtained notwithstanding the provisions of such general or special Act";

AND WHEREAS TransCanada Pipelines ("TCPL") has applied to the Council of The Corporation of the City of North Bay ("the City") for the rights to construct and operate a public utility and to cross and use certain of the streets, highways and public places of the City for the purpose of supplying electricity to Ontario Hydro (the "Services") within the City, and to enable TCPL to convey the Services for any and all purposes, subject only to certain express limitations;

AND WHEREAS TCPL does not seek the right to use the streets, or any of them, unless the City grants easements permitting such use;

AND WHEREAS the municipal Council of The Corporation of the City of North Bay has deemed it advisable to grant to TCPL such rights to the extent and upon the terms and conditions hereinafter set forth.

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY ENACTS AS FOLLOWS:

1. AUTHORIZATION

That TCPL, its successors and assigns, be and they are hereby authorized and empowered for and during the term of 40 years from the date of commencement of the By-law to install, construct and maintain through, over and along the streets, highways and public places within the heavy black line shown on Schedule "A" hereto, any fixtures, including towers, poles, anchors, guys, braces, wires, cables, electric or other conductors or devices hereafter erected and maintained for the sole purpose of making the required electrical connection to the Ontario Hydro electric grid located to the north of the proposed co-generation facility, to the north of Cooks Mills Road.

2. LIMITED PUBLIC UTILITY

TCPL, its successors and assigns is hereby further authorized and empowered to construct and operate a limited public utility within the heavy black line shown on Schedule "A" hereto, for the supply of electricity only to Ontario Hydro.

3. APPROVAL OF THE DIRECTOR OF ENGINEERING AND ENVIRONMENTAL SERVICES

The construction, maintenance and repair of any such works authorized upon the streets, highways or public places all within the heavy black line shown on Schedule "A" hereto shall be subject to the supervision and direction, and shall be completed to the satisfaction of the City's Director of Engineering and Environmental Services or his authorized agent(s).

4. GRANT OF EASEMENTS

The construction of any such works upon the streets, highways or public places may only take place within easements applied for and granted by the City to TCPL.

5. MAINTENANCE AND REPAIR

(1) TCPL, and its successors or assigns, shall ensure that any works constructed and operated in, over or under any of the streets, highways or public places within the heavy black line shown on Schedule "A" hereto shall be maintained and repaired by TCPL, its successors or assigns, to the satisfaction of the said City Director or his authorized agent(s).

(2) Council is hereby authorized at the sole expense of TCPL to cause any necessary works to be done, or repairs to be carried out, where TCPL defaults upon its obligations under this By-law in respect of maintenance or repair, or fails to fulfill its obligations to the satisfaction of the Director of Engineering and Environmental Services or his authorized agent(s).

(3) In the event it becomes necessary to break the surface of any public highway, street, walkway or other lands of the City, then TCPL shall give five (5) days prior notice to the City, enter into such service contract as may be reasonably required by the City for inspection fees, design and as constructed drawings and then TCPL shall repair and reinstate the surface of such public highway, street, walkway or other public lands of the City to the same condition as it was before such work was undertaken by TCPL and, thereafter, TCPL shall, at its own expense, maintain that portion of the said public highway, street, walkway or other lands by repairing any settling thereof to the satisfaction of the Director of Engineering and Environmental Services of the City.

(4) In the event that TCPL shall fail to repair, maintain and reinstate the said public highway, streets, walkways or other lands of the City as aforesaid within five (5) days of being notified by the City, the City may undertake the same and charge the costs thereof to TCPL which may be collected as if the said costs were arrears of taxes, and the City shall not be liable for any damage of any nature and kind caused TCPL and its equipment by reason of the work undertaken by the City as aforesaid, and TCPL hereby undertakes to indemnify and save harmless the City therefrom.

6. NON-EXCLUSIVE GRANT

The rights herein granted to TCPL, its successors or assigns are not exclusive. The City may grant similar rights to any other company or companies, person or persons.

7. NON-TRANSFERABLE GRANT

(1) TCPL shall not sell, transfer or assign the rights and privileges granted in this By-law without the express written consent of the City, which consent shall not be unreasonably withheld.

(2) Notwithstanding the foregoing, TCPL may sell, transfer or assign its interest without such consent to an entity in which TCPL holds a fifty percent (50%) interest or more, or to a financial institution for the purposes of financing.

8. INDEMNITY

TCPL, its successor or assigns shall indemnify the City against all claims, demands, damages, losses, costs and expenses arising from the supply of services authorized herein and the construction, maintenance and repair of any works in relation thereto which are not attributable to the negligence of the City or its employees, agents or servants, or any of them.

9. APPROVAL OF THE ONTARIO MUNICIPAL BOARD

This by-law shall not have force and effect until first approved by the Ontario Municipal Board.

10. AUTHORITY TO EXECUTE AGREEMENTS

The Mayor and Clerk of the City, or their duly appointed designates are authorized to execute an agreement dated November 30, 1992 and such agreements as necessary to implement the terms of this By-law.

READ A FIRST TIME IN OPEN COUNCIL THE 11TH DAY OF JANUARY 1993.

READ A SECOND TIME IN OPEN COUNCIL THE 11TH DAY OF JANUARY 1993.

READ A THIRD TIME IN OPEN COUNCIL AND ENACTED AND PASSED THIS 11TH DAY OF JANUARY , 1993..

  
MAYOR

  
CITY CLERK

SCHEDULE "A"

