Agenda – Council – February 23, 2011

Report – Executive Policy Committee – February 9, 2011

Item No. 1 Settlement with Manitoba Hydro regarding an audit of the collection of the Electricity and Gas Tax

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On February 9, 2011, the Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service and submits the following to Council:

1. That a settlement with Manitoba Hydro, with payment from Manitoba Hydro in the amount of $5.3 million, be approved.

2. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

Report – Executive Policy Committee – February 9, 2011

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On February 9, 2011, the Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service and submitted the matter to Council.

ADMINISTRATIVE REPORT

Title: **Settlement with Manitoba Hydro regarding an audit of the collection of the Electricity and Gas Tax.**

Critical Path: **Executive Policy Committee - Council**

AUTHORIZATION

Author	Department Head	CFO	CAO
N. Karpa	N. Karpa	M Geer A/Chief Financial Officer	M Ruta A/Chief Administrative Officer

RECOMMENDATIONS

1. That a settlement with Manitoba Hydro, with payment from Manitoba Hydro in the amount of $5.3 million, be approved by Council.
2. That the proper officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

REASON FOR THE REPORT

Council approval is required for settlements in excess of $ 250,000 pursuant to the City Organizational By-law 7100/97.

IMPLICATIONS OF THE RECOMMENDATIONS

This settlement, and payment by Manitoba Hydro, will bring a conclusion to the City of Winnipeg's audit of Manitoba Hydro with respect to the collection and remittance of the Electricity and Gas Tax, and the City will discontinue the Court of Queen's Bench Suit number CI 10-01-065189.

HISTORY

- The *City of Winnipeg Charter* (the "*Charter*") and the former *City of Winnipeg Act* provide Council the authority to, by by-law, impose a tax on the consumption of electricity and gas. Council adopted By-law 479/73 to impose this tax.
- Pursuant to section 449 of the *Charter*, the City has the right to audit the records of sellers for purposes of enforcing remittance of tax that was collected or should have been collected. On July 18, 2005 the City Treasurer officially appointed Buckingham Tax Services to conduct an audit of the records of Manitoba Hydro with respect to the collection and remittance of Tax on Electricity and Gas (City Tax). The audit period was established for August 1, 1999 to December 31, 2004 (hereafter referred as "Period 1").
- The audit of Period 1 was very complex, with many technical, accounting, and legal issues examined. There was considerable examination and re-examination of records and detailed information by the external audit staff, City of Winnipeg staff, and by Manitoba Hydro staff. Many of the issues required legal review as well.
- During the course of the Period 1 audit, it was discovered that Manitoba Hydro did not appear to be properly computing the City Tax relative to the federal Goods and Services Tax (GST) as required in the *Charter*.
- In February 2010, the City filed a Statement of Claim in the Court of Queen's Bench relative to the matter of the GST, with some of the matters dating back to 1991, along with other matters also related to the audit including:
    - Application of the domestic rate versus the non-domestic rate
    - Base load calculations
    - Rounding calculations
    - Commissions deducted
- Following the completion of the Period 1 audit, a subsequent audit of the period from January 1, 2005 to December 31, 2010 (hereafter referred as "Period 2") was to have been undertaken.
- While an actual audit (examination of records) was not undertaken for Period 2, it was expected to be just as technically complex, lengthy, and would have required the same level of significant involvement of staff in each organization as was experienced in the audit of Period 1. It was also expected that many of the same issues that were uncovered in the audit of Period 1 extended into Period 2, and it was expected that many of the audit findings would be similar.
- Due to the amount of effort and uncertainty surrounding both audit periods, it was felt by both the City of Winnipeg and Manitoba Hydro that it would be preferable to resolve all these matters by agreement, and then focus attention and energy to working together proactively to simplify and streamline the application and administration of the electricity and gas tax.
- The proposed settlement agreement covers the period from January 1, 1991 to December 31, 2010. This covers both Periods 1 and 2.

- In consideration of the payment from Manitoba Hydro of $5.3 million, all issues relating to the audit (both Periods 1 and 2) will be resolved, and from January 1, 2011
    - GST will not be included in the purchase price of electricity and gas for the purposes of calculating the tax owning by the customer;
    - Reduced rates of tax will continue to be applied to electricity and gas consumed for space heating; and
    - Manitoba Hydro will continue to refund tax to customers in situations where adjustments are processed to correct previous billed amounts.
- Part of the settlement also calls for the creation of a small working group from both parties with the objective of simplifying and streamlining the application of the Electricity and Gas Tax. This working group, acting cooperatively together, will facilitate more effective communication, in order to avoid misunderstandings in the application and administration of the Electricity and Gas Tax. A mandate of this working group will be to develop and recommend applicable changes to the administration of the Electricity and Gas Tax. This may include recommendations for changes related City of Winnipeg By-laws, the *City of Winnipeg Charter*, or other related *Acts*.

FINANCIAL IMPACT

Debt - Internal	$	-	$	-	$	-	$	-	$	-
Debt - External		-		-		-		-		-
Grants (Enter Description Here)		-		-		-		-		-
Reserves, Equity, Surplus		-		-		-		-		-
Other - Enter Description Here		-		-		-		-		-
Total Funding	$	-	$	-	$	-	$	-	$	-
Total Additional Capital Budget Required	$	-								
Total Additional Debt Required	$	-								
Current Expenditures/Revenues										
Direct Costs (Commission)	$	170,671	$	-	$	-	$	-	$	-
Less: Incremental Revenue/Recovery		5,300,000		-		-		-		-
Net Cost/(Benefit)	$	(5,129,329)	$	-	$	-	$	-	$	-
Less: Existing Budget Amounts		-		-		-		-		-
Net Budget Adjustment Required	$	(5,129,329)	$	-	$	-	$	-	$	-

Additional Comments:

The payment of $5,300,000 is before estimated commissions payable of $170,671. The above financial impact will be reflected in the 2011 budget process. Other costs related to the settlement were expensed in 2010.

(original signed by)

Radhika Abeysekera
Manager of Finance - Campus Departments
Corporate Finance Department

CONSULTATION

In preparing this report there was consultation with:
Legal Services Department

SUBMITTED BY

Department: Assessment and Taxation
Division: Office of the Director
Prepared by: Nelson Karpa
Date: February 3, 2011
File No.