**Minute No. 216**
**Report – Executive Policy Committee – February 6, 2013**

**Item No. 9 Settlement of Deacons Corner Invoice between Manitoba Hydro and the City of Winnipeg**

COUNCIL DECISION:

Council concurred in the recommendation of the Executive Policy Committee and adopted the following:

1. That the City pay Manitoba Hydro $292,222 representing 50% of their invoice for services rendered at Deacons Corner totaling $584,443.94.

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 6, 2013**

DECISION MAKING HISTORY:

Moved by His Worship Mayor Katz,

That the recommendation of the Executive Policy Committee be adopted.

Carried

Councillor Swandel asked to be recorded as having voted against the item in accordance with Rule 47(7) of the Procedure By-law 50/2007.

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On February 6, 2013, the Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service and submitted the matter to Council.

# ADMINISTRATIVE REPORT

**Title:** **SETTLEMENT OF DEACONS CORNER INVOICE BETWEEN MANITOBA HYDRO AND THE CITY OF WINNIPEG**

**Critical Path:** **EXECUTIVE POLICY COMMITTEE, COUNCIL**

## AUTHORIZATION

| Author | Department Head | CFO | CAO |
|---|---|---|---|
| M. Ruta | M. Ruta | M. Ruta, CFO | D Joshi<br>COO |

## RECOMMENDATIONS

That the City pay Manitoba Hydro $292,222 representing 50% of their invoice for services rendered at Deacons Corner totaling $584,443.94.

## REASON FOR THE REPORT

Although technically a claim has not been filed between Manitoba Hydro and the City, given the long expanse of time with respect to settlement and the possibility of litigation, Council approval is being sought.

## IMPLICATIONS OF THE RECOMMENDATIONS

The City will be able to settle this long-standing disagreement at a substantially discounted value. Water and Waste has advised that the funding is available in the water treatment plant capital program.

## HISTORY

- This issue relates to the relocation of Manitoba Hydro transmission towers which were impeding construction of the new Water Treatment Plant. As noted below, the cost of relocation incurred by Hydro totaled $584,443.93. The City issued a Purchase Order requesting relocation of the lines and Manitoba Hydro issued an invoice for a corresponding amount
- There was a 1931 inter-departmental agreement between the City's Hydro Utility and the Greater Winnipeg Water District (Water utility) allowing the City to locate the Slave Falls Transmission Line over and along the right of way of the Water utility. The agreement provided for an easement in favor of the Hydro utility over the lands occupied by the Water utility in respect of the Hydro utility's "towers, poles and wires". This same agreement also provided that "the said towers, poles and wires shall be moved by the (Hydro utility) as may be directed from time to time by the (Water utility)….at the sole cost of the (Hydro utility)". Sometime subsequent to the signing of this agreement, the City became both the Hydro utility and Water utility.
- The Greater Winnipeg Water District was succeeded by the Metropolitan Corporation of Greater Winnipeg which was thereafter dissolved in 1972 in favor of the new City of Winnipeg created by the City of Winnipeg Act. It is Hydro's contention that the separate entities to the agreement became one thus ending the agreement.
- In 2002 Winnipeg Hydro was sold to Manitoba Hydro. The 1931 agreement was not disclosed in the inter-departmental contracts appendix. The City acknowledged in writing that "all inter-departmental contracts have been terminated as at the closing date without any liabilities or penalties payable by the purchaser whatsoever." The communication goes on to state that the City will indemnify, reimburse and hold the Purchaser harmless against any and all claims etc. which may arise in any manner out of the inter-departmental contracts as at the closing date.
- However, the agreement was disclosed in the list of easements and rights of way granted to the vendor. Section 5(2) of the Sale of Winnipeg Hydro Act states that Manitoba Hydro assumes the obligations of the City under an easement agreement relating to Winnipeg Hydro.
- Manitoba Hydro concluded that the 1931 agreement has been terminated and the provisions of the Asset Purchase agreement and Master Easement and Right of way agreement give Manitoba Hydro a free grant of easement.
- The City maintains that the 1931 agreement was listed as an easement and right of way in the sale agreement. The City concludes that Manitoba Hydro knew of the agreement and is subject to it as if it was agreed to by two separate entities.
- The agreement includes a dispute resolution clause allowing good faith discussions between senior representatives. If this does not work, then it goes to the CAO and the

President of Hydro to discuss. Thereafter the parties can agree to mediation or arbitration or alternatively it proceeds to the Court of Queen's Bench for resolution.

- As the Statute of Limitations period was about to expire, Manitoba Hydro were about to file a statement of claim. The City has agreed to waive the limitation period to see if we could negotiate a settlement.
- In summary, the City believes that the easement was transferred and is the responsibility of Manitoba Hydro. Manitoba Hydro contends that there is an inter-departmental agreement that expired and for which they are not responsible.

Manitoba Hydro has indicated that based on the above they believe they have a strong case to argue they were not liable for Deacons Corner relocation based on the wording in the sale agreement. On review and in discussion with Legal Services and Water and Waste, the Public Service believes the settlement proposed is fair to both sides of the discussion and will avoid protracted legal costs and litigation which may not result in a more favorable settlement.

## FINANCIAL IMPACT

**Project Name:** **First Year of Program** **2013**

SETTLEMENT OF DEACONS CORNER INVOICE

| | 2013 | 2014 | 2015 | 2016 | 2017 |
|---|---|---|---|---|---|
| **Capital** | | | | | |
| Capital Expenditures Required | $ 292,222 | $ - | $ - | $ - | $ - |
| Less: Existing Budgeted Costs | 292,222 | - | - | - | - |
| Additional Capital Budget Required | $ - | $ - | $ - | $ - | $ - |
| **Funding Sources:** | | | | | |
| Debt - Internal | $ - | $ - | $ - | $ - | $ - |
| Debt - External | - | - | - | - | - |
| Grants (Enter Description Here) | - | - | - | - | - |
| Reserves, Equity, Surplus | 292,222 | - | - | - | - |
| Other - Enter Description Here | - | - | - | - | - |
| Total Funding | $ 292,222 | $ - | $ - | $ - | $ - |
| Total Additional Capital Budget Required | $ - | | | | |
| Total Additional Debt Required | $ - | | | | |
| **Current Expenditures/Revenues** | | | | | |
| Direct Costs | $ - | $ - | $ - | $ - | $ - |
| Less: Incremental Revenue/Recovery | - | - | - | - | - |
| Net Cost/(Benefit) | | $ - | $ - | $ - | $ - |
| Less: Existing Budget Amounts | - | - | - | - | - |
| Net Budget Adjustment Required | | $ - | $ - | $ - | $ - |

**Additional Comments:** The Public Service is recommending payment of $292K or 50% of the original Manitoba Hydro invoice of $584K and will be funded from capital.

Original signed by *"M. L. Geer, CA"*

## CONSULTATION

**In preparing this report there was consultation with:**

Legal Services
Water and Waste

## SUBMITTED BY

CFO
Prepared by: M. Ruta
Date: January 2, 2013
File No.