Agenda – Council – May 29, 2020

Report – Executive Policy Committee – May 22, 2020

Item No. 3 Bill 44 – The Public Utilities Ratepayer Protection and Regulatory Reform Act (Various Acts Amended)

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On May 22, 2020, the Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service, as amended, and submitted the following to Council:

1. That the Public Service be directed to attend the Provincial Standing Committee Hearing for Bill 44 to present City of Winnipeg concerns and seek clarification on the content of the Bill and anticipated Regulations.

2. That the Chief Administrative Officer request the Province of Manitoba to include the City of Winnipeg in active collaboration in the creation of the regulations for Bill 44.

3. That City Council request the Province of Manitoba to endorse Winnipeg's current 2020-2023 water and sewer rate plan and enact the necessary regulations under Bill 44, or alternatively delay amendment to Section 210.5 of The City of Winnipeg Charter, to allow for the first water and sewer rate period to be reviewed and set by the PUB to begin in 2024.

4. 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 – May 22, 2020

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On May 22, 2020, the Executive Policy Committee passed the following motion:

WHEREAS on March 19, 2020 the Manitoba Legislative Assembly gave first reading to Bill 44- The Public Utilities Ratepayer Protection and Regulatory Reform Act (Various Acts Amendment) (The Bill);

AND WHEREAS The Bill would amend The City of Winnipeg Charter Section 210.5 to remove exemption from the Public Utilities Board (PUB) Act for the purpose of setting water and sewer rates;

AND WHEREAS this amendment would remove City Council's authority to set water and sewer rates for the City of Winnipeg, in favor of these rates being set by the PUB;

AND WHEREAS on January 30, 2020 City Council approved a 4 year water and sewer rate plan for the period of 2020 – 2023;

AND WHEREAS the City has recently completed a 4 year balanced operating budget that is based in part on the aforementioned 4 year water and sewer rate plan;

AND WHEREAS the 4 year water and sewer rate plan is providing stability and predictability for ratepayers during an otherwise uncertain time, while also providing funding for the capital upgrades to Winnipeg's wastewater treatment plants to meet provincial environment guidelines;

AND WHEREAS the impact of The Bill on the organization structure of the Water and Waste Department will take some time to determine as will the workload impact to the department of preparing for and participating in a PUB rate hearing;

AND WHEREAS The Bill enables the Lieutenant Governor in Council to make regulations specifying the date for the beginning of the first rate period;

AND WHEREAS City Council has already approved a 4 year water and sewer rate plan that ends in 2023, it is appropriate that the City of Winnipeg request the Province of Manitoba to set the first PUB rate period to begin in 2024;

Report – Executive Policy Committee – May 22, 2020

DECISION MAKING HISTORY (continued):

EXECUTIVE POLICY COMMITTEE RECOMMENDATION (continued):

THEREFORE BE IT RESOLVED that the recommendation of the Winnipeg Public Service be concurred in with the following amendment:

- That the following new recommendation be added and the remaining recommendation be renumbered accordingly:

    "3. City Council request the Province of Manitoba to endorse Winnipeg's current 2020-2023 water and sewer rate plan and enact the necessary regulations under Bill 44, or alternatively delay amendment to Section 210.5 of The City of Winnipeg Charter, to allow for the first water and sewer rate period to be reviewed and set by the PUB to begin in 2024."

and submitted the matter to Council.

On April 28, 2020, the Executive Policy Committee passed the following motion:

WHEREAS on March 19, 2020 the Manitoba Legislative Assembly gave first reading to three bills including Bill 44-The Public Utilities Ratepayer Protection and Regulatory Reform Act, Bill 48- The Planning Amendment and City of Winnipeg Charter Amendment Act, and Bill 49 – The Building and Electrical Permitting Improvement Act (Various Acts Amended and Permit Dispute Resolution Act Enacted) ("The Bills");

AND WHEREAS Bill 44 establishes a new regulatory framework that would replace Winnipeg City Council's ability to determine water and sewer rates in favour of these rates being determined by the Public Utilities Board;

AND WHEREAS Bill 48 would provide the Municipal Board with jurisdiction to make binding decisions on appeals of municipal land use decisions in the City of Winnipeg;

AND WHEREAS Bill 49 would enact new legislation to resolve disputes related to building and electrical permits by having provincially appointed adjudicators issue binding orders on these matters;

AND WHEREAS the Bills may contain financial implications for residents of the City of Winnipeg and implications for the City's decision making framework;

Report – Executive Policy Committee – May 22, 2020

DECISION MAKING HISTORY (continued):

EXECUTIVE POLICY COMMITTEE RECOMMENDATION (continued):

AND WHEREAS on April 20, 2020 the Standing Committee on Property and Development, Heritage and Downtown Development requested the Winnipeg Public Service provide a verbal update of Bills 48 and 49 at its May 21, 2020 meeting.

THEREFORE BE IT RESOLVED that the Winnipeg Public Service be directed to report back within 30 days to the Executive Policy Committee with individual written reports on the financial, organizational, policy and any other relevant implications to the City of Winnipeg with respect to Bills 44, 48 and 49, as tabled in the Manitoba Legislature in March, 2020.

ADMINISTRATIVE REPORT

Title: **BILL 44 – THE PUBLIC UTILITIES RATEPAYER PROTECTION AND REGULATORY REFORM ACT (VARIOUS ACTS AMENDED)**

Critical Path: **Executive Policy Committee**

AUTHORIZATION

Author	Department Head	CFO	CAO
M. Geer, CPA, CA Director, Water and Waste Department	M. Geer, CPA, CA Director, Water and Waste Department	N/A	M. Ruta, Interim CAO

EXECUTIVE SUMMARY

On March 19, 2020, the Legislative Assembly of Manitoba gave first reading to Bill 44 - *The Public Utilities Ratepayer Protection and Regulatory Reform Act (Various Acts Amended)*.

Bill 44 will amend *The City of Winnipeg Charter Section 210.5* to remove exemption from *The Public Utilities Board Act*, for the purposes of setting water and sewer rates.

This amendment will remove City Council's authority to set water and sewer rates for the City of Winnipeg.

In order to ensure that the impacts on the City of Winnipeg are identified, the Public Service is recommending that they attend the Provincial Standing Committee Hearing and request involvement in the creation of the regulations.

The Public Service will continue to review the Bill to identify further financial, organizational and customer impacts, including existing Council authority, approval process, standard operating procedures and applicable by-laws.

RECOMMENDATIONS

1. That the Public Service be directed to attend the Provincial Standing Committee Hearing for Bill 44 to present City of Winnipeg concerns and seek clarification on the content of the Bill and anticipated Regulations.

2. That the Chief Administrative Officer request the Province of Manitoba to include the City of Winnipeg in active collaboration in the creation of the regulations for Bill 44.

3. 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

On April 28, the Executive Policy Committee directed the Public Service to report back within 30 days to the Executive Policy Committee with individual written reports on the financial, organizational, policy and any other relevant implications to the City of Winnipeg with respect to Bills 44, 48 and 49, as tabled in the Manitoba Legislature in March, 2020.

Pursuant to Section 4 of the City Organization By-law No 7100/97, the Executive Policy Committee has jurisdiction over Inter-Governmental Affairs and acts as the Inter-Governmental affairs Committee to conduct all necessary formal relationships with the Government of Manitoba.

IMPLICATIONS OF THE RECOMMENDATIONS

By participating in both the Provincial Standing Committee Hearing and the creation of the regulations the implications, both financial and organizationally, to the City of Winnipeg, will be detailed by the Public Service. In addition, further clarity in regards to the implications will be sought.

HISTORY/DISCUSSION

On March 19, 2020, the Legislative Assembly of Manitoba gave first reading to Bill 44 *The Public Utilities Ratepayer Protection and Regulatory Reform Act (Various Acts Amended).*

On May 1, 2017 the Standing Policy Committee on Water and Waste, Riverbank and the Environment received a Notice of Motion from City Council directing the Administration to call public hearings on the proposed Water and Sewer Rate Increases of 2017 and 2018.

On December 19 and 20, 2011, under Public Utilities Board general supervisory jurisdiction, the Board held a two-day informational Hearing with respect to the City's water and sewer utilities. The purpose of this Hearing was not to set water and sewer rates but to examine, in an open and transparent forum, how the City finances, manages and operates its water and sewer utilities and for the Board and the public to learn more about the City's water and sewer utilities and facility transparency around water and wastewater operations.

Subsequent to the hearing, *The Public Utilities Board Act* Order 56/12 was issued on May 3, 2012 (Appendix 1) and made a number of recommendations, including, but not limited to:

- Elimination of the dividend
- Elimination of payment of property taxes to the City of Winnipeg
- Reduce rent payable to the City of Winnipeg to cost
- City increase interest paid on utility funds held in general revenues
- Elimination of the transfer to the Land Drainage fund
- Use savings from above to address the infrastructure deficit and accelerate the combined sewer overflow program

It is anticipated a Committee Hearing to hear public representations on Bill 44 *The Public Utilities Ratepayer Protection and Regulatory Reform Act (Various Acts Amended) will be scheduled pursuant to legislative assembly procedures.*

KEY ISSUES

The passage of Bill 44 will mean that City Council will no longer have ability to set water and sewer rates and long term financial plans for the City of Winnipeg water and sewer utilities. Bill 44 (Appendix 2) was tabled on March 19, 2020 and the Public Service has not yet had opportunity to engage with provincial officials on the intent of the amendment. Under Bill 44 the City would be required to apply for a rate approval and the rates need to be based on:

- the reasonable revenue requirements of the water and wastewater utility for each year within the rate period; and
- a cost allocation method and rate design approved by the regulator.

In addition, Bill 44 proposes a host of new regulatory authority. This includes regulatory authority:

- to specify the date for the beginning of the first rate period;
- to change the length of a rate period;
- respecting the application and approval process for water and wastewater utility rates;
- to permit, prohibit or restrict the use of rate revenue for anything other than the operational and capital requirements of the water and wastewater utility
- provide for any transitional matter arising out of the coming into force of this section; and
- respecting any other matter that the Lieutenant Governor in Council, after consulting with the City and the regulator, considers necessary or advisable for the purposes of this section.

While the legislation proposes a five year rate cycle, the ability to change the length of the rate period, as well as specifying the beginning of the initial rate period, is enabled through the proposed regulatory authority. Bill 44 does not include the authority to issue an order or directive governing the City's operations or its capital management, investments or expenditures in relation to the water and wastewater utility.

However, Section 210.1(6) appears to allow the Public Utilities Board to ask the government, via the minister, for authority to make recommendations on the utility's capital management investments, and expenditures, and also to make recommendations on City operations.

Bill 44 proposes to prohibit differential rates for different customers or classes of customers based on affordability or other socio-economic factors. It is not clear whether that would apply to industrial users versus residential users or what implications this might have for the "polluter pays" principle.

In addition to Bill 44, the water and sewer utilities are subject to a host of provincial legislation and licensing requirements including:

- *The Environment Act* Licence No. 2684RRR – North End Water Pollution Control Centre
- *The Environment Act* Licence No. 2716RR – South End Water Pollution Control Centre
- *The Environment Act* Licence No. 2669ERR – West End Water Pollution Control Centre
- *The Environment Act* Licence No. 3042 – Combined Sewer Overflow
- *The Environment Act* Licence No. 1089ERR - Biosolids
- *The Environment Act* Licence No. 2684RRR – North End Water Pollution Control Centre
- *The Environment Act,* Water and Wastewater Facility Operators Regulation
- *The Save Lake Winnipeg Act, Water Protection Act* – provides direction on NEWPCC (in addition to the Licence)

- *The Drinking Water Safety Act*, Public Water System Operating Licence PWS-09-412.01South

The department has also been the subject of Clean Environment Commission hearings at the discretion of the Minister responsible for *The Environment Act.*

IMPLICATIONS/RISKS

City Council's multi-year budget and rate approval for 2020 to 2023 may not be permitted under PUB and City could be ordered to a hearing before then.

City of Winnipeg could face enormous financial pressures if PUB would not allow the existing dividend policy. It is a standard utility practice in other municipalities and similar to water rental paid by Manitoba Hydro to the Province of Manitoba.

The dividend in 2020 to 2023 (in millions) is $34.6, $35.7, $36.7 and $37.7

The organization structure of the Water and Waste Department would need to be reviewed as many services in the department's portfolio would not be subject to the Public Utilities Board.

City Council's authority for setting operating and capital budgets would be weakened under PUB, even though the majority of those costs are to comply with the applicable Manitoba Licences.

A PUB hearing is a very in-depth, quasi-judicial process that requires a multi-disciplinary team and will require additional resources. The rate applicant pays for the hearing process as well as any registered intervenors. Given that it would be the City's first appearance at a PUB Hearing and that Manitoba Hydro will be exempt from PUB for five years, it is reasonable to assume that the inaugural hearing would be lengthy and costly. The Manitoba Hydro exemption would free up the PUBs time and resources to review the City rate application.

FINANCIAL IMPACT

Financial Impact Statement **Date:** May 8, 2020

Project Name:

Bill 44 – The Public Utilities Ratepayer Protection and Regulatory Reform Act (Various Acts Amended)

COMMENTS:

There are no direct financial implications associated with the recommendations contained in this report. There will be direct and potentially significant financial implications to the City with the passage of Bill 44. The amount and timing of these financial implications is not reasonably determinable at this time.

"Original signed by L. Szkwarek, CPA, CGA"
Lucy Szkwarek, CPA, CGA
Manager of Finance and Administration

CONSULTATION

N/A

OURWINNIPEG POLICY ALIGNMENT

01-3 Prosperity – Direction 1:
Provide Efficient and focused Civic Administration and Governance

01-3 Prosperity – Direction 2:
Provide a Predictable and Cost-Effective Business Environment that Promotes Investment and Growth

01-3 Prosperity – Direction 3
Maintain Strong Intergovernmental Cooperation

WINNIPEG CLIMATE ACTION PLAN ALIGNMENT

N/A

SUBMITTED BY

Department: Water and Waste Department
Prepared by: Moira Geer
Date: May 7, 2020
File No.: 010-01-11-03-01

APPENDICES:

Appendix A: Bill 44 The Public Utilities Ratepayer Protection and Regulatory Reform Act (Various Acts Amended)

Appendix B: Order No. 56/12 The Public Utilities Board Act