Committee of the Whole
REPORT 10-013
As Amended By City Council on April 14, 2010
9:30 a.m.
April 13, 2010
Sheraton Hotel
Hamilton Convention Centre

Present:
Deputy Mayor R. Pasuta
Councillors B. Bratina, B. Clark, C. Collins, S. Duvall,
L. Ferguson, T. Jackson, B. McHattie, B. Morelli, M.
Pearson, D. Mitchell, R. Powers, T. Whitehead

Absent with regrets:
Mayor F. Eisenberger – Vacation
Councillor M. McCarthy – City Business
Councillor Merulla – City Business

Also Present:
C. Murray, City Manager
R. Rossini, General Manager, Finance and Corporate
Services
G. Davis, General Manager, Public Works
T. McCabe, General Manager, Planning and Economic
Development
J. Priel, General Manager, Community Services
J. Kay, Fire Chief/General Manager HES
P. Barkwell, City Solicitor
M. Gallagher, Co-ordinator, Council and Committee of the
Whole/Budgets

COMMITTEE OF THE WHOLE PRESENTS REPORT 10-013 AND
RESPECTFULLY RECOMMENDS:

1. Amendments to Schedule 20 (Residential Care Facilities) of the
Licensing By-law 07-170 (PED10005(a)) – Supplementary Report and
By-law (Item 5.1)

(a) That the amendments to Schedule 20 (Residential Care Facilities)
of the Licensing by-law No. 07-170, detailed in the proposed
amending by-law attached as Appendix "B" to Report PED10005(a) be approved;

(b) That the proposed amending by-law attached as Appendix "B" to Report PED10005(a) which has been prepared in a form satisfactory to the City Solicitor, be passed.

(c) That the City of Hamilton requests amendments to the Substitute Decisions Act that prohibits owner operators from acting as Power of Attorneys under their care or in the care of a related Company.

2. Amendments to Schedule 20 (Residential Care Facilities) of the Licensing By-law 07-170 (PED10005)

That Report PED100005 respecting Amendments to Schedule 20 (Residential Care Facilities) of the Licensing By-law 07-170 be received.

3. Request to address Committee by John Callinor of Nestle Waters Canada respecting Item 6.9 on today's agenda regarding Bottled Water

That the presentation by John Challinor respecting Bottled Water be received.

4. Bottled Water (CS10035/PW10035) (City Wide)

(a) That the General Managers of Public Works and Community Services be authorized to implement a strategy which reduces reliance on bottled water at City facilities and events. The strategy entails:

(i) A social awareness campaign to educate residents and consumers about the value and safety of municipal drinking water, the environmental implications of non-recycled Polyethylene Terephthalate (PET) bottles and the importance of source water and watershed protection;

(ii) Continuing to sell bottled water at City Recreation facilities but at the same time increasing access to municipal drinking water wherever possible.

(b) That the item respecting "Correspondence from Refreshments Canada respecting bottled water and support of a broader sustainability program" be lifted from the Outstanding Business List on the Committee of the Whole Agenda.

(c) That staff be directed to report back with timelines associated with implementing actions noted in the report.
5. Advisory Committee for Persons with Disabilities Report 10-002 (Item 6.2)

(a) **Barrier Free Design Guidelines**

That, pending the implementation of the Provincial AODA Built Environment Standards, the Advisory Committee for Persons with Disabilities recommends to Council that the Barrier-Free Design Guidelines, 2006 be reviewed for gaps and deficiencies such as those existing in social housing, curb cuts and accessible washrooms design and be updated at its earliest convenience.

(b) **Roundabouts**

That the recommendation respecting roundabouts submitted by the Advisory Committee be received and that the Advisory Committee for Persons with Disabilities be added as a commenting body to city projects such as roundabouts to address concerns of persons with disabilities.

(c) **Signage at City Hall**

That a request be sent to the City Hall construction project managers that the Advisory Committee for Persons with Disabilities be invited to tour the City Hall facilities as soon as possible in order to view, observe and provide feedback.

6. Capital Projects’ Status and Closing Report as of December 31, 2009 (FCS09083(b)) (City Wide) (Item 6.4)

(a) That the December 31st, 2009, Capital Projects’ Status and Projects’ Closing Report and the attached Appendices A, B, C, D, and E to report FCS09083(b) for the tax levy and the rate supported capital projects be received for information;

(b) That the General Manager of Finance & Corporate Services be directed to close the completed capital projects listed in Appendix B to report FCS09083(b) as amended in accordance with the Capital Closing Policy and that the net transfers be applied as listed below and as detailed by project in Appendix B to report FCS09083(b)

**Transfer to/from Reserves**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Development Charges</td>
<td>12,871</td>
</tr>
<tr>
<td>Police-Capital Reserve</td>
<td>62,986</td>
</tr>
<tr>
<td>Reduce Outstanding Debt-Rates Program</td>
<td>1,000,000</td>
</tr>
</tbody>
</table>

Council – April 14, 2010
(c) That the following be redirected to infrastructure replacement/upgrades (ie; sidewalks, roads) totalling $516,455:

(i) Former Municipal Capital Reserves (55,153)
(ii) Information Technology Capital Reserves; 311,788
(iii) Unallocated Capital Levy 259,820

and that staff bring a report back to committee on a suggested priority listing for consideration.

7. **Stimulus Infrastructure Project Implementation Update**
   (FCS09052(e)/PW10034/CS10039) (City Wide) (Item 6.5)

That Report (FCS09052(e)/PW10034/CS10039) respecting Stimulus Infrastructure Project Implementation Update be received.

8. **Tax and Rate Operating Budget Variance Report to December 31, 2009 (Unaudited) (FCS10027) (City Wide)**

(a) That the 2009 Tax and Rate Operating Budget Variance Report to December 31, 2009 be received for information; and

(b) That, subject to final audit, the Disposition of year-End Surplus/Deficit be approved as follows:

<table>
<thead>
<tr>
<th>DISPOSITION / RECONCILIATION OF YEAR-END SURPLUS/ (DEFICIT)</th>
<th>$</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corporate Surplus from Tax Supported Operations</td>
<td>$3,784,057</td>
<td></td>
</tr>
<tr>
<td>Less: Disposition to Self-Supporting Programs &amp; Agencies</td>
<td></td>
<td>($789,363)</td>
</tr>
<tr>
<td>HECFI</td>
<td>$292,409</td>
<td></td>
</tr>
<tr>
<td>Police</td>
<td>($453,489)</td>
<td></td>
</tr>
<tr>
<td>Library</td>
<td>($628,283)</td>
<td></td>
</tr>
<tr>
<td><strong>Balance of Corporate Surplus</strong></td>
<td>$2,994,694</td>
<td></td>
</tr>
<tr>
<td>Less: Transfer to Tax Stabilization Reserve</td>
<td></td>
<td>($2,994,694)</td>
</tr>
<tr>
<td><strong>Balance of Tax Supported Operations</strong></td>
<td></td>
<td>$0</td>
</tr>
<tr>
<td>Corporate (Deficit) from Rate Supported Operations</td>
<td>($7,117,090)</td>
<td></td>
</tr>
<tr>
<td>Plus: Transfer from the Water/Waste/Water Reserves</td>
<td>$7,117,090</td>
<td></td>
</tr>
<tr>
<td><strong>Balance of Rate Supported Operations</strong></td>
<td></td>
<td>$0</td>
</tr>
</tbody>
</table>
9. **Wireless Cellular Services and Device Agreements (FCS10029) (City Wide)**

   (a) That City of Hamilton staff be directed and authorized to negotiate the terms and conditions for an agreement, including pricing and value added services, with the preferred vendors for Wireless Cellular Services and Devices established under the Government of Ontario’s Broader Public Sector plan; and

   (b) That City of Hamilton staff prepare a final report with a recommended preferred vendor(s) and terms for a final agreement in a form acceptable to the City Solicitor for Council approval.

10. **Amendment to the Ice Rates for the 2010/2011 Season (CS10029) (City Wide) (Item 6.8)**

    (a) That Appendix “A” of Item 1, of the Committee of the Whole Report 09-032, approved by Council on November 25, 2009 be amended to reflect the revised ice rates (attached as Appendix “A” to Report CS10029).

    (b) That the revised Ice Rate Fees be incorporated into the 2010 User Fee by-law.

    (c) That, if a funding surplus exists in the Community Services Department 2010 year-end budget position, the impact of the proposed Ice Rate Amendments in the amount of $162,290, be funded through the year-end surplus disposition;

    (d) That if the City is in an accumulated deficit position in 2010, the impacts of the recommendations above be funded from the Tax Stabilization Reserve 110046.

11. **Canada Mortgage and Housing Corporation Municipal Infrastructure Lending Program (FCS10022)**

    (a) That applications be made to the Canada Mortgage and Housing Corporation for low interest loans under the Municipal Infrastructure Lending Program for the local road rehabilitation projects identified in Table 1 of this report, in an amount not to exceed $25.0 million;

    (b) That the Municipal Infrastructure Lending Program borrowing of $25.0 million be used for project 4030911016 - Local Roads Rehabilitation as this project meets the program loan eligibility criteria;
(c) That the approved grant funding from the Investing in Ontario Act for 4030911016 - Local Roads Rehabilitation be reallocated to 3540441442 – Hamilton City Hall Renovations, thereby reducing the budgeted debt financing of the City Hall Renovation project by $25.0 million; and

(d) That the Mayor and Treasurer or any other appropriate staff be authorized and directed to execute all necessary documentation between the City of Hamilton and the Canada Mortgage and Housing Corporation under the Municipal Infrastructure Lending Program, in a form satisfactory to the City Solicitor.

12. **Environmental-friendly playground located at 236 King St. W., Dundas**

   (a) That up to $100,000, inclusive of any external funding, be borrowed from the Parkland Dedication Reserve 104090 to be repaid over 5 years at 3.40% with the associated financing charges area rated to Ward 13;

   (b) That the aforementioned funding be committed for the completion of the approved environmental-friendly playground located at 236 King St. W., Dundas and that this work be contracted to Bienenstock Natural Playgrounds.

The following items were added:

13. **Landmart OMB appeals in North Waterdown, OMB Case No. PL081128, and 25T200802 and ZAC-08-10**

   (a) That the City of Hamilton seek an adjournment of the Landmart OMB hearing (OMB Case No. PL081128) given that the Waterdown North Master Drainage Plan Addendum is not expected to be publicly available until mid June 2010;

   (b) That, in the event that the Ontario Municipal Board does not grant an adjournment of OMB Case No. PL081128, the City of Hamilton support the Landmart development before the Board on the basis of subdivision conditions which have been deemed appropriate by staff.

14. **Investigations directed into the allegations of A. Khan (LS10007)**

   (a) That Appendices B, C, D and E to Report LS10007 remain confidential;

*Council – April 14, 2010*
(b) That the balance of Report LS10007, together with Appendix A (document A-1, A-2 and A-3), be made public;

(c) That no further steps be taken to investigate the allegation of A. Khan that the Region of Halton is considering a “pipe to the lake” in regard to its project at the Skyway Wastewater Treatment plant;

(d) That no further steps be taken to investigate the allegation of A. Khan that the prices for biogas and heat as between the City (Wastewater Treatment Plant) and Hamilton Renewable Power Inc., were not set at arms length;

(e) That the balance of the investigation be coordinated by the City Solicitor, as outlined in Appendices B, C and D, and that the City Solicitor report back to the Committee of the Whole with the findings of the investigation and the legal advice flowing out of those findings;

(f) That the City Solicitor’s use of Purchasing Policy, SCHEDULE B – Recurring and Non-competitive Expenditures, to retain Professional Services (outside experts) to assist with the investigation without obtaining competitive quotes be endorsed;

(g) That the cost of the balance of the investigation being co-ordinated by the City Solicitor be charged to Account 108005 (Wastewater Reserve), with an upset limit of $250,000; and

(h) That the total cost of the investigation be publicly disclosed when Council deems the investigation to be complete.

15. City of Hamilton ats 775377 Ontario Limited (Belmont Developments) (LS100008) (City Wide)

(a) That the City decline the Plaintiff’s Offer to Settle in Ontario Court of Justice Action No. 05-CV-301207PD3;

(b) That Report LS10008 remain confidential.

FOR THE INFORMATION OF COUNCIL:

(a) CHANGES TO THE AGENDA

The Clerk noted the following changes to the agenda for consideration:
Added Items:

Added Delegation Request 4.2 from John Callinor of Nestle Waters Canada respecting Item 6.9 – Bottled Water report. You may wish to have the staff report moved up on the agenda to be entertained at the same time as the delegation.

Two Added Private and Confidential Matters:

9.4 Investigations directed into the allegations of Abdul Khan

9.5 "City of Hamilton ats 775377 Ontario Limited"

Notice of Motion by Councillor Powers respecting environmental-friendly playground at 236 King Street West, Dundas

The agenda was adopted as amended.

(b) DECLARATIONS OF INTEREST

None

(c) ADOPTION OF MINUTES

3.1 March 8, 2010

The Minutes of March 8, 2010 were adopted as presented.

(d) DELEGATION REQUESTS

The following delegation requests be approved.

(i) Request to address Committee by Jack Gibbons, Ontario Clean Air Alliance respecting Coal Phase-out resolution

(ii) Request to address Committee by John Callinor of Nestle Waters Canada respecting Item 6.9 on today’s agenda regarding Bottled Water
(e) PRESENTATIONS

(i) Amendments to Schedule 20 (Residential Care Facilities) of the Licensing By-law 07-170 (PED10005(a)) – Supplementary Report and By-law

A motion to defer this item pending the assessment of the per diem as well as other costs to the operators that may be affected lost on a Standing Recorded Vote:

Yea: Duvall, Jackson, Whitehead
Total: 3
Nay: Bratina, Clark, Collins, Ferguson, McHattie, Morelli, Mitchell, Pearson, Powers, Pasuta
Total: 10
Absent: Mayor Eisenberger, Councillor McCarthy, Merulla
Total: 3

Councillors Jackson, Duvall, Whitehead opposed to main motion.

The proposed amending by-law includes the following amendment:

Deletion of Section 47 in its entirety and replaced with the following in lieu thereof:

47. The operator shall ensure that no facility is equipped with a locked unit provided that the Operator of any facility with a locked unit on date of passage shall make the necessary changes such as removing locks as soon as possible to eliminate such locked units.

(ii) Request to address Committee by John Callinor of Nestle Waters Canada respecting Item 6.9 on today's agenda regarding Bottled Water (Item 5.2)

John Challinor addressed Committee. The delegation provided a written presentation to Committee. The delegation was in support of the staff report and encouraged Committee to approve the resolution.

(f) Notices of Motion

Councillor Powers presented the following Notice of Motion:

(a) That up to $100,000, inclusive of any external funding, be borrowed from the Parkland Dedication Reserve 104090 to be repaid over 5
years at 3.40% with the associated financing charges area rated to Ward 13;

(b) That the aforementioned funding be committed for the completion of the approved environmental-friendly playground located at 236 King St. W., Dundas and that this work be contracted to Bienenstock Natural Playgrounds.

The Rules were subsequently waived and the motion was approved and is noted as Item 12 in this report.

(g) PRIVATE AND CONFIDENTIAL

Committee moved into Closed Session further to the following sections of the Procedural By-law and Municipal Act:

8.1 (d) labour relations or employee negotiations
8.1(e) Litigation or potential litigation
8.1(f) The receiving of advice that is subject to solicitor client privilege including communications necessary for that purpose

to address the following matters:

9.1 Closed Session Minutes of March 8, 2010

9.2 Labour Relations Challenges & Job Evaluation (Compensation)
Pressures resulting from the transfer of positions to the CUPE 5167 Collective Agreement (HUR10009)

Direction provided in closed session.

9.3 Landmart OMB appeals in North Waterdown, 25T200802 and ZAC-08-10, OMB Case Number PL081128

See Item 13

9.4 Investigations directed into the allegations of A. Khan

See Item 14

9.5 City of Hamilton ats 775377 Ontario Limited

See Item 15
Quorum was lost at 2:55 p.m.

Respectfully submitted,

Deputy Mayor R. Pasuta

M. Gallagher, Co-ordinator
Council/COW/Budgets
April 13, 2010
**CITY OF HAMILTON**

**CITY MANAGER’S OFFICE**  
Legal Services

<table>
<thead>
<tr>
<th>TO: Mayor and Members</th>
<th>WARD(S) AFFECTED: CITY WIDE</th>
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<tr>
<td>Committee of the Whole</td>
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**COMMITTEE DATE:** April 13, 2010

**SUBJECT/REPORT NO:**  
Investigations directed into the allegations of A. Khan, LS10007 (City Wide)

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<th>SUBMITTED BY:</th>
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<tbody>
<tr>
<td>Peter A. Barkwell</td>
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<tr>
<td>City Solicitor</td>
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<tr>
<td>City Manager’s Office</td>
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<th>PREPARED BY:</th>
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<tbody>
<tr>
<td>Peter A. Barkwell 905-546-2424 ex. 4636</td>
</tr>
</tbody>
</table>

**SIGNATURE:**

Discussion of this Confidential Report in closed session is subject to the following requirement(s) of the City of Hamilton’s Procedural By-law and the Ontario Municipal Act, 2001:

- Personal matters about an identifiable individual(s), including City employees;
- Litigation or potential litigation, including matters before administrative tribunals, affecting the City;
- Advice that is subject to solicitor-client privilege, including communications necessary for that purpose;

**RECOMMENDATION(S)**

a) That Appendices B, C, D and E to Report LS10007 remain confidential;

b) That the balance of Report LS10007, together with Appendix A (documents A-1, A-2 and A-3), be made public;
c) That no further steps be taken to investigate the allegation of A. Khan that the Region of Halton is considering a "pipe to the lake" in regard to its project at the Skyway Wastewater Treatment plant;

d) That no further steps be taken to investigate the allegation of A. Khan that the prices for biogas and heat as between the City (Wastewater Treatment Plant) and Hamilton Renewable Power Inc., were not set at arms length;

e) That the balance of the investigation be co-ordinated by the City Solicitor as outlined in Appendices B, C and D, and that the City Solicitor report back to the Committee of the Whole with the findings of the investigation and the legal advice flowing out of those findings;

f) That the City Solicitor's use of Purchasing Policy, SCHEDULE B – Recurring and Non-competitive Expenditures, to retain Professional Services (outside experts) to assist with the investigation without obtaining competitive quotes be endorsed;

g) That the cost of the balance of the investigation being co-ordinated by the City Solicitor be charged to Account 108005 (Wastewater Reserve), with an upset limit of $250,000; and

h) That the total cost of the investigation be publicly disclosed when Council deems the investigation to be complete.

EXECUTIVE SUMMARY (High level overview)

It has been confirmed that Region of Halton is no longer considering a "pipe to the lake" as part of its Skyway Wastewater Treatment Plant. It is therefore recommended that no further investigation be conducted into this allegation made by Mr. A. Khan.

Documents attached as Appendix A, confirm that the rates for sale of methane gas by the City to Hamilton Renewable Power Inc (H.R.P.I.), and the purchase of heat from H.R.P.I. by the City, were set by an outside consultant. It is therefore recommended that no further investigation be conducted into this allegation made by Mr. A. Khan.

It is recommended that the City Solicitor proceed with the balance of the investigation directed by Council and report back to Committee of the Whole with the findings and the legal advice flowing out of those findings.

Alternatives for Consideration – See Page X or Not Applicable

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FINANCIAL / STAFFING / LEGAL IMPLICATIONS (for Recommendation(s) only)

Financial: See Appendix E

Staffing: N/A

Legal:

HISTORICAL BACKGROUND (Chronology of events)

On December 9th, 2009, former City employee Mr. Abdul Khan, forwarded an email to members of Council in which he made a series of allegations regarding the conduct of City business. At its meeting of December 9th, 2009, Council passed the following Resolution:

10.3 Correspondence from Abdul Khan respecting concerns re:
Water/Wastewater (Item 5.7)
(Clark/Powers)

   (a) That the City Solicitor be directed to:

      (i) define an independent process for addressing the Human
          Resources issues identified in Mr. Khan’s correspondence;

      (ii) define an independent process for addressing the sewage capacity
          and proposed technology matters;

      (iii) forward a copy of Mr. Khan’s correspondence to the Police to
          investigate the alleged misappropriation of funds;

      (iv) and to report back to Committee of the Whole on these matters.

   (b) That the internal and external auditors be directed to review Mr. Khan’s
correspondence to determine if there are any financial implications
associated with the allegations contained within Mr. Khan’s
correspondence and report back to Committee of the Whole.

Police Investigation

As directed by Council this matter was reported to the Hamilton Police Service.
The Police Service conducted their investigation and concluded that:
"Based on the outcome of the investigation, it is the Investigator’s opinion that there were no theft or related Criminal Code offences arising from the activities as described by Mr. Khan."

This result frees the City to conduct the balance of the investigation without concern that the City’s efforts might impede an ongoing police investigation.

**Allegation that Halton Region is considering a “pipe to the lake” solution**

In his email of December 9th, 2009, Mr. Khan stated:

> "Around the same time in summer of 2008, the Regional Municipality of Halton proposed to the RAP team that they would divert the outfall of the Skyway WWTP to the lake and they will provide treatment to the level proposed by the MOE in the guidelines."

The writer has confirmed via conversation with Region of Halton staff that although consideration was given to switching the outfall from the Skyway Wastewater Treatment Plant from the Harbour to the Lake, that this option has been discarded. Current planning is going forward on the basis that the outfall to the Harbour will continue.

The Environmental Assessment documents related to the Skyway Wastewater Treatment Plant can be accessed at the Region of Halton website: [http://www.halton.ca](http://www.halton.ca)

The most recently posted document reads, in part:

> The Master Plan Update of the 2002 Master Planning work identified and assessed a number of solutions for meeting future servicing needs in Halton Region. These included considering a variety of expansion scenarios for all five sewershed areas and associated wastewater treatment plants in the Region.

> For the Skyway service area, the Master Plan Update recommended that the Skyway WWTP be expanded to service growth and intensification in the City of Burlington. The preferred solution was to expand the plant from 118 ML/d to 140 ML/d **with continued discharge to the Hamilton Harbour**. (Emphasis added by the writer) This recommendation addressed needs in the Burlington urban area and Bronte/Burloak area, referenced as alternative B-WWS-1 of the 2002 Master Plan work. The Master Plan updates revised projections in Skyway to 2031 which encompass the 2021 planning period in the Regional Official Plan. The 2031 period is consistent with the Region’s most recent
planning initiatives including proposed Amendment No. 38 to the official Plan. Accordingly, since this period approaches the ultimate build-out for the site, it is considered to be the "last" capacity expansion needed for the Skyway plant.

Furthermore, the Master Plan Update noted that alternatives for implementing the preferred solution would need to consider factors including the Hamilton Harbour Remedial Action Plan (HHRAP), biosolids management, site constraints and existing outfall capacity. The latter factor was noted to limit the existing site capacity to 143 ML/d average annual capacity.

It is therefore recommended that no further steps be taken with respect to this allegation made by Mr. Khan.

**Allegation that costs as between the City and H.R.P.I. were not set at arms length**

In his email of December 9th, 2009, Mr. Khan alleges that the rates for the sale of biogas and heat as between the City and H.R.P.I. were not set at arms length. He states, in part:

*Hamilton Renewable Power Inc (HRPI)*

Under the HRPI, an electric power generator was installed at the Woodward WWTP to operate on the biogas produced at the plant. Under the arrangement, HRPI would buy the biogas from the WWTP and produce electric power to sell to the Grid and the heat to the WWTP. The sale price of the electrical power was fixed by the province under standing offer agreement. However, the purchase price of biogas and the sale price of heat was not appropriately set at arm length, as Mr. Harnum who was the Vice President of the HRPI and the Senior Director of Water and Wastewater was on both side of the spectrum.

At the end of 2007, I realized that the WWTP is paying too much to HRPI for the heat and charging too little for the biogas. Prior to the HRPI generator on site, the WWTP would use to biogas for heating purposes and would offset the natural gas consumption. The HRPI became a burden on the WWTP. It would have been more cost effective for the WWTP to use natural gas for heating and not buy heat from HRPI.

H.R.P.I. is a business corporation whose sole shareholder is the City of Hamilton. The Board of Directors of H.R.P.I. are members of Council appointed by Council Resolution. The Officers of H.R.P.I. are City employees. H.R.P.I. was created
for the dual purpose of creating energy from waste as an environmental benefit and to generate potential profit for the City of Hamilton.

As a business corporation, H.R.P.I. must pay taxes on its profits. If the City were to provide biogas to H.R.P.I. for free, that would maximize H.R.P.I.’s gross profit, but also maximize the taxes which would be payable. If the City were to charge an artificially high price for the supply of biogas to H.R.P.I. that would work to reduce gross profit and the taxes payable.

However, the price which the City charges to H.R.P.I. must be set on a basis which would withstand scrutiny by the Canada Revenue Agency. Otherwise, H.R.P.I., and by extension the City, could be subjected to re-assessment of the taxes payable together with possible penalties and interest.

Similar considerations apply to the provision of heat by H.R.P.I. to the City. If H.R.P.I. were to supply the heat at zero cost, that would restrict the income of H.R.P.I. There would be some risk that the Canada Revenue Agency would take the view that such a non-arms length transaction at zero cost was intended to artificially reduce H.R.P.I.’s profit and taxes. Again, H.R.P.I. might then be subject to a re-assessment of taxes.

As a result KPMG was retained to provide a recommendation as to what price the City should charge to H.R.P.I. for biogas, and what price the City should pay to H.R.P.I. for the provision of heat to the Wastewater Treatment Plant digesters.

The KPMG report is included in Appendix A.

Also included in Appendix A are copies of emails between City staff. These emails indicate that Mr. Khan received a copy of the KPMG report on July 27th, 2007 via email. Mr. Khan’s responding email of the same date appears to indicate that he had read the KPMG report after receipt.

It is the writer’s opinion that the KPMG report represents an independent arms length assessment of the appropriate rates to be charged by the City and by H.R.P.I. to one another.

It is recommended that no further steps be taken to investigate Mr. Khan’s allegation that the buy/sell prices as between the City and H.R.P.I. were not set at arms length.

**POLICY IMPLICATIONS**

N/A
RELEVANT CONSULTATION

ANALYSIS / RATIONALE FOR RECOMMENDATION
(include Performance Measurement/Benchmarking Data, if applicable)

ALTERNATIVES FOR CONSIDERATION:
(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

CORPORATE STRATEGIC PLAN (Linkage to Desired End Results)


APPENDICES / SCHEDULES

Appendix A – documents relating to the setting of rates as between the City of Hamilton and Hamilton Renewable Power Inc.

Appendix B – terms of reference and work plan for financial investigation into allegations of A. Khan

Appendix C – terms of reference and work plan for legal/human resources investigation into allegations of A. Khan

Appendix D – terms of reference and work plan for technical investigation into allegations of A. Khan

Appendix E – budgetary projections for investigation

Council – April 14, 2010
APPENDIX A TO REPORT LS10007

A-1 – email dated July 27th, 2007 from David Oak to Ian Routledge and Abdul Khan

A-2 – memo dated May 28th, 2007 from KPMG LLP (Jonathan Erling) to City of Hamilton (Mike Zegarac)

A-3 – email dated July 27th, 2007 from Abdul Khan to David Oak and Ian
Barkwell, Peter

From: Oak, David
Sent: Friday, July 27, 2007 2:03 PM
To: Routledge, Ian
Cc: Khan, Abdul
Subject: FW: HRPI and City Thermal Energy / Methane Gas Billings

ian,

Attached you will find copies of the thermal energy and methane gas billings between the City and HRPI for 2006, as well as thermal energy billed to the City from January 1 to June 30, 2007.

--- Original Message ---
From: Dennison, Linda
Sent: Wednesday, July 25, 2007 9:54 AM
To: Oak, David
Subject: RE: HRPI and City Thermal Energy / Methane Gas Billings

Hi David,

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From: Dennison, Linda
Sent: Wednesday, July 25, 2007 9:54 AM
To: Oak, David
Subject: RE: HRPI and City Thermal Energy / Methane Gas Billings

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Linda, can you forward a copy of the KPMG valuation.

thanks

Mike Zegarac
Senior Policy and Projects Manager
Budgets and Finance
Corporate Services
City of Hamilton
(905) 546 2424 ext. 2739.

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Mike or Linda,

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David...........I am okay with the budget forecast for the remainder of the year. In regards to the HRPI revenue and expenditures, I am unable to confirm these values since it is unclear how they were derived or calculated. The net effect of the HRPI revenue/expenditures appears to result in an operating budget charge of $39,778.28 for 2007, which I don't believe was included in the operating budget last year. Natural gas charges appear to be tracking according to the budget and there are no savings to cover this cost increase. My understanding was that the HRPI unit was to be cost neutral for the plant, if not then we need to incorporate this charge into next year budget. Can we get further details and information on the HRPI charges?

Regards......Ian R

Ian Routledge
Manager, Plant Operations
Water and Wastewater Division
700 Woodward Ave
Hamilton, Ontario, L8H 8E4
Tel: 905-546-2424, Ext 1191

---Original Message---
From: Oak, David
Sent: Thursday, July 19, 2007 11:30 AM
To:    Routledge, Ian

Subjects: 2007 Budget Variance Forecast - Please review before July 24

Ian,

Attached you will find an updated year-end Budget Variance Forecast (operating accounts only) based on actuals for the period ending June 30, 2007. Could you review and let me know if you wish any changes to this forecast which is reporting a favourable net expenditure variance of $360K for Plant Operations and Maintenance.


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<td>Favourable</td>
</tr>
<tr>
<td>510330</td>
<td>$146,501.03</td>
<td>Favourable</td>
</tr>
<tr>
<td>Total</td>
<td>$389,875.60</td>
<td>Favourable</td>
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This 2007 projected year-end favourable budget variance is mainly attributable to salary gapping, property taxes and HRPI related billing transfers. Below are the assumptions used in compiling this forecast:

- All expenditure accounts under budget were assumed fully spent by year-end.
- No additional spending was assumed for accounts that have YTD expenditures but no budget, or that have overspent their annual budget allocation by June 30.
- Outstanding commitments were not factored into the year-end projected spending due to the potential for being multi-year in nature (i.e. multi-year contracts).
- OHP Payments for 2007 (to be paid in 2008) totalling $33K added to accounts 51743 - 510320 and 51743 - 510330.
- Hamilton Renewable Power Inc Recovery forecast added under account 47899 - 510310 in the amount of $121,205.00. This represents revenue generated from HRPI for methane gas consumed by the co-generator. The 2007 year-end revenue forecast was calculated as follows:
  2006 Methane Revenue Accrual Reversal $250,000.00
  2006 Methane Consumed - Actual Jul 1 to Dec 31 ($123,735.00)
  2007 Methane - Estimate Jan 1 to Dec 31 ($247,470.00)
  Total ($121,205.00)
- Hamilton Renewable Power Inc billing to the City for thermal energy used is forecasted under account 56135 - 510310 in the amount of $314,397.28. The 2007 year-end expenditure forecast was calculated as follows:
  2006 Thermal Energy Expenditure Accrual Reversal ($250,000.00)
  2006 Thermal Energy Expense - Actual Jul 1 to Dec 31 $183,149.00
  2007 Thermal Energy Expense - Actual Jan 1 to Mar 31 $100,436.84
  2007 Thermal Energy Expense - Actual Apr 1 to Jun 30 $90,168.30
  2007 Thermal Energy Expense - Estimate Jul 1 to Dec 31 $190,624.14
  Total $314,397.28

Any required changes need to be communicated to me no later than July 24. This updated 2007 Budget Variance Forecast is scheduled to be presented at the July 31 Department Management Team Meeting.

Thanks

David Oak, CMA
Business Administrator - Water / Wastewater
Corporals Services Department
City of Hamilton
Phone: (905) 546-2424, ext. 2495
Fax: (905) 546-4491
e-mail: dcock@hamilton.ca

Council – April 14, 2010
PRIVATE & CONFIDENTIAL

To Mike Zegzar--City of Hamilton

From Jonathan Erling

Date May 28th, 2007

Subject Royalty Structure – Hamilton Renewable Power Inc.

In this memo, I provide a potential approach for structuring transfer payments between the City of Hamilton ("the City") and Hamilton Renewable Power Inc. ("HRPI").

Background

The City of Hamilton sells biogas produced at the Woodward Ave. wastewater treatment plant to Hamilton Renewable Power Inc. ("HRPI"). HRPI uses this gas to generate electricity and to produce thermal energy in the form of hot water. The thermal energy is then sold back to the City for process and heating requirements. Because HRPI operates at arms-length from the City, you would like a methodology that the City can apply for valuing the biogas sold to HRPI and for the thermal energy subsequently purchased from it.

Key Objectives:

The methodology for setting transfer prices should meet the following objectives:

- Have economic rationale.
- Ensure that HRPI can remain financially solvent over the term of its contract with the OPA.
- Minimize taxes paid by HRPI.

Proposed Approach:

Two transfer prices are required:

- A price for digester gas sold to HRPI by the City.
- A price for thermal energy supplied to the City by HRPI.

Our proposed pricing approach is outlined below.
Digester Gas

For 2006, we recommend that digester gas sold to HRPI by the City be priced at a value of $2.40 per mmBTU (HHV). For subsequent years, this price should be escalated by the annual change in the Consumer Price Index (CPI) for Ontario. For 2006, total costs paid by HRPI for digester gas will be approximately $289,000, assuming that 120,500 mmBTU of fuel was used by the generating unit. We propose that HRPI only pay for digester gas that is actually used as input fuel, and not for any gas that needs to be flared when the generating unit is not operating or cannot use all of the digester gas available.

The starting value of $2.40 per mmBTU roughly corresponds to 25% of the value of natural gas in the base year of 2006.

The transfer price will need to be adjusted if the City reduces its purchases of thermal energy from HRPI. HRPI’s ability to pay the proposed price for digester gas is contingent on its continuing to earn revenue from the sale of thermal energy to the wastewater treatment plant.

Thermal Energy

For 2006, we recommend that thermal energy sold to the City by HRPI be priced at a value of $10.29 per mmBTU. This price should be escalated annually by the change in the Consumer Price Index for Ontario. For 2006, total costs paid by the City for this thermal energy will be approximately $428,000, assuming that 41,600 mmBTU of thermal energy was delivered to the City wastewater treatment plant.

The proposed transfer price is designed so that the City pays for about 75% of the avoided cost of using natural gas to generate hot water in its own boilers, assuming a natural gas price of $9.60 per mmBTU and 70% seasonal boiler efficiency. This price provides HRPI with a revenue stream that ensures the viability of the project, but also ensures that the City benefits from a portion of the cost savings associated with using digester gas. Setting prices at a value that reflects 75% of the avoided natural gas cost ensures that the City will continue to benefit from the arrangement even with a significant decline (up to 25%) in natural gas prices.

HRPI could offer a lower price for thermal energy to the City if it did not have to pay the City for input fuel as outlined above. However, we believe that it is appropriate to attach a value both to input fuel and output thermal energy, rather than having a single, lower value for thermal energy delivered. Making HRPI pay for digester gas provides the City with an incentive to ensure continued delivery of this gas. The price of digester gas, however, has been set low enough so that HRPI’s financial position can be maintained.
Rationale for Proposed Approach

We recommend that proposed transfer prices be indexed to the general consumer price index, rather than being linked to the price of natural gas. This reflects the following considerations:

- Revenues from the sale of electricity to the OPA are indexed to CPL at least in part. Thus, CPI is the best measure of HRPI's ability to pay increased costs for digester gas over time.

- Natural gas prices are highly volatile, and may undergo major changes in their real value, particularly over the period of the underlying OPA contract. Tying transfer prices to natural gas prices would raise the risk that such prices could move significantly, and put HRPI's financial health at risk. HRPI needs a supply of input fuel that is stable, given the largely fixed nature of electricity prices paid by the OPA under its long-term contract.

- While the purchase price paid by HRPI for digester gas is relatively low (at 25% of the recent value of natural gas in equivalent heating units), this low price is necessary to ensure the economic viability of the project. It is generally not economic to operate reciprocating engine generating plants with natural gas purchased at current market prices. This is true even when value is obtained for by-product heat energy. Further, the digester gas has limited value for alternative uses and cannot be easily transported to another purchaser without major expense for pipeline infrastructure. This limits the value of this gas in the market.

***

Please give me a call at 416-777-3206 if you have any questions about this material.

Best regards

Jonathan Erling
From: Khan, Abdul
Sent: Friday, July 27, 2007 2:18 PM
To: Oak, David; Routledge, Ian
Subject: RE: HRPI and City Thermal Energy / Methane Gas Billings

Thanks Dave. This is interesting. I thought it would be the other way round. Essentially the plant is subsidising HRPI and without this, HRPI in real sense will make a loss.

Regards

Director, Water and Wastewater Treatment
Public Works Department, City of Hamilton
55 John St North, 6th Floor, Hamilton Ontario L8R 3K8
Tel: 905-548-2444 x4450, Fax: 905-548-4481, akhan@hamilton.ca

--- Original Message ---
From: Oak, David
Sent: Friday, July 27, 2007 2:03 PM
To: Routledge, Ian
Cc: Khan, Abdul
Subject: FW: HRPI and City Thermal Energy / Methane Gas Billings

Ian,

Attached you will find copies of the thermal energy and methane gas billings between the City and HRPI for 2006, as well as thermal energy billed to the City from January 1 to June 30, 2007.


The pricing method used for the thermal energy and methane gas commodity can be found in the below KPMG attachment. If you read the report, it indicates that the value of the thermal energy sold to the City ($10.29 per mmBTU for 2006) is set higher than the value of natural gas ($9.80 per mmBTU for 2006) to ensure a viable revenue stream for HRPI. Under this pricing strategy it appears the cost of the thermal energy billed to the plant will be higher than your natural gas savings. The price determined for the methane gas sold to HRPI is set at 25% of the natural gas price ($9.80 X .25 = $2.45 per mmBTU in 2006). These unit prices are to be adjusted annually based on the CPI.

Hope this provides some clarification.

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To: Oak, David
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Hi David,

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Original Message
From: Zegarac, Mike
Sent: Wednesday, July 25, 2007 9:57 AM
To: Dermison, Linda
CC: Oam, David
Subject: FW: HRPI and City Thermal Energy / Methane Gas Billings

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Original Message
From: Oam, David
Sent: Tuesday, July 24, 2007 5:17 PM
To: Zegarac, Mike; Dermison, Linda
Subject: HRPI and City Thermal Energy / Methane Gas Billings

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From: Routledge, Jan
Sent: Tuesday, July 24, 2007 4:17 PM
To: Oam, David
CC: Routledge, Jan
Subject: RE: 2007 Budget Variance Forecast - Please Review Before July 24

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