SUBJECT: Implementation of New Energy Commodity Policy and Proposed Amendments to Existing Commodity Price Hedging Policy (PW08144/ FCS08114) (City Wide)

RECOMMENDATION:

(a) That the Statement of Policies and Goals With Respect to the Procurement, Sale, Delivery, and Storage of Energy Commodities, Including the Use of Energy Commodity Price Hedging Agreements ("Energy Commodity Policy"), attached as Appendix ‘A’ to Report PW08144/FCS08114, be approved;

(b) That the Amended Statement of Policies and Goals With Respect to the use of Commodity Price Hedging Agreements, excluding Energy Commodities ("Commodity Price Hedging Policy"), attached as Appendix ‘B’ to Report PW08144/FCS08114, be approved;

(c) That section 4.0 Specific Polices Re: Energy Procurement of the existing City of Hamilton Corporate Energy Policy be removed and replaced with a reference to the City’s Energy Commodity Policy;
(d) That the General Manager of Finance and Corporate Services or his/her authorized delegate, on behalf of the City of Hamilton, be authorized to retain (including the execution of any and all necessary documentation) Agent Energy Advisors Inc.’s ongoing natural gas agency advisory services on a monthly retainer basis for a period of two (2) years, with a mutual option to renew for one (1) term of two (2) years, subject to review by the City Solicitor;

(e) That the General Manager of Finance and Corporate Services or his/her authorized delegate, on behalf of the City of Hamilton, be authorized to retain (including the execution of any and all necessary documentation) Energy Advantage Inc.’s fuel advisory services on a monthly retainer basis for a period of two (2) years, with a mutual option to renew for one (1) term of two (2) years, subject to review by the City Solicitor;

(f) That the General Manager of Finance and Corporate Services or his/her authorized delegate report back to Council annually with respect to the actual cost of retaining the consultants (Contract Agents) noted in (d) and (e) of this Report, including details of activities engaged in by said consultants (Contract Agents) on behalf of the City.

Scott Stewart, C.E.T.  
General Manager  
Public Works  

Peter A. Barkwell  
Acting General Manager  
Finance & Corporate Services  

**EXECUTIVE SUMMARY:**

In February 2007, and in accordance with O.Reg.635/05 “Debt-Related Financial Instruments and Financial Agreements” under the *Municipal Act 2001*, Council endorsed the City of Hamilton Statement of Policies and Goals Relating to the Use of Commodity Price Hedging Agreements (refer to Report FCS07024). The adoption of this Commodity Price Hedging Policy provided the City additional flexibility to potentially mitigate and/or manage potential price fluctuations by utilizing financial hedging strategies. The City primarily used these hedging strategies with respect to the purchase of natural gas and electricity. The use of these strategies resulted in substantial cost-savings and/or great budgetary control for the City.

It was recognized at the time of development that the Commodity Price Hedging Policy would need to be reviewed and updated from time to time in order to respond to market and legislative changes, as well as to accommodate the City’s growing sophistication, and wider use of, financial hedging strategies. Further, it became apparent that the processes and procedures with respect to the purchase, sale and delivery of Energy Commodities (as herein defined) needed refinement. Firstly, due to the City’s existing Purchasing Policy, the purchase, sale and delivery of commodities such as natural gas
and electricity were subject to two (2) procurement authorities: Purchasing Policies (public process for finding and securing suppliers and delivery agents) and the Commodity Price Hedging Policy (entering into of hedging agreements). Secondly, as the City engaged in more complex transactions involving financial hedging and tried to respond to the specialized, ever-fluctuating and complex world of energy procurement, it became increasingly apparent that the City’s existing Purchasing Policies and Procedures were not designed for, nor equipped to deal with, these market sectors.

In light of the above, staff proposes that Council adopt a new Energy Commodity Policy so that all bulk energy and fuel-related procurement by the City may be dealt with by one comprehensive Policy and authority. This would involve a “carve-out” of all Energy Commodity (as herein defined) purchases from the City’s Purchasing Policy, as well as the existing Commodity Price Hedging Policy.

Further, in order to be able to respond quickly to the current unstable energy climate, staff proposes that Council provide the General Manager of Finance and Corporate Services or his/her authorized delegate with the authority to enter into Contract Agent agreements with Agent Energy Advisors Inc. and Energy Advantage Inc. respectively to assist the City in manoeuvring its way through the complicated market sectors of natural gas and fuel.

**BACKGROUND:**

**Policies**

The deregulation of the natural gas and electricity sectors in Ontario (natural gas in 1985 and electricity in 2002), resulted in these commodities’ prices being set by market conditions (i.e. supply and demand) - fluctuating hourly, daily and seasonally. Supply challenges for these commodities and continued growth in demand have contributed to price volatility and have produced forward market price uncertainty. Further, the recent tumultuous financial and political global energy climate has resulted in increased price volatility in the fuel markets. Traditionally, the pricing for the City’s purchases of fuel for any given month was based on an averaging of the previous month’s weekly costs. This pricing strategy resulted in losses for the suppliers when the cost of diesel or gasoline rose and in the City being “overcharged” (for lack of a better word) when prices plummeted. In light of this, the City’s current suppliers have notified the City that the traditional way fuel has been priced is no longer available and/or are reluctant to maintain the "status quo" pricing structure beyond 2008. The only alternative provided by the City’s current suppliers would be a daily rack price, which increases volatility and has no price stabilization.

In order to control, or at least moderate, Commodity price risk, buyers (including municipalities) in the Ontario marketplace need to utilize price hedging strategies. This is particularly true with respect to Energy Commodities, which are subject to high levels of price volatility.

In 2005, the Provincial Government of Ontario approved Ontario Regulation 653/05 “Debt-Related Financial Instruments and Financial Agreements” under the Municipal Act 2001. O. Reg. 653/05 permitted municipalities to enter into commodity price hedging agreements. Commodity, under the regulation, is defined as “whether in the original or
processed state, an agricultural product, a forest product, a product of sea, a mineral, a metal, a hydro-carbon fuel, electricity, a precious stone or other gem and other physical goods but does not include chattel paper, a document of title, an instrument, money or securities.” The Regulation, as it pertains to commodity price hedging agreements, required that municipalities adopt a statement of policies and goals relating to the use of financial agreements to address commodity pricing and costs before the municipality would be allowed to enter into commodity price hedging agreements.

In February 2007, Council endorsed the City of Hamilton Statement of Policies and Goals relating to the use of Commodity Price Hedging Agreements (refer to Report FCS07024). The Commodity Price Hedging Policy was, in large part, geared towards the purchase of natural gas and electricity [at the time, the two (2) main Commodities purchased by the City, where significant cost-savings were anticipated with the use of financial hedging strategies]. The adoption of the Commodity Price Hedging Policy provided the City additional flexibility to potentially mitigate and/or manage potential price fluctuations in these, as well as other, Commodities. The energy suppliers, with whom the price hedge agreements were made, would typically be prepared to hold bid prices for a very short period of time only. As a result, in order to respond in a timely fashion when appropriate pricing was offered, authority was delegated to the appropriate corporate officers as outlined in the original Commodity Price Hedging Policy.

Report FCS08052 “2007 Report on Commodity Price Hedging Agreements” approved by Council in June 2008, provided details of the various energy price hedging agreements and energy transactions for natural gas and electricity completed during 2007. As identified in the 2007 Report, the City has already realized significant cost-savings with respect to the purchase of natural gas and electricity, using hedging strategies. It is anticipated that substantial savings will be realized with the use of financial hedging strategies with respect to the purchase of fuel products, as well as other Energy Commodities.

It was recognized at the time of development that the Commodity Price Hedging Policy would need to be reviewed and updated from time to time in order to respond to market changes, as well as to accommodate the City’s growing sophistication, and wider use of, financial hedging strategies. Further, it became apparent that the processes and procedures with respect to the purchase, sale and delivery of natural gas and electricity and the potential purchase of other Energy Commodities, needed refinement. Firstly, due to the City’s existing Purchasing Policy, the purchase, sale and delivery of Energy Commodities (for example: natural gas and electricity) were subject to two (2) procurement authorities: Purchasing Policies (public process for finding and securing suppliers and delivery agents) and the Commodity Price Hedging Policy (entering into of hedging agreements). Secondly, as the City engaged in more complex transactions involving financial hedging and tried to respond to the specialized, ever-fluctuating, fast-moving and complex world of energy procurement, it became increasingly apparent that the City’s existing Purchasing Policies and Procedures were not designed for, nor equipped to deal with, these market sectors and that Purchasing staff did not have the specialized knowledge necessary to deal with Energy Commodity transactions.
In light of the above, staff proposes that Council adopt a new Energy Commodity Policy (Appendix "A" to this Report) so that all bulk energy and fuel-related procurement (and related transactions) by the City may be dealt with by one comprehensive Policy and authority. The General Manager of Finance and Corporate Services would be responsible for the administration of this new Policy, with a great deal of delegation of responsibilities to the Manager of Energy Initiatives. This would involve a "carve-out" of all Energy Commodity purchases (and related transactions) from the City’s Purchasing Policy. “Energy Commodities”, for the purposes of the new Energy Commodity Policy, are defined as follows:

“Energy Commodities” means electricity, Green Power, natural gas, methane and all other petroleum based fuel products such as: diesel, biodiesel, gasoline, fuel oil, propane and any other bulk commodity primarily used by the City for the purpose of heating and cooling of buildings and other structures, electricity generation, cogeneration and the fuelling of City fleets, as determined by the Manager of Energy Initiatives.

“Green Power” means electricity generated from renewable energy sources, such as certified water power, solar, biogas, biomass and wind. Other terms for Green Power include: Green Power certificates, Tradable Renewable Certificates or "Green Tags". These attributes, embodied in a certificate, may be bought and sold either bundled or unbundled with commodity electricity.

In order to facilitate the policy and procedure changes inherent in the new Energy Commodity Policy, amendments to, and a simplification of, the existing Commodity Price Hedging Policy are required (Appendix “B” to this Report). Commodities, other than Energy Commodities, will continue to be procured via City Purchasing Policies; however, the Commodity Price Hedging Policy will allow for price hedging strategies for these Commodities if and when the City decides to use them. If, in the future, certain Commodities prove to be purchased frequently using the Commodity Price Hedging Policy, this Policy can be adjusted to suit those needs. Further, amendments to the City’s Purchasing Policy definitions will be required, which will be brought forward in early 2009.

Contract Agents

The City requires the use of outside consultants (Contract Agents) from time to time in order to help City staff negotiate the unstable and complicated Energy Commodity terrain. The use of these Contract Agents is imperative in that these entities are immersed daily in the Energy Commodity markets and have specialized expertise with respect to responding to market changes. These services are highly specialized and nuanced - therefore the use of a competitive process whereby the “best price” is the deciding criteria is not suited for finding the appropriate Energy Commodity consultant for the City. In short, using the cheapest consultant can result in the City losing a considerable amount of money by depending on inadequate, incomplete or otherwise substandard advice - an amount that would far exceed any difference in the initial contract price between the "lowest" and “highest” bidder. In light of same and in order to be able to respond quickly to the current unstable energy climate, staff proposes that Council provide the General Manager of Finance and Corporate Services or his/her
authorized delegate with the authority to enter into Contract Agent agreements with Aegent Energy Advisors Inc. and Energy Advantage Inc., to assist the City in manoeuvring its way through the complicated Energy Commodity market sectors.

The Manager of Energy Initiatives has selected the above-noted Contract Agents on the following basis:

(a) Aegent Energy Advisors Inc. ("Aegent") - Aegent has been providing top-notch natural gas advisory services on an as-needed basis for the City of Hamilton since 2002. Aegent has been instrumental in assisting City staff in managing the City’s natural gas portfolio, including, but not limited to: procurement, balancing, storage and pipeline services. Based on their past performance, reasonable pricing, professional rapport with City staff and overall knowledge of the City’s accounts, City staff believe that Aegent would be the best choice for the purposes of natural gas advisory services.

(b) Energy Advantage Inc. ("Energy Advantage") - Energy Advantage is currently the only Contract Agent that has established services and clients dealing with fuel-related procurement and management services (i.e. sole source). Energy Advantage has a very good reputation within the fuel market communities and has demonstrable expertise in the area of fuel procurement strategies. City staff believe that Energy Advantage would be the best choice for the purposes of fuel advisory services.

Staff proposes the use of a two (2) year contract with each Contract Agent noted above, with the mutual option to renew for one (1) term of two (2) years. The annual cost for the use of these services is estimated to be: no more than $30,000 (Aegent) and no more than $24,000 (Energy Advantage). These contracts would be funded by the Energy Reserve. The Manager of Energy Initiatives will work with the City Solicitor to execute Professional Services Agreements with each of Aegent and Energy Advantage respectively. Further, the General Manager of Finance and Corporate Services or his/her authorized delegate will report back to Council annually with details of these Contract Agents' duties, responsibilities, performance and actual costs.

**ANALYSIS OF ALTERNATIVES:**

**Policies**

That the City continue to conduct purchases (and related activities) of Energy Commodities pursuant to the City’s Purchasing Policy and Procedures (which are not designed to deal with the unique, complicated, highly time-sensitive and specialized purchase, sale and delivery of Energy Commodities), and then deal with the entering into of price hedging agreements for those purchases (and related activities) under the Commodity Price Hedging Policy. This creates a dual-authority regime, which creates a complicated drafting, negotiating and tracking system - in effect, wasting staff time and increasing internal administrative costs.

**Contract Agents**

That the City use a competitive bidding process for the purpose of engaging Energy Commodity consultants (i.e. Contract Agents) instead of entering into direct contracts
with the consultants recommended in this Report. This will result in an untimely delay in the provision of these services, as well as the possibility of not receiving the “best” services available. This could result in the City losing money “waiting” for the process to be completed, not to mention the substantial losses it could incur in receiving “bad” advice with respect to its Energy Commodity transactions.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

Financial - Increased budget predictability, reduced market exposure to volatile energy pricing, cost savings and more efficient use of staff time and overall responsiveness to the ever changing energy market.

Staffing - Better and more efficient use of Purchasing and Energy Initiative staff time.

Legal - General Manager of Finance and Corporate Services (Treasurer) will continue to be required to comply with the reporting requirements under the O.Reg. 653/05. The General Manager of Finance and Corporate Services and Manager of Energy Initiatives will be charged with ensuring fairness and transparency with respect to the Energy Commodity procurement process. The City Solicitor will be consulted with respect to all contract negotiations.

**POLICIES AFFECTING PROPOSAL:**

Commodity Price Hedging Policy  
Purchasing Policy  
Corporate Energy Policy

**RELEVANT CONSULTATION:**

Corporate Services Department: Legal Services; Purchasing; Budgets & Finance and Risk Management  

**CITY STRATEGIC COMMITMENT:**

By evaluating the “Triple Bottom Line”, (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

- Community Well-Being is enhanced. ☑ Yes   ☐ No
- Environmental Well-Being is enhanced. ☑ Yes   ☐ No
- Economic Well-Being is enhanced. ☑ Yes   ☐ No

Does the option you are recommending create value across all three bottom lines? ☑ Yes   ☐ No

Do the options you are recommending make Hamilton a City of choice for high performance public servants? ☑ Yes   ☐ No
City Of Hamilton
Statement of Policies and Goals
For the Procurement, Sale, Delivery, and Storage of Energy Commodities, Including the Use of Energy Commodity Price Hedging Agreements
[“Energy Commodity Policy”]

PART I - POLICY STATEMENT AND INTERPRETATION

1. Purpose of Statement

In recognition of the unique position of Energy Commodities (as herein defined) energy prices are set by varying market conditions (i.e. supply and demand), fluctuating hourly, daily and seasonally. Supply challenges for these commodities and varying supply and demand have contributed to price volatility and have produced forward market price and budgetary uncertainty.

Buyers in the Ontario marketplace who wish to control commodity price risk must enter into commodity price hedging agreements, which are intended to reduce the risk of adverse price movements in a commodity. This Statement of Policies and Goals provides the framework for the purchase, sale, delivery, and storage of Energy Commodities and the consideration of price hedging by the City of Hamilton for all Energy Commodities.

2. Definitions

“City Affiliates” are those entities with which the City is not at arm’s length within the meaning of the Income Tax Act (Canada).

“Contract Agent” means an external agent, contractor, consultant, or other representative hired by the City to assist with the procurement, sale, and/or delivery of Energy Commodities for the City.

“Cooperative Energy Purchasing” means coordination of City Energy Commodity purchases with Energy Commodity purchases of City Affiliates, or other organizations.

“Energy Commodities” means electricity, Green Power, natural gas, methane and all other petroleum based fuel products such as: diesel, bio-diesel, gasoline, fuel oil, propane and any other bulk commodity primarily used by the City for the purpose of heating and cooling of buildings and other structures, electricity generation, cogeneration and the fuelling of City fleets, as determined by the Manager of Energy Initiatives.

“Green Power” means electricity generated from renewable energy sources, such as certified water power, solar, biogas, biomass and wind. Other terms for Green Power
include: Green Power certificates, Tradable Renewable Certificates or "Green Tags". These attributes, embodied in a certificate, may be bought and sold either bundled or unbundled with commodity electricity.

3. **Policy Statement**

The City of Hamilton ("City") will procure the necessary quality and quantity of Energy Commodities in an efficient, timely, and cost effective manner, while maintaining the controls necessary for a public institution in accordance with this Energy Commodity Policy. The City will encourage the negotiation of fair Master Agreements, and agreements with Contract Agents, with respect to the purchase, sale, delivery, and storage of Energy Commodities. The City will strive to ensure that the best value is obtained and that the financial stability of Energy Commodity suppliers meets high thresholds to ensure sustainability and reliability of supply.

The City will consider commodity price hedging agreements as a means of fixing, directly or indirectly, or enabling the City to fix the price or range of prices to be paid by the City for the future delivery of some or all of a specific Energy Commodity, or the future cost to the municipality of an equivalent quantity of the Energy Commodity, where is advantageous for the City to do so.

The City will also consider opportunities for entering into agreements with utilities and other transportation and delivery supplier contracts (i.e. pipeline supply) to secure commodity supply and utility rates of specific Energy Commodities.

**PART II - DESIGNATION AND DELEGATION OF RESPONSIBILITIES**

1. **Designated Authority - General Manager of Finance and Corporate Services**

The General Manager of Finance and Corporate Services ("GMFCS") for the City of Hamilton is the designated person responsible for administrative matters pertaining to the purchase, sale, delivery, and storage of Energy Commodities, including, without limitation, determination of potential suppliers and the entering into of Master Agreements and related transactions, as well as Energy Commodity price hedging in an efficient and cost-effective manner. The GMFCS will delegate certain administrative duties and responsibilities to internal staff, particularly the Manager of Energy Initiatives, and external Contract Agents.

The General Manager of Finance and Corporate Services, or his/her authorized delegate, is authorized to enter into contracts for the purpose of engaging a Contract Agent with respect to the purchase, sale and/or delivery of Energy Commodities in accordance with Part III of this Energy Commodity Policy.

The General Manager of Finance and Corporate Services is responsible for:

a) determining what supplier(s) are appropriate for the City to engage in negotiations in order to secure Master Agreements with respect to the purchase, sale, delivery and/or storage of Energy Commodities in accordance with this Energy Commodity Policy;

b) determining when it would be advantageous for the City to engage Contract Agents in order to assist the City with respect to its Energy Commodity procurement
strategy and determining which Contract Agents to engage in negotiations and/or to enter into agency or other agreements with, in accordance with this Energy Commodity Policy;

c) determining when it would be advantageous for the City, to participate in Cooperative Energy Purchasing and to coordinate such joint efforts in accordance with this Energy Commodity Policy; and

d) determining whether a particular Energy Commodity price hedging agreement is advantageous for the City based on the considerations outlined in this Energy Commodity Policy.

2. **Authorized Delegate - Manager of Energy Initiatives**

The Manager of Energy Initiatives will be the General Manager of Finance and Corporate Services’ authorized delegate to conduct the following:

a) seek out, with or without the use of Contract Agents, potential suppliers of Energy Commodities and engage in negotiations with same with respect to the purchase, sale, delivery and/or storage of Energy Commodities using the criteria for potential suppliers outlined in this Energy Commodity Policy, including the entering into of Master Agreements (with terms and conditions acceptable to the City Solicitor);

b) execute Energy Commodity procurement, sale, delivery, and/or storage contracts and enter into Energy Commodity transactions in accordance with this Energy Commodity Policy and on terms and conditions acceptable to the City Solicitor;

c) enter into agency agreements and/or other contracts and/or arrangements with Contract Agents and/or electric or natural gas distribution and transmission utilities or other Energy Commodity agencies and/or companies for the purpose of purchase, sale, delivery and/or storage of Energy Commodities upon approval from the General Manager of Finance and Corporate Services and on terms and conditions acceptable to the City Solicitor;

d) enter into agreements with respect to the purchase, sale, delivery, and/or storage of Energy Commodities with City Affiliates on terms acceptable to the General Manager of Finance and Corporate Services;

e) enter into district energy agreements (with terms and conditions acceptable to the City Solicitor) with third parties, including, but not limited to, school boards, Provincial agencies, and other private or public institutions for electricity supply, heating or cooling (thermal energy);

f) meet with the General Manager of Finance and Corporate Services, as required, and provide written reports regarding the past performance of Energy Commodity hedging agreements, future strategies and other issues as requested, as well as information with respect to the use of Contract Agents;

g) notify the General Manager of Finance and Corporate Services, in writing, of any significant changes in the Energy Commodity hedging philosophies or policies and organization; and
h) provide periodically, not less than annually, lists of Energy Commodity hedging agreements and agreements with Contract Agents and such other information as may be requested by the General Manager of Finance and Corporate Services.

3. Use of Contract Agents

The Contract Agent will only be authorized to act within the scope of his/her/its’ specific authority under any executed contract with the City and shall, in accordance with such contract, provide a number of services to the City, which may include:

a) assisting the Manager of Energy Initiatives in developing a prudent energy procurement mix and specific procurement objectives and strategies;

b) monitoring, analyzing and reporting on the City’s procurement performance and supporting the Manager of Energy Initiatives with respect to Energy Commodity procurement, delivery and storage related matters;

c) assisting in the selection of Energy Commodity suppliers, delivery, and/or storage agents;

d) meeting with the Manager of Energy Initiatives, as required;

e) enter into contracts and/or arrangements (with terms and conditions acceptable to the City Solicitor) with electric or natural gas distribution or transmission utilities or other Energy Commodity agencies and/or companies for the purpose of purchase, sale, delivery and/or storage of Energy Commodities upon approval from the Manager of Energy Initiatives; and

f) enter into district energy agreements (with terms and conditions acceptable to the City Solicitor) with third parties, including, but not limited to, school boards, Provincial agencies, and other private or public institutions for electricity supply, heating or cooling (thermal energy) upon approval from the Manager of Energy Initiatives.

PART III - PROCUREMENT POLICIES

1. Energy Commodity Suppliers, Delivery, and/or Storage Entities

In determining what suppliers, delivery and/or storage entities are appropriate for the City to engage in negotiations in order to secure Master Agreements with respect to the purchase, sale, delivery, and/or storage of Energy Commodities, the following non-exclusive considerations will be taken into account:

(i) past, present and projected pricing strategies;

(ii) acceptability of contract terms and conditions by the City Solicitor;

(iii) the past, present and prospective financial stability of any potential supplier, including the meeting of a minimum threshold of financial stability set in accordance with this Energy Commodity Policy;

(iv) any conflicts of interest as between the City, City Affiliates and any supplier, delivery and/or storage entity;
in the opinion of the General Manager of Finance and Corporate Services, the commercial relationship between the City and/or City Affiliates and the supplier, delivery and/or storage entity has been impaired by the prior and/or current act(s) or omission(s) of such supplier or entity including but not limited to:

(a) a corporation, including an officer, director or shareholder of a corporation, or other person which has been involved in litigation with the City;

(b) any corporation that is an affiliate of or successor to, or has one or more of its officers, directors or shareholders, any person or corporation described in clause (a);

(c) the failure of the supplier, delivery and/or storage entity to pay, in full, all outstanding payments (and, where applicable, interest and costs) owing to the City by such supplier or entity, after the City has made demand for payment of same;

(d) the refusal to follow reasonable directions of the City or to cure a default under any contract with the City as and when required by the City;

(e) the supplier, delivery and/or storage entity refusing to enter into a contract with the City after the supplier's (or entity's) bid, proposal or other document provided in response to a City procurement document has been accepted by the City;

(f) the supplier, delivery and/or storage entity refusing to perform or to complete performance of a contract with the City;

(g) act(s) or omission(s) resulting in a claim by the City under a bid bond, a performance bond, a warranty bond or any other security required to be submitted by a vendor on a RFP, RFQ, RFRC, or Tender;

within the five year period immediately preceding the date on which the supplier, delivery or storage entity enters into a contract with respect to Energy Commodities with the City;

(v.1) for the purposes of subsection (V), the prior acts or omissions of a supplier, delivery or storage entity shall also include the prior acts or omissions of: an officer, a director, a majority or controlling shareholder, or a member of the supplier (or entity) if a corporation; a partner of the supplier (or entity), if a partnership; any corporation to which the supplier (or entity) is an affiliate of or successor to, or an officer, a director or a majority or controlling shareholder of such corporation; and any person with whom the supplier (or entity) is not at arm’s length within the meaning of the Income Tax Act (Canada);

(vi) in the opinion of the General Manager of Finance and Corporate Services there are reasonable grounds to believe that it would not be in the best interests of the City to enter into a contract with the supplier, delivery or storage entity, including (without limiting the generality of the foregoing):
(a) the conviction of that supplier, delivery and/or storage entity or any person or entity with whom that supplier, delivery and/or storage entity is not at arm’s length within the meaning of the *Income Tax Act* (Canada) of an offence under any taxation statute in Canada;

(b) the conviction or finding of liability of that supplier, delivery and/or storage entity under the *Criminal Code* or other legislation or law, whether in Canada or elsewhere and whether of a civil, quasi-criminal or criminal nature, of moral turpitude including but not limited to fraud, theft, extortion, threatening, influence peddling and fraudulent misrepresentation;

(c) the conviction or finding of liability of the supplier, delivery and/or storage entity under any environmental legislation, whether of Canada or elsewhere, where the circumstances of that conviction evidence a gross disregard on the part of that entity for the environmental well-being of the communities in which it carries on business;

(d) the conviction or finding of liability of the supplier, delivery and/or storage entity relating to product liability or occupational health or safety, whether of Canada or elsewhere, where the circumstances of that conviction evidence a gross disregard on the part of that entity for the health and safety of its workers or customers;

(e) the conviction or finding of liability of that supplier, delivery and/or storage entity under the financial securities legislation whether of Canada or elsewhere, where the circumstances of that conviction have, or would have, significant negative financial impact on any contract with the City.

2. Use of Energy Commodity Price Hedging Strategies/Agreements

In determining whether a particular Energy Commodity price hedging agreement is advantageous for the City, the following non-exclusive considerations will be taken into account:

(i) any and all Energy Commodity purchases for which commodity price hedging agreements will be appropriate;

(ii) that the financial position of the City will be enhanced in all likelihood by virtue of the use of such an agreement;

(iii) that the all-inclusive contracted price and cost to the City of the associated Energy Commodity will be lower or more stable than it would be without the agreement;

(iv) the formulation of a detailed estimate of the expected result of using such an agreement;

(v) the formulation of the financial and other risks to the municipality that would exist with the use of such an agreement and determine if such risk would be lower than the financial and other risks to the municipality that would exist without such an agreement;
(vi) using his/her best judgment and in his/her sole discretion determine that the agreement contains adequate risk control measures, for example:

1) ensuring that if either party’s credit rating falls below BBB – (S&P); Baa3 (Moody’s); and/or BBB (low) (DBRS), the other party may demand Adequate Assurance of Performance. “Adequate Assurance of Performance” shall mean sufficient security in the form, amount and for the term reasonably acceptable to the City, and/or, but not limited to being able to provide an unconditional irrevocable letter of credit or prepayment;

2) providing, in the case where a supplier has no credit rating, a guarantee from the parent corporation (assuming parent corporation meets credit rating requirements in 1 above);

3) limiting credit exposure based on a degree of regulatory oversight and/or on the regulatory capital of the other party to the agreement; and

(vii) ensure ongoing monitoring with respect to the Energy Commodity price hedging agreements.

3. **Contract Agents (consultants)**

The Manager of Energy Initiatives shall seek Council approval for a specified period of time before engaging any Contract Agents for the purposes of this Energy Commodity Policy.

4. **Cooperative Energy Purchasing**

The Manager of Energy Initiatives shall consider engaging in Cooperative Energy Purchasing when, in his opinion, it would be advantageous to the City to do so based on the following non-inclusive considerations:

(i) the possibility of economies of scale (i.e. better buying power);

(ii) opportunities for cost-sharing of services; and

(iii) opportunities for securing indirect financial benefits to the City.

The Manager of Energy Initiatives shall have the authority to enter into Cooperative Energy Purchasing initiatives with City Affiliates at his discretion in consultation with the General Manager of Finance and Corporate Services and the City Solicitor.

All other Cooperative Energy Purchasing initiatives shall be subject to prior Council approval.

**PART IV - REPORTING REQUIREMENTS**

The General Manager, Finance and Corporate Services and Treasurer, shall report to Council at least once each fiscal year with respect to any and all Energy Commodity price hedging agreements, and other Energy Commodity agreements, in place. The report shall contain, at a minimum, all requirements as set out in O. Reg. 653/05 (as it exists from time to time) and shall include:
1. A statement about the status of the Energy Commodity price hedging agreements during the period of the report, including a comparison of the expected and actual results of using the agreements;

2. A statement by the Treasurer indicating whether, in his or her opinion, all of the agreements entered during the period of the report are consistent with this Energy Commodity Policy relating to the use of financial agreements to address commodity pricing and costs;

3. An overview of any agreements with Contract Agents (including, without limitation, actual costs, services provided and frequency of use) and a statement by the Treasurer indicating whether, in his or her opinion, all of these agreements are consistent with this Energy Commodity Policy with respect to the use of Contract Agents;

4. An overview of any Cooperative Energy Purchasing initiatives and/or agreements and a statement by the Treasurer indicating whether, in his or her opinion, all of these agreements are consistent with this Energy Commodity Policy with respect to the use of Cooperative Energy Purchasing;

4. Such other information as Council may require; and

5. Such other information as the Treasurer considers appropriate to include in the report.

PART V - ROLE OF CITY COUNCIL

Council is responsible for determining, based on information provided by City staff, whether the financial implications of Energy Commodity price hedging agreements are favourable relative to alternatives, and whether the risks associated with the Energy Commodity price hedging agreements are reasonable.

In considering the report and recommendation from the General Manager, Finance and Corporate Services and Treasurer, Council is responsible for ensuring that legal and financial advice has been obtained and must consider whether the scope of the proposed Energy Commodity price hedging agreements warrants further legal or financial advice from an independent source.
Commodity price hedging agreements

5. (1) A municipality that has entered, or plans to enter, an agreement under Part II of the Act for the supply of a commodity required for a municipal system may enter into one or more financial agreements to minimize the cost or financial risk associated with incurring debt for the commodity. O. Reg. 653/05, s. 5 (1).

(2) The financial agreement must fix, directly or indirectly, or enable the municipality to fix the price or range of prices to be paid by the municipality for the future delivery of some or all of the commodity or the future cost to the municipality of an equivalent quantity of the commodity. O. Reg. 653/05, s. 5 (2).

(3) Subject to subsection (4), the municipality shall not sell or otherwise dispose of the financial agreement or any interest of the municipality in the agreement. O. Reg. 653/05, s. 5 (3).

(4) The municipality may sell or otherwise dispose of a financial agreement or an interest of the municipality in the agreement if, in the opinion of the treasurer of the municipality, the sale or disposition is in the best interests of the municipality and if either of the following conditions is satisfied:

1. The sale or disposition is part of a transaction for the sale of real property by the municipality relating to a change in the use of the property by the municipality.

2. The municipality has ceased to carry on any activity relating to the municipal system for which the commodity was being acquired. O. Reg. 653/05, s. 5 (4).

Statement of policies and goals re commodity price hedging agreements

6. (1) Before a municipality passes a by-law authorizing a commodity price hedging agreement, the council of the municipality shall adopt a statement of policies and goals relating to the use of financial agreements to address commodity pricing and costs. O. Reg. 653/05, s. 6 (1).

(2) The council of the municipality shall consider the following matters when preparing the statement of policies and goals:

1. The types of projects for which commodity price hedging agreements are appropriate.

2. The fixed costs and estimated costs to the municipality resulting from the use of such agreements.
3. Whether the future price or cost to the municipality of the applicable commodities will be lower or more stable than they would be without the agreements.

4. A detailed estimate of the expected results of using such agreements.

5. The financial and other risks to the municipality that would exist with, and without, the use of such agreements.

6. Risk control measures relating to such agreements, such as,
   i. credit exposure limits based on credit ratings and on the degree of regulatory oversight and the regulatory capital of the other party to the agreement,
   ii. standard agreements, and
   iii. ongoing monitoring with respect to the agreements. O. Reg. 653/05, s. 6 (2).

Report on commodity price hedging agreements

7. (1) If a municipality has any subsisting commodity price hedging agreements in a fiscal year, the treasurer of the municipality shall prepare and present to the municipal council once in that fiscal year, or more frequently if the council so desires, a detailed report on all of those agreements. O. Reg. 653/05, s. 7 (1).

   (2) The report must contain the following information and documents:

   1. A statement about the status of the agreements during the period of the report, including a comparison of the expected and actual results of using the agreements.

   2. A statement by the treasurer indicating whether, in his or her opinion, all of the agreements entered during the period of the report are consistent with the municipality's statement of policies and goals relating to the use of financial agreements to address commodity pricing and costs.

   3. Such other information as the council may require.

   4. Such other information as the treasurer considers appropriate to include in the report. O. Reg. 653/05, s. 7 (2).
Purpose of Statement

This Amended Statement of Policies and Goals With Respect to the Use of Commodity Price Hedging Agreements, Excluding Energy Commodities, provides the framework for the consideration of commodity price hedging by the City of Hamilton for any “commodity”, excluding “Energy Commodities”.

Definitions

“Commodity” means, whether in the original or a processed state, an agricultural product, a forest product, a product of the sea, a mineral, a metal, a hydrocarbon fuel, electricity, a precious stone or other gem and other physical goods but does not include chattel paper, a document of title, an instrument, money or securities, or as otherwise defined by O.Reg.635/05, or applicable successor legislation, as it exists from time to time; however, for the purposes of this Policy excludes Energy Commodities.

“Contract Agent” means an external agent, contractor, consultant, or other representative hired by the City to assist with the procurement, sale, and/or delivery of Commodities for the City.

“Energy Commodities” means electricity, Green Power, natural gas, methane and all other petroleum based fuel products such as: diesel, bio-diesel, unleaded, fuel oil, propane and any other bulk commodity primarily used by the City for the purpose of heating and cooling of buildings and other structures, electricity generation, cogeneration and the fuelling of City fleets, as determined by the Manager of Energy Initiatives.

“Green Power” means electricity generated from renewable energy sources, such as certified water power, solar, biogas, biomass and wind. Other terms for Green Power include: Green Power certificates, Tradable Renewable Certificates or "Green Tags". These attributes, embodied in a certificate, may be bought and sold either bundled or unbundled with commodity electricity.

Policy Statement

The City of Hamilton (the City) will consider Commodity price hedging agreements as a means of fixing, directly or indirectly, or enabling the City to fix the price or range of prices to be paid by the City for the future delivery of some or all of a Commodity or the
future cost to the municipality of an equivalent quantity of the Commodity, where is advantageous for the City to do so.

**Delegation of Responsibilities**

The General Manager of Finance and Corporate Services for the City of Hamilton is the designated person responsible for administrative matters pertaining to Commodity price hedging. The General Manager of Finance and Corporate Services may delegate certain administrative duties and responsibilities to internal staff and external Contract Agents.

The General Manager of Finance and Corporate Services, or his/her authorized delegate, is authorized to enter into financial hedging agreements pursuant to this Policy and in accordance with the City’s Purchasing Policies and on terms and conditions acceptable to the City Solicitor.

The General Manager of Finance and Corporate Services, or his/her designate, is authorized to enter into contracts for the purpose of engaging a Contract Agent in accordance with the City’s Purchasing Policies and on terms and conditions acceptable to the City Solicitor.

**General Manager of Finance and Corporate Services**

The General Manager of Finance and Corporate Services is responsible for:

a) In accordance with the City’s Purchasing Policies, determining whether a particular Commodity price hedging agreement is advantageous for the City, whereby, the following considerations will be taken into account:

   (i) any and all Commodity purchases for which Commodity price hedging agreements will be appropriate;

   (ii) that the financial position of the City will be enhanced by virtue of the use of such an agreement;

   (iii) that the all-inclusive contracted price and cost to the City of the associated Commodity will be lower or more stable than it would be without the agreement;

   (iv) formulate a detailed estimate of the expected result of using such an agreement;

   (v) formulate the financial and other risks to the City that would exist with the use of such an agreement and determine if such risk would be lower than the financial and other risks to the City that would exist without such an agreement;

   (vi) using his/her best judgment and in his/her sole discretion determine that the agreement contains adequate risk control measures, for example:

      1) ensuring that if either party’s credit rating falls below BBB - (S&P); Baa3 (Moody’s); and/or BBB (low) (DBRS), the other party may demand Adequate Assurance of Performance. "Adequate
Assurance of Performance” shall mean sufficient security in the form, amount and for the term reasonably acceptable to the City, and/or, but not limited to being able to provide an unconditional irrevocable letter of credit or prepayment;

2) providing, in the case where a supplier has no credit rating, a guarantee from the parent corporation (assuming parent corporation meets credit rating requirements in 1 above);

3) limiting credit exposure based on a degree of regulatory oversight and/or on the regulatory capital of the other party to the agreement; and

(vii) ensure ongoing monitoring with respect to the Commodity price hedging agreements.

Contract Agent

The Contract Agent will only be authorized to act within the scope of his/her/its’ specific authority under any executed contract/agreement with the City and shall, in accordance with such a contract/agreement, provide a variety of services to the City, as required.

Reporting Requirements

The General Manager of Finance and Corporate Services and Treasurer, shall report to Council at least once each fiscal year with respect to any and all Commodity price hedging agreements in place. The report shall contain, as a minimum, all requirements as set out in O. Reg. 653/05:

1. A statement about the status of the agreements during the period of the report, including a comparison of the expected and actual results of using the agreements;

2. A statement by the Treasurer indicating whether, in his or her opinion, all of the agreements entered during the period of the report are consistent with the municipality's statement of policies and goals relating to the use of financial agreements to address Commodity pricing and costs;

3. Such other information as Council may require; and

4. Such other information as the Treasurer considers appropriate to include in the report.

Council’s Role

Council is responsible for determining, based on information provided by staff, whether the financial implications of Commodity price hedging agreements are favourable relative to alternatives, and whether the risks associated with the Commodity price hedging agreements are reasonable.

In considering the report and recommendation from the General Manager, Finance and Corporate Services and Treasurer, Council is responsible for ensuring that legal and financial advice has been obtained and must consider whether the scope of the proposed Commodity price hedging agreements warrants further legal or financial advice from an independent source.
1. (1) In this Regulation,

"bond forward agreement" means a financial agreement described in section 2;

"commodity" means, whether in the original or a processed state, an agricultural product, a forest product, a product of the sea, a mineral, a metal, a hydrocarbon fuel, electricity, a precious stone or other gem and other physical goods but does not include chattel paper, a document of title, an instrument, money or securities;

"commodity price hedging agreement" means a financial agreement described in section 5;

"lease financing agreement" means a financial agreement described in section 8.

O. Reg. 653/05, s. 1 (1).

(2) For the purposes of this Regulation, a lease financing agreement has a material impact on a municipality if the costs or risks associated with the agreement significantly affect the municipality's debt and financial limit determined in accordance with Ontario Regulation 403/02 (Debt and Financial Obligation Limits) made under the Act, or would reasonably be expected to have a significant effect on that limit. O. Reg. 653/05, s. 1 (2); O. Reg. 604/06, s. 1.

COMMODITY PRICE HEDGING AGREEMENTS

Commodity price hedging agreements

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   (2) The council of the municipality shall consider the following matters when preparing the statement of policies and goals:

   1. The types of projects for which commodity price hedging agreements are appropriate.

   2. The fixed costs and estimated costs to the municipality resulting from the use of such agreements.

   3. Whether the future price or cost to the municipality of the applicable commodities will be lower or more stable than they would be without the agreements.

   4. A detailed estimate of the expected results of using such agreements.

   5. The financial and other risks to the municipality that would exist with, and without, the use of such agreements.

   6. Risk control measures relating to such agreements, such as,

      i. credit exposure limits based on credit ratings and on the degree of regulatory oversight and the regulatory capital of the other party to the agreement,

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(2) The report must contain the following information and documents:

1. A statement about the status of the agreements during the period of the report, including a comparison of the expected and actual results of using the agreements.

2. A statement by the treasurer indicating whether, in his or her opinion, all of the agreements entered during the period of the report are consistent with the municipality's statement of policies and goals relating to the use of financial agreements to address commodity pricing and costs.

3. Such other information as the council may require.

4. Such other information as the treasurer considers appropriate to include in the report. O. Reg. 653/05, s. 7 (2).