



**STAFF REPORT
ACTION REQUIRED
Confidential Attachment**

Enwave Energy Corporation 2007 Annual General Shareholders Meeting

Date:	April 16, 2007
To:	Executive Committee
From:	City Manager
Wards:	All
Reason for Confidential Information:	This report involves the security of property belonging to the City or one of its agencies, boards, and commissions.

SUMMARY

This report recommends that the City Manager or her designate be appointed the proxy holder for the City at the Annual Shareholders' Meeting of Enwave Energy Corporation to be held on May 30, 2007 or any adjournment thereof, and to obtain instructions as to how the proxy holder is to vote at the Meeting.

RECOMMENDATIONS

The City Manager recommends that City Council:

- (1) appoint the City Manager or her designate as the City's proxy holder to attend and vote the common shares of Enwave Energy Corporation ("Enwave") owned by the City at the annual meeting of the shareholders of Enwave to be held on May 30, 2007 or any adjournment of that meeting;
- (2) direct the proxy holder to vote as follows at the Annual Shareholders' Meeting:
 - (a) to approve the minutes of the Annual Meeting of Shareholders of February 13, 2006 and Special Shareholders Meeting of July 5, 2006;
 - (b) to receive the annual financial statements of the Corporation for the period ended October 31, 2006 together with the auditor's report thereon;
 - (c) to receive the un-audited financial statements for the first quarter ended January 31, 2007;

- (d) to reappoint the auditors, Ernst & Young LLP, Chartered Accountants, and to authorize the directors to fix their remuneration;
 - (e) to reappoint John McManus as a director of Enwave to hold office until the second annual meeting of the shareholders of the Corporation to be held after the May 30, 2007 annual shareholders meeting, or until his successor is elected or appointed, and
 - (f) to transact such other business as may properly come before the Meeting or any adjournment or adjournments thereof;
- (3) authorize and direct the Deputy City Manager and Chief Financial Officer and the City Clerk to execute on behalf of the City the common share proxy substantially in the form of Attachment 2 to this report; and
- (4) that the contents of Confidential Attachment 5 to this report remain confidential in their entirety after the consideration of this report by Council.

Financial Impact

The recommendations in this report have no financial impact.

DECISION HISTORY

The City received notice on April 12, 2007 of Enwave's 2007 Annual Shareholders' Meeting to be held on May 30, 2007. City Council is required to appoint a proxy holder to vote the City's shares and to direct the actions of the proxy holder at the meeting.

ISSUE BACKGROUND

Enwave is a corporation incorporated under the *Business Corporations Act (Ontario)* ("OBCA") on December 15, 1999, whose shareholders are the City of Toronto and BPC Penco Corporation ("BPC"), a subsidiary of OMERS. The City holds the only voting shares; BPC Penco's shares are non-voting. A shareholders' agreement among the parties governs the relationship among shareholders and Enwave.

The City has received a notice and blank form of proxy from Enwave (completed in Attachment 2) for this year's annual meeting to be held at 11:00 am, Wednesday, May 30, 2007.

COMMENTS

As a corporation, the City attends and votes at a shareholders' meeting through a proxy holder. A proxy holder, as nominee of a shareholder, is required by law to act in accordance with the shareholder's direction. It is recommended that the City Manager or her designate be appointed the City's proxy holder.

Under the OBCA, a corporation must retain accurate records, including minutes of meetings and resolutions of shareholders. It is recommended that the proxy holder be authorized and directed to receive the minutes of the annual shareholders' meeting of February 13, 2006 and the special shareholders' meeting of July 5, 2006.

Under the OBCA, shareholders are generally requested to vote in favour of receiving financial statements at an annual general meeting. Under the section 154 (1) (a) of the Business Corporations Act (Ontario), the financial statements to be presented to shareholders at an annual general meeting of a (non-offering) corporation must relate to a fiscal period ended not more than six months before that meeting. The Shareholders Agreement between the City, BPC, and Enwave requires the Board of Enwave to deliver the annual audited financial statements of Enwave to the shareholders within 120 days of fiscal year end, and the quarterly financial results to City Finance within 45 days of each fiscal quarter end. The company's fiscal year-end is October 31.

Enwave has provided the shareholders with its audited financial statements for the year ended October 31, 2006, and with its unaudited financial statements for the first quarter ended January 31, 2007, for the purposes of the annual general meeting of the shareholders, to be held on May 30, 2007. Deputy City Manager and Chief Financial Officer has reviewed the financial statements and his summary and comments are contained in Confidential Attachment 5 to this report. The confidential statements are on file with the City Clerk's office.

Section 3.11 of the Shareholders' Agreement stipulates that Ernst & Young LLP be reappointed as Enwave's auditors, unless both shareholders have consented in writing to a change. Neither the City nor BPC has requested such a change. It is therefore recommended that the proxy holder be authorized and directed to vote for the reappointment of Ernst & Young LLP as the company's auditors for the current fiscal year, and for their remuneration to be fixed by Enwave's board of directors.

Under Section 3.1 of the Shareholders' Agreement, the Board consists of six directors. At their current levels of ownership in Enwave, both the City and BPC are entitled to nominate three directors to the Board. BPC has nominated John McManus for reappointment as a director of Enwave to hold office until the second annual meeting of the shareholders to be held after the May 30, 2007, or until his successor is elected. The other directors including the City's citizen nominees have not yet completed their terms of office so no other appointments are required at this time.

It is possible that some minor amendments or minor variations to the agenda items might be proposed at the meeting or that other minor items might be introduced (e.g. adjournment of the meeting). It would not be legally proper, however, to introduce significant items of business at the meeting, as they would require advanced written notice both under the OBCA and the Shareholders' Agreement.

The OBCA and the Shareholders' Agreement require that a form of proxy be executed on behalf of a shareholder that is a corporation. It is therefore recommended that the City Manager or her designate be authorized and directed to execute on behalf of the City, the proxy substantially in the form of Attachment 2 to this report.

CONTACT

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SIGNATURE

Shirley Hoy, City Manager

ATTACHMENTS

Attachment 1: Notice of Annual General Meeting

Attachment 2: Common Share Proxy Form

Attachment 3: Minutes of the Annual Shareholders' Meeting held on February 13, 2006

Attachment 4: Minutes of the Special Shareholders' Meeting held on July 5, 2006

Attachment 5: Confidential Information