



**STAFF REPORT
ACTION REQUIRED
Confidential Attachments**

Enwave Energy Corporation Annual Shareholders' Meeting

Date:	August 24, 2009
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 corporations, and deals with personal matters about identifiable persons.

SUMMARY

This report transmits the notice of the Annual Shareholders' Meeting for Enwave Energy Corporation to be held on October 4, 2009 and recommends the necessary Council actions. This report includes a transmittal of the recommendations of the Corporations Nominating Panel and the nominees of BPC Penco for appointment of directors and a confidential report from the Deputy City Manager and Chief Financial Officer commenting on the financial statements.

RECOMMENDATIONS

The City Manager recommends that:

- (1) Council appoint the City Manager or his designate as the City's proxy holder to attend and vote the City's common shares of Enwave Energy Corporation at the annual shareholders' meeting to be held on October 4, 2009, or any adjournment of that meeting and direct that the necessary proxy be executed;
- (2) Council adopt the recommendation of the Corporations Nominating Panel dated August 12, 2009 forming Attachment 3 to this report as follows:
"City Council nominate the two persons listed in Confidential Appendix 1 to this report [Attachment 3] for election at Enwave's 2009 annual shareholders' meeting to the Board of Directors of Enwave Energy Corporation and the individual indicated to serve as Chair of the Board, to serve at the pleasure of Council for a term commencing on the date of the 2009 annual shareholders' meeting and ending on the date of the third annual shareholders' meeting held after the 2009

annual shareholders' meeting in 2012, or until their successors are elected or appointed";

- (3) the proxy holder be directed to vote the City's shares as follows at the annual shareholders' meeting of Enwave Energy Corporation:
 - (a) approve the minutes of the 2008 Annual Meeting held on July 7, 2008;
 - (b) receive the annual financial statements of the Corporation for the fiscal year ended October 31, 2008 together with the auditor's report on those statements;
 - (c) receive the unaudited financial statements of the Corporation for the second quarter ended April 30, 2009;
 - (d) reappoint Ernst & Young LLP, Chartered Accountants as the Corporation's auditors, and authorize the directors of Enwave to fix the auditors' remuneration;
 - (e) elect as directors of the Enwave Board:
 - (i) the Mayor;
 - (ii) the two individuals recommended by the Corporations Nominating Panel identified in Confidential Appendix 1 to Attachment 3 to this report; and
 - (iii) the three individuals nominated by BPC Penco identified in Confidential Appendix A of Attachment 1 to this report;
 - (f) appoint as the Chair of the Enwave Board the individual identified in Confidential Appendix 1 to Attachment 3 to this report; and
 - (g) transact such other business as may properly come before the annual shareholders' meeting or any adjournment of the meeting;
- (4) the names and credentials of the nominees from both BPC Penco and the City be made public following City Council's approval; and
- (5) the contents of Confidential Attachment 4 to this report be kept in their entirety confidential after the consideration of this report by Council except as routinely disclosed in the "Government Business Enterprises" section of the City's Consolidated Financial Statements.

Financial Impact

The recommendations in this report have no financial impact.

Equity Impact Statement

The Corporations Nominating Panel for Enwave Energy Corporation considered diversity characteristics in making its recommendations.

DECISION HISTORY

The City has received notice (Attachment 1) dated June 16, 2009 of Enwave's Annual Shareholders' Meeting to be held on October 4, 2009. The Notice indicates that the business to be transacted is the approval of the previous minutes, receipt of the financial statements, appointment of the auditor, and election of the board of directors.

ISSUE BACKGROUND

Enwave is deemed to have been incorporated under the *Business Corporations Act* (Ontario) (“OBCA”) on December 15, 1999. Its shareholders are the City of Toronto and BPC Penco Corporation (“BPC”), a subsidiary of OMERS. There is a Shareholders’ Agreement in place that governs the relationship among the City, BPC and Enwave.

The composition of the Board of Directors is specified in the Shareholders’ Agreement and is comprised of 6 members. The number of representatives of each shareholder is dependent on the balance of shares held by each shareholder. The City currently owns approximately 43% of the shares of Enwave and is entitled to nominate 3 members of the Board. So long as the City owns more than 35% of the shares of Enwave, the City appoints the Chair of the Board, but the Chair shall not be a member of Council.

The City’s representatives are the Mayor or a Member of Council as the Mayor’s designate, and two citizens nominated by the Corporations Nominating Panel, established by the Mayor in accordance with Council’s Policy on Public Appointments. The term of the current directors expires on the date of the annual shareholders’ meeting to be held on October 4, 2009.

The City holds the only voting shares in Enwave; BPC’s shares are non-voting. The City votes for both its own and BPC’s representatives on the Enwave board at its annual shareholders’ meeting. The Shareholders’ Agreement requires that the City vote in favour of the nominees of BPC. BPC’s nominees are included in Confidential Appendix A to Attachment 1 to this report.

Enwave and BPC are private companies that do not report publicly their financial statements for competitive business reasons. Accordingly, it is necessary that Enwave’s financial statements remain confidential in their entirety except to the extent that they are routinely disclosed in the “Government Business Enterprises” section of the City’s Consolidated Financial Statements.

COMMENTS

The City attends and votes its shares at shareholders’ meetings through a proxy holder. This report recommends that the City Manager or his designate be appointed the City’s proxy holder. The proxy holder is required by law to act in accordance with the shareholder’s instructions. Enwave has provided a proxy form that must be executed by the City. The proxy form names the proxy holder and any specific Council instructions.

In accordance with the Public Appointments Policy, the Mayor established a Corporations Nominating Panel to recommend candidates to be considered by Council for the Board of Enwave. The following persons were named to the Panel to recommend the City’s citizen nominees: Deputy Mayor Joe Pantalone (Panel Chair and Chair of the Striking Committee); Councillor Janet Davis (then Chair of the Civic Appointments Committee); Ratna Omidvar (President, The Maytree Foundation); and May Wong (formerly of the Toronto Community Foundation). The report from the Chair of the

Panel recommending the City citizen representatives is included in this report as Attachment 3.

Enwave has provided its audited financial statements for the year ended October 31, 2008, and its unaudited financial statements for the second quarter ended April 30, 2009 for the purposes of the annual shareholders' meeting. As in previous years, the Deputy City Manager and Chief Financial Officer has reviewed the statements submitted and prepared comments for the information of Council (Attachment 4 to this report).

Section 3.11 of the Shareholders' Agreement provides that Ernst & Young LLP will be reappointed as Enwave's auditors unless both shareholders have consented in writing to a change. Neither the City nor BPC has requested 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 corporation's auditors for the current fiscal year, and to vote in favour of Enwave's board of directors setting the auditor's remuneration.

It is possible that some other minor business or minor variations to the agenda items may be introduced or proposed at the Annual Meeting. Recommendation 3(g) would authorize the City Manager or his designate to vote such other business as may properly come before the meeting. Significant items may not be introduced as new business at the meeting because such items would require advanced written notice both under the OBCA and the Shareholders' Agreement.

CONTACT

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SIGNATURE

Joseph P. Pennachetti, City Manager

ATTACHMENTS

Attachment 1: Notice of Annual General Meeting including (confidential) transmittal of the names of the nominees of BPC Penco

Attachment 2: Minutes of the Annual Shareholders' Meeting held on July 7, 2008

Attachment 3: (Confidential): Report of the Corporations Nominating Panel -
"Appointment of Citizens to the Board of Directors of Enwave Energy Corporation"

Attachment 4: (Confidential): Enwave Energy Corporation – 2008 Financial Statements
Report from the Deputy City Manager and Chief Financial Officer

Appointment of Citizens to the Board of Directors of Enwave Energy Corporation

Date:	August 12, 2009
To:	Executive Committee
From:	Chair, Corporations Nominating Panel for Enwave Energy Corporation
Wards:	All
Reason for Confidential Information:	This report deals with personal matters about an identifiable person.

SUMMARY

This report recommends two persons, including a Chair, for appointment to the Board of Directors of Enwave Energy Corporation.

RECOMMENDATIONS

The Corporations Nominating Panel recommends that:

City Council nominate the two persons listed in Confidential Appendix 1 to this report for election at Enwave's 2009 annual shareholders' meeting to the Board of Directors of Enwave Energy Corporation and the individual indicated to serve as Chair of the Board, to serve at the pleasure of Council for a term commencing on the date of the 2009 annual shareholders' meeting and ending on the date of the third annual shareholders' meeting held after the 2009 annual shareholders' meeting in 2012, or until their successors are elected or appointed.

COMMENTS

The term of the current directors of the Enwave Board expires on the date of the annual shareholders' meeting to be held on October 4, 2009.

The Public Appointments Policy adopted by Council in September, 2006 provides that a Corporations Nominating Panel be appointed by the Mayor to recommend candidates to be considered by Council for the boards of corporations.

The following persons were named to the Panel: Deputy Mayor Joe Pantalone (Panel Chair and Chair of the Striking Committee); Councillor Janet Davis (Chair of the Civic

Appointments Committee); Ratna Omidvar (President, The Maytree Foundation); and May Wong (formerly of the Toronto Community Foundation).

I want to personally, and on behalf of City Council, thank the Panel, and particularly Ms. Omidvar and Ms. Wong, for their participation in the recruitment process and for working to help the City meet its governance and diversity objectives. Their contributions to this process are greatly appreciated.

This report is submitted by the Chair on behalf of the members of the Corporations Nominating Panel.

SIGNATURE

Deputy Mayor Joe Pantalone
Chair, Corporations Nominating Panel

ATTACHMENT

Confidential Appendix 1: Recommended Citizen Appointments to the Enwave Energy Corporation Board of Directors