



STAFF REPORT ACTION REQUIRED

2013 Levy on Railway Roadways and Rights of Way and on Power Utility Transmission and Distribution Corridors

Date:	June 18, 2013
To:	Executive Committee
From:	Treasurer
Wards:	All
Reference Number:	P:\2013\Internal Services\rev\ec13019rev (AFS17013)

SUMMARY

This report seeks Council authority for the introduction of the by-law necessary to levy and collect taxes for the 2013 taxation year on railway roadways and rights of way and on land used as transmission or distribution corridors owned by power utilities, totalling approximately \$7.3 million in taxation revenue, of which the municipal share is \$6.6 million and the provincial education share is \$0.7 million.

RECOMMENDATIONS

The Treasurer recommends that:

1. City Council authorize the levy and collection of taxes for the 2013 taxation year on railway roadways and rights of way and on land used as transmission or distribution corridors owned by power utilities, in accordance with subsection 280 (1) of the *City of Toronto Act, 2006* and subsection 257.7 (1) the *Education Act*.
2. City Council grant authority for the introduction of the necessary bill to give effect thereto.

Financial Impact

The 2013 levy of taxes on railways and rights of way and on power utility transmission or distribution corridors will raise approximately \$7.3 million in taxation revenue, of which the municipal share is \$6.6 million and the provincial share is \$0.7 million. The total

revenue for 2012 was approximately \$7.5 million, of which the municipal portion was \$6.7 million and the provincial education portion was \$0.8 million.

Table 1, below, summarizes the acreage rates prescribed by the Province, the total acreage for each group of properties, and the resulting 2013 levy on railway roadways or rights of way and on power utility transmission or distribution corridors, with a comparison to 2012.

Table 1
Levy Amounts for 2013 on Railway Roadways or Rights of Way and on Power Utility Transmission or Distribution Corridors

	Rate per Acre (\$)			Acreage	Tax Levy		
	Municipal	Education	Total		Municipal	Education	Total
2012 Levy							
Canadian National Railway	\$611.33	\$822.69	\$1,434.02	493.63	\$301,771	\$406,105	\$707,876
Canadian Pacific Railway	\$611.33	\$822.69	\$1,434.02	535.32	\$327,257	\$440,402	\$767,659
Power Utility – Hydro One	\$834.02	\$1,208.66	\$2,042.68	2,771.94	\$2,311,853	\$3,350,333	\$5,662,186
Metrolinx ¹	\$611.33	\$0	\$611.33	585.45	\$357,903	\$0.00	\$357,903
Total				4,386.34	\$3,298,785	\$4,196,840	\$7,495,625
Adjusted Total (City retaining Education share of Hydro One levy)²					\$6,649,118	\$846,507	\$7,495,625
2013 Levy							
Canadian National Railway	\$611.33	\$822.69	\$1,434.02	292.02	\$178,521	\$240,242	\$418,763
Canadian Pacific Railway	\$611.33	\$822.69	\$1,434.02	536.17	\$327,777	\$441,102	\$768,879
Power Utility – Hydro One	\$834.02	\$1,208.66	\$2,042.68	2,761.63	\$2,303,255	\$3,337,872	\$5,641,127
Metrolinx ¹	\$611.33	\$0	\$611.33	778.35	\$475,829	\$0.00	\$475,829
Total				4,368.17	\$3,285,382	\$4,019,215	\$7,304,597
Adjusted Total (City retaining Education share of Hydro One levy)²					\$6,623,254	\$681,343	\$7,304,597
Change in Levy (2013 vs. 2012)							
Canadian National Railway	No change in acreage rates 2012 to 2013			-201.61	-\$123,250	-\$165,863	-\$289,113
Canadian Pacific Railway				+0.85	+\$520	+\$700	+\$1,220
Power Utility – Hydro One				-10.31	-\$8,598	-\$12,461	-\$21,059
Metrolinx ¹				+192.90	+\$117,926	\$0	+\$117,926
Total				-18.17	-\$13,404	-\$177,625	-\$191,029
Adjusted Total (City retaining Education share of Hydro One levy)²					-\$25,865	-\$165,164	-\$191,029

1. Metrolinx was known as Greater Toronto Transit Authority (GO Transit). *The Greater Toronto Services Board Act, 1998*, exempted the real property owned by Greater Toronto Transit authority from education taxes. Pursuant to the *GO Transit Act, 2001*, as of January 1, 2002, GO Transit became a Crown Agency of the Province. It is exempt from property taxes but subject to payment-in-lieu of taxes for the municipal portion of taxes only.

2. For Hydro One properties, the City retains the education portion of taxes. In the rows labelled "Adjusted Total", the education portion for Hydro One properties has been included in the Municipal Portion of taxes. Prior to April 1, 1999, under a revenue sharing arrangement for Ontario Hydro properties, the City retained both the education and municipal portions of taxes. Section 361.1 of the *Municipal Act* was amended effective April 1, 1999 to establish that the taxes payable were included in the definition of payment-in-lieu (PIL) properties. This allowed the City to continue to retain both the municipal and education portion of taxes, and this has been continued under the *City of Toronto Act, 2006*.

Overall, the net revenue in 2013 has decreased by \$191,029 from 2012 as the result of:

- i. a reduction of \$25,865 in the municipal portion of the levy, due to the reduction in the total acreage of the railway rights of way and the hydro corridors from 4,386.34 acres to 4,368.17 acres (representing a decrease of 18.17 acres) from 2012, and
- ii. a reduction of \$165,164 in the provincial education portion of the levy, due to the reduction in the total assessable acreage owned by Canadian National Railway (CN). CN has been actively selling their right-of-way (ROW) corridors in Toronto to Metrolinx. As a result, CN's total assessable acreage has decreased by 201.61 acres (493.63 to 292.02 acres), while Metrolinx's total assessable acreage has increased by 192.90 acres (585.45 acres to 778.35 acres) in 2013. Since the properties owned by Metrolinx are exempt from provincial education taxes, a shift in the acreage from CN to Metrolinx has resulted in a reduction in the provincial education portion of taxes.

The decrease in the overall assessable acreage is attributable to a year-over-year (2012 to 2013) decrease of land used as transmission or distribution corridors owned by power utilities totalling 10.31 acres, which is offset by a small acreage increase of 0.85 acres for Canadian Pacific Railway (CP).

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

At its meeting held on July 6, 7 and 8, 2010 City Council, in adopting Executive Committee report EX45.10: "2010 Levy on Railway Roadways and Rights of Way and on Power Utility Transmission and Distribution Corridors," also approved the following:

- “4. *City Council approve seeking an amendment to:*
 - a. *Regulation 387/98 and 392/98 to require an annual inflationary adjustment in the “mature rate”.*
 - b. *the “mature rate” prescribed by Regulation so as to phase in rate changes that more properly reflect the market value of the land over a period of time be reviewed.*
5. *City Council request the City Manager to actively pursue this matter in concert with other municipalities in Ontario.*
6. *City Council authorize the Deputy City Manager and Chief Financial Officer and the Acting Treasurer, in consultation with Intergovernmental Relations, to work in conjunction with the Regional Treasurers of Ontario group, the Municipal Finance Officers' Association, the Association of Municipal Clerks and Treasurers and the Association of Municipal Tax Collectors, to advance the position to the Province of Ontario that railway and hydro rights of way should be assessed and taxed on a Current Value Assessment basis.*
7. *Deputy City Manager and Chief Financial Officer and the Acting Treasurer report on their progress annually.”*

The report and decision document of Council can be accessed at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2010.EX45.10>

At its meeting held on July 11, 12 and 13, 2012 City Council, in adopting Executive Committee Report EX21.6: "2012 Levy on Railway Roadways and Rights of Way and on Power Utility Transmission and Distribution Corridors," authorized the levy and collection of taxes for the 2012 taxation year on railway roadways and rights of way and on land used as transmission or distribution corridors owned by power utilities in accordance with subsection 280(1) of the *City of Toronto Act*, 2006 and subsection 257.7(1) of the *Education Act*.

The report and decision document of Council can be accessed at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.EX21.6>

ISSUE BACKGROUND

Ontario Regulations 387/98 under the *Municipal Act, 2001* (continued by O.Reg. 121/07 under the *City of Toronto Act, 2006*) and O.Reg. 392/98 under the *Education Act*, as amended, have prescribed the applicable rates for railway and power utility rights of way acreage levies since 1998. Beginning in 1998 and ending in 2005, the Province prescribed what were termed "transition rates" each year, to phase-in changes to the taxation level of these right of way properties, until a uniform rate was reached in 2005 within each of eight geographic regions across the Province. The acreage tax rates established in 2005 are called 'mature rates' and apply to all years beyond 2005.

COMMENTS

Subsection 280(1) of the *City of Toronto Act, 2006* requires the City, in accordance with the regulations, to levy an annual tax for municipal purposes on railway roadways, and rights of way and on land used as transmission or distribution corridors owned by power utilities.

Subsection 257.7(1) of the *Education Act* requires the City to levy and collect taxes based on the rates prescribed for school purposes on the railway and power utility lands described in subsection 280(1) of the *City of Toronto Act, 2006*.

Ontario Regulation 121/07 under the *City of Toronto Act, 2006* and 392/98 under the *Education Act*, (as amended by O. Reg 123/07), prescribe the applicable rates for 2013 for the municipal portion and education portion of taxes respectively, for railway and power utility rights of way acreage levies.

To calculate the taxes payable on acreage properties, the City of Toronto requires the area of each property and the applicable tax rates. The acreage figures are provided to municipalities by the Municipal Property Assessment Corporation (MPAC) on the returned assessment roll each year and are available for 2013.

As provided in Table 1 above, the estimated revenue for 2013 from all the railway and power utility rights of way is approximately \$7.3 million, of which the municipal share is \$6.6 million and the education share is \$0.7 million. Of the \$6.6 million municipal share, \$475,829 will be received in the form of payment-in-lieu of taxes from Metrolinx.

Council's Request for Legislative Amendments

City Council, in approving the levy of railway rights of ways and hydro corridors in July 2006, and again in June 2007, June 2008, August 2009 and July 2010, recommended that the Minister of Finance amend regulations 387/98 and 392/98 to require an annual inflationary adjustment in the "mature rate" and the "mature rate" prescribed by Regulation so as to phase in rate changes that more properly reflect the market value of the land over a period of time.

To date, no changes have been made to the legislative or regulatory provisions to incorporate Council's requests for changes to the "mature" rates. Despite Council's resolutions, no legislative authority exists for the City to levy a tax rate other than that permitted by the provincial regulation for 2013.

Council's position on assessment and taxation of railway and hydro corridors was identified to the Province in the City of Toronto's submission on requested changes to the *City of Toronto Act* as part of the two-year review of the Act undertaken in the fall of 2009. No legislative or regulatory changes pertaining to railway and hydro rights of ways were made by the Province as a result of this review.

In May 2010, staff sent a letter outlining the City's position, together with a draft resolution, to the Municipal Finance Officers' Association of Ontario (MFOA), the Association of Municipal Managers, Clerks and Treasurers of Ontario (AMCTO), and the Association of Municipal Tax Collectors of Ontario (AMTCO – now the Ontario Municipal Tax and Revenue Association), seeking support for the City's position. The City's letter requested that the resolution be circulated to their membership for support. The draft resolution was developed in consultation with the City's Intergovernmental Relations unit.

Additionally, staff made a presentation at the meeting of the Municipal Liaison Group (MLG) of the Municipal Property Assessment Corporation (MPAC) in June 2010 seeking support for the City's position on the taxation of railway and hydro rights of ways, and a further presentation was made in September 2010 at the annual fall conference of the Association of Municipal Tax Collectors of Ontario (AMTCO). Since that time, City staff and various municipal professional associations have continued to meet with the Province regarding legislative/regulatory changes, including the taxation of railway and hydro rights-of-way, as recently as January 2013 in discussions with the Province..

To date, the Province has not committed to any review of the legislative or regulatory provisions to incorporate annual inflationary changes to the “mature” rates, or the method of taxation for railway and hydro rights of way.

CONTACT

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SIGNATURE

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