

TORONTO STAFF REPORT

October 17, 2005

To: Audit Committee

From: Auditor General

Subject: Relationship of the Auditor General to the Toronto Hydro Corporation, the City of Toronto Economic Development Corporation, the Toronto Community Housing Corporation and Enwave Energy Corporation.

Purpose:

To respond to a request by the Audit Committee that “the Auditor General, in consultation with the Chief Administrative Officer, the Chief Financial Officer and Treasurer and the City Solicitor, to report to the Audit Committee for its meeting on November 2, 2005 on the recommended role and responsibilities of the Auditor General in relation to Enwave Energy Limited, City of Toronto Economic Development Corporation, Toronto Hydro Corporation and Toronto Community Housing Corporation and on any changes required by the recommendations.”

Financial Implications and Impact Statement:

There are no financial implications arising from the recommendations in this report.

Recommendation:

It is recommended that the City Solicitor review the existing shareholders’ agreements with Toronto Hydro Corporation, Toronto Economic Development Corporation and the Toronto Community Housing Corporation with a view to amending the agreements to provide the Auditor General the same level of access to records as is provided to the Deputy City Manager and Chief Financial Officer. Consideration be given to further amending the agreement to include a provision enabling the Auditor General to conduct specific audit work only in circumstances, where in Council’s opinion, the interests of the City are being compromised.

Background:

On January 17, 2005, the Audit Committee requested that the Chief Administrative Officer report to its meeting of April 5, 2005 on access by the Auditor General to all of the City’s ABCs and Corporations in which the City is the sole shareholder.

The Chief Administrative Officer reported to the Audit Committee on April 5, 2005 and recommended that:

“the Auditor General, in consultation with the Chief Administrative Officer, the Chief Financial Officer and Treasurer and the City Solicitor, be requested to report to the Audit Committee on the recommended role and responsibilities of the Auditor General in relation to Enwave Energy Limited, City of Toronto Economic Development Corporation, Toronto Hydro Corporation and Toronto Community Housing Corporation and on any changes required by the recommendations.”

Comments:

Enwave Energy Corporation (Enwave), the Toronto Community Housing Corporation (TCHC), the City of Toronto Economic Development Corporation (TEDCO) and the Toronto Hydro Corporation (Toronto Hydro) are all incorporated under the Ontario Business Corporations Act (OBCA). The City is the sole shareholder of each of these entities except Enwave. The city is a minority shareholder in Enwave and owns 43 per cent of its shares. BP Penco Corporation owns the balance of the shares.

The City’s rights as a shareholder are derived from its ownership of shares, not its status as a legislative body. It should be noted that the City is the shareholder and shareholder action must be directed by Council or, in certain circumstances, Council may appoint a person to act on its behalf.

Concerns have been expressed by City Council in regard to audit access by the Auditor General to the records of each of Enwave, TCHC, TEDCO and Toronto Hydro. The City’s relationships with these Corporations are as follows:

City Relationships with Ontario Business Corporations		
	Yes	No
Is the City the only shareholder?	Toronto Hydro, TCHC, TEDCO	Enwave
Does City Council approve its budget?		Toronto Hydro, Enwave, TCHC, TEDCO
Has the Corporation issued public securities? (and therefore subject to the Ontario Securities Act)	Toronto Hydro	TCHC, TEDCO, Enwave
Is there any other agreement between the City and the Corporation that gives the City access to financial records?	TEDCO (arm’s length agreement) TCHC (funding agreement with City as Service Manager) Enwave (Agreement between Enwave, the City and BP) (1)	Toronto Hydro

Source: Report of the Chief Administrative Office (now the City Manager) and the City Solicitor entitled: “Relationship of the Auditor General and the Audit Committee to the City’s Agencies, Boards, Commissions and Corporations” dated March 24, 2005.

- (1) The chart included in the joint report of the Chief Administrative Officer (now the City Manager) and the City Solicitor, dated March 24, 2005, indicated that there was no agreement between the City and Enwave that gives the City access to financial records. In actual fact, there is an agreement which provides the City with access to the books and records of Enwave in regard to certain audit provisions.

The City has issued shareholder directions to TCHC, TEDCO and Toronto Hydro. These documents, among other things, set out the City's objectives as the sole shareholder of these Corporations, give the City the right to review business plans and other documents, and establish rules and procedures for financial and other reporting. A chart summarizing the roles of the City in terms of certain provisions of the OBCA and the City's shareholder directions is included as Appendix 1 to this report.

Financial Audit Provisions:

The City's external auditors, Ernst & Young, have been appointed to conduct the financial audits of the following entities:

- Enwave
- TCHC
- TEDCO
- Toronto Hydro

These financial audits are required by legislation and provide independent assurances that the annual financial statements of each of these entities present fairly the financial results of the operations of the entity for the year being audited, as well as the financial position of the particular entity at the end of each year.

No changes are required in regard to the arrangements relating to the external financial audits.

Operational Audit Provisions:

- (1) Enwave

The City is one of two shareholders of Enwave. The City, BPC and Enwave entered into a unanimous shareholders' agreement that provides both the City and BPC with access to the books and records of the Corporation, and gives each shareholder the right to arrange at its own expense any type of audit or conduct further investigations as it may reasonably require.

This provision would allow the Auditor General under certain conditions to conduct audit work at Enwave. Consequently, this arrangement is appropriate and as a result, no changes are required to the audit arrangements relating to Enwave.

- (2) TCHC, TEDCO and Toronto Hydro

The organizational documents and the shareholder directions relating to TCHC, TEDCO and Toronto Hydro make a City Division Head or his or her designate what might be described as a City liaison with the Corporation. There is a link between the Corporation and the City division most familiar with and involved in the sector in which the Corporation operates.

In addition, the City's Corporate Finance Division performs a role regarding all Corporations in terms of reviewing, among other things, quarterly financial statements and audited financial statements.

Following his review of financial statements, the Deputy City Manager and Chief Financial Officer submits a report to the appropriate committee for consideration by Council. At that time, the Deputy City Manager and Chief Financial Officer would indicate any items of note in the statements and advise of any action necessary.

As can be seen from Appendix 1, the City Finance Officer (now the Deputy City Manager and Chief Financial Officer) has unrestricted access to the financial records of Toronto Hydro, TEDCO and TCHC.

In order to ensure that the City's interest are protected, it is proposed that access to the financial records of each of Toronto Hydro, TEDCO and TCHC be extended to include the Auditor General. In this context, it is also suggested that shareholders' agreements be amended so that Council could require the Auditor General to conduct audits at each one of the entities, if in Council's opinion, its interests were not being protected.

Essentially, these are the same provisions that exist in the agreement with Enwave.

Conclusion:

The implementation of the recommendations contained in this report will provide the Auditor General with the ability to access the records of Toronto Hydro, TEDCO and TCHC. Such access would allow City Council to request the Auditor General's Office to conduct specific audit work, if at some point the City's interests were compromised.

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List of Attachments:

Appendix 1: Summary of Questions for Each Corporation

APPENDIX 1

Summary of Questions for Each Corporation

1. Who has been designated by Council to have unrestricted access to records?

Toronto Hydro	TEDCO	TCHC	Enwave
City CFO	City CFO, Commissioner EDCT and any other person appointed by the City	SHD permits City to designate someone, but no one has been designated to date	City CFO

2. Who at the City is responsible for reviewing the audited financial statements?

Toronto Hydro	TEDCO	TCHC	Enwave
City CFO	Commissioner of EDCT in consultation with City CFO	SHD permits City to designate someone, but no one has been designated to date	City CFO

Note: Titles of staff members are these titles contained in the respective agreements.

Source: Report of the Chief Administrative Office (now the City Manager) and the City Solicitor entitled: "Relationship of the Auditor General and the Audit Committee to the City's Agencies, Boards, Commissions and Corporations" dated March 24, 2005.

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