



**STAFF REPORT
ACTION REQUIRED
with Confidential Attachments**

Enwave Energy Corporation Annual Shareholders' Meeting

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| Date: | February 27, 2012 |
| To: | Executive Committee |
| From: | City Manager |
| Wards: | City-wide |
| Reason for Confidential Information: | This report involves the security of property belonging to the City or one of its corporations. |
| Reference: | |

SUMMARY

The purpose of this report is to: transmit the notice of the Annual and Special Shareholders' Meeting for Enwave Energy Corporation ("Enwave") to be held on April 17, 2012; provide a confidential attachment concerning Enwave's financial statements; provide a confidential attachment concerning the appointment of directors to the Board of Enwave; and recommend the necessary Council actions and directions to staff.

RECOMMENDATIONS

The City Manager recommends that:

1. Council appoint the City Manager or his designate as the City's proxy holder for the purposes of the annual shareholders' meeting of Enwave Energy Corporation ("Enwave") to be held on April 17, 2012 and any adjournment of that meeting and direct the proxy holder to attend same and vote:
 - a. to approve the minutes of the 2010 Annual Meeting held on July 20, 2011;
 - b. to receive the annual audited financial statements of Enwave for the fiscal year ended October 31, 2011 together with the auditor's report on those statements,

- c. to receive the unaudited financial statements for the first quarter ended January 31, 2012;
 - d. to reappoint Ernst & Young LLP, Chartered Accountants, as Enwave's auditor, and authorize the directors of Enwave to fix the auditor's remuneration;
 - e. to accept the resignation of the individual identified in Confidential Appendix A to Attachment 1 to this report as a Director of Enwave effective as of the close of business on December 7, 2011;
 - f. to confirm the appointment of the individual identified in Confidential Appendix A to Attachment 1 to this report as a Director of Enwave effective as of the close of business on December 7, 2011 and to hold office until the third annual meeting of the shareholders of Enwave to be held after the April 17, 2012 annual shareholders meeting, or until his successor is elected or appointed;
 - g. to elect as directors of the Enwave Board:
 - (i) Councillor Gary Crawford as the designate of the Mayor and to allow for a variation in the term of the appointment, such term to end after the first annual meeting of Enwave's shareholders to be held after the April 17, 2012 annual shareholders meeting, or until his successor is elected or appointed;
 - (ii) the two citizens nominated by BPC Penco and identified in Confidential Appendix A to Attachment 1 to this report whose term is to end after the third annual meeting of Enwave's shareholders to be held after the April 17, 2012 annual shareholders' meeting, or until their successors are elected or appointed; and,
 - (iii) the two citizens identified in Confidential Appendix A to Attachment 1 to this report whose term is to end after the first annual meeting of Enwave's shareholders to be held after the April 17, 2012 annual shareholders' meeting and to allow for a variation in the terms of the appointments of these Directors, or until their successors are elected or appointed;
 - h. to appoint as the Chair of the Enwave Board the individual identified in Confidential Appendix A to Attachment 1 to this report; and
 - i. at the proxy holder's discretion on any minor amendment or minor variation to matters specified in the notice of such meeting or on any other minor matter that may properly come before such meeting or any adjournment thereof.
2. Council waive Sections 3.2 and 3.7 of the Public Appointments Policy to accommodate the full length of service permitted by the Policy and to permit the individuals identified

in Confidential Attachment 5 to this report to be elected to the Enwave Board of Directors.

3. Council 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 Confidential Attachment 2 to this report.
4. Council receive the confidential report of the Deputy City Manager and Chief Financial Officer, entitled "Enwave Energy Corporation – 2011 Financial Statements", being Confidential Attachment 4 to this report.
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.
6. The contents of Confidential Attachments 2 and 5 to this report and of Confidential Appendix A to Attachment 1 to this report be made public after the conclusion of the annual general meeting.

Financial Impact

There are no financial impacts resulting from the adoption of this report.

DECISION HISTORY

The City has received notice (Attachment 1 with attached Confidential Appendix A) dated February 16, 2012 of Enwave's Annual Shareholders' Meeting to be held on April 17, 2012. The Notice indicates that the business to be transacted is the approval of the previous minutes, receipt of financial statements, appointment of the auditor, authorization for the directors to fix the auditor's remuneration, and the appointment of directors.

At its meeting held on November 29, 2011, City Council directed (Item EX12.3) that the City, as shareholder, jointly with BPC Penco, direct the Board of Enwave to undertake all necessary actions to solicit proposals for a joint sale of 100% of the shareholders' interest in Enwave on behalf of both shareholders. It is anticipated that this matter would be reported to Council by approximately mid-year.

ISSUE BACKGROUND

Enwave is deemed to have been incorporated under the *Business Corporations Act* (Ontario) ("OBCA") on December 15, 1999, which requires that after the first annual meeting of shareholders, such annual meetings be held subsequently at intervals no greater than fifteen months. The previous annual shareholders' meeting was held on July 20, 2011.

The shareholders of Enwave are the City 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 City is the sole holder of common shares having a vote in Enwave;

BPC is the sole holder of non-voting Class A shares. The Shareholders' Agreement requires that the City vote in favour of both its own and BPC's nominees to the Enwave board at its annual shareholders' meeting.

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, provided that the Chair shall not be a member of Council.

Enwave is a private company that for competitive business reasons does not report its financial statements publicly. 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 Enwave's shareholders' meetings through a proxy holder appointed by Council. This report recommends that the City Manager or his designate be so appointed. The proxy holder is required by law to act in accordance with the shareholder's instructions. A proxy form is attached (Confidential Attachment 2) that accords with the recommendations in this report.

Enwave has provided its audited financial statements for the year ended October 31, 2011 and intends to provide its unaudited statements for the first quarter ending January 31, 2012 for the purposes of the annual shareholders' meeting. The Deputy City Manager and Chief Financial Officer has reviewed the audited annual financial statements submitted and prepared his own report containing comments for the information of Council (Confidential Attachment 4 to this report).

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

The term of the current board directors expires on the date after the annual shareholders' meeting to be held on April 17, 2012, or when their successors are elected. The notice of the Annual Meeting of Shareholders provided by Enwave includes the consideration of the appointment of directors representing both BPC Penco and the City. It is recommended that the proxy holder be authorized and directed to vote for the reappointment of the directors representing BPC Penco as set out in Confidential Appendix A to Attachment 1 to this report.

The City's current representatives on the Enwave Board are the Mayor and two citizens, one of whom is its Chair. The Mayor was appointed to the Enwave Board pursuant to Item ST1.1 by City Council at its meeting held on December 7 and 8, 2010, for a term ending on the date after the annual shareholders meeting to be held on April 17, 2012. The Mayor has requested and it is recommended that Councillor Gary Crawford be appointed as his designate on the Enwave Board for a term ending after the next following annual shareholders' meeting. Confidential Attachment 5 contains information and recommendations concerning the appointment of citizen members to and a Chair of the Enwave Board.

Consideration should be given at a later date to engaging in discussions with BPC Penco about amending the Shareholders' Agreement to make the term of the City's citizen directors on the Enwave board in the agreement coincide with the provisions of Council's Public Appointments Policy. Directors of other City corporations are elected for a term of two years with a renewal term of two years (without recruitment, with full recruitment every four years), with a maximum length of service of two terms (eight years), rather than a maximum of three years as set out in Enwave's Shareholders' Agreement.

It is possible that some other minor business or minor variations to the agenda items may be introduced or proposed at the Annual Meeting. Adoption of Recommendation 1 (i) authorizes the proxy holder to vote on such other business as may properly come before the meeting. No significant items may be introduced as new business at the meeting because such items would require advance 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 Meeting of Shareholders with Confidential Attachment

Attachment 2: (Confidential) Common Share Proxy Form

Attachment 3: Minutes of the Annual Shareholders' Meeting held on February 17, 2011

Attachment 4: (Confidential) Report of the Deputy City Manager and Chief Financial Officer,
entitled "Enwave Energy Corporation – 2011 Financial Statements"

Attachment 5: (Confidential) Information Concerning the Appointment of Directors to the Board
of Enwave Energy Corporation