



**SUBJECT: Proposed Governance Changes to Burlington Hydro**

**TO: Committee of the Whole**

**FROM: City Manager's Office**

Report Number: CM-10-19

Wards Affected: All

File Numbers: 155-03-01

Date to Committee: June 10, 2019

Date to Council: June 17, 2019

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**Recommendation:**

Approve the filing of articles of amendment by Burlington Hydro Electric Inc to change its name to Burlington Enterprise Corporation as per attached Appendix A; and

Approve Burlington Enterprises Corporation modifying the size of its board as per attached Appendix B; and

Approve Burlington Hydro Inc. modifying the size of its board as per attached Appendix C; and

Approve the General By-Law of Burlington Hydro Inc. to be presented to Council on June 17, 2019; and

Approve the General By-Law of Burlington Enterprises Corporation to be presented to Council on June 17, 2019; and

Approve the Shareholder Direction as per attached Appendix F; and

Direct the Director of Finance to bring forward the reserve fund bylaw to reflect the name change to Burlington Enterprise Corporation.

**Purpose:**

A City that Grows

- Promoting Economic Growth

A Healthy and Greener City

- Environmental and Energy Leadership

An Engaging City

- Good Governance
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## **Background and Discussion:**

Burlington Hydro operates as a corporation under the *Business Corporations Act* (Ontario). The corporate structure consists of a holding company Burlington Hydro Electric Inc (BHEI) which wholly owns its two affiliate companies Burlington Hydro Inc (BHI) and Burlington Electricity Services Inc (BESI). In turn BHEI is wholly owned by the Corporation of the City of Burlington.

BHI manages all aspects of the electricity distribution business and is regulated by the Ontario Energy Board (OEB). As a local distribution company (LDC) BHI applies for and receives approval from the regulator to charge for its services. BESI is a non-regulated company and engages in those aspects of BHEI's business which are not regulated.

## **Strategy/process**

As shareholder, The City of Burlington has an interest in governance matters that affect the Hydro corporation. Recently the OEB has issued guidance related to governance of the LDCs. It has indicated its desire to have the LDC be independent from influence by the shareholder and the holding company. See Appendix G for a visual representation of the recommended corporate governance model for Burlington Hydro as presented at the AGM in May 2019.

While this guidance on governance architecture and functions is a recommended best practice and not mandatory it should be noted that the OEB is also considering a new framework for rate review applications, providing for different levels of review. The most intense level of review is likely to occur with those LDCs who do not adopt the best practice. This level of review is time intensive and costly. To this end, BHEI has elected to adopt the governance best practice. As a result, changes to the governance of the Hydro corporation along with changes to the shareholder direction are requested as follows in the chart below. In reviewing the changes to the governance structure and shareholder direction and by-laws proposed by BHEI, staff undertook its due diligence by seeking legal advice from Borden Ladner Gervais (Ms. Linda Bertoldi). BLG has provided advice to staff and Council in the past on hydro related matters. Any issues

provided by external legal council during this review were addressed by city and Burlington Hydro staff.

<b>Governance Changes</b>			
	<b>Current</b>	<b>Proposal</b>	<b>Comments</b>
Holding Company Name Change	Burlington Hydro Electric Inc	Burlington Enterprises Corporation	Name change – remains 100% owned by the Corporation of the City of Burlington It is entirely within the judgment of Council as to whether it wishes to change the name of the holding company. This change is not required by the OEB Report.
Board of Directors	BHEI board currently can range from a minimum one to a maximum of eleven. The Board is currently comprised of 7 Directors and meets regularly.	BEC board will be fixed at 5: Mayor, City Manager, President of hydro and 2 independent. New Board will only meet for key issues when required.	The OEB Report does not apply to the size (# of directors) or composition (independence) of BHEI board of directors. Currently the BHEI board is the primary governing board and meets regularly. Proposed change is based on minimum required for good governance and will provide savings to BEC.
	BHI board currently can range from a minimum of one to a maximum of eleven	BHI board will be fixed at 7: Mayor, City Manager, 5 independent directors	The OEB Report does apply to both size and composition of the BHI board of

			<p>directors. The increase of directors to 7 complies with the OEB guidelines. Proposal to have 5 independent out of 7 also complies with the guidelines. Currently the BHI board is a secondary board meeting only for key issues. The change will have them operate as the primary governing board.</p>
Board Committees		<p>It is proposed by BHEI to amend the by-laws of BHI to establish 3 Committees:          Audit and Finance          Governance and Risk          Human Resources and Compensation</p>	<p>Proposal complies with OEB report</p>
<b>Changes to Shareholder Direction</b>			
	<b>Current</b>	<b>Proposal</b>	<b>Comments</b>
<p>Article 3.3 Geographical Scope of Business Activities of Burlington Hydro (the Corporation and its Subsidiaries)</p>	<p>Indicates the business activities of Burlington Hydro shall be carried out within the Province of Ontario</p>	<p>Indicates the business activities of BEC and its subsidiaries may be carried out in any jurisdiction permitted by applicable law</p>	<p>There is no limitation on the geographic scope of activities that may be carried out in any jurisdiction permitted by Applicable Law. Proposed change provides more flexibility in the operation of the holding company</p>

			and its Subsidiaries.
Article 4.1 Operation and Control Board Size and Composition	Number of board members as previously outlined	Number of board members as per the changes outlined	Confirms the changes to the number of directors.
Article 4.2 Operation and Control Board of Directors of Subsidiaries	Subect to any matters requiring approval of the Shareholder pursuant to this direction, the business and affairs of the Subsidiaries will be managed or supervised by their respective boards of directors.	Delete “Subject to any matters requiring approval of the Shareholder pursuant to this direction” . Now “The Business of the Subsidiaries will be managed or supervised by their repective boards of directors. The next sentence is modified with the addition of the following underlined words “The Corporation will elect the directors of the Subsidiaries <u>in accordance with Applicable Law and particularly in the case of the Distribution Company, in accordance with best practices identified by the Regulator from time to time...</u> ”	Changes are consistent with best practices identified in OEB report.
Article 5.1 (b) Decisions of the Shareholder	The following will apply to any approvals or decisions that the Shareholder must provide: b) no approval will be given unless the	b) no approval will be given unless the Corporation has given reasonable [advance – deleted] notice in writing of the need for	Changes are consistent with good goernance

	Corporation has given reasonable advance notice in writing of the need for approval and has provided such information as is reasonably necessary for the Shareholder to make an informed decision regarding the subject matter requiring approval.	approval, <u>unless such notice period is waived by the Shareholder in writing</u> , and has provided such information as is reasonably necessary for the Shareholder to make an informed decision regarding the subject matter requiring approval.	
Article 5 Shareholder Matters – this section 5.2 (n) outlines matters requiring shareholder approval	Cannot borrow money or provide financial assistance to any Subsidiary in the amount exceeding \$10 million.	Cannot borrow money or provide financial assistance to any Subsidiary in the amount exceeding \$10 million over existing debt levels	Provides clarity on when shareholder approval is required for borrowing funds.
Article 5 Shareholder Matters – this section 5.2 (s) outlines matters requiring shareholder approval	Caps capital expenditures over and above the approved business plan at \$1 million before requiring shareholder approval	Caps capital expenditures over and above the approved business plan at \$2 million before requiring shareholder approval	Provides more flexibility in the case of emergency expenditures and is in line with delegated authority levels.
Article 5 Shareholder Matters – this section 5.2 (t) outlines matters requiring shareholder approval	Shareholder approval is required to acquire all or substantially all of the assets undertaking or securities of a distributor	Shareholder approval is required to acquire all or substantially all of the assets undertaking or securities of any business including a distributor.	Gives the shareholder oversight of the acquisition of any business including a distributor.
Article 6 – Reporting, section 6.1 Business Plan	The business plan must be submitted to the Shareholder 45 days prior to the end of the fiscal year.	The business plan must be submitted to the Shareholder 30 days prior to the end of the fiscal year.	Provides more time before reporting to the shareholder.

<p>Article 6 – Reporting, section 6.2 Quarterly Reports</p>	<p>No confidentiality provisions for quarterly reports.</p>	<p>Quarterly reports Insert “shall be marked as and received as confidential where # such report contains sensitive or confidential information” after “...Submit to the chief financial officer of the Shareholder a quarterly report.</p>	<p>Requires quarterly reports to be received as confidential where the report contains sensitive or confidential information.</p>
<p>Article 6 – Reporting, section 6.6 Annual Financial Statements</p>	<p>Requires audited financial statements to be delivered within 90 days after the end of the fiscal year.</p>	<p>Requires audited financial statements to be delivered within 120 days after the end of the fiscal year.</p>	<p>Provides more time before reporting to the shareholder.</p>
<p>Article 6 – Reporting s. 6.7 Shareholder Designated Representative (New)</p>	<p>No designated shareholder representative named.</p>	<p>City Manager or designate is appointed the designated representative of the shareholder for receiving material communications including those requiring changes to the Shareholder Direction, By-laws or other matters requiring Shareholder approval.</p>	<p>Clarifies reporting relationships. Adds section 6.7 Shareholder Designated Representative.</p>
<p>Article 7 – Financial Performance, section 7.3 Dividend Policy</p>	<p>Provides the ability to the Shareholder to adjust the dividend based on the financial requirements of the Shareholder. Establish a dividend policy for BHI</p>	<p>Removes the ability for the shareholder to adjust the dividends.</p>	<p>Significantly amends the original Direction. Change would be consistent with OEB’s concerns about the authority of utility boards to make judgements in the best interest of the</p>

			utility and its customers. OEB has concerns about the establishment of dividend policies, but City Staff and Burlington Hydro Management staff will discuss further to see if can arrive at a dividend policy.
Article 7 – Financial Performance, section 7.4 Operations Policy	Contains a section of directives related to Burlington Hydro	Section is removed.	Reduces the influence in the Shareholder’s direction over the distribution company as recommended by the OEB.
Article 7 – Financial Performance, section 7.5 Amendments	Shareholder has the sole discretion to change the shareholder direction but must provide the board written notice.	Shareholder has the sole discretion to change the shareholder direction but must provide 30 days written notice to the board.	Provides a notification timeframe for written notice to the board of changes to the Shareholder direction.

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**Financial Matters:**

The City of Burlington will continue to receive dividends from Burlington Enterprises Corporation and interest on the promissory note from Burlington Hydro Inc.

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**Connections:**

The City of Burlington is the sole shareholder of Burlington Hydro Electric Inc.

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**Public Engagement Matters:**

Report CM-10-19 is on a public standing committee agenda for the community.



**Conclusion:**

As sole shareholder, The City of Burlington has an interest in governance matters that affect the Hydro corporation.

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Respectfully submitted,

Tim Commisso

Interim City Manager

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**Appendices:**

- A. Articles of Amendment to Change Name to Burlington Enterprises Corporation
- B. Special Resolution of Burlington Enterprises Corporation
- C. Special Resolution of Burlington Hydro Inc.
- D. By-law for Burlington Hydro Inc. - Directly to Council
- E. By-law for Burlington Enterprises Corporation – Directly to Council
- F. Shareholder Direction for Burlington Enterprises Corporation
- G. Governance Model Slides from Hydro AGM

**Notifications:**

Gerry Smallegange, CEO Burlington Hydro

**Report Approval:**

All reports are reviewed and/or approved by Department Director, Director of Finance and Director of Legal. Final approval is by the City Manager.