



SUBJECT: Hydro Credit Facilities

TO: Corporate Services, Strategy, Risk & Accountability Cttee.

FROM: Finance Department

Report Number: F-15-21

Wards Affected: not applicable

File Numbers: 125-01

Date to Committee: Select date

Date to Council: March 23, 2021

Recommendation:

That for the purposes of the Priorities Agreement dated March 30, 2011, between the City of Burlington ("BHI") and Toronto Dominion Bank ("TD"), the Mayor and City Clerk be authorized and directed to execute and deliver a consent authorizing BHI to incur up to an additional \$15,000,000 in debt from TD, pursuant to its credit facility agreement dated on or about January 12, 2011 and amended, between TD, as lender, and BHI, as borrower, substantially in the form appended as Appendix A to report F-15-21, subject to the approval as to form by the Executive Director of Legal Services and Corporation Counsel and approval as to content of the Chief Financial Officer.

That as is required by the Shareholder Direction dated October 15, 2019, the City of Burlington, in its capacity as a shareholder of the Burlington Enterprise Corporation, hereby authorizes and approves the increase in indebtedness of Burlington Hydro Inc, from the Toronto Dominion Bank up to an additional amount of \$15,000,000, and the Mayor and Clerk are hereby authorized and directed to execute the Resolution of Sole Shareholder substantially in the form appended as Appendix B to report F-15-21, subject to the approval as to form by the Executive Director of Legal Services and Corporation Counsel and approval as to content of the Chief Financial Officer.

The Mayor and City Clerk, for and on behalf of the City, are authorized to negotiate, finalize, execute and deliver any related documents and to do all such other acts and things which the Mayor and City Clerk may determine to be necessary or advisable, or as the City may be advised by counsel are necessary or advisable, to give effect to the recommendations in Report F-15-21 subject to the approval as to form by the Executive

Director of Legal Services and Corporation Counsel and approval as to content of the Chief Financial Officer.

PURPOSE:

Vision to Focus Alignment:

- Support sustainable infrastructure and a resilient environment

Background and Discussion:

The City of Burlington is the sole shareholder of Burlington Enterprises Corporation (“BEC”), the parent company of Burlington Hydro Inc, (“BHI”), pursuant to the *Business Corporations Act*. The City, in its capacity as the sole shareholder (the “Shareholder”) of BEC passed a Shareholder Direction dated October 15, 2019. The Shareholder Direction, in part, requires BEC to obtain approval of the Shareholder prior to it or any of its subsidiaries incurring certain financial obligations. Specifically, item 5.2(n) requires Shareholder approval when BEC or its subsidiaries seek to encumber its assets for an amount of \$10,000,000 over its existing debt levels, which BHI is currently seeking to do under a credit facility agreement between TD Bank and BHI. BEC is now requesting Shareholder consent for the increase of an existing credit facility with TD Bank in the amount of \$15,000,000.

Further, the City, entered into a Priorities Agreement dated March 30, 2011 with TD Bank and BHI, pursuant to which the City subordinated any security interest that it held or may hold over the property or assets of BHI in favour of TD Bank. The Priorities Agreement sets out priority of the debts incurred between the contracting parties. Under the Priorities Agreement, BHI requires the consent of the City when entering into certain financial arrangements. BEC is now requesting that the City consent and under the Priorities Agreement, to subordinate its security to TD Bank for the additional amount of debt that BHI will incur under the increased credit facility.

Financial Matters:

On April 10, 2002 BHI issued a promissory note in favour of the City (the “Promissory Note”) in the amount of \$47.8 million.

On or about January 12, 2011 BHI, as borrower, entered into a credit facility agreement with the Toronto-Dominion Bank, as lender, pursuant to which TD made available to BHI an operating loan in the maximum amount of \$10,000,000 (the “Credit Agreement”), later increased to \$20,000,000 by an Amending Agreement dated March 31, 2020.

In connection with the Credit Agreement, TD, BHI and the City entered into the Priorities Agreement pursuant to which the City subordinated any security interest that it held or

may hold over the property or assets of BHI in favour of the TD security to the extent of BHI's obligations to TD under the Credit Agreement (as amended).

Consent is now sought from the City to increase the loan facility established by TD under the Credit Agreement in the aggregate principal amount of \$15,000,000 relative to the initial borrowing under the Credit Agreement.

As reported in Finance department report F-01-21 discussing the Hydro Business Plan BHI has long term debt as outlined below:

Funding has been in place with Infrastructure Ontario since 2010 for financing the Smart Meter program. This loan has a 15-year amortization period at a fixed rate of 4.51%. Outstanding at year end 2021 will be \$3.5 million. A second loan that assisted with financing the Hydro One Transformer Station capital contributions has a 25-year amortization period at a fixed rate of 4.02%. Outstanding at year end 2021 will be \$6.1 million.

A third loan has a 15-year amortization period at a fixed rate of 3.63%. The loan matches long-term funding against BHI capital expenditures including the true-up payment for the Tremaine transformer station and the two Tremaine breakers. Outstanding balance at year end 2021 will be \$5.9 million.

There is also a \$20m operating line of credit for working capital needs and an \$18 million letter of credit facility to cover prudential requirements related to the monthly power bill with the IESO.

The business plan 10-year time horizon forecasted additional borrowings of \$56 million over the forecast time horizon with the new debt funding the capital program. The company's capacity to borrow for capital projects is sound with a debt/capital structure within lender covenants. This additional loan facility was included in the 2021 budget and is included in the funding of the capital program. BHI has a three-year capital program that nears \$35 million. BHI's annual profits do not provide sufficient cash flow to fund the capital budget without external financing. Cash balances are at a level whereby long-term debt will be used to fund long term assets. The three-year capital program is outlined below:

BURLINGTON HYDRO INC.	2021	2022	2023
CAPITAL BUDGET (\$000's)	<u>Budget</u>	<u>Fcst</u>	<u>Fcst</u>
<u>SUSTAINING CAPITAL BUDGET</u>			
Buildings	495	125	45
Substation Equipment	1,090	1,295	1,020
Projects - 4.16, 15 & 27.6KV, TS	8,126	5,587	5,638
Transformers	900	900	900
Meters	1,029	864	864
Rolling Stock	525	245	395
Tools	39	12	12
Computer Hardware/Software	488	1,370	1,380
Office Equipment	5	88	20
	12,697	10,486	10,274
Developer Asset Buybacks	450	450	450
SUSTAINING CAPITAL BUDGET	13,147	10,936	10,724

Shareholder Risks

BHI has requested that the City authorize a new facility (an increase of up to \$15 million) loaned by the TD bank. The shareholder direction in section 5(n) requires shareholder approval if BEC or its subsidiary BHI proposes to borrow money or grant a security interest or otherwise encumber its assets in an amount exceeding \$10 million over existing debt levels. To facilitate the increased financing, the City must also subordinate its debt, which is the promissory note held by the City of \$47.8 million, to the extent of BHI's obligations to TD Bank under the credit agreement. The City has agreed to similar subordination in March 2020 when BHI increased its operating line of credit from \$10 million to \$20 million.

The legal effect of the City granting its consent would be:

- (i) A consent to BEC to incur up to an additional \$15,000,000 in debt from TD; and
- (ii) That the City security under its Promissory Note would continue to be subordinated to the TD security to the extent of BHI's obligations to TD under the Credit Agreement, as amended, and that such obligations of BHI to TD will be permitted to increase by up to \$15,000,000.

The cumulative legal effect of the consent granted by the City in March 2020 and the consent now sought in connection with the increased facility would be to permit BHI to incur up to an additional \$25,000,000 in debt from TD relative to the initial borrowing under the Credit Agreement.

The effect of this subordination by the City is that should a creditor of BHI choose to enforce against BHI or BHI enter into an insolvency proceeding TD will be entitled to all the assets and the proceeds of such assets of BHI ahead of the City until all the amounts owing by BHI to TD under or in connection with the Credit Agreement are fully repaid.

TD will continue to permit the City to receive payments of principal and interest on the promissory note from BHI if no default has occurred under the Credit Agreement.

Conclusion:

BEC is requesting shareholder approval for BHI to incur the additional indebtedness of up to \$15,000,000 from TD bank (up to an additional \$25,000,000 in debt from TD relative to the initial borrowing under the Credit Agreement). Under the agreement TD bank is requesting the City, as the shareholder, to consent to, the City security will continue to be subordinated to the TD security to the extent of BHI's obligations to TD under the Credit Agreement

Respectfully submitted,

Sandy O'Reilly

Controller and Manager of Financial Services

Ext 7648

Appendices:

- A. Consent Agreement
- B. Special Resolution

Notifications:

Gerry Smallegange, President and CEO Burlington Hydro

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Report Approval:

All reports are reviewed and/or approved by Department Director, the Chief Financial Officer and the Executive Director of Legal Services & Corporation Counsel.