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## Council

### Date

September 30, 2015

### Time

9:00 a.m.

### Location

Council Chamber, 2<sup>nd</sup> Floor Civic Centre  
300 City Centre Drive, Mississauga, ON L5B3C1

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## 8. INTRODUCTION AND CONSIDERATION OF CORPORATE REPORTS

R-3 Report dated September 23, 2015, from the City Solicitor re: **Enersource Merger.**

### Recommendation

1. That a By-law be enacted authorizing the Mayor and City Clerk to execute the following Agreements:
  - (a) Merger Participation Agreement;
  - (b) Shareholder Agreement for the new corporation (MergeCo);
  - (c) a written resolution of the Shareholders of Enersource approving a reorganization under which Enersource's shares in its LDC will be transferred to a new holding company, Enersource Holdings (it is this new holding company that will be merged with the Horizon and PowerStream holding companies pursuant to the Merger Participation Agreement);
  - (d) an amended Enersource Shareholder Agreement;
  - (e) a written instrument confirming the City's approval of the foregoing agreements and documents as well as Enersource's entry into a Share Purchase Agreement for the acquisition of Hydro One Brampton Networks Inc.;

- (f) such further and other documents as may be necessary or appropriate to fulfil the intent of the transaction described in this report and/or to perform the City's obligations under the aforementioned Agreements.

All with such non-material modifications and amendments as are approved by Janice Baker, City Manager and Chief Administrative Officer and the City Solicitor.

Motion

**14. MOTIONS**

- (e) That a by-law be enacted authorizing the Mayor and City Clerk to execute the following Agreements; Merger Participation; Shareholder Agreement for the new corporation (MergeCo); a written resolution of the Shareholders of Enersource approving a reorganization under which Enersource's shares in its LDC; an amended Enersource Shareholder Agreement; a written instrument confirming the City's approval of the foregoing agreements and documents as well as Enersource's entry into a Share Purchase Agreement for the acquisition of Hydro One Brampton Networks Inc.; and other documents as may be necessary or appropriate to fulfil the intent of the transaction described in this report and/or to perform the City's obligations under the aforementioned Agreements and non-material modifications and amendments as are approved by Janice Baker, City Manager and Chief Administrative Officer and the City Solicitor.

Corporate Report R-3

- (f) To approve the information session from Lifeline Syria which will be held on Tuesday, October 20<sup>th</sup>, 2015 in Council Chambers and to waive the fees of the room rental, assistance or services of an audio-visual technician and Security staffing.

Direction from General Committee September 23, 2015

**15. INTRODUCTION AND CONSIDERATION OF BY-LAWS**

- B-13 A by-law to temporarily close a Public Highway a portion of Mississauga Valley Boulevard from 7:00 a.m. on Monday, November 2, 2015 to 7:00 p.m. Saturday, January 30, 2016.

Procedural By-law 0193-2015 section 89(4) dates August 17, 2015

- B-14 A by-law to allocate sums from the Parkland Dedication Reserve Fund (Account 32121) to the Land Acquisition Credit Valley Lands (F074) project (PN15-350) and to authorize the withdrawal therefrom.

GC-0523-2015/September 16, 2015

- B-15 A by-law to establish and Require Payment of Recreation Programs Fees and Charges for the 2016-2017 recreation season, and to repeal By-law Number 0290-2014, as amended with various changes.

BC-0039-2015/September 23, 2015

- B-16 A by-law to establish the fares and tolls of MiWay, and to repeal By-law No. 0287-2014, as amended to make various changes.

BC-0040-2015/September 23, 2015

- B-17 A by-law to establish and Require Payment of Various Fees and Charges and to repeal By-law 0296-2015, as amended to make various changes.

BC-0041-2015/September 23, 2015

- B-18 A by-law to establish and Require Payment of Fees and Charges for Certain Services provided by Fire & Emergency Services and to repeal By-law Number 0292-2014, as amended to make various changes.

BC-0042-2015/September 23, 2015

- B-19 A by-law to establish and Require Payment of facility rental and services fees related to Park, Marinas and Forestry for the 2016-2017 season to establish fees and charges for Cemeteries for 2016 and; to establish and require payment of rental rates for Sports Fields for 2016.

BC-0043-2015/September 23, 2015

- B-20 A by-law to establish and Require Payment of Fees and Charges for Drop-in Culture Programs and Rental Rates for 2016, and to repeal By-law 0294-2014, as amended to make various changes.

BC-0044-2015/September 23, 2015

- B-21 A by-law to establish and Require Payment of Pre-registered Culture Programs Fees and Charges for 2016-2017, and to repeal By-law 0293-2014, as amended to make various changes.

BC-0044-2015/September 23, 2015

- B-22 A by-law to establish fees for the processing of applications under the *Planning Act*.

BC-0045-2015/September 23, 2015

- B-23 A by-law to establish and Require Payment of Transportation and Works Fees and Charges and to repeal By-law Number 0295-2014, as amended to make various changes.

BC-0046-2015/September 23, 2015

- B-24 A by-law to transfer funds from the Capital Reserve Fund (Account 33121) to the Beach Volleyball Venue (PN15-349).

BC-0048-2015/September 23, 2015

- B-25 A by-law to transfer funds from the Development Charges Reserve Fund Recreation (Account 31315) to the Beach Volleyball Venue (PN15-349).

BC-0048-2015/September 23, 2015

- B-26 A by-law to authorize the execution of the agreements necessary to complete the merger of Enersource Corporation with Horizon Holdings Inc. and PowerStream Holdings Inc., and provide for the acquisition of Hydro One Brampton Networks Inc.

Corporate Report R-3

**18. CLOSED SESSION**

- (i) Security of the property re: **Enersource Update (Verbal)**.

# City of Mississauga Corporate Report



COUNCIL AGENDA  
SEP 30 2015

Date: September 25, 2015  
To: Mayor and Members of Council  
From: Mary Ellen Bench, BA, JD, CS  
City Solicitor

Originator's files:

Meeting date:  
September 30, 2015

## Subject

Enersource Merger

## Recommendation

1. That a By-law be enacted authorizing the Mayor and City Clerk to execute the following Agreements:

- (a) Merger Participation Agreement;
- (b) Shareholder Agreement for the new corporation (MergeCo);
- (c) a written resolution of the Shareholders of Enersource approving a reorganization under which Enersource's shares in its LDC will be transferred to a new holding company, Enersource Holdings (it is this new holding company that will be merged with the Horizon and PowerStream holding companies pursuant to the Merger Participation Agreement);
- (d) an amended Enersource Shareholder Agreement;
- (e) a written instrument confirming the City's approval of the foregoing agreements and documents as well as Enersource's entry into a Share Purchase Agreement for the acquisition of Hydro One Brampton Networks Inc.;
- (f) such further and other documents as may be necessary or appropriate to fulfil the intent of the transaction described in this report and/or to perform the City's obligations under the aforementioned Agreements.

All with such non-material modifications and amendments as are approved by Janice Baker, City Manager and Chief Administrative Officer and the City Solicitor.

## Report Highlights

- The purpose of this report is to seek Council approval and authorization, as the 90% shareholder of Enersource Corporation, for the proposed merger between Enersource Holdings, Horizon Holdings Inc. and PowerStream Holdings Inc. and the acquisition of Hydro One Brampton Networks Inc., to create a single local hydro distribution company.

R-3(a)

- Horizon Holdings Inc. (Horizon) is owned by the Cities of Hamilton and St. Catharines. PowerStream Holdings Inc. (PowerStream) is owned by the Cities of Barrie, Markham and Vaughan.
- The company formed by the merger of the Enersource, Horizon and PowerStream LDCs will acquire the regulated electricity distribution of Hydro One Brampton Networks Inc. ("HOBNI") for a cost of \$607 million, net of any purchase adjustments.
- The three principal legal agreements that define the transaction are: 1) the Share Purchase Agreement for the acquisition of HOBNI from the Province of Ontario, 2) the Merger Participation Agreement setting out the terms of the merger; and 3) the unanimous Shareholder Agreement which will govern the shareholders after the merger. In addition, the current Enersource Shareholder Agreement between the City and Borealis will need to be adjusted to take these transactions into account.
- Enersource and the City of Mississauga have obtained an opinion from PriceWaterhouse Coopers, LLP, Chartered Accountants advising that from a financial point of view, the proposed transaction is fair to the shareholders of Enersource taken as a whole. Staff are relying on this opinion to recommend the City proceed with the transaction.
- Once all of the shareholders approve of the transaction, Ontario Energy Board approval and a favourable ruling under the *Competition Act* are required before this transaction can close.
- The business plan presented to City Council summarizes the transaction, including the benefits and risks to the customers of Enersource and to the City as a shareholder.

## Background

On April 16, 2015, Premier Wynne announced that Hydro One's transmission and the rural distribution business would be privatized by an initial public offering and that the Province is in talks with Enersource, Horizon and PowerStream to merge with or acquire 100% of Hydro One Brampton Networks Inc. (HOBNI).

On May 27, 2015, Norm Loberg, Chair of the Board of Enersource Corporation appeared before City Council to discuss Enersource's performance over the last year and to advise City Council and the public of this opportunity for Enersource to merge with Horizon and PowerStream and, for the parties together to acquire the regulated electricity distribution business of HOBNI.

Representatives of Enersource and its legal advisors have attended at City Council on numerous occasions over the last few months to advise Members of Council of the progress of this transaction and discuss the financial, legal and due diligence efforts associated with it, as well as approvals required to complete the transaction.

The transaction will create the second largest electricity distribution company in Ontario with almost one million customers, \$2.7 billion in assets, \$2.5 billion rate base and the business case indicates that it is expected to deliver approximately \$426 million of net cash savings (pre-tax) through synergies in the first ten years following the merger. These synergies, which will continue moving forward, are expected to ensure regular increases in dividends to the City of Mississauga

and to benefit customers through reducing pressure on future hydro rates. These benefits will largely be achieved through efficiencies created by the merger.

## Comments

The City of Mississauga currently holds a 90% ownership in Enersource Corporation, with Borealis owning the remaining 10%. Enersource will be the largest shareholder of MergeCo (31%) and The City of Mississauga as 90% shareholder of Enersource, will indirectly own 27.9% of the merged utility (MergeCo). The head office will be in the City of Mississauga.

This transaction is significant in terms of the size of the merger and the complexity of the legal agreements necessary for it to move forward. Enersource, Horizon and PowerStream jointly engaged Deloitte to prepare the business case for the transaction. To determine if the mergers and acquisition are in the best interests of the City and of Enersource Corporation, Enersource has retained the law firm of Borden Ladner Gervais LLP (BLG) to negotiate the required agreements and obtain the necessary due diligence reports. Due diligence reports were obtained from third party experts in respect of legal, financial, environmental and operational aspects of the transaction. Enersource has advised that no issues were identified during the due diligence review that would prevent the proposed transaction from proceeding. The City is relying on the aforementioned reports and Enersource's advice. Enersource has also retained Price Waterhouse Corporation (PWC) to evaluate the business case model and provide a fairness opinion regarding the synergies, the capital structure, the financing and business aspects of the transaction to Enersource and to the City. The City has retained Goodmans LLP to provide independent legal advice respecting this transaction. Significant time and effort have been expended by the consultants as well as the staff of Enersource and the City, to be able to recommend that this transaction is in the best interest of The City of Mississauga.

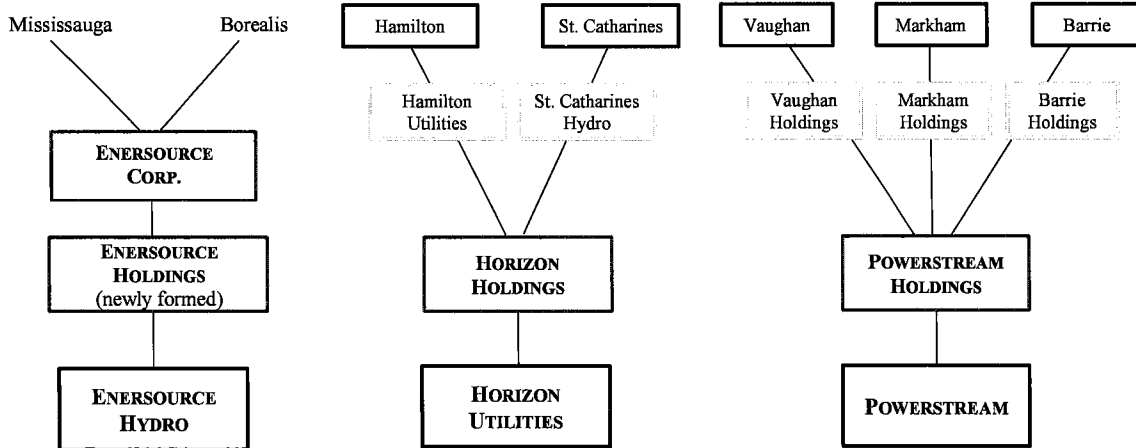
### Legal Agreements

City Council is being asked to provide authority for the City to enter into the necessary legal agreements to complete this transaction. The three key agreements are the Merger Participation Agreement (MPA), the Shareholder Agreement for the new corporation, and the HOBNI Purchase Agreement. In our case, amendments to the Enersource's Shareholder Agreement will also be required. The key provisions in these agreements have been presented to Council and most of the language has been finalized.

Under the Merger Participation Agreement, Enersource, Horizon and PowerStream will be amalgamated to form one company. Hamilton and St. Catharines currently own Horizon through a joint holding company. Barrie, Markham and the Vaughan currently own PowerStream, also through a joint holding company. Mississauga and Borealis own Enersource Corporation which immediately before the merger will own all of the shares of Enersource Holdings, which in turn will own the Enersource LDC. The structure is illustrated below:

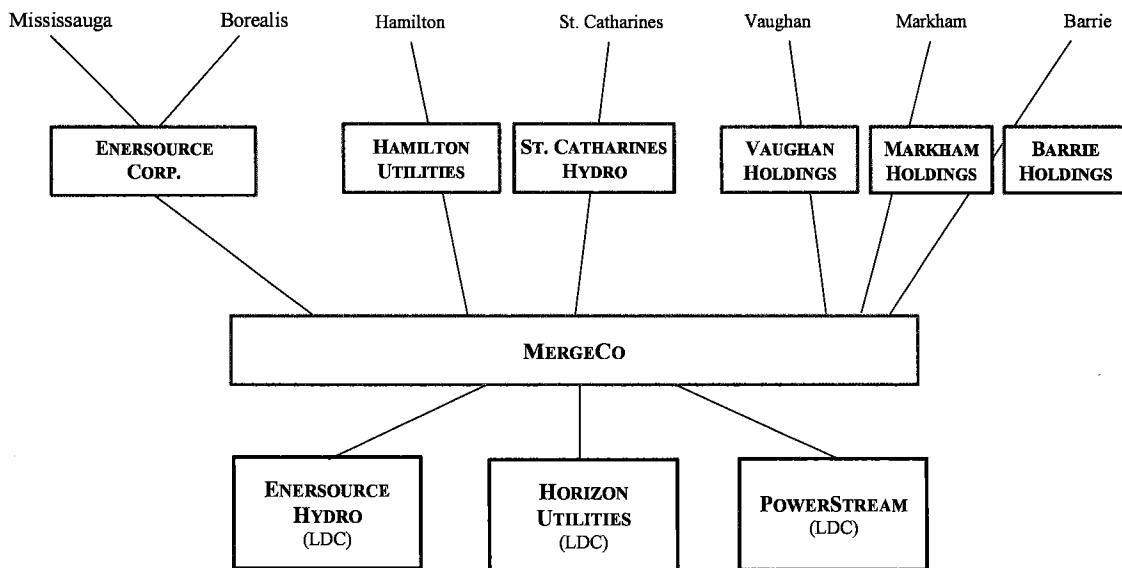
R-3(c)

**Structure Immediately Prior to Merger:**



Before closing under the Merger Participation Agreement, Hamilton, St. Catharines, Barrie, Vaughan and Markham will transfer their shares in the Horizon and PowerStream joint holding companies to their own holding companies so that each municipality will own shares through its own holding company. The PowerStream, Enersource and Markham holding companies will then merge to form MergeCo, resulting in the structure shown below:

**MergeCo Structure:**



(These 3 LDCs will also be merged into one single subsidiary of MergeCo, as will the 3 PowerStream unregulated ServiceCos not shown on this chart)

Each shareholder of MergeCo will get common shares and special shares. The special shares will be structured to permit adjustments to be made once the relative values of the businesses each



party contributed to MergeCo are finally determined. In addition to the regulated electricity distribution business, PowerStream owns a solar generation business that will be part of MergeCo, but kept separate and recognized through a separate class of shares.

Once all the municipal shareholders and Borealis have authorized these transactions, application can be made for the required Ontario Energy Board approval and *Competition Act* clearance. Closing cannot take place until after these approvals have been obtained. Between the time the agreements are executed and the final closing next year, a joint committee structure will ensure that the business operations of all four local distribution companies continue so that service to customers will not be interrupted or altered in any way.

Under the MergeCo Shareholders Agreement, Enersource will appoint four (three City and one Borealis) of twelve directors. The majority of the Board of MergeCo will be independent directors. The chair and all but one director from each shareholder will be independent of all shareholders.

The shareholders of MergeCo will be allowed to sell their shares in MergeCo if they give the other shareholders the first right to buy the shares. A transfer of shares in a holding company will require the approval of the other MergeCo shareholders.

As previously noted, Enersource, Horizon and PowerStream (MergeCo) will together purchase Hydro One Brampton Networks Inc. (HOBNI) at a price of \$607 million net of any purchase price adjustments. The rate base valuation of HOBNI is approximately \$404 million and the purchase price is based on a rate base valuation of 1.5 times the rate base, which PWC confirms it's an acceptable market valuation. City Council must approve a share purchase agreement to be entered between the province as the owner of HOBNI, and Enersource, Horizon and PowerStream as purchasers pursuant to the terms of the Enersource Shareholders Agreement. The City of Mississauga will not be asked to provide any of the funds for this acquisition however, the City may be requested to provide a guarantee for monies borrowed by Enersource for this purpose. The City would provide this guarantee as being the 90% shareholder of Enersource, and only if required.

As completion of these transactions will leave Enersource Corporation as essentially a shell company that will hold the shares of the City and Borealis but not conduct business, the current Board structure consisting of 10 directors is not appropriate. The City and Borealis have agreed that a Board of four directors, 3 of whom would be nominees of Mississauga and one of whom would be an nominee of Borealis is appropriate at this time. The primary function of the Board will be to oversee the legal, accounting and administrative matters for the holding company. The City is also requiring changes necessary to ensure that the City's ability to sell its MergeCo shares is not compromised by the structure of the transactions, or the structure of Enersource.

It is recommended that the Enersource Shareholder Agreement require, in addition to the matters already in the Shareholder Agreement, that City Council's approval be provided before Enersource could engage in any business other than simply holding MergeCo shares or give any approval Enersource is required to give under the MergeCo Shareholders Agreement. In addition, the revised Enersource Shareholder Agreement would contain provisions to reduce Board compensation given the reduced role directors of Enersource would have following the merger.

#### Key Findings by PWC and Risks

Enersource has identified transaction benefits including lower distribution rates for customers, increased cash flow to shareholders and an increased enterprise value. In addition, Enersource

R-3(e)

notes that customers will be better served through enhanced and shared systems, will receive better response to reliability issues and will experience enhanced customer service through in a way of technologies. Residents have been directed to Enersource's website for further details of the merger proposal; it sets out the benefits to customers in greater detail.

In its fairness opinion, PWC has confirmed that the proposed transaction will create incremental value to Enersource's shareholders and that the business case financial metrics are comparable or favourable to stand alone result. Risks are identified in the business case: that all the synergies may not be achieved, that the cost of capital /borrowing could increase, and that OEB may not approve the application as presented resulting in a potential decline of share income. PWC identified a risk respecting an unfavourable outcome in an ongoing rate filing metric before the OEB respecting PowerStream, and this will be closely monitored and managed before the transaction closes.

The business case identifies benefits that include operational and tax saving through the merger and lower rates for customers if the projected synergies achieved, and increased share earnings for the City.

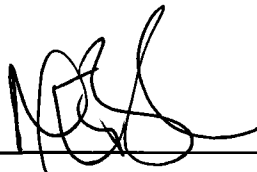
PWC's conclusion was that the proposed transaction was fair, from a financial point of view, to the Enersource shareholders as a whole.

## Financial Impact

It is projected that the merger of Enersource, Horizon and PowerStream and the acquisition of Hydro One Brampton will create synergies that will result in benefits to the customers of Enersource as well as an increased dividend return to the City of Mississauga.

## Conclusion

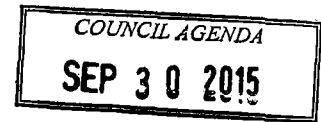
The proposed transaction to amalgamate the businesses of Enersource Holdings Inc., Horizon Holdings Inc. and PowerStream Holdings Inc. and to together purchase Hydro Brampton Networks Inc. requires the approval of City Council as 90% shareholder of Enersource Corporation. Over the past 4 months, City Council has been briefed on the details respecting the transaction by Enersource's officials and by the legal and financial experts retained to provide advice in this regard. City staff have been working with the financial and legal advisors retained by Enersource in respect of this matter and the City has retained external counsel to provide legal advice in respect of this transaction. The purpose of this report is to provide a summary of the legal structure of this transaction as well as the conclusion found in the business case and fairness opinion and, request Council's authorization to enter into the necessary agreements for this transaction to proceed.



Mary Ellen Bench, BA, JD, CS  
City Solicitor

Prepared by: Mary Ellen Bench, City Solicitor

motion (cf)



1. That the request for an information session from Lifeline Syria which will be held on Tuesday, October 20<sup>th</sup>, 2015 in Council Chambers, be approved.
2. That the room rental fees associated with the information session from Lifeline Syria, be waived.
3. That the fee for assistance or services of an audio-visual technician associated with the information session from Lifeline Syria, be waived.
4. That any fees for Security staffing associated with the information session from Lifeline Syria, be waived.