



City of
Peterborough

To: **Members of the General Committee**

From: **Richard Freymond**
Commissioner of Corporate and Legislative Services

Meeting Date: **September 21, 2020**

Subject: **Report CLSFS20-049**
Proceeds Received from Sale of Assets of Peterborough
Distribution Inc. - Update

Purpose

A report to provide an update to Council on the proceeds from the sale of the assets of Peterborough Distribution Inc. to Hydro One and to communicate next steps.

Recommendation

That Council approve the recommendation outlined in Report CLSFS20-049 dated September 21, 2020, of the Commissioner of Corporate and Legislative Services, as follows:

That Report CLSFS20-049 providing an update on the proceeds received to date from the sale of the assets of Peterborough Distribution Inc. to Hydro One, be received for information.

Budget and Financial Implications

There are no budget and financial implications at this time.

The negotiated cash sale price of the assets of Peterborough Distribution Inc. ("PDI") to Hydro One was \$105 million and is subject to certain adjustments. The net sale proceeds received by the City to date is approximately \$59.7 million. The amount received to date is based upon certain financial assumptions with respect to forecasted results as of the sale transaction date and is subject to change as Baker Tilly updates its calculations based on information as of July 31, 2020 to be provided to it by City of

Peterborough Holdings Inc. (“CoPHI”), PDI, Peterborough Utilities Services Inc. (“PUSI”) and the corporation that resulted from the amalgamation of PDI and PUSI.

The funds received to date have been temporarily placed in a high interest savings account with the ONE Fund. The funds are fully liquid and will be invested as per Council direction pending the outcome of the ongoing discussions with the Investing Options Review Working Group.

As a further update to Report CLSFS20-025 dated June 8, 2020, the City has spent an amount of \$1.6 Million to date on legal fees associated with the PDI sale. In 2017, as part of Report CPFS17-046, Council set aside \$750,000 for legal fees. As indicated in the 2017 Report, upon completion of the sale, the City will recover these costs from the net sale proceeds of the transaction.

Background

On December 15, 2016, Council passed By-law 16-173 to authorize CoPHI to sell substantially all of the assets of PDI to Hydro One Inc. (“Hydro One”) for a cash sale price of \$105 Million which is subject to certain adjustments. Certain key terms of the asset purchase agreement included:

1. The payment of a deposit of \$4 Million by Hydro One on execution and delivery of the asset purchase agreement (payment was received by the City on July 31, 2018).
2. A cash payment of \$101.0 Million on closing.
3. Prior to closing, CoPHI would cause PDI to amalgamate with PUSI and the amalgamated corporation (“Vendor”) would sell the PDI assets to Hydro One.
4. In acknowledgement of the length of time to complete the transaction and in recognition that PDI continued normal business operations until the closing date of the transaction, within ninety days of the closing date, the Vendor would deliver to Hydro One and the City, financial statements of the Vendor for its fiscal period ending on the closing date and closing date calculations of the Vendor’s net working capital, regulatory asset and liability account balances and net book value of property, plant and equipment (net of deferred contributions), all of which are to be audited by Baker Tilly (“Auditors”), together with the Auditors’ working papers.

The purchase price would then be increased or decreased as appropriate based on any differences between these closing date statements, balances and amounts and the corresponding statements, balances and amounts as at December 31, 2015.

Following are sections 1 and 5 of By-law 16-173:

1. That in accordance with the Shareholder Direction and Unanimous Shareholder Declaration dated July 30, 2012, the City hereby authorizes City of Peterborough Holdings Inc. (“CoPHI”) to sell substantially all of the assets of

Peterborough Distribution Inc. (“PDI”) to Hydro One Inc. for the consideration and pursuant to the terms and conditions set out in the signed proposal letter and term sheet from Hydro One Inc. to CoPHI, dated September 26, 2016 (“Term Sheet”) provided that:

- (i) The gross proceeds for the sale transaction net of amounts to be determined and approved by the City, shall be paid to the City (“Net Proceeds”)
 - (ii) Such payment of Net Proceeds shall be supported by declarations of dividends equal to such Net Proceeds from PDI to CoPHI and from CoPHI to the City, and
 - (iii) PDI and Peterborough Utilities Services Inc. be reorganized as required by the Chief Administrative Officer, the Director of Corporate Services and the City Solicitor, Director of Legal Services (collectively the “City Staff”), in consultation with legal counsel and other professional advisors.
5. That the Net Proceeds of the sale be placed in an interest bearing reserve account under the control of the City Treasurer with details and options available to Council for investment of the funds to be reported to Council in the second quarter of 2017. Various agreements were executed by the City on July 31, 2018 to give effect to By-law 16-173.

On January 21, 2019, General Committee reviewed Report CAO19-001 of the CAO “to update Council on the current status, obligations, financial costs and arbitration mechanism of the sale of Peterborough Distribution Inc. to Hydro One”. On January 28, 2019, Council approved the Report’s recommendation that the report be received for information.

On April 30, 2020, by its Decision and Order EB-2018-0242, the Ontario Energy Board approved the application for approval to amalgamate PDI and PUSI and for the Vendor to transfer the electricity distribution system of PDI to Hydro One Networks Inc. (“H1 Networks”). As a consequence of the Ontario Energy Board’s approval, the completion of the various transactions was scheduled for Saturday, August 1, 2020 subject to escrow terms that permitted the land-related aspects of the transactions to be completed when the Land Registry Office opened on Tuesday, August 4, 2020.

On June 1, 2020, PDI and PUSI were amalgamated pursuant to clause 1(iii) of By-law 16-173 to form the Vendor, whose legal name is Peterborough Utilities Services Inc.

On June 22, 2020, Council passed By-law 20-043 to address various issues for which Council’s approval was required in order to complete the transactions. By-law 20-043 also delegated to the City’s Chief Administrative Officer (“CAO”), in consultation with the City’s Treasurer, the authority to determine “Net Proceeds” for the purposes of clause 1(i) of By-law 16-173.

On July 21, 2020, based upon information dated March 31, 2020 provided by Baker Tilly on behalf of PDI and PUSI, the CAO determined that the Net Proceeds to be paid to the City would be \$68 million. This determination was made on the basis that Baker Tilly would prepare updated calculations to July 31, 2020 based on material to be provided to it by CoPHI, PDI, PUSI and the Vendor as of July 31, 2020 and that the Net Proceeds amount would be thereupon adjusted. The CAO's determination was made in consultation with the City's Treasurer and with the assistance of the City Solicitor and the City's external legal counsel, Miller Thomson LLP.

Table 1 provides a much simplified and condensed summary of how the determination was made:

Table 1
Determination of Net Proceeds (Millions)
From Information dated March 31, 2020

Gross Cash Sale Proceeds:	\$105.0	
Net Purchase Price Adjustments:	<u>(\$0.4)</u>	
	\$104.6	
Less:		
Long term Debt (including debt swap):	\$33.6	
Payments in Lieu of Tax:	<u>\$3.0</u>	<u>\$36.6</u>
		<u>\$68.0</u>

On August 4-5, 2020, the City received amounts totaling \$55.7 Million from the Escrow account at Miller Thomson LLP, which is in addition to the \$4 Million purchase price deposit received on July 31, 2018. The amounts are based on financial data from PUSI dated May 31, 2020.

Table 2
Net Proceeds (Millions) Paid to City on Closing (August 1, 2020)

Amount Paid by Hydro One to MT On Closing:	\$101.0
(\$4.0 Million Deposit held by City)	
Less:	
Long Term Debt (incl. debt swap):	\$36.5
Payments in lieu of Tax:	<u>\$2.6</u>
Cash Received in Escrow	\$61.9
Total distributions from Escrow	<u>\$55.7</u>

Difference between Cash Received and

Distributions**\$6.2**

(This amount is being held in escrow by Miller Thomson LLP pending final determination and payment of any purchase price adjustments with Hydro One.)

Next Steps

The approximate \$6.2 Million difference between the cash received in Escrow and the distributions from Escrow is being held in escrow with Miller Thomson LLP subject to Baker Tilly updating its calculations based on material to be provided to it by CoPHI, PDI, PUSI and the Vendor as of July 31, 2020, the final months leading up to the closing date.

The July 31, 2020 financial statements of the Vendor and the closing date calculations of the Vendor's net working capital, regulatory asset and liability account balances and net book value of property, plant and equipment (net of deferred contributions) will then be subject to audit by the Auditors and review and approval by Hydro One.

It is anticipated that these next steps will wrap up by the end of 2020 assuming that there are no outstanding substantive objections from Hydro One, following which the City may receive further cash distributions.

Subject to a review of the financial records of PDI, PUSI and the Vendor for the final months leading up to the closing date, amounts equal to certain cash balances of PDI, PUSI or the Vendor could be paid to the City as further dividends (through CoPHI).

Funds Temporary Invested

When combined with the \$4.0 Million deposit received previously, the City has received to date a total of \$59.7 Million. An amount of \$55.0 Million has been placed in a high interest savings account with the ONE Fund. Based upon the City Investment Policy, up to 40% of the City's investment portfolio may be placed with the ONE Fund. The \$55 Million maximizes the allowable threshold. The funds are fully liquid and can be accessed at any time. The high interest savings account pays a nominally higher interest rate than the City's high interest savings account through CIBC, the City's financial institution.

Summary

This report provides an update on the process and the \$59.7 Million of proceeds received to date on the sale of assets of PDI.

Submitted by,

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