

To: SPECIAL COUNCIL

Meeting Date: 9/27/2022

Subject: 22-031-OCM Cambridge and North Dumfries Energy Plus Inc. (“Energy Plus”) and Brantford Power Inc. (“BPI”) Merger Participation Agreement – Closing Adjustment Documents

Submitted By: David Calder, City Manager

Prepared By: David Calder, City Manager

Report No.: 22-031-OCM

File No.: C1101

Wards Affected: All Wards

RECOMMENDATION(S):

THAT Report No 22-031-OCM Cambridge and North Dumfries Energy Plus inc. (“Energy Plus”) and Brantford Power Inc. (BPI) Merger Participation Agreement – Closing Adjustment Documents be received;

AND THAT no objection be given to the City of Brantford with respect to the Brantford Closing Financial Statements, the reports of the auditor thereon, and the Tallgrass Appraisal (as those terms are defined in the Merger Participation Agreement), prepared in accordance with Section 2.4(a) of the duly executed Merger Participation Agreement, resulting in the payment of a special dividend payable to the City of Brantford in the amount of approximately \$125,000 as a result of the applicable calculation of adjustments to closing valuations (the “Closing Valuations”) of Energy Plus and BPI pursuant to Section 2.5 of the Merger Participation Agreement (set out in a letter dated August 29, 2022 by GrandBridge Corporation to its shareholders, with attachments, as revised pursuant to a letter dated September 20, 2022), it being understood that the Brantford Closing Financial Statements, the reports of the auditor thereon, and the Tallgrass Appraisal shall be deemed to have been approved in the absence of such objection by City of Cambridge and the Township of North Dumfries;

AND THAT, in respect of the submission for consideration by GrandBridge Corporation of a further adjustment to the Closing Valuations with respect to certain write-offs of deferred financing costs related to BPI’s credit facility, City Council has received such submission and considers that no changes to the adjustment set out in paragraph 2 above result therefrom;

AND FURTHER THAT the Board of Directors of GrandBridge Corporation and the Council of the Township of North Dumfries, in their capacity as a shareholder in the former Energy Plus and now a shareholder of GrandBridge Corporation, be circulated a copy of this Resolution.

EXECUTIVE SUMMARY:

Purpose

The Purpose of this Report is to advise City Council, in their role as a Shareholder in the former Energy Plus and now GrandBridge Corporation, of the results of the Closing Financial Statements of the former Energy Plus and BPI.

This reporting to Council is a requirement of the Merger Participation Agreement, dated September 1st, 2021, which established the framework of the merger between Energy Plus and BPI.

Key Findings

N/A

Financial Impact

The expenditure associated with the professional services necessary to assist the City Manager on the review of the close out of the former Energy Plus and BPI and their respective subsidiary companies will be funded from Hydro Dividend Stabilization Fund. This expense is being shared with the Township of North Dumfries. There are sufficient funds in the account to cover the expenditure associated with the preparation of this report.

STRATEGIC ALIGNMENT:

- ☐ Strategic Action; or
- ☐ Core Service

Objective(s): Not Applicable

Strategic Action: Not Applicable

Program: Not Applicable

Core Service: Not Applicable

BACKGROUND:

Energy Plus and BPI merged to form GrandBridge Corporation on May 2nd, 2022.

Energy Plus and its subsidiary companies, BPI and its subsidiary companies, and the respective shareholders of Energy Plus and BPI, namely, the City of Brantford (in respect of BPI) and the City of Cambridge and Township of North Dumfries (in respect of Energy Plus) duly executed a Merger Participation Agreement on September 1st, 2021 (the “MPA”).

The MPA had the effect of committing the parties to the merger of the two local distribution companies and their holding companies based upon an agreed upon framework and principles.

A key element of the MPA was the calculation of the final closing adjustments of Energy Plus and BPI and their respective subsidiaries (notably, their regulated local distribution company subsidiaries). In accordance with the MPA, the audited final closing statements, certain other financial information, and resulting adjustments to closing valuations of the respective corporations are to be completed within 120 days of the Closing Date. The City of Brantford and the City of Cambridge / Township of North Dumfries shall then have 30 days upon receipt of receiving the proposed closing adjustments to lodge an objection of the audited financial statements. If there is no objection within the 30-day period, then the statements will be deemed to be approved by the respective Shareholders.

Relevant to this discussion are subsections (a), (f), (h) and (i) of Section 2.4 of the MPA as follows:

- (a) Brantford shall cause the auditors for the BEC Group to complete the audit procedures and distribute to Brantford, Cambridge and North Dumfries the audited financial statements for each member of the BEC Group as at the end of business on the day immediately prior to the Closing Date (including the audited financial statements of BEC on a consolidated basis) within 120 days following the Closing Date (collectively the “**Brantford Closing Financial Statements**”).
- (f) All Closing Financial Statements shall be prepared in accordance with IFRS applied on a basis consistent with the preparation of the BEC Financial Statements, the BPI financial Statements, BHI Financial Statements, the Energy Plus Holdings Financial Statements, Energy+ Financial Statements and the Energy Plus Solutions Financial Statements, as applicable. The Closing Financial Statements shall be accompanied by a report thereon by such auditors. For the purposes of preparing and reviewing the applicable Closing Financial Statements, each Party shall grant such auditors and the other authorized Representatives of the other Parties reasonable access to all relevant records, facilities and personnel in its possession or within its control. Brantford will pay all costs and expenses in connection with the preparation of the Brantford Closing

Financial Statements in respect of the BEC Group and Cambridge and North Dumfries shall pay all costs and expenses in connection with the preparation of the Energy Plus Closing Financial Statements for the Energy Plus Group.

- h) Cambridge and North Dumfries shall have a period of 30 days from the date they receive the Brantford Closing Financial Statements, the reports of the auditor thereon, the Customer Contracts Valuation in respect of each applicable member of the BEC Group and the Tallgrass Appraisal during which to review such Brantford Closing Financial Statements, the Customer Contracts Valuation in respect of each applicable member of the BEC Group and the Tallgrass Appraisal. For the purpose of such review, Cambridge and North Dumfries and each member of the Energy Plus Group and their authorized Representatives shall be given full access by Brantford and each member of the BEC Group to examine the working papers, schedules and other documentation used or prepared by the auditors to the Energy Plus Group, Chartered Business Valuator or appraiser in respect of the Tallgrass Appraisal, as applicable. If no written objection to such Energy Plus Closing Financial Statements, the Customer Contracts Valuation in respect of each applicable member of the BEC Group or Tallgrass Appraisal is given to Brantford by Cambridge and North Dumfries within such 30-day period, such Brantford Closing Financial Statements, the Customer Contracts Valuation in respect of each applicable member of the BEC Group and the Tallgrass Appraisal shall be deemed to have been approved by Cambridge and North Dumfries as of the last day of such 30-day period.
- (i) Brantford may object to the Energy Plus Closing Financial Statements, the Customer Contracts Valuation in respect of any applicable member of the Energy Plus Group and/or the MTS Appraisal within the 30-day period set out in Section 2.4(h) by giving written notice to Cambridge and North Dumfries setting out in reasonable detail the nature of such objection (a “**Brantford Objection**”). Cambridge and North Dumfries (acting jointly) may object to the Brantford Closing Financial Statements, the Customer Contracts Valuation in respect of the applicable member of the BEC Group and/or the Tallgrass Appraisal within the 30-day period set out in Section 2.4(h) by giving written notice to Brantford setting out in reasonable detail the nature of such objection (a “**Cambridge and North Dumfries Objection**”). Brantford, Cambridge and North Dumfries (acting jointly) agree to attempt to resolve the matters in dispute set out in a Brantford Objection and/or Cambridge and North Dumfries Objection within 15 days from the date on which such notice is given. If all matters in dispute are resolved by Brantford, Cambridge and North Dumfries, the applicable Closing Financial Statements(s), Customer Contracts Valuation, Tallgrass Appraisal and/or MTS Appraisal, as applicable, shall be modified to the extent required to give effect to

such resolution and shall be deemed to have been approved as of the date of such resolution.

The City Manager can confirm that in accordance with Section 2.4 of the MPA that the closing financial statements attributed to Energy Plus, BPI and their respective subsidiary companies, together with the closing adjustment calculations was received by letter dated August 29th, 2022 with attachments. A letter dated September 20, 2022 set out certain revisions to the closing adjustment calculations (reflecting comments made by KPMG to GrandBridge Corporation).

In accordance with the provisions of the MPA, if the City wishes to object to the closing adjustment for BPI then a written objection must be lodged no later than September 29th, 2022.

In the event of an objection by either Brantford or jointly by the City of Cambridge / North Dumfries, then in accordance with Section 2.4 j) of the MPA the Parties shall have 15 days to resolve the dispute. At the end of the 15-day period all unresolved matters shall be forwarded to a mutually agreed, independent, nationally recognized accounting firm for resolution (an “**Expert**”). The Expert’s determination of all such matters shall be final and binding on all Parties and shall not be subject to appeal by Brantford, Cambridge, North Dumfries or any other Party.

In the event of the need to retain an independent Expert to deal with an unresolved dispute, GrandBridge Corporation will be responsible for the fees and expenses attributed to the Expert.

ANALYSIS:

Professional Services

The City of Cambridge and the Township of North Dumfries retained the professional services of Ron Clark (Aird & Berlis LLP) and John Rockx (KPMG Canada) to undertake a review of the August 29th final adjustment closings for BPI and its subsidiary companies.

Messrs. Clark and Rockx were key advisors to Cambridge and North Dumfries throughout the negotiations to establish the new utility corporation and the preparation of the Merger Participation Agreement, amongst other documents.

Messrs. Clark and Rockx were retained in the present time period to conduct a review of the final closing adjustments of BPI. and the relevant provisions of the MPA.

Closing Adjustment

Section 2.5 of the MPA prescribes the calculations to be undertaken with respect to the final Closing Adjustments for Energy Plus and BPI and their respective subsidiary companies as of the day prior to the merger. The merger was effective May 2nd, 2022 and as such the financial statements were the financial position of Energy Plus and BPI as of May 1st, 2022.

Based upon the review the closing financial statements and in alignment with the MPA, KPMG has advised of the following:

Closing Adjustment Schedule:

KPMG reviewed the draft Closing Adjustment schedule and identified one error of \$115,000 to Energy Plus' closing balance sheet entries at May 1, 2022 (extra accrued liability of \$115,000 was deducted) plus a minor adjustment to a BPI item (under \$1,000).

The expected impact of the \$115,000 adjustment was that the closing dividend payable by GrandBridge Corporation to the City of Brantford would have been reduced by \$80,000 to about \$125,000 vs the previously calculated amount of \$205,000 as identified in the August 29th, 2022 filing with the Shareholders.

Such error was brought to the attention of GrandBridge Corporation by KPMG. GrandBridge Corporation corrected the error in a letter dated September 20, 2022. As a result, the special dividend to Brantford has been reduced to approximately \$125,000.

Deferred Financing Fees

Management of GrandBridge Corporation are seeking direction from the Shareholders as to a payment of a one-time dividend related to deferred financing fees with BPI's "early break" from its long-term debt and the associated administration fees that had been paid to the Royal Bank of Canada (RBC), and external legal counsel in 2019 and 2020

BPI had a \$25 million non-revolving term facility with RBC that had unamortized deferred financing costs of \$216,533 at December 31, 2021 (before additional amortization until May 1, 2022).

On or about April 20, 2022, BPI amended its credit facility with RBC to provide take-out financing for the Infrastructure Ontario debt (\$12.1 million) and provide extra financing capacity for future periods. The amendment to the RBC credit facility resulted in the \$216,533 of deferred financing costs to be written off for accounting purposes (i.e., the old RBC facility was cancelled). The City of Brantford is suggesting that this is an

unanticipated merger-related cost that was borne by Brantford Hydro Inc. pre-merger and should be recovered by BPI, net of taxes (\$159,152).

It is the position of the City Manager, and supported through the legal review of Aird & Berlis, that there is no obligation for Cambridge / North Dumfries as Shareholders to support the payment of the adjustment related to the \$159,154 as an anticipated write-down in connection with termination of the RBC debt of BPI. There is no requirement in the MPA for any adjustment as a result of the Infrastructure Ontario “make-whole” payment/break fee. Thus, the issue of liabilities relating to other financings was specifically dealt with in the MPA and there is no provision in the MPA relating to the RBC write-down.

It remains the contention of the City Manager that the adjustment provisions were heavily negotiated during the lead up to the execution of the MPA and are quite precise. It is the City Manager’s opinion that it is not open to the Parties to create adjustments for newly discovered reasons.

Next Steps

In accordance with the timeframes as set out in the MPA, the Parties have 30 days following the receipt of the closing financial statements to signal an appeal or dispute to the contents of the published documents. The documents were served to the Shareholders on August 29th, 2022 (subject to revision on September 20, 2022) and as such if Council in their role as a Shareholder wishes to object to an element within the published draft documents, then written notice must be served upon the City of Brantford no later than September 29th.

The recommended next steps for Council in their role as a Shareholder of the former Energy Plus and GrandBridge Corporation is as follows:

1. That no objection be made to the financial statements and resulting adjustment calculations as reflected in the materials received from GrandBridge Corporation on August 29, 2022 as revised on September 20, 2022, resulting in a special dividend payable to Brantford of approximately \$125,000, it being understood that the absence of such objection within the 30-day period constitutes approval of such financial statements; and
2. That, in respect of GrandBridge Corporation management’s inquiry concerning the deferred financing fees attributed to RBC, taking into account that the MPA did not include this expense as part of the terms of the merger, and the City as a Shareholder is not under any obligation nor

are there provisions in the MPA for the Parties to open up the Agreement to create adjustments for newly discovered reasons. The City considers that no changes to the adjustment set out in paragraph 1 above result therefrom and that such position may be conveyed by City staff to the other parties.

The Township of North Dumfries Council will be meeting on September 26th, 2022 to review a Report from their Staff on the financial closing statements. The City Manager and Chief Administrative Officer from the City and Township have worked jointly on the preparation of Reports to the respective Councils that are in alignment in terms of analysis and recommendations.

EXISTING POLICY / BY-LAW(S):

N/A

FINANCIAL IMPACT:

The expenditure associated with the professional services necessary to assist the City Manager on the review of the close out of the former Energy Plus and BPI and their respective subsidiary companies will be funded from Hydro Dividend Stabilization Fund. This expense is being shared with the Township of North Dumfries. There are sufficient funds in the account to cover the expenditure associated with the preparation of this report.

PUBLIC VALUE:

N/A

Sustainability:

N/A

Leadership:

N/A

Collaboration:

N/A

Transparency:

N/A

Engagement:

N/A

ADVISORY COMMITTEE INPUT:

Advisory Committees Consulted:

N/A

PUBLIC INPUT:

N/A

INTERNAL / EXTERNAL CONSULTATION:

Engagement has taken place with representatives from KPMG and Aird and Berlis LLP with regard to financial and legal consultation.

CONCLUSION:

N/A

REPORT IMPACTS:

Agreement: **Yes**

By-law: **No**

Budget Amendment: **No**

Policy: **No**

APPROVALS:

This report has gone through the appropriate workflow and has been reviewed and or approved by the following as required:

Director

Deputy City Manager

City Solicitor

City Manager

ATTACHMENTS:

N/A