



MINUTES

SESSION 2

SPECIAL MEETING OF

THE COUNCIL OF

THE CORPORATION OF THE CITY OF MISSISSAUGA
(www.mississauga.ca)

WEDNESDAY, JANUARY 28, 2009 – 9:13 AM

COUNCIL CHAMBER
300 CITY CENTRE DRIVE
MISSISSAUGA, ONTARIO L5B 3C1

INDEX

1.	CALL TO ORDER	1
2.	DISCLOSURES OF PECUNIARY INTEREST	1
3.	MATTERS TO BE CONSIDERED	1
4.	CORRESPONDENCE	3
5.	PUBLIC QUESTION PERIOD	5
6.	NOTICES OF MOTION	6
7.	RESOLUTIONS	8
8.	CONFIRMATORY BY-LAW	11
9.	ADJOURNMENT	11

PRESENT: Mayor Hazel McCallion
Councillor Carmen Corbasson Ward 1
Councillor Pat Mullin Ward 2
Councillor Maja Prentice Ward 3
Councillor Frank Dale Ward 4
Councillor Eve Adams Ward 5
Councillor Carolyn Parrish Ward 6
Councillor Nando Iannicca Ward 7
Councillor Katie Mahoney Ward 8
Councillor Pat Saito Ward 9
Councillor Sue McFadden Ward 10
Councillor George Carlson Ward 11

ABSENT: Nil

STAFF: Janice Baker, City Manager & Chief Administrative Officer
Brenda Breault, Commissioner of Corporate Services and Treasurer
John Calvert, Acting Commissioner of Planning and Building
Mary Ellen Bench, City Solicitor
Crystal Greer, City Clerk
Karin Ann Brent, Legislative Coordinator
Jessica Reid, Legislative Coordinator

1. **CALL TO ORDER**

The meeting was called to order at 9:13 a.m. by Mayor Hazel McCallion.

2. **DISCLOSURES OF DIRECT OR INDIRECT PECUNIARY INTEREST** - Nil

3. **MATTERS CONSIDERED**

(a) Enersource

Councillor Pat Mullin introduced her motion listed on this agenda as a Notice of Motion. Councillor Nando Iannicca questioned whether Council needed to pass a motion to reconsider the matter. City Clerk Crystal Greer advised that a portion of a clause in the preamble portion of Councillor Mullin's motion might indicate reconsideration of a matter on which Council has issued a decision however the purpose of the motion was to re-negotiate the agreement, which was a separate action from Council's previous decision to negotiate the purchase of shares.

Councillor Carolyn Parrish distributed information and a copy of Councillor Mullins' motion marked to introduce amendments. This information was distributed to all Members of Council and senior staff, and copies were made available to those present at this meeting. Councillor Carolyn Parrish reviewed her written comments and introduced her requested amendments to Councillor Pat Mullin's motion.

Subsequently, Council invited the registered deputants to attend the podium.

(b) Deputations

(i) Mississauga Board of Trade

Ellen McGregor, Chair of the Mississauga Board of Trade and Syd Martin, Chair of the Mississauga Board of Trade's Policy and Government Affairs Committee referenced their written submission to Council regarding the Enersource Corporation distributed on the additional Agenda issued for this meeting. Ms. McGregor advised that they were present representing the interest of Mississauga's local businesses and that the Mississauga Board of Trade to advise their opposition to the City attempting to purchase Borealis' (OMERS) ten (10%) percent share of Enersource Corporation as it would have a negative impact on local business and all taxpayers.

On a verbal motion, the subject deputation was received for information.

Received for Information

See Information Item I-5

MG.11.Enersource

(ii) OMERS (Borealis)

Later in the meeting after Council passed its Resolution on the matter, Mr. Nobrega, President & Chief Executive Officer of OMERS was invited to the podium and requested the opportunity to explain the position of OMERS (Borealis). Mr. Nobrega reviewed the results of the investments between the years 2000 and 2008 and referenced his letter dated January 22, 2009 presented to Council on the agenda of this meeting.

Mr. Nobrega concluded his comments advising his wish to have everyone concerned get back to the business of operating the subject utility, and further, expressed his hope that the Provincial legislation will be enacted to allow consolidation. Councillor George Carlson responded to Mr. Nobrega's comments, clarifying that Council's concerns relate to certain clauses in the Shareholders' Agreement that were applied without Council's specific approval prior to execution of that document.

Councillor Carolyn Parrish spoke to the recent reduction to the rate of pay for Members of the Board of Directors for the Enersource Corporation without prior notice to OMERS, explaining that the prior rates of pay were not acceptable. Further, Councillor Parrish opined that she and Councillor Pat Mullin should be appointed to represent Council on the team for the negotiations directed in Resolution 0033-2009.

Councillor Maja Prentice noted the need for productive communication between all parties concerned toward working together for the benefit of the residents of Mississauga.

Councillor Eve Adams advised her concurrence with re-negotiating the subject Shareholders' Agreement. Further, Councillor Adams advised that she is a member of Enersource's Board of Directors and that although Council has previously resolved to negotiate for the purchase of OMERS' (Borealis) shares, OMERS (Borealis) has no obligation to sell; and further, explained that her position on the matter is to do what will benefit the residents of Mississauga.

Mr. Nobrega advised Council that the clauses referred to as 'vetos' actually provide for 'unanimous consent agreements' issued on behalf of the shareholders. Councillor Adams opined that a different perspective was presented last year and that the referenced clauses should have lapsed when the PUT agreement expired.

Mayor Hazel McCallion noted that the direction of Council back in the year 2000 indicated that the agreement was to be prepared to the satisfaction of the City Solicitor, the external lawyer and TD Securities.

Councillor George Carlson moved that Councillor Pat Mullin and Councillor Carolyn Parrish be appointed to the negotiating team identified in Council's Resolution (0033-2009) issued at this meeting. Subsequently, Council concurred to consider the appointment of two (2) Councillors to the subject negotiating team at its meeting on February 11, 2009. On a verbal motion, Mr. Nobrega's comments were received for information.

Received for Information
See Information Item I-1
CS.09.ENE

4. CORRESPONDENCE

- (a) Information Items I-1 to I-6

I-1 OMERS' Equity Interest in Enersource Corporation

Letter dated January 22, 2009 from Michael Nobrega – President & Chief Executive Officer of OMERS advising representatives will meet with City staff to discuss amending the Shareholders' Agreement for Enersource Corporation.

Received for Information

See Deputation (b) (ii)

CS.09.ENE

I-2 Comments Encouraging Renegotiation of Enersource Shareholders' Agreement

Copy of the letter received by Mayor Hazel McCallion's office on January 22, 2009 from resident Steven Mahoney, submitting comments to the public meeting regarding the Enersource Corporation, which was hosted by Mayor McCallion in the evening on Thursday, January 22, 2009.

Received for Information

CS.09.ENE

I-3 Comments Regarding Enersource Corporation Share Holdings

Letter dated January 23, 2009 addressed to Mayor McCallion and the Members of Council from Gabriel Khayatt, President of CSI Canada opining that it would not be prudent at this time for the City to negotiate for acquisition of the ten (10%) percent of the Enersource Corporation share held by Borealis holdings (OMERS).

Received for Information

CS.09.ENE

I-4 Comments Regarding Enersource Corporation Share Holdings

Letter dated January 27, 2009 addressed to Mayor and Members of Council from resident Phil Green opining that that it would not be prudent at this time for the City to negotiate for the acquisition of the ten (10%) percent of the Enersource Corporation shares held by Borealis holdings (OMERS).

Received for Information

CS.09.ENE

I-5 Comments Regarding Enersource Corporation Share Holdings

Letter dated January 27, 2009 addressed to Mayor McCallion and Members of Council from Chair Ellen McGregor and President and CEO Sheldon Leiba of the Mississauga Board of Trade, requesting City Council to reverse its previous decision and strengthen its relationship with Borealis (OMERS).

Received for Information

See Deputation (b) (i)
CS.09.ENE

I-6 Councillor Carolyn Parrish's Comments on the Public Meeting re: Enersource

A package of information from Councillor Carolyn Parrish containing her comments and conclusions about the issues raised at the public meeting regarding Enersource hosted by Mayor McCallion on Thursday January 22, 2009, along with copies of the following documentation:

- a copy of the Memorandum dated November 12, 2007 addressed to Mary Ellen Bench, City Solicitor for the City of Mississauga from Jeffrey M. Singer of Stikeman Elliott Barristers and Solicitors,;
- a copy of the letter dated December 4, 2000 from Iain R. Morton of McCarthy Tetrault Barristers and Solicitors submitting the revised black-lined copies of the Put Agreement, the Financing Agreement and the Shareholders Agreement; and
- a copy of section 2.15 titled "Special Approval of Actions" of the Shareholder's Agreement.

Received for Information

CS.09.ENE

5. PUBLIC QUESTION PERIOD

On a verbal motion, Council concurred to dispense with a public question period within this meeting.

Direction

MG.01

6. NOTICES OF MOTION

(a) Moved by Councillor P. Mullin

WHEREAS the City of Mississauga and Borealis Energy Corporation ("Borealis") entered into a Strategic Alliance Agreement in December, 2000 through which Borealis obtained a 10% ownership interest in Enersource Corporation, and subsequently entered into both a Put Agreement whereby the City could put its shares in Enersource and Borealis would be required to acquire them at the specified price, and a Shareholders Agreement;

AND WHEREAS City Council has determined that it will not exercise the Put or take any other action to sell its shares in Enersource;

AND WHEREAS the Shareholders Agreement is reflective of the fact that Borealis has until this point in time, had exposure that goes beyond those of a typical 10% shareholder because the PUT Agreement required Borealis to commit to the potential acquisition of 100% of Enersource shares at a future date, which gave Borealis a significant interest in ensuring that the value of the assets did not deteriorate;

AND WHEREAS given that the Put agreement is about to expire and therefore it is appropriate to amend the Shareholders Agreement between the City and Borealis to reflect the proportionate shareholdings of the parties,

NOW THEREFORE BE IT RESOLVED:

1. That the Mayor, the City Manager and the City Solicitor be authorized to negotiate amendments to the Shareholders' Agreement with Borealis to provide for Borealis to have no additional rights, other than those normally enjoyed by a 10% shareholder.

Councillor Pat Mullin's motion was put to Council for consideration, along with the amendments suggested by Councillor Carolyn Parrish.

Councillor Pat Saito advised Council that she was of the impression that this meeting of Council was called to discuss Mr. Nobrega's comments issued at the public meeting hosted by Mayor McCallion on January 22, 2009, and requested clarification of the purpose of this meeting. Councillor Carolyn Parrish advised that a majority of the Members of Council signed a petition to call this meeting to discuss the Enersource Corporation in regard to the comments and issues raised at the public meeting held on January 22nd.

Councillor Nando Iannicca advised Council of his position and addressed the accountability of Council for prior decisions and the need to discuss the issues that have been raised by all parties concerned. Further, Councillor Iannicca clarified that Council has issued its direction to re-negotiate with the other shareholders out of its concern related to amendments that were apparently applied to the Shareholder's Agreement without specific review with Council prior to execution of that document in the year 2000.

Councillor Pat Mullin acknowledged the amendments indicated in the version of her motion marked by Councillor Carolyn Parrish and advised her concurrence with the recommended revisions, noting that Councillor Parrish could move the revised motion and that she would second it. Further, Councillor Mullin requested that Mayor Hazel McCallion participate with the negotiations, and requested an amendment to the motion in this regard, as well as adding a directive that the negotiated amendments to the Shareholder's Agreement be reported back to Council for its approval.

Discussion was held regarding which Councillors should participate with the negotiations, during which Councillor Sue McFadden suggested that a negotiating team should not include Councillors who have sat on the Enersource Corporation Board of Directors.

Councillor Pat Saito opined that Council needs to be accountable for the current situation, noting the numerous hours spent reviewing the documentation about the various options considered prior to entering into the Agreement executed in the year 2000. Councillor Saito further opined that it is currently not an appropriate economic time for the City to purchase the shares currently held by Borealis (OMERS). Further, Councillor Saito spoke to Councillor Mullin's motion presented at this meeting and advised her wish to see a spirit of cooperation for continuation with OMERS holding ten (10%) percent of the Enersource Corporation shares. As well, Councillor Saito expressed concern that the Council Members who sit on the Enersource Board of Directors could be put in a situation of having a conflict of interest.

Councillor Maja Prentice advised her concurrence with re-negotiating the subject Agreement with Borealis (OMERS), opining that Borealis is a value-added partner. Councillor Prentice subsequently advised her concurrence with the motion presented by Councillor Mullin with the friendly amendments suggested by Councillor Parrish.

Further Councillor Parrish opined that conflict of interest is an elaborate issue in this matter, and expressed concern for reaching a solution to the outstanding issues in the event that the requested negotiations fail.

Councillor Carmen Corbasson advised that she supports the motion presented by Councillor Pat Mullin as amended by suggestion of Councillor Parrish, on the basis that whatever results from the directed negotiations will have to be reported back to Council for its consideration prior to any action being taken. Further, Councillor Corbasson opined that the certain clauses in the Agreement referenced as ‘irritants’ should not be labeled as such, and noted that Council has other options to exercise if the negotiations fail to resolved the noted issues.

Mayor Hazel McCallion requested that she be included on the negotiating team.

Councillor Katie Mahoney congratulated her colleagues about their positions being taken on the subject matter, opining that she would like to see Council work together to negotiate a viable solution.

Councillor Pat Mullin moved to call the question. The motion to call the question was voted upon and carried.

Subsequently, Councillor Mullin requested that a Recorded Vote be taken on the motion presented with amendments suggested by Councillor Parrish and as further amended to include Mayor McCallion as part of the negotiating team, and to add the words “for final approval by Council” at the end of the directive paragraph numbered 1.

Directives

Information Item I-6
Resolution 0033-2009
CS.09.ENE

7. **RESOLUTION**

0033-2009 Moved by: C. Parrish Seconded by: P. Mullin

WHEREAS the City of Mississauga and Borealis Energy Corporation (“Borealis”) entered into a Strategic Alliance Agreement April 12, 2000 and a Shareholders’ Agreement signed December 6, 2000 through which Borealis obtained a 10% ownership interest in Enersource Corporation, and subsequently entered into both a PUT Agreement whereby the City could sell its shares in Enersource and Borealis would be required to acquire them at a price, set at the time of the Agreement;

AND WHEREAS This Council has determined that it will not exercise the PUT or take any other action to sell its shares in Enersource;

AND WHEREAS the Shareholders Agreement is reflective of the fact that Borealis has until this point in time, had exposure that goes beyond that of a typical 10% shareholder because the extended PUT Agreement required Borealis to commit to the potential acquisition of 100% of Enersource shares, ultimately by December 31, 2008, which gave Borealis a significant interest in ensuring that the value of the assets did not deteriorate;

NOW THEREFORE BE IT RESOLVED:

1. That the Mayor, the City Manager, the City Solicitor, the representative from Stikeman-Elliot (Jeff Singer) and two Councillors (one who has consistently voted to purchase 10% of Enersource back from Borealis and one who has consistently opposed that decision), be authorized to negotiate amendments to the Shareholders' Agreement with Borealis to provide for Borealis to have no additional rights, other than those normally enjoyed by a 10% shareholder, for final approval by Council.

The following issues, in abbreviated form, provided a basis for further balancing the rights and powers of the two shareholders and should include:

- a) An amendment that ensures that each of the City and Borealis would be entitled to effectively appoint a number of directors that is proportionate to their respective shareholdings.
- b) The addition of wording such that all normal business decisions affecting Enersource be approved by the Board of Directors by a simple majority approval, and further that certain enumerated fundamental matters must be approved by at least 75% of the directors and then by the City in its capacity as a shareholder.
- c) The addition of Amendments which draw a distinction between proposed dispositions by the City and Borealis. Within this context, the City would enjoy broad discretion to monetize its interest in Enersource, free to negotiate the sale of its interest in Enersource with any third party. The City would also have the right, but not the obligation, to provide Borealis with an opportunity to purchase from the City any shares it proposes to sell. Borealis may only accept any such opportunity to the extent that the proceeds to the City are equivalent, on a net after tax basis, as the proceeds pursuant to the third party transaction.

- d) The assurance that Borealis would be free to negotiate the sale of its interest in Enersource with any third party, first offering them to the City on the same terms and conditions.
- e) A number of clerical changes are to be negotiated. These include, among others:
 - i) Changes to the Quorum requirements, so that Borealis cannot frustrate business by its nominee directors failing to be present for meetings;
 - ii) Deletion of the provision encroaching on the City's absolute discretion in relation to whom it nominates to the Enersource Board of Directors (and the terms of such nominee directors);
 - iii) Changes to the restrictions on access by the shareholders to Enersource confidential information, such that each of the shareholders and their representatives may have access to such information (as well as third parties in connection with a proposed sale); provided that certain of such representatives and third parties enter into a confidentiality agreement in favour of Enersource to protect the propriety and confidentiality of such information; and
 - iv) Deletion of those provisions that contemplated the introduction of new shareholders consequent of the acquisition by Enersource of additional utilities. Should Council wish to proceed with merger or acquisition in the future, these matters would be dealt with at that time.

Negotiations should proceed on a basis that reflects considerable autonomy, discretion and control by the City over the operations of Enersource, a major departure from the construct of the Current Agreement.

In all of the above matters both parties shall recognize that time is of the essence.

A recorded vote was requested with the following results:

	YES	NO
Mayor H. McCallion	X	
Councillor C. Corbasson	X	
Councillor P. Mullin	X	
Councillor M. Prentice	X	
Councillor F. Dale	X	
Councillor E. Adams	X	
Councillor C. Parrish	X	
Councillor N. Iannicca	X	
Councillor K. Mahoney	X	
Councillor P. Saito	X	
Councillor S. McFadden	X	
Councillor G. Carlson	X	

Recorded Vote (12/0)
Carried Unanimously
 Resolution 0033-2009
 CS.09.ENE

8. CONFIRMATORY BY-LAW

0021-2009 A by-law to confirm the proceedings of the Council of The Corporation of the City of Mississauga at its special meeting held on January 28, 2009.

MG.01

9. ADJOURNMENT – 11:06 AM

 MAYOR

 CLERK