

Clause 6 in Report No. 16 of Committee of the Whole was adopted, without amendment, by the Council of The Regional Municipality of York at its meeting held on November 17, 2016.

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Hydro and Gas Utilities Permit Cost Recovery

Committee of the Whole recommends adoption of the following recommendations contained in the report dated October 21, 2016 from the Commissioner of Transportation Services:

1. Council authorize the fees and charges outlined in Attachment 1 to recover costs associated with issuing permits to hydro and gas companies for their utility work within Regional rights-of-way.
2. The Commissioner of Finance be authorized to amend Schedule "A" to Bylaw No. 2010-15 to incorporate the new fees and/or charges effective January 1, 2017.

Report dated October 21, 2016 from the Commissioner of Transportation Services now follows:

1. Recommendations

It is recommended that:

1. Council authorize the fees and charges outlined in Attachment 1 to recover costs associated with issuing permits to hydro and gas companies for their utility work within Regional rights-of-way.
2. The Commissioner of Finance be authorized to amend Schedule "A" to Bylaw No. 2010-15 to incorporate the new fees and/or charges effective January 1, 2017.

2. Purpose

This report seeks Council authorization to charge hydro and gas companies fees to recover Regional costs associated with issuing permits for utility work in Regional rights-of-way. The fees are consistent with existing fees charged to

telecommunication companies in order to recover Regional costs associated with issuing permits, and with the principles already discussed with the staff of the affected utilities.

3. Background

The Region charges municipal consent and road occupancy permit cost recovery fees to telecommunications companies

Telecommunications is a federally-regulated industry and through legislation, telecommunication companies (telecoms) have the right, as do hydro and gas companies, to install their infrastructure in a municipal right-of-way. Section 10 of Ontario Regulation 584/06 permits the Region to impose fees or charges on telecoms in order to recover costs associated with the issuing and managing process.

The Region has fees and charges for telecommunications infrastructure in the right-of-way as set out in the Region's standard form of Municipal Access Agreement with the telecoms. Telecoms are required to pay a road occupancy permit fee and a Municipal consent fee. The road occupancy permit fee addresses the costs associated with working in Regional rights-of-way for either new or existing infrastructure. Municipal consent fees are payable when telecoms install new infrastructure.

The Region has legal jurisdiction over its rights-of-way

The Region has legal jurisdiction and regulatory control over Regional rights-of-way and Council has authority to manage activities occurring within Regional rights-of-way.

There can be a variety of reasons that a third party would request access to Regional rights-of-way, and their entitlement depends on the type of third party. Common third parties include developers, utility companies as well as other government agencies. Legally, the Region must properly manage rights-of-way responsibly so third party requests can be accommodated in a manner that ensures the overall safety and proper operation of rights-of-way. The permitting process, including road occupancy permits and Municipal consents, is used to manage this responsibility.

By law, hydro and gas utilities have the right to place their infrastructure on a municipal right-of-way

Hydro and gas utility companies are legally entitled to construct, repair, maintain and replace their infrastructure and facilities in a municipal right-of-way for the

greater good of the public. They do not require the consent of the municipality to do so. In the case of hydro companies, their legal authority is set out in Section 41 of the Electricity Act, 1998.

The regulatory framework pertaining to gas pipelines in Ontario falls within the jurisdiction of either the federal National Energy Board (for federal pipelines such as the TransCanada Pipeline) or under the provincial Ontario Energy Board (e.g. Enbridge Gas).

The Ontario Energy Board developed a Model Franchise Agreement as a standard form of agreement between a municipality and a gas company when a gas company wishes to distribute, store and transmit gas in and through a municipality. The Model Franchise Agreement signed by the Region with Enbridge Gas does not preclude the Region charging permit fees to Enbridge Gas.

Historically municipalities have not charged hydro and gas companies permit or other municipal consent-type fees

Historically many hydro companies were owned by local municipalities. As the local municipality received revenues earned by their utility, it was unusual to charge them fees for permit and municipal consent processing services. Hydro companies have been exempted as a property class for taxation purposes under the Assessment Act, whereas pipelines comprise a taxable class and the gas company continues to pay property taxes to the municipality in which their pipeline is situated.

The Region has a bylaw for fees and charges for services and activities offered by the Region

Schedule "A" of Bylaw No. 2010-15 consolidates the current fees and charges that are prescribed for the provision of various services offered by the Region. The Commissioner of Finance has been authorized to amend Schedule "A" from time to time as new fees and charges are approved by Council.

4. Analysis and Implications

The Municipal Act, 2001 enables municipalities to charge hydro and gas companies reasonable costs for issuing permits for work in Regional rights-of-way

Section 10 of Ontario Regulation 584/06 specifically permits the imposition of fees or charges to recover a municipality's reasonable costs for issuing permits undertaken for works done by hydro and gas companies; "(a) to place the works

on a municipal highway; and (b) to cut the pavement of or otherwise dig up a municipal highway for the works.” The amount of fees charged must be reasonable and relative to the costs borne by a municipality in providing the service. This concept is generally known as a municipality’s “causal costs.”

Regional staff have analyzed the costs of staff processing utility requests for right-of-way access

The amount of work undertaken by Regional staff depends upon the nature of the request from the utility company. Even though the Region to-date has not formalized a fee structure for gas and hydro utility work, Regional staff has processed utility work requests using the same process used for telecoms. This involves using the current municipal consent and road occupancy permit approval process.

For new infrastructure the municipal consent process is followed. Typically this involves a review of the design submitted by the utility. For utility construction, whether new or existing infrastructure, the Region follows its process for issuing Road Occupancy Permits.

Regional staff time undertaking this work may involve any one or more of the following activities:

- Review and provide comments on design drawings and plans
- Review proposed construction schedules
- Review application for road occupancy permit
- Review traffic management plans
- Close out application
- Inspect and monitor work completed within the right-of-way
- Manage post construction asset drawings

The proposed fees will harmonize road occupancy permit and municipal consent fees for all utilities

A harmonized road occupancy permit and municipal consent fee that pertains to all utility and telecoms would be administratively efficient and equitable to third parties using Regional rights-of-way. Attachment 1 contains the proposed municipal consent fees and road occupancy permit fees for hydro and gas companies. The fees essentially mirror those already in place for the telecoms.

Recovery of the Region's costs for work supporting utilities supports Vision 2051 and the 2015 to 2019 Strategic Plan

This report supports Vision 2051 goals by providing efficiency in service delivery and operations. Harmonizing fees and charges payable by companies that need to install their infrastructure on Regional rights-of-way aligns with Council's 2015 to 2019 Strategic plan. It supports 'Good Government' by providing responsive and efficient public service by ensuring a fiscally prudent and efficient Regional government.

5. Financial Implications

Table 1 sets out the number of municipal consents processed by the Region in 2015 for hydro and gas companies and the associated fees not recovered.

Table 1
Hydro and Gas Company Municipal Consents 2015

Name of Company	No. of Municipal Consent (MC) Applications/Road Occupancy Permits (ROP)	Fees Not Recovered
Enbridge Gas	142 MC	\$57,500
Powerstream	82 MC	33,200
Hydro One	43 MC	17,400
Newmarket Hydro	7 MC	2,800
Enbridge Gas	75 ROP	5,000
Total		\$115,900

In 2015, the Region issued 914 road occupancy permits for all utilities, including telecoms, and charged only the telecoms the permit fees to recover Regional costs. Fees not recovered from third parties are borne by taxpayers through tax levy funds

6. Local Municipal Impact

The new fees applicable to hydro and gas companies will have a marginal impact on local municipalities who own or have shared ownership of municipal utility companies. The impact is expected to be minimal and will offset fees that are otherwise borne by municipal taxpayers

7. Conclusion

To date, the Region has borne all of the fees associated with Regional staff reviewing applications for municipal consents and road occupancy permits from hydro and gas utility companies. The Region is legally entitled to impose fees and charges for this work provided they are reasonable and relative to the Region's causal costs. The Region's fees and charges Bylaw No. 2010-15 will need to be amended to incorporate the new cost recovery fees and/or charges that will come into effect on January 1, 2017.

For more information on this report, please contact Brian Titherington, Director, Roads and Traffic Operations, at ext. 75901.

The Senior Management Group has reviewed this report.

October 21, 2016

Attachments (1)

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Accessible formats or communication supports are available upon request

Hydro and Gas Utilities Permit Cost Recovery

DEPARTMENT: Transportation Services			
Column A Service	Column 1 Fee	Column 2 13% HST	Column 3 Total Fee (rounded per
Hydro and Gas Applications			
- Review of hydro and gas plans for Municipal Consent application	\$450.00	**	\$450.00
- Re-inspection fee for Municipal Consent applications	\$167.00	**	\$170.00
- Municipal Consent revision application	\$223.00	**	\$220.00
Hydro and Gas Pavement Degradation Fees			
- Pavement less than 2 years	\$27.00/sq.m.	**	\$27.00/sq.m.
- Pavement 2 to 4 years	\$22.00/sq.m.	**	\$22.00/sq.m.
- Pavement 4 to 7 years	\$18.00/sq.m.	**	\$18.00/sq.m.
- Pavement 7 to 10 years	\$11.00/sq.m.	**	\$11.00/sq.m.
- Pavement greater than 10 years	\$ 4.00/sq.m.	**	\$4.00/sq.m.
Gas Annual Road Occupancy Permit (ROP) Fee			
- 0 to 100 permits	\$ 5,563.00	**	\$ 5,600.00
- 101 to 500 permits	\$10,014.00	**	\$10,000.00
- 501 to 1000 permits	\$14,465.00	**	\$14,500.00
- 1001 to 2000 permits	\$16,690.00	**	\$16,700.00
- Over 2000 permits	\$22,253.00	**	\$22,300.00

**HST Exempt

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