



AGENDA

Special Meeting of Council of the City of Kenora

**Tuesday, October 24, 2023
12:00 p.m.**

City Hall Council Chambers

Live Stream Link: <https://kenora.civicweb.net/Portal/>

1. Call to Order

2. Land Acknowledgment – Councillor Koch

3. Public Information Notices

As required under Notice By-law #160-2022, the public is advised of Council's intention to adopt the following at today's meeting:

N/A

4. Declaration of Pecuniary Interest and the General Nature Thereof

Any Member of Council to Declare and Pecuniary Interest and the General Nature Thereof pertaining to any items as follows:

- i) On today's agenda or from a previous meeting;
- ii) From a meeting at which a Member was not in Attendance

5. Presentations/Deputations

Approximately five (5) minutes per person/group.

6. Adjourn to a Closed Session

That pursuant to Section 239 of the Municipal Act, 2001, as amended, authorization for Council to move into a Closed Session to discuss items pertaining to the following: -

- i) Receiving advice that is subject to solicitor-client privilege, including communications necessary for that purpose (1 matter- Synergy North Corporation–Transition to Rate of Return Model)

7. Return to Open Session with Special Item Report

- Synergy North Corporation – Transition to Rate of Return Model from Rate Minimization Model

8. By-laws

Council will give three readings to the following by-laws: -

- Amended and restated unanimous Shareholders Agreement for Synergy North Corporation

9. Announcements (non-action)

10. Adjourn Meeting

Information on Voting by Mayor & Council under The Municipal Act, 2001

243. Except as otherwise provided, **every member** of a council shall have **one** vote;

245. Any question on which there is a **tie vote shall be deemed to be lost**, except where otherwise provided by any Act;

246. (1) If a member present at a meeting at the time of a vote requests immediately before or after the taking of the vote that the vote be recorded, each member present, except a member who is disqualified from voting by any Act, shall announce his or her vote openly and the clerk shall record each vote;

(2) A **failure to vote** under subsection (1) by a member who is present at the meeting at the time of the vote and who is qualified to vote shall be **deemed to be a negative vote.**



October 22, 2023

City Council Report

To: Mayor and Council

Fr: Kyle Attanasio, Chief Administrative Officer

Re: Synergy North Corporation – Transition to Rate of Return Model from Rate Minimization Model

Recommendation:

Whereas The Corporation of the City of Kenora ("**Kenora**") and Thunder Bay Hydro Corporation ("**TB Hydro**") hold all of the issued and outstanding shares in the capital of Synergy North ("**SN**") and The Corporation of the City of Thunder Bay ("**TB**") holds all of the issued and outstanding shares in the capital of the TB Hydro; and

Whereas TB Hydro, Kenora, and SN are parties to an Amended and Restated Unanimous Shareholders' Agreement (the "**USA**") dated as of January 1, 2019;

Whereas TB holds a promissory note (the "**Note**") dated as of April 9, 2013 issued by SN (in its capacity as successor to the original issuer of the Note Thunder Bay Hydro Electricity Distribution Inc.), pursuant to which SN shall repay the principal amount thereof to TB on demand; and

Whereas in connection with a transition from the Rate Minimization Model (as defined in the USA) to a Rate of Return Model (as defined in the Draft A&R USA) with respect to SN,

- a) TB and SN wish to make certain amendments to the Note to provide for the payment of interest at the Established Rate (as defined in the Draft A&R USA) and the Partial Principal Repayment (collectively, the "**TB Note Amendments**");
- b) SN wishes to repay a portion of the principal of the Note (the "**Partial Principal Repayment**") and such repayment requires the approval of TB Hydro and Kenora pursuant to the USA;
- c) to enable the Partial Principal Repayment, SN wishes to enter into financing arrangements (the "**Financing**"), including the provision of security, with Toronto-Dominion Bank ("**TD**"), substantially as described in a Term Sheet forming part of a Proposal dated July 28, 2023 submitted by TD to SN; and
- d) the parties to the USA wish to make certain amendments to the USA substantially in the form of the draft amended and restated unanimous shareholders agreement (the "**Draft A&R USA**") previously presented to City Council for review;

Therefore Be It Resolved That:

1. The City is authorized to enter into an amended and restated USA (the "**A&R USA**") substantially in the form of the Draft A&R USA;

2. The City is authorized to execute the requisite shareholders resolution of SN to approve the TB Note Amendments, the Partial Principal Repayment, and the Financing;
3. The execution and delivery by the City of the A&R USA and the performance by it of its obligations thereunder, substantially in the form and on the terms set out in the Draft A&R USA, with such deletions, amendments or additions thereto as the Chief Administrative Officer, or other duly authorized representative, of the City (the "**Authorized Representative**") may determine, is authorized and approved, the execution of such A&R USA in accordance with the provisions of the paragraph below being conclusive evidence of such determination;
4. The Authorized Representative is authorized and directed, for and in the name of and on behalf of the City, to execute and deliver the A&R USA substantially in the form and on the terms set out in the Draft A&R USA, with such deletions, amendments or additions thereto as the Authorized Representative may in his or her absolute discretion determine, the execution of such instruments in accordance with the provisions of this paragraph being conclusive evidence of such determination; and
5. The Authorized Representative is authorized and directed, for and in the name of and on behalf of the City, to execute and deliver a shareholder resolution of SN and all such other agreements, amendments, instruments, certificates, resolutions and other documents and to do all such other acts and things as the Authorized Representative may determine to be necessary or advisable in connection with the A&R USA and the Financing and to carry out the intention of the foregoing resolution, the execution and delivery of any such agreement, amendment, instrument, certificate, resolution or other document or the doing of any such other act or thing by the Authorized Representative being conclusive evidence of such determination; and
6. The Authorized Representative is authorized and directed to provide a copy of these Resolutions to SN, TB, and TB Hydro, and their respective authorized representatives who are under a duty of confidentiality, on a confidential basis.

Background Information:

Synergy North Corporation is a private local distribution company (LDC) owned by Thunder Bay Hydro Corporation (91.69%) and the City of Kenora (8.31%) with oversight provided by a Board of Directors. The Corporation was formed following the merger of Thunder Bay Hydro Electricity Distribution Inc. and Kenora Hydro Electric Corporation on January 1, 2019.

The Board consists of eight (8) directors. Seven (7) directors are appointed by the City of Thunder Bay Council and the remaining one (1) director is appointed by the City of Kenora Council. Synergy North is incorporated under the *Ontario Business Corporations Act (OBCA)*, and is a licensed distributor by the Ontario Energy Board (OEB). The OEB is the regulator of Ontario's electricity industry and utilities including provincial electricity rates.

Currently, Synergy North Corporation operates under a "Rate Minimization Model." Under this model, the City of Thunder Bay does not receive any financial return from the utility in the form of either an after-tax dividend or before tax principal payment and interest on its \$26,490,500 note payable. The City of Thunder Bay is one of only two municipalities in Ontario that currently does not receive any interest payment on debt

from its hydro utility and Synergy North Corporation is one of only two LDCs (Fort Frances being the other) that do not provide a dividend.

The note payable was originally established when Thunder Bay Hydro was created in October 2000 and has remained on Synergy North Corporation's balance sheet as an outstanding financial obligation. To date, no repayments of principal and interest have been made to the City of Thunder Bay under this note payable in accordance with the Rate Minimization Model provisions of the approved Shareholder Declaration (SD). Underlying the Rate Minimization Model was an overall strategic assumption that lower hydro rates would contribute to increased growth and diversification of the City of Thunder Bay economy.

The Unanimous Shareholders' Agreement (USA) signed January 1, 2019 when Synergy North Corporation was created refers to the future payment of interest on the note payable to the City of Thunder Bay. Specifically, Section 5.6 of the USA states "that no interest shall accrue or be paid on such debt at the current deemed long-term interest rate prescribed by the OEB provided that the City of Thunder Bay may elect in its sole and absolute discretion, that such interest not accrue or be paid at that time."

In October 2021, the City of Thunder Bay Council elected to approve the transition from a Rate Minimization Model to a Rate of Return Model for Synergy North Corporation and directed Synergy North Corporation to make a principal payment of \$10,000,000 in late 2023 by refinancing a portion of the note payable and make interest payments on the remaining note to the City of Thunder Bay thereafter.

Synergy North Corporation currently pays interest on the City of Kenora note payable and has since the time of the merger, which was negotiated in the current USA. Only Kenora customers currently pay the interest charges related to this debt as hydro rates are not fully harmonized. The City of Kenora's note payable currently sits at approximately \$2,069,000.00 and is expected to be fully repaid by May 31st, 2027. Following the next OEB application, Synergy North rates will be fully harmonized starting on May 1, 2024. This means that Kenora customers and Thunder Bay customers will pay the same rates from that date forward.

Synergy North Corporation has begun work on the next Cost of Service application to the Ontario Energy Board. The application process is rigorous, involving planning and documentation over a twenty-four (24) month period. The Cost of Service submission was made in the summer of 2023 with rate changes commencing on May 1, 2024. The application assumes, among other things, that \$10,000,000 in debt will be repaid in December of 2023 with interest payments commencing on the remaining debt in December of 2023 as well. Based on the application timeline, corporate document changes need to take place at this time to allow for this; debt repayment and interest. With certainty Synergy North Corporation also needs to, by definition, leave the Rate Minimization Model at the same time.

The 50+ LDCs in Ontario that receive a financial return provision normally consists of one or both of the following two components:

- 1) Tax deductible interest payment on long term debt held by the municipality (i.e. note payable).
- 2) A return on equity and/or dividend payment.

Both of the above components are permitted by the OEB to be included by LDCs within the maximum allowable rate of return. Most other hydro companies are operated on the full rate of return model and pay dividends and interest to shareholders/municipalities.

Over the past four months, Synergy North Corporation, the City of Thunder Bay, and the City of Kenora have worked collaboratively to arrive at mutually agreeable language to amend the USA, SD and Promissory Note.

In sum, both the USA and the SD need to be amended to accommodate the shift out of Rate Minimization to allow for changes to the Promissory Note; the repayment of debt to the City of Thunder Bay and interest to be paid on the remaining debt still held by the City of Thunder Bay. This is set to commence December 1st, 2023, should all the agreements be completed over the next few weeks.

The Board of the Synergy North Corporation approved the amended USA and Promissory Note and Thunder Bay Hydro Corporation approved an amended USA and SD and Promissory Note on September 28, 2023.

The City of Thunder Bay Council voted to advance the amended USA and SD and the amended promissory note to their October 30, 2023 meeting, where it is anticipated that approval will occur.

Budget: There is no budgetary impact to the City of Kenora as a result of this report.

Risk Analysis: Amendments to the USA, SD, and the Promissory Note held by the City of Thunder Bay are necessary to complete the debt repayment transaction. Additionally, Synergy North Corporation's Cost of Service application has the components of the transaction contained therein. Any delays to the approval of the amended USA, SD, and Promissory Note would delay Synergy North Corporation's principal repayment to the City of Thunder Bay, which will complicate Synergy North Corporation's cost of service application.

Approving the amended USA and SD at this time are in the City's best interest because they will result in the following:

- 1) A transition from a Rate Minimization Model to a Rate of Return Model, which will facilitate Synergy North Corporation's ability to pay out dividends to the shareholders in the future; and
- 2) Continued advancement of Synergy North Corporation's Cost of Service application, which is required by the OEB and establishing the Utility's rates commencing May 1, 2024.