



The Regional Municipality of Durham Report

To: Finance & Administration Committee
From: Commissioner of Finance
Report: #2023-F-18
Date: September 12, 2023

Subject:

Update of Regional Commodity Price Hedging Agreements: Statement of Policies and Goals

Recommendations:

That the Finance and Administration Committee recommend to Regional Council that:

- A) The proposed September 2023 update to the Region's Commodity Price Hedging Agreements: Statement of Policies and Goals contained in Attachment #1 be approved with the following key elements:
- i) The Region of Durham (the Region) will continue to consider commodity price hedging agreements as a means of fixing, directly or indirectly, or enabling the Region to fix the price or range of prices to be paid by the Region for the future delivery of some or all of the commodity or the future cost to the municipality of an equivalent quantity of the commodity, where it is advantageous for the Region to do so;
 - ii) The Commissioner of Finance and Treasurer for the Region will continue to be the designated person responsible for administrative matters pertaining to commodity price hedging and will delegate certain administrative duties and responsibilities to internal staff and external agents. In addition, the Commissioner of Finance and Treasurer, or his/her designate, will continue to be authorized to enter into contracts for the purpose of engaging a Contract Agent in accordance with the Region's Purchasing Policies;
 - iii) The Statement of Policies and Goals: Commodity Price Hedging Agreements be further broadened to consider a wider range of appropriate risk control measures for particular commodity price hedging agreements, which may include, but not be limited to, the potential for limiting credit exposure based on a degree of regulatory, oversight and/or on the regulatory capital of the other party to the agreement;

- iv) The Statement of Policies and Goals: Commodity Price Hedging Agreements be updated to reflect current staff responsibilities and accountabilities for reviewing and recommending commodity price hedging transactions; and
 - v) In accordance with the requirements of Ontario Regulation 653/05 under the *Municipal Act, 2001*, the Commissioner of Finance and Treasurer continue to annually prepare and provide a report to Regional Council with respect to any and all commodity price hedging agreements in place for the prior fiscal year.
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Report:

1. Purpose

- 1.1 Section 6.1 of Ontario Regulation 653/05 under the *Municipal Act, 2001*, requires that before a municipality passes a by-law authorizing a commodity price hedging agreement, the council of the municipality shall adopt a statement of policies and goals relating to the use of financial agreements to address commodity pricing and costs.
- 1.2 For many years, the Region has been entering into commodity price hedging agreements and related transactions in accordance with its current Commodity Price Hedging Agreements: Statement of Policies and Goals, which was approved by Council in 2007. Through this report, staff are seeking approval for an updated modernized policy that reflects current best practice.

2. Previous Reports and Decisions

- 2.1 On June 20, 2007, through [Report 2007-F-53](#), Regional Council approved the Commodity Price Hedging Agreements: Statement of Policies and Goals for the Region of Durham.
- 2.2 Staff report to Council annually on Commodity Price Hedging Agreements in accordance with the Region's approved Policy and provincial regulation. The 2022 report ([Report 2023-INFO-69](#)) was presented on August 18, 2023.

3. Proposed Updates to the Region's Commodity Price Hedging Agreements: Statement of Policies and Goals

- 3.1 The Region's Commodity Price Hedging Agreements: Statement of Policies and Goals requires minor updating to improve the efficiency and flexibility of the Policy as it relates to assessing contract counterparty risk and maintaining the Region's roster of prequalified energy suppliers (to-date this has primarily been for electricity and/or natural gas).

- 3.2 More specifically, given the continuous evolution of energy markets and varying involvement of various entities as it relates to energy purchase and sale and price hedging agreements, consideration of a broader range of risk control measures is required to ensure the Region is maximizing and maintaining its access to an extensive roster of cost-effective, quality energy suppliers while also reducing rigidity with use of prescribed credit rating thresholds.
- 3.3 The enhanced flexibility will provide the Commissioner of Finance and Treasurer with greater discretion for assessing counterparty risk when prequalifying suppliers and maintaining existing arrangements. As entities may be subject to acquisition and/or merger including through private, non-rated entities, the use of prescribed credit rate thresholds may not be optimal as it may limit access to quality suppliers and adversely financially impact existing positions being maintained by the Region.
- 3.4 The Region's supplier contracts generally follow industry standard templates (e.g., GasEDI for natural gas base agreements) which include further risk mitigation provisions including performance requirements, financial responsibility, default and remedies, just to name a few that further protect the Region's interests.
- 3.5 The Region's Finance Department (including Procurement and Risk Management and Insurance), and Legal Services will continue to work with its expert energy advisors in structuring base agreements which serve to appropriately allocate and mitigate risk to the Region for its energy purchase and sale and price hedging agreements.
- 3.6 The Region's Commodity Price Hedging Agreements: Statement of Policies and Goals is proposed to be updated to reflect current staff responsibilities and accountabilities for reviewing and recommending commodity price hedging transactions.
- 3.7 The Commissioner of Finance and Treasurer will continue to annually prepare and provide a report to Regional Council with respect to any and all commodity price hedging agreements in place for the prior fiscal year along with any updates/changes regarding the Region's base supply agreements.
- 3.8 The updated Regional Commodity Price Hedging Agreements: Statement of Policies and Goals is enclosed in Attachment #1.

4. Relationship to Financial Plan

- 4.1 This report aligns with/addresses the following strategic goals and priorities in the Durham Region Strategic Plan:
 - Goal 5.4 Service Excellence – This report demonstrates the commitment to effective, responsible financial management and provision of exceptional value to Durham taxpayers by identifying opportunities to drive organizational success through innovation, a skilled workforce, and modernized services.

5. Conclusion

5.1 The proposed updates to the Region's Commodity Price Hedging Agreements: Statement of Policies and Goals works to allow the Region to consider a wider range of appropriate risk control measures for particular commodity price hedging agreements, which may include, but not be limited to, the potential for limiting credit exposure based on a degree of regulatory, oversight and/or on the regulatory capital of the other party to the agreement. More specifically the enhanced flexibility of the updated policy will provide the Commissioner of Finance and Treasurer with greater discretion for assessing counterparty risk when prequalifying suppliers and maintaining existing arrangements. The proposed updates also reflect current staff responsibilities and accountability.

6. Attachments

Attachment #1: Commodity Price Hedging Agreements: Statement of Policies and Goals (September 2023)

Respectfully submitted,

Original Signed By

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Commissioner of Finance

Recommended for Presentation to Committee

Original Signed By

Elaine C. Baxter-Trahair
Chief Administrative Officer



FINANCE DEPARTMENT

Commodity Price Hedging Agreements: STATEMENT OF POLICIES AND GOALS

PROPOSED - September 2023

Interpretation

This policy is to be interpreted and applied in accordance with the requirements of the Municipal Act, 2001 ("the Act") and any regulations passed thereunder ("the regulations"). Terms used in this policy have the meanings applicable to those terms in the corresponding sections of the Act and the regulations.

Purpose of Statement

This Statement of Policies and Goals (the "Policy") provides the framework for the consideration of commodity price hedging by the Regional Municipality of Durham.

- a) The Region of Durham (the Region) will consider commodity price hedging agreements as a means of fixing, directly or indirectly, or enabling the Region to fix the price or range of prices to be paid by the Region for the future delivery of some or all of the commodity or the future cost to the municipality of an equivalent quantity of the commodity, where it is advantageous for the Region to do so.

Delegation of Responsibilities

The Commissioner of Finance and Treasurer for the Region is the designated person responsible for administrative matters pertaining to commodity price hedging. The Commissioner of Finance and Treasurer will delegate certain administrative duties and responsibilities to internal staff and external agents.

The Commissioner of Finance and Treasurer, or his/her designate, is authorized to enter into contracts for the purpose of engaging a Contract Agent in accordance with the Region's Purchasing Policies.

Commissioner of Finance and Treasurer

The Commissioner of Finance and Treasurer is responsible for:

- a) determining whether a particular commodity price hedging agreement is advantageous for the Region, whereby, the following considerations will be taken into account:
 - (i) any and all commodity purchases for which commodity price hedging agreements will be appropriate. Appropriate refers to opportunities to fix the price or a range of prices, the market for the commodity must be subject to fluctuation and formal documentation has been completed that outlines the benefits and cost savings to the Region;
 - (ii) that the financial position and stability of the Region will be enhanced by virtue of the use of such an agreement;
 - (iii) that the all-inclusive contracted price and cost to the Region of the associated commodity will be lower or more stable than it would be without the agreement;
 - (iv) formulate a detailed estimate of the expected result of using such an agreement;
 - (v) formulate the financial and other risks to the municipality that would exist with the use of such an agreement and determine if such risk would be lower than the financial and other risks to the municipality that would exist without such an agreement;
 - (vi) using his/her best judgment and in his/her sole discretion determine that the agreement contains adequate risk control measures. For example, risk control measures may include the potential for limiting credit exposure based on a degree of regulatory, creditworthiness, oversight and/or on the regulatory capital of the other party to the agreement; and
 - (vii) ensure ongoing monitoring with respect to the commodity price hedging agreements.

Director, Business Planning and Budgets

The Director, Business Planning and Budgets and his/her designate will be authorized to:

- 1) execute commodity procurement contracts and enter into commodity transactions in accordance with the policy and as approved by the Commissioner of Finance and Treasurer or designate;

- 2) meet with the Commissioner of Finance and Treasurer, as required, and provide written reports regarding the past performance of Commodity Hedging Agreements, future strategies and other issues as requested;
- 3) notify the Commissioner of Finance and Treasurer, in writing, of any significant changes in the commodity hedging philosophies or policies and organization;
- 4) will provide periodically, not less than annually, lists of Commodity Hedging Agreements and such other information as may be requested by the Commissioner of Finance and Treasurer; and
- 5) enter into Agency Agreements or Contracts with Contract Agents for the purpose of purchasing, securing and delivery of commodities upon approval from the Commissioner of Finance and Treasurer.

Contract Agent (independent contractor external to Region of Durham)

The Contract Agent will only be authorized to act within the scope of his/her/its' specific authority under any executed Contract and/or Agency Agreement with the Region and shall, in accordance with such a Contract or Agreement, provide a number of services to the Region, which may include:

- 1) assisting the Director of Business Planning and Budgets and his/her designate in developing a prudent commodity procurement mix and specific procurement objectives and policies;
- 2) monitoring, analyzing and reporting on the Region's procurement performance and supporting the Director, Business Planning and Budgets and his/her designate with respect to commodity procurement related matters;
- 3) assisting in the selection of commodity suppliers;
- 4) meeting with Regional staff, as required; and
- 5) entering into commodity transactions or commodity procurement agreements on behalf of the Region with commodity suppliers and/or distribution utilities when so directed by the Director of Business Planning and Budgets and/or the Commissioner of Finance and Treasurer and where a proper Agency Agreement has been executed with the Region.

Reporting Requirements

The Commissioner of Finance and Treasurer shall report to Council at least once each fiscal year with respect to any and all commodity price hedging agreements in place. The report shall contain, at a minimum, all requirements as set out in O. Reg. 653/05 and include:

- a statement summarizing any contingent payment obligations under the commodity price hedging agreement that, in the opinion of the Commissioner of Finance and Treasurer, would result in a material impact for the municipality, including agreement termination provisions, equipment loss, equipment replacement options and guarantees and indemnities;
- a summary of the assumptions applicable to any possible variations in the commodity price hedge agreement payment and contingent payment obligations

Excerpt from Municipal Act, 2001, Ontario Regulation 653/05 Debt-Related Financial Instruments and Financial Agreements**COMMODITY PRICE HEDGING AGREEMENTS****Commodity price hedging agreements**

5. (1.) A municipality that has entered or plans to enter, an agreement under Part II of the Act for the supply of a commodity required for a municipal system may enter into one or more financial agreements to minimize the cost or financial risk associated with incurring debt for the commodity. O. Reg. 653/05, s 5(1).

(2) The financial agreement must fix, directly or indirectly, or enable the municipality to fix the price or range of prices to be paid by the municipality for the future delivery of some or all of the commodity or the future cost to the municipality of an equivalent quantity of the commodity. O. Reg. 653/05, s. 5(2).

(3) Subject to subsection (4), the municipality shall not sell or otherwise dispose of the financial agreement or any interest of the municipality in the agreement O. Reg. 653/05, s. 5(3).

(4) The municipality may sell or dispose of the financial agreement or an interest of the municipality in the agreement if, in the opinion of the Treasurer of the municipality, the sale or disposition is in the best interests of the municipality and if either of the following conditions is satisfied:

1. The sale or disposition is part of a transaction for the sale of real property by the municipality relating to a change in the use of the property by the municipality.
2. The municipality has ceased to carry on any activity relating to the municipal system for which the commodity was being acquired. O. Reg. 653/05, s. 5(4).

Statement of Policies and Goals Re: Commodity Price Hedging Agreements

6. (1) Before a municipality passes a by-law authorizing a commodity price hedging agreement, the Council of the municipality shall adopt a statement of policies and goals relating to the use of financial agreements to address commodity pricing and costs. O. Reg. 653/05, s. 6(1).

(2) The Council of the municipality shall consider the following matters when preparing the statement of policies and goals:

1. The types of projects for which commodity price hedging agreements are appropriate.

2. The fixed costs and estimated costs of the municipality resulting from the use of such agreements.
3. Whether the future price or cost to the municipality of the applicable commodities will be lower or more stable than it would be without the agreements.
4. A detailed estimate of the expected result of using such agreements.
5. The financial and other risks to the municipality that would exist with and without the use of such agreements.
6. Risk control measures relating to such agreements, such as,
 - (i) credit exposure based on credit ratings and on the degree of regulatory oversight and on the regulatory capital of the other party to the agreement;
 - (ii) standard agreements; and
 - (iii) ongoing monitoring with respect to the agreements. O. Reg. 563/05, s. 6(2).

Report on commodity price hedging agreements

7. (1) If a municipality has any subsisting commodity price hedging agreements in a fiscal year, the Treasurer of the municipality shall prepare and present to the municipal council once in that fiscal year, or more frequently if Council so desires, a detailed report on all of those agreements. O. Reg. 653/05, s. 7(1),
 - (2) The report must contain the following information and documents:
 1. A statement about the status of the agreements during the period of the report, including a comparison of the expected and actual results of using the agreements.
 2. A statement by the Treasurer indicating whether, in his or her opinion, all of the agreements entered during the period of the report are consistent with the municipality's statement of policies and goals relating to the use of financial agreements to address commodity pricing and costs.
 3. Such other information as the Council may require.
 4. Such other information as the Treasurer considers appropriate to include in the report. O. Reg. 653/05, s. 7(2).