

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF: THE MUNICIPAL GOVERNMENT ACT

- and -

IN THE MATTER OF: AN APPLICATION by the MUNICIPALITY OF THE COUNTY OF PICTOU and the TOWNS of NEW GLASGOW, PICTOU and STELLARTON for an Order for the Amalgamation of the Municipality and the Towns

Rebuttal Evidence of the Applicant in Response to Evidence of the Town of Trenton and the Town of Westville regarding Intermunicipal Service Agreement

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NET ASSETS AND LIABILITIES

The Town of Westville suggests that in the event of withdrawal Westville would forfeit its rights to assets but still be responsible for cost and its share of liabilities. Westville seeks an order from the Board amending the Intermunicipal Services Agreement (“IMSA”) to protect Westville’s interests in this regard. Counsel for Westville, Dennis James, asserts that Westville would be unreasonably denied their share of the net assets (with the overall net value, as computed by Brian White, to the Pictou County Shared Services Authority (“PCSSA”) as of March 31, 2015) to be \$6.42 million for the Pictou County Solid Waste (“PCSW”) division and \$4.79 million for the East River Environmental Control Centre (“ERECC”) division.

In terms of the net value of assets, the above noted figures are primarily comprised of Tangible Capital Assets (“TCAs”); 91.3% of the value of total net asset value of PCSW division, and 57.2% of the total net value of assets of the ERECC division. In my opinion, the value of TCAs of both divisions relates to the entities operating as “going concerns”, i.e. continued operations as a solid waste transfer station, commercial construction and demolition disposal site, and organic processing centre for PCSW, and wastewater treatment for ERECC. Similarly, the related TCAs are generally physically fixed to the land and divisional operations. In all likelihood the liquidation of these TCAs will produce significantly less cash than the carrying value referenced by Mr. James.

In terms of liabilities, the post-closure reserve is intended to address in an appropriate manner related post-closure costs over the next twenty-four years. The post-closure reserve has been calculated pursuant to Public Sector Accounting Board Standard 3270. With respect to PCSW this standard is intended to account for and report the liability for post-closure care. It should also be noted that the post-closure reserve is more than fully funded (cash on hand exceeds the calculated fund requirement).

There is also a practical consideration in that ERECC and PCSW functions are considered to be core municipal services. It is highly unlikely that the Towns of Westville and Trenton will be withdrawing from these services and requiring a share of the net assets in that there are few alternative service delivery options.

There is precedent regarding how the PCSSA previously handled closure of an entire division. During the fiscal year ended March 31, 2014, the PCSSA Board of Directors comprising the municipal owners decided to close their land use planning, inspection and administration division. The TCAs, which consisted of a building and electronic equipment, were liquidated and all liabilities were settled. The municipal owners received shares of the net proceeds based on the amounts historically contributed to the division by each of the municipal owners. The redistribution formula was developed and unanimously accepted by the municipal units through a consensus based approach following the guiding principles detailed within the IMSA.

SERVICE EXPANSION BLOATING THE COST OF ADMINISTRATION

Westville contends that with service expansion, the overall cost of administration will increase to the two divisions in which they currently participate, i.e., their costs will increase as a result of new service in which they do not participate.

Current-day accounting practises of the PCSSA directly address this concern.

Since closure of the Planning, Inspection and Administration division, the PCSSA has adopted an accounting practise whereby the cost of administration is allocated between the two remaining divisions. This internal cost-allocation entry was designed to ensure that each operating division is responsible for its share of administrative overheads and that municipal units not in receipt of a divisional service are not paying for that division's share of administrative overheads.

The Applicants assert that the allocation has been handled in an open and transparent manner as part of the approval process of the annual estimates. To date, the PCSSA Board of Directors has agreed that the allocation method is fair and equitable. In the future, should a municipal unit not agree with the allocation, they have arbitral rights provided to them under provision 13 of the IMSA (remembering that the PCSSA is required to develop fees and charges in accordance with the guiding principles set out in provision 6).

Examples from the IMSA speaking to the equitable nature of the shared services arrangement include the following:

6 (1) (b) Transparency. *The books, records, and accounts of Shared Services Authority shall be made available and open for inspection by any Participating Municipal Unit, upon reasonable request. The Participating Municipal Units shall encourage their municipal staff to assist in the support of Shared Services Authority with respect to best practices in financial and other administrative and governance matters. Any and all decisions of both administrative staff and the Board of Directors of Shared Services Authority shall be made in a transparent manner that fosters trust and confidence between and amongst the parties to this Agreement. Shared Services Authority shall apply the same standards of public transparency and accountability as statutorily applied to the Participating Municipal Units.*

...

6 (1) (d) Equity. *As elsewhere described herein, services shall, on a phased in basis, be allocated and delivered as more fully set out in s. 9(1) of this Agreement. To promote cost effectiveness, accountability, and inter-municipal co-operation, all parties acknowledge and agree that the existing cost model is to be replaced over not more than five years. Subject to s. 9(1), the allocation of user pay/unit costs of services shall be applied equally to all Participating Municipal Units: i.e. similar services shall be assigned similar costs.*

...

6. (1) (f) Adaptiveness. *All parties to this Agreement acknowledge that "one size does not fit all" and that the recommendations and decisions of the Chief Operating Officer,*

the staff and the Board of Shared Services Authority shall require good faith, good judgment, and reasonable discretion in all decisions with respect to service delivery. All parties recognize that certain Participating Municipal Units may request a type or form of municipal service that is not of interest to other municipal units. Shared Services Authority shall support such optional services if the Board considers it appropriate to do so, provided non-users are not required to pay for such undertakings and the provision of such service do not materially undermine the delivery of existing services.

...

9. (4) All parties to this Agreement acknowledge and agree that the allocation of costs and services and the identification of criteria for user pay/unit cost assignment shall involve considerable good faith, good judgment and reasonable discretion with respect to both the recommendations of the Chief Operating Officer and the approved allocations of the Board of Directors.

RATIONALE BEHIND THE 2010 INCORPORATION OF THE PCSSA

The PCSSA was incorporated in 2010 as a successor agency to the Pictou County District Planning Commission. The reason for the incorporation primarily related to the introduction of guiding principles on inter-municipal co-operation, transparency, responsiveness, equity, efficiency, adaptiveness and accountability within the constating documents of the organization. These changes, in addition to the switch in the method of cost-recovery from one based primarily on uniform assessment to user pay, were required to settle long standing disputes between the municipal owners. The spirit of the April 1, 2010 IMSA is clearly set out to foster a harmonious relationship between the municipal owners. Requirements to approve items under the IMSA defined special resolution as example have never been invoked. The user pay model has been managed through consensus based decision making.

The intent of the PCSSA constating documents in their totality needs to be considered. The Agreement directs how the user pay principles are to be developed, how new services or divisions are to be added, and how municipal members can withdraw from a service. All of these aspects must be addressed through the guiding principles set out in provision 6 of the IMSA.

Finally, should conflict arise that cannot be settled internally, the municipal owners can avail themselves to the right to arbitral protection detailed in provision 13 of the IMSA.

SUMMARY

- The net value of assets is not indicative of the municipal unit's ownership interest in PCSSA assets as their value is as part of a going concern and the cash value of these assets would be far below book value.

- Internal accounting practise does not allow administrative costs to be downloaded on municipal units not participating in a division of the PCSSA;
- The constating documents of the PCSSA provide significant protection to all municipal owners; and
- Disputes respecting the operation of the PCSSA are subject to resolution by arbitration.