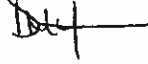



TO: GENERAL COMMITTEE

SUBJECT: POWERSTREAM INC. AFFILIATE STRUCTURE AND PROMISSORY NOTE

PREPARED BY AND KEY CONTACT: D. MCALPINE, CITY CLERK/DIRECTOR OF LEGISLATIVE AND COURT SERVICES, EXT. 4421

SUBMITTED BY: D. MCALPINE, CITY CLERK/DIRECTOR OF LEGISLATIVE AND COURT SERVICES 

GENERAL MANAGER APPROVAL: E. ARCHER, CMA, GENERAL MANAGER OF COMMUNITY AND CORPORATE SERVICES 

CHIEF ADMINISTRATIVE OFFICER APPROVAL: C. LADD, CHIEF ADMINISTRATIVE OFFICER 

RECOMMENDED MOTION

1. That, acting as sole shareholder in Barrie Hydro Holdings Inc. (BHHI), the Shareholder's Resolution attached as Appendix "A" to Staff Report CLK010-13 concerning the establishment of a new affiliate structure for PowerStream Inc., be approved.
2. That the Mayor and City Clerk be authorized and directed to take all steps and execute all documents on behalf of the City, acting as sole shareholder in BHHI, as may be necessary or desirable in connection with the foregoing.
3. That the Treasurer in consultation with the Mayor be authorized to convert the \$20 million Promissory Note currently held by the City of Barrie, in whole or in part, with the timing of any such conversion(s) as deemed necessary and subject to the following;
 - a) Such conversion(s) keeping the shareholder "whole" on a cash flow basis until the core business generates additional dividends after rebasing; and
 - b) The approval of any conversion(s)/conversion terms by the Board of Directors of PowerStream Inc. and its Shareholders as may be required.

PURPOSE & BACKGROUND

4. In February, 1999, City Council directed that the City of Barrie retain ownership of the assets of the Barrie Public Utilities Commission and incorporate a Holding Company and other Affiliate corporations under the Ontario Business Corporations Act to operate Barrie's electrical distribution corporation (the Corporation) for the benefit of the citizens of Barrie.
5. In October, 2000, City Council directed, through Resolution 00-G-291, the establishment of a Holding Company and its related subsidiaries in accordance with the requirements of The Electricity Act, 1998. The Holding Company was named "Barrie Hydro Holdings Inc." and the subsidiaries were named "Barrie Hydro Distribution Inc." and "Barrie Hydro Energy Services Inc."
6. Barrie Hydro Distribution Inc. (BHDI) was merged with PowerStream Inc. effective January 1, 2009.

ANALYSIS

Affiliate Structure

7. At its November 26, 2012 meeting, BHHI approved revisions to PowerStream's Strategic Plan. The Strategy states, "By 2020, we will build on our core electricity distribution business to become Ontario's premier integrated energy services provider".
8. On February 1, 2013, the Board of Directors of PowerStream Inc. approved a new corporate structure in accordance with Appendix "A" to Staff Report CLK010-13 (Schedule "A") to allow it to achieve the vision contained within the revised PowerStream Strategic Plan. The new corporate structure requires the incorporation of a holding company (Holdco) to hold all of the shares of PowerStream Inc. and any affiliate companies established for new businesses. In order to proceed with the new corporate structure, the consent of the Shareholders is required.
9. The Shareholders will hold all of the shares in this new Holdco in the same proportion as their current ownership shares in PowerStream Inc. (20.5% for BHHI), rather than holding shares in PowerStream directly. PowerStream would then become a wholly owned subsidiary of Holdco.

Promissory Note

10. The City of Barrie currently holds a \$20 million Promissory Note issued by PowerStream Inc. generating an interest rate of 5.8%. However, as a result of its past rate submission PowerStream has been directed by the OEB to reduce the interest paid on shareholder notes payable to 4.41%. PowerStream indicated that this will take effect starting in 2014.
11. It is recommended that the Treasurer in consultation with the Mayor be authorized to convert the \$20 million Promissory Note currently held by the City of Barrie, in whole or in part, with the timing of any such conversion(s) as deemed necessary and subject to no net impact on a cash flow basis to the City of Barrie. The conversion of the Promissory Note will provide a method for financing equity requests by PowerStream Inc., minimizing financial impacts to the City of Barrie.
12. It would reduce the annual interest income received by the City (or eliminate it, if the full value of the note was converted). However, in exchange the funds would be applied to investments that produce at least an 8.9% annual return. PowerStream has indicated, in recognition of the negative impact the loss in interest revenue would produce, that it would increase its annual dividend to keep shareholders "whole" on a cash flow basis until the core business generates additional dividends after rebasing.

ENVIRONMENTAL MATTERS

13. There are no environmental matters related to the recommendation.

ALTERNATIVES

14. The following alternatives are available to the Shareholder regarding the recommended motion:

Alternative #1

The Shareholder could request that PowerStream Inc. maintain its current corporate governance structure.

The proposed affiliate structure will help position PowerStream as an integrated energy services provider, as it will accommodate one or more new, unregulated businesses including the existing solar power generation business and a proposed suite metering business. The representatives of other partners in PowerStream Inc. (Markham and Vaughan) have indicated that they have or will be recommending the proposed affiliate structure to their respective Boards.

Alternative #2

The Shareholder could request that PowerStream Inc. investigate other corporate governance structures.

PowerStream Inc. and its legal counsel as well as the Shareholder representatives and their own legal counsel have reviewed an alternative governance structure and concluded that the proposed structure contained in Appendix "A" offers the most advantages.

FINANCIAL

15. The recommendation to establish a new affiliate structure for PowerStream Inc. does not have any direct financial implications for the City of Barrie as the sole shareholder in Barrie Hydro Holdings Inc. Indirectly, the establishment of this new corporate structure will permit PowerStream Inc. to capitalize on new business opportunities such as solar power generation and a new suite metering business that are unregulated by the Ontario Energy Board and can generate annual rates of return on the investment in excess of the permitted rates for PowerStream Inc. as an energy distribution company.
16. If the \$20 million note is fully converted, foregone interest revenue would be approximately \$1 million/year. PowerStream has indicated it would, subject to Board approval, increase its annual dividend to keep the shareholder "whole" on a cash flow basis until the core business generates additional dividends after rebasing.

LINKAGE TO 2010-2014 COUNCIL STRATEGIC PLAN

17. The recommendations included in this Staff Report are not specifically related to City Council's Strategic Plan.

APPENDIX "A"

Shareholder Resolution regarding Affiliate Structure

RESOLUTION OF THE CORPORATION OF THE CITY OF BARRIE
SHAREHOLDER OF BARRIE HYDRO HOLDINGS INC.
(the "City")

WHEREAS the City is the shareholder of Barrie Hydro Holdings Inc. (the "Corporation");

AND WHEREAS the Corporation is a shareholder in PowerStream Inc. ("PowerStream");

AND WHEREAS the City is party to the Amended and Restated Shareholders Agreement for PowerStream dated as of November 23, 2010 (the "Shareholder Agreement");

AND WHEREAS the Board of PowerStream has approved, on February 1, 2013, a new Affiliate Structure in the form annexed hereto as Schedule "A";

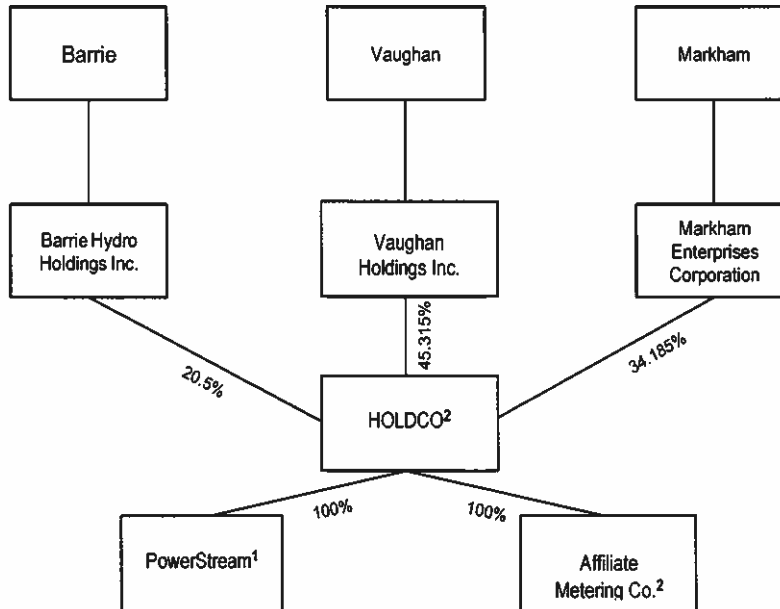
AND WHEREAS the City desires to approve certain matters related to the new Affiliate Structure;

RESOLVED THAT:

1. The definition of "Business" in Section 1.1 of the Shareholder Agreement be amended to include, as a new subheading, "energy and related services, including suite metering, to be carried out in an unregulated Affiliate (as defined in the *Business Corporations Act*) as unanimously approved from time to time by the Shareholders";
2. A municipal electrical utility under the under the *Electricity Act* (Ontario), under the *Municipal Act*, 2001 (Ontario) and under the *Business Corporations Act* (Ontario), to be known as PowerStream Holdings Inc., be established by and with the Cities of Markham and Vaughan;
3. Following the incorporation and organization of PowerStream Holdings Inc. ("Holdco") as a municipal electrical utility:
 1. the City shall transfer all of its shares in Holdco to the Corporation pursuant to a share transfer agreement in accordance with Section 85(1) of the *Income Tax Act* (Canada), and in consideration therefore, the Corporation shall issue a corresponding number of common shares to the City;
 2. the Corporation shall then transfer all of its common shares in PowerStream to Holdco in exchange for treasury common shares in Holdco, such that 20.5% of all of the issued and outstanding common shares in the capital of Holdco be owned by the Corporation, and execute and file a form T2057 Election in accordance with Section 85 of the *Income Tax Act* (Canada) in connection therewith;
 3. concurrent with the share rollover transactions described above at item 3(b), the City enter into a new unanimous shareholder agreement on terms substantially similar to the Shareholder Agreement and as approved by the President and Legal Counsel, and in accordance with the following principles:
 - a) the new definition of "Business" is utilized;

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- b) the Holdco and PowerStream Energy Services Inc. ("Affiliate MeteringCo.") are added as parties;
 - c) all of the current corporate governance, decision making and liquidity provisions as they currently pertain to PowerStream in the Shareholder Agreement shall apply *mutatis mutandis* to Holdco;
 - d) PowerStream shall continue as a wholly owned subsidiary of Holdco;
 - e) Affiliate MeteringCo. shall continue as a wholly-owned subsidiary of Holdco;
 - f) the appointment of the directors of PowerStream from time to time shall be made by the board of directors of Holdco, subject to compliance with the Affiliate Relationships Code of the Ontario Energy Board;
 - g) all of the duties and obligations of the directors of PowerStream be constrained and vested instead in the sole shareholder, Holdco, operating through its board of directors;
 - h) all of the duties and obligations of the directors of the Affiliate MeteringCo. be constrained and vested instead in the sole shareholder, Holdco, operating through its board of directors; and
4. The Mayor and City Clerk hereby authorized and directed to take all steps and execute all documents on behalf of the City as may be necessary or desirable in connection with the foregoing.

Schedule "A"



NOTES:

1. Regulated by the Ontario Energy Board (OEB)
2. New Entity