

**CITY OF VAUGHAN**

**EXTRACT FROM COUNCIL MEETING MINUTES OF JANUARY 29, 2013**

Item 3, Report No. 2, of the Finance and Administration Committee, which was adopted without amendment by the Council of the City of Vaughan on January 29, 2013.

**3                    POWERSTREAM REQUEST TO POSTPONE SHAREHOLDER DEBT**

**The Finance and Administration Committee recommends approval of the recommendation contained in the following report of the Commissioner of Finance & City Treasurer, dated January 21, 2013:**

**Recommendation**

The Commissioner of Finance & City Treasurer recommends:

1. That the Mayor and Clerk be authorized to execute the Postponement Agreement with the Bank of Montreal for backstop financing; and
2. That the Mayor and Clerk be authorized to execute a similar Postponement Agreement in relation to the new debenture issue.

**Contribution to Sustainability**

Not applicable.

**Economic Impact**

There is no economic impact associated with this report. Currently there is a postponement agreement in place for PowerStream's financing arrangement with the Toronto Dominion Bank, as well as a PowerStream debenture issued in 2012. Postponing the municipal promissory notes allows PowerStream to obtain lower borrowing rates, which benefits both PowerStream and the shareholders.

Staff has been advised by PowerStream staff that the extension or repayment of the City's Promissory note on the expiry date of May 31, 2024 will not be affected by either of the postponement agreements contemplated in this report.

**Communications Plan**

Not applicable.

**Purpose**

The purpose of this report is to obtain Council authority to execute the Postponement Agreement with the Bank of Montreal for PowerStream's backstop financing and a similar Postponement Agreement in relation to the new debenture issue.

**Background Analysis and Options**

In 2000, the assets and liabilities of Vaughan Hydro Commission were transferred to new Hydro Vaughan corporations incorporated under the *Business Corporations Act (Ontario)*, pursuant to section 142 of the *Electricity Act, 1998*. The majority of the assets were transferred to Hydro Vaughan Distribution Inc. (HVDI) which was allocated to equity and a promissory note from HVDI to the City of Vaughan for \$45,000,000.

On June 1, 2004 PowerStream was formed upon the amalgamation of Hydro Vaughan Distribution Inc., Markham Hydro Distribution Inc. and Richmond Hill Hydro Inc. (jointly owned by

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Vaughan and Markham) As part of the amalgamation agreement, the City of Vaughan and the Town of Markham agreed to adjust the capital structure of their respective utilities insofar that PowerStream's debt to equity ratio would not exceed 65:35 as a percentage of total capital. Prior to closing, in order to ensure that both of the shareholders were treated equally, this adjustment was achieved with the approval of both shareholders through the exchange of common shares for amendments to the promissory notes. In the City of Vaughan's case, this resulted in the Amended and Restated Promissory Note, dated June 1, 2004 in the amount of \$78,236,285 in favour of the City of Vaughan. The note provides for an interest rate of 5.58% and payment is due to the City of Vaughan on May 31, 2024.

On January 8, 2013, PowerStream Inc. issued a notice to each of its shareholders advising of the upcoming Toronto Dominion Commercial debenture for \$50 million coming due in February 2013, which PowerStream intends to refinance. In the event that there is market volatility at the time the TD debenture comes due, PowerStream is putting a financial backstop with BMO Nesbitt Burns in place to ensure that PowerStream has access to capital to refinance the TD debenture.

Included in the January 8, 2013 notice from PowerStream is a request that each of the City of Vaughan, Town of Markham and City of Barrie sign a postponement agreement with BMO, effectively subordinating their promissory notes to the backstop financing. The postponement agreement is essentially the same as the postponement agreement approved by Council in June of 2012. As the promissory note is held by the City of Vaughan, not Vaughan Holdings Inc., the City must authorise the postponement. In addition, PowerStream notes in their letter that when the TD debenture is refinanced, the City will have to sign a similar postponement agreement in relation to the new debenture issue. The details regarding the postponement agreement for the new debenture issue are not known at this time.

Vaughan's promissory note was subordinate to the TD debenture, pursuant to section 4.1 of the Amended and Restated Promissory Note and Vaughan further agreed in section 4.2. to subordinate its debt to other debt issued by PowerStream from time to time. Although these clauses requiring subordination are included in the Amended and Restated Promissory Note issued by PowerStream, Vaughan, Markham and Barrie sought an outside legal opinion in this regard and based on legal advice, the postponement agreements require Council approval.

#### **Relationship to Vaughan Vision 2020**

Not applicable.

#### **Regional Implications**

No Implications.

#### **Conclusion**

Staff recommends that the Mayor and Clerk be authorized to execute the Bank of Montreal postponement agreement for backstop financing. It is also recommended the Mayor and Clerk be authorized to execute the postponement agreement for PowerStream's new debenture issue refinancing the TD debenture.

#### **Attachments**

Attachment 1 – Postponement Agreement

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**Report prepared by:**

Barbara Cribbett, CMA  
Commissioner of Finance & City Treasurer

(A copy of the attachments referred to in the foregoing have been forwarded to each Member of Council and a copy thereof is also on file in the office of the City Clerk.)