

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF JUNE 25, 2013

Item 43, Report No. 32, of the Committee of the Whole, which was adopted without amendment by the Council of the City of Vaughan on June 25, 2013.

43 POWERSTREAM CORPORATE STRUCTURE AND AFFILIATE BUSINESS

The Committee of the Whole recommends approval of the recommendation contained in the following report of the Interim City Manager, dated June 18, 2013:

Recommendation

The Interim City Manager recommends:

- 1) That the following resolution be adopted;

WHEREAS the City of Vaughan (the City) is the shareholder of Vaughan Holdings Inc. (the "Corporation" or VHI);

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;

AND WHEREAS the Board of PowerStream has recommended that the Shareholders approve the implementation of a Suite Metering Business, to be carried out in an unregulated affiliate;

AND WHEREAS VHI supports PowerStream's development of a Suite Metering Business;

AND NOW THEREFORE BE IT 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 *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 municipalities of Barrie, Markham and Vaughan;
3. Following the incorporation and organization of ("Holdco") as a municipal electrical utility:
 - (a) 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;
 - (b) the Corporation shall then transfer all of its common shares in PowerStream to Holdco in exchange for treasury common shares in Holdco, such that 45.315 percent of all of the issued and outstanding common shares in the capital of Holdco be owned by the Corporation, and execute and file form T2057 Election in accordance with Section 85 of the *Income Tax Act* (Canada) in connection therewith;

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- (c) concurrent with the share rollover transactions described above in 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 Interim City Manager and Commissioner of Legal and Administrative Services/City Solicitor, and in accordance with the following principles:
 - (a) the new definition of “Business” is utilized;
 - (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. Vaughan supports PowerStream’s development of a suite metering business in an unregulated affiliate;
- 5. Vaughan agrees that VHI provide its pro-rata share of the equity financing for the Suite Metering Business, up to a maximum of \$5,437,800.
- 2) That the Mayor and City Clerk be 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.

Contribution to Sustainability

Not applicable

Economic Impact

There are no economic impacts to the City of Vaughan associated with this report. The investment into the suite metering business in PowerStream’s unregulated affiliate will be funded by VHI.

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Communications Plan

Not Applicable

Purpose

The purpose of this report is to seek approval from Council for the establishment of a new corporate structure for PowerStream, including incorporation of a new holding company to hold all of the shares of PowerStream, to be owned by the Shareholders, Vaughan Holdings Inc. (VHI, Markham Enterprises Corporation (MEC) and Barrie Hydro Holdings Inc. (BHHI), and the incorporation and establishment of an unregulated affiliate corporation. As the sole shareholder of VHI, the City's approval is required for the new corporate structure. In addition, VHI requires the approval of the City to invest in the proposed suite metering business which will be operated by the unregulated affiliate corporation.

Background - Analysis and Options

The Board of Directors of PowerStream approved a new corporate structure at its Board meeting on February 1, 2013. The new corporate structure, shown on Schedule A requires the incorporation of a new holding company, to hold all of the shares of PowerStream and any additional affiliate companies established for new businesses. The consent of the Shareholders is required.

A new Holdco will be established to hold all of the shares of PowerStream and to hold all of the shares of any other corporate entities established for new business purposes. The Shareholders will hold all of the shares of this new Holdco, in the same proportions that they currently hold shares of PowerStream, rather than holding shares of PowerStream directly. PowerStream would then become a wholly owned subsidiary of Holdco. (See Schedule A) The governance arrangements currently in place pursuant to the PowerStream shareholders agreement would migrate to the Holdco level.

PowerStream has proposed an expansion of their proven suite metering initiative, which would be placed in and operated from the unregulated affiliate company. Suite Metering/Sub-Metering refers to the installation of individual unit meters behind a common bulk meter. PowerStream established a suite metering business in 2007 within their core LDC business to provide suite metering service to multi-unit buildings in their service territory. PowerStream has prepared a business plan that supports the expansion of their proven suite metering initiative beyond PowerStream's service territory.

The equity investment from VHI would be in tranches over the next 4 years and would be aligned to signed contracts with new customers, resulting in a relatively low risk and attractive financial returns.

The VHI Board of Directors approved the new PowerStream structure and VHI's equity investment of \$5,437,800 into the suite metering business operating within the new unregulated affiliate Corporation on June 10, 2013. The City's approval of both the new PowerStream structure and VHI's equity investment is required as per the Amended and Restated Shareholders Agreement for PowerStream dated as of November 23, 2010 and the Vaughan Holdings Inc. Unanimous Shareholders Declaration dated as of November 8, 2004.

Conclusion

Staff recommend that the resolution establishing a new corporate structure for PowerStream, including incorporation of a new holding company to hold all of the shares of PowerStream, to be

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owned by the Shareholders, Vaughan Holdings Inc.(VHI), Markham Enterprises Corporation (MEC), and Barrie Hydro Holdings Inc.(BHHL), to facilitate the establishment of a new suite metering business in an unregulated affiliate corporation, and an equity investment of up to \$5,437,800 from VHI into the suite metering initiative be adopted.

Attachments

Schedule A – New PowerStream Corporate Structure

Report prepared by:

Barbara Cribbett
Interim City Manager

(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.)

COMMITTEE OF THE WHOLE – JUNE 18, 2013

POWERSTREAM CORPORATE STRUCTURE AND AFFILIATE BUSINESS

Recommendation

The Interim City Manager recommends:

- 1) That the following resolution be adopted;

WHEREAS the City of Vaughan (the City) is the shareholder of Vaughan Holdings Inc. (the "Corporation" or VHI);

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;

AND WHEREAS the Board of PowerStream has recommended that the Shareholders approve the implementation of a Suite Metering Business, to be carried out in an unregulated affiliate;

AND WHEREAS VHI supports PowerStream's development of a Suite Metering Business;

AND NOW THEREFORE BE IT 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 *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 municipalities of Barrie, Markham and Vaughan;
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- (c) concurrent with the share rollover transactions described above in 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 Interim City Manager and Commissioner of Legal and Administrative Services/City Solicitor, and in accordance with the following principles:
 - (a) the new definition of "Business" is utilized;
 - (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. Vaughan supports PowerStream's development of a suite metering business in an unregulated affiliate;
- 5. Vaughan agrees that VHI provide its pro-rata share of the equity financing for the Suite Metering Business, up to a maximum of \$5,437,800.
- 2) That the Mayor and City Clerk be 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.

Contribution to Sustainability

Not applicable

Economic Impact

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Communications Plan

Not Applicable

Purpose

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Background - Analysis and Options

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Conclusion

Staff recommend that the resolution establishing a new corporate structure for PowerStream, including incorporation of a new holding company to hold all of the shares of PowerStream, to be owned by the Shareholders, Vaughan Holdings Inc.(VHI), Markham Enterprises Corporation (MEC), and Barrie Hydro Holdings Inc.(BHHI), to facilitate the establishment of a new suite metering business in an unregulated affiliate corporation, and an equity investment of up to \$5,437,800 from VHI into the suite metering initiative be adopted.

Attachments

Schedule A – New PowerStream Corporate Structure

Report prepared by:

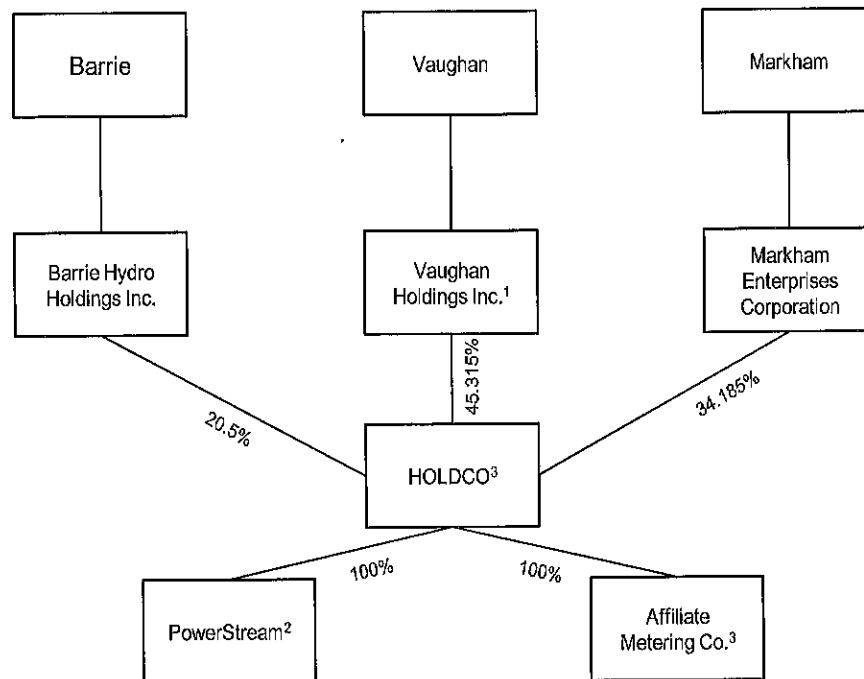
Barbara Cribbett
Interim City Manager

Respectfully submitted,

Barbara Cribbett
Interim City Manager

SCHEDULE A

PROPOSAL 1



NOTES:

1. Consider replacing Vaughan Holdings Inc. by Hydro Vaughan Holdings Inc. or Hydro Vaughan Energy Corporation by winding up VHI into one of those two corporations.
2. Regulated by Ontario Energy Board ("OEB").
3. New entity.

gowlings