



Council Minutes

(Special Meeting)

November 19 and 20, 2015, 7:00 PM

Council Chamber, Anthony Roman Markham Civic Centre

Meeting No. 23

Alternate formats for this document are available upon request

Roll Call

Mayor Frank Scarpitti, Deputy Mayor Jack Heath, Regional Councillor Jim Jones, Regional Councillor Joe Li, Regional Councillor Nirmala Armstrong, Councillor Valerie Burke, Councillor Alan Ho, Councillor Don Hamilton, Councillor Karen Rea, Councillor Colin Campbell, Councillor Amanda Collucci, Councillor Logan Kanapathi, Councillor Alex Chiu.

Staff

Andy Taylor, Chief Administrative Officer
Catherine Conrad, City Solicitor
Jim Baird, Commissioner of Development Services
Trinela Cane, Commissioner of Corporate Services
Brenda Librecz, Commissioner of Community and Fire Services
Joel Lustig, Treasurer
John Wong, Technology Support Specialist
Raj Raman, Mayor's Chief of Staff
Dennis Flaherty, Director of Communications and Community Relations
Kimberley Kitteringham, City Clerk
Martha Pettit, Deputy City Clerk
Don Taylor, Manager, Executive Operations
Graham Seaman, Director, Sustainability
Mark Visser, Senior Manager, Financial Strategy & Investment
Alida Tari, Council/Committee Coordinator

The Special Meeting of Council convened at 7:09 PM on November 19, 2015 in the Council Chamber. Mayor Frank Scarpitti presided.

On behalf of Council, Mayor Frank Scarpitti welcomed Mayor Maurizio Bevilacqua from the City of Vaughan and Mayor Jeff Lehman from the City of Barrie to the meeting.

At 11:43 p.m. on November 19, 2015, Council passed a motion to waive Section 3.28 of Procedural By-law 2001-1 allowing the meeting to continue further than 12:01 a.m. on November 19, 2015. The motion moved by Regional Councillor Nirmala Armstrong and Regional Councillor Jim Jones was carried by a two-thirds vote of the Members present.

1. DISCLOSURE OF PECUNIARY INTEREST

- (1) None declared.

2. PRESENTATIONS

- (1) PRESENTATIONS
- PROPOSED POWERSTREAM INC. MERGER
WITH HORIZON UTILITIES CORPORATION
AND ENERSOURCE HYDRO MISSISSAUGA INC.
AND PURCHASE OF HYDRO ONE BRAMPTON NETWORKS INC. (13.7)

PowerStream Update - M&A Transaction
(November 19, 2015 Special Council Meeting)
[Presentation](#)

Mr. Brian Bentz, President and Chief Executive Officer, PowerStream Inc., provided a PowerPoint presentation regarding the proposed PowerStream – Merger/Acquisition Transaction. He provided a brief history of PowerStream and how electricity has been delivered since its inception. He highlighted some of the benefits of merging hydro utilities.

Staff Presentation - Proposed Merger of Powerstream,
Enersource and Horizon, and Acquisition of Brampton Hydro
(November 19, 2015 Special Council Meeting)
[Presentation](#)

Mr. Andy Taylor, Chief Administration Officer, City of Markham, provided a PowerPoint presentation regarding the proposed merger of PowerStream, Enersource and Horizon, and the acquisition of Brampton Hydro. He summarized some of the synergies and potential risks of the merger, and the annual savings that could be achieved should the merger proceed.

3. DELEGATIONS

(1) DELEGATIONS

- PROPOSED POWERSTREAM INC. MERGER
WITH HORIZON UTILITIES CORPORATION
AND ENERSOURCE HYDRO MISSISSAUGA INC.
AND PURCHASE OF HYDRO ONE BRAMPTON NETWORKS INC. (13.7)

Moved by Councillor Valerie Burke

Seconded by Councillor Alex Chiu

That following delegations regarding "Proposed Powerstream Inc. Merger with Horizon Utilities Corporation and Enersource Hydro Mississauga Inc. and Purchase of Hydro One Brampton Networks Inc." be received:

1. Mary Zhao, Markham Ward 6 Seniors Association - in favour of the merger. She submitted a petition containing approximately 226 signatures in favour of the merger.
2. Meiying Lin - in favour of the merger.
3. Mayor Jeff Lehman, City of Barrie - in favour of the merger.
4. Mayor Maurizio Bevilacqua, City of Vaughan - in favour of the merger.
5. Annie Leung, Cherish Integrated Services - in favour of the merger.
6. Marg Ferguson - in opposition to the merger.
7. Bud Purves, York University Development Corporation - in favour of the merger.
8. Tammy Armes, Representative of Cathedral Town Ratepayer Association - in opposition to the merger.
9. Mayrose Gregorios - in opposition to the merger.
10. Daisy Wai, Ad2000 And Beyond Advertising Inc. - in favour of the merger.
11. Marg Ferguson, on behalf of Marilyn Ginsburg - in opposition to the merger.
12. Antoinette Bozac – in favour of the merger.
13. Robert Mok, on behalf of Eileen Liasi - in opposition to the merger.
14. Robert Mok, on behalf of Downtown Markham Ratepayers Association - in opposition to the merger.
15. John Webster - in favour of the merger.
16. Jim Kwan - in opposition to the merger.
17. Stephen McLeod - in favour of the merger.
18. Charles Jiang - in opposition to the merger.
19. Michael Gannon – in opposition to the merger.
20. Alick Siu - in favour of the merger.
21. Kenny Wan, Richmond Hill & Markham Chinese Business Association - in favour of the merger.
22. Cecilia Ip, Maccil Marketing Inc., - provided questions related to the merger.
23. Benedict Leung, Leung & Company - in favour of the merger.
24. Shakir Rehmatullah, Flato Development - in favour of the merger.

Carried

Moved by Councillor Don Hamilton
Seconded by Councillor Valerie Burke

That Council call the question.

Motion was lost by a 2/3 vote of Council Members present

**4. RECOMMENDATION FROM SPECIAL GENERAL COMMITTEE
(NOVEMBER 11, 2015)**

- (1) PROPOSED POWERSTREAM INC. MERGER
WITH HORIZON UTILITIES CORPORATION
AND ENERSOURCE HYDRO MISSISSAUGA INC.
AND PURCHASE OF HYDRO ONE BRAMPTON NETWORKS INC. (13.7)

PowerStream Update - M&A Transaction
(Presented at the November 11, 2015 Special General Committee)
[Presentation](#)

Navigant Consulting Ltd.
- Powerstream Merger & Acquisition: Decision Support
(Presented at the November 11, 2015 Special General Committee)
[Presentation](#)

Staff Presentation - Proposed Merger of Powerstream,
Enersource and Horizon, and Acquisition of Brampton Hydro
(Presented at the November 11, 2015 Special General Committee)
[Presentation](#)

Report - Powerstream Merger
(Presented at the November 11, 2015 Special General Committee)
[Report to Nov. 11 GC](#) [Appendix 1](#) [Appendix 2](#)

Memorandum - Navigant Consulting Ltd.
(Written confirmation of additional information provided verbally at the
November 11, 2015 Special General Committee Meeting)
[Memorandum](#)

Report – Powerstream Merger

[Recommendation Revised on Nov. 19, 2015 Report](#) [Appendix 1](#) [Appendix 2](#)

Moved by Councillor Amanda Collucci

Seconded by Regional Councillor Nirmala Armstrong

- 1) That the presentation by Mr. Brian Bentz entitled “PowerStream Update – M&A Transaction” at the November 11, 2015 Special General Committee meeting, be received; and,
- 2) That the presentation by Mr. Benjamin Grunfeld of Navigant Consulting Ltd. entitled “PowerStream Merger and Acquisition: Decision Support” at the November 11, 2015 Special General Committee meeting, be received; and,
- 3) That the presentation by Mr. Andy Taylor, Chief Administration Officer entitled “Proposed Merger of PowerStream, Enersource and Horizon, and Acquisition of Brampton Hydro” at the November 11, 2015 Special General Committee meeting, be received; and,
- 4) That the deputations provided by Michael Gannon, Marilyn Ginsburg, Robert Mok, Wayne Chen and Mayrose Gregorios at the November 11, 2015 Special General Committee meeting, be received; and,
- 5) That the written confirmation of additional information provided verbally at the November 11, 2015 Special General Committee Meeting be received; and,
- 6) That the report titled "PowerStream Merger", with recommendations updated on November 19, 2015, be received; and further,
- 7) That Council adopt the following updated recommendation:

"Whereas Markham Enterprises Corporation (“MEC”) and The Corporation of the City of Markham (the “City”), Vaughan Holdings Inc. (“VHI”), The Corporation of The City of Vaughan, Barrie Hydro Holdings Inc. (“BHHI”), and The Corporation of the City of Barrie, PowerStream Holdings Inc. and PowerStream Inc. are parties to the Unanimous Shareholders’ Agreement for PowerStream Holdings Inc., dated November 1, 2013 (the “PowerStream Shareholder Agreement”); and,

Whereas MEC owns 34.185% of the shares of PowerStream Holdings Inc.; and,

Whereas MEC is a wholly owned holding company of the City, incorporated under the provisions of the *Electricity Act, 1998 (Ontario)*; and,

Whereas the Board of Directors of PowerStream has approved and has recommended to its shareholders the approval of a merger of the local hydro distribution companies of PowerStream Holdings Inc. (“PowerStream”), Horizon Holdings Inc. (“Horizon”), and Enersource Holdings Inc., a holding company to be established by Enersource Corporation (“Enersource”); and,

Whereas the Board of Directors of PowerStream has approved and has recommended to its shareholders the purchase of Hydro One Brampton Networks Inc. (“Brampton”), conditional upon the completion of both the Merger Participation Agreement and the Share Purchase Agreement, in accordance with the terms set out in both agreements; and,

Whereas the PowerStream Shareholders’ Agreement requires unanimous approval by its Shareholders for transactions including the merger and the acquisition of Brampton; and,

Whereas the merger of PowerStream, Horizon, Enersource and acquisition of Brampton will form a new organization currently referred to as “MergeCo”; and,

Whereas MEC, together with VHI and BHHI, retained independent consulting and legal services as follows:

- Navigant Consulting Ltd., on the proposed Transaction ;
- BDR NorthAmerica Inc., on the proposed Transaction;
- Gowlings LLP, on the proposed governance structure and the draft agreements:
 - Merger Participation Agreement;
 - Unanimous Shareholders’ Agreement; and
 - Share Purchase Agreement; and,

Whereas the City, at its General Committee meeting on October 7, 2015, received presentations and reports from:

- Navigant Consulting Ltd.
- PowerStream
- City Staff; and,

Whereas the merger and the acquisition (the “Transaction”) require a significant equity contribution of \$43-47.3M, depending on the amount of closing costs and adjustments; and,

Whereas the City holds a promissory note in the amount of \$67.9M and the interest rate approved by the OEB for shareholder promissory notes will be reduced from 5.58% to approximately 4.54%; and,

Whereas the dividends forecasted for the core business, are expected to increase; and,

Whereas the MergeCo dividend policy carries incremental uncertainty as compared to the PowerStream dividend policy; and,

Whereas under the proposed terms of the merger, dividend income and equity return from PowerStream's solar assets are segregated for the benefit of the shareholders of PowerStream, as set out in the draft PowerStream Solar Business Services and Indemnity Agreement Indicative Term Sheet; and,

Whereas the Net Present Value of the solar dividends in MergeCo will be decreased by approximately \$1M; and,

Whereas the financial modeling and the analysis indicate a return on the incremental investment greater than 5%; and,

Whereas, although staff have negotiated significant amendments to the Transaction to reduce associated risks, the investment is not financially compelling given the remaining risk and the investment criteria of both MEC and the City of Markham; and,

Whereas the Transaction can not be recommended by City staff solely on an investment basis; and,

Whereas the Transaction will deliver meaningful benefits to PowerStream customers beginning in year six after the merger, estimated at an average of \$40/year for all customers and \$25-\$30 on the average residential utility bill (representing approximately 5% to 9% of the distribution portion of the utility bill), in the form of reductions in the cost increases on the distribution portion of such bills;

Now therefore be it resolved:

- 1) That subject to conditions set out in clauses 1 and 2 hereof, The Corporation of the City of Markham, in its capacity as a shareholder of MEC, approves:
 - a. the merger of PowerStream, Horizon and Enersource, substantially in accordance with the draft Merger Participation Agreement dated October 9, 2015 and the Unanimous Shareholders' Agreement dated October 9, 2015;

- b. The purchase of Hydro One Brampton Networks Inc., substantially in accordance with the terms of the Share Purchase Agreement dated October 8, 2015, between Her Majesty the Queen in Right of Ontario as represented by the Minister of Energy (the “Province”) and Brampton Distribution Holdco Inc. as the vendor, and Horizon, Enersource and PowerStream as purchaser; and,
- 2) That the completion of the merger and the purchase of Brampton be conditional on the following:
- a) The terms of the Transaction being substantially as set out in the Merger Participation Agreement dated October 9, 2015, the Share Purchase Agreement dated October 8, 2015, the Unanimous Shareholders’ Agreement dated October 9, 2015 and the draft PowerStream Solar Business Services and Indemnity Agreement dated October 5, 2015.
 - b) Amendments to the agreements in a form satisfactory to the Chief Administrative Officer as follows:
 - i. Unanimous shareholder approval required for mergers and acquisitions until 75% of the targeted synergy savings have been achieved;
 - ii. Extension of the term of the Shareholder promissory notes for 20 years from 2016 with right to extend for a further 20 years, at the interest rate approved by the Ontario Energy Board;
 - iii Improvements to section 8.3 of the Unanimous Shareholders’ Agreement to achieve clarity on the tax mitigation strategies for first and subsequent sales of shares in MergeCo that trigger departure and transfer taxes;
 - c) That a financial back stop be negotiated with one or more of the municipal partners participating in this Transaction, on terms satisfactory to the Chief Administrative Officer;
 - d) That the equity investment required to complete the merger and acquisition be no greater than \$47.3M;
 - e) Confirmation from the Province of Ontario, satisfactory to the Chief Administrative Officer and the City Solicitor, with respect to the terms and rates of shareholder loans to LDC’s;
 - f) Approval of the Strategic Plan by the Board of Directors of MEC; and,
- 3) That the City work with MEC staff and other shareholders, to reduce the equity contribution required for the Transaction to occur, including but not limited to a formal, municipally led sale of 10% of MEC’s shareholding in PowerStream with consideration for MergeCo’s value; and,
- 4) That in the event that the sale is not successful, staff shall report back with alternate funding options, including funding options that will not require funding from the City of Markham; and,

- 5) That the Mayor and Clerk be authorized and directed to execute the Merger Participation Agreement, the Unanimous Shareholders' Agreement and the PowerStream Solar Business Services and Indemnity Agreement based on the draft Indicative Term Sheet, subject to any modifications or amendments approved by the Chief Administrative Officer; and,
- 6) That the Mayor and Clerk be authorized and directed to execute and deliver all other documents, notices, articles, certificates to be signed and or delivered under or in connection with the Merger Participation Agreement, the Unanimous Shareholders' Agreement or Share Purchase Agreement or to take any action(s) required to give effect to the foregoing resolutions; and further,
- 7) That staff be authorized to do and to take any action necessary to give effect to these resolutions, including the execution of any documents."

Carried by a recorded vote (7:6)
(See following recorded vote)

YEAS: Councillor Alan Ho, Regional Councillor Nirmala Armstrong, Regional Councillor Jim Jones, Mayor Frank Scarpitti, Councillor Colin Campbell, Councillor Amanda Collucci, Councillor Alex Chiu. (7)

NAYS: Councillor Valerie Burke, Councillor Don Hamilton, Councillor Karen Rea, Deputy Mayor Jack Heath, Regional Councillor Joe Li, Councillor Logan Kanapathi. (6)

5. COMMUNICATIONS

- (1) COMMUNICATIONS
- PROPOSED POWERSTREAM INC. MERGER
WITH HORIZON UTILITIES CORPORATION
AND ENERSOURCE HYDRO MISSISSAUGA INC.
AND PURCHASE OF HYDRO ONE BRAMPTON NETWORKS INC. (13.7)
[Communications](#)

Moved by Councillor Valerie Burke
Seconded by Councillor Alex Chiu

That the following communications providing comments regarding "Proposed Powerstream Inc. Merger with Horizon Utilities Corporation and Enersource Hydro Mississauga Inc. and Purchase of Hydro One Brampton Networks Inc." be received:

1. Bill Kidd.
2. Eric C. Tappenden, President/Owner, Chapel Ridge Funeral Home.
3. Gary Scholl, Chairman & CEO, POI Business Interiors.
4. Doug Worsley.
5. Daisy Wai, President, Ad2000 And Beyond Advertising Inc.
6. Angelica Gutierrez.
7. Mary Ann Proulx, Executive Director, Citizens for Affordable Housing, York Region.
8. Compass Chung.
9. Stephen McLeod.
10. Richard Cunningham, President & CEO, Markham Board of Trade.
11. Amarjiet Singh.
12. Santosh Kaur.
13. Allan O'Dette, President & CEO, Ontario Chamber of Commerce.
14. Jasdeep Singh.
15. Eira Keay.
16. Nick Konstantinou, Facility Leader, GE Digital Energy
17. Jasvinder P. Singh, HomeLife Miracle Realty Ltd.
18. Ajit Kaur.
19. Raj Kumari Kashyap.
20. Karen Ng

Carried

6. CONFIRMATORY BY-LAW

Moved by Councillor Alex Chiu

Seconded by Councillor Valerie Burke

That By-law 2015-155 be given three readings and enacted.

Three Readings

BY-LAW 2015-155 A BY-LAW TO CONFIRM THE PROCEEDINGS OF THE SPECIAL COUNCIL MEETING OF NOVEMBER 19, 2015.

[By-law](#)

Carried

7. ADJOURNMENT

Moved by Councillor Alex Chiu

Seconded by Councillor Valerie Burke

That the Council Meeting be adjourned at 1:43 AM on November 20, 2015.

Carried

Kimberley Kitteringham
City Clerk

Frank Scarpitti
Mayor

(Signed)