

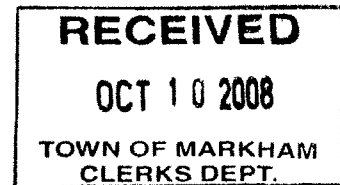


Clerk's Department
2141 Major Mackenzie Drive
Vaughan, Ontario
Canada L6A 1T1

Tel (905) 832-8504
Fax (905) 832-8535

October 7, 2008

Ms. Kimberley Kitteringham, Town Clerk
The Town of Markham
101 Town Centre Blvd.
Markham, ON
L3R 9W3



Dear Ms. Kitteringham:

RE: POWERSTREAM MERGER WITH BARRIE HYDRO

I am writing to advise you that Vaughan Council, at its meeting held on October 2, 2008, adopted the following resolution:

WHEREAS PowerStream Inc. is owned by Markham Enterprises Corporation and Vaughan Holdings Inc.;

AND WHEREAS Vaughan Holdings Inc. is owned by The Corporation of the City of Vaughan;

AND WHEREAS PowerStream Inc. wishes to merge its businesses with that of Barrie Hydro Distribution Inc. following and conditional upon Ontario Energy Board approval of such merger (the "Transaction");

AND WHEREAS Vaughan Holdings Inc., Markham Enterprises Corporation and Barrie Hydro Holdings Inc. have entered into a letter of intent (the "Letter of Intent") dated June 12, 2008, as amended, with respect to the Transaction;

AND WHEREAS in accordance with Section 2.06(1)(c) of the current Shareholders Agreement between the shareholders of PowerStream Inc., the shareholders of PowerStream Inc., and The Corporation of the Town of Markham and The Corporation of the City of Vaughan must give their consent in writing to the Transaction, all of whom are hereinafter referred to for convenience as the "Shareholders of the Corporation";

AND WHEREAS the Shareholders of the Corporation wish to approve the Transaction and the entering into of a merger agreement between PowerStream Inc. and Barrie Hydro Distribution Inc., substantially in the form of the draft merger agreement approved by Vaughan Holdings Inc.;

AND WHEREAS the Shareholders of the Corporation wish to approve the entering into of a Shareholders Agreement between the Shareholders of the Corporation, The Corporation of the City of Barrie, Barrie Hydro Holdings Inc. and PowerStream Inc., substantially in the form of the draft shareholders agreement attached as Schedule 1.1. to the Merger Agreement ("the Shareholders Agreement");

Ms. Kimberley Kitteringham, Town Clerk
The Town of Markham
Page 2
October 7, 2008

AND WHEREAS the Shareholders of the Corporation have been informed of the principal terms and provisions of the Merger Agreement and the Shareholders Agreement and it is in the interests of the Shareholders of the Corporation and PowerStream Inc. to enter into the Merger Agreement and the Shareholders Agreement and to approve the Transaction contemplated thereby;

Now therefore it is resolved that:

THAT the terms of the Transaction contemplated by the Merger Agreement approved by Vaughan Holdings Inc., subject to any modifications or amendments approved by the City Manager, or Deputy City Manager/Commissioner of Finance & Corporate Services, be and are hereby approved and that PowerStream and Vaughan Holdings Inc. be authorized to enter into and deliver the Merger Agreement and the Shareholders Agreement, in a form satisfactory to the City Manager, or Deputy City Manager/Commissioner of Finance & Corporate Services and perform, observe and comply with its obligations under the Merger Agreement.

THAT the Mayor and Clerk are hereby authorized and directed to sign the Merger Agreement and the Shareholders Agreement and in doing so agree to and approve any amendments to the Merger Agreement and the Shareholders Agreement subsequent to the date of this resolution:

THAT the Mayor and Clerk are hereby authorized and directed to sign and/or dispatch or deliver all other documents, notices, certificates to be signed and/or dispatched or delivered under or in connection with the Merger Agreement or the Shareholders Agreement or to take any action deemed necessary by the City Manager or Deputy City Manager/Commissioner of Finance & Corporate Services;

THAT the City Manager, or Deputy City Manager/Commissioner of Finance & Corporate Services is hereby authorized, and directed to sign and/or dispatch or deliver any other documents, notices, certificates required to be signed and/or dispatched or delivered under or in connection with the Merger Agreement and the Shareholders Agreement and take any other action necessary to give effect to the Merger Agreement.

THAT the City of Vaughan approves a Dividend Policy for the merged corporation to be incorporated into the proposed Shareholders Agreement, generally in the form attached (Attachment 1); and

THAT the City of Vaughan approves an amendment to Section 2.06 of the proposed Shareholders Agreement to require unanimous shareholder approval, in all circumstances, for each of the items listed in Section 2.06(1).

Attached for your information is **Minute No.209**, regarding the above noted matter.

Sincerely,


for Jeffrey A. Abrams
City Clerk

Attachment:
Extract
Attachment 1 – Dividend Policy

JAA/pa

CITY OF VAUGHAN

EXTRACT FROM SPECIAL COUNCIL MEETING MINUTES OCTOBER 2, 2008

209. **POWERSTREAM MERGER WITH BARRIE HYDRO**
(Item 2)

MOVED by Councillor Carella
seconded by Councillor Di Vona

That the recommendation contained in the following report of the City Manager, Deputy City Manager/Commissioner of Finance & Corporate Services and the Commissioner of Legal and Administrative Services/City Solicitor, be approved:

CARRIED

Recommendation

The City Manager, Deputy City Manager/Commissioner of Finance & Corporate Services and the Commissioner of Legal and Administrative Services/City Solicitor recommends:

WHEREAS PowerStream Inc. is owned by Markham Enterprises Corporation and Vaughan Holdings Inc.;

AND WHEREAS Vaughan Holdings Inc. is owned by The Corporation of the City of Vaughan;

AND WHEREAS PowerStream Inc. wishes to merge its businesses with that of Barrie Hydro Distribution Inc. following and conditional upon Ontario Energy Board approval of such merger (the "Transaction");

AND WHEREAS Vaughan Holdings Inc., Markham Enterprises Corporation and Barrie Hydro Holdings Inc. have entered into a letter of intent (the "Letter of Intent") dated June 12, 2008, as amended, with respect to the Transaction;

AND WHEREAS in accordance with Section 2.06(1)(c) of the current Shareholders Agreement between the shareholders of PowerStream Inc., the shareholders of PowerStream Inc., and The Corporation of the Town of Markham and The Corporation of the City of Vaughan must give their consent in writing to the Transaction, all of whom are hereinafter referred to for convenience as the "Shareholders of the Corporation";

AND WHEREAS the Shareholders of the Corporation wish to approve the Transaction and the entering into of a merger agreement between PowerStream Inc. and Barrie Hydro Distribution Inc., substantially in the form of the draft merger agreement approved by Vaughan Holdings Inc.;

AND WHEREAS the Shareholders of the Corporation wish to approve the entering into of a Shareholders Agreement between the Shareholders of the Corporation, The Corporation of the City of Barrie, Barrie Hydro Holdings Inc. and PowerStream Inc., substantially in the form of the draft shareholders agreement attached as Schedule 1.1. to the Merger Agreement ("the Shareholders Agreement");

AND WHEREAS the Shareholders of the Corporation have been informed of the principal terms and provisions of the Merger Agreement and the Shareholders Agreement and it is in the interests of the Shareholders of the Corporation and PowerStream Inc. to enter into the Merger Agreement and the Shareholders Agreement and to approve the Transaction contemplated thereby;

Now therefore it is resolved that:

CITY OF VAUGHAN

EXTRACT FROM SPECIAL COUNCIL MEETING MINUTES OCTOBER 2, 2008

Minute No. 209 – Page 2

THAT the terms of the Transaction contemplated by the Merger Agreement approved by Vaughan Holdings Inc., subject to any modifications or amendments approved by the City Manager, or Deputy City Manager/Commissioner of Finance & Corporate Services, be and are hereby approved and that PowerStream and Vaughan Holdings Inc. be authorized to enter into and deliver the Merger Agreement and the Shareholders Agreement, in a form satisfactory to the City Manager, or Deputy City Manager/Commissioner of Finance & Corporate Services and perform, observe and comply with its obligations under the Merger Agreement.

THAT the Mayor and Clerk are hereby authorized and directed to sign the Merger Agreement and the Shareholders Agreement and in doing so agree to and approve any amendments to the Merger Agreement and the Shareholders Agreement subsequent to the date of this resolution:

THAT the Mayor and Clerk are hereby authorized and directed to sign and/or dispatch or deliver all other documents, notices, certificates to be signed and/or dispatched or delivered under or in connection with the Merger Agreement or the Shareholders Agreement or to take any action deemed necessary by the City Manager or Deputy City Manager/Commissioner of Finance & Corporate Services;

THAT the City Manager, or Deputy City Manager/Commissioner of Finance & Corporate Services is hereby authorized, and directed to sign and/or dispatch or deliver any other documents, notices, certificates required to be signed and/or dispatched or delivered under or in connection with the Merger Agreement and the Shareholders Agreement and take any other action necessary to give effect to the Merger Agreement.

THAT the City of Vaughan approves a Dividend Policy for the merged corporation to be incorporated into the proposed Shareholders Agreement, generally in the form attached (Attachment 1); and

THAT the City of Vaughan approves an amendment to Section 2.06 of the proposed Shareholders Agreement to require unanimous shareholder approval, in all circumstances, for each of the items listed in Section 2.06(1).

Economic Impact

The proposed transaction is a merger through the exchange of shares and consequently no funding is required.

KPMG was jointly retained to value the respective corporations and provide a value range. Each of the shareholders retained their own financial advisors to comment on the work done by KPMG and the results of the valuation and business case for the merger.

Communications Plan

PowerStream is taking the lead to ensure a consistent message from all shareholders. They will be providing appropriate communication material.

Purpose

The purpose of this report is to obtain Council approval to the merger of PowerStream Inc. and Barrie Hydro.

EXTRACT FROM SPECIAL COUNCIL MEETING MINUTES OCTOBER 2, 2008

Minute No. 209 – Page 3

Background - Analysis and Options

The provincial government supports consolidation of local power distribution companies (LDCs) as a method of increasing efficiencies and lowering costs to consumers. The Ontario Energy Board (OEB) has openly stated it wants to regulate fewer LDCs. A transfer tax holiday is in place until October 17, 2008 as a merger/acquisition incentive. OEB's Incentive Regulation requires LDCs to meet aggressive minimum productivity targets each and every year, and will penalize LDCs who cannot achieve efficiencies. To realize economies of scale and achieve those productivity targets, LDCs must consolidate, either through merger or acquisition. PowerStream has been actively pursuing merger and acquisition opportunities over the past year. In the summer of 2007, Barrie Hydro management approached PowerStream management to discuss a potential merger of the two utilities. The management teams from both corporations worked together to develop a preliminary business case which outlined potential synergies and relative value ranges that could result from a merger. A letter of intent, establishing the principles of the proposed transaction and the process for negotiations, was executed by Vaughan Holdings Inc., Markham Enterprises Corporation and Barrie Hydro Holdings Inc., on June 12, 2008 and subsequently amended to extend the period for exclusive negotiations.

Vaughan's shares in PowerStream are held by Vaughan Holdings Inc. Vaughan and Markham Council approvals for the merger are required as the municipalities are a party to the current shareholder agreement. How the Holding companies shares in PowerStream are transferred is governed by the Shareholder Agreement and to prevent a shareholder from circumventing the requirements of the shareholder agreement by transferring their shares in their respective holding company, the municipalities are a party to the agreement.

Options/Discussion

In order to proceed with the negotiations towards a possible merger, PowerStream's Board of Directors established a Joint Steering Committee comprised of members of PowerStream management as well as external legal counsel Frank Callaghan, to represent PowerStream. Similarly, Barrie appointed a team to act on their behalf in the negotiations.

KPMG was appointed by both parties to prepare a market valuation of the combined entity to determine the relative fair market value of shares for PowerStream and Barrie. Based on KPMG's discounted cash flow analysis and Rate Base analysis, the relative share value range was confirmed at 79 - 82% for PowerStream and 18 - 21% for Barrie. The negotiated shares, taking into account concerns about 2008 projections and PowerStream's next rate filing for 2009, are 79.5% for PowerStream and 20.5% for Barrie. Of that, Vaughan Holding's share of the amalgamated corporation will be 45.315%. Vaughan Holdings Inc. retained Crosbie & Company to advise it on financial matters related to the valuation.

The shareholdings in the merged entity are summarized as follows:

Shareholder	Common Shares	Shareholdings
Vaughan Holdings Inc.	45,315	45.315%
Markham Energy Corporation	34,185	34.185%
Barrie Hydro Holdings Inc.	<u>20,500</u>	<u>20.500%</u>
Total	100,000	100.00%

CITY OF VAUGHAN

EXTRACT FROM SPECIAL COUNCIL MEETING MINUTES OCTOBER 2, 2008

Minute No. 209 – Page 4

The composition of the Board of Directors of the merged entity will be as follows:

Vaughan Holdings Inc.	6
Markham Energy Corporation	4
Barrie Hydro Holdings Inc.	<u>3</u>
Total	13

The Draft Shareholders Agreement is based on the PowerStream Shareholders Agreement and includes many of the protections for shareholders in that agreement. There are a significant number of items requiring unanimous shareholder consent, including:

- The carrying on of any business or activity other than the business of MergeCo;
- Taking steps to wind-up, dissolve or terminate MergeCo.;
- Mergers or acquisitions other than Board Approved Transactions;
- The admission of new Shareholders or the issuance of any shares or any other change in the issued outstanding share capital;
- The disposition (other than in the ordinary course of Business) of the assets of MergeCo, having a value of (i) 5% or more of the Asset Value in the case of assets forming part of the "rate base" for OEB rate hearing purposes or (ii) 9% or more of the Asset Value in the case of any other assets;
- Change of Auditor;
- Approval of the dividend policy;
- Any name change from "PowerStream Inc.". However, for a period of one (1) year after merger, MergeCo will co-brand itself "PowerStream Inc. Barrie Hydro Distribution" within the Barrie service territory;
- Any change in the articles or By-laws;
- Entering into any agreement other than in the ordinary course of Business;
- Making any capital expenditure in excess of 9% of the Asset Value or (ii) the making capital expenditures which, in the aggregate, exceed 20% of the Asset Value;
- Swap or derivative transactions not in accordance with the swap and derivative transaction policy approved by the Board;
- Any change of the head office or the closing of any operations/administration centres;
- The making of a Capital Call by the Shareholders;
- The establishment of a subsidiary, other than in connection with a Board Approved Transaction;
- The approval of the initial strategic plan, and updates on a three year cycle.

The draft Shareholders Agreement does not contain the shotgun provision that was in the PowerStream agreement, however, it does contain provisions permitting sales of shares to third parties, with tag along rights, and will also contain provisions permitting first right of refusal for internal sales of shares, with tag along rights. After approval by the Shareholders, the approval of the Ontario Energy Board is also required, and if granted, the transaction should close on the first day of the month following the date that is 14 days after the OEB approval is obtained.

Relative Valuation Report

As noted above, KPMG was appointed as an Independent Financial Advisor by both PowerStream and Barrie Hydro to determine the relative fair market value of shares for PowerStream and Barrie. Vaughan Holdings Inc. retained Crosbie & Company to complete a peer review of KPMG's relative valuation work.

EXTRACT FROM SPECIAL COUNCIL MEETING MINUTES OCTOBER 2, 2008

Minute No. 209 – Page 5

Crosbie was in agreement with the use of the discounted cash flow valuation approach which KPMG used to determine relative share value range.

KPMG noted in its analysis that there is considerable uncertainty regarding the accuracy of managements projections for 2008, and the potential impact of an unfavourable rate decision on PowerStream's next rate filing in 2009, in terms of certain capital expenditure items not being allowed in the ratebase. It was estimated that the impact of these risks could reduce PowerStream's relative ownership by 0.5% to 1.5%. As a result, the negotiated shares are 79.5% for PowerStream and 20.5% for Barrie. Of that, Vaughan Holdings Inc.'s share of the amalgamated corporation will be 45.31%.

Synergy Savings

The Joint Steering Committee estimates that the merger will result in synergy savings of \$5M to \$5.5M for five years, 50% of which is projected to be distributed to the MergeCo shareholders as a dividend for the first 5 years (to 2013), after which synergies are passed on to customers (service levels will be maintained). The cost of the merger will be equivalent to approximately one year's projected savings.

Capital expense savings averaging approximately \$850,000 annually will also be realized over the 10 year period.

Rate Harmonization

The rate departments from Barrie Hydro and PowerStream anticipate that, based on OEB policy, rate harmonization will occur over a 3 to 5 year timeframe. For PowerStream's customers, the projected magnitude of these long-term changes due to rate harmonization and flow-through of the merger synergy savings (after 5 years) by customer class is as follows:

- Residential rates increasing between 0.8% and 1.8%
- General service (up to 50 KW) changing by -0.5% to +0.4%
- General Service (greater than 50 KW) increasing between 0.3% to 0.8%

Relationship to Vaughan Vision 2020

This report is consistent with the priorities previously set by Council and the necessary resources have been allocated and approved.

Regional Implications

Not applicable.

Conclusion

Based on the recommendation of the Joint Steering Committee and PowerStream and in consultation with Vaughan Holding's advisors, the Board of Vaughan Holdings Inc. has recommended the merger with Barrie Hydro. Markham Energy Corporation and Markham Council have also approved the merger. The business case supports the merger, the relative shareholdings as negotiated by the Joint Steering Committee are reasonable based on the valuation and the avoidance of the risk associated with post closing adjustments and the fact there are no substantive issues outstanding with respect to the agreements. Recognizing that the transfer tax holiday expires October 17, 2008 staff recommend approval.

CITY OF VAUGHAN

EXTRACT FROM SPECIAL COUNCIL MEETING MINUTES OCTOBER 2, 2008

Minute No. 209 – Page 6

Attachments

Attachment 1 – Dividend Policy

Report prepared by:

Clayton D. Harris, CA
Deputy City Manager/
Commissioner of Finance & Corporate Services
Ext. 8475

(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.)

Dividend Policy

PURPOSE

Consistent with the Objectives and Guiding Principles, the corporation will endeavor to earn the maximum rate of return allowable by the Ontario Energy Board. The purpose of this policy is to provide shareholders with a steady income stream from dividends while providing the corporation with an appropriate capital structure and working capital level in order to operate as a viable business.

DETERMINATION OF DIVIDENDS

Dividend amounts will be determined as follows:

- The Corporation shall pay a minimum of 50% of net income with consideration given to the following:
 - Cash position at the beginning of the current year;
 - Working capital requirements for the current year; and
 - Net capital expenditures required for the current year.

CRITERIA FOR DETERMINATION OF DIVIDENDS

Dividends will be declared after due consideration is given to the following:

- All financial covenants on any debt issued by the corporation
- Qualifications to meet external bond rating services to maintain an "A" rating
- Cash requirements of the corporation to meet working capital requirements and short-term (5 year) plans of capital expenditures