



Report to: General Committee

Date Report Authored: June 6, 2012

SUBJECT: Postponement of Markham's Debt from PowerStream and Markham District Energy Inc. – Delegated Authority
PREPARED BY: Catherine M. Conrad, Town Solicitor, Ext. 4737

RECOMMENDATION:

- 1) That the report entitled "Postponement of Markham's Debt from PowerStream and Markham District Energy Inc.– Delegated Authority" dated June 6, 2012 be received;
- 2) That the Mayor and Clerk be authorized and directed to execute postponements of Markham's Promissory Note or other debt from PowerStream, and any other documents required, to facilitate PowerStream refinancing initiatives from time to time, subject to approval of the Chief Administrative Officer;
- 3) That the Mayor and Clerk be authorized and directed to execute postponements of Markham District Energy debt to Markham, and any other documents required, to facilitate Markham District Energy Inc. financing or re-financing initiatives from time to time;
- 4) That staff be directed to do all things necessary to give effect to the recommendations of this report.

PURPOSE:

The purpose of this report is to obtain Council authority for the Mayor and Clerk to execute documents required to facilitate PowerStream financing and re-financing requirements, from time to time, provided that the Chief Administrative Officer is satisfied with the documents and the proposals.

BACKGROUND:

When Markham Hydro Distribution Inc. (MHDI) was established in December 1999, Markham transferred all of its hydro distribution assets to the new corporation. In exchange, MHDI provided Markham with a promissory note in the amount of \$67.866M. When MHDI and the hydro distribution companies of Vaughan and Richmond Hill amalgamated in 2004, the promissory note was amended. The note provides for a principal repayment of \$67,866,202 with interest at 5.58% per annum. The expiry date of the note is May 31, 2024.

On May 16, 2012, a letter was received from PowerStream, addressed to each of its shareholders, including Markham Enterprises Corporation (MEC), requesting a postponement of the Amended and Restate Promissory Note to the Bank of Montreal, to facilitate the replacement of PowerStream's \$125M EDFIN (Electricity Distributors Finance Corporation) note, which comes due in 2012. As the promissory note is held by Markham, not MEC, Markham must authorize the postponement.

OPTIONS/ DISCUSSION:

PowerStream's principal debt is an EDFIN note, in the amount of \$125M, which comes due in August 2012. PowerStream is negotiating refinancing, and as a backstop to the EDFIN note coming due, has arranged with BMO Nesbitt Burns to provide refinancing for the debenture. Markham's promissory note was subordinate to this EDFIN note pursuant to section 4.1 of the Amended and Restated Promissory Note and Markham agreed, in section 4.2, to subordinate its debt to debt issued by PowerStream from time to time.

Markham, with Barrie and Vaughan, have requested a legal opinion on the requirement to postpone to their shareholder debt to new financing by PowerStream and as of the writing of this report, that opinion is not yet available. Due to the council recess for the summer, authority is requested for the Chief Administrative Officer to authorize the postponement upon receipt of a satisfactory legal opinion.

DELEGATED AUTHORITY

As PowerStream has advised that such postponements will be required from time to time (this is the second such request, as Markham has already postponed to a previous financing arrangement with TD Bank), and as we have also, in the past, postponed Town debt to Markham District Energy outside debt to facilitate their financing, delegated authority is requested for future postponement requests from both PowerStream and Markham District Energy Inc.

FINANCIAL CONSIDERATIONS AND TEMPLATE: (external link)

None, provided that the opinion from our outside legal counsel confirms that this postponement is routine.

HUMAN RESOURCES CONSIDERATIONS

None.

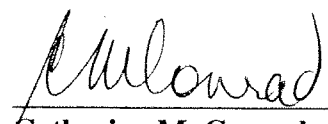
ALIGNMENT WITH STRATEGIC PRIORITIES:

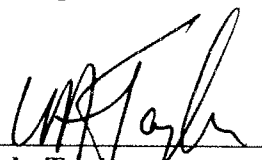
N/A.

BUSINESS UNITS CONSULTED AND AFFECTED:

The Finance Department was consulted in the preparation of this report and concurs with its recommendations.

**RECOMMENDED
BY:**


Catherine M. Conrad
Town Solicitor


Andy Taylor
Chief Administrative
Officer

ATTACHMENTS:

PowerStream letter dated May 14, 2012, requesting postponement of Town's promissory note.

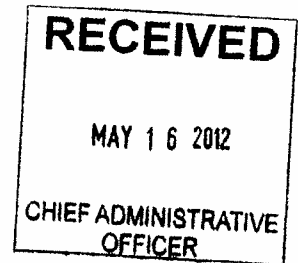


May 14, 2012

Clayton Harris
President & CEO
Vaughan Holdings Inc.
2141 Major MacKenzie Drive East, Suite 100
Vaughan, ON, L6A 1W8

Andy Taylor
President & CEO
Markham Enterprises Corporation
101 Town Centre Blvd.
Markham, ON, L3R 9W3

Ed Archer
President & CEO
Barrie Hydro Holdings Inc.
70 Collier Street, P.O. Box 400
Barrie, Ontario L4M 4T5



Re: Postponement Agreement for PowerStream's Backstop

Dear Clayton, Andy, and Ed:

On August 15, 2012, PowerStream's \$125M EDFIN note comes due. My team and I have been working closely with our financial advisors – BMO Nesbitt Burns on the refinancing plan for the debenture and we intend to have all the necessary documents ready to close by June 1st.

At PowerStream's annual meeting with Standard and Poors, S&P indicated to PowerStream that with the EDFIN debenture coming due in August 2012, that a year prior to the EDFIN debt maturing, S&P would like PowerStream to have a backstop in place to cover the \$125M bond. This backstop will ensure that if there is financial volatility in the marketplace at the time the bond comes due, that PowerStream has access to capital to refinance the EDFIN bond.

As indicated in Section 4.2 of the Shareholder Promissory Notes:

"The City further agrees to subordinate the indebtedness owed it hereunder to debt issued by the Corporation from time to time to a financial institution or other third party for the purposes of the Corporation or its subsidiaries on such terms as the lender may reasonably request".



Attached to this letter is the postponement agreement prepared by BMO's external counsel, Fasken Martineau, LLP., and reviewed by our external legal counsel, Gowlings Lafleur Henderson, LLP. We have been working with both external counsels and BMO to shorten the postponement agreement.

We also anticipate that the Shareholders will have to sign a similar postponement agreement in relation to the new debenture issue.

We are requesting that the Shareholders sign the postponement agreement and return to my attention no later than May 29, 2012 so that PowerStream has the credit backstop in place.

If you have any questions please do not hesitate to contact me. Thank you for your continued support.

Sincerely,

Carol Young on behalf of J. Glicksman

John Glicksman, B. SC., MBA
EVP & Chief Financial Officer
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Cc: Brian Bentz, President & CEO, PowerStream Inc.
Dennis Nolan, EVP Corporate Services & Secretary, PowerStream Inc.
Carolyn Young, VP, Finance, PowerStream Inc.
Vinay Metha, VP, General Counsel, PowerStream Inc.
Catherine Conrad, Town Solicitor, Town of Markham
Dawn McAlpine, City Clerk, Corporate Services, City of Barrie