

**TRANSFER OF SHARES TO VAUGHAN HOLDINGS INC.**

**Recommendation**

The City Manager, Commissioner of Finance & Corporate Services and the Commissioner of Legal & Administrative Services recommend the following:

WHEREAS The Corporation of the City of Vaughan ("City of Vaughan") is the owner of 590 common shares of PowerStream Inc. (the "Shares");

AND WHEREAS the City of Vaughan, The Corporation of the Town of Markham ("Town of Markham"), Markham Energy Corporation ("MEC") and PowerStream Inc. entered into a shareholders agreement dated June 1, 2004 (the "Shareholders Agreement"), which governs the operation and growth of PowerStream Inc.;

AND WHEREAS Section 3.01 (3) of the Shareholders Agreement permits the City of Vaughan to transfer the Shares without the consent of the Town of Markham or MEC to a wholly-owned subsidiary, however, as a condition precedent to such transfer of Shares, the Town of Markham is entitled to receive evidence that the transfer is exempt from tax and has no adverse consequences to PowerStream Inc.;

AND WHEREAS the City of Vaughan has obtained an advance tax ruling from the Ontario Ministry of Finance dated January 24, 2005, permitting the transfer of the shares without transfer tax being applied if such transfer takes place before March 28, 2005 (the "Advance Tax Ruling") and such Advance Tax Ruling has been provided to the Town of Markham;

AND WHEREAS the City of Vaughan wishes to transfer the shares to a wholly-owned subsidiary, Vaughan Holdings Inc. ("Holdco");

IT IS RESOLVED THAT Council of the City of Vaughan consents to the following transfer of Shares:

<u>Transferor</u>	<u>Transferee</u>	<u>Number and Type of Shares</u>
The Corporation of the City of Vaughan	Vaughan Holdings Inc.	590 common shares of PowerStream Inc.

AND THAT the transfer of 590 Common Shares of PowerStream be approved;

AND THAT the Shareholders Resolution for the Approval of the Transfer of Shares be approved substantially in the form attached;

AND THAT the resolution for the Approval of the Issuance of the 590 Common Shares for Property by PowerStream be approved substantially in the form attached;

AND THAT the Waiver of Notice of Redemption be approved; and

AND BE IT FURTHER RESOLVED THAT the Mayor and Clerk be authorized to execute the necessary documents to give effect to this direction.

## Purpose

The purpose of the report is to obtain Council approval to transfer the 590 common shares in PowerStream Inc. currently held by the City of Vaughan to Vaughan Holdings Inc.

## Background - Analysis and Options

Vaughan and Markham amalgamated their electric distribution utilities, along with their joint interests in Richmond Hill Hydro on June 1, 2004. As part of the amalgamation it is contemplated that Vaughan's shares in the amalgamated utility, PowerStream would be transferred to our holding company. In the 2004 Ontario Budget the Province announced that the Electricity Act 1998 would be amended to confirm that holding companies that acquire, hold, dispose of or otherwise deal with shares of a corporation established pursuant to section 142 of the Act are considered municipal electric utilities. Once the announced amendment becomes law and our holding company is considered to be a municipal electric utility for the purposes of the Electricity Act, 1998 the transfer of shares must be made to the holding company before March 28, 2005. The current transfer tax holiday expires on that date.

### Electricity Act Amended December 16, 2004

Section 94(1) of the Electricity Act provides that a Municipal Electric Utility ("MEU") shall not transfer to any person any interest in real or personal property that has been used in connection with generating, transmitting, distributing or retailing electricity (an "**Electricity Business**") unless, before the transfer takes effect, it pays an amount of transfer tax. Subsection 94(2) of the Electricity Act deems an interest in a corporation that derives its value in whole or in part from real or personal property that has been used in an Electricity Business. However, pursuant to subsection 3(18) of O. Reg. 124/99, subsection 94(1) of the Electricity Act does not apply to a transfer of an interest in property made after March 27, 2003 and before March 28, 2005 if the transfer is made to a MEU that, at the time of the transfer, is exempt under subsection 149(1) of the ITA from the payment of tax under that Act. Accordingly, provided that Holdco is considered to be a MEU that is exempt from tax under subsection 149(1) of the ITA at the time of the proposed transaction and that the transfer is made before March 28, 2005, no transfer tax would arise under the Electricity Act.

On December 16, 2004 the Electricity Act was amended to introduce a new paragraph (d.1) to the definition of "Municipal Electricity Utility" in subsection 88(1) of that Act. Paragraph (d.1) provides that

"a corporation established after May 1, 2003 under Ontario Regulation 168/03 (Municipal Business Corporations) under the *Municipal Act, 2001*, for the purpose of acquiring, holding, disposing of and otherwise dealing with shares of a corporation incorporated by the municipal corporation under section 142 of this Act"

will be considered to be an MEU.

Accordingly, the transfer of shares of PowerStream by the City to Holdco should qualify for the exemption from transfer tax provided for in subsection 3(18) of O. Reg. 124/99 if it occurs before March 28, 2005.

### Advanced Tax Ruling Requested January 6, 2005

Given the significance of the transfer tax Tim Wach from Gowlings was instructed to obtain an advance tax ruling from the Ontario Ministry of Finance. On January 6, 2005 a request was sent to the Corporations Tax Branch of the Ministry of Finance. The request outlined the facts specific to the request.

### Advance Tax Ruling Received January 24, 2005

The Province appreciated the importance of the ruling and the timing of the transfer of the shares. On January 24, 2005 and based on the facts as outlined in the request the following advance ruling was received:

“No transfer tax would arise on the transfer of the shares of PowerStream to “Holdco” by the City if that transfer occurs before March 28, 2005”

The importance of March 28, 2005 is that this is the last day of the transfer tax holiday. Normally transfer tax is payable. The Province introduced a tax holiday to encourage consolidation in the industry. Notwithstanding the positive tax ruling the shares must be transferred prior to the end of the tax holiday to avoid the tax.

### External Legal Opinion Received Regarding the Ruling February 4, 2005

Gowlings was also asked to provide a legal opinion as to the reliance that can be placed on an advance ruling. That opinion was received on February 4, 2005. Their opinion is as follows:

“provided that the facts submitted to the Ministry are complete and accurate, which we understand to be the case, the law upon which the ruling is based is not amended prior to the implementation of the transaction ruled upon, and that these transactions are carried out within the time frame contemplated, then the Ministry will consider the Advance Ruling to be binding on it”

### Other Matters

Section 3.01(3) of the shareholders agreement dated June 1, 2004 permits the City of Vaughan to transfer its shares of PowerStream Inc. without the consent of the Town of Markham or MEC to a wholly owned subsidiary, Vaughan Holdings Inc. However as a condition precedent to such transfer, the Town of Markham is entitled to receive evidence that the transfer is exempt from tax and has no adverse tax consequences to PowerStream Inc. A copy of the advance tax ruling is being provided to the Town of Markham.

The City's auditors, KPMG have been appointed as the auditors of Vaughan Holdings Inc. Staff inquired of KPMG if any other taxes, other than transfer tax would be applicable in connection with the transfer of shares. They have advised that since the City is exempt from income tax under the Federal and Provincial Income Tax Acts the transfer would not be subject to tax under these Acts.

A valuation of the shares is required. Staff have been in discussion with staff at PowerStream. A valuation is being prepared for PowerStream for the purposes of valuing the corporation as at June 1, 2004, the date of incorporation. Staff are discussing using that valuation as a basis and rolling it forward to March 2005.

The articles of Incorporation of PowerStream provide for the right to transfer shares in the capital of the Corporation (PowerStream). They cannot be transferred without the consent of the Corporation signified by:

- a) a resolution of the board of directors;
- b) an instrument or instruments in writing signed by a majority of the directors;
- c) an ordinary resolution of the shareholders; or
- d) an instrument or instruments in writing signed by the holders of a majority of the outstanding voting shares of the Corporation.

To expedite the share transfer and ensure that it is complete prior to the end of the transfer tax holiday, March 28, 2005, the share transfer is being undertaken using (d) above.

**Conclusion**

Council consent will permit the transfer of its shares in PowerStream to Vaughan Holdings Inc. prior to the end of the transfer tax holiday and consistent with the intent of the amalgamation agreement.

**Attachments**

Attachment 1 – Shareholders Resolution – Approval of Transfer of Shares  
Attachment 2 – Approval of Issuance of 590 Common Shares for Property  
Attachment 3 – Waiver of Notice of Redemption  
Attachment 4 – Share Transfer

Respectfully submitted

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Michael DeAngelis  
City Manager

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Clayton D. Harris, CA  
Commissioner of Finance & Corporate Services

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Robert Swayze  
Commissioner of Legal & Administrative Services

**POWERSTREAM INC.**  
(the "Corporation")

**APPROVAL OF TRANSFER OF SHARES**

WHEREAS the articles of the Corporation permit shares in the capital of the Corporation to be transferred upon approval by an instrument in writing signed by the holders of a majority of the outstanding voting shares of the Corporation;

AND WHEREAS The Corporation of the City of Vaughan ("**City of Vaughan**") is the holder of a majority of the outstanding voting shares of the Corporation;

AND WHEREAS the Corporation is governed by a shareholders agreement dated June 1, 2005, among The Corporation of the Town of Markham ("**Town of Markham**"), Markham Energy Corporation ("**MEC**"), the City of Vaughan and PowerStream Inc. (formerly Amalco Hydro Distribution Inc.), (the "**Shareholders Agreement**");

AND WHEREAS as of the date hereof, there are 590 common shares of the Corporation issued and outstanding in the name of the City of Vaughan (the "**Shares**");

AND WHEREAS the City of Vaughan wishes to transfer the Shares to Vaughan Holdings Inc. in accordance with Section 3.01(3) of the Shareholders Agreement;

IT IS RESOLVED THAT the undersigned hereby consents to the transfer of Shares from the City of Vaughan to Vaughan Holdings Inc.

DATED as of the 15<sup>th</sup> day of March, 2005.

**THE CORPORATION OF THE  
CITY OF VAUGHAN**

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

**APPROVAL OF ISSUANCE OF 590 COMMON SHARES FOR PROPERTY**

WHEREAS The Corporation of the City of Vaughan ("**City of Vaughan**") is the sole shareholder of Vaughan Holdings Inc. (the "**Corporation**") and entered into a unanimous shareholder declaration dated June 11, 2005 whereby certain matters of the Corporation require the consent of the City of Vaughan (the "**Unanimous Shareholder Declaration**");

AND WHEREAS pursuant to Section 2.1(1)(l) of the Shareholder Declaration the City of Vaughan must consent to the issuance of shares of the Corporation and pursuant to Section 2.2 of the Shareholder Declaration all approval or decisions of City of Vaughan shall require a resolution or by-law of the City of Council of the City of Vaughan and shall be given in writing executed by the Mayor of City of Vaughan or an individual designated by the Mayor from time to time (the "**City of Vaughan Consent**");

AND WHEREAS the City of Vaughan wishes to subscribe for 590 common shares of the Corporation and by execution of this resolution provide the City of Vaughan Consent in accordance with the Unanimous Shareholder Declaration;

IT IS RESOLVED THAT the City of Vaughan consents to the issuance of shares of the Corporation to the City of Vaughan.

**THE CORPORATION OF THE CITY OF VAUGHAN**

By: \_\_\_\_\_  
Michael Di Biase, Mayor

By: \_\_\_\_\_

**WAIVER OF NOTICE OF REDEMPTION**

TO: VAUGHAN HOLDING INC.  
(the "Corporation")

AND TO: THE DIRECTORS THEREOF

The undersigned, being the holder of all the common shares in the capital of the Corporation, hereby waives notice of the intention of the Corporation to redeem all of such common shares of the Corporation, for the aggregate amount of CDN \$100.00, held by the undersigned effective March 15, 2005 , and hereby consents to the redemption of the Shares.

DATED as of the \_\_\_\_\_ day of March, 2005.

**THE CORPORATION OF THE CITY  
OF VAUGHAN**

By: \_\_\_\_\_

By: \_\_\_\_\_

SHARE TRANSFER

TO: VAUGHAN HOLDINGS INC.

FOR VALUE RECEIVED, the undersigned hereby transfers to you 590 common shares of PowerStream Inc. that is now registered in the name of the undersigned.

DATED as of the 15<sup>th</sup> day of March, 2005.

THE CORPORATION OF THE CITY OF  
VAUGHAN

Per: \_\_\_\_\_

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