

**GREEN ENERGY ACT/SOLAR PROJECT – EXTENSION OF INVESTMENT PERIOD**

**Recommendation**

The City Manager, the Commissioner of Finance and the Commissioner of Legal and Administrative Services/City Solicitor recommend:

That the City's subscription for Vaughan Holdings Inc. shares, as set out in the this report, to facilitate Vaughan Holdings Inc. equity injection into PowerStream for their solar business, be extended to December 31, 2013, subject to the terms and conditions set out in this report.

**Economic Impact**

The City of Vaughan and Vaughan Holdings Inc. (VHI) and PowerStream's other shareholders approved an equity injection to a maximum of \$60M into PowerStream's solar business in December 2009. The City of Vaughan's and VHI's proportionate share is \$27.2M, which is based on VHI's 45.31% ownership in PowerStream. The equity injection is essentially a two step process, with the City of Vaughan purchasing additional shares in VHI to a maximum of \$27.2M and then VHI purchasing Class A common shares in PowerStream to a maximum of \$27.2M. Ultimately, the cash flow for the solar investment is coming from the City of Vaughan as an investment of its reserve balances. This investment is permitted under Regulation 438/97 to the Municipal Act and the City's Investment Policy.

The original forecasts for the solar investment anticipated that the City's and VHI's entire equity investment of \$27.2M would take place over the first two years (2010 and 2011), with dividend returns beginning as early as 2011 and continuing over the life of the investment (20 Years), ultimately providing the City with dividend income, and return of investment. To date, the City through VHI has invested only \$2.162 million. An extension of the agreement to 2013 would commit the remaining \$25M of the City's investment portfolio for another 2 years.

The revised forecast developed for the extension of the equity injection to December 31, 2013 projects dividends to begin in 2014 and continuing until 2034, with 100% repayment of the equity investment by 2020.

**Contribution to Sustainability**

Not applicable

**Communications Plan**

Not applicable

**Purpose**

The purpose of this report is to obtain Council approval, as shareholder, to extend the timeframe for the City of Vaughan's investment into PowerStream's Solar Photovoltaic (PV) project through the purchase of additional shares in Vaughan Holdings Inc.

**Background – Analysis and Options**

**History**

In 2009, PowerStream management mobilized a team to assess the opportunities offered to Local Distribution Companies (LDCs) by the *Green Energy and Green Economy Act, 2009* in renewable generation and the Feed-in-Tariffs (FIT) program, and concluded that PowerStream should invest in a portfolio of solar generation projects.

In September, 2009, PowerStream indicated that it was formulating a specific “ask” to its shareholders (Vaughan Holdings Inc., Markham Enterprises Corp. and Barrie Hydro Holdings Inc.) for approval of a funding mechanism that would allow PowerStream to invest in solar generation.

The \$150 million investment by PowerStream was to be funded through external debt (\$90 million) and shareholder equity (\$60 million) in accordance with the preferred debt to equity ratio of 60-40. The shareholders contributions were to be made in proportion to their existing interest in PowerStream. VHI's share of that equity injection was approximately \$27.2 million (45.315% of the \$60 million).

The equity injections were to be linked to PowerStream's signing of Ontario Power Authority (OPA) FIT contracts in 2010 and 2011. Therefore VHI's \$27.2 million of equity would be injected in tranches over those two years as FIT contracts were approved, with the shareholder's commitment to the equity injection to be reviewed at the end of 2011 if all the funds had not been spent.

VHI's investment in the PowerStream solar project was to be funded by the City's purchase of additional VHI shares. VHI would use the proceeds of the Town's share purchase to then purchase an equal dollar amount of new “Class A” non-voting shares to be issued by PowerStream.

The VHI Board of Directors approved the equity injection in December 2009. Subsequently in 2009, the City of Vaughan approved the required equity injection from the City to VHI (see Attachment #1).

In the resolution passed by the VHI Board of Directors on December 15, 2009, it states that “Vaughan's investment in Class A shares may be made in tranches ... not more frequently than quarterly, until December 31, 2011. After that date, Vaughan shall review its commitment in respect of any part of its share of the Solar Equity Financing that has not been made.”

#### Current Request

To date, VHI has made only three equity injections totaling approximately \$2.162 million of the \$27.2 million equity injection. PowerStream has stated that the popularity of the FIT program and uncertainty surrounding the October 2011 Provincial election created significant delays in the FIT contract approval process. The most recent PowerStream projections reviewed by VHI staff indicated that the full amount of the equity injections will take significantly longer than initially projected. As such, PowerStream recently sought approval from its shareholders to extend the timeframe for the equity injection. On November 3, 2011, the Board of Directors of VHI approved an extension to December 31, 2013, conditional upon the Council of the City of Vaughan acting as the Shareholder of VHI approving the amendments to the Subscription Agreement, and agreeing to continue to fund VHI's equity participation in PowerStream's Solar Initiative.

Based on the expected rate of return on the Solar business and the OPA contracts that PowerStream is expected to sign, it is recommended that the City agree to the extended timeline of the equity injection commitment for projects with a signed lease and viable FIT contract applications or executed asset purchase agreements that meet the agreed upon internal rate of return, to the end of 2013.

#### Relationship to Vaughan Vision 2020

Not applicable

#### Regional Implications

No Implications

## **Conclusion**

Staff recommend that the City of Vaughan's subscription for Vaughan Holdings Inc. shares, to facilitate VHI's equity injection into PowerStream for their solar business, be extended to December 31, 2013 subject to the terms and conditions set out in this report.

## **Attachments**

Attachment 1: Special Council December 16, 2009 – Green Energy Act Investment Opportunities

Respectfully submitted,

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Clayton D. Harris, CA  
City Manager

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Barbara Cribbett, CMA  
Commissioner of Finance & City Treasurer

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Janice Atwood-Petkovski  
Commissioner of Legal and Administrative Services  
& City Solicitor

# Attachment 1

## CITY OF VAUGHAN

### EXTRACT FROM SPECIAL COUNCIL MEETING MINUTES DECEMBER 16, 2009

#### 237. GREEN ENERGY ACT INVESTMENT OPPORTUNITIES

MOVED by Councillor Yeung Racco  
seconded by Regional Councillor Rosati

That the recommendation contained in the following report of the City Manager, the Commissioner of Legal & Administrative Services/City Solicitor and the Director of Reserves & Investments, dated December 16, 2009, be approved:

CARRIED

#### Recommendation

The City Manager, the Commissioner of Legal & Administrative Services/City Solicitor and the Director of Reserves & Investments recommend:

1. That the confidential memo from the Commissioner of Legal & Administrative Services/City Solicitor be received (under separate cover); and,
2. That the City's investment policy be amended as outlined in the staff report and,
3. That the following resolution be adopted.

**WHEREAS** PowerStream has advised its shareholders, Markham Enterprises Corporation ("Markham"), Vaughan Holdings Inc. ("VHI"), and Barrie Hydro Holdings Inc. ("Barrie") (collectively, the "Shareholders"), that it intends to develop a renewable energy generation business unit concentrating in rooftop solar generation (the "Solar Business");

**AND WHEREAS** VHI is wholly-owned by the Municipality of the City of Vaughan ("Vaughan");

**AND WHEREAS** PowerStream anticipates that the Solar Business will require a significant aggregate capital expenditure (the "Capital Expenditure");

**AND WHEREAS** the Capital Expenditure is to be provided by equity financing and debt financing;

**AND WHEREAS** VHI's share of the Solar Equity Financing is a maximum of \$27,189,000.00;

**AND WHEREAS** Vaughan desires to invest such amount of \$27,189,000 in equity shares of VHI from time to time, concurrent with the dates upon which VHI will invest the Solar Equity Financing in PowerStream;

**AND WHEREAS** PowerStream will issue to VHI non-voting Class A Common Shares ("Class A Shares") for the Solar Equity Financing;

**AND WHEREAS** Vaughan supports PowerStream's development of Solar Business;

**AND WHEREAS** the Solar Business supports the intent of Vaughan's *Green Directions Community Sustainability and Environmental Master Plan* objective 1.2 to promote the reduction of greenhouse gas emissions in the City of Vaughan;

**AND WHEREAS** the Solar Business is consistent with the *Green Directions* Action 1.2.1 to advocate for the use of existing infrastructure to allow citizen's and businesses to share excess capacity to the energy grid; and Action 1.2.2 to consider through partnerships, opportunities for developing energy strategies for new development areas for the purpose of reducing energy use by applying such measures photovoltaic, geothermal and wind systems;

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**AND WHEREAS** in order to accomplish the Solar Equity Financing and the Solar Debt Financing, it is necessary to amend the Shareholders Agreement between the Shareholders, the municipalities that own the Shareholders and PowerStream, dated as of the 1st day of January 2009 (the "Shareholders Agreement"); approve and file articles of amendment of the Corporation to create Class A Shares and enter into one or more Subscription Agreements whereby the Shareholders will provide the Solar Equity Financing by subscribing for Class A Shares;

**AND WHEREAS** it will also be necessary that Vaughan subscribe for additional common shares in VHI in the maximum amount of \$27,189,000;

**NOW THEREFORE BE IT RESOLVED** that:

1. Vaughan supports the development of the Solar Business by PowerStream;
2. Vaughan agrees, in principle, to subscribe for equity common shares in VHI in the maximum amount of \$27,189,000.00 on the following terms and conditions:
  - a) The VHI Board of Directors shall adopt a dividend and distribution policy in respect of such common shares that is satisfactory to Vaughan and provides for distribution to Vaughan of the distributions received by VHI from PowerStream with respect to the Solar Business; and
  - b) Vaughan's investment in such common shares may be made in tranches, according to a process to be developed, with amounts and timing determined consistent with the dates and amounts of the Class A Shares to be issued by PowerStream to VHI.
3. Subject to the foregoing, Vaughan consents to amendments to the Shareholders Agreement to provide for the creation of new Class A Shares, enable the Solar Business and approve a dividend and distribution policy in respect of the Class A Shares and such other amendments as are necessary to give effect to this resolution.

BE IT FURTHER RESOLVED that the Mayor, together with the City Clerk, are hereby authorized and directed for and on behalf of Vaughan to:

1. approve the issuance of common shares as aforesaid in VHI to Vaughan, and one or more subscription agreements therefore; and
2. execute (whether under the corporate seal of Vaughan or otherwise) and deliver the Amended Shareholders Agreement, and any other documents, all in a form and content satisfactory to such signing officers, required to give effect to these resolutions.

**Contribution to Sustainability**

The report is a direct response to the Green Energy Act and relates to investing in renewable energy.

**Economic Impact**

As outlined in the report.

**Communications Plan**

The City will issue appropriate press releases.

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#### **Purpose**

The purpose of this report is to support an investment in Vaughan Holdings Inc. by the City of Vaughan (sole shareholder). The purpose of the investment is to capture potential business opportunities arising from the implementation of the *Green Energy Act and Green Economy Act, 2009* ("Green Energy Act").

#### **Background - Analysis and Options**

The City of Vaughan approved in principle its Environmental Master Plan in April 2009. The Green Energy Act became law in May 2009. In September 2009, PowerStream's Board of Directors instructed their staff to explore opportunities arising from the Green Energy Act and work with its shareholders to develop a business case and financing plan. Entering into a "new" business requires additional investment. That investment will require both equity (40%) and debt (60%).

Vaughan's shares in PowerStream are held by Vaughan Holdings Inc. (VHI). The City of Vaughan owns 100% of the outstanding shares in VHI. VHI has been working with the other two (2) shareholders and PowerStream to undertake appropriate due diligence with respect to investment opportunities under the Green Energy Act. To minimize costs the three (3) shareholders jointly retained a firm to undertake a due diligence review and evaluate the business case for the solar generation business.

The purpose of their review was to provide advice to VHI regarding solar generation business opportunities resulting from the *Green Energy Act* as proposed by PowerStream in various documents and presentations, including:

- a) conducting a review of PowerStream's analysis in support of its business case, as to reasonableness of the underlying assumptions, the resulting outputs of the base case and certain sensitivities;
- b) performing due diligence as to the reasonableness of market-based assumptions, including lease payments to owners of participating buildings;
- c) providing a review and consultation regarding the Client's options related to investment of funds in the PowerStream business plan;
- d) providing assistance in clarification of the requirements of the programs under which PowerStream anticipates entering into contracts for the sale of the output of its proposed solar generation project(s) (i.e. the Feed in Tariff "FIT" and "Micro-FIT" programs of the Ontario Power Authority);
- e) providing assistance in documenting the PowerStream business plan and related financing and other options to support decision-making by the Client and/or stakeholders;
- f) conducting any related research and/or documentation requested by the Client; and
- g) attending meetings with the Client and/or other parties as required.

Overall, BDR concludes that PowerStream's proposed business plan, if implemented in the timeframe and to the proposed scale, represents a good investment opportunity for PowerStream's shareholders. Therefore, staff recommended approval of the request for financing on the basis of the motions presented in this report. Unanimous shareholder consent is required for PowerStream to proceed. Staff from Markham and Barrie are concurrently presenting the same motion for approval by their respective Boards/Councils.

In BDR's judgment, PowerStream has retained qualified advisors to develop its business plan and was diligent in collecting and analyzing supporting data. Its financial model was competently designed

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and its plans incorporate reasonable assumptions. BDR believes, based on its review, that PowerStream's expected profitability levels can be achieved and that there is potential for better levels of profitability than PowerStream's base case.

#### Financial

The financial impact of the recommended motions in this report is an equity investment in VHI of up to \$27.2 million. The City would be issued additional shares in VHI. As described by the recommended motions, the amounts and timing of the investment would be subject to a process that would be developed in collaboration with all shareholders and PowerStream.

The additional equity from the City would be used to establish VHI's proportionate ownership interest in PowerStream's solar business at 45.31%. The timing of equity contributions would be driven by the capital expenditures required to fulfil the execution of OPA approved FIT contracts. It is expected that equity contributions would not occur more than quarterly. Additional discussions with the other shareholders and PowerStream regarding the amount and timing of investment is required.

In addition to the City moving towards achieving the intent of the Environmental Master Plan there is an opportunity to increase the rate of return the City earns on investments. Currently investment returns are very low. The investment in solar is being considered as "financing a project" which lasts 20 years. The objective is that all invested funds would be returned to the shareholder. Additionally the City will receive dividends from PowerStream through VHI. The details of the distributions are to be finalized.

#### City's Investment Policy

As provided in The Electricity Act, municipal investment through share subscription is an eligible investment. For greater clarity and certainty, the following changes are proposed to the City's Investment Policy:

##### Legal Authority

Add after regulations – "including The Electricity Act, 1998"

##### Authorized Investments

Add to the first paragraph after time – "and The Electricity Act, 1998, as amended from time to time."

Replace the fourth bullet to "Bonds, debentures, and promissory notes and other evidences of indebtedness and common or preferred equity shares of a corporation incorporated under section 142 of The Electricity Act, 1998 as amended from time to time."

#### Solar Investments

The investment in solar will predominantly be through the installation of roof-top solar panels. Many of the panels will be installed on commercial roofs; however, there is an opportunity for utilizing municipal roofs. Each shareholder has provided PowerStream with a list of potential sites. Each opportunity has to be evaluated on its own merits. Considerations include the size and age of the roof and the ability of the structure to support the roof-top equipment. Commercial lease arrangements will be negotiated for each of the roofs suitable for solar panels.

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**Relationship to Vaughan Vision 2020/Strategic Plan**

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

**Regional Implications**

None.

**Conclusion**

Staff recommend that the City of Vaughan make an equity investment in VHI for the purpose of investment in PowerStream's business plan for capturing potential business opportunities arising from the implementation of the Green Energy Act. The form of this investment would be via the purchase of additional common shares. It is expected that each shareholder, through their respective holding companies would match the level of investment with its current ownership share of PowerStream (i.e. 45.31% of available shares).

**Attachments**

None.