



STAFF REPORT

REPORT #:	CAO 2012-01
DATE:	January 23, 2012
SUBMITTED TO:	Mayor and Council
SUBMITTED BY:	Kimberly Wingrove, CAO
SUBJECT:	COLLUS PowerStream Strategic Partnership

1. RECOMMENDATION:

THAT Council receive Staff Report CA02012-01 titled COLLUS PowerStream Strategic Partnership, and enact By-law 2012-011 to execute the agreements with respect to the sale of 50% of the shares of the Collingwood Utility Services Corp to PowerStream Inc., and related matters.

2. SUMMARY AND BACKGROUND:

Council is being asked to approve the sale of 50% of the shares of Collingwood Utility Services Corp. to PowerStream Inc. Currently, the Town of Collingwood is the sole shareholder of Collingwood Utility Services Corporation. Collingwood Utility Services Corp. serves approximately 15,000 business and residential customers in Collingwood, Creemore, Thornbury and Stayner.

PowerStream is the second largest municipally-owned electricity distribution company in Ontario, delivering power to more than 335,000 customers. PowerStream serves the communities of Alliston, Aurora, Barrie, Beeton, Bradford West Gwillimbury, Markham, Penetanguishene, Richmond Hill, Thornton, Tottenham and Vaughan. PowerStream is jointly owned by the municipalities of Barrie, Markham and Vaughan. .

During the previous term of council, a review of operations was initiated as part of COLLUS' ongoing approach to ensure that our Municipality is receiving the most Shareholder and customer value for its dollar with a focus on fiscal responsibility and the reduction of debt. Immediately following the 2010 municipal election, Council challenged us all to begin looking for new opportunities and attempt to do more with less. The COLLUS board then engaged KPMG to look at the corporation's value, to provide the board with a review of what is happening in the

electricity distribution industry, to provide insight to what might happen in the future and to provide various strategic ownership options.

After examining several options, a strategic partnership option was chosen for several reasons:

- **Reduced Risk.** The Town will reduce/mitigate itself from the risks of being in the electricity distribution business specifically in the area commodity risk.
- **Retains an Income Stream.** The Town will continue to earn a future dividend stream based on equity ownership in the new partner's Local Distribution Company (LDC).
- **Operating Synergies with the Shareholder.** The Town retains the ability to obtain operating cost synergies through the integration of support functions with the water utility and IT.
- **Control.** The Town retains joint-control of the utility and its decisions with respect to levels of customer service, promotion of economic development, rates, subject to OEB oversight.
- **Provides Additional Funding to Town:** The funds that are received as a result of this partnership transaction will allow the Municipality to reduce debt or to be available for valued community projects.
- **Policy Challenges.** This option does address the expected push for additional consolidation of LDCs in the province.
- **Future Opportunities.**

The share purchase agreement and shareholders agreement address the requirements of the strategic partner relationship including:

- An investment of up to 50% in Collingwood Utility Services Corp. shares
- Provision of strategic and specialized resources to Collingwood Utility Services through Service Agreements
- Support in growing the Collingwood Utility Services business, both organically and through acquisition
- Continued and enhanced support for the interests of the communities we serve and our employees
- Continued and substantial presence in the communities we serve
- Continued focus on maintaining and enhancing the competitive distribution rate and cost structure of Collingwood Utility Services Corp.

This request does not include any of the activities associated with the water operations. **Collingwood Public Utilities Services will continue these operations “as is”.**

Further to the resolution passed unanimously by the Board of Collingwood Utility Services Corp. (see attached), the Town, as the sole shareholder of Collingwood Utility Services Corp., is being asked to approve a transaction wherein the Town will sell 50% of its shares in the issued capital of Collingwood Utility Services Corp. to PowerStream Inc., pursuant to a share purchase agreement and enter into an agreement respecting the governance, shareholdings and related matters of and regarding Collingwood Utility Services Corp. (the “Unanimous Shareholders Agreement”), each of the draft Share Purchase Agreement and the Unanimous Shareholders

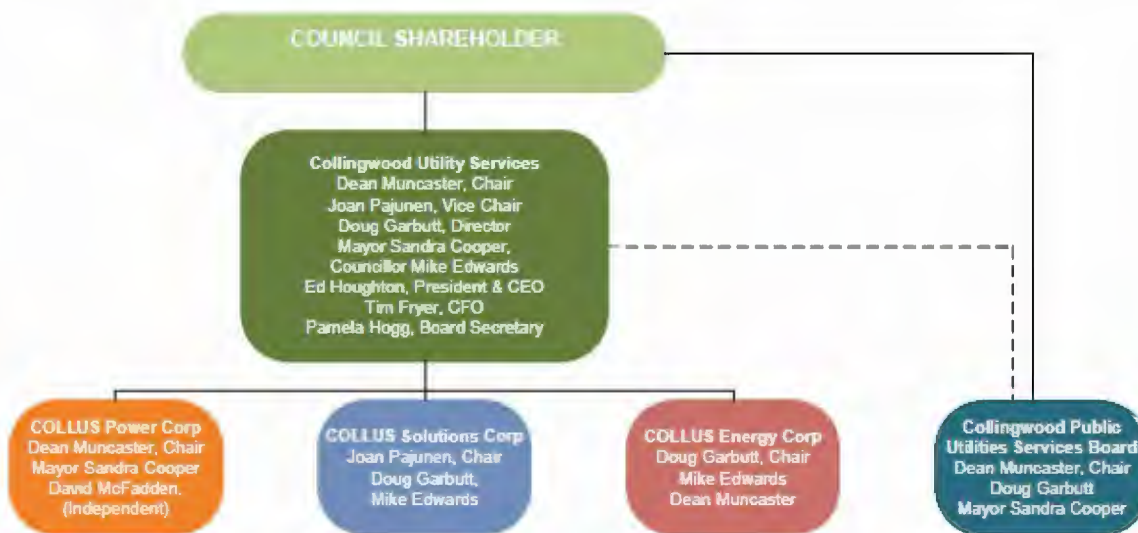
Agreement having been provided to Council and approved by Collingwood Utility Services Corp.;

With Council approval, the Town and Collingwood Utility Services will enter into the Share Purchase Agreement with PowerStream, to approve the Transaction contemplated thereby, and following the fulfillment of and completion of certain conditions precedent set out therein, sell the Shares and enter into the Unanimous Shareholders Agreement.

The resolution directs the Mayor of the Town of Collingwood and the Clerk to execute the Share Purchase Agreement and the Unanimous Shareholders Agreement, with such changes as they may consider reasonable, and to execute all documentation necessary to effect the sale of the Shares to PowerStream, the Transaction and By-law 2012-011, including without limitation approve financing, authorize and file articles of amendment, amend bylaws, amend and enter into service agreements between the Town and Collingwood Utility Services or its Subsidiaries, authorize dividends to be declared and paid by Collingwood Utility Services and the Subsidiaries and authorize repayment of debt under the outstanding promissory note issued to the Town by COLLUS.

3. DISCUSSION:

As noted above, Collingwood Utility Services is wholly owned by the Town; each of COLLUS Power Corp. ("COLLUS"), COLLUS Energy Corp. ("Energy") and COLLUS Solutions Corp. ("Solutions") is a wholly owned subsidiary of Collingwood Utility Services (collectively, COLLUS, Energy and Solutions are referred to as the "Subsidiaries");



As a regulated utility, COLLUS Power is subject to oversight by the Ontario Energy Board (OEB). Thus, decisions on rates and services quality for any owner are constrained by OEB rules in place

Upon review of the strategic ownership options prepared by KPMG, Town Council gave direction to COLLUS to further investigate the Strategic Partnership option through the creation of a Strategic Partnership Task Team (August 2011) and to issue a Request for Proposal (RFP) (Issued October 4, 2011) to prospective partners. Upon review and rating of the various proposals submitted according to the RFP, COLLUS made a recommendation (December 5, 2011) to Town Council that COLLUS be directed by the Town to complete negotiations with PowerStream Inc. ("PowerStream"). KPMG LLP and legal representatives from Aird and Berlis were engaged throughout the negotiation process. It was determined that the transaction would be most beneficial to the Town if the Town was to sell a 50% interest in Collingwood Utility Services Corp.. As such, the Share Purchase Agreement and the Unanimous Shareholders Agreement reflect this structure.

The Share Purchase agreement details the financial considerations being provided to the Town by PowerStream Inc. It includes amongst other items, a dispute resolution mechanism should there be any disagreement on the final financial figures. It also contains the representations and warranties made by the Town regarding corporate power and authority and appropriate by-laws to enter into the transaction. It outlines the service agreements with the Town and details the employee groups and any contractual agreements in place respecting them. There are a number of conditions to closing including sign off by third party and regulatory agencies such as the Ontario Energy Board and Infrastructure Ontario. There is a drop dead date of December 31, 2012 for the completion of these conditions.

The Unanimous Shareholders agreement is entered into by PowerStream and the Town of Collingwood upon execution of the Share Purchase agreement. It requires a new strategic plan be created within 6 months that will be updated every 3 years. The Shareholders Agreement also outlines board composition (equal representation, co-chairs for the first 2 years, 3 year director terms), conditions requiring shareholder approval, development of a business plan and the dividend policy. Collingwood Utility Services Corp. has the first right of refusal on mutually acceptable participation in any future mergers or acquisitions undertaken by both PowerStream and COLLUS.

4. EFFECT ON TOWN FINANCES:

Under the terms of the Share Purchase Agreement, the Town of Collingwood will receive cash and other considerations valued at approximately \$15M. Under the Ontario Electricity Act., the Town would pay a Transfer Tax equal to 33%, less Payments in-lieu of Taxes (PILS) of the proceeds if it sells its ownership interest in COLLUS to another entity. At present, the Provincial government has introduced an exemption (or "holiday") from transfer tax for sales of municipally-owned utilities to entities owned by municipalities or by the province.

A commitment has been made to hold a public meeting to determine where the proceeds of the sale would be directed.

5. DISPOSITION:

If approved, By-law 2012-011 shall come into full force and effect upon the Mayor and the Clerk being authorized, for and on behalf of the Town, to execute the Share Purchase Agreement and the Unanimous Shareholders Agreement, with such changes as they may consider reasonable, and to execute all documentation necessary to effect the sale of the Shares to PowerStream, the Transaction and this By-law, including without limitation approved financing, authorize and file articles of amendment, amend bylaws, amend and enter into service agreements between the Town and Collingwood Utility Services Corp. or its Subsidiaries, authorize dividends to be declared and paid by Collingwood Utility Services and the Subsidiaries and authorize repayment of debt under the outstanding promissory note issued to the Town by COLLUS.

The Collingwood Utility Services Board and the Town of Collingwood will proceed with the fulfillment of the conditions of the Share Purchase Agreement.

6. APPENDICES:

- Resolution of Board, Collingwood Utility Services Corp., January 20, 2012

SIGNATURE

Kimberly Wingrove
CAO
Town of Collingwood

Collingwood Utility Services Corp. Resolution

WHEREAS Collus Power Corp. ("Collus") is a wholly-owned subsidiary of Collingwood Utility Services Corp;

AND WHEREAS Collingwood Utility Services Corp. ("CUS") is wholly owned by the Corporation of the Town of Collingwood (the "Town");

AND WHEREAS the Town, as the sole shareholder of CUS, had requested that CUS and Collus identify and investigate the advantages and disadvantages of various strategic ownership options from the perspective of the Town and the local ratepayers taking into account both financial and qualitative factors;

AND WHEREAS Collus then entered into a contractual arrangement with KMPG, LLP to perform the review of the various strategic ownership options;

AND WHEREAS upon review of the strategic ownership options, Town Council gave direction to Collus to further investigate the Strategic Partnership option through the creation of a Strategic Partnership Task Team and to issue a Request for Proposal (RFP) to prospective partners;

AND WHEREAS the RFP was seeking a Strategic partner that would supply the following:

- An investment of up to 50% in Collus Power shares
- Provision of strategic and specialized resources to Collus Power through Service Agreements
- Support in growing the Collus Power business, both organically and through acquisition
- Continued and enhanced support for the interests of the communities we serve and our employees
- Continued and substantial presence in the communities we serve
- Continued focus on maintaining and enhancing the competitive distribution rate and cost structure of Collus Power

AND WHEREAS upon review and rating of the various proposals submitted according to the RFP, Collus made a recommendation to Town Council that Collus be directed by the Town to complete negotiations with PowerStream Inc. ("PowerStream") resulting in a Share Purchase Agreement and a Unanimous Shareholder's Agreement;

NOW THEREFORE IT IS RESOLVED:

THAT Collingwood Utility Services Board recommends that the Town of Collingwood execute the Share Purchase Agreement and Unanimous Shareholder Agreement for the sale of 50% share of CUS to PowerStream Inc.

AND THAT the Chair and the President and Chief Executive Officer be authorized to execute these agreements.

MOVED AND PASSED this 20th day of January, 2012.

Councillor Mike Edwards_____

Moved by

Carried Unanimously

Mayor Sandra Cooper_____

Seconded by

**BY-LAW No. 2012-011
OF THE
CORPORATION OF THE TOWN OF COLLINGWOOD**



BEING A BY-LAW TO AUTHORIZE THE ENTERING INTO AND EXECUTION
OF A SHARE PURCHASE AGREEMENT RESPECTING THE SALE OF THE
SHARES OF THE TOWN OF COLLINGWOOD (THE "TOWN") IN
COLLINGWOOD UTILITY SERVICES CORP. ("CUS") TO POWERSTREAM
INC., A SHAREHOLDERS AGREEMENT IN RESPECT OF CUS AND
RELATED MATTERS

WHEREAS CUS is wholly owned by the Town;

AND WHEREAS each of Collus Power Corp. ("Collus"), Collus Energy Corp. ("Energy") and Collus Solutions Corp. ("Solutions") is a wholly owned subsidiary of CUS (collectively, Collus, Energy and Solutions are referred to as the "Subsidiaries");

AND WHEREAS the Town, as the sole shareholder of CUS, wishes to approve a transaction (the "Transaction") wherein the Town will sell 50% of its shares in the issued capital of CUS (the "Shares") to PowerStream Inc. ("PowerStream"), pursuant to a share purchase agreement (the "Share Purchase Agreement") and enter into an agreement respecting the governance, shareholdings and related matters of and regarding CUS (the "Unanimous Shareholders Agreement"), each of the draft Share Purchase Agreement and the Unanimous Shareholder Agreement having been provided to Council and approved by CUS;

AND WHEREAS it is in the interest of the Town and CUS to enter into the Share Purchase Agreement, to approve the Transaction contemplated thereby, and following the fulfillment of and completion of certain conditions precedent set out therein, sell the Shares and enter into the Unanimous Shareholders Agreement,

NOW THEREFORE COUNCIL OF THE CORPORATION OF THE TOWN OF COLLINGWOOD ENACTS AS FOLLOWS:

1. **THAT** Report No. CAO2012-01 be received.
2. **THAT** the Town enter into the Share Purchase Agreement and the Unanimous Shareholders Agreement with PowerStream, once those agreements are in a form and content to the satisfaction of the Mayor.
3. **THAT** the Mayor or the Clerk be authorized, for and on behalf of the Town, to execute the Share Purchase Agreement and the Unanimous Shareholders Agreement, with such changes as they may consider reasonable, and to execute all documentation necessary to effect the sale of the Shares to PowerStream, the Transaction and this By-law, including without limitation approve financing, authorize and file articles of amendment, amend bylaws, amend and enter into service agreements between the Town and CUS or its Subsidiaries, authorize dividends to be declared and paid by CUS and the Subsidiaries and authorize repayment of debt under the outstanding promissory note issued to the Town by Collus.
4. **THAT** this By-law shall come into full force and effect on the date of final passage hereof at which time all By-laws and/or resolutions that are inconsistent with the provisions of this By-law and the same are hereby repealed or rescinded insofar as it is necessary to give effect to the provisions of this By-law.

ENACTED AND PASSED this 23rd day of January, 2012.

MAYOR

CLERK

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