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VIA E-MAIL

February 23, 2009

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
Suite 2701
2300 Yonge Street
Toronto, ON
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Dear Ms. Walli:

Re: PowerStream Inc.;
EB-2008-0244

We are counsel to PowerStream Inc. in proceeding EB-2008-0244 (the "Cost of Service Proceeding"). We are writing to respond to a letter dated February 17, 2009 from Mr. O'Leary, counsel for the Smart Sub-Metering Working Group ("SSMWG"), requesting late intervention status in the cost of service proceeding.

PowerStream opposes SSMWG's request for late intervention on the ground that none of the four issues that Mr. O'Leary identifies in his letter ("SSMWA Issues") is relevant to PowerStream's application. The SSMWG's Issues fall into one of two categories: (i) compliance with Board codes, including the *Distribution System Code* ("DSC"); and (ii) PowerStream's right and, indeed, duty to install smart individual suite meters (as opposed to sub-meters) when requested to do so by a building owner or developer. PowerStream's position on each of these points is set out below.

Compliance with Distribution System Code

In his letter, Mr O'Leary states that one purpose of SSMWG's proposed intervention is to ask "questions about PowerStream's suite metering program from the perspective of its compliance with applicable codes" (p.2) and, in particular, "the requirement for economic evaluations" (p. 3) as well as "compliance with requests... for bulk meters" (p.3). While PowerStream categorically denies that it is not complying with applicable codes, it notes that the Board has established a separate and formal five-stage process, headed by its Chief Compliance Officer ("CCO"), to review and respond to any allegation or concern that a regulated company, such as PowerStream,

is not meeting its legal or regulatory obligations. If the SSMWG has any concerns in this regard, it should bring its allegations forward for adjudication pursuant to the Compliance Management process that the Board has established for this purpose. It should not attempt to inappropriately broaden the scope of this proceeding.

Competitive Market Activities

Smart metering describes the situation in which a licensed local distribution company ("LDC") individually meters every unit in a multi-unit building (and the common areas) with a smart meter. The customer of the LDC is the unit occupant and the occupant is billed directly by the LDC. By definition, only LDCs (i.e., licensed distributors) can provide smart metering services (as opposed to smart sub-metering services). Subsection 5.1.9 of the DSC requires a distributor to install smart metering when requested to do so, by either the board of directors of a condominium corporation or a condominium developer.

Smart sub-metering describes the situation where an LDC provides distribution service to a multi-unit building's master (bulk) meter (which measures electricity usage for the whole building) and a separate, smart sub-meter provider provides sub-metering service to every unit (and the common areas) via individual, smart sub-meters. The LDC bills the building owner for bulk service to the bulk meter and the smart sub-meter provider bills the occupant of each unit within the building as well as the building owner (for the common areas). Suppliers of smart sub-metering services, including licensed distributors, are required to be licensed as such under section 57 (i) of the *Ontario Energy Board Act, 1998* and must comply with the *Smart Sub-Metering Code*.

PowerStream is not licensed as a smart sub-meter provider and does not engage in smart sub-metering activities of any kind. Moreover, no budgeted amounts for such activities are included in its 2009 rates application. On the other hand, PowerStream does engage in smart metering of individual suites in compliance with its duties as a distributor under subsection 5.1.9 of the DSC. It has, accordingly, budgeted an amount for individual suite smart metering in its 2009 rate application. In the result, PowerStream is at a loss to understand the basis for SSMWG's allegation that ratepayers are subsidizing PowerStream's participation in the competitive sub-metering marketplace (p.2 of SSMWG's letter).

SSMWG's Request for Cost Eligibility

PowerStream submits that should the Board decide to grant SSMWG's request for standing in this proceeding it should, nevertheless, deny its request for a determination that it is eligible for an award of costs.

SSMWG's proposed intervention is nothing more than a thinly veiled attempt to re-litigate an issue – the right of distributors to provide smart metering services – that SSMWG previously fought and lost in the context of proceeding EB-2007-0772. If SSMWG has evidence of regulatory non-compliance with the DSC by PowerStream, we invite it to bring this evidence to the attention of the Board's CCO so it can be dealt with in the proper forum. If SSMWG wishes to convince the Board to change the rules that pertain to the provision of smart metering by

distributors, we invite it to seek a review, pursuant to the appropriate process for such matters. It would be grossly unfair to ask PowerStream's ratepayers to subsidize the narrow, commercial interests of the SSMWG, particularly as there are other more appropriate forums to advance these interests. Put another way, no public interest would be served in allowing SSMWG to participate in this rate proceeding at the expense of ratepayers.

Yours very truly,

(signed) H.T. Newland

HTN\ko

cc: Mr. Buonaguro
VECC

Ms. Christine Dade
AMPCO

Ms. Susan Frank
Hydro One Networks

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