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Delivered by Email and Courier

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
26th Floor, Box 2319
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: PowerStream Inc. (EB-2015-0003)
Custom IR EDR Application**

We are counsel to PowerStream Inc. (“PowerStream”), the Applicant in the above-captioned matter.

In the May 22, 2015 cover letter to PowerStream’s 2016-2020 Custom IR distribution rate application, PowerStream advised that a limited number of documents had been provided to the intervenors in confidence during the pre-filing rate proposal and settlement process, and that those documents would be filed with the Board in confidence as part of the current Application. PowerStream requests that these documents be maintained in confidence pursuant to Rules 10.01 and 10.02 of the Board’s *Rules of Practice and Procedure* and Sections 5.1.1 and 5.1.2 of the Board’s *Practice Direction on Confidential Filings* (the “Practice Direction”). The nature of those documents and the basis for PowerStream’s request for their confidential treatment are set out below:

- **ASSUMED UNION WAGE INCREASES**

Interrogatory Response J-AMPCO-29(a) (see Section III, Tab 1, Exhibit J, page 261 of 363)

Interrogatory Response J-Energy Probe-37 (see Section IV, Tab 1, page 40 of 63)

PowerStream intends to file these interrogatory responses regarding its assumptions as to the 2016-2020 percentage increases in wages for its employees who are members of the Power Workers Union (“PWU”) in confidence. PowerStream’s current collective agreement with the PWU expires on March 31, 2016. Negotiations between PowerStream and the PWU will be

taking place in the months prior to that expiry date. As such, any reference to, or inclusion of, Union compensation information provided in this Application is sensitive and could prejudice the PowerStream/PWU collective bargaining process.

Appendix “A” to the Practice Direction sets out the Board’s considerations in determining requests for confidentiality. Among those considerations are the following:

- (a)(i) prejudice to any person’s competitive position;
- (a)(iii) whether the information could interfere significantly with negotiations being carried out by a party;
- (a)(iv) whether the disclosure would be likely to produce a significant loss or gain to any person; and
- (g) any other matters relating to FIPPA (the *Freedom of Information and Protection of Privacy Act*) and FIPPA exemptions.

With respect to item (g) above, the Board has provided a summary of pertinent FIPPA provisions at Appendix E of the Practice Direction. That summary provides, in part, as follows:

“Under section 17(1), the Board must not, without the consent of the person to whom the information relates, disclose a record where:

- (a) the record reveals a trade secret or scientific, technical, commercial, financial or labour relations information;
 - (b) the record was supplied in confidence implicitly or explicitly; and
 - (c) disclosure of the record could reasonably be expected to have any of the following effects:
 - i. prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons or organization;
 - iii. result in undue loss or gain to any person, group, committee or financial institution or agency;
- ...”

PowerStream submits that the disclosure of assumed 2016-2020 wage and benefit increases for the Union employee group could reasonably be expected to prejudice PowerStream’s negotiating position in the upcoming collective bargaining process and interfere significantly with those negotiations.

- **UTILITY BENCHMARKING REPORTS**

Appendices B-1 and B-2 to PowerStream’s response to SEC Interrogatory F-SEC-11 (see Section III, Tab 1, Exhibit F, page 100 of 363).

The material referenced above consists of the “Management Report” portion of the MEARIE 2014 Utility Performance Management Survey based on 2013 data (referred to in Appendix B-1 to the PowerStream response to SEC Interrogatory F-SEC-11) and (in Appendix B-2) the “Statistics and Ratios” portion of the survey.

The parties preparing these surveys are engaged in competitive businesses. The disclosure of the terms of the surveys could reasonably be expected to prejudice the economic interest of, significantly prejudice the competitive position of, cause undue financial loss to, and be injurious to the financial interests of those parties since it would enable their competitors to ascertain the survey methodology used by those parties. The parties preparing the surveys have requested that they be kept in confidence.

The disclosure of information related to the survey participants could also reasonably be expected to result in survey participants no longer participating in surveys of this kind, as their participation has been premised on the understanding that their information would remain confidential.

The Practice Direction recognizes that these are among the factors that the Board will take into consideration when addressing the confidentiality of filings. They are also addressed in section 17(1) of FIPPA, and the Practice Direction notes (at Appendix C of the Practice Direction) that third party information as described in subsection 17(1) of FIPPA is among the types of information previously assessed or maintained by the OEB as confidential.

PowerStream is not in a position to place the material on the public record in the absence of an Order of the Board directing it to do so.

- **BUSINESS PLANNING MATERIAL**

PowerStream Inc. – 2015-2020 Budget/Financial Outlook - Board of Directors Presentation, December 12, 2014 – Response to Technical Conference Question #9 (see Section IV, Tab 1, page 19 of 63).

This material contains budget, revenue and dividend forecasts for the 2015-2020 period, and includes commercially sensitive information related to both regulated and unregulated business activities carried on by PowerStream, including activities related to PowerStream’s involvement in renewable generation activities.

The disclosure of this information could reasonably be expected to prejudice the economic interest of, significantly prejudice the competitive position of, cause undue financial loss to, and be injurious to the financial interest of PowerStream. It would enable PowerStream’s competitors in competitive businesses to determine the extent of PowerStream’s activities in those businesses.

PowerStream notes that the maintenance of confidentiality in respect of this document would be consistent with the Board's treatment of business planning material in other applications, including (for example) Horizon Utilities Corporation's 2011 Cost of Service Application (EB-2010-0131), in which the Board made the following finding in response to a request for public disclosure of a Horizon Utilities business plan:

"The Board finds that the business plan material should be confidential, as it has found in other cases. While the Board is interested in having as much information as possible on the public record, the Board relies on full and complete disclosure of all relevant information in order to ensure that its decisions are well-informed. The Board recognizes that some of that information, such as business plans, are of a confidential nature and should be protected as such. The Board notes that it has previously held business plans to be confidential. As such, Horizon had a reasonable expectation that this document would be maintained as confidential."

- **COMPENSATION SURVEYS**

MEARIE 2014 Management Salary Survey (see Section VI, Tab 34).

Conference Board of Canada 2015 Compensation Planning Outlook (see Section VI, Tab 35)

Toronto Board of Trade – Executive Compensation Report 2013-2014 (see Section VI, Tab 36)

As with the Utility benchmarking reports discussed above, the parties preparing these surveys are engaged in competitive businesses. The disclosure of the terms of the surveys could reasonably be expected to prejudice the economic interest of, significantly prejudice the competitive position of, cause undue financial loss to, and be injurious to the financial interests of those parties since it would enable their competitors to ascertain the survey methodology used by those parties. The parties preparing the surveys have requested that they be kept in confidence.

The disclosure of information related to the survey participants could also reasonably be expected to result in survey participants no longer participating in surveys of this kind, as their participation has been premised on the understanding that their information would remain confidential.

The Practice Direction recognizes that these are among the factors that the Board will take into consideration when addressing the confidentiality of filings. They are also addressed in section 17(1) of FIPPA, and the Practice Direction notes (at Appendix C of the Practice Direction) that third party information as described in subsection 17(1) of FIPPA is among the types of information previously assessed or maintained by the OEB as confidential.

PowerStream is not in a position to place the material on the public record in the absence of an Order of the Board directing it to do so.

The various items described above were provided to the intervenors participating in the pre-filing rate proposal and settlement process on the basis that it would not be disclosed to any other parties. PowerStream expects that those parties will file executed copies of the Board's form of Declaration and Undertaking with respect to confidentiality and will maintain the material that is the subject of this confidentiality request in confidence pending the Board's disposition of this request. PowerStream is also prepared to provide copies to new parties' counsel and experts or consultants provided that they have executed the Board's form of Declaration and Undertaking with respect to confidentiality and that they comply with the Practice Direction, subject to PowerStream's right to object to the Board's acceptance of a Declaration and Undertaking from any person.

In accordance with the Practice Direction, confidential unredacted copies of the material discussed above are being delivered to the Board Secretary under separate cover, in an envelope marked "Confidential".

Yours very truly,

BORDEN LADNER GERVAIS LLP

Per:

Original signed by James C. Sidlofsky

James C. Sidlofsky

cc: Colin Macdonald, PowerStream

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