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BY EMAIL and RESS

August 31, 2015
Our File No. 20150003

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
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Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2015-0003 – Powerstream Inc. 2016-2020 – Confidentiality Submission

We are counsel for the School Energy Coalition. Pursuant to Procedural Order No. 2, these are SEC's submissions with respect to PowerStream's request for confidentiality status over certain documents.

SEC opposes PowerStream's request for confidentiality, pursuant to the *Practice Direction on Confidential Filings* (the "*Practice Direction*"), over the following three documents:

1. The entire MEARIE 2014 Utility Performance Management Survey, which consists of both the 'Management Report' and the 'Statistics and Ratios' part.
2. MEARIE 2014 Management Salary Survey.
3. The presentation made to the Board of Directors, titled *2015-2020 Budget/Financial Outlook* and dated December 12, 2014.

General Comments on Confidentiality

The Board's policy is that confidentiality is the exception. As a general rule, information should be available for inspection by the public, and its proceedings should be "open, transparent and



accessible”.¹ This is because “the credibility and the legitimacy of the Board and its decisions rests on the open and transparent processes the Board uses.”²

To be treated as confidential, pursuant to the *Practice Direction*, “the onus is on the person requesting confidentiality to demonstrate to the satisfaction of the Board that confidential treatment is warranted in any given case.”³ Further, any harm alleged by the Applicant cannot be speculative, and must outweigh the public interest in providing the documents on the public record.

MEARIE 2014 Utility Performance Management Survey

SEC submits that this information should not be given confidential treatment. The Board has ordered a previous version of this survey (2013) to be placed on the public record in its comprehensive reasons in the combined *Decision and Order on Confidentiality* (“*Combined Confidentiality Decision*”) in EB-2013-0115 (Burlington Hydro), EB-2013-0159 (Oakville Hydro) and EB-2013-0174 (Veridian).⁴ In addition to that decision, the 2013 version of the survey has been placed on the public record in a number of other proceedings.⁵ SEC submits that PowerStream has not raised any new arguments regarding confidentiality of the 2014 version of the survey. The Board’s rationale in the *Combined Confidentiality Decision* is still valid with respect to the 2014 version of the survey where it rejected the same arguments that PowerStream has raised in this proceeding.

MEARIE 2014 Management Salary Survey

PowerStream has claimed confidentiality over the 2014 MEARIE Management Salary Survey for the same reasons as the MEARIE 2014 Utility Performance Management Survey. SEC submits the Board should not grant confidential treatment to this survey.

First, the survey is already in the public domain as it was provided on the public record, in full, as an attachment in response to an interrogatory in 1-SEC-4 in EB-2015-0101.⁶

Second, in the *Combined Confidentiality Decision*, the Board similarly ordered the 2013 MEARIE Management Salary Survey to be placed on the public record.⁷ The Board’s rationale in the *Combined Confidentiality Decision* is still valid with respect to the 2014 version of the survey where it rejected the same arguments that PowerStream has raised in this proceeding.

Board of Directors’ Presentation

PowerStream is seeking confidential treatment over the entirety of a presentation made to its Board of Directors that contains budget, revenue and dividend forecasts for the 2015-2020 period. SEC does not dispute that certain aspects of the presentation should be treated as

¹ *Practice Direction on Confidential Filings* at p. 2

² *Decision on Confidentiality* (EB-2013-0234), dated April 8 2014

³ *Practice Direction on Confidential Filings* at p. 2

⁴ *Decision and Order on Confidentiality* (EB-2013-0116/0159/0174, dated May 29, 2014. (See Appendix)

⁵ For example see: i) EB-2014-0113 (St. Thomas), IR Response 1-SEC-3, Attach 1-2 ii) EB-2014-0002 (Horizon), IR Response 1-SEC-7, Attach 19-20, iii) EB-2014-0083 (Hydro One Brampton Networks), IR Response 2-Staff-10, Attach 1

⁶ EB-2015-0108 (Waterloo North), IR Response 1-SEC-4, Attach 1

⁷ *Decision and Order on Confidentiality* (EB-2013-0116/0159/0174, dated May 29, 2014, p.11 (See Appendix)



confidential, but not the entire presentation. The proper approach is for PowerStream to redact portions of the presentation that meet the requirements of the *Practice Direction*. Here, Powerstream should only redact information that refers to, or includes, unregulated information and information that for a legitimate reason should not be placed on the public record. The Board confirmed this approach in its *Decision on Confidentiality* in the most recent Horizon Utilities proceeding over a similar request for confidentiality over the entirety of the information provided to its Board of Directors.⁸ Only 4 slides contain information that includes unregulated aspects of the business (slides 20-22) or a combination of regulated and unregulated information (slide 25).

Business plans and information provided to the Board of Directors in approving the budget that underlies the application is important information that should not be made confidential. Besides reference to a 2010 Horizon Utilities Decision related to confidentiality of a business plan (as opposed to budget information), PowerStream has not provided any rationale, with the exception of information regarding its unregulated and competitive activities, for why any of the other information contained in the presentation should be treated as confidential. Similar information is regularly placed on the public record with no objection.⁹

All of which is respectfully submitted.

Yours very truly,
JAY SHEPHERD P. C.

Original signed by

Mark Rubenstein

cc: Wayne McNally, SEC (email)
Interested Parties (email)

⁸ *Decision on Confidentiality* (EB-2014-0002), September 18, 2014, p.12

⁹ See for example, i) EB-2015-0004 (Ottawa), Response to IRs A-CCC-Q3-A, Attach, A-CCC-3, Attach. ii) EB-2014-0101 (Oshawa), R Response 1.0-SEC-3, Attach Ex.1. iii) EB-2015-0108 (Waterloo) IR Response 1-SEC-1, Attach. iv) EB-2013-0416 (Hydro One Distribution), IR Response 1.1-SEC-1, Attach 1-2. v) EB-2013-0321 (OPG), IR response to 1.2-SEC-2, Attach.