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VIA E-MAIL & COURIER

May 1, 2009

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, Suite 2700
Toronto, ON
M4P 1E4

Dear Ms. Walli:

Re: PowerStream Inc.;
Ontario Energy Board File No. EB-2008-0244

We are writing on behalf of PowerStream Inc. ("PowerStream") to file revised responses to Interrogatories 1, 7, 12 and 13 from the Smart Sub-Metering Working Group ("SSMWG").

The responses to SSMWG 1 includes two schedules. Schedule SSMWG 1-1, a document entitled "Sub-Metering Competitive Strategy," contains four references to specific service providers in the sub-metering sector. As a courtesy to the parties involved, PowerStream has redacted these references in the response provided to intervenors. We are, however, filing an unredacted version of Schedule SSMWG 1-1 with the Board and request that it be held in confidence pursuant to Rule 10 of the Board's *Rules of Practice and Procedure* and its *Practice Direction on Confidential Filings*. PowerStream does not anticipate that SSMWG or any other party will object to the redaction.

Yours very truly,

Helen Newland

HTN/ko

Encls.

For the Board:

Revised responses to SSMWG 1, 7, 12 and 13, including unredacted version of Schedule SSMWG1-1

For all interested Parties EB-2008-0244:

Revised response to SSMWG 1, 7, 12 and 13, including redacted version of Schedule SSMWG1-1

Smart Sub-Metering Working Group Interrogatory #1

Rate Base (Exhibit B)

- 2.1 Are the amounts proposed for Rate Base appropriate?
- 2.2 Are the amounts proposed for 2009 Capital Expenditures appropriate?

References: Exhibit B1/T4/S2/p. 2
Exhibit B1/T4/S2/p. 19
Exhibit B1/T6/S1
Exhibit B1/T7/S1

Question:

1. **PowerStream proposes the continuation of a multi-unit residential smart suite metering program (the “Suite Metering Program”) and budgets expenditures of \$5.7 million for the years 2008 to 2012 (Exhibit B1/T6/S1). The PowerStream capital investment process indicates that a business case is completed for all projects in excess of \$250,000 (Exhibit B1/T2/S1, p. 19).**

Please provide a copy of all business cases, plans, presentations to the PowerStream Executive Management Team, internal communications and calculations that relate to the Suite Metering Program from its inception.

Response

PowerStream, as a licensed electricity distributor, has a service territory distribution monopoly and, generally, it is not engaged in competitive businesses. The most notable exception is smart suite metering; this is a very competitive business segment with numerous market participants. In addition to PowerStream, a number of intervenors are also engaged or are attempting to get a foothold in this market segment. These intervenors – Carma Industries Inc., Enbridge Electric Connections Inc., Hydro Connection Inc., Intellimeter Canada Inc., Stratacon Inc. and Wyse Meter Solutions (collectively, the “Smart Sub-Metering Working Group”) – filed a late intervenor request with the Board dated February 17, 2009 in which the competitive nature of this business segment was openly acknowledged.

PowerStream is concerned that SSMWG has intervened in this proceeding to gain access to certain information from PowerStream for the purpose of securing an unfair competitive advantage *vis-à-vis* PowerStream. This particular interrogatory is a blanket request for any and all internal documents pertaining to PowerStream’s suite metering program without any attempt to link the information requested to the matters at issue in this proceeding. Bluntly speaking, it

amounts to nothing more than a "fishing expedition." Nevertheless, in order to avoid procedural wrangling, PowerStream is prepared to provide a copy of PowerStream's suite metering business plan as well as an excerpt from the minutes of the meeting of its Board of Directors documenting its decision to provide suite metering service to condominiums. Accordingly, the following documents are attached hereto:

- (i) **Schedule SSMWG 1-1:** a document entitled "Sub-Metering Competitive Strategy," presented to PowerStream's Board of Directors (October 24, 2007); and
- (ii) **Schedule SSMWG 1-2:** an excerpt from the minutes of a meeting of PowerStream's Board of Directors (October 24, 2007).

The two schedules referenced above are provided in unredacted form with the exception of four references in Schedule SSMWG 1-1 to specific third-party service providers. As a courtesy to the parties involved, these references have been redacted in the copy of Schedule SSMWG 1-1 that is being provided to intervenors in this proceeding. An unredacted version of Schedule SSMWG 1-1 is being filed with the Board.

It is important to note that the phrase "sub-metering" is used throughout the schedules. At the time these documents were prepared, this terminology was accurate. This subsequently changed and now the correct terminology is "individual suite metering." The use of the term "sub-metering" should not be interpreted to mean that PowerStream is engaged in the sub-metering business. PowerStream is not now, nor has it ever been, engaged in the sub-metering business in condominiums or otherwise.

POWERSTREAM INC. BOARD OF DIRECTORS MEETING – OCTOBER 24, 2007

SUB-METERING COMPETITIVE STRATEGY

Recommendation

The President & CEO and the Vice President Corporate Performance recommend that the Board of Directors authorize Management to take appropriate action to formally pursue Sub-Metering business opportunities as a competitive business within PowerStream's service territory. This course of action was recommended by the Audit & Finance Committee at its meeting of October 23, 2007. These actions include the formal engagement of a marketing and technology partner to assist PowerStream in the execution of this business strategy.

Issue Summary

1.0 Current Environment

██████████ is offering Condominium Builder/Developers a \$ 300/unit incentive payment to contract with ██████████ for the installation, operation and maintenance of Sub-Metering system in their new condominium development projects. This poses a serious competitive threat to PowerStream's Sub-Metering business opportunities.

2.0 Background

PowerStream is a rate regulated and licensed electricity Distributor in Ontario. Our distribution rates are established through a public and transparent process fully regulated by the Ontario Energy Board (OEB). When we connect a sub-metering customer they are charged our approved residential distribution rates, which are designed to eliminate any rate class cross-subsidisation.

██████████ and ██████████, both of whom are active in our service territory, are unlicensed sub-metering entities whose rates are unregulated. Their rates are consequently not subject to the review of any regulatory agency for fairness or cross-subsidisation issues and the OEB at present has no plans to undertake such regulation.

For new condominium construction the decision to install a Sub-Metering system in a development and chose a service provider is decided by the Developer/Builder and not the successor Condominium Corporation. The service agreement and related costs are subsequently assumed by the condominium unit owners as part of their purchase agreement.

Ministry of Energy (MOE) and OEB staff are of the understanding that under Section 112 of the Condominium Act a Condominium Corporation can terminate a Sub-Metering service agreement at its discretion given it effectively consumer choice. Based on a legal opinion obtained by PowerStream from Gowlings Lafleur Henderson, the Condominium Corporation does not have this authority effectively making the Corporation and its unit owners the captive clients of the service agreement it assumes from the Developer/Builder.

2.1 Advocacy Efforts

Advocacy efforts by various LDC's and the EDA to influence the MOE to eliminate electricity distribution competition (embedded distribution) on private property were unsuccessful. The MOE subsequently introduced regulations to formalise the requirements for sub-metering and the OEB is now in the process of developing Distribution System Code requirements in support of these regulations.

PowerStream representatives met with staff of the OEB Compliance Section on October 1st to advise them of the evolving competitive pressures in the sub-metering business environment and urged them to make competitors in the Sub-Metering business subject to the same rate regulation provisions as Local Distribution Companies. Board staff

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advised that, in their opinion, the OEB lacks the jurisdiction to rate regulate these entities and has no current plans to do so.

3.0 Strategic Importance to PowerStream

- Customer growth potential in the multi-unit metering classification is substantial. Based on current building plans PowerStream could increase its customer base by up to 2,000 – 3,500 (1.0 -1.5%) per year by offering individual unit metering. It is an important organic growth opportunity within our service territory. Moreover, this opportunity will only increase as urban growth density intensifies.
- New customer connections are a key component of the OEB's performance based metrics approach to the 3rd phase of Incentive Based Regulation. The extent to which PowerStream can increase its customer base will result directly in more favourable performance results for PowerStream and reduce Regulatory risk.
- Providing individual unit connections for condominium customers provides PowerStream with the ability to engage these customers directly in CDM initiatives. Without sub-metering these customers cannot be engaged in achieving the Government's conservation objectives. As approximately 10% of PowerStream's customers are currently behind the bulk meter, this is a considerable foregone CDM opportunity.
- Finally, adding new plant assets through the sub-metering of condominium developments increases PowerStream's asset base and is supportive of our merger and acquisition activity.

4.0 Key Issues

- The extent to which PowerStream's competitors can recover their "incentive" costs directly from their end customers as their rates are unregulated and not subject to review.
- The extent to which [REDACTED] incentive payments may be cross-subsidised by other segments of their Corporate parent's businesses or [REDACTED] Shareholders given that their rates are unregulated and not subject to review.
- If PowerStream elects to match the incentive payments it will likely establish a precedent that will cause other Developer/Builders to seek the same incentives from PowerStream. Based on the current forecast of condominium developments in our service territory the incentive payments could total \$ 1M. per year.
- It is possible, given the OEB requirements for cost allocation equity, that PowerStream's Shareholders may have to fund the incentive payments from dividends because to recover these costs through distribution rates may result in cross-subsidisation by PowerStream's non-condominium customers.
- If PowerStream elects to make incentive payments the break-even point for cost recovery is 8 years at a maximum incentive of \$ 125/unit.

5.0 Alternatives

5.1 Do Nothing

Not Recommended. Reduced organic and rate base growth and loss of customer numbers for OEB 3rd Phase Incentive Based Regulation.

5.2 Compete for the Business from New Unregulated Subsidiary

Not Recommended. Expensive (> \$ 0.5M) to establish, onerous Affiliate Relationship Code provisions to satisfy, complicated Governance and questionable profitability without other business objects.

5.3 Compete for the Business within the Regulated Distribution Business

Recommended. Provides the opportunity for organic and rate base growth and enhances PowerStream's competitive position with respect to 3rd Phase Incentive Based Regulation.

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6.0 Recommendations

- That the Board of Directors authorize Management to take appropriate action to formally pursue Sub-Metering business opportunities as a competitive business within PowerStream's service territory.
- That PowerStream continue our advocacy efforts. While initial attempts to engage MOE and OEB staff have been disappointing, focusing on the lack of customer mobility may provide leverage.

MINUTES OF A MEETING OF THE BOARD OF DIRECTORS

POWERSTREAM INC.

POWERSTREAM VAUGHAN BOARDROOM

2800 Rutherford Road

Vaughan, Ontario

WEDNESDAY, OCTOBER 24, 2007

Directors Present: Peter Meffe, Chair
Tony Carella, Director
Linda Jackson, Director, via teleconference
Tony Wong, Director
Dan Horchik, Director
Mario Ferri, Director
Bernie DiVona, Director
David Allison, Director
Joyce Frustaglio, Director, via teleconference

Officers Present: Brian Bentz, President & CEO
John Glicksman, EVP & CFO
Dennis Nolan, EVP Corporate Services & Secretary
Jack Dinsdale, EVP Asset Management
Milan Bolkovic, EVP & COO
Mike Matthew, Director, Asset Management

Other Attendees: Ed Chatten, VP Corporate Performance
Eric Fagen, Manager, Corporate Communications

Regrets: Frank Scarpitti, Vice-Chair

Mr. Meffe acted as Chair and Mr. Dennis Nolan, acted as Secretary.

Mr. Meffe called the meeting to Order.

CONFIRMATION OF AGENDA

ON MOTION DULY MADE, SECONDED, AND CARRIED, the following resolution was passed:

RESOLVED that the agenda be confirmed. There being no disclosure of interest, the meeting proceeded to consider new business.

3. **SUB METERING COMPETITIVE STRATEGY**

Report by the President & CEO and the VP Corporate Performance

Mr. Chatten, Vice- President Corporate Performance and Metering reviewed the Report with the Board. Mr. Chatten explained Management's recommendations to take appropriate actions to pursue sub-metering business opportunities within PowerStream's service territory.

After discussion, it was:

RESOLVED THAT the Strategy be approved, amended to remove the payment of incentives or customer acquisition fees.

Smart Sub-Metering Working Group Interrogatory #7

Question:

The PowerStream Website indicates that the Suite Metering Program utilizes Quadlogic Smart Meters. What is PowerStream's forecast cost per suite to purchase and install Quadlogic Smart Meters, and what portion of this amount is included in the Suite Metering Program?

Response

PowerStream's response to SSMWG-5 provides: (i) the actual fully-allocated cost of its suite metering program in 2007 and 2008 and its forecast of such costs for 2009; and (ii) the number of buildings and units involved in the suite metering program. The fully allocated *per* unit cost of PowerStream's suite metering program in each year can be derived from this information.

Amounts paid by PowerStream to Quadlogic and Trilliant in respect of hardware, procurement, installation, data acquisition and project management services are embedded in the fully allocated cost data provided in response to SSMWG-5. These vendors were chosen on the basis of a competitive tender and, accordingly, the prices of their service comprise market prices. Pricing information that is specific to each of these vendors is proprietary to these vendors and PowerStream is unable to unilaterally provide this information to any third parties. Moreover, PowerStream is of the view that SSMWG does not require this specific proprietary information for any purpose that is relevant to a rate application proceeding. The cost information provided in other responses to SSMWG interrogatories is more than sufficient to formulate positions on the issues that are relevant in this proceeding.

Smart Sub-metering Working Group Interrogatory #12

Cost of Service (Exhibit D)

I4.1 Are the overall levels of the 2009 Operation, Maintenance and Administration Budgets appropriate?

Reference: Exhibit D1/T1/Schedules 1, 2, 3, 4 and 9 Question:

Does PowerStream include in its proposed 2009 OM&A Budget any amounts for the operation and promotion of the Suite Metering Program (salaries, overhead, etc.)? Please provide the amounts attributable to the Suite Metering Program on a fully allocated basis.

Response

Yes. The 2009 OM&A amounts set out in PowerStream's Application include \$127,000 which comprises PowerStream's forecast of the fully allocated (including burdens) OM&A cost of PowerStream's 2009 suite metering program.

Smart Sub-metering Working Group Interrogatory #13

Question:

The PowerStream Website indicates that it partners with Trilliant Networks to deliver the Suite Metering Program. Please advise of Trilliant's role and whether the 2009 OM&A Budget includes any forecast amounts payable to Trilliant, and if so, the forecast amount.

Response

Trilliant provides procurement, installation, data acquisition and project management services in connection with PowerStream's suite metering program. The 2009 OM&A Budget does include forecast amounts payable to Trilliant. Please see revised responses to SSMWG-7 and SSMG-12 for further information on this matter.