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May 13, 2009

DELIVERED AND VIA EMAIL

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
27th Floor
2300 Yonge Street
Toronto, ON M4P 1E5

Dear Mr. Walli:

**Re: PowerStream Inc. 2009 Cost of Service Electricity Distribution Rates
Board File No. EB-2008-0244
Intervenor: Smart Sub-Metering Working Group ("SSMWG")**

We act for the above-noted SSMWG.

The SSMWG notes that Procedural Order No. 4 requires intervenors to make submissions in respect of requests by the Applicant for confidentiality today. While it does not appear from Counsel for PowerStream's letter of May 11, 2009 that the Applicant is now requesting confidential treatment in respect of the balance of the documentation requested by SSMWG Interrogatory No. 1, given that the Applicant earlier alluded to the need for confidential treatment in support of the Applicant's refusal to respond to SSMWG Interrogatory No. 1, the SSMWG is filing this letter.

The SSMWG has intervened in this proceeding in respect of the Applicant's multi-million dollar condominium metering program. The Applicant's pre-filed evidence confirms that a business case is prepared for each project in excess of \$250,000. SSMWG Interrogatory No. 1 requested production of the business case underlying the Applicant's suite metering program and related materials. One would expect that one or several senior managers at PowerStream would have been tasked with the role of considering the advantages and disadvantages of proceeding with the suite metering program, including its financial and cost implications. It is to be expected that the underlying data and assumptions would have been distilled into an analysis and recommendations for discussion by the Applicant's Executive Management Team.

PowerStream initially refused to produce any documentation in response to SSMWG's Interrogatory No. 1. In response to an objection filed by the SSMWG to this refusal, PowerStream produced two documents consisting of a presentation to the Board of Directors and the Board of Directors' approval. Clearly, this presentation must have followed presentation of a business plan to the Executive Management Team and must have been based upon certain underlying assumptions and projections. While the SSMWG accepts that the Applicant's response to this point consists of all written

materials presented to the Board of Directors, PowerStream has not attempted to justify why the production of the presentation to the Executive Management Team, which includes the recommendation by the Audit and Finance Committee which is specifically referenced in the documentation produced to date, are not relevant.

PowerStream is requesting approval to add the capital cost of its multi-million dollar program to rate base and to recover as part of its revenue requirement, the O&M costs associated with the program. The SSMWG questions the prudence of this program which the Applicant admits is a deliberate foray by PowerStream into a highly competitive marketplace.

As noted in our May 8, 2009 letter, the two documents produced by the Applicant to date clearly demonstrate that there are relevant rate-related issues. By the Applicant's Counsel's letter of May 11, 2009, it is further acknowledged that various business scenarios were identified and analyzed as part of the Applicant's decision-making process. Given the presentation to the Applicant's Board of Directors, one business scenario considered was likely whether the suite metering program should be undertaken through an affiliate of the Applicant. The SSMWG submits that the prudence of the Applicant's decision to not undertake competitive market activities through an affiliate or at all are both live issues in this proceeding and the data and analysis about these other scenarios are relevant and should be produced.

The SSMWG therefore respectfully requests that the Board require PowerStream to provide a complete response to SSMWG Interrogatory No. 1.

Yours very truly,

AIRD & BERLIS LLP



Dennis M. O'Leary

DMO/jo

cc: The Applicant (via email)
Intervenors (via email)

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