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**VIA E-MAIL**

June 17, 2009

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

Dear Ms. Walli:

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

I am writing, on behalf of PowerStream Inc., to file our Written Argument in this proceeding.

Yours very truly,

HTN/ko

cc: Interested Parties EB-2008-0244

## ONTARIO ENERGY BOARD

**IN THE MATTER OF** the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B);

**AND IN THE MATTER OF** an application by PowerStream Inc. for an order approving just and reasonable rates and other charges for electricity distribution to be effective May 1, 2009

### Written Argument of PowerStream Inc.

#### **A. Introduction**

1. By decision dated June 3, 2009, the Ontario Energy Board ("Board" or "OEB") approved the terms and conditions of the Settlement Proposal filed by PowerStream Inc. ("PowerStream") on May 29, 2008. The Settlement Proposal embodies an agreement between PowerStream and all of the parties (the "Intervenors") who participated in the Settlement Conference that was convened pursuant to the Board's directive in Procedural Order No. 3.
2. PowerStream and the Intervenors achieved a complete and comprehensive settlement of all 37 issues on the Board-approved Issues List (Appendix "B" to Procedural Order No. 2). The settlement of these issues was made subject to a subsequent decision by the Board on whether and to what extent PowerStream should be permitted to recover in rates, the owning and operating costs of its suite metering activities.
3. The Settlement Proposal stated that one Intervenor – the Smart Sub-Metering Working Group ("SSMWG") – took the position that "the revenue requirement impacts of those activities should not be included in rates in the Test Year" [**Settlement Proposal, p.8**]. The Settlement Proposal went on to state that while PowerStream believes that such costs should be recovered, other Intervenors had not, as yet, taken any position on this issue [**Settlement Proposal, p. 8**].

4. A one-day oral hearing was held on June 15, 2009 to hear evidence and submissions on the provision, by PowerStream, of individual smart suite metering activities.

**B. Relief Sought By PowerStream**

5. PowerStream requests that the Board accept, for rate-making purposes, the revenue requirement of \$114,563,000 that is stipulated in the Settlement Proposal, inclusive of the costs of PowerStream's individual smart suite metering activities in 2009.
6. Implicit in this request is a request that the Board accept, for rate-making purposes, the 2009 rate base amount of \$526,814,000 that is also stipulated in the Settlement Proposal, inclusive of: (i) actual capital additions of \$1,660,000 and \$1,715,000, in respect of PowerStream's individual suite metering activities in 2007 and 2008, respectively; and (ii) forecast capital additions of \$1,086,000 in respect of PowerStream's individual smart suite metering activities in 2009.
7. As a result of the intervention of the SSMWG in this proceeding, the inclusion of individual smart suite metering services as part of PowerStream's core distribution business and the right to recover associated, prudently-incurred costs, has been called into question.
8. PowerStream should not be obligated to provide individual smart suite metering services under a cloud of uncertainty as to whether it will be allowed to recover its prudently incurred costs. Indeed, this type of uncertainty could well put a damper over all individual smart suite metering activities carried out by licensed distributors in Ontario. Further, if licensed distributors cannot reach consumers that lie behind a bulk meter, their ability to deliver conservation and demand management programs to these consumers will be significantly impaired, if not entirely eliminated. This is of even

greater concern, given the recently enacted *Green Energy Act*, pursuant to which licensed distributors are required to assume greater and primary responsibility to promote and achieve the government's conservation targets. Commercial providers of smart sub-metering services do not share this responsibility and have no obligation, statutory or otherwise, to provide their service.

9. In light of the above, PowerStream requests that the Board confirm that under the legislative and regulatory framework that exists today, licensed distributors are obligated to provide individual smart suite metering services as part of their core distribution business and are entitled to recover their prudently incurred associated costs.

**C. PowerStream's Suite Metering Costs Are Prudent**

10. In September 2007, PowerStream initiated a Request for Proposal ("RFP") process in order to select a smart metering vendor and service provider to implement the smart meter technology and manage on-going data collection activities; in short, the full array of services required to provide individual smart suite metering services to condominiums [1Tr.68, II.6-21]. PowerStream engaged the services of an independent third party, Util-Assist Inc. ("Util-Assist"), to develop and administer the RFP process and assist in the evaluation of the proposals received [1Tr.68, II.4-5]. Util-Assist is a highly regarded consulting company that assists utilities in the procurement of smart meter technology and the delivery of smart meter services [1Tr.67, II.6-9]. Mr. James Douglas is the founder and President of Util-Assist.
11. Mr. Douglas, appearing on behalf of PowerStream at the oral hearing, testified that the selection process was fair, reasonable and transparent [1Tr.68, II.27-28; p. 69, II.1]. The RFP disclosed the criteria that would be used to select the successful bidder

**[1Tr.68, II.22-26].** Ultimately, PowerStream selected Trilliant Incorporated ("Trilliant") as its smart suite meter vendor and service provider because it ranked higher than any other bidder in terms of an evaluation of operational and financial factors **[1Tr.69, II.2-7]**. PowerStream submits that in the result, the price payable to Trilliant for the provision of individual smart suite metering services is a reasonable and fair market price.

12. During the cross-examination of PowerStream's witnesses, an issue arose with respect to the *per* unit installation cost of individual smart suite meters relative to the *per* unit installation cost of the single smart meters that are installed in traditional subdivisions (where such installation is not part of a mass retrofit program). PowerStream utilizes Quadlogic technology in the delivery of smart suite meter services. The *per* unit cost of installing Quadlogic meters is approximately \$680. This compares with a \$250 per unit cost of installing single smart meters in traditional subdivision homes.
13. PowerStream expects that some parties may argue that the difference in the *per* unit cost of installing Quadlogic technology, compared with the installed cost for single family homes, should be for the account of the condominium developer or condominium corporation but that, in any event, it should not be shared by non-condominium customers in the residential rate class. PowerStream disagrees.
14. PowerStream's witnesses testified that very few existing condominiums in its service territory – 5 percent or less – had footprints that could accommodate the use of traditional single smart meters **[1Tr.82, II.21-28; 83, II.1-2]**. As for new buildings, condominium developers are entirely conversant with modern metering technology. Accordingly, they size and design their meter rooms assuming that the smaller Quadlogic units or other similar meters will be installed, as opposed to a greater number

of the larger single units. There are other factors, besides size, that dictate the choice of the Quadlogic meter. For example, standard technology that relies on radio frequencies to transmit meter data (as opposed to transmittal by powerline) may not work in high-rise buildings [1Tr.86, ll. 4-28; p.87, ll.1-12; p.88, ll.23-27].

15. The obligation to provide distribution service carries with it a corollary obligation to install technology that meets current industry standards and that is appropriate in the circumstances of the installation in question. For the reasons discussed in paragraph 14 above, single meters are simply not appropriate for use in condominium buildings.
16. The cost of the products and services provided pursuant to the contract with Trilliant comprise represent approximately two-thirds of PowerStream's cost to deliver individual smart suite metering services to customers. This, in turn, represents approximately 66 percent (before PILs) of the incremental revenue requirement of PowerStream's individual smart suite metering activities [Exhibit K1.4]. The balance of the incremental revenue requirement of PowerStream's individual smart suite metering program – 34 percent (before PILs) – comprises operating, maintenance and administrative expenses ("OM&A"). This component is embedded or pooled within the OM&A amount of \$43,216,000 that is stipulated in the Settlement Proposal. This amount and its constituent elements, including suite metering OM&A costs, are presumed to be both reasonable and prudent. There is no evidence on the record of this proceeding to suggest otherwise and PowerStream was not challenged on this point during the cross-examination of its witnesses.

D. **Condo Customers Are Not Subsidized**

17. Individual smart suite metered customers take service under PowerStream's residential rate class. There is no separate class or sub-class for such customers. This is entirely consistent with the Board's definition of "smart metering" (as distinct from "smart sub-metering") that is set out in its "Notice of Proposal to Amend A Code" dated January 8, 2008 in proceeding EB-2007-0772 (p.2):

The Board uses the term "smart metering" to describe the situation in which a licensed distributor individually meters every condominium unit (and the condominium's common areas) with a smart meter. In this scenario, **each unit will become a residential customer of the licensed distributor** and each unit and the common areas must have a separate account with the licensed distributor. [emphasis added]

18. The costs of condominium customers are pooled with the costs of all other residential customers for the purpose of a cost allocation and rate design. The consumption patterns and other cost drivers of condominium unit customers are assumed to be similar, albeit not identical, to those of other residential customers such that there is no undue intra-class subsidization of one customer or customer group within the class, by another customer or group within the class. PowerStream believes this to be a reasonable assumption [1Tr.72, II.9-24]. This view is supported by the analysis set out in Exhibit K1.4.
19. Exhibit K1.4 is a table entitled "Suite Metering Incremental Revenue Requirement and Incremental Revenue". PowerStream prepared and filed this table to refute the calculations set out in a table that was filed by the SSMWG [Exhibit K1.6]. The figures

in Exhibit K1.4 are the result of a high-level analysis. PowerStream is not suggesting that these figures could or should be used to derive rates for a separate condominium rate class, any more than the SSMWG is suggesting that the figures in its table could be used for that purpose **[1Tr.220, II.3-9]**. As PowerStream testified, a full cost allocation study would be required to design a new rate class **[1Tr. 134, II.2-9]**. Nevertheless, the "annual suite meter program sufficiency" that is shown at the bottom of Exhibit K1.4, supports a high-level conclusion that condominium unit customers are not subsidized by other residential customers. In fact, the converse appears to be the case: condominium unit customers subsidize other residential customers.

20. This conclusion is bolstered by the figures on the SSMWG's table **[Exhibit K1.6]**, as revised during the cross-examination of the SSMWG's witness, Mr. Maclure. Exhibit K1.6 was part of Exhibit K1.5, a Document Brief filed by the SSMWG. At the start of the oral hearing, counsel for the SSMWG filed a revised version of the original table to reflect a correction to the PILs calculation. The correction reduced the alleged suite metering-related revenue deficiency from about \$750,000 to \$119,000 **[1Tr.218, II.2-9]**.
21. Under cross-examination, Mr. Maclure continued to revise his calculations:
  - a \$30,000 deduction from revenue requirement to correct an error in the calculation of the working capital allowance **[1Tr.219, II.4-13]**; and
  - a \$322,937 deduction from revenue requirement to reflect the approximate *per* customer OM&A cost for individual smart suite metered customers vs. the average per customer OM&A cost for all customers in all classes (\$110 vs. \$178) **[1Tr.206-208]**.



The sum of these deductions turns a **revenue deficiency** of \$750,000, shown in the SSMWG table as originally filed, into a **revenue sufficiency** of more than \$200,000 [1Tr. 227].

E. **Smart Suite Metering is a Core Distribution Service**

22. PowerStream witnesses testified that two reasons underpinned the decision of PowerStream's Board of Directors, in October 2007, to formally engage in the provision of individual smart suite metering services as part of its core distribution business: (i) PowerStream's responsibilities to promote the government's conservations initiatives; and (ii) PowerStream's understanding of its statutory obligations to provide such services upon request [1Tr.63-64]. At the time of this decision, the sources of this obligation were section 28 of the *Electricity Act, 1998* ("Electricity Act") and Ontario Regulation 442/07 ("O.Reg.442/07"). The July 2008 amendments to the *Distribution System Code*("DSC") incorporated this obligation into the code by adding paragraph 5.1.9.
23. Section 28 of the Electricity Act requires a distributor to connect a building if it lies along the distributor's existing distribution system and if the distributor is so requested by the building owner, occupant or other person in charge. O. Reg. 442/07, originally promulgated on August 1, 2007, clearly requires licensed distributors to install smart meters in existing condominiums where so requested by the board of directors of the condominium corporation.
24. O. Reg 442/07 is ambiguous, however, insofar as a distributor's obligations to install individual smart suite meters in new condominiums. PowerStream has, from the beginning, interpreted section 4 of O. Reg. 442/07 as requiring all new condominiums to

be either smart suite metered, smart bulk metered or smart sub-metered, the choice being left to the condominium developer. When requested by the developer, PowerStream understands that it would be required to provide this service – but only when requested [1Tr.90,II.8-19]. PowerStream is aware that there are other distributors who also interpret O. Reg 442/07 in the same manner.

25. The DSC was amended, effective July 25, 2008, to add section 5.1.9. There was much discussion, during the hearing, about section 5.1.9. There is no dispute that the clear and unambiguous words of that section require a licensed distributor to install individual smart suite metering where so requested by the board of directors of a condominium corporation (in the case of existing condominiums) or by the developer (in the case of new condominiums):

5.19 When requested by either:

- (a) the board of directors of a condominium corporation; or
- (b) the developer of a building, in any stage of construction, on land for which a declaration and description is proposed or intended to be registered pursuant to section 2 of the *Condominium Act, 1998*,

a distributor shall install smart metering that meets the functional specification of Ontario Regulation 425/06 – *Criteria and Requirements for Meters and Metering Equipment Systems and Technology* (made under the Electricity Act).

**D. What Does the SSMWG Want?**

26. Until the SSMWG filed its Witness Statement on June 8, 2009, PowerStream did not know what relief the group was seeking in this proceeding. The SSMWG chose not to attend the Issues Day. Accordingly, PowerStream assumed that the SSMWG had accepted the Board-approved Issues List and would fit their request for relief around the traditional costs-of-service issues such as prudence, cost allocation and rate design that are included in the list.
27. After reading the Witness Statement filed last week, a different agenda emerged. In that statement, the SSMWG asks the Board to disallow all of the costs of PowerStream's suite-metering activities and to require PowerStream to undertake such activities through an affiliate or as a non-utility activity **[Exhibit K1.5, tab 22, para. 16]**. From this statement, one might speculate that the SSMWG's objective, in seeking late intervention in this proceeding, was to drive PowerStream out of the individual smart suite metering business. While this may be their ultimate objective, it is far more likely that the SSMWG viewed PowerStream's rate proceeding as a convenient and available platform to draw attention to their grievances with the current legislative and regulatory framework that requires licensed distributors to participate in individual smart suite metering activities. This conclusion is bolstered by the fact that the SSMWG's witness was unable to reconcile the SSMWG's request to require PowerStream to conduct its individual smart suite metering business outside of the utility, with the statutory duty of licensed distributors to provide such services **[1Tr.210, II.23-28; 211, II.1-23]**.
28. Ultimately, the SSMWG's issue had nothing to do with PowerStream's Application or even with generic principles of cost allocation and rate design. It had everything to do, however, with taking steps to challenge the comprehensive legislative and regulatory

framework that has been put in place to advance the government's conservation objectives, in order to increase the SSMWG's market share.

**E. Conclusions**

29. PowerStream requests that the Board accept, for rate-making purposes, a revenue requirement of \$114,560,000, including actual capital additions of \$1,660,00 and \$1,715,000 in respect of PowerStream's individual smart suite metering activities in 2007 and 2008, respectively, and forecast additions of \$1,086,0000 in 2009. There is no evidence in the record of this proceeding that these amounts should be adjusted for any reason whatsoever. Indeed, even the SSMWG would appear not to be proposing any adjustment [1Tr.220, II.3-9].
30. PowerStream also requests the Board to confirm that licensed distributors are obligated to provide individual smart suite metering services as part of their core distribution business and are, accordingly, entitled to recover their prudently incurred associated costs. There is ample evidence in the record of this proceeding to support this request. PowerStream submits that such confirmation is required to dispel the cloud of doubt that has been cast over the distributor community in this regard.

**F. Requests for Costs**

31. PowerStream takes the position that the SSMWG's conduct as an Intervenor in this proceeding was irresponsible in the extreme. The Board's objective in this proceeding, after all, was to rebase PowerStream's rates for the purposes of the Board's 3<sup>rd</sup> Generation Incentive Regulation Mechanism. The SSMWG's objective, on the other hand, was to compel an oral hearing at virtually the 11<sup>th</sup> hour, in order to create a public

forum in which to raise issues, which at their core, relate to the SSMWG's own commercial interests.

32. PowerStream is accordingly taking the unusual step of seeking an order of the Board directing the SSMWG to pay all of PowerStream's costs of participating in the oral hearing. Subsection 30(1) of the *Ontario Energy Board Act, 1998* empowers the Board to make such an order and, in PowerStream's submission, it would be appropriate for the Board to do so in this case.