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VIA E-MAIL

June 23, 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 its Reply Argument in this proceeding.

Yours very truly,

(signed) Helen T. Newland

HTN/ko
Encls.

cc: Interested Parties EB-2008-0244

THE 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.

**Reply Argument
of
PowerStream Inc.**

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I. Introduction

1. This is the Reply Argument of PowerStream on the issue of whether and to what extent PowerStream Inc. ("PowerStream") should be permitted to include the owning and operating costs of its individual smart suite metering activities in revenue requirement and, accordingly, recover these costs in rates.
2. Arguments were filed by the staff ("Staff") of the Ontario Energy Board ("Board" or "OEB") and the following Intervenor: the Consumers Council of Canada ("CCC"); Energy Probe Research Foundation; the School Energy Coalition ("SEC"); the Smart Sub-Metering Working Group ("SSMWG"); and the Vulnerable Energy Consumers Coalition ("VECC"). Board Staff and all Intervenor but one – the SSMWG – take the position that PowerStream should be permitted to recover its prudently incurred individual smart suite metering costs in rates.
3. The SSMWG on the other hand, opposes recovery of any smart suite metering costs, notwithstanding its statement that it is "not taking the position in this proceeding that these costs are not prudent."¹ Rather, the basis for the SSMWG's opposition is that distributors, such as PowerStream, should not be permitted to compete with commercial sub-meters service providers by providing individual smart metering services within the regulated utility. A corollary to this is that allowing PowerStream to recover individual smart suite metering costs in distribution rates will harm the competitive market.² To bolster its arguments in this regard, the SSMWG makes numerous unfounded and unsubstantiated allegations that PowerStream is acting in an anti-competitive fashion.
4. This reply responds to the SSMWG's arguments. It also responds to the argument of the SEC that PowerStream's revenue requirement should be adjusted to reflect a reduction to ratebase, in the Test Year, in order to take into account the time-lag between when individual suite meters are installed and when such meters are connected to revenue-generating consumers.

II. Response to the SSMWG

A. **How Should PowerStream Meet its Legal Obligations?**

5. In its argument, the SSMWG states that it was created with the purpose of drawing the Board's attention to concerns about rate-regulated utilities operating in competitive smart sub-metering markets.³ By its own admission, the purpose

¹ SSMWG Argument, para. 68.

² *Ibid.*, para. 2.

³ *Ibid.*

of its intervention in this proceeding is to "forestall the erosion of the competitive market"⁴ or, put another way, protect the market share of the SSMWG members.

6. Both PowerStream and the SSMWG members install smart suite meters. The SSMWG members choose to provide this service as part of their unregulated and competitive businesses. Distributors, such as PowerStream, are required by regulation and by the *Distribution System Code* ("DSC") to provide this service.⁵ All of the Intervenor – even the SSMWG – acknowledge and accept that this is the case.
7. What the SSMWG appears to take issue with, however, is that PowerStream is discharging its legal obligations by providing individual smart suite metering services within the regulated utility, as opposed to in an affiliate or as a non-utility activity.⁶ The SSMWG observes that subsection 71(2) of the *Ontario Energy Board Act, 1998* ("OEB Act") and section 29.1 of the *Electricity Act, 1998* state that distributors "may" provide services that promote conservation and that neither provision mandates that such activities must occur within the regulated utility. The SSMWG accordingly argues that distributors, such as PowerStream, can and should discharge their legal obligation under regulation and the DSC by providing smart suite metering services through an affiliate or in a non-utility account, on a fully allocated basis, without the ability to recover costs in distribution rates.
8. The SSMWG's argument misses the point. PowerStream does not dispute that it could choose to engage in competitive sub-metering activities through an affiliate that is licensed as a sub-meterer. It submits, however, that were it to do so, it would not be relieved of its duties to provide smart metering services. PowerStream, *qua* distributor, would still have to provide smart suite metering, as a distribution service, if requested to do so. The reason for this is simple. An affiliate of a distributor is not a distributor. It is neither licensed nor regulated as a distributor. Yet it is the distributor – not an affiliate of a distributor – that is required by regulation and by the DSC to provide smart metering services upon request. Moreover, a non-utility affiliate would have less of an incentive than a distributor to actively promote conservation initiatives. Such is the case with SSMWG members.
9. In its argument, the SSMWG ignores Ontario Regulation 442/07 and section 5.1.9 of the DSC. The only way to interpret the SSMWG's argument, in a way that is consistent with these legislative and regulatory provisions, is as a proposal to compel distributors to outsource a component of their distribution obligation to a non-utility affiliate that would then act as an agent of the regulated utility. Such

⁴ SSMWG Argument, para. 2.

⁵ Ontario Regulation 442/07; DSC, s. 5.1.9.

⁶ SSMWG Argument, paras. 12, 74.

a proposal would give rise to a myriad of issues, too numerous to mention. In any event, no such outsourcing requirement exists at the present time and for good reason.

10. The Board imposed the section 5.1.9 obligation upon distributors less than 12 months ago. It did so after an extensive, 6-month public consultation process. The SSMWG participated in the public consultation by filing two submissions, dated January 31 and June 24, 2008, respectively. In its January submission, the SSMWG acknowledged that licensed distributors could "enter into the competitive market as either a licensed smart sub-metering provider or a smart meter provider." In fact, the SSMWG appeared to endorse giving consumers an array of choices of smart meter service providers.⁷ Later on in the same submission, the SSMWG unequivocally stated its support for the addition of clause 5.1.9 to the DSC: "[T]he Group supports the addition of the new Clause 5.1.9, as worded in Attachment A to the Proposal."⁸
11. The SSMWG's proposal in this proceeding is nothing more than an indirect attempt to have the OEB review and vary a recent Board decision and one which the SSMWG initially supported. If the SSMWG has now changed its mind and decided that distributors should not be mandated to provide smart suite metering services it can, as the Chair suggested during the oral hearing, ask the Board to amend the DSC. It has not done this, instead choosing to use PowerStream's rate proceeding in order to advance its own commercial interests and attempt to increase its market share.

B. Allegations of Anti-Competitive Behaviour

12. In its argument, the SSMWG submits that allowing utilities, such as PowerStream, to operate a competitive business within the regulated entity, gives it "overwhelming economic advantages" and "opportunities to act in an anti-competitive fashion," thereby negatively impacting the smart sub-metering industry.⁹ The SSMWG alleges that PowerStream is attempting to "eliminate competition,"¹⁰ extend its distribution monopoly to private sector markets through "subtle" means¹¹ and "avail itself of its dominant position in the market at the expense of the competitive sub-metering industry."¹² These are unfounded and unsubstantiated allegations.
13. At the outset, it is important to distinguish between "competition" and "anti-competitive practices". These are different concepts and should not be confused.

⁷ EB-2007-0772, Submission by the Smart Sub-Metering Working Group (January 31, 2008), para. 7.

⁸ *Ibid.*, para. 12.

⁹ SSMWG Argument, paras. 2 and 13.

¹⁰ *Ibid.*, para. 54.

¹¹ *Ibid.*, para. 58.

¹² *Ibid.*, para. 74.

"Economic competition" refers to the quest for a greater share of a market in which to sell goods and services. "Anti-competitive practices," on the other hand, are those that have the effect of preventing or lessening competition among businesses operating in a market or those that are intended to have that effect.

14. The SSMWG has not presented any evidence that PowerStream was acting to prevent or lessen competition *vis-à-vis* sub-metering service providers. The reason for this is simple; there is no such evidence.
15. In its argument, the SSMWG points to: (i) PowerStream's Conditions of Service¹³; (ii) its "advocacy efforts"¹⁴; (iii) its promotional activities;¹⁵ and (iv) its Offer to Connect¹⁶, all as factors that suggest that PowerStream's conduct is overtly and negatively impacting the competitive market. The implication that PowerStream is engaging in anti-competitive practices.
16. In cross-examination, counsel for the SSMWG made much of the first sentence of paragraph 2.3.7.3.5 of PowerStream's Conditions of Service.¹⁷ This sentence reads: "PowerStream does not offer bulk metering of multi unit buildings." What the SSMWG failed to note in cross-examination and again fails to mention in its argument, is that directly below this sentence, in the same paragraph, its is clearly stated that: "[T]he building owner may opt for ... a sub-metered system." These words directly contradict the SSMWG's assertion that "there is no language in the version of the Conditions of Service appended to PowerStream's response to SSMWG IR #3, Sch. 3-1 which suggests that anyone, other than PowerStream, may install meters in buildings it serves."¹⁸
17. Unfortunately, the excerpts from PowerStream's Conditions of Service, that were provided in response to SSMWG IR#3, inadvertently omitted this key provision. In examination-in-chief, however, PowerStream's witness, Mr. Chatten, corrected this omission by reading the clarifying words into the record and confirming that PowerStream will install bulk meters if so requested¹⁹. In his cross-examination of Mr. Chatten, counsel for the SSMWG ignored Mr. Chatten's earlier testimony. The SSMWG's argument similarly ignores this testimony in order to advance its argument that PowerStream is acting in an anti-competitive manner.
18. The SSMWG also refers to PowerStream's "advocacy efforts" as evidence of PowerStream's conduct negatively affecting the competitive market.²⁰ Again, the

¹³ Exh. K1.7 (PowerStream's Document Brief), pp. 151-157.

¹⁴ *Ibid.*, pp. 134-135.

¹⁵ *Ibid.*, pp. 144-150.

¹⁶ *Ibid.*, pp. 160-61.

¹⁷ 1 Tr. 164-165.

¹⁸ SSMWG Argument, para. 52.

¹⁹ 1 Tr. 66, ll. 7-28; p. 67, l.1.

²⁰ SSMWG Argument, para.54.

SSMWG has taken something completely out of context in order to advance its position. The reference to PowerStream's "advocacy efforts" is a reference to Item 2 of a management presentation to PowerStream's Board of Directors seeking authorization to formally pursue what eventually became PowerStream's "individual smart suite metering" (as opposed to "smart sub-metering"). The presentation referred to the "advocacy efforts" by various LDC's and the Electricity Distributors Association to influence the Ministry of Energy, which efforts were ultimately unsuccessful because "[t]he MOE subsequently introduced regulations to formalize the requirements for sub-metering..."²¹ The "advocacy efforts" referred to in the management presentation pre-dated the regulations that facilitated sub-metering and were made in the context of the multi-party consultations that preceded the promulgation of a legislative framework for smart metering.

19. The SSMWG also characterizes PowerStream's "promotion" of its individual smart suite metering service as "another overt example" of how PowerStream allegedly negatively impacts the competitive market. This issue was addressed by PowerStream's witness, Mr. Chatten, during cross-examination by counsel for VECC. Mr. Chatten testified that PowerStream spends approximately \$10,000 in promoting its key account program, its CDM program and its suite metering activities. In other words, the \$10,000 promotional expenditure on program awareness is split among three programs.²² This hardly represents a deliberate attempt to subvert market forces.
20. Finally, the SSMWG's argument also refers to PowerStream's Offer to Connect as evidence that PowerStream is attempting to expand its "distribution monopoly into an area where a competitive private sector market exists;" i.e., inside a condominium building. The Offer to Connect includes a form of agreement that purports to bind a condominium corporation to contract with PowerStream as their "exclusive meter installation and service provider."²³ Once again, the SSMWG has ignored the testimony of PowerStream's witness, Mr. Chatten. In response to a question from the Chair, Mr. Chatten stated that:

... the condo corporation has the right and the ability to change service providers, if they so choose in the future.²⁴

Later on, as part of the same exchange and, in answer to another question from the Chair, another PowerStream witness, Mr. Macdonald, made it clear that if a condominium corporation did not want to designate PowerStream as its exclusive meter installer and service provider, as stipulated in the agreement,

²¹ Exh. K1.7, p. 134.

²² 1 Tr. 102, ll. 24-28; p. 103, ll. 1-11.

²³ Exh. K1.7, p. 161.

²⁴ 1 Tr. 169, ll. 7-21.

PowerStream would still install the "New Quad-Logic Smart Metering System and all associated Equipment at no cost to" the condominium corporation, as provided in the Offer to Connect. No additional charges would be levied against the corporation:²⁵

...we have an obligation to connect, and the same rules would apply. The metering costs would not be charged, it would be part of the pooled rates for the residential class.

Mr. KAISER: So your evidence is you would charge them the same regardless of whether they covenanted in the contract to give you exclusivity or not?

Mr. MACDONALD: Yes.

21. It is clear that notwithstanding the words in the agreement, a condominium corporation is free to terminate their relationship with PowerStream and switch to a sub-metering service provider. No additional charge is levied against the condominium corporation in these circumstances.
22. It is a serious matter to accuse anyone of anti-competitive behaviour. Such allegations should not be made lightly. It is troubling that the SSMWG has chosen to level these accusations at PowerStream in the absence of any credible evidence. The SSMWG also conveniently ignores the fact that PowerStream is required by law and encouraged by Government policy, to pursue individual smart suite metering activities. Indeed, recently enacted but unpromulgated amendments to the OEB Act require the OEB, when making decisions, to promote electricity conservation and demand management in a manner consistent with the policies of the Government of Ontario.

C. Cost Allocation and Rate Design Issues

23. During the hearing, there was much discussion about issues of cross-subsidization, cost allocation and rate design. In the result, however, none of the Intervenor, including the SSMWG, has proposed that PowerStream should take steps to carry out a full cost allocation study in order to define a separate condominium rate class.²⁶ Indeed one Intervenor – the CCC – makes an extremely convincing argument, which PowerStream endorses, that the Board should not embark on such an exercise, for either PowerStream or on a more generic basis.²⁷

²⁵ 1 Tr. 171, ll.13-28; p. 172, ll.1-3.

²⁶ The SEC proposes that the Panel recommend to the full Board that it examine, on a generic basis, the issue of how regulated activities compete with the private sector.

²⁷ CCC Argument, paras. 19-23.

24. As for PowerStream, there is no evidence of intra-class cross subsidization that would suggest the need for such a fundamental departure from its current rate design practices. This is true, notwithstanding the SSMWG's attempt to introduce new evidence in its final argument by filing yet another table.²⁸ This new table revises PowerStream's original table by substituting fully allocated operations, maintenance and administrative ("OM&A") costs for the incremental costs that were shown in the original PowerStream table.
25. The purpose of PowerStream's original table was to determine if the incremental revenues of its individual smart metering activities exceeded the incremental costs. The table compared the difference, in annual costs and revenue, between smart suite metering and bulk metering. Accordingly, only the capital and OM&A costs that are incremental to the costs of bulk-metering condominiums were included in the analysis.²⁹ PowerStream's incremental analysis demonstrates that smart-suite metering revenues exceed the associated incremental costs (including return) and that individually smart suite metered customers are not subsidized by other residential customers.
26. The SSMWG's revision to PowerStream's original table mixes "apples and oranges". The \$517,000 amount shown on Line 14 of SSMWG's revisions is based on the fully allocated, *per* customer OM&A cost for a residential class customer. Accordingly, this amount includes the costs to operate and maintain the distribution system that serves both conventional and individually smart suite metered customers. Moreover, the \$146,640 amount shown in Line 13 of SSMWG's revision is already embedded in the \$517,000 amount shown on Line 14 of the revision; in other words, the \$110 amount is the "all-in" *per* customer cost of serving customers in the residential class.
27. In the result, the SSMWG has overstated the incremental OM&A costs of smart suite metering by \$432,900. This, in turn, has resulted in an overstatement of the "Working Capital Allowance" (shown on Line 6 of the new table) by \$64,395. The "Return on Rate Base" (shown on Line 11 of the new table) is overstated by the same amount. The end result is that the "Suite Metering Revenue Requirement" amount (shown on Line 20 of the new table) is overstated by \$438,789 and the revenue deficiency of \$278,358 (shown on Line 27 of the new table) becomes a revenue sufficiency of \$160,430.

²⁸ SSMWG Argument, p. 23.

²⁹ The OEB's cost allocation model recognizes that some administrative costs are fixed and others vary with the number of customers. In its incremental analysis, PowerStream used the average "Customer Related Costs" of \$6.3 million, for the residential class, from the Cost Allocation Study that was filed in its Application, in order to derive an average cost *per* residential customer of \$28.93.

III. The Cost of Individual Smart Suite Meters

28. In its argument, the SSMWG suggests that the installation of Quadlogic meters is optional; i.e., something that PowerStream has chosen to install as opposed to something PowerStream is required to install.³⁰ The evidence clearly contradicts this assertion.
29. 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.³¹ 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 power line) may not work in high-rise buildings.³²
30. In its argument, the SSMWG suggests that because there is no explicit legal requirement for PowerStream to install Quadlogic meters, such installations are optional. As PowerStream stated in its Written Argument, 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. Single meters are simply not appropriate for use in condominium buildings.
31. In response to a question from the Chair, SSMWG's own witness, Mr. Maclure, confirmed that his employer, Enbridge Electric Connections Inc., "uses and has been using right from the get go [the] Quadlogic Meters, with the exception of that first building, which we inherited and [the] meter base is in already".³³
32. One further point is worth making in response to the suggestion that is implicit in the SSMWG's argument that condominium corporations and developers should be required to pay the difference between the cost of a Quadlogic meter and the cost of a conventional meter.³⁴ The fully allocated OM&A cost to serve a residential class customer is approximately \$110.00.³⁵ During the oral hearing, the Chair asked PowerStream's witness, Mr. Macdonald whether the OM&A cost

³⁰ SSMWG Argument, p. 5.

³¹ 1Tr.82, ll.21-28; 83, ll.1-2.

³² Tr.86, ll. 4-28; p.87, ll.1-12; p.88, ll.23-27.

³³ 1 Tr. 225, ll. 20-28; p. 226, ll.1-2.

³⁴ SSMWG Argument, paras. 36-38.

³⁵ 1 Tr. 135, ll. 13-28.

of a condominium customer is higher or lower than the OM&A cost of a "garden variety residential customer." Mr. Macdonald responded as follows:³⁶

MR. MACDONALD: It's just so hard to say without doing a full analysis. There are so many different factors. The cost allocation gets to what the load profile is, when they use the power, what assets it take to serve them. I don't know. There's costs that slice both ways; some costs would be higher, some would be lower.

IV. **Response to School Energy Coalition**

33. In its argument, the SEC proposes that PowerStream should be required to adjust its rate base calculation, for the Test Year, to reflect the number of smart suite metered customer accounts rather than the number of smart suite meter installations. The effect of this proposal would be to recognize capital assets for rate-making purposes when such assets begin to generate revenue instead of on the date on which they become available for service, as is PowerStream's current practice.
34. PowerStream's asset recognition approach for condominiums is identical to its approach for conventional subdivisions where installations can pre-date connected customers by several or more years. Moreover, PowerStream's approach is supported by the terms and conditions of the Board's *Accounting Procedures Handbook for Electric Distribution Utilities* (the "APH") and, in particular, Article 410.
35. Page 6 of Article 410 defines assets as "economic resources controlled by an entity as a result of past transactions or events and from which future economic benefits may be obtained." Article 410 goes on to state as follows:
- a) they embody a future benefit that involves a capacity, singly or in combination with other assets, in the case of profit-oriented enterprises, to contribute directly or indirectly to future net cash flows, and, in the case of not-for-profit organizations, to provide services;
 - b) the entity can control access to the benefit; and
 - c) the transaction or event giving rise to the entity's right to, or control of, the benefit has already occurred.

In addition, in identifying a benefit, there must be:

³⁶ 1 Tr. 136, ll. 9-14.

