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Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
26th Floor, Box 2319
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: Enersource Hydro Mississauga Inc., Horizon Utilities Corporation,
PowerStream Inc. (collectively, the “Applicants”) – Application under
Section 86 of the *Ontario Energy Board Act, 1998***

Board File No. EB-2016-0025

We, together with Aird & Berlis LLP, are counsel to the Applicants in the above-captioned matter. We are writing to you today with respect to three matters:

- The Applicants’ response to Undertaking J1.1, given in yesterday’s session of the oral hearing. A copy of that response is enclosed;
- Undertaking JT1.2, given in yesterday’s session of the oral hearing, in which the Applicants agreed to provide a copy of the draft Unanimous Shareholders Agreement. The OEB Panel allowed the Applicants an opportunity to address confidentiality concerns in respect of that document; and
- The Board’s direction that the Applicants file the Appendices to the Business Plan.

Undertaking JT1.2

The Applicants are prepared to provide the draft Unanimous Shareholders agreement in confidence, and we have delivered it by email to Ms. Helt and Ms. Fernandes of OEB staff (we ask that Ms. Helt ensure that copies are provided to the Panel) and to those individuals who have executed the OEB’s form of Declaration and Undertaking with respect to confidentiality.

Specifically, as Mr. Cass indicated during the hearing, the document is a draft and remains subject to negotiation. The public disclosure of this draft agreement may reasonably be expected to prejudice the competitive positions of, and interfere with the negotiations of the shareholders of what will be the holding company of LDC Co. The OEB’s *Practice Direction on Confidential Filings* recognizes that these are among the factors that the Board will take into consideration when addressing the confidentiality of filings. They are also addressed in section 17(1) of the *Freedom of Information and Protection of Privacy Act* (“FIPPA”) and section 10 of the

Municipal Freedom of Information and Protection of Privacy Act (“MFIPPA”), and the Practice Direction (at Appendix B) indicates that third party information as described in section 17(1) of FIPPA is among the types of information previously assessed or maintained by the OEB as confidential.

Business Plan Appendices:

The Panel directed the Applicants to file the Appendices to the Business Plan. The following table contains a list of the Appendices; indicates those that will not be provided on the basis that they are subject to solicitor-client privilege; and indicates those that will only be provided in confidence:

APP. #	NAME	CONTENTS	COMMENTS
6-A	Financial Results Overview	Mergeco PowerPoint presentation containing assumptions, relative valuation, shareholder benefits, dividend stream, many bar charts to 2039 (shareholder and customer benefits), merger synergies table, regulatory strategy, opportunities & risks, sensitivity analysis	Disclosed publicly
6-B	Phase II Relative Valuation Report (Hybrid PS Solar)	Deloitte presentation on enterprise value vs market multiple approaches	Disclosed publicly
6-C	Proposal – PSI Solar Business	Synopsis	DISCLOSED IN CONFIDENCE Appendix 6-C is a September 3, 2015 draft of a PowerStream Solar Business – Services and Indemnity Agreement Indicative Term Sheet. That draft was superseded by the form of the document contained in Schedule 5.1(9)(A) of the Merger Participation Agreement (“MPA”), and in its August 12, 2016 Decision on the original confidentiality request and Procedural Order No. 3, the OEB found that Schedule 5.1(9)(A) of the MPA would remain confidential. The Applicants are prepared to provide Appendix 6-C in confidence, consistent with the treatment of Schedule 5.1(9)(A) of the MPA.
6-D 6-E 6-I	Material prepared by counsel to parties to the transaction		This material will not be disclosed as it is subject to solicitor-client privilege.
6-F	Financing Plan	Presentation containing information related to possible leverage targets and purchase of Hydro One Brampton	Disclosed publicly.

6-G	Managing Interest Rate Risk	CIBC Presentation	Disclosed publicly
6-H	LDC Tax Status	Tax “primer”	Disclosed publicly
9-A	Golder & Associates Environmental Due Diligence Report		DISCLOSED IN CONFIDENCE The report identifies sites within the four consolidating utilities’ service areas in which potential environmental issues exist. Its disclosure may reasonably be expected to result in undue loss or gain to owners of those properties. The Applicants do not have the consent of property owners to release that information. Confidential treatment of this information is contemplated by section 17(1)(c) of FIPPA and section 10(1)(c) of MFIPPA.
9-B	Vanry and Associates Report – Distribution Assets Due Diligence Review		Disclosed publicly

Please note that the fact that certain of the Appendices are being filed should not be taken as an acknowledgement by the Applicants that they are within the scope of this proceeding. When the Business Plan was filed in July as an attachment to the Applicants’ response to Interrogatory B-Staff-1, portions of the Plan were redacted on the basis that they were out of scope, and the reasons varied depending on the portion of the Business Plan being considered. Those reasons will not be repeated here. However, the same reasoning applies to these Appendices. Specifically:

- Appendix 6-B is out of scope because it contains a discussion of relative valuations that remain the subject of ongoing negotiation;
- Appendix 6-C is out of scope because it involves a discussion of an aspect of the potential Limited Partnership structure for LDC Co, and that structure is not being pursued in this Application. It is also a draft of a document that has been superseded by another document that has already been filed in confidence in this proceeding;
- Appendices 9-A and 9-B are out of scope because they pertain to due diligence, and the OEB has clearly indicated that matters related to the extent of due diligence are beyond the scope of a MAADs proceeding.

Yours very truly,

BORDEN LADNER GERVAIS LLP

Per:

Original signed by James C. Sidlofsky

James C. Sidlofsky

Encls.

cc: G. DeJulio, Enersource
I. Butany-DeSouza, Horizon Utilities
C. Macdonald, PowerStream
F. Cass, Aird & Berlis LLP
Intervenors of Record