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## Memorandum

To: Corinne Kennedy  
cc: Dennis Nolan  
John Glicksman  
Ron Clark  
David McFadden  
Date: December 20, 2011  
Re: PowerStream / Collingwood / Collus  
Share Purchase Agreement

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Dear Corinne:

Thank you for the draft agreements which you forwarded last Wednesday.

As you are aware, we had the opportunity to have an initial discussion with Messrs. Houghton and McFadden last Thursday. Further to those discussions and following an initial review of the draft agreements, we provide herewith our initial comments on the Share Purchase Agreement.

### Share Purchase Agreement

1. We understand that by virtue of Collingwood's tax status, it is desired to have PowerStream Inc. acquire 50% of the issued and outstanding shares of Collingwood Utilities Services Corp. ("CUS"), which in turn would continue to own its three subsidiaries, namely Collus Power Corp., Collus Solutions Corp. and Collus Energy Corp. We understand that Collus Energy Corp. has no assets or liabilities.

We would like to perform Minute Book reviews for each of the four affected corporations, and perhaps we could discuss the best way to arrange that;

2. Proceeding in this fashion would require verification that there are no liabilities in any of the Subsidiaries that are not intended to be assumed within the transaction. It would also require that representations and warranties be made to Powerstream by the Corporation of the Town of Collingwood, as vendor, with respect to each of CUS and it's three Subsidiaries.
3. Similarly, proceeding in this fashion would require a covenant from Collingwood to continue to acquire services from each of CUS and it's three Subsidiaries in the same manner as has been



conducted in the past but generally in accordance with ARC requirements, unless otherwise agreed by both Shareholders. In addition, a covenant of Collus Solutions to continue to provide services to all parties including Collus Power on a fully allocated cost base plus a return would be required;

4. A further review of the services presently being provided by Collus Solutions will need to be undertaken;
5. On this basis we would then expect that the Purchase Agreement will need to distinguish between the OEB regulated business of Collus Power, and the non-regulated businesses of Collus Solutions and Collus Energy;
6. We do not anticipate that Competition Bureau approval for this transaction would be required;
7. With respect to timing, we discussed with the Collingwood representatives the desirability of endeavouring to execute the Share Purchase Agreement, with a definitive new Unanimous Shareholder Agreement as a schedule, in early to mid-January. Work on the MADD's application would commence now with the hope that it could be filed shortly after execution of the Share Purchase Agreement, with closing to take place once the approval of the MADD's application had been received from the OEB;
8. We expect that the purchase price arrangements in draft section 2.1 will need to be revised to give effect to the new structure;
9. We expect that section 4.3(c) can be deleted;
10. With respect to representations and warranties from Collingwood, in view of the new structure we would anticipate representations and warranties pertaining to CUS, Collus Power, Collus Solutions and Collus Energy. We would also expect that those representations and warranties not be qualified by materiality or knowledge (but that there would be the \$100,000.00 materiality basket included within the indemnification). I attach the representations and warranties received by PowerStream Inc. when it acquired all of the shares of Aurora Hydro. Powerstream would anticipate receiving representations and warranties of this nature, with modifications as applicable for the various Collingwood entities;
11. We will expect that the Interim Period covenants would prohibit any changes to the current business or any distributions or dividends (other than those required to give effect to the note repayment, Recapitalization Dividend and purchase price mechanics);
12. We discussed with the Collingwood representatives that the MADD's application would be prepared by the internal regulatory experts at PowerStream. PowerStream would agree to be responsible for external legal costs up to a specified maximum amount;
13. With respect to the indemnification, we expect that the \$100,000.00 *de minimus* basket will be general acceptable and that the general indemnification cap should be the Purchase Price. The proposed 24 month survival period should be acceptable, although Tax should survive for a period commensurate with any reassessment periods and environmental claims should survive



for 5 years. Other specific indemnification provisions may be discovered during ongoing due diligence;

14. With respect to sections 6.3(5) and (6), we discussed with the Collingwood representatives the desirability of making a Public Announcement in mutually agreeable form concurrent with execution of the Share Purchase Agreement.

We would expect that the Schedules to the Share Purchase Agreement would include, at a minimum, real property and leased property, intellectual property, contracts and commitments, employee benefits, collective agreements, employees, insurance, environment, taxes, shared services agreements, the Collingwood Promissory Note, and a list of all required third party Consents. You might let us know if you have prepared any analysis of required third party Consents. We understand that at a minimum the consent of Infrastructure of Ontario will be required.

Finally, we have noted reference to a company called "Utility Collaborative Services Inc." on the Collus Power Balance Sheet but had not noted this company referenced in the RFP. Do you have any information on this entity?

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