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Please Reply to the TORONTO OFFICE

BY EMAIL

February 6, 2009
Our File No. 2080670

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
M4P 1E4

Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2008-0335 and EB-2008-0244 – Powerstream

We are in possession of confidential information filed by the Applicants in EB-2008-0335. In the course of gathering it together for destruction in accordance with our Undertaking to that effect, we noted that the confidential information includes not only filed material, but also our extensive analysis of that material, all of which is relevant to the current proceeding, EB-2008-0244.

This letter is therefore being sent to request that the Board grant us permission, by way of order, to transfer this confidential information to our EB-2008-0244 file, and retain it during that proceeding. We propose that the Board would deem the original 0335 filing to be filed in confidence in the 0244 proceeding. We would then immediately provide the Board with a new Undertaking, relating to EB-2008-0244, covering this information.

In support of this proposal, we note the following:

- The Board panel in the 0335 proceeding has already determined that the issues to which this information relates are material issues in the 0244 proceeding. The same Board panel is hearing the latter case. Thus, there is no prejudice to the Applicant arising out of our proposal.
- The confidential information in question is financial information, and as a result significant time has been spent in numerical analysis of that information. Under the normal rules, to the extent that the analysis includes the confidential information, it must be removed or the analysis must be destroyed as well. This creates the likelihood that the analysis will have to be done

once more in the 0244 proceeding. This duplication is an unnecessary cost and diversion of resources at a time when all parties are stretched with multiple proceedings.

- This information will certainly be requested again in this proceeding, and there would appear to be no reason why the Board panel would not order its production. However, if the old version is destroyed, there arises a risk that the new version and the old version would be inconsistent. Intervenor would not be in a position to identify those inconsistencies, because they would not have their copies of the information. The perverse result is that the Board and the Applicant would have the old version, but the intervenors would not, creating an inherent inequality of information.
- Because almost all of the parties in the 0244 proceeding and the 0335 proceeding are the same, they will remember components of the confidential information, but memories being what they are, there are likely to be discrepancies between them. Having the same information on the record avoids any such problem.

We therefore ask that the Board permit us to retain the 0335 confidential information in the 0244 proceeding, still in confidence, on the condition that we forthwith provide an Undertaking in the Board's form in the 0244 proceeding.

Of course, in the event that the Board does not give us this permission, we will proceed with the destruction of the information immediately as per our Undertaking.

All of which is respectfully submitted.

Yours very truly,
SHIBLEY RIGHTON LLP

A handwritten signature in black ink, appearing to read 'Jay Shepherd', written over a light blue horizontal line.

Jay Shepherd

cc: Bob Williams, SEC (email)
Wayne McNally, SEC (email)
Interested Parties (email)