

# AIRD & BERLIS LLP

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## Delivered and E-mail

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
P.O. Box 2319  
27<sup>th</sup> Floor  
2300 Yonge Street  
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: PowerStream Inc. 2009 Cost of Service Electricity Distribution Rates  
Board File No. EB-2008-0244  
Intervenor: Smart Sub-Metering Working Group**

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We act for the Smart Smart-metering Working Group ("SSMWG") and are writing in respect of the above-noted proceeding.

The SSMWG is an Intervenor in the above proceeding. It asked a series of Interrogatories of the Applicant, which were either not answered or not fully answered (SSMWG IR Nos. 1, 7, 12, and 13). PowerStream states in its response to SSMWG IR No. 1 that it is not prepared to share the information requested with Intervenors and intends to avail itself of the protections of Rule 10 and the Confidential Filing Practice Direction (the "Direction").

Subsection 5.1.4 of the Direction requires PowerStream to indicate the reasons why the information at issue is considered confidential and the reasons why public disclosure would be detrimental. The Direction also requires that PowerStream provide to the Board a confidential unredacted version of the document containing all of the information for which confidentiality is requested. The Applicant is also required by the Direction to either provide a non-confidential redacted version of the documents from which the confidential information is deleted or stricken or where the request for confidentiality relates to the entire document, a non-confidential description or summary of the document. Aside from a very general statement made in SSMWG IR No. 1, the SSMWG submits that PowerStream has not complied with the Direction.

In a letter dated April 23, 2009, PowerStream asked the Board for confidential treatment of documents associated with certain other Interrogatories. This letter does not however address the SSMWG Interrogatories.

As such the SSMWG is unable to make comments specific to the documents which PowerStream objects producing as no attempt has been made to describe the documents nor, to the SSMWG's knowledge, have these documents been filed with the Board. In

addition, the SSMWG notes that PowerStream has given no explanation as to why providing information about the amounts included in its 2009 OM&A budgets relating to the smart suite metering program should not be disclosed to Intervenor.

For the reasons set out below, the SSMWG objects to the PowerStream request for confidentiality and requests that the Board require the Applicant to fully answer the Interrogatories and produce the requested documentation. Without admitting that any of the documents or information sought should be afforded confidential treatment, the SSMWG submits that, at a minimum, redacted versions of the information should be provided to Intervenor, and counsel should be permitted to review unredacted versions, subject to the terms and conditions of the Declaration and Undertaking (Appendix "D" to the Direction) which counsel would execute.

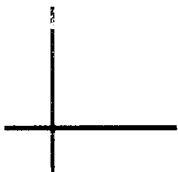
The SSMWG is involved in this proceeding by reason of the approvals sought by the Applicant in respect of its suite metering program. This program has not been the subject of Board review in the past, having been launched in 2007. PowerStream is now looking to include in rate base expenditures in 2007 and 2008, and forecasts further expenditures through to 2012 of some \$5.7 million. It has also admitted that its 2009 OM&A budget includes amounts related to the suite metering program (SSMWG IR Nos 12 & 13).

The Applicant admits that its suite metering program operates in "a very competitive business segment" and that these activities are a "most notable exception" to the fact that as a licensed electricity distribution monopoly, it is not generally engaged in competitive businesses (SSMWG IR No. 1).

It should be noted that PowerStream has not objected to the Interrogatories asked on the basis of relevance. It is clear that the Interrogatories asked go to questions about the need for the suite metering program, its prudence, cost, and its impact on rates. Some of the members of the SSMWG offer and install virtually the identical Quadlogic smart sub-metering systems which PowerStream offers to install in new and existing condominiums. The SSMWG is not looking for the details about the pricing agreement between PowerStream and Quadlogic. Instead, it is looking for the business plan and economic justifications for PowerStream entering into this competitive market and the reasoning behind the cross subsidization of its activities by other ratepayers.

The PowerStream Application states that its capital investment process indicates that a business case is completed for all projects in excess of \$250,000 (Exhibit B1/T6/S1). It is submitted that it is most probable that PowerStream undertook an internal review of the need for and appropriateness of engaging in a competitive market business before requesting formal bids and quotes from third party suppliers. It is also most likely that PowerStream evaluated the size of the market and made forecasts about its future and the benefits, if any, to existing ratepayers.

It is noteworthy that a similar request for such information was made of Toronto Hydro in EB-2007-0680. Toronto Hydro produced a copy of its project plan for individual suite metering in condominium buildings (Ex. R1/T6/S9, Appendix A, filed November 12, 2007). This plan examined the market that existed, the difference in difficulty and cost to retrofit existing bulk metered buildings, a comparison of the availability of various integrated



metering technology alternatives, operational considerations, financial issues, customer communications, and next steps, including reference to the RFP sent to prospective third party meter service providers. None of Toronto Hydro's IR response was redacted.

Absent PowerStream fully responding to the Interrogatories in question, the SSMWG will be unable to present its case. For example, the SSMWG will be prevented from challenging the assumptions and projections that the Applicant has relied upon for the purposes of now saying that the suite metering program is needed within the regulated utility and that its costs are prudent despite the existence of a highly competitive market. Similarly, neither the SSMWG nor other parties will be able to challenge that part of PowerStream's OM&A budget related to suite metering because PowerStream refuses to disclose what part of that budget relates to this program.

The SSMWG therefore respectfully requests that the Board require PowerStream to fully respond to SSMWG IRs Nos. 1, 7, 12 and 13 and deny its request for confidentiality.

Finally, the SSMWG acknowledges that the Board has required Intervenors to give notice of their intention to file evidence in this proceeding by Monday April 27, 2009. PowerStream's refusal to provide the information requested makes the meeting of this timeline difficult in that the SSMWG has no idea of the nature and content of materials that have been withheld. While the SSMWG does not, at this moment, contemplate the filing of evidence, the SSMWG requests that the Board extend the deadline for the SSMWG to provide notice of its intent to file evidence to a date three days following the delivery of any further information provided by the Applicant as a result of this objection.

Yours very truly,

AIRD & BERLIS LLP



Dennis M. O'Leary

DMO/ct

cc The Applicant (via email)  
Intervenors (via email)

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