

IN THE MATTER OF the *Ontario Energy Board Act, 1998, S.O. 1998, c.O.15, Sch. B;*

AND IN THE MATTER OF an Application by Powerstream Inc. for an Order or Orders approving just and reasonable rates for the delivery and distribution of electricity commencing May 1, 2009.

**FINAL SUBMISSIONS OF THE
SCHOOL ENERGY COALITION**

Introduction

1. All of the issues in this proceeding, except one, have been settled pursuant to a Settlement Agreement that has been filed with, and approved by, the Board. SEC is a party to that Settlement Agreement. By order of the Board June 15, 2009, submissions on the remaining unsettled issue – the suite metering activities of the Applicant – were to be filed by the Applicant on June 17th, and by all other parties on June 19th.
2. These are the Submissions of the School Energy Coalition on that unsettled issue.
3. We note that the Consumers Council of Canada, which supports the Applicant on this issue, has quite appropriately filed its submissions on this issue earlier today. While our submissions do not specifically deal with the CCC submissions, we believe that all of the points made by them have been considered in these submissions of SEC.

Decomposing the Issue

4. The Applicant is engaged in the activity of installing individual suite meters in condominiums in their franchise area. In doing so, they are competing with an existing individual suite metering (or sub-metering) industry. However, they are also complying with both legislative direction, from the government, and regulatory direction, from the Board.
5. This puts the Applicant in a difficult position on these issues. At the same time, the SSMWG, which has raised the issue, has legitimate concerns, and faced limited opportunities and scope within which to bring those concerns before the Board. Despite our below on what the Board should do, in our view this issue is a timely one, and was fairly brought and defended by SSMWG and the Applicant.

6. The interest of ratepayers in this issue stems from two possible impacts:
 - a. Subsidization of the competitive activities of a regulated entity by the customers of its monopoly activities, at an incremental cost to those monopoly customers;
 - b. Impairment of competition in the marketplace, at least in theory leading to increased prices, reduced selection/service, or a combination of those and other results.
7. The Board has historically been concerned about impacts such as these, and where they have been identified has sought to prevent them from occurring.
8. If the Board concludes that either or both of these impacts is arising in this case, the next step is to determine what action it should take.
9. If the Board concludes that some or all of the costs associated with this activity should be reflected in revenue requirement, then it must determine the appropriate amount to be included.
10. Finally, the Board should – as it regularly does – be concerned in considering these issues with the impact on other utility activities, present and future, to which the principles it is considering here might be applicable.

Cross-Subsidization

11. It would appear to us quite clear that there is probably some form of subsidization of the suite metering activities by the other regulated activities. There are two ways in which other ratepayers end up bearing additional costs because of suite metering.
12. First, the GS>50 customers have higher rates (relative to what they would be without LDC suite metering) because the KW volumes over which costs are spread in that class are reduced. If volumes for a class are reduced (most of the KW end up generating residential class revenue rather than GS>50 revenue, and costs allocated to that class are not, the rates for those in the class must be increased.
13. It is our conclusion from the evidence that it is not possible for the Board to determine the amount of this impact on GS>50 customers. It could be a material amount, but that is unknown at this time. The best estimate would appear to be the sum of \$144,483 in K1.4, but that amount, calculated for a different purpose, cannot be said to be a thorough determination of this impact.
14. Second, the residential customers may have higher rates because the costs allocated to that class are increased by a greater amount than the number of new customers.
15. Of course, the costs associated with attaching a residential customer are not the same from one to another. There is variability, and there is insufficient evidence in this proceeding to conclude that condo suite metering connection costs per customer are

completely outside of that range. It is evident that they are at the high end of the range or above, just on the basis of the substantially greater meter costs, but actually identifying the differential is impossible on the evidence before the Board.

16. In addition, it is not clear to us that the subsidization – whatever the amount is – can be fairly said to be subsidization of the new residential customers in the condo that are connected. It appears more likely that it is the developer who is, implicitly, getting the subsidy from the existing residential customers. The new residential condo customers are likely neutral in this.
17. Our reasoning on this stems from analogy to connection of new subdivisions. If a new subdivision of residential customers is being added, the developer will in some cases be required to make a capital contribution, on the basis that the cost to bring electrical distribution to their development would otherwise result in an upward pressure on residential rates over time. While the contribution does not reflect differences in the costs of connecting each residential customer to the system, it does reflect material incremental system costs caused by the development.
18. In the case of a condo, there are also incremental system costs caused by the development. Those costs are not outside the building, but inside, and are driven by a) the most efficient way to wire a building (resulting in more expensive meters), and b) the value of each square foot of space within the building (requiring meters with a smaller footprint). While the evidence on this point is far from clear, we believe it is reasonable for the Board to infer from the evidence presented that these factors drive at least part of the cost differential between normal residential connections and condo suite connections.
19. If it were possible to quantify this, the Board could, it seems to us, direct the Applicant to include this analysis in its costing for each new condo building, and obtain a capital contribution from the developer where warranted.
20. However, unfortunately the conclusion is inescapable that, on the evidence currently before the Board, it is not possible to determine whether there is any material subsidization, and, if so, the extent if any to which these developer-related factors are the cause of that subsidization. While it is reasonable to assume that the subsidy exists, it could be a dollar or a million dollars a year. There is simply no way for the Board to determine that.
21. It is therefore submitted that the Board does not have before it sufficient evidence of an amount of cross-subsidization on which it can take any action.

Effect on Competitive Markets

22. The SSMWG has led evidence that the activities of the Applicant in the marketplace have had the effect of stifling competition. That evidence is clear, and is consistent with the structure of the Applicant's activities. There would appear to be no reason to doubt that competition is being affected adversely.

Appropriate Board Response

23. While we believe that the Board can fairly conclude a) that the competitive suite metering program is being subsidized by other ratepayers, and b) that the result is a reduction in competition in the marketplace, that is not the end of the matter. There are countervailing factors here that, in our view, make it inappropriate for the Board to prohibit or limit the current actions of this Applicant in this area.
24. As we noted at the outset, the Applicant and other LDCs have been directed by legislation, regulations, and the DSC to connect the individual suites of condos when requested to do so.
25. Therein lies the fundamental problem in this case. Ontario has, over the last several years, developed an electricity distribution system in which the distributors are, for the most part, required to restrict themselves to regulated monopoly activities. There are limited, essentially legacy, exceptions. The primary reason for the limits on the LDCs (and the related limits in the ARC to deal with competitive affiliate activities) is to protect the competitive markets and prevent cross-subsidization.
26. Within an entity in which all activities follow that paradigm, the socialization of costs amongst customers, either within classes or overall, is a normal and accepted aspect of ratemaking. Limits are usually placed on that socialization, but those limits generally do not need to take competitive markets into account. Costs that are socialized are monopoly costs. Competition is not affected.
27. Suite metering is an exception to the electricity distribution paradigm. The legislature and the Board, to achieve policy objectives, have allowed/directed LDCs to engage in competitive activities on a regulated basis. This is a decision that could be debated, but that debate is not properly before this Board panel. The suggestion that this Board panel should order those activities to be carried out in an affiliate, for example, or as a non-utility activity within the regulated entity, is inconsistent with that policy decision. If this Board were to entertain such a step, it would necessarily have to overturn s. 5.1.9 of the DSC and narrowly interpret the legislation as well.
28. The effect of allowing an LDC to carry out, as a regulated (and therefore risk-protected) activity, a business that competes with the private sector is to lessen competition, and is potentially contrary to the public interest. Yet suite metering may in fact be the first of a number of competitive activities in which the electricity distributors will participate with the permission or even encouragement of the legislature and the Board. This general question, which is a small one in the context of the suite metering business, may become a much bigger one when the activities promoted by the Green Energy Act start to kick in.
29. Based on the above, it is submitted that the Board should reach the following conclusions:

- a. The Applicant's suite metering activities should not be prohibited or restricted due to the impacts on the competitive markets.
 - b. This Board panel should recommend to the Board as a whole that the issue of how regulated activities that compete with the private sector should be treated be considered on a generic basis as soon as the Board is able to commence that review.
30. The above deals with the question of whether the Applicant should be allowed to continue with the suite metering activity. There is a secondary question that the Board has often considered in the past where a regulated entity competes with the private sector, i.e. should any cross-subsidy be adjusted to make the competition fairer. In the past, the Board has imputed revenue, or required pricing that took proper cost allocation into account, or used other tools to ensure that subsidies are reduced or eliminated.
31. Based on our analysis under the heading "Cross-Subsidization" above, we believe that Board should conclude that no adjustment for cross-subsidization should be ordered. There are two reasons for this:
 - a. The amount of any cross-subsidy has not been proved. While it is possible to conclude that a cross-subsidy probably exists on a balance of probabilities, even if assumed that subsidy could well be immaterial. In short, the case for a material subsidy has not been made out.
 - b. Even if the Board concludes that there is a material subsidy, it is not possible to determine either the breakdown between customer classes, nor the beneficiary of the subsidy. This is important because, if the beneficiary is the new residential condo customer, that raises issues of rate subclasses and socialization of costs within a rate class. It is a rate design issue on which the Board has essentially no evidence before it. Conversely, if the beneficiary is the developer, that raises issues of how capital contributions should be determined, and again this Board does not have a sufficient record to make that kind of policy decision in this case.

Amount to be Included in Revenue Requirement

32. We have concluded that the costs of the Applicant's suite metering program should be included in rates in the Test Year. What did emerge from the oral hearing, and the subsequent responses to undertakings, is a material question as to whether the Applicant has included the correct amount in rate base for 2009.
33. The evidence of the Applicant is that it has included in its forecast 6,300 suite metered customers as of the end of the Test Year. However, as disclosed in Undertaking J1.4, the Applicant actually expects that the meters for only 3,774 of those customers will actually be in use as of the end of 2009.
34. It is submitted that the remaining meters are not used and useful during the Test Year, and therefore cannot be included in rate base. The same is true of the meters in rate base

at the end of 2008, which should have been for 2,774 customers instead of 4,700, and the meters in rate base at the end of 2007, which should have been for 310 customers instead of 2,500.

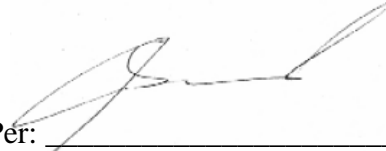
35. It is therefore submitted that the Applicant should be ordered to recalculate rate base for the Test Year based on the meters actually in use during each year, adjusting the rate base continuity year over year (including the impacts of reduced additions and depreciation in prior years) to reach a new rate base, and new revenue requirement, for 2009. We estimate that this will reduce the revenue requirement by about \$250,000 in the Test Year, although it is not possible to calculate it accurately without the rate base details in the Applicant's possession.

Conclusion and Costs

36. It is therefore submitted that the Board should determine as follows:
- a. The Applicant should be allowed in the Test Year to continue suite metering activities within the regulated entity and as a regulated activity, even though in competition with the private sector.
 - b. This Board panel should recommend to the Board as a whole that the interaction between monopoly and competitive regulated activities within an electricity distributor be the subject of a generic proceeding at the Board's earliest reasonable opportunity, but in any case before the activities contemplated by the Green Energy Act become widespread.
 - c. No adjustment should be made for any possible cross-subsidization of the Applicant's suite metering activities by other ratepayers, because of lack of evidence supporting the existence and nature of any material subsidy.
 - d. The amount included in rate base in the Test Year for condo suite metering should be reduced to reflect only those meters that are used and useful in the Test Year.
37. It is submitted that the School Energy Coalition has participated reasonably in this process with a view to assisting the Board. We therefore request that the Board order payment of our reasonably incurred costs of participation.

All of which is respectfully submitted on behalf of the School Energy Coalition on the 19th day of June, 2009.

SHIBLEY RIGHTON LLP



Per: _____

Jay Shepherd