



EB-2012-0161

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

AND IN THE MATTER OF an application by PowerStream
Inc. for an order approving just and reasonable rates and
other charges for electricity distribution to be effective
January 1, 2013.

DECISION AND ORDER ON CONFIDENTIALITY
September 27, 2012

PowerStream Inc. ("PowerStream") filed an application with the Ontario Energy Board received on May 28, 2012, under section 78 of the Act seeking approval for changes to the rates that PowerStream charges for electricity distribution, to be effective January 1, 2013.

The Board in the present Decision and Order makes a determination on a matter of confidentiality that has arisen in this proceeding.

Background

On August 30, 2012 PowerStream filed its responses to the interrogatories of the intervenors and Board staff.

PowerStream claimed confidentiality for part of its response to School Energy Coalition interrogatory #28 (SEC IR #28), which asked PowerStream to provide the five year technology strategy referred to in its evidence, along with any supporting business case and any presentations to executive management or the Board of Directors showing the costs and benefits of the strategy.

PowerStream's response stated that while a business case to support this strategy was not prepared, it had undertaken a comprehensive vendor selection process resulting in

a recommendation to Executive Management that KPMG be awarded the engagement for preparation of this strategy. PowerStream noted that its staff had prepared a Vendor Recommendation report for its Executive Management, which included comments on, and scoring of, the three prospective vendors' proposals, as well as discussions of their pricing and methodologies, which had been provided in confidence to PowerStream. The Vendor Recommendation report was in turn provided in confidence to PowerStream's Board of Directors. PowerStream stated that it was prepared to file a copy of the Vendor Recommendation report in confidence in accordance with the Board's *Practice Direction on Confidential Filings* (the "Practice Direction").

PowerStream stated that the basis for its confidentiality request was that KPMG and the other proponents are consulting firms engaged in competitive businesses. As such, the public disclosure of their proposed methodologies and pricing with respect to this project could reasonably be expected to prejudice the economic interest of, significantly prejudice the competitive position of, cause undue financial loss to and be injurious to the financial interest of each of these consultants since it would enable their competitors, including their fellow proponents to ascertain the scope and pricing of services in similar projects.

Powerstream further stated that the public disclosure of this information might also have similar impacts upon itself, specifically, prejudice the economic interest of, significantly prejudice the competitive position of, cause undue financial loss to, and be injurious to its financial interest. PowerStream cited as examples that potential proponents in future consulting engagements may not be willing to submit proposals knowing that they may be made public or PowerStream's ability to obtain truly competitive proposals, reflecting a variety of methodologies and prices may be impaired.

PowerStream filed the confidential material with the Board Secretary pursuant to the Practice Direction.

In Procedural Order No. 3, dated September 10, 2012, the Board provided for the filing of submissions on the matter of confidentiality claimed by PowerStream.

As an interim measure the Board allowed any external counsel or external consultant for the intervenors that wished to review the confidential document filed in response to SEC IR #28 to do so after signing a copy of the Board's Declaration and Undertaking

with respect to confidential documents, and filing it with the Board and serving it on PowerStream.

The Board stated that, as set out in the Practice Direction, it is the Board's policy that all evidence should be on the public record unless reasons warrant otherwise. This reflects the Board's view that proceedings should be open, transparent and accessible. The Practice Direction seeks to balance these objectives with the need to protect information properly designated as confidential.

The Board further stated that if it was to ultimately decide that the document should not be afforded confidential treatment, it would be placed on the public record unless, within a period of five business days, and in accordance with section 5.1.12 of the Practice Direction, PowerStream requested that the information be withdrawn.

Intervenors and Board staff who objected to PowerStream's request for confidential treatment of the interrogatory response were required to file their submissions by September 14, 2012, while PowerStream was to file any reply submission by September 19, 2012.

No submissions were received.

Board Findings

The Board notes that no parties opposed PowerStream's request regarding the confidential treatment of its response to SEC IR #28. The Board accepts the reasons for the confidentiality claim put forward by PowerStream and notes that it has approved requests of a similar nature in the past. The Board approves this request.

THE BOARD ORDERS THAT:

1. PowerStream's request for confidential treatment of the referenced Vendor Recommendation report filed as part of its response to SEC Interrogatory #28 is granted.
2. PowerStream shall provide all unredacted confidential materials to any external counsel or external consultant for an intervenor that wishes to review the confidential document and that has executed a Declaration and Undertaking

pursuant to the Board's *Practice Direction on Confidential Filings*, if it has not done so already.

3. Where possible, parties shall frame any cross examination questions related to the confidential material in a manner that will allow the questions and responses to be placed on the public record and to the extent possible, parties shall frame submissions related to the confidential material in a manner that will allow the submissions to be placed on the public record. If parties are not able to frame submissions in a manner that allows them to be placed on the public record, those submissions must be marked confidential.
4. Parties in receipt of confidential information shall, in accordance with the signed Declaration and Undertaking, either return the subject information to the Board and communicate to PowerStream that they have done so, or destroy the information and execute a Certificate of Destruction, following the closing of the record to this proceeding. The Certificate must be filed with the Board and a copy sent to PowerStream.

ISSUED at Toronto, September 27, 2012

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary