

# AIRD & BERLIS LLP

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March 2, 2009

Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street, 27<sup>th</sup> Floor  
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: EB-2008-0244 – PowerStream Inc. 2009 Rate Application  
Late Intervention Request by the Smart Sub-Metering  
Working Group (“SSMWG”) and Request for Cost Eligibility**

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This is in response to the letter of opposition by PowerStream dated February 23, 2009, to the Late Intervention and Request for Cost Eligibility by the SSMWG made by letter dated February 17, 2009.

The SSMWG submits that PowerStream has not provided any basis to conclude that members of the SSMWG do not have a substantial interest in this proceeding. On the contrary, the PowerStream letter appears to accept that the SSMWG does have an interest in a number of issues which are properly the subject of a Board process. PowerStream's position, simply stated, is that these issues should not be raised in the current rates proceeding.

The SSMWG submits that the issues it wishes to raise all arise directly from PowerStream's application and relate specifically to matters which could have a material impact on rates. It can be stated with certainty that if the SSMWG did not intervene in this proceeding and tried later to raise issues about the appropriateness of some of the rate approvals that PowerStream is seeking to obtain in this proceeding, it would be met with the argument that the SSMWG had missed its opportunity by not participating in this rate proceeding. It is not the role of the Board's Compliance Office to subsequently reconsider rate approvals made by the Board in an earlier proceeding. If ratepayer funding for PowerStream's condominium suite metering program is to be considered, it is submitted that this application is the appropriate forum.

Rule 23.02 of the Board's *Rules of Practice and Procedure* requires a potential intervenor to satisfy the Board that it has a "substantial interest and intends to participate actively and responsibly in the proceeding..." It should be noted that there is no suggestion in the PowerStream letter that the SSMWG will not participate responsibly. The sole issue is whether the SSMWG has a substantial interest in certain issues in this proceeding.

The SSMWG intervention letter, without going into evidentiary detail, identifies the fact that PowerStream is seeking approval for significant funding, through rates, of costs associated with providing and installing smart suite metering to multi-unit buildings in its

service territory. Specifically, the PowerStream application proposes incurring suite-metering costs which it will record as operations capital. Specifically, the application notes that:

“This program for condominium and apartment-type complexes covers the installation of individual unit metering equipment (a smart meter) to replace the bulk metering systems used in the past.” (Exhibit B1, Tab 4, Schedule 2, p. 19, ss. 3(c).

The five-year capital plan, filed at Exhibit B1, Tab 6, Schedule 1, p. 1 of 21, states, at Section 3.4 that: “PowerStream is spending \$7.7 million on meter programs from 2008 to 2012. The installation of new individual suite metering systems will account for \$5.7 million of this expense.” At Exhibit B1, Tab 7, Schedule 1, page 14, PowerStream acknowledges that condominium suite metering is not part of the Smart Meter program and that such costs will be recorded like any other fixed asset addition.

The Board has earlier acknowledged that the smart sub-metering industry operates in a competitive environment. This includes competing with electric LDCs in respect of the suite metering of new and retrofit multi-unit buildings. The SSMWG is of the view that this proceeding is the only proceeding where it will have the opportunity to question PowerStream as to the nature of its suite metering program to determine how this multi-million dollar, multi-year program operates. This includes questions about the appropriateness of ratepayers funding the purchase and installation of equipment in such circumstances. Whether ratepayers should be funding such activities will depend in part on the manner in which PowerStream undertakes its economic evaluation of projects as required under the *Distribution System Code* and the extent to which it receives capital contributions, if any, from building developers and owners. All of these questions have clear rate implications and flow from the evidence PowerStream filed in this proceeding.

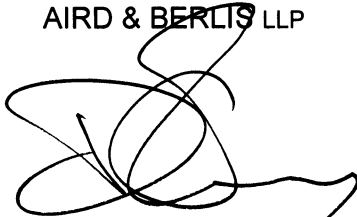
The SSMWG does not seek to re-litigate any earlier decided issue as suggested in the PowerStream letter. It accepts the right of LDCs to install smart suite metering in multi-unit buildings when requested by a building owner, developer or board of directors of a condominium corporation. It is the treatment of the costs and the availability of ratepayer funding for the acquisition and installation of smart suite meters for use in condominiums and apartments which the SSMWG wishes to examine in this proceeding, not the right of LDC's to undertake the activity.

The SSMWG notes that the amounts proposed by PowerStream for its condominium suite metering program are significant. The SSMWG believes that the availability of ratepayer funding for this program is having and will continue to have a material and negative impact on the competitive smart suite metering market. The amounts involved are material as are the negative impacts on the industry. The SSMWG submits that as a result, it has a substantial interest in the application. For these reasons, the SSMWG respectfully requests status as an intervenor.

Finally, in respect of the SSMWG's request for eligibility for costs, it should be recalled that the SSMWG seeks only a determination of "eligibility" for costs. Should the SSMWG not add value to the proceeding, it remains open to the Board to deny all or any portion of the SSMWG's costs claim.

Yours very truly,

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