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 May 1, 2009.

ARGUMENT OF THE SMART SUB-METERING WORKING GROUP ("SSMWG")

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Introduction

1. The Smart Sub-metering Working Group ("SSMWG") consists of the following licensed smart sub-metering companies, each of which operates in the competitive smart sub-metering marketplace: Carma Industries Inc.; Enbridge Electric Connections Inc.; Hydro Connection Inc.; Intellimeter Canada Inc.; Provident Energy Management Inc.; Stratacon Inc.; and Wyse Meter Solutions. As noted by SSMWG's witness, each of these businesses is relatively small, with limited resources. Collectively they serve between 60,000 and 70,000 customers.[1]

2. These businesses have collectively formed the SSMWG so as to be capable of bringing to the attention of the Ontario Energy Board (the "Board") the concerns the SSMWG has where rate-regulated utilities, like PowerStream, are permitted to operate in the competitive market in a manner which gives them overwhelming economic advantages and opportunities to act in an anti-competitive fashion. The SSMWG submits that the approval PowerStream seeks in this proceeding to embed in rates its suite metering program will harm the competitive market.

3. The SSMWG did not intervene in this proceeding to promote itself. It has intervened in an effort to help forestall the erosion of the competitive market.

Executive Summary

The evidence before the Board in this proceeding confirms the following:

4. Using PowerStream's <u>own</u> Revenue Requirement Analysis (Exhibit K1.4) and evidence that the approximate average cost to serve a residential customer is $110, the PowerStream analysis results in a revenue deficiency of $278,358 (a copy of the analysis is attached). By PowerStream's <u>own</u> calculations, there is evidence of cross-subsidy.

5. No statute, regulation or code requires PowerStream to install the expensive Quadlogic metering systems. Both PowerStream's and the SSMWG's witnesses confirmed that the simple smart meters used and installed throughout PowerStream's service territory could be used in condominiums. PowerStream has chosen to install the significantly more

[1] Tr. 1, p. 190

expensive Quadlogic metering systems and to look to its other residential ratepayers to pay the additional costs.

6. Contrary to the *Distribution System Code* ("DSC"), PowerStream is not requiring condominium developers and condominium corporations to pay the difference between the actual cost to install the Quadlogic sub-metering systems and the basic connection charge which is embedded in rates.

7. PowerStream admits that its suite metering program is operating in a highly competitive market, one that could meet all of the demand met by PowerStream's suite metering program.[2] While condominium developers and condominium corporations may have a choice between who suite meters their buildings, other PowerStream ratepayers do not. They are being asked to pay for the installation of metering systems in condominiums when the competitive market would do the same, at no cost to PowerStream's existing ratepayers.

8. PowerStream has acknowledged that the actual cost per customer in 2008 for the Quadlogic metering systems is actually $779 per unit, $100 per unit greater than the 2009 forecast. There is no reason to expect the 2009 estimate to be any more accurate. This increase only exacerbates the cross-subsidy.

9. To the extent that the cross-subsidy exists and the fully allocated costs to install a Quadlogic smart metering system and provide service to a residential customer are not considered for the purposes of determining whether a developer should be asked for a capital contribution, or to pay the required variable connection charge, the competitive smart sub-metering providers are put at a competitive disadvantage.

10. LDCs can comply with their obligations to install suite meters by offering to install the same smart meters used as part of PowerStream's smart meter initiative. Other residential ratepayers should not be required to pay the additional costs to install significantly more expensive Quadlogic metering systems, when the space-savings benefits accrue to condominium developers and condominium corporations.

[2] SSMWG IR#1; Tr. 1, pp. 173 and 194

11. Viewed as a whole, PowerStream's actions have a negative impact on competitive market.

<u>The Legal and Regulatory Framework</u>

12. The SSMWG accepts that LDCs are required, when asked, to install smart meters in multi-unit condominiums. The issue is not whether but rather how LDCs may undertake such activities in light of the fact that there is, as acknowledged by PowerStream[3], "a highly competitive" smart metering industry. There is no reasonable interpretation that can be given to any statutory provision or clause in the DSC that requires LDCs to engage in smart metering activities in an anti-competitive fashion and which embeds residential rate class cross-subsidization. Both ss. 71(2) of the *Ontario Energy Board Act, 1998* ("OEB Act"), and s. 29.1 of the *Electricity Act,* are permissive. Both of these sections provide that a distributor "may" provide services that would assist the Government of Ontario in achieving its goals and electricity conservation. Neither section mandates that such activities must occur within a rate-regulated utility. It is certainly open to the Board to require that condominium smart metering activities be undertaken either through an affiliate or in a non-utility account on a fully-allocated cost model basis. Indeed, Oakville Hydro and Enersource (jointly through Golden Horseshoe Metering Systems Inc.) and Whitby Hydro have created affiliates for such purposes, and these affiliates are licensed by the Board as smart sub-metering licensees.

13. Indeed, if LDCs are permitted to negatively impact the smart sub-metering industry by reason of their anti-competitive conduct, it is submitted that such conduct does not assist the Government of Ontario in achieving its goals and electricity conservation. Because much of the demand for smart metering in condominiums is currently being met by the competitive SSM industry, if this competitive industry is negatively impacted, reducing the rate and number of condominium suites that are smart metered, then the conservation goals of the Province of Ontario will suffer, and the exception to the limitation on a distributor's business activities under ss. 71(2) is not available.

14. Section 5.1.9 of the DSC requires a distributor to install smart metering when requested by either a board of directors of a condominium corporation or the developer. This section does not mandate any rate class cross subsidization nor other anti-competitive

[3] SSMWG IR#1

conduct. This section clearly does not require LDCs to install expensive Quadlogic metering systems when the smart meters approved and procured for the smart meter initiative come at an installed capital cost, according to PowerStream's pre-filed evidence, of $122.00.[4]

15. PowerStream advertises its suite metering program as one where a Quadlogic metering system will be installed at no cost to the developer or condominium corporation.[5] It is submitted that this no-cost promise is contrary to the DSC.

16. The DSC defines "ownership demarcation point" as "the physical location at which a distributor's ownership of distribution equipment, including connection assets ends at the customer." The term "connection assets" is defined as meaning:

> "that portion of the distribution system used to connect a customer to the existing main distribution system, and consists of the assets between the point of connection on a distributor's main distribution system and the ownership demarcation point with that customer."

17. "Customer" is defined as meaning a person that has contracted for or intends to contract for connection of a building. This includes a developer.

18. PowerStream treats multi-unit condominiums as residential customers.[6] Section 3.1.4 of the DSC states:

> "For residential customers, a distributor shall define a basic connection and recover the cost of the basic connection as part of its revenue requirement. The basic connection for each customer shall include, at a minimum:
>
> (a) supply and installation of overhead distribution transformation capacity or an equivalent credit for transformation equipment; and
>
> (b) up to 30 meters of overhead conductor or an equivalent credit for underground services."

19. To date, PowerStream does not have approval to recover as part of its revenue requirement a residential basic connection which includes the cost of Quadlogic

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4 PowerStream Application, Ex. I/T3/S3, p. 5
5 SSMWG IR#3, and Tr. 1, p. 91
6 Tr. 1, p. 71

metering. As a result, PowerStream is required to comply with Section 3.1.6 of the DSC, which states that:

> "All customer classes shall be subject to a variable connection charge to be calculated as the costs associated with the installation of connection assets above and beyond the basic connection." (emphasis added)

20. Because PowerStream's basic connection for residential customers does not include the costs associated with Quadlogic metering systems, it is required to charge condominium developers and condominium corporations a variable connection charge equal to the difference between the basic connection charge, which is embedded in PowerStream's revenue requirement, and the actual cost to install the Quadlogic metering system in a specific building. As this is the first proceeding in which PowerStream has brought its suite metering program forward in a rate application, there can be no doubt that its basic connection charge does not include the cost to install Quadlogic metering systems. It logically follows that the basic connection charge should never include such costs because the costs of sophisticated Quadlogic systems are hardly "basic" and are only relevant to a small percentage of PowerStream's potential residential customers. Accordingly, PowerStream is disregarding Section 3.1.6 of the DSC by not charging condominium developers and condominium corporations a variable connection charge, as required. This failure to recover these costs increases PowerStream's revenue requirement.

21. The fact is that condominium unit owners are being treated differently than the balance of the residential rate class. While it is PowerStream's evidence that they do not include metering costs in the connection costs for any residential customer,[7] the fact is that the capital cost to acquire and install smart meters on single family dwellings is separated out and the subject of specific Board scrutiny and approvals. PowerStream devotes an entire exhibit in its pre-filed evidence to smart meters. If anything, the treatment of smart meters should compel the Board to critically examine PowerStream's smart suite metering program, particularly given the fact that it is an effort undertaken by the regulated utility within a competitive market.

[7] Tr. 1, p. 84

Rate Class Cross-Subsidy

22. Aside from some test pilot expenditures totalling almost $500,000[8] incurred in 2006, PowerStream's suite metering program started in 2007. Its rates applications in each of 2007 and 2008 were undertaken pursuant to the Board's 2007 and 2008 EDR processes.[9]

23. The Board has not previously considered PowerStream's suite metering program. It has not examined its capital costs nor its impact on OM&A. PowerStream's pre-filed evidence does not indicate that PowerStream examined the issue of rate class cross-subsidization and it presented no evidence that such concerns were addressed before launching the program. Yet the issue is raised in minutes presented to PowerStream's Board of Directors in 2007. Indeed, the minutes specifically identify rate class subsidization as an issue.

24. PowerStream's 2007 and 2008 rates therefore do not include any amounts on account of its suite metering program. It is for this reason that it is looking to add to rate base the capital costs incurred over these years. It is also looking to add to its OM&A budget both the costs to serve the new suite metered customers and any additional costs generated from the operations and maintenance of the sophisticated Quadlogic system.

25. PowerStream's pre-filed evidence calculates the average cost per customer for OM&A at $179.20.[10] In oral testimony, PowerStream's quesstimate was that the average cost to serve a residential customer is in the range of $110.[11] PowerStream's witnesses admitted that suite metering customers also benefit from the OM&A activities which give rise to costs serving other residential customers.[12] There is the same need to generate and deliver bills, collect, provide customer care functions, manage bad debt and administer the process.

26. By contrast, PowerStream's smart meter initiative was the subject of the Combined Proceeding (EB-2007-0063) at which time the Board examined PowerStream's procurement process which led it to select Sensus as its smart meter provider.

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[8] Tr. 1, pp. 145/6, Board Staff IR #10
[9] PowerStream Application, A2/T1/S1, pp. 2 and 3
[10] PowerStream Application, D1/T1/S1, p. 1
[11] Tr. 1, p. 135
[12] Ditto

27. PowerStream's suite metering program has not undergone an evaluation process even remotely similar to the smart meter initiative. None of the safeguards and reviews associated with the smart meter initiative have been applied to PowerStream's suite metering program, even though the costs per unit are as high as six times the cost to install smart meters.

28. Attached as Schedule 1 to this Argument is a copy of the analysis generated and produced by PowerStream as Exhibit K1.4. All of the inputs remain identical with the exception of OM&A costs, which now include PowerStream's "estimated" OM&A costs per residential customer, of $110.00 and the incremental costs of $2.60 per month set out in PowerStream's Undertaking J1.1 response. While the SSMWG submits that this figure appears inherently on the low side,[13] the analysis clearly demonstrates a deficiency.

29. Accordingly, using PowerStream's <u>own</u> numbers, the suite metering program generates a deficiency. This confirms rate class cross- subsidization in a competitive market.

30. Leaving aside the belief that the $110 average OM&A costs per residential customer is low, there are other factors which have been confirmed in evidence which increase the deficiency.

31. First, the PowerStream analysis understates the actual suite meter unit cost of $680. PowerStream admitted under cross-examination that the actual per unit cost in 2008 was $779 per unit.[14] PowerStream has not stated in evidence that the per unit price of $779 is an anomaly. This per unit price is an appropriate proxy for 2009 and could result in fewer units being metered because of the higher cost. This will reduce revenues and drive up the deficiency. Alternatively, PowerStream will exceed budget.

32. Second, the installation of smart meters in condominiums is intended to provide unit owners with the knowledge and tools to effect conservation. If the meters do not incent

[13] PowerStream's total OM&A costs are $45.09 million (D1/T1/S1, p 1, Table 2). It forecasts having 221,376 residential customers in 2009 (Board Staff IR#27, Undertaking J1.4). The product of this number of customers and an average customer cost of $110 is $24.3 million, which is about 54% of PowerStream's total OM&A. This would mean that the remaining 30,000 customers (24,000 of which are general service under 50 KW) are responsible for the remaining 46% of PowerStream's total OM&A. Intuitively, this suggests that the $110 per customer estimate for residential customers is low.
[14] Tr. 1 p. 145

conservation, then the sole purpose of incurring such costs is lost. It is the experience of the SSMWG's witness that the conversion of existing condominiums results in a reduction in electricity consumption levels by as much as twenty percent.[15] This means that the variable distribution charges payable by newly suite metered customers could fall by as much as 20 percent versus historic actuals. In the case of retrofits, the existing load will decline.

33. Third, as admitted by PowerStream under cross-examination, there is lag between the date a unit is suite metered and the date that a revenue generating customer begins to receive service by PowerStream.[16] It currently estimates that there is approximately a 60 percent occupancy rate for suite metered units.[17] This means that 40 percent of its units are sitting idle and generating no income. PowerStream has installed 4,700 units in 2007 and 2008.[18] In fact, as at the end of 2008, PowerStream only has 2,774 revenue producing suite metered units. The impact of this on estimated new residential revenue is obvious. If 40 percent of your meters are not generating any revenue, the new residential revenue forecast used by PowerStream in its analysis is overstated by 40 percent, both in respect of the customer charge and the variable distribution charge. Indeed, when asked by the Chair whether it is fair to say that, if the actual number of revenue-producing units is 900 (or some other number less than the 4,700 units actually installed in 2007 and 2008), it is very clear revenue doesn't cover costs, Mr. MacDonald answered this question "Yes".[19]

34. Fourth, in the situation of a conversion, the building may already have received the benefit of any basic connection amount, which is embedded in PowerStream's rates. The building was earlier connected, and any contribution to the cost to connect would have been calculated at that time. Existing condominiums should not be entitled to look to PowerStream's revenue requirement a second time.

35. All of the above means that the rate class cross-subsidization which is occurring is significantly worse than the analysis indicates. Other PowerStream ratepayers are being asked to subsidize condominium developers and condominium corporations, and do so

[15] SSMWG Witness Statement, p. 5
[16] Tr. 1, p. 128
[17] Undertaking J1.4
[18] SSMWG IR# 5
[19] Tr. 1, p. 142

in the face of a very competitive smart sub-metering market, one that is capable of meeting the demand and do so without other PowerStream ratepayers cross-subsidizing.[20]

There is no Obligation to Install Quadlogic Metering Systems

36. The evidence is very clear on this point. PowerStream is under no legal obligation to install the expensive Quadlogic metering systems.

37. In his evidence-in-chief, Mr. Douglas, the smart meter consultant, advised that the industry and new developers had been "electing" the technology such as Quadlogic metering systems[21]. He also admitted under cross-examination that it would be technically possible to install the $122.00 simple smart meters in new buildings.[22] He went on to confirm that what PowerStream is offering as part of its suite metering program to condominium developers is a different product than that offered to subdivisions and that the Quadlogic system is a more complicated way of gathering information.[23] Mr. Douglas continued confirming that it is the condominium developer's decision as to whether it chooses simple smart meters versus the Quadlogic type suite meters.[24] Mr. Douglas also candidly admitted that from the developer's point of view, if he is selling his building at $300.00 per foot, the Quadlogic metering system saves the developer money because he needs a smaller space for metering.[25] Mr. MacDonald then admitted that PowerStream does not ask the developer to make a contribution to its cost to reflect the fact that by installing the Quadlogic metering system, it is actually saving the developer money.[26]

38. Mr. Chatten noted during his evidence-in-chief that, for the most part, PowerStream's service territory is characterized by relatively newish buildings[27], the implication being that most of PowerStream's suite metering program will be directed at newer buildings in which case, as admitted by Mr. Douglas, it is the developer's decision and desire to save floor space that drives the request for the Quadlogic metering systems, not any technical

[20] Tr. 1, p. 194
[21] Tr. 1, p. 82
[22] Tr. 1, p. 88
[23] Ditto
[24] Tr. 1, p. 90
[25] Tr. 1, p. 91
[26] Ditto

limitation on installing simple smart meters. Even if the configuration of an existing building is not suitable for the installation of simple smart meters, for the same reason that PowerStream would require a developer to pay for the costs associated with the placement of a transformer in a location which the developer chooses, there is no valid reason why the additional cost to install a more expensive Quadlogic metering system should not be borne by the building which benefits from installation of the fancier system.

Credibility of PowerStream's Numbers

39. While PowerStream acknowledges that it has not completed a cost allocation study which would identify specifically all of the costs generated by the installation of new smart suite meters and the costs to serve these new customers, no explanation has been given as to why PowerStream did not undertake a cost benefit analysis, as admitted by Mr. Chatten.[28] This is inconsistent with its own pre-filed evidence. PowerStream summarizes its capital investment process at Exhibit B1, Tab 2, Schedule 1. This process notes certain key milestones and the involvement of the Executive Management Team.[29] The pre-filed evidence notes, in two places, that a complete business case for projects in excess of $250,000 will be undertaken;[30] yet no business case was produced for the multi-million dollar suite metering program. Only after extensive prodding by Mr. Buonaguro did PowerStream undertake to produce its "Alternative 1" in response to Undertaking J1.1. The fact is that PowerStream has not followed its own capital investment process.

40. Turning to the numbers which PowerStream has produced, the only overall conclusion which can be reached is that, at best, they should be received with extreme caution. The reasons for this are as follows.

41. First there is uncertainty in respect of the average cost per unit served. PowerStream's response to SSMWG IR# 5 suggests an average cost of between $680.00 and $687.00 per unit for 2007, 2008 and 2009, respectively. However, under cross-examination, PowerStream admitted that the actual capital costs in 2007 were $880.00 per unit

[27] Tr. 1, p. 82
[28] Tr. 1, p. 113
[29] B1/T1/S1, pp. 3, 4
[30] B1/T2/S1, pp. 19 and 30

installed[31] and in 2008 (without any pilot program development costs) the actual cost was $779.00 per unit.[32]

42. Undertaking J1.1 notes an OM&A cost per month of $2.60. Multiplied by the 4,700 units installed in 2007 and 2008, this incremental OM&A cost for the program on an annual basis totals $146,640.

43. By contrast, the SSMWG asked, at IR# 12, for PowerStream to provide the amounts attributable to the suite metering program on a fully allocated basis. Its response was that 2009 OM&A amounts include $127,000 "which comprises PowerStream's forecast of the fully allocated (including burdens) OM&A costs" of the suite metering program. In its evidence-in-chief, Mr. MacDonald admitted that "it is not appropriate to say that this represents the fully allocated costs of the program."[33]

44. Then in PowerStream's spreadsheet, Exhibit K1.4, it uses both the $127,000 figure (which it prorates over 4,700 units) and then adds a further $28.93 per customer for "administrative". The total of these two amounts, as set out in PowerStream's Exhibit K1.4, is $230,740. This figure works out to about $49.00 per customer, per year.

45. Yet, the true cost to serve an additional 4,700 customers is a significantly higher amount. In his evidence-in-chief, Mr. MacDonald was asked by PowerStream's counsel whether consumption patterns and cost causation of condo individual customers are assumed to be similar as those of horizontal subdivision customers. Mr. MacDonald responded that this is PowerStream's "reasonable assumption".[34] Under cross-examination, Mr. MacDonald admitted that PowerStream treats suite metering customers the same as any other residential customer.[35] He further accepted that PowerStream will incur, in respect of its individual suite metered customers, all of the costs that are inherent in serving a residential customer.[36] In response to a question from the Chair, Mr. MacDonald estimated that the average cost to serve residential customers is approximately $110, annually. When asked further by the Chair about whether the cost to serve condo customers would be greater or less than other residential customers, Mr.

[31] Tr. 1, p. 146
[32] Tr. 1, p. 145, and Board Staff IR# 10-1
[33] Tr. 1, p. 70
[34] Tr. 1, p. 72
[35] Tr. 1, p. 132

MacDonald indicated that "there are costs that slice both ways; some costs would be higher, some would be lower."[37] Indeed, under cross-examination, Mr. MacDonald admitted that the $127,000 figure provided in response to SSMWG IR# 5 are incremental costs, specific only to suite metering.[38]

46. The conclusion of the above is that the data before the Board in this proceeding is incomplete and, to a large extent, unreliable. PowerStream is asking for approval to operate in a competitive market without fully identifying the impacts of so doing. The SSMWG therefore submits that the Board would be justified in refusing to approve the continuation of the suite metering program on the basis of the unreliability of PowerStream's data alone.

Negative Impacts on the Competitive Market

47. The negative impacts on the competitive market occur in both overt and subtle ways. Each contributes to the erosion of the existing competitive market.

48. One overt manner in which the competitive market is negatively influenced is PowerStream's Conditions of Service, portions of which were reproduced in response to SSMWG IR#3. Subsection 2.3.7.3.5 of PowerStream's Conditions of Service is entitled "Multi-unit Residential Suite Buildings". The first sentence of this subsection states:

> "PowerStream does not offer bulk metering of multi-unit buildings."

49. The very next subsection, 2.3.7.3.7, is entitled "Smart Meters". It reads:

> "PowerStream will install multi-unit metering systems (or sub-metering systems) as per the Ministry of Energy directives to the OEB."

50. PowerStream's witnesses were asked during their examination-in-chief about the wording in PowerStream's Conditions of Service. Mr. Chatten candidly admitted that the wording is "misleading".[39]

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[36] Tr. 1, p. 135
[37] Tr. 1, p. 136
[38] Tr. 1, p. 139
[39] Tr. 1, p. 66

51. Add to the above the language of Subsection 2.3.7.1 of PowerStream's Conditions of Service:[40]

> "For settlement and billing purposes, PowerStream will supply, arrange installation, own, and maintain **all meters**, instrument transformers, ancillary devices, and secondary wiring required for revenue metering." (emphasis added)

52. There is no language in the version of the Conditions of Service appended to PowerStream's response to SSMWG IR#3, Sch. 3-1 which suggests that anyone, other than PowerStream, may install meters in buildings it serves. Indeed, Subsection 2.3.7.3.7 implies exactly the opposite, stating that "PowerStream will install…sub-metering systems." PowerStream's suite metering program has now been in place for two years; yet its Conditions of Service remain misleading.

53. Another overt example includes the ratepayers resources PowerStream directs at promoting its suite meter program when, as a matter of law, a condominium developer must now install a smart metering system. PowerStream does not need to promote the installation of smart meters because they are now mandatory for new condominiums. PowerStream's witness admitted that "it is under no obligation to undertake these activities."[41] To be clear, it is promoting its foray into a competitive market, and it is funding its promotional activities by rates paid by its other ratepayers.

54. PowerStream is also undertaking advocacy efforts to eliminate competition.[42] These and other steps taken by PowerStream (and apparently other LDCs) are all intended to further PowerStream's position in a competitive market. These advocacy efforts are being financed by ratepayers. In other words, steps are being taken by a rate-regulated monopoly which, if successful, would negatively impact the private sector competitive market, and the costs to take these steps are being paid out of the monopoly's non-competitive rates.

55. The SSMWG noted that it has been made aware of situations where PowerStream has required a capital contribution from a condominium developer if it installs a bulk meter and utilizes a private sector smart sub-metering company, but does not require a capital

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[40] SSMWG IR#3, Sch. 3-1
[41] Tr. 1, p. 98
[42] SSMWG IR# 1, Sch. 1-1, at Item 2.1

contribution where PowerStream installs virtually the same suite metering system.[43] At least one instance of this was admitted to by PowerStream while under cross-examination.[44] The reality of this situation is that by allowing PowerStream to recover its suite metering program costs from all ratepayers rather than require capital contributions or variable connection charges from a building developer or condominium corporation, this problem will arise repeatedly in future. Plain and simply, if PowerStream, through its methodology, is able to demand capital contributions from a condominium developer or condominium corporation where a competitive smart sub-metering company installs the metering system but for the very same project does not require a capital contribution if PowerStream installs the metering system, then the competitive market in Markham, Vaughan and the rest of PowerStream's service territory will be lost. The rumour alone of this occurring will dissuade condominium developers and corporations from even approaching a competitive market sub-metering company.

56. PowerStream's witnesses were taken to the SSMWG's Witness Statement where it notes that members of the SSMWG include termination provisions in their Connection Agreements. The SSMWG Witness Statement also notes that this is different than what appears to be in the case in respect of PowerStream. When asked whether this is a true statement, Mr. Chatten's response was: "Well, in a sense it is" …[45] Shortly following this answer, Mr. Chatten stated that any condominium corporation can choose at any time to change to another service provider. Specifically, he stated: "There are no barriers to exit."[46]

57. The SSMWG fails to understand how such an answer can be correct when Appendix "A" and the terms of reference letter produced by PowerStream in response to SSMWG IR#3 require a developer to agree as follows:

> "3. Upon completion of an agreement to do so; PowerStream will own the relationship with the suite owners."[47]
>
> *** "PowerStream and the condominium corporation will establish a mutually satisfactory date to transfer ownership."[48]

[43] SSMWG Witness Statement
[44] Tr. 1, p. 161
[45] Tr. 1, p. 76
[46] Tr. 1, p. 77
[47] SSMWG IR#3, Sch. 3-1, App. "A"

> "PowerStream provides the following to the condominium corporation, all at no cost, in return for the condominium corporation's agreement that PowerStream will be their exclusive smart suite meter installation and service provider."[49]
>
> "This terms of reference letter binds the condominium corporation to contract with PowerStream as their exclusive meter installation and service provider."[50]

58. The SSMWG submits that the clear language of PowerStream's own productions is inconsistent with the position taken by Mr. Chatten. There can be little question that this is simply a subtle means of attempting to expand PowerStream's distribution monopoly into an area where a competitive private sector market exists.

Rate Impact in the Long Run Could be Significant

59. PowerStream's evidence is that perhaps 10 percent of its customers are currently behind bulk meters.[51] This means that there is a potential market of 25,000 existing units which will need to be smart metered in addition to all new multi-unit buildings being constructed annually. Using PowerStream's actual per unit costs in 2008, of $779 per unit, the cost to suite meter these existing units alone comes to just under $20 million. The SSMWG submits that the Board and ratepayers should recognize that suite metering could have a significant impact on rates. It is therefore appropriate to question why more expensive Quadlogic systems should be subsidized by other ratepayers when a competitive market is willing and capable of meeting the demand.

SSMWG's Spreadsheet

60. PowerStream notes in its Argument the fact that the SSMWG replaced its spreadsheet on the morning of the oral hearing. The spreadsheet circulated by the SSMWG the week prior to the hearing followed precisely the methodology used by PowerStream in its pre-filed evidence supporting the cost recovery of capital expenditures in respect of smart meters - specifically, Exhibit I, Tab 3, Schedule 2, page 2, Table 1. In this table, PowerStream calculated the gross up for PILS of $429,868, on a revenue requirement of $872,762. The SSMWG subsequently determined that this filing and its methodology

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[48] Ditto
[49] Ditto
[50] Ditto
[51] SSMWG IR#1, Sch. 1-1, s. 3

was erroneous and completed a further spreadsheet, which was circulated on the morning of the hearing.

61. While the SSMWG spreadsheet includes, simply for informational purposes, the revenues that PowerStream will receive from the commercial load (i.e., the common elements) at the condominiums being served, it is inappropriate to include these revenues when attempting to determine whether there has been residential ratepayer cross-subsidization. When one compares all of the additional costs to install the Quadlogic meters and to serve the new residential customers against the additional revenues generated by serving these same customers, a cross-subsidization becomes apparent. This is confirmed by PowerStream's own spreadsheet (Exhibit K1.4) once you include the fully allocated costs to serve the new residential customers.

Response to PowerStream's Argument

62. Before responding to rate-related issues, SSMWG wishes to address what appears to be PowerStream's challenge to the involvement of relatively small electricity market players, such as competitive smart sub-metering companies, in proceedings like this application. Certainly, the amount involved in PowerStream's suite metering program relative to its entire revenue requirement is small from its perspective, but the stakes to the members of the SSMWG are enormous. Unlike PowerStream, members of the SSMWG will financially live or die depending upon the continuation of a competitive market. The fact that PowerStream believes the numbers are small does not change the fact that the numbers are large from the perspective of the individual members of the SSMWG. The apparent suggestion that smaller electricity market participants should not be permitted an opportunity to articulate their concerns about the entry of a rate-regulated monopoly into a competitive market is most troubling. It is even more troubling that the same rate-regulated utility would request costs from such intervenors knowing full well that, unlike itself, the SSMWG has no ability to pass such costs along.[52] The SSMWG submits that this is nothing but a further example of the effort by certain LDCs to eliminate the existing competitive smart sub-metering market.

[52] It is unimaginable that PowerStream did not include in its OM&A budget the cost to participate in a one-day hearing in respect of its 2009 Rate Application. PowerStream has neither argued nor presented evidence that one day of an oral hearing was not contemplated in its budget. Accordingly, the request for costs represents a demand for double recovery.

63. The fact is that the SSMWG lacked the coordination and the resources to monitor LDC rate applications. It, therefore, did not participate in the Toronto Hydro rate application (EB-2007-0680).[53] It is also a fact that Board Staff raised as an issue in that proceeding the question of the appropriateness of other ratepayers cross-subsidizing the cost to install significantly more expensive metering systems in condominiums.[54] The Board, in its Decision, indicated that a generic hearing might be appropriate for such issues. No such hearing has, as of this date, been commenced.

64. PowerStream filed its application in October 2008. The consideration of the application was delayed by PowerStream's merger with Barrie Hydro. The SSMWG sought late intervenor status shortly after it became aware of PowerStream's request for approval for its suite metering program. The intervention of the SSMWG in no way delayed the Board's consideration of PowerStream's application. Indeed, the oral hearing took place precisely on the date set by the Board for its consideration of the application.

65. PowerStream opposed SSMWG's intervention, and the SSMWG responded to PowerStream's letter of opposition. After being granted intervenor status by the Board, the SSMWG attended and participated in the Issues Conference. It subsequently exchanged correspondence with counsel for PowerStream and understood that its issues properly fell within several of the issues contained in the Issues List.

66. The SSMWG submits that it is wholly inappropriate to make statements of the nature made by PowerStream, at paragraph 26 of its Argument, about what it knew or did not know in respect of the relief that the SSMWG is seeking in this proceeding. While the SSMWG feels bound by the rules of confidentiality in respect of the Settlement Conference, it is clear from the scoping language in the Settlement Agreement that the SSMWG believed that the revenue requirement impacts of the individual suite metering program should not be included in rates in the Test Year.

67. On the morning of the hearing, in response to a suggestion by counsel for CCC, the option of recording all of the suite metering program's costs in a deferral account to be dealt with subsequent to a generic proceeding that considers relevant issues was raised. The SSMWG indicated its willingness to accept this as a compromise. PowerStream

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[53] Tr. 1, p. 189
[54] EB-2007-0680, Decision, May 15, 2009, p. 20

indicated that this was unacceptable, as a result of which, the oral hearing was necessitated. As noted by SSMWG during the morning session, if the Board approves the rate implications of the PowerStream suite metering program in this proceeding, they will be embedded in rates and will continue, despite any decision in a future generic decision which determines that such conduct should not continue.

68. SSMWG has not questioned the prudence of the costs spent by PowerStream on suite meters. Questions do begin to arise as a result of PowerStream's witnesses confirming that in 2008 unit costs rose to $779[55]; however, the SSMWG is not taking the position in this proceeding that these costs are not prudent. The question it raises is the extent to which and the appropriateness of other ratepayers paying the higher costs of installing Quadlogic metering systems when they are available, at no cost, from the competitive market. The SSMWG submits that the Board in this proceeding has the ability to require PowerStream, from the date of its Decision forward, to determine whether, on a fully allocated cost basis, there is a cost subsidy and to either require the subsidized amount to be paid by a condominium developer or condominium corporation or to place these amounts into a deferral account, the recovery of which would be dependent on the results of a subsequent generic proceeding.

69. It is noted that PowerStream spent much of its argument promoting the prudence of its decision to outsource the suite metering program to its contractor, Trilliant. What PowerStream fails to note in its Argument is that it claimed commercial confidentiality and, without even complying with the requirements of the Board's Confidential Guidelines, failed to file, even with the Board, a redacted version of the data underlying the program. To then imply that it was successful in averting a fight over prudence when it filed no evidence is quite remarkable.

70. The fact is that if PowerStream were properly engaged in a competitive market, the forces of the competitive market would ensure its costs are prudent. If PowerStream were not permitted to look to other residential ratepayers to pay for its suite metering program, but instead was obliged to look to condominium developers and condominium corporations for the higher costs, there would be no concern about the prudence of its costs because PowerStream would be competing with the balance of the competitive

[55] Tr. 1, p. 145

market. The competitive market would ensure that the costs were competitive and hence prudent.

Conclusion

71. The SSMWG is not suggesting that PowerStream should discontinue its installation of smart suite meters in condominium buildings. It is only asking that the Board ensure that PowerStream's efforts in this regard do not damage the competitive smart sub-metering market. The fact that PowerStream has not undertaken a cost allocation study, so as to determine exactly the extent of the cross-subsidy, is no justification to permit a cross-subsidy to continue, particularly in a situation where the cross-subsidy is directed at an existing competitive market.

72. The fact that PowerStream is unable to identify the precise impact that its suite metering program has on its revenue requirement at this time should not be a justification for allowing it to recover in rates advertising and advocacy costs, it admits it has no obligation to incur.[56]

73. The fact that similar or worse conduct is occurring elsewhere which should be dealt with in a generic proceeding, is no basis to approve the continuance of conduct in this rate application. The Board has the tools at hand presently to require PowerStream to record in a newly established deferral account all of the costs associated with its suite metering program. Such costs can then be cleared through to rates, to the extent that they are shown to be prudent and consistent with a decision of the Board in a subsequent generic proceeding. PowerStream would remain at liberty to continue with its suite metering program, but if it wished to limit its risk, it would eliminate unnecessary costs, like promotion and its advocacy efforts. Most importantly, if it is concerned that a generic decision might determine that some of the program's costs should not be recovered in rates, it could require condominium developers and corporations to pay the variable connection charge required under the DSC.

74. Alternatively, PowerStream could undertake its suite metering program through an affiliate and participate on an equal footing with other private sector sub-metering companies. The SSMWG submits that it has not done this because it wishes to avail

[56] Tr. 1, p. 98

itself of its dominant position in the market at the expense of the competitive sub-metering industry.

75. Finally, the Board has the power to direct PowerStream to undertake its activities in the competitive market, but do so through a non-utility account. There is no evidence that in so doing, PowerStream's suite metering program will be any less effective. Under this option, as in each of the above options, if PowerStream is asked by a condominium corporation or developer to install a suite metering system, PowerStream can comply, but will do so without damaging the competitive market but without the comfort of knowing its other ratepayers will cross-subsidize its foray into the competitive market.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

June 19, 2009.

"Dennis M. O'Leary"
Dennis M. O'Leary
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Counsel for the Smart Sub-metering Working Group

EXHIBIT K1.4 revised to include fully allocated OM&A
Suite Meter Revenue Requirement 2007 & 2008 Program

Line	Item		Calculation
1	Number of Installed suite meters	4700	
2	Unit cost	680	
3	Total Capital Cost	3196000	Line 1 xLine 2
4	Working Capital Allowance		
5	Operation Expense	663640	Line 15
6	Working Capital Allowance 15%	99546	Line 5 x 15%
7	Suite Metering Rate Base	3295546	Line 6 + Line 10
8	Return on Rate Base		
9	Debt 60% @ 6.16%	121803	Line 7 x .60 x 6.16%
10	Equiy 40% @ 9.00%	118640	Line 7 x .40 x 9.00%
11	Return on Rate Base	240443	Line 9 + Line 10
12	Operation Expense		
13	Incremental Operating Expenses	146640	$2.60/month J1.1 X 4700
14	OM&A $110 / customer	517000	$110 per customer X 4700
15	OM&A	663640	
16	Amortization	213067	Line 3 x 6.66%
17	Total Operating Expenses	876707	Line 13 + Line 15 +Line 16
18	Revenue Requirement before PILS	1117150	Line 11 + Line 17
19	Grossed up PILS @ 33.%	58434	
20	Suite Meter Revenue Requirement	1175584	
21	New Residential Revenues		
22	Customers Charge @$12.02/mo	677928	Line 1 x 12 x $12.01
23	Variable Distribution @1.29 cents/kWh	363780	Line 1 x 500kWh x 12 x1.29cents
24	Commercial Revenues		
25	Variable Distribution $2.2713/kW	-144482	5301 x $2.713
26	Total Revenue	897226	Line 22 + Line 23 +Line 25
27	Annual Suite Meter Program Sufficiency/(Deficiency)	-278358	Line 26 - Line 20