



**EB-2011-0117**  
**EB-2011-0133**

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

**AND IN THE MATTER OF** an application pursuant to  
section 74 of the *Ontario Energy Board Act, 1998* by  
PowerStream Inc. seeking an extension to its mandated  
time-of-use pricing date for certain Regulated Price Plan  
consumers.

**AND IN THE MATTER OF** an application pursuant to  
section 74 of the *Ontario Energy Board Act, 1998* by  
Midland Power Utility Corporation seeking an extension to its  
mandated time-of-use pricing date for certain Regulated  
Price Plan consumers.

**BEFORE:** Cynthia Chaplin  
Vice Chair and Presiding Member

Ken Quesnelle  
Member

## **DECISION**

PowerStream Inc. ("PowerStream") and Midland Power Utility Corporation ("Midland") filed applications dated April 19, 2011 and May 4, 2011 respectively, with the Ontario Energy Board under section 74 of the *Ontario Energy Board Act, 1998*, for a licence amendment granting an extension in relation to the mandated date for the implementation of time-of-use ("TOU") pricing rates for certain Regulated Price Plan ("RPP") consumers. PowerStream's application was assigned file number EB-2011-0117 and Midland's application was assigned file number EB-2011-0133.

## **BACKGROUND**

By letter to all Ontario electricity distributors, dated August 4, 2010, the Ontario Energy Board determined mandatory dates by which each distributor must bill those of its RPP customers that have eligible TOU meters using TOU pricing. The Board's determination was made pursuant to sections 3.4 and 3.5 of the Standard Supply Service Code for Electricity Distributors, which requires TOU pricing for RPP consumers with eligible TOU meters, as of the mandatory date. Compliance with this Code is a condition of licence for nearly all licensed electricity distributors in Ontario.

The determination included the following statement:

The Board acknowledges that distributors may encounter extraordinary and unanticipated circumstances during the implementation of TOU pricing. The Board requests that any distributor encountering such circumstances bring these matters to the Board's attention without delay in order that the Board can assess the impact on the distributor's mandatory TOU date and assess whether any adjustment in that date is warranted.

## **THE APPLICATIONS**

PowerStream and Midland each made an application for extension to their June 2011 mandated TOU pricing date for their General Service under 50kW ("GS<50kW") customers and requested a new TOU pricing date of February 1, 2012. Due to the similar nature of the applications the Board is issuing a combined decision for the applications. PowerStream and Midland stated that they are ready to implement TOU rates for the GS<50kW customers but claimed that an extension is necessary due to concerns about potential bill increases. Both distributors requested time to implement and educate their GS<50kW customers on the Ontario Power Authority's ("OPA") Conservation and Demand Management ("CDM") programs. PowerStream and Midland stated that during the requested extension they planned to work with small commercial and industrial customers and implement CDM programs that may mitigate potential bill increases. PowerStream's extension application would affect approximately 25,000 customers and Midland's extension application would affect approximately 720 customers.

The Board issued Notices of Application and Written Hearing for PowerStream and Midland's applications on May 3, 2011 and May 12, 2011 respectively, and interrogatories and submissions on the application were invited. On May 20, 2011

Board staff requested that due to the similarities in the applications the dates to file interrogatories on the applications be aligned. On May 27, 2011 the Board issued Procedural Order #1 which aligned the dates for interrogatories and submissions for both applications. On May 30, 2011 Board staff filed interrogatories on both applications. The Canadian Federation of Independent Business (“CFIB”) filed interrogatories on PowerStream’s application on May 20, 2011 and on Midland’s application on May 30, 2011. The applicants responded individually to interrogatories on June 13, 2011. On June 20, 2011 Board staff and the CFIB filed submissions on each application. The applicants responded individually to the submissions on June 27, 2011.

PowerStream provided an analysis of the average total bill increases for its GS<50kW customers and stated this analysis was a key factor in the decision to apply for a TOU extension application. The analysis shows that 59% of the customers would experience an increase in their bills with the average increase in the total bill being \$5.12 per month. The remaining 41% of customers would experience a decrease in their bills with the average decrease being \$22.12 per month. PowerStream explained that the bill impacts had not been anticipated because they had not been calculated prior to general service meter installations. PowerStream also outlined the OPA’s CDM programs it planned to market and help customers implement during the requested extension and indicated that if its request for an extension was not granted it would continue to market and help implement the OPA’s CDM programs.

Midland also provided analysis of the potential bill impacts for this class of customers. Midland’s analysis showed 87% of customers would experience bill increases with the average increase being \$6.49 per month. The remaining 13% of customers would experience decreases with the average decrease being \$7.40 per month. Midland stated that it would promote conservation programs formalized by the OPA over the next six months and hold additional information sessions with its customers. Midland stated that it was only able to analyze potential bill impacts in early May 2011 once the smart meter infrastructure was completely installed and stabilized. Midland indicated that it had held information sessions for all customers in the fall of 2009 and in 2011 to acquaint them with the installation of smart meters and TOU pricing. Midland also stated that it placed advertisements and articles in the local newspaper as well as distributing information on TOU pricing to its customers in the form of letters, booklets and information packages. Midland stated it was unable to provide the additional OPA CDM programs to its GS<50kW customers due to staffing and delays in rollout of the OPA programs. Midland also stated that it had no analysis of the effect these

conservation programs would have on customers but that it would continue to promote and market the programs to this class of customers whether it received the requested extension or not.

## **POSITION OF PARTIES**

Board staff recommended denial of both PowerStream's and Midland's TOU extension applications. Board staff was of the view that the reasons for the extensions did not represent extraordinary or unanticipated circumstances sufficient to justify an extension to the mandated TOU pricing date. Board staff stated that it saw no compelling reason for PowerStream or Midland's GS<50kW customers to receive special treatment regarding TOU implementation. Board staff observed that some of PowerStream's GS<50kW customers had already been transitioned to TOU pricing rates. Staff submitted that it was not unexpected for major policy initiatives such as TOU pricing to bring about disparate financial impacts on specific customers or customer groups in the short term. As a result, staff was of the view that providing a specific class of customers with special treatment, even on a temporary basis, is not in the public interest in these cases. In addition, staff submitted that bill mitigation is not an example of an extraordinary or unanticipated circumstance that hinders an applicant in TOU implementation and does not warrant a TOU extension.

The CFIB supported both PowerStream's and Midland's TOU extension applications. The CFIB considered the requested delay to be in the interest of the affected GS<50kW customers, and assumed there was no identified adverse impact on other customer classes or members of the public. The CFIB was concerned about the majority of small businesses who will be faced with bill increases, combined with little advance information and a small number of program tools, of which the effectiveness was not yet known. The CFIB stated that many customers would not be ready for TOU pricing, and that many will receive an unwelcome surprise when TOU rates go into effect. The CFIB acknowledged that while there is no guarantee that the steps planned by PowerStream and Midland would enable customers to mitigate bill impacts, the delay and the proposed programs would enable provincial policymakers to rethink the plan to impose the current TOU regime on small businesses.

In its reply submission PowerStream reiterated its request for an extension to its mandated TOU pricing date. PowerStream was of the view that given the potential for significant total bill impacts there is merit in providing GS<50kW customers with the time and opportunity to implement CDM programs that could offset the bill increases.

PowerStream agreed with Board staff that it is ready from a technical point of view to implement TOU rates for these customers. PowerStream noted that its GS<50kW customers already on TOU pricing are mainly temporary services to residential construction projects. PowerStream stated that these services are classed as GS<50kW until such time that they are no longer needed and are removed. PowerStream acknowledged the merits of Board staff's argument with respect to the fact that estimated bill increases do not represent an extraordinary or unanticipated circumstance related to TOU implementation. PowerStream also acknowledged the merits of Board staff's argument with respect to the fact that some customers will experience a bill decrease and that an extension delays the possible benefit of TOU pricing to these customers. PowerStream stated that it considered the six month extension to provide time for marketing and implementation of the OPA's CDM programs reasonable. PowerStream asked that the extension to its mandated TOU pricing date be allowed by the Board.

In its reply submission Midland stated it did not agree with Board staff's view that its request for an extension to its mandated TOU pricing should be denied and supported the CFIB's submission on the application. Midland believes the reasons given in the application are an unanticipated and an extraordinary circumstance that justifies an extension to its TOU pricing date. While Midland agreed that there are no technological barriers to TOU implementation, it stated that it has been unable to provide this customer base with the relevant conservation program information to enable them to make informed decisions on their consumption habits and the TOU extension would not unfairly disadvantage other customers. Midland submitted that it is a summer peaking distributor, and that the analysis provided with the application was with respect to winter TOU rates which are considerably lower than the summer rates. Midland observed that any potential bill decrease for those customers would be virtually wiped out by the increases effective May 1, 2011 and the increase in summer consumption. Midland submitted that rate mitigation must be taken into consideration along side Board policy. Midland further submitted that the GS<50kW customer class would be put at a disadvantage if the extension is not granted.

## **BOARD FINDINGS**

Following review of the record of these applications the Board does not find the justifications provided by the applicants to be sufficient to justify an extension to either applicant's mandated TOU pricing date. The Board finds that the potential bill impacts and desire to provide further customer education and promotion of CDM programs do

not represent “extraordinary” or “unanticipated circumstances” which hinder an electricity distributor’s ability to implement TOU pricing. Generally speaking “extraordinary” or “unanticipated circumstances” would relate to operational or technical issues which cannot be adequately resolved in time to meet the mandated date. The fact that there are bill increases for some customers (and decreases for others) is not extraordinary or unanticipated. Further, the Board finds that the level of increases provided through the evidence are of a level (in % terms or absolute dollars) that would not warrant mitigation for these customers. Both applicants acknowledge they are currently ready to implement TOU pricing; the Board therefore expects the applicants to immediately begin TOU pricing rollout for their GS<50kW customers.

The Board recognizes that there will be increases in some customers’ bills, but given the analysis already conducted by the applicants, the Board expects that PowerStream and Midland will be able to identify the customers with the highest impacts and provide a targeted and timely education initiative using the OPA’s CDM programs. The Board also notes that for both applicants, and particularly for PowerStream, a substantial portion of customers are expected to experience a bill decrease with the implementation of TOU pricing. The Board is not prepared to delay TOU implementation for this group of customers that could potentially benefit from TOU pricing. Nor does the Board believe it would be appropriate to delay implementation, and the potential benefits, for those customers that have already enacted measures to prepare for TOU pricing such as load shifting and other conservation measures.

In conclusion, the applications are denied.

The Board will not be issuing cost awards in this proceeding.

**DATED** at Toronto, July 11, 2011

**ONTARIO ENERGY BOARD**

*Original signed by*

Cynthia Chaplin  
Vice Chair and Presiding Member

*Original signed by*

Ken Quesnelle  
Member