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VIA MAIL and E-MAIL

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge St.
Toronto, ON
M4P 1E4

Dear Ms. Walli:

Re: Vulnerable Energy Consumers Coalition (VECC)
Notice of Intervention: EB-2010-0131
Horizon Utilities Corporation – 2011 Electricity Distribution Rate Application

VECC has had the opportunity to review the submissions of Energy Probe with respect to the threshold issue and discuss those submissions with Energy Probe, and accordingly can advise the Board that it supports and adopts those submissions with the following additional comments.

In VECC's view it is implicit in the 3rd Generation IRM structure that utilities are earning a fair return on equity if they fall within 300 basis points, plus or minus, of the ROE embedded in their base rates. The assertion that a utility is not making a fair return because it is below the embedded ROE but still within the 300 basis point threshold should not prompt corrective action, as the 3rd Generation IRM dictates that there is nothing to correct. VECC notes that when the reverse is true such that a utility is consistently earning above the embedded ROE but not exceeding the 300 basis point threshold there is no mechanism requiring correction to the benefit of ratepayers on the same basis; there is nothing to correct.[1] As Energy Probe's analysis demonstrates there is no historical data supporting a finding that Horizon has actually performed outside the tolerances established by the Board, such that under the 3rd Generation IRM structure no corrective action is necessary with respect to Horizon.

Additionally, with respect to Horizon's assertion that it will, on a forecast basis, earn a rate of return more than 300 basis points below its embedded ROE, VECC would like to emphasize that in earning an approved ROE on its capital investment a utility is specifically taking on risk, and that sometimes, as is arguably the case in Horizon's situation, that risk manifests itself causing the utility's actual ROE to diminish. The Board has identified risks in the form of Z-Factors against which utilities are partially protected; beyond that Z-Factor protection, for which the Board has determined Horizon does not qualify, the utility will, sometimes, have to bear manifested risks. Stepping in to adjust rates on a forecast basis in the middle of an IRM period, as requested by Horizon, eliminates much of the risk that the company is specifically supposed to be bearing.

Put another way, an IRM regime which protects utilities on a forecast basis from deviating more than 300 basis points from the embedded ROE is a very different structure then the existing 3rd Generation IRM under which Horizon is currently regulated. In VECC's view providing such protection on a prospective basis is inconsistent with the risks specifically borne by the utility and therefore inappropriate.

VECC notes that had Horizon, in its first year after rebasing, fell below the 300 basis point threshold, the 3rd Generation IRM structure would have triggered a review of Horizon's rates and possibly led to early rebasing, but at the same time would have required Horizon to bear that single year deviation in excess of 300 basis points as a manifestation of the risks borne by a regulated utility.[2] In VECC's respectful submission there is no reason why the company should not bear such a deviation in the third year after rebasing, assuming Horizon's 2011 performance falls below the 300 basis point threshold.

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[1] VECC notes that there are IRM structures with earnings sharing mechanisms ("ESM"s) which provide some correction for over-earning relative to an embedded ROE, and that VECC has advocated for ESMs. However in this case the Board determined that no ESM would be required, leaving the utility with the opportunity to earn up to 300 basis points over the embedded ROE without intervention.

[2] VECC notes that the July 14, 2008 Report of the Board on 3rd Generation Incentive Regulation for Ontario's Electricity Distributors, at page 39, specifies that the review of the IRM for a particular utility resulting from off-ramp eligibility "would be <u>prospective</u>", (emphasis added), such that it would not actually address the under-earning that triggered the off-ramp review.

For these reasons VECC agrees with Energy Probe's submission that Horizon's application for early rebasing should be denied. In VECC's view the historical operation of Horizon within the 300 basis point threshold established by the Board, the failure of Horizon to qualify for Z-Factor relief, and the lack of any evidence to the effect that Horizon cannot provide adequate service to its customers in 2011 absent rebasing require a rejection of Horizon's application.

Thank you.

Yours truly,

Michael Buonaguro
Counsel for VECC