



**EB-2010-0131**

**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 Horizon Utilities Corporation for an order approving just and reasonable rates and other charges for electricity distribution to be effective January 1, 2011.

**DECISION ON THE PRELIMINARY ISSUE OF EARLY REBASING AND  
PROCEDURAL ORDER No. 4**

Horizon Utilities Corporation (“Horizon” or “the Applicant”) filed an application (the “Application”) with the Ontario Energy Board (the “Board”), received on August 26, 2010 under section 78 of the *Ontario Energy Board Act, 1998*, (the “Act”) seeking approval for changes to the rates that Horizon charges for electricity distribution, to be effective January 1, 2011.

**The Preliminary Issue**

Horizon has been under the 3rd Generation Incentive Ratemaking Mechanism (“IRM”) framework since 2008, the year its rates were last set based on a cost of service review. In the normal course, Horizon would have applied for rebasing on a cost of service basis for 2012 rates. However, Horizon has filed a cost of service application one year in advance of its next regularly scheduled application.

In 2009, Horizon applied for a Z-factor due to loss of load (EB-200-0332). The Board issued its decision denying the Z-factor, on March 24, 2010.

On April 20, 2010, before the Application was filed, the Board sent a letter to all distributors. In the letter (“the April 20<sup>th</sup> Letter”), the Board stated that a distributor that

seeks to have its rates rebased in advance of its next regularly scheduled cost of service proceeding must justify, in its cost of service application, why an early rebasing is required notwithstanding that the IRM “off ramp” conditions have not been met.

Specifically, the distributor must clearly demonstrate why and how it cannot adequately manage its resources and financial needs during the remainder of its IRM plan term. The April 20<sup>th</sup> Letter stated that the Board may determine, as a preliminary matter, whether the application for rebasing is justified, or whether the application as framed should be dismissed. The letter also advised that the Board may, where an application for early rebasing does not appear to have been justified, disallow some or all of the regulatory costs associated with the preparation and hearing of that application, including the Board’s costs and intervenor costs.

In its Application, Horizon identified several factors supporting its application for rebasing in 2011:

1. Material and persisting shortfalls in revenue, relative to its Board approved Base Revenue Requirement, principally related to a decline in consumption in the larger General Service classes;
2. An urgent need for increased investment in the renewal and maintenance of the electricity distribution system;
3. An urgent requirement to renew and increase skilled trades positions within the workforce and other administrative functions in support of growth and change in the electricity distribution business.; and
4. A requirement for a reasonable rate of return on regulated investments;<sup>1</sup>

The Board issued Procedural Order No. 1 on October 21, 2010 to first consider Horizon’s application for early rebasing for 2011 distribution rates (the “Preliminary Issue”) in advance of further procedural steps. Procedural Order No. 1 allowed for a round of interrogatories by intervenors and Board staff, and submissions by all parties on whether Horizon’s early rebasing application is justified.

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<sup>1</sup> Exh 1/Tab 2/Sch 1/pp.6-7

On November 4, 2010, the Board issued Procedural Order No. 2 extending the deadlines for the filing of the interrogatory responses, submissions and reply submissions with respect to the Preliminary Issue.

Board staff, Energy Probe, SEC and VECC filed submissions on the Preliminary Issue on November 23, 2010. CCC filed its submission on November 24, 2010. Horizon filed a reply submission on November 29, 2010. On November 30, 2010, SEC filed a letter correcting certain statements it had made in its submission. On December 3, 2010, Horizon filed a corrected reply submission, updating 2010 ROE estimates to account for the treatment of the Late Payment Penalty settlement.

### **Positions of the Parties**

Board staff and the intervenors submitted that Horizon did not satisfy the threshold issue of its ROE being at least 300 basis points below its target ROE. In the Application filed on August 26, 2010, Horizon estimated that its forecasted ROE for 2010 would be 5.9%, but in response to Board staff IR # 1, provided an updated year-end 2010 estimate of 7.2% based on year-to-date data of September 30, 2010.

However, Board staff submitted that the volatility of Horizon's load must also be considered in light of evidence in Horizon's application, and could be updated.<sup>2</sup>

Board staff submitted that there were two options available to the Board:

- 1) Dismiss the Application. Acknowledging that Horizon did not satisfy the threshold test, the Application could be dismissed. However, given that Horizon would be normally scheduled to rebase for 2012 rates, and it is seeking to align rates with its fiscal year (i.e. January 1), Horizon would be re-filing by the end of April 2011, a lag of only five months; or
- 2) Proceed with the Application. Board staff submitted that the Board contemplated in the April 20<sup>th</sup> Letter that an early rebasing application could still be heard even when the threshold test was not met.

CCC argued that Horizon's responses to interrogatories demonstrated that the utility had been able to manage its resources and financial needs, and should be able to continue to do so in a cost-effective way for the remainder of its IRM term."<sup>3</sup>

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<sup>2</sup> Board staff, Submission on the Preliminary Issue of Early Rebasing, November 24, 2010, page 4

CCC also argued that if the Board were to proceed with the Application, new rates should not be effective until May 1, 2011 and Horizon should not be eligible for the updated ROE, to avoid a “windfall” for Horizon.

Energy Probe also argued that that Horizon should not be permitted to rebase because:

- 1) Early rebasing will eliminate the consumer benefit of the productivity offset including the stretch factor in the (avoided) third year of the IRM plan;
- 2) The Horizon Application is analogous to that of Hydro Ottawa for which the Board denied Hydro Ottawa’s early rebasing application in its EB-2010-0133 Decision;
- 3) The EB-2009-0332 Decision did not specify that Horizon was entitled to file for early rebasing; and
- 4) Horizon’s Application and responses to interrogatories on the Preliminary Issue did not support Horizon’s four reasons for applying for early rebasing.

Energy Probe suggested that, while Horizon’s Cost of Service Application should be dismissed, the productivity offset or stretch factor be altered or ignored for a 2011 IRM adjustment, or alternatively, an allowance for the shortfall from the 2008 Board-approved operating revenue could be factored into 2011 rates.

VECC supported Energy Probe’s submissions.

SEC argued that Horizon’s situation was similar, in many respects, to that of Hydro Ottawa, whose early rebasing application was denied by the Board in EB-2010-0133, and that this application should be dismissed for the same reasons.

SEC also argued that the primary reason that Horizon applied for early rebasing was to take advantage of an increase in ROE. SEC also argued that US Steel, while one of Horizon’s largest customers, represents a distribution revenue of about \$2.9 million, a fraction of Horizon’s estimated revenue deficiency of about \$20 million for 2011, and that the issues of aging infrastructure rehabilitation and workforce planning are common issues facing many distributors.

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<sup>3</sup> CCC, Submissions on the Preliminary Issue, November 24, 2010, page 6

Horizon estimated its 2011 revenue requirement shortfall would be in the order of \$5.0 million, higher than was estimated by intervenors, who did not take the impact of an IRM adjustment into account.

Horizon submitted that, while it had deferred and re-prioritized capital and OM&A spending in recent years, it could not continue to do so, for reasons of safety and the quality and reliability of distribution services provided to customers. It noted the aging of infrastructure, particularly in older sections of its Hamilton and St. Catharines service areas.

Horizon argued that a load forecast update was warranted, and that a cost of service review was the most appropriate process by which to address its load volatility and the need for increased operating and capital spending.

Horizon noted that its intention to file for rebasing for 2011 rates was on the record in the Z-factor application, well in advance of the April 20<sup>th</sup> Letter.<sup>4</sup>

Horizon also argued that “the Board’s findings [were] clear [in EB-2009-0332] – on a plain reading of the Decision, the way to deal with Horizon Utilities’ circumstances is by way of a cost of service application. There is no suggestion in the Decision that the filing of such an application is at its next scheduled time under IRM. If that were the case, the Board could simply have rejected the Z-factor Application or indicated that this was a matter to be dealt with in 2012, as part of Horizon Utilities’ next scheduled rebasing. The Z-factor Decision did not include such express indication. While the Board did not direct Horizon Utilities to bring a cost of service application for rebasing in 2011, it is reasonable to conclude that the Board clearly did not preclude a filing for 2011, and Horizon Utilities’ circumstances continue to warrant ‘get[ting] them in for a review as quickly as possible.’”<sup>5</sup>

With respect to Energy Probe’s proposals to adjust the IRM formula for Horizon’s 2011 rates, Horizon submitted that the impact of eliminating the stretch factor would be about \$300,000, significantly below the estimated revenue shortfall of \$5.0 million.

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<sup>4</sup> Horizon Utilities Corporation, Reply Submission on the Preliminary Issue, November 29, 2010, page 22, para. 60

<sup>5</sup> Horizon Utilities Corporation, Reply Submission on the Preliminary Issue, November 29, 2010, page 23, para. 62

## **Board Findings**

The Board has determined that it will hear the application.

The Board agrees with the intervenors that Horizon does not meet the off-ramp earnings threshold.

However, the Board finds that it was reasonable for Horizon to believe that the Board would accept a cost of service application from Horizon at this time. Therefore the Board finds that the considerations in the April 20<sup>th</sup> Letter and the Hydro Ottawa decision do not apply to this application.

## **The Z-Factor Application**

In 2009, Horizon filed an application seeking Z-factor treatment with respect to loss of load from U.S. Steel (EB-2009-0332). This load reduction occurred shortly after Horizon had completed its previous rebasing application, and the load reduction was not taken into account – and in the Board’s view, could not have been reasonably anticipated at the time – in establishing its rebased rates. The Board considered that application, but ultimately dismissed it.<sup>6</sup> However, the Board stated the following:

In this Decision the Board has found that Horizon’s application for recovery of large customer revenue losses does not meet either the Z-factor criteria, or those of the off-ramp from its incentive regulatory plan.

In making these findings, the Board is mindful of the need to provide guidance to distributors as to the appropriate approach to take when confronted with such revenue losses. The Board notes the importance of assessing the actions taken by a distributor to deal with customer load loss in the context of their overall impact on the utility, including the overall financial impacts on the utility. The Board believes that the most appropriate approach for a distributor to take under such circumstances is to file a cost of service application. A distributor could also bring forward a request for special treatment of such losses within the context of the overall cost of service application.

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<sup>6</sup> Decision, EB-2009-0332, March 24, 2010.

However, the Board cautions distributors that such an approach should not be undertaken lightly. The Board expects that any requests for load loss recoveries would be defended in the context of the overall business, that the Applicant would provide a detailed explanation of all mitigation actions it had undertaken and why further relief continued to be required under such circumstances.<sup>7</sup>

The Board has indicated that the load loss would only be dealt with in a cost of service application, where it could be considered simultaneously with the operating and capital budgets, service quality and reliability, other factors affecting revenue requirement and rates (e.g. deferral and variance account balances and cost allocation).

In its covering letter for the Z-factor Application, Horizon stated:

Horizon Utilities proposes to recover this forgone revenue through a Z-Factor-related rate rider (the “Rate Rider”) that would take effect January 1, 2010 and would remain in place until the rate order arising out of Horizon Utilities’ next forward test year cost of service distribution rate application takes effect. Horizon Utilities anticipates that the requested Rate Rider will be in place until April 30, 2011, as **Horizon Utilities is currently planning to file a 2011 cost of service distribution rate application in August of 2010, with rates to be effective May 1, 2011.** *[Emphasis added]*<sup>8</sup>

The Board recognized that it was Horizon’s intention to file a cost of service application for 2011 rates in the EB-2009-0332 Decision.<sup>9</sup> The Board did not address this matter elsewhere in that Decision, issued less than one month prior to the April 20<sup>th</sup> Letter.

The Board concurs with Horizon’s analysis of EB-2009-0332, that load loss and volatility should be explored in a comprehensive cost of service review. That decision did not direct Horizon to file for rebasing in 2011, but neither did it restrict Horizon from filing for a cost of service review for 2011 rates, which Horizon had made known as its intention on the record.

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<sup>7</sup> *Ibid.*, pages 16-17

<sup>8</sup> Horizon Utilities Corporation, Rate Rider Application to address an unforeseen and significant loss of distribution revenue, EB-2009-0332, September 3, 2009, page 1

<sup>9</sup> Decision, EB-2009-0332, March 24, 2010.

**Other Issues**

The Board will not impose any restrictions on the outcome of the application at this time. At the completion of the proceeding, the Board will make its decision on all issues, including the effective date for new rates.

**Confidentiality**

In the original Application, Horizon has filed a claim for confidentiality, pursuant to the *Practice Direction on Confidential Filings* (the “Practice Direction”) with respect to certain information in Exh 4/Tab 2/Sch 10/pages 11 and 14 (Tables 4-25 and 4-26). On Exh 4/Tab 2/Sch 10/pages 9-10, Horizon states:

With respect to the Horizon Utilities’ current collective agreement with the International Brotherhood of Electrical Workers (the “IBEW”) expires on May 31, 2011. Negotiations between Horizon Utilities and the IBEW will be taking place in the months prior to that expiry date. As such, any reference to, or inclusion of, compensation information provided in its 2011 Rate Filing is sensitive and could prejudice the 2011 collective bargaining process.

Horizon Utilities submits that the disclosure of budgeted 2011 base wages and benefits for the Union employee group could reasonably be expected to prejudice Horizon Utilities’ negotiating position in the upcoming collective bargaining process and interfere significantly with those negotiations. Horizon Utilities has made similar redactions with respect to its other employee groups because, without those redactions, the budgeted adjustments to 2011 Union wages and benefits will be obvious, nullifying the effect of the Union-related redactions.

The Practice Direction permits any party to a proceeding to object to the request for confidentiality by filing a written objection. This Procedural Order addresses the process for receiving such objections. Subsequent to any and all submissions received pursuant to this Procedural Order, the Board intends to make its findings with respect to Horizon’s claim for confidentiality.

### **Interim Rates**

In the Application, Horizon has requested an effective date of January 1, 2011 for the Rate Order for its 2011 rates. It further requested that, “[i]n the event that the OEB is unable to provide a Decision and Order in this Application for implementation by the Applicant as of January 1, 2011, the Applicant requests that the OEB issue an interim Order approving the proposed distribution rates and other charges, effective January 1, 2011 which may be subject to adjustment based on its final Decision and Order.”<sup>10</sup>

The Board does not generally approve the proposed rates on an interim basis, and will not do so in this case. As the Application is currently before it, the Board is prepared to make Horizon’s current approved rates interim as of January 1, 2011 pending the Board’s decision. This determination is made without prejudice to the Board’s decision on Horizon’s Application, and should not be construed as predictive, in any way whatsoever, of the Board’s final determination with regards to the effective date for Horizon’s rates arising from this Application.

### **Procedural Matters**

The Board has decided to proceed by way of an oral hearing. At this time, the Board will make provision for an initial round of written interrogatories, to be followed by a technical conference and a settlement conference after which the Board will conduct an oral hearing on any outstanding issues, if any.

The Board considers it necessary to make provision for the following matters related to this proceeding. The Board may issue further procedural orders from time to time.

#### **THE BOARD ORDERS THAT:**

1. Horizon Utilities Corporation’s current Board-approved Tariff of Rates and Charges is declared interim effective **January 1, 2011**.
2. Board staff and intervenors may file with the Board and deliver to Horizon Utilities Corporation and other parties any submissions with respect to the claim for confidentiality submitted by Horizon Utilities Corporation. Such submissions shall be filed on or before **December 23, 2010**.

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<sup>10</sup> Exh 1/Tab 1/Sch 2/page 2

3. Horizon Utilities Corporation may file a reply submission on or before **January 7, 2011** responding to any submissions filed by Board staff and intervenors with respect to Horizon Utilities Corporation's claim for confidentiality.
4. Board staff shall file with the Board and deliver to Horizon Utilities Corporation any interrogatories with respect to the application on or before **January 7, 2011**.
5. Intervenors shall file with the Board and deliver to Horizon Utilities Corporation any interrogatories with respect to the application on or before **January 10, 2011**.
6. Horizon Utilities Corporation shall file with the Board and deliver to all intervenors any responses to interrogatories on or before **January 24, 2011**.

All filings to the Board must quote the file number, EB-2010-0131, be made through the Board's web portal at [www.errr.oeb.gov.on.ca](http://www.errr.oeb.gov.on.ca), and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at [www.oeb.gov.on.ca/OEB/Industry](http://www.oeb.gov.on.ca/OEB/Industry). If the web portal is not available, parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

### **ADDRESS**

Ontario Energy Board  
P.O. Box 2319  
2300 Yonge Street, 27th Floor  
Toronto ON M4P 1E4  
Attention: Board Secretary

E-mail: [Boardsec@oeb.gov.on.ca](mailto:Boardsec@oeb.gov.on.ca)  
Tel: 1-888-632-6273 (toll free)  
Fax: 416-440-7656

**DATED** at Toronto, December 15, 2010

**ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary