



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
May 1, 2011.

**DECISION ON CONFIDENTIALITY, LATE INTERVENTION REQUEST AND
PROCEDURAL ORDER No. 5**

Horizon Utilities Corporation (“Horizon”) filed an application with the Ontario Energy Board (the “Board”) on August 27, 2010 under section 78 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B), seeking approval for changes to the rates that Horizon Utilities Corporation charges for electricity distribution, to be effective January 1, 2011.

Claim for Confidentiality

In the above noted application, Horizon requested that certain information on Exhibit 4/Tab 2/Schedule 10/pages 11 and 14 be kept confidential, as tables on these pages contain information that could interfere significantly with union negotiations currently underway between Horizon and the International Brotherhood of Electrical Workers.

In accordance with section 5.1.11 of the Board’s Practice Direction on Confidential Filings, the Board must notify all parties of its decision in relation to a request for confidentiality.

Board Findings

Procedural Order No. 4 required that parties wishing to make submissions on the confidentiality request do so by December 23, 2010. On January 7, 2011, SEC filed a late submission. SEC did not oppose the claim for confidentiality with respect to Exhibit 4/Tab 2/Schedule 10/page 14 of 24/Table 4-26. However, SEC's position is that Exhibit 4/Tab 2/Schedule 10/page 11 of 25/Table 4-25, which is Appendix 2-K of the Board's *Filing Requirements for Transmission and Distribution Applications*, should not be treated as confidential as it is a standard document required in every rate filing.

With respect to Table 4-25, the Board notes that Horizon has only claimed confidentiality with respect to salary, wages and benefits information by employee category (Executive, Management, Non-union and Union) and for the 2011 Test Year; all other information is shown in the public redacted version. In other Cost of Service cases, utilities have provided information for all periods including the test year. However, where there is a bargaining agreement in place, both the utility and the union will be aware of the agreed upon wage increase factor and there is no specific direct harm resulting from disclosure. On Exhibit 4/Tab 2/Schedule 10/pages 9 and 10, Horizon provides its reasons for claiming confidentiality of the 2011 salary, wages and benefits, noting that its current agreement with the International Brotherhood of Electrical Workers expires on May 31, 2011. Horizon states:

“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 Board agrees with Horizon that the 2011 Test Year salaries, wages and benefits information by employee category should remain confidential as requested.

By way of correspondence dated January 5, 2011, counsel for Horizon has informed the Board that it has provided copies of the confidential information to those parties that have executed the Board's Declaration and Undertaking. Other parties wishing to see

the proposed confidential information may execute and file the Declaration and Undertaking which is found as Appendix D to the Practice Direction on Confidential Filings. Horizon is directed to provide copies of the proposed confidential information to these parties upon receipt of the Declaration and Undertaking. The Board reminds parties that execution of the Declaration and Undertaking is a condition of an Order of the Board.

Request for Late Intervention from AMPCO

On December 17, 2010, the Association on Major Power Consumers in Ontario (AMPCO) filed a letter requesting late intervention. AMPCO has also applied for cost eligibility. Horizon did not object to AMPCO's request.

Board Findings

The Board will accept AMPCO's late intervention, but reminds it that it must abide by the established process and timelines. The Board finds that AMPCO is eligible for a claim for cost awards.

THE BOARD ORDERS THAT:

1. Horizon Utilities Corporation shall provide all unredacted confidential materials to all parties that have executed a Declaration and Undertaking pursuant to the Board's *Practice Direction on Confidential Filings*, if it has not done so already. Where possible, parties shall frame cross examination questions related to the confidential material in a manner that will allow the questions and responses to be placed on the public record.

To the extent possible, parties shall frame submissions related to the confidential material in a manner that will allow the submissions to be placed on the public record. If parties are not able to frame submissions in a manner that allows them to be placed on the public record, those submissions must be marked confidential.

2. Parties in receipt of confidential information shall either return the subject information to the Board and communicate to the Applicant that they have done so, or destroy the information and execute a Certificate of Destruction, following

the closing of the record to this proceeding. The Certificate must be filed with the Board and a copy sent to Horizon Utilities Corporation.

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, 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. 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
Tel: 1-888-632-6273 (toll free)
Fax: 416-440-7656

DATED at Toronto, January 10, 2011

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary