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Delivered by E-mail and Courier

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, Ontario M4P 1E4

Dear Ms. Walli:

**Re: EB-2010-0131
Horizon Utilities Corporation
Application to the Ontario Energy Board for Electricity Distribution
Rates and Charges as of January 1, 2011**

We are counsel to Horizon Utilities Corporation (“Horizon Utilities”) with respect to the above-captioned matter. We are writing to you today regarding to certain interrogatories in respect of which Horizon Utilities proposes to file responses in confidence.

Horizon Utilities will be delivering, under separate cover, copies of the subject material to the Board in confidence in accordance with its *Practice Direction on Confidential Filings* (the “Practice Direction”). Horizon Utilities will also be delivering copies in confidence to those of the parties’ counsel and/or consultants who have executed the Board’s form of Declaration and Undertaking with respect to confidentiality, subject to Horizon Utilities’ right to object to the Board’s acceptance of a Declaration and Undertaking from any person.

Responses in respect of which confidentiality is being claimed:

Horizon Utilities has received and responded to over 200 questions from Board staff and intervenors in respect of its Application. Among those questions are the following in respect of which Horizon Utilities has requested that certain information be maintained in confidence:

Board Staff: Questions 25, 27, 28, 30, 37
CCC: Question 8
Energy Probe: Question 26
Schools: Questions 3, 6(a), 13(h), 18(f), 22, 26 and 30(f)

Since delivering its interrogatory responses, Horizon Utilities has determined that its responses to Board Staff Questions 27 and 28 may be made public. Accordingly, please find accompanying this letter public unredacted responses to those questions.

Horizon Utilities offers the following comments on the confidentiality of information being provided in respect of the remaining questions. Horizon Utilities anticipates having further submissions in the

event of objections to any of the matters addressed in this letter, and trusts that the Board will provide Horizon Utilities the opportunity to make those submissions.

Board Staff Question 25

In this question, Board staff have asked Horizon Utilities to identify the inflation rate used for the 2011 OM&A forecast and the source document for the inflation assumptions. Horizon Utilities has redacted a portion of this response. Specifically, Horizon Utilities has redacted its 2011 inflation assumptions for salaries and benefits.

The reasons for the redaction are as set out in Exhibit 4, Tab 2, Schedule 10, pages 9-10 of the Application in respect of Table 4-25 of the Application. In those pages, Horizon Utilities requested that certain 2011 wage and benefit information remain confidential due to the upcoming negotiations in respect of Horizon Utilities' new collective agreement with the IBEW. The current collective agreement expires on May 31, 2011, and 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 Application is sensitive and could prejudice the 2011 collective bargaining process. In its request for confidentiality in respect of that table, Horizon Utilities noted that Appendix "B" to the Board's *Practice Direction on Confidential Filings* (the "Practice Direction") sets out the Board's considerations in determining requests for confidentiality. Among the considerations set out in that Appendix are the following:

- (a)(i) prejudice to any person's competitive position;
- (a)(iii) whether the information could interfere significantly with negotiations being carried out by a party;
- (a)(iv) whether the disclosure would be likely to produce a significant loss or gain to any person; and
- (g) any other matters relating to FIPPA (the *Freedom of Information and Protection of Privacy Act*) and FIPPA exemptions.

With respect to item (g) above, the OEB has provided a summary of pertinent FIPPA provisions at Appendix F of the Practice Direction. That summary provides, in part, as follows:

"Under section 17(1), the Board must not, without the consent of the person to whom the information relates, disclose a record where:

- (a) the record reveals a trade secret or scientific, technical, commercial, financial or labour relations information;
- (b) the record was supplied in confidence implicitly or explicitly; and
- (c) disclosure of the record could reasonably be expected to have any of the following effects:
 - i. prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons or organization;
 - ...

- iii. result in undue loss or gain to any person, group, committee or financial institution or agency;
- ...”

Horizon Utilities submitted 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 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.

In its January 10, 2011 Decision on confidentiality, the Board granted Horizon Utilities’ confidentiality request. Horizon Utilities submits that in the same way 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, the disclosure of the inflation assumptions for 2011 salaries and benefits can reasonably be expected to have the same effect. Accordingly, Horizon Utilities respectfully requests that the Board confirm that this information may remain confidential.

Board Staff Question 30

In this question, Board staff have asked that Horizon Utilities update Table 4-26 of the Application to reflect new hires and vacancies for additional FTEs as of December 31, 2010. In the original version of Table 4-26, at Exhibit 4, Tab 2, Schedule 10, page 14, Horizon Utilities redacted the starting/budgeted salaries of the FTEs set out in the table, for the reasons set out at Exhibit 4, Tab 2, Schedule 10, page 10. Specifically, Horizon Utilities stated:

“Appendix C to the Practice Direction sets out types of information that the OEB has previously held confidential. Personal records constitute the first item on that list. Municipally owned electricity distributors such as Horizon Utilities are not subject to disclosure requirements in respect of staff salaries, and none of the salaries in Table 4-26 have been disclosed or are required to be disclosed in any other forum. While individuals’ names are not provided with the positions, in many cases there is only one person in each position identified in the Table, so that it would be possible to determine the salaries of identifiable individuals by reference to their titles.

Horizon Utilities submits that in the absence of any overriding formal disclosure requirements, the individual salary information is highly sensitive personal information relating to identifiable individuals, and its disclosure could reasonably be expected to expose them to pecuniary harm in the employment market as it could affect their competitive positions with other potential employers. Information of this kind is protected from disclosure under Section 21 of FIPPA.”

Horizon Utilities’ confidentiality request was accepted by the Board in its January 10, 2011 Decision on confidentiality.

The update requested by staff simply adds hiring/vacancy information about certain 2010 FTEs. Horizon Utilities submits that it is appropriate that starting/budgeted salaries for the FTEs that are the subject of the update be redacted in the same manner as the starting/budgeted salaries were redacted in the original table and for the same reasons as set out in the Application.

Board Staff Question 37

In this question, Board staff have asked Horizon Utilities to provide copies of certain e-mail correspondence between Hydro One and Horizon with respect to generation capacity limits at transformer stations.

The requested exchange took place in confidence, and involved discussions regarding technical information at a staff level between Hydro One staff and Horizon Utilities staff. The information provided in the e-mail messages with respect to the rationale behind Hydro One's generation capacity limits is not a formal position of Hydro One, nor should it be considered to be such a position. Horizon Utilities submits that making information of this kind public will have the effect of inhibiting discussions among utility staff and lead to less-informed decision-making with respect to system planning and, in this case, planning for renewable generation. Horizon Utilities requests that the Board confirm that this material will remain confidential.

CCC Question 8

In this question, CCC has asked that Horizon Utilities provide copies of any materials, including correspondence, between Horizon and its shareholders regarding the Z-factor application and the 2011 rate application.

In its response, Horizon Utilities refers to its 2010 and 2011 three-year financial plans and associated presentations. This material contains commercially sensitive information related to both regulated and unregulated business activities carried on by Horizon Utilities and members of its corporate family, including activities related to Horizon Utilities' involvement in renewable generation activities through the Solar Sunbelt General Partnership. It also includes information related to the credit facility between Horizon Utilities' parent (Horizon Holdings Inc.) and a chartered Canadian bank that is the subject of Horizon Utilities' request for confidentiality in respect of Schools Question 3.

The disclosure of this information could reasonably be expected to prejudice the economic interest of, significantly prejudice the competitive position of, cause undue financial loss to, and be injurious to the financial interest of Horizon Utilities and other members of its corporate family. It would enable Horizon Utilities' and its affiliates' competitors in competitive businesses to determine the extent of Horizon Utilities' and its affiliates' activities in those businesses. Disclosure of information related to the credit facility could reasonably be expected to have the impacts discussed in the context of Schools question 3.

Horizon Utilities requests that the Board confirm that this material will remain confidential.

Energy Probe Question 26

In this question, Energy Probe has asked that Horizon Utilities update Table 4-25 to reflect actual figures for 2010. Horizon Utilities provided an updated version of Table 4-25, and indicated in its response to Question 26(a) that the version of Table 4-25 prepared for the purpose of responding to this interrogatory has been redacted, consistent with the Board's Decision on confidentiality issued January 10, 2011.

The reasons for the redaction of portions of Table 4-25 (certain 2011 wage and benefit information has been redacted) are set out above in Horizon Utilities' comments in respect of Board Staff Question 25. The updated 2010 material inserted into Table 4-25 in response to this interrogatory was not redacted, as it is historical. However, the updated table contains the same 2011 information the redaction of which the Board approved in its January 10, 2011 Decision. Accordingly, Horizon Utilities submits that it remains appropriate to redact this information in the updated table.

Schools Question 3

In this question, Schools has requested copies of the partnership agreement for the Solar Sunbelt General Partnership, as well as copies of any planning memoranda, tax analysis, presentation, or other documentation setting out the rationale for the structure employed.

Horizon Utilities will provide a copy of the partnership agreement in confidence. It will not provide the other requested material. In addition to the reasons set out in its response to this interrogatory, Horizon Utilities offers the following additional comments:

By recent amendments to the *Ontario Energy Board Act, 1998*, electricity distributors are permitted to carry on certain competitive generation activities. These activities are beyond the scope of the regulated distribution activities carried on by those distributors. Horizon Utilities will be carrying on this activity as a partner in the Solar Sunbelt General Partnership, and the accounting for Horizon Utilities' competitive generation activities will be carried on in accordance with the Board's *Guideline 2009-0300: Regulatory and Accounting Treatments for Distributor-Owned Generation Facilities*. As noted in the response to this interrogatory, ratepayer interests in electricity distribution activities are segregated from the competitive generation activities of the distributor in accordance with Board's Guideline.

The disclosure of the partnership agreement could reasonably be expected to prejudice the economic interest of, significantly prejudice the competitive position of, cause undue financial loss to, and be injurious to the financial interest of Horizon Utilities, the partnership and other members of its corporate family. It would enable Horizon Utilities' and its affiliates' competitors in the competitive business of renewable generation to determine the extent of Horizon Utilities' and its affiliates' activities in those businesses.

With respect to other material requested by Schools, as noted in the response to the interrogatory, it is not relevant to this proceeding, being conducted for the purpose of establishing just and reasonable rates for Horizon Utilities' regulated electricity distribution activities. The generation activity is being segregated from Horizon Utilities' regulated activities; the partnership structure is contemplated by

Board staff in their July 7, 2010 Compliance Bulletin; and the basis for the establishment of this structure is not relevant to the regulated distribution activities of Horizon Utilities.

Schools Question 6(a)

In this question, Schools has requested a copy of the loan agreement referred to in Exhibit 1, Tab 3, Schedule 4 of the Application.

The June 30, 2010 Credit Agreement between Horizon Holdings Inc. (“HHI”) and Horizon Utilities (the “HHI/Horizon Credit Agreement”) is a \$95MM inter-company credit facility made available to Horizon Utilities by its parent company, HHI. It consists of two parts: the agreement itself, executed by HHI and Horizon Utilities; and Attachment A thereto. Attachment A is a June 30, 2010 Credit Agreement between HHI and a chartered Canadian bank (the “HHI/Bank Credit Agreement”). The HHI/Horizon Credit Agreement incorporates the terms of the HHI/Bank Credit Agreement, a \$100 million bank credit facility, as the terms of the HHI/Horizon Credit Agreement are “back-to-back” with the terms underlying the HHI/Bank Credit Agreement.

The Bank is a corporation which is engaged in competitive businesses. HHI and the members of its corporate family are engaged in both regulated and competitive businesses.

The disclosure of the terms of the HHI/Horizon Credit Agreement and/or the HHI/Bank Credit Agreement could reasonably be expected to prejudice the economic interest of, significantly prejudice the competitive position of, cause undue financial loss to, and be injurious to the financial interest of the Bank since it would enable the Bank’s competitors to ascertain the scope, pricing and other terms of credit facilities that the Bank is prepared to provide. It could also reasonably be expected to prejudice the economic interest of, significantly prejudice the competitive position of, cause undue financial loss to, and be injurious to the financial interest of HHI since it would enable other potential lenders to ascertain the scope, pricing and other terms of credit facilities that HHI is prepared to accept, and may reduce HHI’s ability to negotiate more favourable terms with lenders.

The Board’s Practice Direction recognizes that these are among the factors that the Board will take into consideration when addressing the confidentiality of filings. They are also addressed in section 17(1) of FIPPA, and the Practice Direction notes (at Appendix C of the Practice Direction) that third party information as described in subsection 17(1) of FIPPA is among the types of information previously assessed or maintained by the OEB as confidential. The Bank has requested that its identity not be disclosed and that this information be kept in confidence.

Horizon Utilities notes that both an inter-company credit facility (between Hamilton Utilities Corporation, or “HUC”, and Horizon Utilities) and a HUC/chartered bank credit facility were filed in confidence in response to Undertakings JX2.1 and JX2.2, respectively, in the Board’s oral hearing on Horizon Utilities’ 2008 Cost of Service Electricity Distribution Rate Application (EB-2007-0697). At paragraph (h) of Appendix B to the Practice Direction, the Board indicates that “whether the type of information in question was previously held confidential by the Board” is among the factors the Board will consider in addressing confidentiality of filings.

Accordingly, Horizon Utilities requests that the Board confirm that the HHI/Horizon Credit Agreement and the HHI/Bank Credit Agreement shall remain confidential.

Schools Question 13(h)

In this question, Schools is requesting a copy of the Electricity Distributors Association (the “EDA”) memorandum that sets out the anticipated structure and costs associated with the MDMR services. This memorandum was provided to EDA members in confidence, as it pertains to confidential negotiations between the EDA and the IESO. The provisions of section 17 of FIPPA are relevant here - the memo was explicitly provided in confidence, and it reveals commercial information the disclosure of which could reasonably be prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons or organization (the IESO and the EDA); and result in undue loss or gain to the IESO and/or Horizon Utilities and other electricity distributors.

Horizon Utilities understands that the expectation of both of those parties was that the information would remain confidential, and to Horizon Utilities’ knowledge, the Board has treated that material as confidential in another proceeding (Newmarket-Tay Hydro 2010 Cost of Service – Board file No. EB-2009-0269). Horizon Utilities requests that the Board confirm that this material will remain confidential.

Schools Questions 18(f) and 30(f)

In Question 18(f), Schools has requested a copy of the full project plan for Horizon Utilities’ Enterprise Cyber Security Project. In Question 30(f), Schools has requested a copy of Horizon Utilities’ May 6, 2009 Cyber Security Assessment report. These documents contain information and assessments regarding the security of Horizon Utilities’ technology systems, networks and data, and Horizon Utilities’ current and planned measures to protect those systems, networks and data. The compromising of Horizon Utilities’ systems could reasonably be expected to result in unauthorized access to and release of personal information with respect to Horizon Utilities’ customers and employees, and unauthorized access to and interference with Horizon Utilities’ electricity distribution system.

Among the Board’s considerations in determining requests for confidentiality set out in Appendix B to the Practice Direction are the following:

- (a)(i) prejudice to any person’s competitive position;
- (a)(iv) whether the disclosure would be likely to produce a significant loss or gain to any person;
- (c) whether the information pertains to public security; and
- (g) any other matters relating to FIPPA (the *Freedom of Information and Protection of Privacy Act*) and FIPPA exemptions.

Section 20 of FIPPA provides:

Danger to safety or health

A head may refuse to disclose a record where the disclosure could reasonably be expected to seriously threaten the safety or health of an individual.

Section 13 of the *Municipal Freedom of Information and Protection of Privacy Act* is identical to Section 20 of FIPPA.

In light of the foregoing, Horizon Utilities requests the Board’s confirmation that the material requested in these interrogatories shall remain confidential.

Schools Question 22

In this question, Schools has requested data in Horizon Utilities’ possession benchmarking the age of its assets or any asset category, to the ages of similar assets in use by other LDCs. As noted in its response, the only data of that kind in Horizon Utilities’ possession is data prepared by Kinectrics Inc. for use in the context of merger discussions between Horizon Utilities and Guelph Hydro Electric Systems Inc. (“GHESI”) That merger did not proceed.

The Kinectrics information was prepared and provided in confidence, and has consistently been treated as confidential by both Horizon Utilities and GHESI. The provisions of section 17 of FIPPA are relevant here - the information was explicitly provided in confidence, and it reveals commercial information the disclosure of which could reasonably be prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons or organization (in this case, Horizon Utilities, GHESI and other potential merger partners); and result in result in undue loss or gain to Horizon Utilities and other electricity distributors. Horizon Utilities requests that the Board confirm that this material will remain confidential.

Schools Question 26

In this question, Schools has requested a copy of Horizon Utilities’ response to Undertaking JX1.3 in its 2008 Cost of Service proceeding.

This is highly sensitive commercial material, consisting of business plans and advisors’ reports related to the Hamilton Hydro/St. Catharines Hydro merger in 2005. It essentially provides a roadmap for LDC merger projects, and its release would be highly prejudicial to Horizon Utilities in any future merger/amalgamation negotiations. Horizon Utilities submits that this material reveals commercial information the disclosure of which could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons or organization (Horizon Utilities and/or other electricity distributors); and result in undue loss or gain to Horizon Utilities and/or other electricity distributors. Material provided by third parties in this package was explicitly provided in confidence and there has been no consent to its release.

Horizon Utilities notes that this material was accepted by the Board in confidence in EB-2007-0697. Horizon Utilities is providing, in confidence, the material that it provided in response to Undertaking JX1.3, with the exception that it will not produce material that is subject to solicitor-client privilege. That privilege has not been waived.

Should you have any questions or require further information with respect to these matters, please do not hesitate to contact me.

Yours very truly,
BORDEN LADNER GERVAIS LLP

Original Signed by James C. Sidlofsky

James C. Sidlofsky
JCS/ac
Encl.

- cc. Theodore Antonopoulos, Ontario Energy Board
- Keith Ritchie, Ontario Energy Board
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