



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.

BEFORE:

Marika Hare
Presiding Member

Cathy Spoel
Member

Karen Taylor
Member

DECISION AND ORDER ON CONFIDENTIALITY ISSUES

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) (the "Act"), seeking approval for changes to the rates that Horizon charges for electricity distribution, to be effective January 1, 2011.

In its Decision on the Preliminary Issue of Early Rebasing and Procedural Order No. 4, issued December 17, 2010, the Board decided to proceed with Horizon's application for 2011 rates, and established a process for discovery through an initial round of interrogatories with respect to Horizon's pre-filed evidence.

In its application, Horizon claimed confidentiality on estimates of increases in salaries, wages and benefits by employee category for 2011, on account of ongoing negotiations underway between Horizon and the International Brotherhood of Electrical Workers (“IBEW”).

On January 10, 2011 the Board issued its Decision on Confidentiality, Late Intervention Request and Procedural Order No. 5 wherein the Board approved Horizon’s claim for confidentiality with respect to this information.

In the responses to interrogatories posed to it by Board staff and intervenors, Horizon also claimed confidentiality with respect to certain responses in whole or in part. In its letter of January 28, 2011, Horizon filed a letter detailing the interrogatories for which it was claiming confidentiality and the reasons for which confidentiality was being claimed.

On January 29, 2011, SEC filed a letter in response to Horizon’s claim for confidentiality.

On February 2, 2011, the Board issued Procedural Order No. 6. In addition to establishing a schedule for a Technical Conference, Settlement Conference and Oral Hearing, P.O. # 6 established a process for further submissions from parties with respect to confidentiality of interrogatory responses, completed by a reply submission from Horizon. The Board noted that it would take into account SEC’s letter of January 29, 2011.

No parties filed submissions with respect to confidentiality. On February 16, 2011, in accordance with P.O. # 6, Horizon filed a reply submission addressing SEC’s letter of January 29, 2011.

On March 14, 2011 Horizon filed an update to its evidence in this proceeding. The updates pertain primarily to Horizon’s load forecast for its Large Use customer class. In its updates Horizon also added a new table (Table 3-24) which provides a summary of forecasted Large User load for 2011 on an individual customer basis. Horizon has asked that the unredacted version of Table 3-24A be treated as confidential.

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

Board Findings

The Board makes its findings with respect to the confidential claim relating to both the individual interrogatories and the updated evidence filed March 14, 2011 below.

Board staff IR # 25

Board staff requested information on the inflation increase forecasts with respect to 2011 OM&A expenses. In its response, Horizon claimed confidentiality with respect to wages and salaries and inflationary increases expected for 2011. Horizon claims confidentiality with respect to this information due to the contract negotiations ongoing between Horizon and the IBEW. Only this information is redacted in the public version of the interrogatory response.

SEC agreed that this information should be held in confidence in accordance with the January 10, 2011 Decision on Confidentiality, Late Intervention Request and Procedural Order No. 5, but submitted that the information be made public once negotiations between Horizon and the IBEW are completed and the results are publicly announced.

The Board finds that the information on labour wage increase forecasts for 2011 should be held in confidence for the same reasons as it determined in its January 10, 2011 Decision on Confidentiality.

Board staff IR # 30

In this interrogatory, Board staff requested an update of Table 4-26 to reflect new hires and vacancies up to December 31, 2010. In its response, Horizon redacted the budgeted salary for each new hire listed. Horizon requested that the information be held in confidence for the same reasons that the Board determined that individual compensation be held in confidence in Table 4-26 in the original application.

SEC concurred that this information should be held in confidence in accordance with the Board's previous Decision on Confidentiality.

The Board finds that the information on annual salaries for new hires provided in the response to Board staff IR # 30 should be held in confidence for the same reasons as it determined in its January 10, 2011 Decision on Confidentiality.

Board staff IR # 37

In this interrogatory, Board staff requested copies of e-mail correspondence between staff of Horizon and Hydro One Networks Inc. with respect to transmission constraint at transformer stations, as referenced in Horizon's Green Energy Act plan.

Horizon stated that:

[t]he 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.

SEC responded that it believed that "... communications between regulated utilities should not have any form of blanket confidentiality protection ... they should be confidential only if the information contained within them would be considered confidential under the Board's rules in the rate proceeding of the sender." SEC requested permission to review the material before making any final submission.

In its reply, Horizon noted that the material was provided to SEC and other intervenors that had signed the Declaration and Undertaking with respect to confidential information, that it had not received any submissions and that it reserved the right to reply to any further submissions.

No further submissions were received.

The Board agrees with the position submitted by SEC that there should be no blanket confidentiality on technical discussions or correspondence between staff of regulated utilities. The Board's processes are required to be open and transparent, and utilities

should expect that they will be held to a higher degree of transparency because of their provision of an essential service under a monopoly regime.

In general, the Board finds that such correspondence, where it is relevant in a proceeding before the Board, should be public. The Board does question the relevance of this information in this proceeding; however, in accordance with the Practice Direction, the Board does not find that this information should be treated as confidential. As such, Horizon has an opportunity to request that the information be withdrawn. If it does not do so within five business days of this Decision and Order on Confidentiality, as set out in section 5.12 of the Practice Direction, the Board directs that the correspondence be placed on the public record.

CCC IR # 8

In this interrogatory, Horizon was requested to provide copies of any materials, including correspondence, between Horizon and its shareholders regarding the Z-factor application and the 2011 rate application.

In its January 28, 2010 letter, counsel for Horizon stated:

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.

SEC submitted that the fact that Horizon, its parent or affiliates carry on competitive activities should not be a basis for escaping the goal of transparency. SEC submitted that the documents should be public.

In reply, Horizon claimed that the material contains commercially sensitive information and should be held in confidence.

The Board finds that the business plan material should be confidential, as it has found in other cases. While the Board is interested in having as much information as possible on the public record, the Board relies on full and complete disclosure of all relevant information in order to ensure that its decisions are well-informed. The Board recognizes that some of that information, such as business plans, are of a confidential nature and should be protected as such. The Board notes that it has previously held business plans to be confidential. As such, Horizon had a reasonable expectation that this document would be maintained as confidential.

As in other proceedings, the Board finds it necessary to point out that, in the Board's view, there are limitations of corporate business plans. Information contained therein is only relevant where it affects (i.e. is pertinent and material to) the ratemaking process. Depending on whether and to what extent elements of the Business Plan become critical to this proceeding, the Board may deem it necessary to seek further submissions regarding whether any elements of the Business Plan may appropriately go on the public record, but at this stage the document shall remain confidential in its entirety.

The Board also questions the relevance of the other materials filed in response to CCC IR #8, including correspondence, between Horizon and its shareholders regarding the Z-factor application and the 2011 rate application. However, in accordance with the Practice Direction, the Board does not find that this information should be treated as confidential. As such, Horizon has an opportunity to request that the information be withdrawn. If it does not do so within five business days of this Decision on Confidentiality, as set out in section 5.12 of the Practice Direction, the Board directs that the correspondence be placed on the public record.

Energy Probe IR # 26

In this interrogatory, Horizon was asked to update Table 4-25, summarizing the number of employees and compensation (salaries, wages, overtime, benefits) by category with 2010 actuals. In its response, Horizon redacted certain compensation information by employee category for the 2011 Test Year, claiming confidentiality for the same reason that the 2011 compensation information was approved to be held in confidence in the Board's January 10, 2011 Decision on Confidentiality.

SEC agreed that this information should be held in confidence but submitted that the information be made public once negotiations between Horizon and the IBEW are completed and the results are publicly announced.

The Board finds that the information on compensation by employee category for the 2011 Test Year in this update to Table 4-25 should be held in confidence .

SEC IR # 3

In response to this interrogatory Horizon provided a copy of the Partnership Agreement for the Solar Sunbelt General Partnership ("Solar Sunbelt") involving itself and Horizon Solar Corporation. As is noted in the evidence, Horizon has a 99.9% interest in Solar Sunbelt by way of the partnership.

Horizon has claimed confidentiality, noting that recent amendments to the Act permit electricity distributors to carry on certain competitive generation activities. Horizon is doing so as a partner in Solar Sunbelt. Horizon claims that public disclosure "... 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, the partnership and other members of its corporate family."

SEC submitted that:

The basic premise of this claim appears to be that if a regulated utility engages in competitive activities, the information on those activities is confidential. With respect, we fundamentally disagree with this principle. On the contrary, in our view if a regulated utility carries competitive activities, it should be taken to have waived any claim it may have relating

to confidentiality of information on those activities based on their competitive nature (as opposed to, for example, based on security concerns, or labour negotiations). If the utility wishes to have confidentiality, it can carry on the activity in a separate company, and control the ties between that business and the regulated business.

In reply, Horizon noted that it agreed to provide a copy of the partnership agreement in confidence.

The Board considers that the Partnership Agreement for the Sunbelt Solar General should be treated as public information. The Board however does question the relevance of the Partnership Agreement. As such, Horizon has an opportunity to request that the information be withdrawn. If it does not do so within five business days of this Decision on Confidentiality, as set out in section 5.12 of the Practice Direction, the Board directs that the correspondence be placed on the public record.

The Board finds that what is relevant for the Board in this proceeding is not the partnership arrangement by which Horizon is indirectly engaging in competitive activities as allowed by legislation, but the implications of this with respect to Horizon's regulated business and the regulated rates on its distribution customers. For example, participation in riskier competitive activities can impact on the credit-worthiness of the regulated utility or its parent and affect the cost of capital.

The Board will allow exploration of Horizon's involvement in the Solar Sunbelt partnership to be explored with respect to the cost consequences on Horizon's revenue requirement and on rates to its distribution customers.

SEC IR # 6 a)

In this interrogatory, Horizon was asked to provide a copy of the Loan Agreement between its parent company, Horizon Holdings Inc. ("HHI") and a chartered bank, as referenced on page 3 of the Standard and Poors credit report filed in Exhibit 1/Tab 3/Schedule 4/Appendix 1-14.

Horizon noted that the chartered bank is engaged in a competitive business. The bank requested that its identity not be disclosed and the information be held in confidence.

Horizon also noted that similar information was filed in confidence in Exhibits JX2.1 and JX2.2 in Horizon's 2008 rates application (File No. EB-2007-0697).

SEC commented that "[Horizon] seeks to limit public scrutiny of its own borrowing from its parent by virtue of the fact that the terms are back to back with the parent's arrangements with a chartered bank." SEC noted that bank arrangements with utilities and their parents are routinely filed on the public record in most proceedings for Cost of Service rate applications. SEC also noted that, when Exhibits JX2.1 and JX2.2 were filed in Horizon's 2008 rates application, these documents came up in the oral hearing and were left as confidential, without any debate, so that the proceeding could be completed in a timely manner. SEC requested that the documents in this proceeding be made public.

In reply, Horizon stated that it "... has agreed to provide the material in confidence, but will not agree to provide it publicly, as disclosure of the terms ... could reasonably be expected to prejudice the economic interest and be injurious to the financial interest of the Bank."

In its January 28, 2010 letter, counsel for Horizon noted that the credit arrangement between the bank and HHI is "back-to-back" with the credit arrangement between HHI and Horizon itself. Horizon's affiliated line of credit with HHI is summarized in Note 17 of Horizon's 2009 Audited Financial Statements (Exhibit 1/Tab 3/Schedule 10/Appendix 1-10/page 27). The arrangement referenced in the Standard and Poors Report appears to be an update of this arrangement, and the line of credit has increased from \$80 million to \$100 million.

The Board notes that generally, copies of loan agreements and other financing arrangements with banks and other financial institutions are required to be filed on the public record. The Board finds that the agreement should be filed publicly, but in a redacted form with the name and any identifying information of the subject bank redacted, leaving all terms and conditions of the Loan Agreement unredacted. The unredacted version shall remain confidential.

SEC IR # 13 h)

In this interrogatory, Horizon was requested to provide a copy of the memorandum provided by the Electricity Distributors Association (the “EDA”) to member utilities with respect to estimates for the structure and costs for MDMR services.

Horizon claimed confidentiality for the EDA memorandum based on section 17 of the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c. F31 as the document contains information on confidential negotiations between the EDA and IESO. Horizon noted that the Board treated this type of information as confidential in another proceeding, that pertaining to Newmarket-Tay Hydro’s 2010 rates application (File No. EB-2009-0269).

While SEC believed that the document should be public, it acknowledged the Board’s decision to retain as the same type of information as confidential in the Newmarket-Tay Hydro case and believed that the Board should afford similar treatment in this proceeding.

The Board finds that the EDA memorandum filed in response to SEC IR # 13 h) should be held in confidence.

SEC IR # 18 f) and SEC IR # 30 f)

In SEC IR # 18 f), Horizon was requested to provide the project plan for Horizon’s Enterprise Cyber Security Plan. In SEC IR # 30 f), Horizon was requested to provide a copy of its May 6, 2009 Cyber Security Assessment Report.

Horizon claimed confidentiality on the basis that:

“[t]hese 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.”

SEC agreed that these documents should be treated as confidential.

The Board does question the relevance of these documents however finds that these documents should be held in confidence for the reasons described by Horizon

As with the Business Plan finding above, depending on whether and to what extent elements of the project plan and assessment report become critical to this proceeding, the Board may deem it necessary to seek further submissions regarding whether any elements of this material may appropriately go on the public record, but at this stage the information shall remain confidential in its entirety.

SEC IR # 22 d)

In this interrogatory, Horizon was requested to provide “whatever data is in [Horizon’s] possession benchmarking the age of [Horizon’s] assets or any asset category, to the ages of similar assets in use by other LDCs.” In its response, Horizon filed a copy of a Kinectrics Inc. study that was prepared, several years ago in the context of merger discussions between Horizon and Guelph Hydro Electric Systems Inc., which merger did not proceed.

SEC submitted that the information should generally be publically available, but stated that:

“in this case it was gathered in the context of merger discussions. If the Board were to require its public disclosure after the fact, that could have the potential to inhibit future merger discussions between utilities generally. Industry rationalization is an important evolution of the sector, and we believe that inhibiting that direction would be contrary to the ratepayers’ interests. Therefore, it is submitted that this information should be considered confidential in this proceeding.”

The Board considers that such information should generally be on the public record. Because of the vintage of the study and the fact that information is supplemented by more current information on the age and condition of Horizon’s assets in this proceeding (i.e. Horizon’s Asset Management Plan filed in Exhibit 2/Tab 2/Schedule 2/Appendix 2-1), the Board finds that the commercial sensitivity of the information is lessened and that it should therefore be placed on the public record. That being said, Board finds that the

value of aged information is questionable, given the availability of updated information elsewhere on the record.

If Horizon believes that, because of the age of the information the information is not relevant and material for the Board to reach a determination with respect to Horizon's application for 2011 rates, Horizon should have an opportunity to request the withdrawal of the information and to suitably amend its interrogatory response. If it does not do so within seven (5) business days of this Decision on Confidentiality, the Board directs that the information be placed on the public record.

SEC IR # 26

In this interrogatory, Horizon was asked to provide a copy of Exhibit JX1.3 from Horizon's previous cost of service rates application, for 2008 distribution rates (File No. EB-2007-0697). Horizon submitted that this contained "... 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."

SEC acknowledged that Exhibit JX1.3 has already been determined by the Board to be confidential and that no factors have subsequently been identified that would cause that finding to be revisited. SEC concurred that the response should continue to be confidential.

The Board finds that the documents filed as attachments to SEC IR # 26 should continue to be treated as confidential.

Updates to Evidence filed on March 14, 2011

Horizon filed updates to its evidence in this proceeding on March 14, 2011. The updates pertain primarily to Horizon's load forecast for its Large Use customer class. Horizon also added a new table (Table 3-24) which provides a summary of forecasted Large User load for 2011 on an individual customer basis. Horizon has asked that the unredacted version of Table 3-24 be treated as confidential. The Board notes that the information in Table 3-24 contains information that has already been filed publicly in this proceeding. As such, the Board finds that this information is public. Horizon should

have an opportunity to request the withdrawal of the information and to suitably amend its response. If it does not do so within seven (5) business days of this Decision on Confidentiality, the Board directs that the information be placed on the public record.

THE BOARD ORDERS THAT:

1. Where Horizon Utilities Corporation wishes to withdraw a document and amend its response to the interrogatory, it shall make such a request to the Board do so within (5) business days of this Decision on Confidentiality, or it shall file unredacted copies of the material with the Board Secretary on the public record and to all registered parties to this proceeding
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.

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DATED at Toronto, March 30, 2011

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary