REDACTED – NON-CONFIDENTIAL

EB-2010-0131

IN THE MATTER OF the *Ontario Energy Board Act*, 1998, being Schedule B to the *Energy Competition Act*, 1998, S.O. 1998, c.15;

AND IN THE MATTER OF an Application by Horizon Utilities Corporation to the Ontario Energy Board for an Order or Orders approving or fixing just and reasonable rates and other service charges for the distribution of electricity as of January 1, 2011.

Written Argument Of
The Consumers Council of Canada

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WRITTEN ARGUMENT OF THE CONSUMERS COUNCIL OF CANADA

INTRODUCTION

1. On August 26, 2010, Horizon Utilities Corporation ("Horizon") applied to the Ontario Energy Board ("Board") for approval of its proposed distribution rates and other charges effective January 1, 2011. These are the submissions of the Consumers Council of Canada ("Council") regarding Horizon's application.

2. Horizon's initial application Horizon was seeking approval of a service revenue requirement of $108,707,939 and a revenue deficiency of $19,560,006. Prior to the hearing, the evidence was updated primarily to reflect an updated load forecast. With the updates, Horizon is now seeking approval of a 2011 revenue requirement of $108,099,607 and a revenue deficiency of $20,721,655.

3. In addition to its requested revenue requirement, Horizon is seeking approval of various other charges, balances in its deferral and variance accounts, clearance of those accounts, several new accounts and approval of its Green Energy Plan. Horizon is also seeking an effective date for its new rates of January 1, 2011.

4. The Council submits that the background to the application provides a context which affects the consideration of the merits of the application. The Council begins its submissions with a review of that background.

BACKGROUND

5. Horizon had previously rebased its rates in 2008 under a cost of service model, and was not scheduled for another rebasing until 2012. In 2009, Horizon applied for Z-factor relief, under the Incentive Regulation Model ("IRM"). The application was premised on a decline in load related to its large use customers. In its Decision, the Board found that Horizon's application for recovery of large customer revenue losses did not meet either the Z-factor criteria, or those of the off-ramp provision that forms part of the IRM plan.

6. The Board stated:

> 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 when confronted with such revenue losses. The Board notes that 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.
>
> However, the Board cautions distributors that such an approach should not be taken lightly. The Board expects that any such requests for load loss recoveries would be defended in the context of the overall business, that the Applicant would provide <u>a detailed explanation of all mitigation actions it had undertaken</u> and why further relief continued to be required under such circumstances. (Emphasis added) (**Decision with Reasons, EB-2009-0332**)

7. On April 20, 2010, the Board issued a letter setting out its views regarding applications for early rebasing. The Board indicated that distributors were expected to be able to

adequately manage their resources and financial needs during the term of the IRM plan. In addition, the Board noted that, when early rebasing is required, LDCs could make a provision for an off-ramp. However, the Board noted the following for those distributors seeking an early rebasing:

> Specifically each distributor must clearly demonstrate why and how it cannot manage its resources and financial needs during the remainder of its IRM period. Distributors are advised that the panel of the Board hearing the application may consider it appropriate to determine, as a preliminary issue whether the application for rebasing is justified or whether the application should be dismissed. **(April 20, 2010 letter from the Board, p. 2)**

8. On October 21, 2010, the Board determined that it would consider Horizon's request for early rebasing in advance of the other procedural steps. Following written submissions, the Board determined that it would hear the application. The Board agreed that Horizon had not met the off-ramp earnings threshold, but found it reasonable for Horizon to believe, based on statements the Board had made earlier, that the Board would accept a cost of service application from Horizon at that time. The Board also determined that it would not, as a preliminary matter, impose any restrictions on the outcome of the application. The Board did not, however, rule out the possibility that the application might be subject to some restrictions.

9. The Council opposed Horizon's application for an early rebasing. The Council argued that Horizon had demonstrated that it had been able to manage its resources and financial needs since the loss of load, and should be able to continue to do so for the remainder of the IRM term, one more year. The Council also argued that, if the Board were to proceed new rates, Horizon should not be eligible for the updated ROE, in order to avoid what the Council argued would be a windfall to Horizon. As set out below, the Council continues to maintain that position.

10. The Council submits that it is important for the Board to ensure regulatory efficiency through the implementation of its IRM framework. Although some level of flexibility is required, the Board should only allow exceptions to that framework in very limited circumstances. Horizon has been granted the opportunity to rebase early. The Council submits

that the onus is on Horizon to demonstrate that the decline in Large Use volumes justifies early rebasing.

GENERAL ISSUES

11. As noted above, Horizon is seeking approval of revenue requirement of $108.7 million, which represents a revenue deficiency of $20.7 million. For a typical residential consumer, this represents an increase in delivery rates of more than 18%.

12. Horizon's evidence is that a number of key factors have contributed to the revenue deficiency and have characterized these factors as "outside of our control". In his opening remarks Mr. Basilio, on behalf of Horizon , stated:

> Our evidence will show that a very significant portion of the revenue deficiency is for reasons outside of our control, and does not relate to changes in rate base or costs requested in this application. Specifically, a very significant portion of this increase relates to a material decline in load, principally by larger commercial customers, lower ancillary regulated revenue, more commonly referred to as offsets. However based on these two items alone the revenue deficiency would be $5.6 million. (**Tr., Vol. 1, pp. 29- p. 30**)

13. Mr. Basilio also referred to the "urgent need" for increased renewal and maintenance of the electricity distribution system, and related systems and processes that are beyond their productive life or no longer suitable for business processes. In addition, Horizon pointed to an urgent requirement to continue renewing and increasing skilled trades positions to support growing capital programs aimed to mitigate increasing risks related to severe and more frequent service interruption. (**Tr., Vol. 1, p. 30**)

14. The Council acknowledges that Horizon has an argument to make with respect to the impact of its declining load. It has provided evidence of a decline in the Large Use class, although the actual level of decline was the subject of confusing and conflicting evidence. The Council submits that the effect of a declining load is the only reason why Horizon is before the Board with an early rebasing application, and that, if its rates are to be adjusted it should be to reflect this decline.

15. With respect to its analysis of the other issues, the Council submits that Horizon has failed to demonstrate that it requires a significant increase in its revenue requirement. As the Council will set out below, Horizon is increasing its Operating, Maintenance and Administration ("OM&A") and Capital budgets significantly, but the nature of the increases are not consistent with "an urgent need for increased renewal and maintenance of the electricity system", nor an "urgent requirement to continue renewing and increasing skilled trades positions". In addition, Horizon's proposed increases are not consistent with an LDC that has a static load profile. Put simply, the Council submits that Horizon has not demonstrated that it has taken mitigation actions, as required by the Board in its earlier decision.

16. Horizon is a utility that is facing what is termed structural challenges. (**Tr., Vol. 1, pp. 105-106**) This really refers to the fact that Horizon is a utility with a stable or declining load. The Council submits that, under these circumstances, utilities need to look for ways to reduce their costs, concentrate on their core business activities, and consider how best to meet the needs of their customers. In addition, they need to focus on how best to mitigate rate impacts. Horizon has not provided persuasive evidence that it has taken these measures. Instead, in a rebasing year, they are requesting significant increases in capital and OM&A, well beyond the levels that would be expected for a slow-growth utility.

RATE BASE/CAPITAL EXPENDITURES

17. Horizon's capital expenditure forecast for 2011 is $43.9 million. (**Argument-in-Chief ("AIC"), p. 10**) This represents an increase of approximately 27% over 2010, which was $34.6 million. (**EP TC #10**)

18. Horizon's evidence , in support of the 2011 capital budget includes the following:

- Material and persisting shortfall in revenue, relative to its Board approved Base Revenue Requirement, which is adversely affecting its ability to finance required business investments;
- An urgent need for increased investment in the renewal and maintenance of the electricity distribution system and related underlying enabling systems and processes that are beyond their productive life;
- The urgency for renewal capital and maintenance is based on asset condition data and an asset management plan; (**Ex. 1/T2/S1/p. 6**)

- The expenditures are necessary to enable Horizon to maintain acceptable standards of safety, reliability, performance indices, and customer satisfaction. (**AIC, p. 10**)

19. Horizon argues that any reduction in its proposed capital program will result in increased operating and maintenance expenditures of infrastructure at the end of its useful life, impair its ability to pursue cost efficiency through systems and process replacement and innovation, and impair the delivery of more effective and sustainable customer service. (**AIC, p. 10**)

20. Although there is agreement among parties as to what the most updated 2011 capital budget is (Board Staff and Horizon cite $43.9 million), it remains unclear to us what was actually spent in 2008. Board Staff cites $24.7 million whereas in the submissions of Energy Probe 2008 actuals are $44.996. In addition, these numbers are inconsistent with the data provided at Ex. 2/T2/S4/p. 1. The Council submits that, given the number of updates and the conflicting numbers in the evidence, it would be useful to have Horizon provide numbers for the years 2008 to 2010 comparable to the $43.9 million.

21. What is clear, however, is that the increase over 2010 is significant, and the nature of the projects planned are not all in line with "the renewal and maintenance of the distribution system". Horizon's evidence on this issue has been confusing and, in some cases, inconsistent. The most recent Asset Management Plan prepared internally is not consistent with the independent Kinetrics Report prepared prior to the merger with St. Catharines. (**Tr. Vol. 1, pp. 176-178**) The School Energy Coalition (“SEC”) has provided a useful summary of the inconsistencies between those two reports. The Council agrees with that analysis and submits that Horizon's Asset Management Plan does not provide the Board with the necessary evidence to assess the reasonableness of the $43.9 million budget for 2011.

22. The evidence of Horizon on the reasons it has rejected the Kinetics Report raise troubling questions about Horizon’s credibility on the issue of the condition of its assets. (**Tr., Vol. 2, pp. 63-72**) The Kinetics Report was used to support the acquisition of St. Catharines Hydro. However, when Horizon needed to persuade the Board that significant investment was required to deal with assets which the Kinetics Report found were in reasonable condition,

Horizon discovered that the Kinetics Report was “simply wrong”. (**Tr., Vol. 2, p. 67**) The Council submits that the Board should be sceptical of Horizon’s claim that significant expenditure is required to deal with the condition of its assets.

23. The Council has, in other cases, urged the Board to accept a capital budget that is in line with previous years, allowing for an increase that allows for some level of incremental spending above inflation. In addition, in many cases the Board has emphasized the need for stable capital programs over time to ensure rate stability. This is not the case with Horizon. The marked increase in 2011 appears to be well above the needs of Horizon, and does not reflect a stable capital program. If Horizon deferred spending in its IRM term in order to ensure it was able to pay dividends to its shareholder, it should not be permitted to have the ratepayers fund those deferred projects now.

24. The Council has reviewed the submission of SEC with respect to the appropriate level of spending and agrees that the average of the last two years would be a reasonable approach. This would result in capital budget of $36.1 million.

25. The Council notes that, to the extent during the IRM term Horizon cannot fund what it believes is the appropriate level of capital, it will have access to the incremental capital model component of the IRM mechanism.

Lead/Lag Study-Working Capital

26. We have reviewed the argument of Energy Probe on this issue and accept their conclusions with respect to the lead/lag study and the working capital allowance. This would reduce the working capital requirement by $4.5 million.

REVENUES

Load Forecast

27. The Council has reviewed the arguments of both Energy Probe and the Vulnerable Energy Consumers Coalition (“VECC”) on the issue of load forecasts. VECC has proposed a Conservation and Demand Management (“CDM”) adjustment equal to 10% of its

approved CDM energy target. The Council supports the analysis provided by VECC. The Council also notes that this type of adjustment is consistent with that approved by the Board in the recent Hydro One Networks Brampton Decision (**Decision with Reasons, EB-2010-0132**).

28. With respect to the 2011 forecast of purchase volumes (excluding Large Use), the Council supports the analysis provided by Energy Probe. Energy Probe has provided a useful critique of Horizon's forecasting methodology and the resulting volumes.

29. The Council notes that, in most cost of service applications, the load forecast tends to be a contentious issue. The Council submits that it would be useful for intervenors, the LDCs, and the Board to undertake a consultation process to deal with load forecasting methodologies. The outcome of that process may not be to establish a single methodology for load forecasting, but rather establish a set of principles that should guide an LDC in the development of its forecasting methodology. As new CDM programs are rolled out and the potential impacts from those programs grow, it would be useful, for example, to establish a consistent approach to making CDM adjustments. In the absence of a Board policy to guide load forecasting these issues will continue to be contentious.

Other Revenues

30. Horizon is forecasting Other Revenues for 2011 of $5.48 million. This amount is identical to the original forecast for 2010, with the exception of an adjustment to reflect the loss of rental income in the amount of $166,960 and an adjustment for miscellaneous non-operating income (**Ex. 3/T3/S1/p. 1**). Other Revenues primarily consists of rental income, late payment charges, miscellaneous service revenues (e.g. new connection charges) and miscellaneous non-operating revenue.

31. In developing the 2011 budget, Horizon based its forecast on the original budget prepared for 2010. That budget was $5.6 million. Late payment revenues and miscellaneous service revenues forecasts are based on a three-year average (**Ex. 3/T3/S3/p. 2**). Prior to the hearing, Horizon provided the actual Other Revenues for 2010. The overall level exceeded the original 2010 forecast. Although the income from the rental property amounting to $166,960 will be eliminated in 2010, the overall level of Other Revenues is still higher than forecast. Both

Late Payment Revenues and Miscellaneous Service Revenues have increased relative to the original forecast.

32. The Council submits that, for 2011, the Other Revenue Forecast should be $5.896 million. This represents the 2010 actual number, adjusting for the fact that the rent from the John Street Property in the amount of $166,960 will no longer be paid. (**Ex. 3/T3/S1/p. 1 and Ex. 3/T3/S1/p. 1**).

OPERATIONS, MAINTENANCE AND ADMINISTRATION

33. Horizon's OM&A budget, as provided in the final updates, is $47.457 million. (**AIC, p. 23**) Horizon's OM&A historical spending was:

2007	$37 million
2008 (BA)	$38.3 million
2008	$38.7 million
2009	$38.8 million
2010 (F)	$40.1 million
2010 (A)	$39.5 million (**Tr., Vol. 1, p. 137**)

34. The Council has concerns about the significant jump in OM&A for 2011 relative to historical spending levels. For the reasons set out below, the Council submits that Horizon has not provided sufficient evidence for such a dramatic increase in spending. Horizon is a utility with static load and customer growth. (**Tr., Vol. 1, p. 139**) In addition, for a number of years Horizon has been facing a deterioration of its load in the Large Use customer class. Despite these conditions, Horizon has not demonstrated that it is undertaking meaningful cost containment, nor has it justified such significant increases in spending.

35. As was evident from the evidence presented at the hearing, the most significant driver of the increasing OM&A budget, and in fact the deficiency itself, is the addition of new employees. Sixty (60) new employees were hired in the period 2008 to 2011. These employees were added to Horizon's payroll in spite of the fact that the number of customers over that same

period is relatively stable. (**Tr., Vol. 2, p. 74**) The cost of the 60 new additions is approximately $5.5 million. $2.8 million of that is allocated to OM&A and the remainder allocated to capital. (**Tr., Vol. 2, p. 79**).

36. The Council submits that Horizon has not justified what constitutes a transformation of its workforce from 2008 to 2011 for the following reasons:

- The nature of the staff additions has very little to do with an aging workforce and "an urgent need for renewal and maintenance of the distribution system";
- Table 2-26 of Exhibit 4/T2/S10 sets out the specific positions being added in the years 2008-2011. What becomes very clear from looking at that exhibit is that very few of the new positions are in the union category;
- A significant number of the new positions are in Finance, Regulatory and Information Technology. In fact, since 2008, thirteen (13) new positions have being added to the IT department; (**Tr., Vol. 2, p. 90**)
- Horizon has significantly increased the number of Executives and Managers relative to the number of additions related specifically to front-line distribution work; and
- Many of the positions expected to be added in 2010 have not yet been hired.

37. With respect to the increases in the specific OM&A categories, again these appear to have less to do with an urgent need for renewal and maintenance of the distribution system and more to do with general administration of the utility. Exhibit 4/T2/S1/pp. 1-2 sets out OM&A by year by the Uniform System of Accounts. The Council notes the large budget increases in the following areas from 2010-2011:

EXPENSE CATEGORY	**2010**	**2011**
Executive Salaries and Expenses	[redacted]	[redacted]
Management Salaries & Expenses	[redacted]	[redacted]
Outside Services Employed	$2,018,826	$3,015,009
General Advertising Expenses	$68,500	$347,100

Miscellaneous Expenses	$585,385	$766,818
Miscellaneous Customer Accts	$6,710,000	$7,080,650

38. In the same Exhibit, the total Distribution Expenses - Maintenance category is increasing from $5,079,077 in 2010 to $5,292,207 in 2011. Horizon's evidence does not point to a revenue requirement focussed on infrastructure renewal.

39. In the context of looking at overall expenditures, the Council notes that Horizon's regulatory costs are $960,000 for this proceeding which Horizon proposes to amortize over 4 years. (**Tr., Vol. 2, p. 87**) This amount appears to be excessive, when compared with the regulatory costs for comparable LDCs.

40. The Council submits that Horizon's OM&A (2010-2011) budget of 17% has not been supported by its evidentiary base. If Horizon were expanding its customer base, increasing its overall demand, or focussing on maintaining its aging system, an increase beyond inflation might be justified. The number of customers remains stable yet we see OM&A per customer rising substantially, and the number of Full Time Employees ("FTE") and the OM&A cost per FTE also rising substantially. (**Ex. 4/2/S8/p. 1**)

41. The Board has to look at Horizon in the context of other LDCs. Horizon has not made a case as to why its revenue requirement should be increasing by over 20%. The Council submits that a reduction in the proposed OM&A level for 2011 of $47.457 million is appropriate. Horizon should be given an OM&A envelope, and be required to work within that envelope. Like other LDCs, Horizon needs to look at efficiencies, ways to trim its staff, and other controllable costs in order to adapt to a scenario where its load, at least in the near term, is not expected to increase.

42. The Council notes that the Board could consider arriving at an appropriate level of OM&A for 2011 in a number of ways. In a recent Decision dealing with Hydro One Networks Brampton ("HONB"), the Board assessed Brampton's OM&A on an envelope basis. The Board pointed to the relatively modest growth in customers and the relatively modest rate of

inflation in determining an appropriate increase over 2009 actual spending. These conditions are analogous to Horizon except that Horizon's customer growth is even lower. The Board in that case granted HONB an increase of 10% over 2009 actuals. (**EB-2010-0132, Decision with Reasons, p. 22-23**)

43. If the Board allowed for a 3% increase each year over 2009 actual levels, that would result in an OM&A level of $41.128 million. Alternatively, the Board could apply an increase slightly above inflation based on 2010 actuals. In that case, using the 2010 actual level of $39.5 million, and a 3% escalator, the 2011 OM&A level would be $40.7 million. The Council notes that several of the intervenors have approached the consideration of an appropriate OM&A budget in different ways. All of these approaches arrive at numbers between $42.757 million (Board Staff) to $41.1 million (SEC). The Council urges the Board to consider an appropriate escalator, based on its assessment of Horizon's evidence and a comparison of that evidence to other LDCs. The Council submits that, depending upon the outcome of that assessment, Horizon's OM&A level for 2011 should be between $40-$42 million. It will then be up to Horizon to manage its operations within that budget.

COST OF CAPITAL

Return on Equity

44. Horizon is seeking approval of an return on equity ("ROE") of 9.66%, which is consistent with the Board's January 1, 2011, cost of capital parameters. The ROE embedded in Horizon's current rates is 8.57%. Horizon was permitted to rebase early because of its arguments regarding loss of load and the challenges that was presenting it in terms of revenue reductions. In the Z-Factor Decision the Board specifically said that the appropriate way to deal with load loss is through a cost of service application. Had Horizon been required to maintain its IRM schedule, its rates would have been rebased in 2012. At that time, as with all other LDCs, Horizon would be subject to the new cost of capital parameters. In the absence of this early application, Horizon would have to wait until January 1, 2012 to apply a new cost of capital.

45. As noted above, this application was brought forward to address what Horizon has characterized as a material decline in load. There have been no arguments advanced by

Horizon that it requires higher rates because the 8.57% ROE level currently in rates was somehow affecting its ability to raise capital or forward dividends to its shareholder. In fact, throughout the last three years dividends have been paid out to its shareholder. (**Tr., Vol. 1,p. 142**)

46. The Council submits that, if the Board were to allow Horizon to include the new ROE level in rates for 2011, it would be inconsistent with the IRM framework and unfair to those utilities that are only permitted to rebase after three years of IRM adjustments. The Council accepts that Horizon should be entitled to the new ROE in 2012, as that would have been the case had they not come before the Board for relief related to their declining Large Use load. However, to allow Horizon to recover more return from its customers in 2011 simply because of its early application would be unfair, and should be viewed as simply a windfall to its shareholder. That windfall, in moving from the current embedded ROE of 8.57% to 9.66% would be approximately $2 million. Horizon is not before the Board because it has demonstrated a need for a higher ROE. It is before the Board because of its declining load. The Council submits that when Horizon applies for an IRM adjustment in 2012, its rates should, at that time, incorporate a new ROE based on the cost of capital parameters. That approach would best balance the needs of it ratepayers and shareholder.

Debt Costs

47. Horizon has a $116 million note maturing on July 31, 2012. The current rate on the loan is 7%. The rate on the note requested in the application is 6.1%. (**Tr., Vol. 3, p. 84**) The Council has reviewed the arguments advanced by the SEC on this issue and supports them. In effect, the deemed debt rate of 5.32% should be used to calculate the new cost of debt. This is entirely consistent with the approach adopted by the Board when Horizon's rates were rebased in 2008. Horizon has not presented any evidence to support a departure from that approach.

COST ALLOCATION AND RATE DESIGN

Revenue-to-Cost Ratios:

48. With respect to revenue-to-cost ratios, Horizon's long-term objective is to allocate its distribution costs in such a manner that ultimately achieves ratios of 1.0. From Horizon's

perspective such an objective ensures that costs are allocated "fairly to each customer class base on it respective class utilization of the distribution system". (**Ex. 7/T1/S1/p. 1**)

49. In most LDC rate applications there is often considerable debate about where the Board should set the revenue-to-cost ratios. On November 28, 2007, the Board produced a Report entitled, "Application of Cost Allocation for Electricity Distributors". (**EB-2007-0667**) In that Report, the Board established benchmark revenue to costs ratios for each rate class. The Board also indicated that a distributor should attempt to move its revenue-to-cost ratios closer to 1.0 if supported by improved cost allocations.

50. In EB-2010-0142, the most recent Toronto Hydro-Electric System Limited ("THESL") application, the Council made the following submissions:

- Cost allocation is not a precise science and the current cost allocation model has data deficiencies;
- The Board indicated in the Report that distributors should only move their revenue-to-cost ratios already in the range if this is supported by improved cost allocations;
- THESL has not improved it cost allocation process from that used in previous cases;
- Moving ratios for classes already in the Board approved ranges is only appropriate if there has been an improvement in the cost allocation information underpinning the ratios;
- The Board has been making decisions in cases that are not necessarily consistent, approving further movement towards 1.0 in some cases and not in others;
- The Council supports the Board adopting a uniform approach in setting revenue-to-cost ratios going forward. In essence, once the rate class revenue-to-cost ratios are in the range, and absent improved cost allocation methodologies, they should be maintained; and
- The one exception would be shifts required to absorb shifts in ratios for those classes outside of the range.

51. The Council submits that the same agreements apply in this case. The Board should adopt a uniform approach to the issue of revenue-to-cost ratios so as to avoid inconsistent results across utilities.

52. The Council notes the comments made by Board Staff on this issue which are consistent with the Council's position:

> While Board Staff takes no issue with Horizon's proposed cost allocation and R/C ratios as applied for and updated, Board Staff cautions against further movement toward unity. Horizon's intentions assume that the cost allocation methodology is exact. In reality like load forecasting and other econometric and economic aspects of rate regulation, cost allocation is an imprecise science.
>
> ...The Board has acknowledged the (relative) imprecision of the cost allocation approach in its guidelines and in numerous decisions. While it has supported movement of R/C ratios to at least class boundaries, further movement when within the Board's range is, in Board Staff's submission, more cautiously treated. (**Board Staff Submission, EB-2010-0131, p. 59**)

53. The Council recognizes that not supporting Horizon's proposal would result in marginally higher rates for residential consumers. However, in order to avoid continuous debate regarding the ratios in each and every case, the Council urges the Board to adopt a consistent policy. As set out below, in order to mitigate the overall bill impacts on residential consumers, the Council proposes that Horizon's fixed charge for residential consumers be maintained at the current levels.

Fixed/Variable Splits

54. With respect to the residential rate class, Horizon is proposing a monthly fixed charge of $14.69 with an additional $1.56 smart meter funding adder. The effective monthly charge is $16.25. (**Tr., Vol. 3, p. 90**) The existing monthly charge is $14.24. The inclusion of the late payment penalty charge will add an additional $.26 to the monthly amount. (**Tr., Vol. 3, p. 89**)

55. When asked whether Horizon would consider maintaining Horizon's fixed charge for residential consumers at the 2010 level, Mr. Basilio indicated that Horizon was not prepared to do so. He indicated that, from his perspective, the fixed portion of the bills is low relative to the underlying nature of the costs, which he claims for the most part are fixed. (**Tr., Vol. 3, p. 90**)

56. The Council submits that Horizon's overall proposed increase is significant. Horizon has indicated that it was doing all it could to mitigate the impacts on its customers. (**Tr., Vol. 3, p. 90**) The average consumption in Horizon's area is lower than in other jurisdictions. Given that lower volume customers are impacted more significantly by increases in fixed charges, the Council submits that, as a mitigation strategy, particularly for lower volume customers, the fixed charges should be maintained at existing levels. Horizon has admitted its cost allocation is not 100% correct. (**Tr., Vol. 3, p. 91**) Maintaining the lower fixed charges not only assists low volume customers in terms of mitigating bill impacts, but creates an incentive to conserve, as increased consumption is billed at a higher rate.

Street Lighting

57. The Board has recently announced that it intends to undertake a consultation process regarding cost allocation. The Board has stated that one of the issues that will be addressed is the treatment of street lighting. Horizon is requesting that it be permitted to update its revenue-to-cost ratios and rates once the outcome of that process is completed. (**Ex. 7/T1/S1/p. 4**). The Council submits that it is inappropriate for Horizon to be permitted to adjust its rates during its IRM term simply to reflect the Board's findings as to how LDCs should deal with street lighting cost allocation. The Council submits that, when Horizon files its next cost of service re-basing application, it should do so with a full cost allocation study. It is only at that time that the adjustments to the street lighting revenue-to-cost ratios should be considered by the Board.

DEFERRAL AND VARIANCE ACCOUNTS:

58. Horizon is proposing two new accounts. The first is a new sub-account of Account 1595, Disposition of Regulatory Asset Balances. Horizon is proposing that the balances in the deferral and variance accounts for which it is seeking disposition in this application be transferred to the new sub-account. The Council has no issues with this proposal.

59. In its March Update, Horizon proposed that Account 1572 be used for tracking any additional net distribution revenues above the aggregate established baselines in the revised load forecast for the two Large Use customers identified in Exhibit 3, Tab 2, Schedule 2. Under

Horizon's proposal, any net distribution revenue in excess of the aggregate of those baselines will be shared with its Large Use customers on a 50/50 basis. During the hearing, Horizon proposed that the treatment of the customer share of the net revenue in excess of the aggregate above the baseline should be determined by a future panel. (**Tr., Vol. 3, p. 80**)

60. The Council is not opposed to the creation of the Large Use deferral account. Given the uncertainty of the revenues associated with these customers, any revenues exceeding the forecast should be credited back to customers. Under Horizon's proposal, the revenues above the baseline would be shared 50:50 between Horizon's shareholder and its Large Use customers. The Council sees absolutely no reason why the revenues associated with these customers should go directly to Horizon's shareholder, as the forecasting risk associated with these customers is non-existent. Given the experience to date in 2011, the revenue associated with these customers is not zero, which has been embedded in the current forecast. In addition, there is no reason why those revenues should be allocated 100% to Horizon's Large Use customers.

LEAP

61. The Board has mandated that all Ontario LDCs recover, on an annual basis, .12% of distribution revenues to support the Low Income Emergency Assistance Program ("LEAP"). Currently this amount is not included in the 2011 revenue requirement. The Council supports the inclusion of this amount in the 2011 revenue requirement as it is consistent with Board-mandated policy and related accounting treatment.

RATE YEAR ALIGNMENT, EFFECTIVE DATE AND IMPLEMENTATION DATE:

62. With respect to Horizon's proposal to align it rate year with its fiscal year, the Council acknowledges that the Board has allowed for the change in previous cases as long as there is no adverse impact on the utility ratepayers. The Council is not opposed to the change in this case provided the Board is content that there is no adverse impact on the ratepayers. The Council does not, however, support Horizon's proposal to have the rates arising out of this application deemed effective January 1, 2011.

63. Horizon has indicated that it informed the Board early on that it intended to file a 2011 cost of service application in order to address its loss of load issues. The fact that it intended to file a cost of service application for 2011 rates was explicit in the evidence filed in support of its Z-factor application. On April 15, 2010, the Board concluded its consultative process dealing with the rate alignment issues. It issued a letter giving distributors the discretion to apply to align its rate year with the fiscal year. That letter also indicated that any distributor applying for an alignment to be effective on January 1, 2011 would be expected to file that application “as soon as possible”. (**Board letter dated April 15, 2010**) Horizon filed its application on August 26, 2010, consistent with a filing for rates effective May 1.

64. The Council acknowledges that unlike other rebasing applications, this one involved the consideration of the threshold issue, namely whether Horizon would be permitted to rebase its rates under a cost of service model one year early. Having said that, Horizon indicated to the Board that it intended to file a 2011 cost of service application well in advance of the April 15, 2010 letter. The Board’s letter was clear that LDCs seeking January 1, 2011 rates should file promptly. Horizon chose to file its application at the end of August.

65. The Council, at times, supports retroactive adjustments to rates (assuming interim rates have been established). In circumstances where the process has been delayed by factors outside of the control of the utility, such an adjustment may be justified. In this case, the Council submits that rates should become effective once the Board issues its decision and order. There is no justification, in the Council’s view, for an effective date of rates of January 1, 2011. There is no justification for a retroactive adjustment to rates. Horizon has had ample opportunity to prepare and file its evidence on a timeline that would have allowed the Board to issue a decision much closer to January 1. Having received the April 15, 2010 letter, Horizon should have expected that it would be required to go through a process that would first consider the preliminary issue around early rebasing.

66. The Council submits that the Board should be very reluctant to allow retroactive rate adjustments. The impact on customers is difficult and confusing. Horizon made a decision in 2009 that it would be filing a 2011 rebasing application. It was incumbent for Horizon to have

done that in a way that would avoid a retroactive charge for its customers to January 1, 2011. The Council anticipates considerable customer backlash if Horizon is permitted to apply it rate increase effective January 1, 2011. Horizon's effective date for rates should follow the Board's usual decision process and the issuance of a final rate order.

GREEN ENERGY PLAN

67. Horizon has filed, as a part of this application, a Green Energy Plan ("GEP"). Horizon is seeking approval of its GEP and a finding of prudence regarding the proposed expenditures for the period 2011-2014. (**Tr., Vol. 2, pp 55-56**) The OM&A expenditures in 2011 are $530,000 and, over the term of the GEP, Horizon is proposing to spend a total of $2.4 million in OM&A and $2.03 million in capital. The expenditures relate to renewable connections, renewable connection enablers, smart grid, customer engagement and communication, and feeder and substation automation projects. (**Ex. 4/T2/S6/Appendix 4-3**)

68. The Council submits that Horizon's GEP expenditures for 2011 should be approved. The expenditures beyond 2011 should be tracked in a deferral account and recovered through a rate adder in a way that is similar to the treatment of smart meter expenditures. At the time of Horizon's next rebasing the Board will be in a better position to assess the prudence of the expenditures and the proposed disposition. This will ensure that ratepayers only fund actual cost incurred, and only those that have been deemed prudent. Recording the amounts in a deferral account will also allow Horizon to track the extent to which the expenditures "directly benefit" Horizon's customers, or whether they should be funded by all provincial ratepayers. Horizon agreed that it did have the capacity to track the benefits. (**Tr., Vol. 2, p. 57**)

69. With respect to the issue of upfront versus ongoing costs, the Council agrees with Board Staff that Horizon should, in it Reply Argument, clarify whether these costs have been appropriately accounted for, in a way consistent with the Board's Report on Direct Benefits (**EB-2009-0349**).

COSTS

70. The Council asks that it be awarded 100% of its reasonably incurred costs for its participation in this proceeding.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Robert B. Warren
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May 9, 2011

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