



EB-2007-0642

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 Holdings
Inc. under section 86 of the *Ontario Energy Board Act, 1998*
seeking leave to acquire all the shares of Horizon Utilities
Corporation.

BEFORE

Pamela Nowina
Presiding Member

Bill Rupert
Member

DECISION AND ORDER

The Application

On May 28, 2007, Horizon Holdings Inc. (“Holdco”) filed an application under section 86(2)(a) of the *Ontario Energy Board Act, 1998* (the “Act”) seeking leave to acquire all of the shares of Horizon Utilities Corporation (“Horizon”), a licensed electricity distributor which distributes electricity in the cities of Hamilton and St. Catharines. Horizon holds electricity distribution licence ED-2006-0031.

Hamilton Utilities Corporation (“HUC”), which is wholly owned by the Corporation of the City of Hamilton, currently holds 78.9 percent of the shares of Horizon. St. Catharines Hydro Inc. (“SCHI”), which is wholly owned by the Corporation of the City of

St. Catharines, currently holds 21.1 percent of the shares of Horizon. Upon approval and completion of the transaction contemplated in the application, HUC and SCHI will own the shares of Holdco in the same ratio as their current ownership of Horizon (namely, HUC will own 78.9 percent of the shares of Holdco and SCHI will own 21.2 percent of the shares of Holdco). Holdco will own 100 percent of the shares of Horizon.

According to documentation filed with the application, the approvals of municipal councils and other entities required to enable the parties to proceed with the proposed transaction have been obtained.

The full record of this proceeding is available for review at the Board's office. While the Board has considered the full record, the Board has summarized and referred only to those portions of the record that it considers helpful to provide context to its findings.

Board Findings

Section 86(2)(a) of the Act provides that no person may acquire voting shares of an electricity distributor without leave of the Board if, as a result of the acquisition, the person would hold more than 20 percent of the voting securities of the distributor.

In determining this application, the Board is guided by the principles set out in the Board's decision in the combined Mergers, Acquisitions, Amalgamations and Divestitures ("MAADs") proceeding (Board File Numbers RP-2005-0018/EB-2005-0234/EB-2005-0254/EB-2005-0257). In its decision in the combined MAADs proceeding, the Board found that the factors to be considered in approving a MAADs application under section 86 of the Act are the factors outlined in section 1 of the Act, which includes the objectives that the Board must consider when carrying out its responsibilities under the Act in relation to electricity.

Those statutory objectives are:

1. To protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service.
2. To promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry.

In its decision on the combined MAADs proceeding, the Board also found that the “no harm” test should be considered. The “no harm” test consists of a consideration as to whether the proposed transaction would have an adverse effect relative to the status quo in relation to the Board’s statutory objectives. If the proposed transaction would have a positive or neutral effect on the attainment of the statutory objectives, then Holdco’s application for leave to acquire all of the shares of Horizon should be granted.

Holdco has submitted that the proposed transaction will:

- have no impact on quality and reliability of service to Horizon’s electricity customers;
- have no impact on Horizon’s electricity distribution customers;
- have no impact on operational safety and system integrity in respect of Horizon’s distribution system;
- have no impact on the capital structure of Horizon;
- have no impact on the economic efficiency and cost effectiveness of the electricity distribution system; and
- not change distribution rates.

Based on the above, the Board is satisfied that the proposed transaction will not have an adverse effect in relation to the factors identified in its objectives as set out in section 1 of the Act. The Board is satisfied that the application meets the “no harm” test.

Section 21(4)(b) of the Act allows for the Board to dispose of a proceeding without a hearing if the Board determines that no person, other than the applicant, appellant or

licence holder will be adversely affected in a material way and the applicant, appellant or licence holder has consented to disposing of the proceeding without a hearing.

HUC and SCHI have stated that no parties other than Holdco, HUC and SCHI will be affected by this transaction. They have also stated that electricity distribution customers in the cities of Hamilton and St. Catharines will continue to be served by Horizon and that Horizon, as the licensed electricity distributor for these areas, will remain in compliance with the terms of its electricity distribution licence. The applicant also requested that the application be disposed of without a hearing.

The proposed transaction is part of an internal restructuring of the Horizon corporate family and based on the evidence, the proposed transaction will have no adverse impact on Horizon's electricity distribution customers. The Board accepts HUC's and SCHI's submission that no one other than the Holdco, HUC and SCHI will be adversely affected in a material way by the proposed transaction. The Board will therefore dispose of this matter without a hearing. The Board finds the proposed transaction to be in the public interest and therefore approves it.

THE BOARD THEREFORE ORDERS THAT:

1. Horizon Holdings Inc. is granted leave to acquire all of the shares of Horizon Utilities Corporation.
2. Notice of completion of the share acquisition shall be promptly given to the Board.
3. The Board's leave to acquire shares shall expire 18 months from the date of this Decision and Order. If the share acquisition has not been completed by that date, a new application for leave will be required in order for the transaction to proceed.

ISSUED at Toronto, August 2, 2007

ONTARIO ENERGY BOARD

Original signed by

Peter H. O'Dell
Assistant Board Secretary