



Borden Ladner Gervais LLP
Lawyers • Patent & Trade-mark Agents
Scotia Plaza, 40 King Street West
Toronto, Ontario, Canada M5H 3Y4
tel.: (416) 367-6000 fax: (416) 367-6749
www.blgcanada.com

JAMES C. SIDLOFSKY
direct tel.: 416-367-6277
direct fax: 416-361-2751
e-mail: jsidlofsky@blgcanada.com

December 10, 2009

Delivered by Courier and E-mail

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

Dear Ms. Walli:

**Re: Horizon Utilities Corporation – Z-Factor Application
Board File No.EB-2009-0332**

Introduction:

We are counsel to Horizon Utilities Corporation (“Horizon Utilities”) in the above captioned matter.

On September 3, 2009, Horizon Utilities filed its Application in this matter, in which it has requested an order or orders granting approval for the recovery of certain amounts related to an unforeseen and significant loss of revenue due to a change in operations on the part of one of its Large Use customers (the “Subject Customer”). Horizon Utilities proposes to recover this forgone revenue through a Z-Factor-related rate rider (the “Rate Rider”) that would take effect January 1, 2010 and would remain in place until the rate order in Horizon Utilities’ next forward test year cost of service distribution rate application takes effect. Horizon Utilities anticipates that the requested Rate Rider will be in place until April 30, 2011, as Horizon Utilities is currently planning to file a 2011 cost of service distribution rate application in August of 2010, with rates to be effective May 1, 2011.

Horizon Utilities has also requested that it be permitted to establish a variance account to track the difference between the anticipated distribution revenue from the Subject Customer and the actual amount of distribution revenue received from the Subject Customer during the same period, for disposition at a date to be determined. The use of the variance account provides an appropriate safeguard to ensure that Horizon Utilities does not over- or under-recover the revenue lost as a result of the change in the Subject Customer’s operations. This approach is just and reasonable in respect of both the utility and its customers.

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Included with the Application was Horizon Utilities' Manager's Summary in support thereof. The Manager's Summary explains the circumstances surrounding the reduction in revenue and Horizon Utilities' approach to the proposed Rate Rider.

On December 1, 2009, Horizon Utilities delivered responses to Board Staff and intervenor interrogatories. Confidential responses to interrogatories were delivered to the Board on December 2, 2009. The reasons for the confidentiality request were set out in our public letter of December 2, 2009. Through its redacted and confidential filings, Horizon Utilities has provided complete responses to all relevant interrogatories in this proceeding. Only one interrogatory has not been answered – that interrogatory was directed to the Board and does not pertain to this Application.

Procedural Order No.3 in this matter, dated November 27, 2009, provides (in part):

“In Procedural Order No. 1, the Board stated that it expects to proceed by way of written hearing in this matter. The Board also noted that following its review of the responses, the Board may include an oral component if in the Board's view it is warranted. The Board is now seeking the views of Horizon and all intervenors regarding the need for an oral hearing in this proceeding. The Board will be assisted if intervenors conduct an expeditious review of the responses to the interrogatories and consider whether an oral hearing would be appropriate for this case.”

Procedural Order No.3 set a deadline of December 10, 2009 for submissions on whether a written or oral hearing is preferred.

Yesterday evening, we received correspondence from Mr. Shepherd, counsel to the School Energy Coalition (“Schools”). In that letter (a slightly amended version of which was received today), Mr. Shepherd has provided comments on both procedural steps and Horizon Utilities' confidentiality claims in respect of certain of its responses to Board Staff and intervenor interrogatories. That was followed by a letter from Mr. Buonaguro late this morning in which Mr. Buonaguro expresses VECC's support for the Schools letter and adds a further comment on confidentiality.

Horizon Utilities wishes to consider the Schools and VECC objections to confidentiality, and to respond to them in accordance with section 5.1.8 of the Board's *Practice Direction on Confidential Filings* (the “Practice Direction”). Our client understands from Board Staff that the Board will be establishing a process for dealing with the issues of confidentiality in this proceeding, and that Horizon Utilities will therefore have an opportunity to deliver its response in due course. We note, though, that on the question of the appropriate form of hearing, Schools has suggested a process whereby the parties would not discover until the commencement of an oral hearing which of the items in respect of which confidentiality is being claimed would in fact be kept in confidence. Horizon Utilities' comments on the question of the appropriate form of hearing are set out below, but in this regard, Horizon Utilities submits that the approach to confidentiality proposed by Schools is neither consistent with the Board's Practice Direction, nor is it fair to Horizon Utilities or the Subject Customer.

The Practice Direction provides a clear process for dealing with confidentiality claims. It contemplates objections, a response, and a determination by the Board, followed by an opportunity for the party that has submitted material in confidence to request its withdrawal and/or to appeal or seek a review of the Board's decision. Horizon Utilities submits that the Schools proposal would effectively eliminate the latter portions of the process set out in the Practice Direction and deny the Applicant the protections set out therein, and there is no basis for doing so in this case.

With respect to the matter addressed in Procedural Order No. 3 – the question of the appropriate form of hearing – for the reasons set out below, Horizon Utilities submits that a written hearing is the appropriate means of disposing of this proceeding.

Horizon Utilities submits that a written hearing, and not an oral hearing, is the appropriate process for the completion of this proceeding.

As discussed above, Horizon Utilities has filed a complete Application and a complete set of interrogatory responses. Horizon Utilities has provided evidence on all aspects of the Application, including, without limitation:

- The circumstances giving rise to the Application;
- The impacts on Horizon Utilities' operations of the loss of revenue that is the subject of this Application on its operations;
- The basis for treating this matter as a Z-Factor Application;
- The proposed Rate Rider and the minimal impacts of the Rate Rider on customer bills (for example, as set out in the Application, total bill impacts for Residential customers range from 10 cents/month for a Residential customer consuming 250 kWh/month to 40 cents/month for a Residential customer consuming 1,000 kWh/month using a variable charge, or 24 cents per Residential customer per month based on a fixed charge);
- The merits of both a variable and a fixed rate rider; and
- The merits of a variance account that will ensure that Horizon Utilities recovers no more and no less than the actual amount of forgone revenue resulting from the change in the Subject Customer's operations.

There may be issues among the parties as to what material should remain confidential, but the Application is complete; it is narrow in scope; and while the forgone revenue is material and its recovery is of critical importance to Horizon Utilities, the customer bill impacts resulting from that recovery are minimal. Horizon Utilities submits that all relevant information is now before the Board, and that the convening of an oral hearing will not add to the Board's or parties' understanding of this matter. Rather, an oral hearing will only add unnecessary procedural steps and costs to this proceeding.

Schools suggests that a one day *in camera* oral hearing "is the most efficient way to handle this matter"; that "this is a proceeding in which the main issue is a relatively simple one, but with a number of potential areas for confusion in the record"; and that "Using a one day hearing would also shorten the process and allow the Board to get to a



decision quickly”, although Schools still contemplates written submissions by intervenors, and although not mentioned in the Schools letter, Horizon Utilities would presumably also have a right to deliver reply submissions.

Horizon Utilities does not agree that adding an oral hearing shortens the process. The oral hearing does not avoid the written submissions that would be required in any event in a written hearing. Horizon Utilities is also not aware of any confusion in the record. Parties may disagree on whether the relief requested in the Application should be granted, but that is a matter for written submissions, and not one that requires an oral hearing. If the Board considers it necessary for Staff and intervenors to have an opportunity to obtain further information, this can be addressed through a supplementary round of interrogatories.

Finally, as is clear from our letter of December 2nd setting out the grounds for Horizon Utilities’ confidentiality request in respect of several interrogatory responses, much of the information addressed in the Application is highly sensitive commercial information, primarily relating to the Subject Customer’s operations. The Subject Customer has expressed its concerns to Horizon Utilities with respect to the publication of that information. Horizon Utilities is concerned that the risk of this information being placed in the public domain is significantly greater in the context of an oral hearing. The written hearing process, supplemented if the Board considers it necessary by further interrogatories, remains the best way to allow for more effective protection of this information.

For all of the foregoing reasons, Horizon Utilities respectfully requests that the Board complete this proceeding by way of a written hearing as it initially contemplated. As noted above, Horizon Utilities has requested that the Rate Rider take effect January 1, 2010. In order to assist in achieving this timeline to the extent possible, we would ask that the concluding submissions be scheduled for filing during the month of January. Should you have any questions or require further information, please do not hesitate to contact me.

Yours very truly,
BORDEN LADNER GERVAIS LLP

Original signed by James C. Sidlofsky

James C. Sidlofsky
JCS

cc. John G. Basilio, Horizon Utilities Corporation
Indy Butany-DeSouza, Horizon Utilities Corporation
Intervenors of Record

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