



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 29, 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**

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

On Thursday, December 17, 2009, the Board issued Procedural Order No. 4 (“PO#4”), in which it provided for the following:

1. Parties wishing to make submissions on the confidentiality status of the Interrogatory responses referred to in the Procedural Order are to file such submissions with the Board and deliver them to Horizon Utilities by December 23, 2009;
2. If Horizon Utilities wishes to respond to any submissions on the confidentiality status of the subject responses, it shall file such submissions with the Board and deliver them to intervenors by January 6, 2010; and
3. An oral hearing will commence on Thursday January 14, 2010 and will continue, if necessary, on Friday January 15, 2010.

Horizon Utilities anticipates meeting the Board’s January 6th deadline for its response to submissions on the confidentiality of the subject responses. However, we are writing to you today to request a brief adjournment in the hearing date. Horizon Utilities will be available to commence the hearing on or after Thursday, January 28, 2010. The reasons for this request are as follows:

- On December 17, 2009, Horizon Utilities received Board Staff interrogatories in its 2010 3rd Generation IRM rate application. Horizon Utilities’ responses are due January 13, 2010, the day before the date scheduled for the hearing in this Z-factor proceeding. Although the IRM process is intended to be mechanistic, Horizon Utilities will require time to consider and prepare responses to the Board

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Staff questions. The Horizon Utilities Regulatory staff members who are dealing with the 3GIRM interrogatories are the same individuals who are involved in the Z-factor proceeding.

- In addition to the 3GIRM and Z-factor proceedings, Horizon Utilities is involved in two other proceedings before the Board with deadlines in mid-January, and Horizon Utilities Regulatory staff are involved in all of these proceedings:
 - On December 14th, the Board issued a *Staff Discussion Paper on the Proposed Framework for Determining the Direct Benefits Accruing to Customers of a Distributor under Ontario Regulation 330/09 (EB-2009-0349)*. This relates to the determination of the direct benefits that accrue to the consumers of a distributor when that distributor has incurred costs to make an eligible investment to accommodate renewable generation. Horizon Utilities is actively involved in preparing the Coalition of Large Distributors' comments on the Discussion Paper – those comments are due January 11, 2010;
 - On December 10, 2009, the Board issued a Notice of Proposal to Amend Codes with proposed amendments to the Distribution System Code and Affiliate Relationships Code for Electricity Distributors and Transmitters to reflect the ability of electricity distributors to own and operate certain renewable and other generation facilities as well as energy storage facilities (EB-2009-0411). As with the comments on the Staff Discussion Paper in EB-2009-0349, Horizon Utilities is actively involved in preparing the Coalition of Large Distributors' comments on the proposed Code amendments – those comments are due January 22, 2010.
- As with Board staff, availability of Horizon Utilities staff has been limited during the weeks of December 21st and December 28th due to the holiday season and family commitments related thereto. It will not be possible for Horizon Utilities' staff to meet the requirements of the other three proceedings and prepare for an oral hearing to be held so shortly after their return to the office at the beginning of the week of January 4, 2010.
- Among the matters addressed in our correspondence of December 10, 2009 was the Board's process for treatment of material in respect of which confidentiality has been claimed. As we noted in that letter, the Board's *Practice Direction on Confidential Filings* 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. The School Energy Coalition ("Schools"), in correspondence from its counsel dated December 9, 2009, 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. In our letter of December 10th, Horizon Utilities submitted 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. It would appear that the timing for the balance of this proceeding as set out in PO#4 will have the effect Horizon Utilities expressed concerns about in our letter of December 10th, as there will be little if any time between the Board's determination on the confidentiality issue and the oral hearing. Horizon Utilities submits that the Board's process requires a reasonable period of time between the determination on confidentiality and the hearing date in order that a party requesting confidential treatment may determine its next steps in response to the Board's determination in advance of the hearing.

- Finally, Bruce Bacon, Borden Ladner Gervais LLP's Senior Utility Rate Consultant, and I (and presumably most of the intervenors in this proceeding) will be involved in three settlement conferences involving various electricity distributors' cost of service distribution rate applications scheduled for the week of January 18th, and we will therefore not be available for an alternative hearing date prior to January 28th. Mr. Bacon is assisting Horizon Utilities in this matter, and will likely be on the witness panel at the hearing.

For all of the foregoing reasons, Horizon Utilities respectfully submits that a brief adjournment of the oral hearing in this matter to a date no earlier than January 28, 2010 is both reasonable and appropriate in these circumstances. Horizon Utilities suggests that any inability to meet the requested effective date of January 1, 2010 for the proposed rate rider can be addressed by an adjustment to the rider whereby the forgone revenue is recovered over the shorter period between the implementation date of the Board's order and April 30, 2011.

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 J. Butany-DeSouza, Horizon Utilities Corporation
Intervenors of Record

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