



U. S. Steel Canada Inc.
A Subsidiary of United States Steel

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January 22, 2010

BY EMAIL & COURIER

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge St. Suite 2701
Toronto ON M4P 1E4

**RE: Board File No. EB-2009-0332
Horizon Utilities Corporation – Recovery of Forgone Revenue
Interrogatories of U. S. Steel Canada Inc.**

Pursuant to the Decision and Order on Confidentiality Issues, issued by the Ontario Energy Board on January 18, 2010, please find below the response of U. S. Steel Canada Inc. in the matter of confidentiality with respect to the EB-2009-0332 proceeding.

Dear Ms. Walli:

The following constitutes the response from U. S. Steel Canada to the above noted ruling.

U. S. Steel Canada Inc. respectfully disagrees with the decision of the Ontario Energy Board (OEB) to place the petitioner's response to U. S. Steel Canada Interrogatory #4 in the public record. Our objections to this decision are as follows:

1. Both U. S. Steel Canada Inc. in #4 and School Energy Coalition in #3 (which represent the only identified cross referenced question) have specifically requested that responses to their respective questions be filed in confidence. Considering the unanimity amongst petitioners regarding confidentiality in this instance, the OEB should not disregard such a request.
2. Although the information contained in the confidential Horizon Utilities Corporation (Horizon) response to U. S. Steel Canada #4 may be in whole or in part currently available in the public domain, linkage of this particular package of information to the Subject Customer is not currently in the public domain. It is this aspect of confidentiality that U. S. Steel Canada Inc. considers to be at question, both in regards to the Subject Customer and, more broadly, in regards to the entire Large Use Customer base.

In addition, as Horizon's response to U. S. Steel Canada #4 has not yet been placed on the public record, it is impossible to determine the extent to which the information is currently in the public domain. Any suggestion otherwise is purely speculative.

3. In the above noted ruling, the OEB contends "...the identity of the Subject Customer is evident, or can easily be determined from information already on the public record, and as such, cannot reasonably be expected to be maintained in confidence". If this supposition is true, then it reflects either:

- i. a flawed process which, on one hand, purports to protect the identity of the customer (as evidenced by the repeated use of the phrase "Subject Customer"), while, on the other hand, empowering the petitioner to provide details sufficient to make the customer's identity evident; or
- ii. flawed execution of an appropriately designed process in which there has been insufficient oversight, resulting there not being a reasonable level of confidentiality for the Subject Customer.

In either case, it contravenes the letter and spirit of the confidentiality provisions to contend that an initial failure in process and/or in the execution of that process destroys all further rights of a Subject Customer to future confidentiality. As a matter of principle and precedent, it remains the responsibility of the OEB to ensure reasonable confidentiality of the Subject Customer.

Furthermore, particulars not normally found on the public record related to the Subject Customer's power consumption were allowed by the OEB to have been placed on the public record as evidence in support of board file EB-2009-0332. This is contrary to the OEB's own Practice Direction on Confidentiality Filings, Section 5 and Appendix C (5). Identification of the Subject Customer would publicly enable the linkage of proprietary information (which was inappropriately made public), to the entity to whom this information belongs.

4. The supposition that the information in the response to U. S. Steel Canada #4 is also to be found, in whole or in part, in the public domain, does not necessarily imply that such information is true, accurate, complete, correct or relevant. The impact of inaccurate information being placed on the public record may result in serious damage to the reputation or relative competitiveness of the Subject Customer and, by extension, to other Large Use Customers.

For these reasons, we respectfully request that the OEB reconsider its decision to put the Horizon response to U. S. Steel Canada #4 on the public record.

If the OEB decide not to rescind this decision, U. S. Steel Canada Inc., respectfully withdraws its question #4 from its interrogatories. In addition to the reasons noted above, we do so because:

- i. The necessity of providing a confidential response to #4 was stated in the U. S. Steel Canada Interrogatory submission as a precondition to the question being considered for a response; and,
- ii. Allowing these events to lead to a breach in the confidentiality protocol of the OEB sets a precedent that may prove limiting in future OEB petitions and interventions.

In summation, we respectfully request that the OEB either;

- a) rescind its decision to allow the Horizon response to U. S. Steel Canada #4 to be placed on the public record; or,
- b) allow U. S. Steel Canada Inc. to withdraw question #4 from its interrogatories such that no response to this question is, at any time, placed in the public record.

If you require any additional information, please do not hesitate to contact Mr. Andy Mahut of U. S. Steel Canada, whose contact information is on file with the OEB.

Yours truly,

U. S. Steel Canada Inc.

A handwritten signature in black ink, appearing to read 'Thomas H. Ferns', with a stylized, cursive script.

Thomas H. Ferns
GENERAL COUNSEL
& CORPORATE SECRETARY

cc: Indy Butany-DeSouza, Horizon Utilities Corporation (By email)
James Sidlofsky, Borden, Ladner, Gervais LLP (By email)
Intervenors of Record (By email)

An electronic version of this communication will be forwarded in PDF format.