



**EB-2009-0332**

**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  
Utilities Corporation for an order approving the recovery of  
certain amounts related to an unforeseen loss of revenue  
to be effective January 1, 2010.

### **PROCEDURAL ORDER No. 6**

Horizon Utilities Corporation ("Horizon," or the "Applicant") filed an application with the Ontario Energy Board (the "Board") on September 3, 2009 under section 78 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B), seeking approval for the recovery of certain amounts related to an unforeseen loss of revenue from one of its Large Use customers (the "Subject Customer"), to be effective January 1, 2010.

The Board issued a Notice of Application and Hearing on September 29, 2009.

On October 23, November 5 and November 27, 2009, the Board issued Procedural Orders No. 1, 2 and 3, which granted intervenor status to, and determined the eligibility for costs awards of the Consumers Council of Canada ("CCC"), Energy Probe, School Energy Coalition ("SEC"), Vulnerable Energy Consumers Coalition ("VECC"), and U.S. Steel Canada Inc. ("U.S. Steel"), and scheduled other procedural matters.

On December 1, 2009, Horizon filed its responses to the interrogatories. In accordance with section 5.1.5 of the Board's *Practice Direction on Confidential Filings* (the "Practice Direction"), Horizon filed a cover letter requesting confidential treatment by the Board of certain interrogatory responses that were filed in confidence, together with a description of the basis on which confidentiality was being claimed.

On December 17, 2009, the Board issued Notice of Hearing and Procedural Order No.4, which established a process for making submissions on Horizon's requests for confidentiality. The Board stated that it would issue a decision on the confidentiality issues prior to the commencement of the oral hearing. The Board also stated that all parties should be prepared to make oral argument following the conclusion of the evidentiary portion of the hearing. The Board further determined that it would hold a one-day oral hearing on this application on Thursday January 14, 2010.

On December 29, 2009, the Board received a letter from Horizon requesting a postponement in the date of the oral hearing to no earlier than January 28, 2010.

On January 5, 2010, the Board issued Procedural Order No. 5, which moved the date of the oral hearing to Thursday January 28, 2010, but left all other dates set out in Procedural Order No. 4 unchanged.

On January 18, 2010, the Board issued its Decision and Order on Confidentiality Issues which granted confidential treatment for specified interrogatories, or portions of interrogatories, and ordered that the remainder be placed on the public record (the "Decision and Order"). The Decision and Order also stated that Horizon would have a period of five business days in which it could make a written request to the Board that the information be withdrawn<sup>1</sup>, which request the Board would consider promptly; and that Horizon might also, within a period of five business days, advise that it intended to appeal or seek a review of the decision to place the information on the public record<sup>2</sup>. The Decision and Order stated that if Horizon indicated that it intended to appeal, the Board would not place the information on the public record until the appeal or review had been concluded or the time for filing an appeal or review had expired without an appeal or review having been commenced, failing which the Board would implement its Decision and Order.

In order to protect the confidentiality of information specific to the Subject Customer, the Board stated that it would hold the January 28, 2010 oral hearing entirely *in camera* in accordance with Section 6.2 of the Practice Direction and, upon completion of the oral hearing, the Board would establish a process to determine which portions of the transcript could subsequently be made public.

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<sup>1</sup> Practice Direction, Section 5.1.12

<sup>2</sup> Practice Direction, Section 5.1.14.

The Decision and Order determined that one of the interrogatories to be placed on the public record was Horizon's response to U.S. Steel #4.

On January 22, 2010, the Board received a letter from U.S. Steel taking issue with the Board's decision to place this response on the public record and requesting that the Board either: (i) rescind its decision to allow the Horizon response to U.S. Steel #4 to be placed on the public record; or (ii) allow U.S. Steel to withdraw question #4 from its interrogatories such that no response to the question was placed on the public record at any time ("US Steel Objections").

The Board notes that although not referenced in the US Steel objections, CCC#7 also reveals the identity of the Subject Customer, which is the basis of the objection to US Steel #4.

The Board will consider the U.S. Steel Objections at the beginning of the oral hearing on January 28, 2010. U.S. Steel's letter of January 22, 2010 will be treated by the Board as its submission. Any other parties that intend to make submissions on the US Steel Objections should be prepared to do so orally at the hearing and U.S. Steel should also be prepared to make any reply submissions orally. The Board has determined that until it has made a decision on the U.S. Steel Objections, neither the responses to US Steel #4 or CCC #7 will be placed on the public record, or should be disclosed by any party.

The Board has also determined that given the complexity of the issues raised in this application, it will no longer require oral argument, but will instead establish a process for written argument which is outlined below.

The Board considers it necessary to make provision for the following matters related to this proceeding. The Board may issue further procedural orders from time to time.

**THE BOARD ORDERS THAT:**

1. The oral hearing is confirmed to commence in the Board's hearing room on **Thursday January 28, 2010** at 2300 Yonge Street, 25<sup>th</sup> Floor, Toronto, at 9:30 am. The oral hearing will continue, if necessary, on Friday January 29, 2010.

2. Parties that wish to make submissions on the US Steel Objections shall do so orally at the hearing. If US Steel wishes to reply to such submissions it shall do so orally at the hearing.
3. Until the Board has made a decision on the U.S. Steel Objections, neither the responses to US Steel #4 or CCC #7 will be placed on the public record, or should be disclosed by any party
4. If Horizon wishes to make argument-in-chief on the application, it must file this submission with the Board and deliver it to intervenors by **February 2, 2010**.
5. If Board staff and intervenors wish to make written submissions on the application, they must file those submissions with the Board and deliver them to Horizon and other intervenors by **February 9, 2010**.
6. If Horizon wishes to respond to a submission, the response must be filed with the Board and delivered to intervenors by **February 16, 2010**.

All filings to the Board must quote the file number, EB-2009-0332, be made through the Board's web portal at [www.errr.oeb.gov.on.ca](http://www.errr.oeb.gov.on.ca), and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Please use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at [www.oeb.gov.on.ca](http://www.oeb.gov.on.ca). If the web portal is not available you may email your document to the address below. Those who do not have internet access are required to submit all filings on a CD or diskette in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at [bardsec@obe.gov.on.ca](mailto:bardsec@obe.gov.on.ca), and be received no later than 4:45 p.m. on the required date.

**ISSUED** at Toronto, January 25, 2010

**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli  
Board Secretary