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April 13, 2010

**Delivered by Courier**

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. We are writing to you today with respect to the March 24, 2010 Decision issued by the Board in this matter.

In the Decision, the Board rejected Horizon Utilities’ Z-factor claim. While Horizon Utilities maintains that its claim was appropriate and reasonable, and that the circumstances that formed the basis for the claim constituted a legitimate Z-factor event that qualified for recovery under the Board’s Z-factor eligibility criteria, Horizon Utilities accepts the Board’s Decision, and does not seek to change the outcome of the proceeding. However, Horizon Utilities is concerned about the characterization by the Board of certain of Horizon Utilities’ evidence. At page 10 of the Decision, the Board wrote:

“Finally, Mr. Basilio (CFO for Horizon) testified that Horizon is experiencing neither a cash flow deficiency, nor inability to finance the business, and that it plans to deal with any long-term effects of these losses through the filing of a cost of service application later this year.”

Horizon Utilities can confirm that this statement is accurate to the extent that, as the Board is aware, Horizon Utilities intends to file a cost of service application this year for rebasing in 2011. Horizon Utilities can also confirm that it remains able to finance its business, although as discussed during the *in camera* hearing, persisting losses of distribution revenue may increase the cost of borrowing necessary to finance the business and reduce the financial flexibility of the business.

Horizon Utilities’ concern with this statement is that at no time in this proceeding has it suggested that its revenue losses related to the customer that is the subject of this proceeding have not created a cash flow deficiency. On the contrary, in its Application, its interrogatory responses, and its testimony during the hearing, Horizon Utilities has clearly indicated that it has suffered significant revenue losses from 2008 to the present as a result of reductions in consumption on the part of the Subject Customer and other large commercial and industrial customers. It was Mr. Basilio’s evidence during the hearing

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(for example, during a discussion regarding the prospective element of the requested relief) that the current conditions of reduced distribution revenue would persist and that this would in turn have a material impact on Horizon Utilities' cash flow and revenue through to Horizon Utilities' 2011 cost of service application. Whether or not the Board accepts that the circumstances forming the basis for this Application constitute a Z-factor, Horizon Utilities suggests that there is no question that it is experiencing a cash flow deficiency when compared to the circumstances that formed the basis for its 2008 cost of service application, and that the existence of a deficiency is clear throughout the record of this proceeding.

As noted above, Horizon Utilities' accepts the Board's denial of the Application. It is concerned, though, that its evidence with respect to cash flow may not have been accurately reflected in the Decision. The Board's *Rules of Practice and Procedure* (for example, Rule 43.02) contemplate corrections to orders or decisions, and Horizon Utilities suggests that this may be an appropriate circumstance for such a correction. We respectfully submit that the following corrected text is a more accurate representation of the evidence:

Finally, Mr. Basilio (CFO for Horizon) testified that Horizon is not experiencing an inability to finance the business, and that it plans to deal with any long-term effects of these losses through the filing of a cost of service application later this year.

Horizon Utilities respectfully suggests that the Decision be amended accordingly. Should you have any questions or require further information in this regard, please do not hesitate to contact me.

Yours very truly,

**BORDEN LADNER GERVAIS LLP**

*Original Signed by James Sidlofsky*

**James C. Sidlofsky**

JCS

cc. Martin Davies, Ontario Energy Board  
John G. Basilio, Horizon Utilities Corporation  
Indy J. Butany-DeSouza, Horizon Utilities Corporation  
Intervenors of Record

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