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February 5, 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.

Please find accompanying this letter Horizon Utilities’ Argument-in-Chief in this matter. This unredacted document is being delivered in confidence. Horizon Utilities will be providing a redacted version of the submission. However, in the interest of providing the submission in as timely a manner as possible, and because the unredacted transcript of last week’s hearing is still under review by [REDACTED] (and the redactions ultimately made in the transcript may have an impact on the text to be redacted from submissions), we are distributing the unredacted version now to Board staff and parties that have signed the Board’s form of Declaration and Undertaking with respect to confidentiality.

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 Sidlofsky

James C. Sidlofsky
JCS
Encl.

Vancouver
Toronto
Ottawa
Montreal
Calgary



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cc. Martin Davies, Ontario Energy Board
John G. Basilio, Horizon Utilities Corporation
Indy J. Butany-DeSouza, Horizon Utilities Corporation
Individuals that have signed the Board's form of Declaration and Undertaking
with respect to confidentiality

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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.

HORIZON UTILITIES CORPORATION ("HORIZON UTILITIES")

ARGUMENT-IN-CHIEF
DELIVERED FEBRUARY 5, 2010

Introduction:

1. Horizon Utilities Corporation ("Horizon Utilities") is a licensed electricity distribution company operating in the City of Hamilton and the City of St. Catharines under Ontario Energy Board (the "OEB" or the "Board") Electricity Distribution Licence ED-2006-0031.
2. On October 22, 2007, Horizon Utilities submitted a Cost of Service Electricity Distribution Rate Application (the "2008 EDR Application") to the OEB pursuant to Section 78 of the OEB Act for approval of just and reasonable rates effective May 1, 2008 (OEB File No. EB-2007-0697).
3. In Exhibit C of the 2008 EDR Application, Horizon Utilities provided detailed explanations for the determination of the load forecast to be used in setting the 2008 Rates. Horizon Utilities' 2008 load forecast for Large Use customers was based on 2006 actual load data, with 2008 being the most current Board-Approved year. The load data for the 2006 Actual, 2007 Bridge Year, and 2008 Test Year was weather normalized using the latest Hydro One forecast that was specific to Horizon Utilities and utilized in Horizon Utilities' Cost Allocation Informational Filing submitted March 30, 2007. The Hydro One model identified

that, among others, the Large User customer class load was not weather sensitive and, as stated in Horizon Utilities' 2008 EDR Application at Exhibit C/Tab 2/Schedule 2/Page 4, "The kWhs for the Large Use class, Unmetered/Scattered Load and Sentinel Lighting are not weather sensitive and are not expected to differ significantly in 2007 or 2008". As such, Horizon Utilities' load forecast for the Large User class for setting 2008 Rates was based on the 2006 actual load for this class. Horizon Utilities' load forecast was accepted by the OEB in its Decision on Horizon Utilities' 2008 EDR Application.

4. On September 3, 2009, Horizon Utilities made an Application to the OEB for an order or orders pursuant to Section 78 of the *Ontario Energy Board Act, 1998*, as amended (the "OEB Act") approving or fixing just and reasonable rates for the distribution of electricity.
5. Specifically, Horizon Utilities applied for an order or orders granting approval for the recovery of certain amounts (approximately \$2.85 million¹ as filed) related to an unforeseen and material loss of revenue due to a change in operations on the part of one of its Large Use customers (referred to in this submission as the "Subject Customer"). The Application pertains to the May 1, 2008 – April 30, 2011 period. Horizon Utilities has experienced a material and general decline in load (and associated revenue) across its Large User and General Service > 50 kW classes during the current economic downturn² – for example, in response to Board Staff interrogatory #4(b), Horizon Utilities advised that it anticipates a utility-wide revenue deficiency of approximately \$3.5 million in 2009 – but to illustrate the significance of the reduction related to the Subject Customer, the forgone revenue from that customer represented approximately 51% of the

¹ Manager's Summary, p. 7, para. 2.6, Table 3

² See Horizon Utilities' response to Board Staff interrogatory #10(b).

overall forgone revenue from Horizon Utilities' Large User class over the May 2008 – June 2009 period.³

6. The events surrounding the decline in the Subject Customer's load are discussed in the Manager's Summary accompanying the Application and in Horizon Utilities' confidential response to U.S. Steel Interrogatory #4. In the spring of 2009, the Subject Customer announced plans for an indefinite shutdown of its Hamilton operations. As a result of such, the Subject Customer's load subsequently dropped to approximately 10% of the level incorporated into the load forecast used in Horizon Utilities' 2008 forward test year cost of service application. As the Board is aware, Horizon Utilities' distribution rates for the 2008 test year and the Incentive Regulation Mechanism ("IRM") years prior to its next rebasing are based on the rates established in the 2008 application.
7. In support of this Application, Horizon Utilities provided specific details, data, and relevant calculations together with plans for addressing the material unforeseen event and support for the Rate Rider. This Application included the manner in which Horizon Utilities proposes to allocate the Rate Rider to the various customer classes and the rationale for the selected approach.
8. Horizon Utilities proposed to recover the forgone revenue related to the Subject Customer through a Z-factor-related rate rider (the "Rate Rider") that would remain in place until the rate order arising out of 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 provided calculations of both fixed and variable Rate Riders with a preference for the implementation of a fixed Rate Rider based on the fact that the

³ Manager's Summary, p. 5, para. 2.4

costs of providing distribution service to the Subject Customer are virtually entirely fixed.⁴

9. In this Application, Horizon Utilities proposes a Rate Rider to recover both the distribution revenue deficiency that has been realized to date as a result of the reduction in actual load of the Subject Customer and the continued anticipated distribution revenue deficiency due to the continued reduction in the Subject Customer's operations. As part of its Application, Horizon Utilities calculated the actual distribution revenue deficiency for the Subject Customer based on the load approved in its 2008 Electricity Distribution Rate ("EDR") Application and the actual load consumed by the Subject Customer for the period May 1, 2008 through June 30, 2009. In the Application, the anticipated distribution revenue deficiency for the period July 1, 2009 to April 30 2011, was calculated based on the difference in the 2008 OEB-approved load forecast and a baseline volume of 12,000 kW, based on 9,000 kW, being the load established during the Subject Customer's shutdown, adjusted by an additional 3,000 kW for the announced startup of a small portion of the Subject Customer's operations. The total forgone revenue for the period of May 1, 2008 through April 30, 2011 was calculated by Horizon Utilities to be \$2,850,486. This represented a total of \$744,824 for the 2008 rate year (May 1, 2008 – April 30, 2009); \$1,049,430 for the 2009 rate year (May 1, 2009 – April 30, 2010); and \$1,056,232 for the 2010 rate year (May 1, 2010 through April 30, 2011).⁵
10. The Rate Rider will re-establish a significant portion of Horizon Utilities' OEB-approved Large User distribution revenue requirement that is required to carry on its operations and that is not being realized due to the unforeseen and significant reduction in the Subject Customer's activities in the Horizon Utilities service area.

⁴ See Horizon Utilities' responses to Board Staff interrogatories #2 and #9. See also Tr. Vol.1, pp. 35-36.

⁵ Manager's Summary, September 3, 2009, page 17, para. 2.6, Table 3.

11. Horizon Utilities also requested that it be permitted to establish a variance account to track the difference between the anticipated distribution revenue from the Subject Customer for the period from July 2009 through April 2011, at a baseline volume of 12,000 kW per month, and the actual amount of distribution revenue received from the Subject Customer during the same period, to be recorded in the variance account 1572, for disposition at a date to be determined.

Updates to the Application:

12. At the time of the Application, based on the best information available to Horizon Utilities,⁶ Horizon Utilities understood that 12,000 kW represented a reasonable estimate of the anticipated demand for the Subject Customer for the July 2009 – April 2011 period. Since the filing of the Application, the Subject Customer's load has increased. In response to Board Staff interrogatory #6, Horizon Utilities provided an updated version of Table 3 of the Manager's Summary that included updated actual demand data for the Subject Customer for the July – October 2009 period. In preparing that revised Table 3, Horizon Utilities also updated the estimated load for the Subject Customer from the 12,000 kW used in the Application to [REDACTED], for the November 2009 – April 2011 period. With those adjustments, the total forgone revenue for the three rate years was reduced to \$2,318,032.⁷ Horizon Utilities provided an updated calculation of its proposed variable distribution rate riders resulting from the updated load estimate as part of its response to VECC interrogatory #4(b).⁸ In both the original Application and the responses to interrogatories, Horizon Utilities assumed an implementation date of January 1, 2010.
13. An oral hearing was conducted by the Board on Thursday, January 28, 2010. During the course of the hearing, Horizon Utilities' witness panel suggested that the Board's rate order would likely not be implemented until April 1, 2010.

⁶ See Horizon Utilities' confidential response to U.S. Steel Canada Inc. Interrogatory No.4

⁷ See Horizon Utilities' response to VECC interrogatory #4.

⁸ See "Updated Revised Table 5", provided in response to VECC interrogatory #4

Horizon Utilities undertook to further update its proposed rate riders to reflect an April 1, 2010 implementation date, so that the forgone revenue would be recovered over a period of thirteen months, rather than the sixteen months initially proposed in the Application.⁹ In responding to Undertaking J1, Horizon Utilities has:

- recalculated both the fixed and variable riders using a twelve month recovery period recognizing that it is more customer-friendly to have this rider come into force coincident with revised rates on May 1, 2010 for the 2010 rate year;
- incorporated the Subject Customer's actual November and December 2009 load data into the calculation; and
- based the forgone revenue estimate for the January 2010 – April 2011 period on the December 2009 actual demand of [REDACTED] an increase over the demand figure used in Updated Revised Table 3 and Updated Revised Table 5 provided in response to VECC interrogatory #4.

14. In order to assist the Board and parties, Horizon Utilities' response to Undertaking J1 included a further updated Table 3 (Calculation of Subject Customer's Actual and Anticipated Distribution Revenue Deficiency), Table 4 (Allocation of Proposed Z-factor Adjustment), Table 5 (Proposed Variable Rate Rider – May 1, 2010 to April 30, 2011) and Table 1 in Appendix B (Proposed Monthly Fixed Rate Rider – May 1, 2010 to April 30, 2011). In addition, the bill impacts for both the variable and fixed riders are attached as Appendix A to the undertaking responses. With these further updates, the total actual (May 2008 – December 2009) and estimated (January 2010 – April 2011) forgone revenue for the three rate years is \$2,191,246.¹⁰

⁹ See Horizon Utilities' response to Undertaking J1

¹⁰ See Horizon Utilities' responses to VECC interrogatory #4 and Undertaking J1.

15. It is important to Horizon Utilities that these adjustments be made. As discussed at the opening of the hearing,

"Horizon acknowledges that it is possible that the subject customer's activities and load in Hamilton may change again between now and the end of April 2011. As with the changes in load to date, there may be increases or decreases in current levels -- excuse me, from current levels. And as with previous changes, any future changes will also be outside of Horizon's control.

Horizon believes that it would be inappropriate to implement the proposed rider and realize a gain in revenue through unanticipated additional load from the subject customer or a further loss in revenue due to further unanticipated load reductions. For that reason Horizon proposed the establishment of a variance account that would track the difference between the anticipated distribution revenue from the customer and the actual amount of distribution revenue received from the subject customer."¹¹

16. Horizon Utilities wishes to emphasize that its purpose in making this Application is simply to recover the material amount of forgone revenue (historical and estimated) related to the Subject Customer. Horizon Utilities' revenues, and particularly its commercial revenues, are materially below those contemplated in its 2008 EDR Application. As noted by Horizon Utilities' Chief Financial Officer, such dramatic commercial declines are due to what has widely been described as a "one in 100 year decline in the economy". For example, as noted at paragraph 2.4 of the Manager's Summary, for the May 2008 – June 2009 period, Horizon Utilities' distribution revenue from its Large User class had decreased by \$1,823,474, of which \$926,075, or 51%, was entirely attributable to the Subject Customer. Horizon Utilities' overall distribution revenue shortfall for the 2008 rate year was approximately \$2.8 million.¹²

Horizon Utilities' Application meets the Board's Z-factor eligibility criteria.

17. In making this Application, Horizon Utilities has considered the OEB's initial Electricity Distribution Rate Handbook; the July 14, 2008 *Report of the Board on*

¹¹ Tr. Vol.1, at p.24

¹² See Horizon Utilities' response to VECC interrogatory #5(a).

3rd Generation Incentive Regulation for Ontario's Electricity Distributors (the "3GIRM Report"); and the September 17, 2008 *Supplemental Report of the Board on 3rd Generation Incentive Regulation for Ontario's Electricity Distributors* including Appendix B: Amended Filing Guidelines, Z-Factors (the "Supplemental 3GIRM Report") for the recovery of amounts related to unforeseen events. At page 35 of the 3GIRM Report, the Board wrote:

"The Board has determined that the eligibility criteria [Causation, Materiality and Prudence, addressed at pages iv and v to the Appendix to the 3GIRM Report and pages vi and vii of Appendix B to the Supplemental 3GIRM Report] are sufficient to limit Z-factors to events genuinely external to the regulatory regime and beyond the control of management and the Board."

18. Since the restructuring of Ontario's electricity sector and the rate making regime for Ontario's distribution utilities under the *Energy Competition Act, 1998*, the Board has provided for the treatment of unforeseen or extraordinary events outside of management's control through the application of a Z-factor adjustment. In general, the unforeseen event must be material and the causation clear. The 3GIRM Report and Supplemental 3GIRM Report provide that the distributor must report events promptly to the OEB and must meet three criteria – materiality, causation, and prudence – in order to be eligible for a Z-Factor Adjustment. Horizon Utilities has complied with the OEB's 3GIRM and Supplemental 3GIRM Reports with respect to the recovery of amounts related to unforeseen events as discussed below.
19. Horizon Utilities' Manager's Summary within the Application provides a thorough explanation as to the background to this Application (including a discussion of Horizon Utilities' original 2008 forward test year cost of service rate application) and how Horizon Utilities has complied with the Board's criteria for Z-factor applications.¹³ Those comments remain valid, and Horizon Utilities refers the Board and parties to them. Horizon Utilities does not intend to repeat them here.

¹³ See parts 2 and 3 of the Manager's Summary ("Filing Guidelines and Eligibility Criteria") commencing at p.4.

In short, however, Horizon Utilities submits that it has met the Board's Z-factor eligibility criteria, and that the circumstances that give rise to this Application are, in the words of the Board, "genuinely external to the regulatory regime and beyond the control of management and the Board".

20. Horizon Utilities also submits that the making of adjustments to the Z-factor amount initially claimed is consistent with the Board's approach as set out in its Filing Guidelines. In its comments regarding notice, the Board wrote: "Distributors are expected to report events to the Board promptly and apply to the Board for any amounts claimed under Z-factor treatment with the next rate application. This will allow the Board and any affected distributor the flexibility to address extraordinary events in a timely manner. **Subsequently, the Board may review and prospectively adjust the amounts claimed under Z-factor treatment.**" (Horizon Utilities' emphasis)

21. With respect to the nature of this event as beyond the ability of Horizon Utilities to control, Horizon Utilities refers the Board to the following comments from Mr. Basilio, Horizon Utilities' Senior Vice President and CFO, during cross-examination:

"So management's control, with respect to its business, includes being able to forecast its costs in relation to customers, and that includes some estimation.

So with information available, there is some ability to predict under normal conditions how load may grow, you know, net change in customers, and usually we are not that far off in those predictions.

With respect to what's precipitating a decision in an individual customer's mind to enter or leave the service territory, that is out of our control, but certainly our ability to, again, under normal conditions, control our financial situation, we do have some of that.

But with respect to the subject customer, again, why we're asserting that that is out of our control and that is somewhat unique is it relates to what has widely been described as a one in 100-year financial event that had very broad and sweeping economic implications across the globe.

That is out of our control, and that is somewhat unique compared to the notion of a few residential customers moving in and out of our service territory.”¹⁴

22. Horizon Utilities offers the following summary of its compliance with the Board’s notice requirement and eligibility criteria for the Board’s assistance.

- **Notice**

23. In its Filing Guidelines¹⁵, the Board indicates its expectation that distributors report events to the Board promptly. Horizon Utilities provided notice to the OEB on December 23, 2008 expressing its ongoing concerns regarding the announced shutdowns of three Large User Customers and the consequences of the events and advised the OEB that “The persistence of the Large User shutdowns noted [in the letter] will result in a Z-factor claim by Horizon Utilities.”¹⁶ Subsequent to this notice, in the Spring of 2009, the Subject customer announced that its shutdown would be extended indefinitely.

- **The three eligibility criteria:**

24. The 3GIRM Report sets out three criteria for eligibility for Z-factor adjustments:

Causation – Amounts should be directly related to the Z-factor event. The amount must be clearly outside of the base upon which rates were derived.

Materiality – The amounts must exceed the Board-defined materiality threshold and have a significant influence on the operation of the distributor; and

Prudence – The amount must have been prudently incurred. This means that the distributor’s decision to incur the amount must represent the most cost-effective option (not necessarily least initial cost) for ratepayers.

25. Horizon Utilities has addressed these criteria in the following sections.

¹⁴ Tr. Vol.1, at pp.141-142

¹⁵ Appendix B to the Supplementary 3GIRM Report

¹⁶ A copy of Horizon Utilities’ letter was provided in response to VECC interrogatory #2(a).

- **Causation**

26. As discussed in its Manager's Summary, Horizon Utilities has twelve Large Users operating seven days a week, twenty-four hours a day. This results in a very steady load pattern that is not susceptible to the effects of weather. Horizon Utilities set 2008 distribution rates based on the Large User load forecast derived from 2006 actual quantities. The Subject Customer accounted for 30% of the total Large User load. The Subject Customer's load began to decline in 2007 and then dropped significantly toward the end of 2008 and into 2009. While the Subject Customer's loads have increased since mid-2009¹⁷, and while Horizon Utilities has accounted for these increases in the adjustments to its Z-factor claim, the Subject Customer's loads remain far below the levels on which the 2008 distribution rates were based, and the amount of forgone revenue that Horizon Utilities seeks to recover in this Application, while reduced, remains material at \$2,191,246 (see Materiality, below).
27. Horizon Utilities submits that the shutdown and changes in activities of the Subject Customer and the resulting reduction in distribution revenue, particularly in the context of an extraordinary economic downturn, constitute a single event clearly outside of the Large User load base upon which rates for 2008 and the 3rd Generation IRM period have been set.

- **Materiality**

28. Horizon Utilities' OEB approved distribution revenue requirement for 2008 was \$93,632,000, and its 2009 distribution revenue requirement was \$94,351,000, resulting in materiality thresholds of \$468,160 and \$471,758, respectively.¹⁸ As discussed above, Horizon Utilities' updated values for forgone revenue related to the Subject Customer are \$744,824 for the 2008 rate year; \$791,582 for the 2009 rate year; and \$654,840 for the 2010 rate year, for a total of \$2,191,246. The

¹⁷ See Horizon Utilities' response to Undertaking J1

¹⁸ These figures represent corrections to those provided in paragraph 3.9 of the Manager's Summary – see Tr. Vol.1, pp.31-32

reduction for each of these rate years significantly exceeds the OEB's materiality threshold. The financial impact of this single event on Horizon Utilities is \$2,191,246, which readily meets the Z-factor adjustment materiality criteria.

29. Notwithstanding this loss of revenue, Horizon Utilities must continue to provide a reliable distribution system to the Subject Customer despite its significant reduction in load. The costs of providing distribution service to the Subject Customer, as a member of the Large User customer class, were supported in Horizon Utilities' Cost Allocation Informational Filing submitted to the OEB on March 30, 2007.¹⁹ These costs are substantially fixed and do not cease to exist because of the Subject Customer's decision to indefinitely shut down much of its production. Moreover, Horizon Utilities has an ongoing responsibility to all of its customers to maintain its system in accordance with good utility practice and to provide safe and reliable electricity service.
30. With respect to the portion of the test relating to a significant influence on the operation of the distributor, the evidence indicates that notwithstanding approximately \$700,000 in deferrals of training and development expenditures and deferrals of new hires and the filling of vacant positions,²⁰ Horizon Utilities' 2008 actual OM&A expenditures exceeded 2008 Board-approved OM&A by approximately \$1 million.²¹ Horizon Utilities had taken steps to defer certain 2009 projects valued at approximately \$2.1 million (approximately \$1.5 million in OM&A and approximately \$600,000 in capital) that would not result in significant business or operational risk in the very short term.²² For the most part, these deferrals do not create any permanent savings – rather, they simply postpone necessary expenditures to a subsequent year. In the case of the \$515,000 in Human resources-related deferrals shown in Horizon Utilities' response to Board

¹⁹ See also Horizon Utilities' response to Board Staff interrogatory #2(a).

²⁰ See Horizon Utilities' response to VECC interrogatory #5(b).

²¹ See Horizon Utilities' response to Board Staff interrogatory #4(a) (updated version of Table 1 from EB-2007-0697, Exhibit A, Tab 2, Schedule 4, page 1 of 1).

²² See Horizon Utilities' response to Board Staff interrogatory #5(a).

Staff interrogatory #5(a), approximately \$180,000 of that amount has been reallocated to contracted services.²³ Horizon Utilities had determined through its normal budgeting process that these projects were necessary. They must still be completed soon, otherwise “other projects in the coming years’ budgets will also be delayed and we are concerned that this will eventually lead to greater risks to reliability, customer service and productivity improvements.”²⁴ Horizon Utilities notes that even with these deferrals, its revenue shortfall is not offset. For example, its capital expenditure deferrals of almost \$700,000 in 2009 are outweighed by increases of approximately \$2 million in 2009 capital spending due to increases in reactive maintenance and two significant capital programs going over budget.²⁵

31. As noted in the Application and during the hearing, Horizon Utilities will be filing a forward test year cost of service application later this year for new distribution rates effective May 1, 2011. Horizon Utilities is hopeful that by rebasing it will be able to address the significant loss of load across the utility on a prospective basis, but the forgone revenue for the May 2008 – April 2011 period must also be addressed.
32. While Horizon Utilities acknowledges that the reductions in load and revenue related to the Subject Customer and others have not created a situation in which Horizon Utilities is no longer sustainable, revenue continues to be lost to a degree that could not have been anticipated, notwithstanding mitigation efforts (which represent postponements rather than reductions). Horizon Utilities is adversely affected by this reduction in revenue. Its bank indebtedness has increased by approximately \$30 million in the past year.²⁶ Its requirements for working capital have increased significantly; although the Z-factor application does not seek to recover such increase as might be allocated to the Subject

²³ See Tr. Vol.1, p.155, line 22 – p.156, line 8.

²⁴ Tr. Vol.1, p.38

²⁵ Tr. Vol. 1, pp.57-58

²⁶ Tr. Vol.1, p.62

Customer.²⁷ The amount of financial capacity for future investments will decrease significantly due to the loss of equity against which Horizon Utilities can borrow.²⁸ As Mr. Basilio testified, this situation "...is a detriment to the utility. It is not supportive of a sustainable utility with a view towards the long term."²⁹

- **Prudence**

33. In this case, Horizon Utilities' distribution revenues are far below the OEB-approved revenue requirement. Horizon Utilities' approved distribution revenue is required to finance its investment in capital, operations, and maintenance expenditures in support of the safe and reliable supply of electricity. As discussed in the Application and during the hearing, this event is clearly beyond the control of Horizon Utilities and, as such, beyond the ability of Horizon Utilities to take any prudent action to prevent the indefinite shutdown of the Customer.
34. Horizon Utilities submits that it has acted prudently in deferring certain expenditures which it has determined may be deferred in the very short term without incurring any immediate risk to system reliability or customer safety. Although as noted above, for the most part, none of the expenditures can be eliminated, which means that they will have to be added to future expenditures. The deferrals have been more than offset by unavoidable increases in capital expenditures related to obligations to connect customers and reactive maintenance. Horizon Utilities also submits that it is acting prudently in making this Application, which has minimal impacts on its customers while recovering revenue necessary to maintain the safe and reliable supply of electricity to those customers. Finally, Horizon Utilities is acting prudently in accelerating the filing of its next forward test year cost of service rate application to this year, for implementation in May 2011. While this will not address the loss of revenue for

²⁷ Tr. Vol.1, p.74, lines 18-20

²⁸ Tr. Vol.1, p.64

²⁹ Tr. Vol.1, p.65

the period prior to May 2011, it is hoped that this will address the reduction in load on a prospective basis.

The decline in the Subject Customer's load is a single event.

35. During the course of the hearing, Horizon Utilities confirmed that is seeking to recover forgone revenue both retrospectively and prospectively:³⁰ retrospectively for the May 2008 through December 2009 period (the forgone revenue for this period has a value of \$1,305,887), based on the difference between actual load data for the subject customer (now updated to December 2009) and the load attributable to the Subject Customer in Horizon Utilities' 2008 Board-approved revenue requirement; and prospectively for the January 2010 through April 2011 period (the forgone revenue for this period has a value of \$885,359), using an assumed monthly demand of [REDACTED] reflecting December 2009 data for the Subject Customer.
36. Horizon Utilities acknowledges that events that result in Z-Factor applications are often one-time events (such as ice storms or other natural disasters). In this Application, the Z-factor event effectively consists of both the past reduction in revenue due to a virtual shutdown of the Subject Customer's operations for a sustained period, and the anticipated forgone revenue through the 2010 rate year (as mentioned previously, Horizon Utilities expects to adjust its rates to account for this loss of load for the period beyond the 2010 rate year as part of a 2011 forward test year cost of service application that Horizon Utilities expects to file in August of 2010). Horizon Utilities submits that it is appropriate to treat both the past loss of the Subject Customer's load and the anticipated ongoing reduction of the Customer's load as a single event. Horizon Utilities notes that other types of events that may lead to Z-factor applications, such as changes in tax policy, may have prospective consequences for utilities, and the circumstances of this Application are similar in that respect.

³⁰ Tr. Vol. 1, pp.49-50

37. Moreover, Horizon Utilities submits that a Z-factor application for revenue forgone to date based on actual results, only to be followed by an almost identical application for similar relief based on a set of actuals for a later period, creates unnecessary complexity and a multiplicity of proceedings. Horizon Utilities submits that its proposed variance account provides an appropriate safeguard to ensure that it does not over- or under-recover the revenue lost as a result of the change in the Subject Customer's operations.

The loss of revenue from the Subject Customer is most appropriately allocated across all of Horizon Utilities' customer classes.

38. As discussed in the Manager's Summary,³¹ Horizon Utilities reviewed several methodologies in order to determine an appropriate mechanism to allocate the forgone revenue from the Subject Customer in a just and reasonable manner. As the indefinite shutdown of the Customer is out of the control of any single customer or customer class, Horizon Utilities believes that it is appropriate to allocate the decline in distribution revenue from this single event to all customer classes.
39. In response to Board Staff interrogatory #8, Horizon Utilities elaborated on that statement. Horizon Utilities maintains that the approach to allocating the revenue deficiency should be similar to the methods used to design rates in a cost of service application. Having considered four possible allocation methodologies (Large User class only; Large User and General Service > 50 kW class only; metered customer classes only; and all customer classes), Horizon Utilities confirms that the allocation of the forgone revenue to all customer classes remains the most appropriate approach to the recovery of this revenue, as it is the means by which the forgone revenue would be recovered in a cost of service application.

³¹ Manager's Summary, p.12, para.4.2

40. Because all customer classes are billed on the basis of kilowatt-hours, Horizon Utilities has chosen to use the customer class proportionate share of total kilowatt-hours based on the actual class kWh consumption for the rate period May 2008 to April 2009 as being the best means of allocating the Z-Factor Adjustment. Table 4 of the Manager's Summary set out Horizon Utilities' proposed allocation based on forgone revenue of \$2,850,486.³² The revised Table 4, based on an updated total of \$2,191,246 in forgone revenue, is set out below:

Updated Revised Table 4
Allocation of Proposed Z-factor Adjustment

Customer Class	kWhs	% of kWhs	Z-Factor Amount
Residential	1,621,860,796	27.68%	\$606,497
General Service <50 kW	593,721,422	10.09%	\$221,022
General Service >50 kW	1,921,754,265	32.90%	\$720,966
Large User	1,514,832,589	28.44%	\$623,243
Unmetered & Scattered Load	12,897,864	0.21%	\$4,700
Sentinel Lights	552,351	0.01%	\$215
Street Lighting	39,427,420	0.67%	\$14,603
Totals	<u>5,705,046,707</u>	<u>100.00%</u>	<u>\$2,191,246</u>

41. In its response to Undertaking J1, Horizon Utilities has provided updated calculations of the proposed riders on both a variable and fixed basis. As discussed in the Manager's Summary³³; in its response to Board Staff interrogatory #2; and during the hearing³⁴ however, Horizon Utilities submits that, despite the reduction in load by the Subject Customer, Horizon Utilities' costs of providing distribution services to the Subject Customer have not declined but are in fact fixed. Put simply, the infrastructure servicing the customer does not

³² Manager's Summary, p.13, para.4.3

³³ Manager's Summary, pp.13-14, para.4.4 and 4.6

³⁴ Tr. Vol.1, pp.35-36 and 66-67

change simply because its load declines,³⁵ and even infrastructure that is being used less or is not being used at all still requires maintenance.³⁶

42. The total bill impact, using the Variable Rate Rider, for a Residential customer using 800 kWh per month is 0.33%, and for a General Service < 50 kW customer using 2,000 kWh per month the total bill impact is 0.36%.
43. The total bill impact, using the Fixed Rate Rider, for a Residential customer using 800 kWh per month is 0.25%, and for a General Service < 50 kW customer using 2,000 kWh per month the total bill impact is 0.46%.
44. Horizon Utilities has provided total bill impacts for all customer classes under both the Variable and Fixed approaches, using the updated forgone revenue information, in Appendix A1 (variable) and Appendix A2 (fixed) to Horizon Utilities' February 2, 2010 undertaking responses. As the fixed charge is more consistent with the fixed nature of the costs of serving the Subject Customer, and as the bill impacts resulting from the use of the fixed charge remain minimal, Horizon Utilities submits that it is more appropriate to calculate the Rate Rider as a fixed customer charge.

Accounting Treatment

45. As discussed above, Horizon Utilities recognizes that its Application includes an assumption as to the Subject Customer's load for the period beyond December 2009. Horizon Utilities has proposed to track any differences between the revenue actually recovered from the Subject Customer for the January 2010 – April 2011 period and the estimated revenue based on the assumed load for that period in a variance account.
46. Horizon Utilities notes that both the 3GIRM Report and the Supplemental 3GIRM Report provide for the use of Account 1572, Extraordinary Event Costs, to track

³⁵ Tr. Vol.1, p.36

³⁶ Tr. Vol.1, p.135-136

eligible Z-Factor amounts. The tracking of this difference using Account 1572, for reconciliation at a later date, will ensure that there are no under- or over-recoveries of distribution revenue related to the Subject Customer's load. Horizon Utilities submits that this approach is just and reasonable in respect of both the utility and its customers.

Conclusion

47. The OEB has approved a level of revenue requirement for Horizon Utilities in order that Horizon Utilities may finance its investment in capital, operations, and maintenance expenditures in support of the safe and reliable supply of electricity. The significant reduction of the Subject Customer's load has resulted in Horizon Utilities not realizing its approved distribution revenue requirement to date, and it does not expect to do so through the 2010 rate year. While other commercial and industrial customers' loads have also decreased, Horizon Utilities is seeking only to recover the forgone revenue attributable to the Subject Customer.
48. Horizon Utilities submits that this reduction in load and the resulting reduction in distribution revenue from the Subject Customer are clearly outside of the load forecast used in Horizon Utilities' 2008 EDR Application. Throughout the Application and the proceeding that followed, Horizon Utilities has provided evidence on the impact of the load reduction on Horizon Utilities' distribution revenue, and Horizon Utilities has demonstrated that this event meets all of the OEB's eligibility criteria to qualify for a Z-factor adjustment.
49. Horizon Utilities has proposed Rate Riders that are just and reasonable, and respectfully requests that the Board approve the proposed Rate Riders effective May 1, 2010; and the proposed use of a variance account in respect of the January 2010 – April 2011 period.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 5TH DAY OF FEBRUARY,
2010:

BORDEN LADNER GERVAIS LLP
Per:

Original signed by James C. Sidlofsky
James C. Sidlofsky
Counsel to Horizon Utilities Corporation

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