



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

January 2, 2008

Delivered by E-mail and Courier

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, Ontario
M4P 1E4

Dear Ms. Walli:

**Re: EB-2007-0697
Horizon Utilities Corporation
Application to the Ontario Energy Board (the "OEB") for Electricity
Distribution Rates and Charges as of May 1, 2008 – Response to
Intervenor request for change in OEB-approved written hearing process**

We are counsel to Horizon Utilities Corporation ("Horizon Utilities") with respect to the above-captioned matter.

On October 22, 2007, Horizon Utilities filed with the OEB a detailed and comprehensive Application for Electricity Distribution Rates and Charges effective May 1, 2008, in which Horizon Utilities has limited the average total bill rate impact for each customer classes to less than 3%, with the exception of its Street Lighting, Sentinel Lighting and Backup/Standby Power classes. The typical 1,000 kWh customer will experience a total bill decrease of 0.6%. The OEB issued Procedural Order No. 1 in this proceeding (the "Procedural Order") on December 4, 2007. The Procedural Order confirmed the OEB's decision to dispose of this Application by way of a written hearing, and set out five steps in the proceeding:

1. Intervenors and Board staff wishing information and material from Horizon Utilities that is in addition to the evidence filed with the OEB, and that is relevant to the hearing, were to request it by written interrogatories filed with the OEB and delivered to Horizon Utilities on or before Thursday, December 20, 2007;
2. Horizon Utilities' responses to the interrogatories are to be delivered to the intervenors no later than Wednesday, January 9, 2008;
3. Board staff submissions, if any, are due by Friday, January 25, 2008;

4. Intervenor wishing to make submissions on the Application must file them with the OEB, and deliver them to Horizon Utilities and other intervenors by Monday, January 28, 2008; and
5. Horizon Utilities' response, if any, must be filed with the OEB and delivered to intervenors by Monday, February 11, 2008.

These steps are entirely consistent with the OEB's practice in written hearings.

Interrogatories were received from OEB staff, VECC, Energy Probe, CCC and the School Energy Coalition ("Schools"). The CCC interrogatories were received in the afternoon of December 23, 2007. The Schools interrogatories were received in the afternoon of December 26, 2007. Notwithstanding the late deliveries of these intervenors' interrogatories and the holiday season, Horizon Utilities is working diligently to provide responses to as many of the interrogatories as possible by the OEB's January 9th deadline.

On December 26th, within minutes of delivering the Schools interrogatories, counsel to Schools requested a change in the OEB-approved process. The request seeks a one-day technical conference, followed by up to three days of alternative dispute resolution ("ADR"). The request arises out of "the nature of the applicant's evidence and the issues raised by it", although no "issues" are identified, and counsel to Schools acknowledges that "the application is one of the more thorough the Board has seen." The implication of the request is that if these additional steps are not acceded to, then "given the issues, the size of the revenue requirement, and the size of the rate impacts, [an oral hearing] may otherwise be proposed by some parties depending on the answers to the IRs."

Horizon Utilities strongly opposes Schools' request to change the process for this Application which has already been decided by the OEB. Horizon Utilities offers the following comments in this regard:

- (a) The OEB has already determined that this Application may be disposed of by way of a written hearing. Horizon Utilities believes that the detail provided in the Application and the minimal customer bill impacts have contributed to this finding. Counsel to Schools writes of "the size of the revenue requirement and the size of the rate impacts" as the basis for a possible request for an oral hearing. Horizon Utilities submits that there is nothing in the size of the revenue requirement alone that would warrant an oral hearing – Horizon Utilities is one of the largest electricity distributors in Ontario. As for "rate impacts", as noted above, the bill impacts for relevant rate classes are minimal. As recently as last week, in its Decision and Order in EB-2007-0063, a PILs-related rate adjustment application by Welland Hydro-Electric System Corporation, the OEB rejected submissions by counsel to Schools regarding allegedly significant rate impacts, stating (at page 4 of that Decision) "The Board's practice has also been to consider rate impacts on the total customer bill. In that regard, the impacts of no more than 1.3% in this case are not excessive and no mitigation is required." In that case, the typical 1,000 kWh residential customer will experience a bill increase of 1.2%. As noted above, the

entire Horizon Utilities rebasing Application will result in a total bill decrease of 0.6% for the typical residential customer. Horizon Utilities submits that counsel to Schools has provided no justification for a deviation from the process already established by the OEB, whether that deviation is in the form of a technical conference and ADR or an oral hearing.

- (b) A significant advantage of a written proceeding is in resource and cost savings – an oral hearing requires many days of preparation and hearing time for the Applicant and intervenors, the costs of which are typically borne by the Applicant. For approximately the past month, Horizon Utilities has understood from the Procedural Order that this Application would be disposed of by way of a written hearing. Since interrogatories began arriving on December 13, 2007, and through the holiday season, Horizon Utilities has devoted significant amounts of time and staff resources to preparing its responses to those interrogatories, which now total approximately 400, when multi-part interrogatories are taken into account. Horizon Utilities would be required to divert those resources and undertake a significant amount of work within a very short time frame to now begin preparing for a technical conference/ADR or an oral hearing. There is simply no basis in this case for the imposition on the Applicant of many thousands of dollars in additional intervenor costs (and additional time and costs for Horizon Utilities itself) for days of oral proceedings, whether in the form of a technical conference/ADR or an oral hearing (or perhaps even all of those, as the prospect of an intervenor request for an oral hearing will likely exist even with an ADR process). As noted above, no legitimate justification has been provided for a deviation from the process already established by the OEB.
- (c) Beyond this Application alone, Horizon Utilities, the OEB and the parties are labouring under huge demands on their time and resources. Horizon Utilities is currently involved in the OEB's rate design and third generation IRM initiatives, and is working on the implementation of its Smart Meter program to ensure that the Ontario government's smart meter-related objectives are met. Among other matters, the OEB will be conducting proceedings on several critical matters in the coming months – among them, the IPSP; the regulation of Ontario Power Generation's heritage assets; and Hydro One Networks Inc.'s distribution rate case. Horizon Utilities submits that the OEB should not be adding oral procedural steps in a written proceeding and increasing the regulatory burden of all parties unless it is absolutely necessary, and that is not the case here.
- (d) The OEB has allowed intervenors to request additional relevant information; Horizon Utilities will provide such relevant information; and final submissions should follow. As noted above, no "issues" have been identified by any intervenor with respect to the Application and Horizon Utilities' evidence, and there is simply nothing in the request that would



warrant prolonging the processing of this Application and adding significantly to its cost.

For all of the foregoing reasons, Horizon Utilities respectfully requests that the OEB maintain the process it has already decided upon in the Procedural Order – a process consistent with the OEB's practice in written hearings and commensurate with the minimal bill impacts arising out of this Application. 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

cc: Max Cananzi, Horizon Utilities Corporation
John Basilio, Horizon Utilities Corporation
Cameron McKenzie, Horizon Utilities Corporation
Intervenors of Record

::ODMA\PCDOCS\TOR01\3714645\4