



BORDEN
LADNER
GERVAIS

February 4, 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 Schools
request for change in OEB-approved written hearing process**

Introduction:

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-approved process and the timeline for this proceeding:

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 were to be delivered to the intervenors no later than Wednesday, January 9, 2008;
3. Board Staff submissions, if any, were due by Friday, January 25, 2008;
4. Intervenors wishing to make submissions on the Application were to 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, was to 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") between December 13, 2007 (OEB Staff) and December 26, 2007 (Schools). 158 interrogatories were received, many of which contained multiple parts, for a total of approximately 400 questions. Between January 15th and January 28th, Horizon Utilities filed almost 1,400 pages of detailed responses to the interrogatories. Both the Application and the responses are comprehensive.

In its letter dated January 22, 2008, the OEB wrote:

"On December 4, 2007, the Board issued Procedural Order No. 1 in the above matter in which it identified the dates for filing interrogatories, responses to interrogatories and submissions. By way of letter dated January 11, 2008 Horizon Utilities Corporation requested an extension to the date for filing responses to certain interrogatories.

As a result of the delayed filing of interrogatory responses, the current dates for staff, intervenor and reply submissions will need to be changed. The Board will be issuing a new Procedural Order with revised dates for filing submissions within 10 days of the filing of the outstanding interrogatory responses. These interrogatory responses are now expected by Friday, January 25, 2008."

In our January 28, 2008 cover letter to Horizon Utilities' final set of interrogatory responses (to the interrogatories of Schools), Horizon Utilities offered the following comments with respect to the completion of this proceeding:

"With the interrogatory responses now complete, there are three remaining steps in this proceeding: the filing of OEB Staff submissions; the filing of intervenor submissions; and the filing of Horizon Utilities' reply submissions. While we understand that the OEB will fix the revised dates for these steps in a new Procedural Order, Horizon Utilities offers the following suggested deadlines for these final items. We have attempted to maintain the periods of time allowed in Procedural Order No.1 for each step.

- OEB Staff submissions would be due Wednesday, February 13, 2008;
- Intervenor submissions would be due Tuesday, February 19, 2008; and
- Horizon Utilities' reply submissions would be due Tuesday, March 4, 2008."



Schools' attempts to alter the OEB-approved process in this proceeding:

As we advised you in our letter of January 2, 2008, a copy of which accompanies this letter for your reference, on December 26th, within minutes of delivering the Schools interrogatories, counsel to Schools requested a change in the OEB-approved process. The request sought a one-day technical conference, followed by up to three days of alternative dispute resolution ("ADR"). That request arose out of "the nature of the applicant's evidence and the issues raised by it", although no "issues" are identified, and counsel to Schools acknowledged that "the application is one of the more thorough the Board has seen." The implication of the request was that if these additional steps were 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 opposed Schools' request to change the OEB's process for this Application, for the reasons set out in our letter of January 2nd. On January 3rd, Mr. Antonopoulos of OEB Staff sent an e-mail message to the parties which stated, in part:

"I understand that the timing is tight between the filing of responses and the written submission phase, but I think it may be advantageous for everyone concerned to wait until parties have had a chance to review the responses before requesting additional discovery or testing of the evidence. As you know, the Board can add additional steps to any written hearing process and can even ramp up a written proceeding (in part or in whole) to an oral one. Having already decided to proceed by way of written hearing, the Board will be assisted in making a decision on any change to the process if parties have a good understanding of the outstanding information (if any) so that they will be in a better position to communicate and explain the nature of such information to the Board.

May I therefore suggest that following your review of Horizon's responses to the interrogatories (most of which should be filed by January 9th - as noted by Horizon in yesterday's letter) that you file a formal written request with the Board should you feel that a change in process is still warranted. This way, the Panel can consider all positions. As of this writing, the Panel has access only to Horizon's position. It would be helpful to the Panel if you could provide some examples, identifying say two or three main concerns that you feel need further review and why Horizon's responses were not sufficient."

Now, however, in an e-mail message dated January 31, 2008, counsel to Schools has acknowledged the "quite full responses to the IRs" and abandoned the previous request for a technical conference, but has again requested a two- to three-day ADR session and has again raised the possibility of an oral hearing (we note that, contrary to the January 31st message, no oral hearing was requested in December – as noted above and in our letter of January 2nd, the implication of the request for a technical conference and ADR was that if these additional steps were not acceded to, then an oral hearing may otherwise be proposed by some parties depending on the answers to the IRs). As was the case in December, and despite Mr. Antonopoulos' suggestion that parties identify (a) outstanding information and (b) concerns that they feel need further review, counsel to Schools has



BORDEN
LADNER
GERVAIS

not identified any outstanding information or issues related to Horizon Utilities' Application or its responses to interrogatories, and as such, Horizon Utilities submits that there is simply no basis for Schools' request.

Horizon Utilities urges the OEB to reject Schools' request:

Horizon Utilities offers the following comments in this regard. These comments are supplementary to those in our letter of January 2nd, and Horizon Utilities continues to rely on those comments, which remain applicable.

- (a) As noted previously, 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, and that its detailed answers to the interrogatories support it. As Horizon Utilities has previously submitted, there is nothing in the size of its revenue requirement alone that would warrant an oral hearing – Horizon Utilities is one of the largest electricity distributors in Ontario. The OEB's practice, as confirmed in its December 24, 2007 Decision and Order in EB-2007-0663 with respect to Welland Hydro-Electric System Corporation, is to consider total bill impacts, and in Horizon Utilities' Application, the bill impact for a 1,000 kWh Residential customer is a decrease of 0.6%. Neither Schools' request of December 26th nor its request of January 31st contains any justification for a deviation from the process already established by the OEB, whether that deviation is in the form of an ADR process or an oral hearing.
- (b) As previously discussed, written proceedings save resources and costs compared to oral hearings, which require many days of preparation and hearing time for the Applicant and intervenors, the costs of which are typically borne by the Applicant. Similar time, resource and cost commitments arise out of ADR processes, with no guarantee that certain intervenors will not press for an oral hearing even after the ADR, all at Horizon Utilities' cost. Horizon Utilities is concerned that Schools' request for the imposition of additional oral steps in this proceeding – a request that is not supported by any identification of outstanding information or matters that require further review – is inappropriate and represents conduct that will tend to lengthen unnecessarily the duration of this process. As you are aware, this is among the factors that the OEB may consider under Rule 5.01 of the OEB's *Practice Direction on Cost Awards* in determining the amount of a cost award to a party. Horizon Utilities and its staff have worked diligently since last summer to prepare a complete, comprehensive Application that minimizes customer impacts and in many cases reduces customer bills; and to answer all OEB Staff and intervenor interrogatories. Horizon Utilities has understood from the Procedural Order that this Application would be disposed of by way of a written hearing, and there is still no legitimate justification for a deviation from the process already established by the OEB. Nothing in the interrogatories or the responses, or in Schools' request, would reasonably



BORDEN
LADNER
GERVAIS

lead one to conclude that this matter should proceed in any way other than that already determined by the OEB. As submitted in our letter of January 2nd, there is still no basis in this case for the imposition on Horizon Utilities 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 an ADR or an oral hearing or both.

- (c) Horizon Utilities reiterates its comments of January 2nd with respect to the huge time and resource demands, beyond those of this Application alone, under which Horizon Utilities, the OEB and the parties are labouring. As mentioned previously, 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 is conducting proceedings on several critical matters – among them, the IPSP; the regulation of Ontario Power Generation's heritage assets; and Hydro One Networks Inc.'s distribution rate case. Horizon Utilities again 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 has now provided it; 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 again 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 – and adopt the timeline proposed in our letter of January 28th for the completion of this proceeding. 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\3738519\3



BORDEN
LADNER
GERVAIS

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;



BORDEN
LADNER
GERVAIS

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

Copy