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October 10, 2012

BY COURIER AND RESS

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319, 27th Floor
2300 Yonge Street
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: Horizon Utilities Corporation
Service Area Amendment Application
Board File: EB-2012-0047**

We are counsel to Horizon Utilities Corporation ("**Horizon Utilities**") in respect of the above-noted matter.

I am writing to confirm that it is the intention of Horizon Utilities to continue with its service area amendment ("**SAA**") application involving the area as noted in the application, as filed. In addition, it is Horizon Utilities' intention to amend its application to include several other nearby and related areas which, as a matter of regulatory efficiency, should all be considered contemporaneously.

As noted in Horizon Utilities' Application, six phases of the Summit Park development in the area of the current SAA were the subject of consent or unopposed applications for a SAA to Horizon Utilities' service territory. Summit Park Phase 7 (the "**Project**") is immediately contiguous to these phases. It has been the expectation and belief of Horizon Utilities, and presumably Multi Area Developments Inc. (the "**Developer**"), that Horizon Utilities would continue to provide distribution services as future phases of the development are undertaken. Indeed, the Developer filed a letter in support of Horizon Utilities' SAA, which was included in the Application.

However, given the time that it ultimately took Hydro One Networks Inc. ("**HONI**") to respond to the Developer's request for an Offer to Connect ("**OTC**") which could be used for comparison purposes, it is our understanding that the Developer became concerned about the adjudication process, believing that the unexpected opposition to the SAA would lengthen the process and cause the Project to be delayed. Horizon Utilities understands that the Project currently has temporary power to the model homes and sufficient power for construction purposes. Consistent with the Developer's concerns, Horizon Utilities requests that the within Application be expedited so that the SAA process does not cause any delay with respect to the Developer's plans.

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Horizon Utilities is concerned by the recent actions which have been taken by HONI which are inconsistent with the continuation of Horizon Utilities' SAA Application. It has just come to Horizon Utilities' attention that HONI is undertaking work intended solely to serve the Project. HONI has been upgrading poles and insulators and is preparing to make an interconnection to the Nebo M3 or M4 express feeders located within Horizon Utilities' service area and which currently exclusively serve Horizon Utilities. Horizon Utilities is of the view that additional loading on any one of these feeders will worsen Horizon Utilities' 10-day limited time rating.

It is apparent to Horizon Utilities that this recent work undertaken by HONI is taking place, to a large extent, in Horizon Utilities' service area. Indeed, HONI has requested that Horizon Utilities interrupt service to several of its customers on Tuesday, October 16, 2012 to facilitate HONI's work. This work appears to be contrary to Clause 6.3.4 of the *Distribution System Code* which prohibits a distributor from building any part of its distribution system in another distributor's licensed service area unless three preconditions are met. Horizon Utilities submits that these preconditions do not exist and that the prohibitions of Clause 6.3.4 apply. Horizon Utilities therefore requests that the Ontario Energy Board ("**Board**") direct HONI to discontinue the work until a determination is ultimately made by the Board in respect of the within Application.

In support of this request, Horizon Utilities attaches a Notice of Motion for, *inter alia*, an Order requiring HONI to cease work immediately until the within Application has been fully processed by the Board. The Motion further seeks an Order requiring HONI to provide a detailed breakdown of all of its cost estimates and revenue projections used for the purposes of HONI's OTC. To the extent that the costs of the current work and any planned future work intended to provide service to the Project have not been included in HONI's economic evaluation, Horizon Utilities requests an Order requiring the production of the same.

To facilitate the expeditious consideration of this matter, Horizon Utilities also requests that the Board Panel hearing the application schedule a date to attend at the location of the SAA and take a view of the physical assets and the location and proximity of relevant existing and planned residential and commercial developments. Horizon Utilities submits that it is difficult to adequately depict in a photographic record or on a map the various relevant issues which are in play. It is believed that if the Board proceeds with an inspection of the area of the SAA, it will help inform the Board not only in respect of the within Application but potentially in respect of future applications given the historic anomalies and legacy issues which continue and must ultimately be addressed. Horizon Utilities therefore respectfully requests that the Board schedule a date to take a view of the proximity of the SAA. In this regard, Horizon Utilities will work cooperatively with HONI to develop an agreed upon itinerary and protocol for the site visit.

Horizon Utilities will be filing amendments to its SAA application in the very near future. In the interim, it has put HONI on notice of its Motion and its opposition to the work that HONI is undertaking by means of a letter dated October 10, 2012, a copy of which is attached.

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Please forward future communications to the following:

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Yours truly,

AIRD & BERLIS LLP

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Dennis M. O'Leary

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ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act 1998, S.O. 1998, c. 15 (Schedule B)*;

AND IN THE MATTER OF a Service Area Amendment
Application by Horizon Utilities Corporation.

NOTICE OF MOTION BY HORIZON UTILITIES CORPORATION

THIS MOTION is brought by Horizon Utilities Corporation ("**Horizon Utilities**"), the Applicant in the above Application. Horizon Utilities requests that this Motion be heard on a date and at a time set by the Ontario Energy Board ("**Board**").

Introduction

1. This Application is for a service area amendment ("**SAA**") which would expand Horizon Utilities' service territory to include Phase 7 of the Summit Park development (the "**Project**"). This development contemplates the construction of additional residential homes and two schools. There have been six prior successful SAA applications by Horizon Utilities in respect of the previous phases of the development. Indeed, in the immediately prior four phases of the Summit Park development, Hydro One Networks Inc. ("**HONI**") confirmed, as recently as March 2009, that "it would be more economically efficient for Horizon Utilities to service the proposed development."¹ The fact is that Phase 7 is simply an eastward expansion of the Summit Park development. It is both rational and efficient for Horizon Utilities' service territory to be amended to provide service to this phase of the development.

¹ Decision and Order of the Board, EB-2009-0035, p. 2

2. Despite the present Application being live before the Board, and in spite of Horizon Utilities updating its Application in mid-August 2012, Horizon Utilities was surprised to learn that HONI is undertaking work (“**Work**”) largely within Horizon Utilities’ service territory, to provide a connection between certain express feeders which fully serve Horizon Utilities and the lands which are the subject of the within Application. The work being undertaken by HONI is clearly intended solely for the benefit of the Project and is proceeding without regard to Horizon Utilities’ Application and the principles enunciated by the Board in the Combined Proceeding, RP-2003-0044² (“**Combined Proceeding**”).

Relief Sought

3. Horizon Utilities seeks the following relief:

- (a) an Order requiring HONI to immediately cease all Work (more specifically described below) until the Board has made a final Decision and Order in the within Application;
- (b) a Declaration that all or certain aspects of the Work are being undertaken in Horizon Utilities’ service territory and that the Work may negatively impinge upon Horizon Utilities’ operations, contrary to Section 6.3.4 of the *Distribution System Code* (“**DSC**”), and an Order requiring HONI to immediately permanently cease undertaking all Work which so impacts Horizon Utilities’ operations;
- (c) a Procedural Order requiring HONI to provide a detailed breakdown and description of the costs and revenues used by HONI for the purposes of its Offer to Connect (“**OTC**”) made to Multi-Area Developments Inc. (“**Multi-Area**”) dated July 27, 2012. Without limiting the generality thereof, the detailed breakdown

² Decision with Reasons, February 27, 2004, RP-2003-0044

should include all costs and revenue estimates, assumptions used, and the details of how any capital contribution required from Multi-Area was calculated and all details related to the Work. To the extent that any portion of the Work, current and future, has not been included in the economic evaluation undertaken by HONI for the purposes of its OTC to Multi-Area, a detailed breakdown of these costs is also requested;

- (d) a Procedural Order scheduling a date for a site visit to permit the Board to take a view of the Summit Park development and environs for the purposes of viewing Horizon Utilities' Application in the context of prior Summit Park development phases, the current assets available to HONI and Horizon Utilities to serve the Project, and to examine the physical proximity of Horizon's and HONI's assets for the purpose of determining the appropriateness of granting approval to the within contested Application.

Grounds in Support

4. Horizon Utilities filed the within SAA Application on or about June 15, 2012. In support of this Application, Multi-Area requested from HONI a comparison OTC. Upon the payment of \$14,000 by Multi-Area, HONI generated an OTC dated July 27, 2012, which Horizon Utilities received on August 8, 2012. By a letter dated August 10, 2012, Horizon Utilities updated its Application and attached a copy of the HONI OTC. By a letter dated September 6, 2012, Horizon Utilities requested that the Board issue a Notice of Application and Procedural Order in this matter as soon as possible.

5. To Horizon Utilities' surprise, it received a letter from Multi-Area dated September 10, 2012, stating that it had accepted HONI's OTC, notwithstanding that Multi-Area had earlier

requested that Horizon Utilities provide service for the Project and had provided its support for the within Application. With the consent of Multi-Area, the Board has granted a SAA to Horizon Utilities in respect of the prior six phases of the Summit Park development. Phase 7 is a natural extension eastward of the development and of Horizon Utilities' service area. Horizon Utilities understands that Multi-Area's letter of September 12, 2012 was a product of the time HONI took to provide its comparison OTC and Multi-Area's concern that the processing of the within Application might delay its development plans.

6. By a Decision and Order dated November 23, 2006, in EB-2006-0216, the Board noted in respect of Horizon Utilities' Application for a SAA in respect of Summit Park Phase 3 that:

"Hydro One supported this service area amendment application. In its letter of support, Hydro One stated that Horizon has an existing distribution system already constructed in Summit Park Phases 1 and 2 (which is contiguous with Phase 3)." (page 2)

7. Horizon Utilities notes that Summit Park Phase 3 includes lands immediately west of the Project.

8. In EB-2006-0311, the Board notes in its Decision and Order dated January 5, 2007 in respect of Summit Park Phase 4 that:

"Hydro One supported the service area amendment application. In its letter of support, Hydro One stated that Horizon has an existing distribution system already constructed in Summit Park Phases 1, 2 and 3 (which is contiguous with Phase 4), whereas Hydro One would need to extend its 27.6 kV circuit approximately 2 kilometers in order to service Phase 4. Hydro One stated that Horizon would be the most cost-effective distributor for the area that is the subject matter of Horizon's application." (page 2)

9. Horizon Utilities notes that Summit Park Phase 4 involves lands which are immediately west and contiguous to Summit Park Phase 7, which are the lands which are the subject of the current SAA.

10. By a Decision and Order dated March 13, 2009, in EB-2009-0035, which dealt with Summit Park Phase 5 lands located immediately south and contiguous to the Project, the Board noted that:

“Hydro One supports the proposed service area amendment and confirms it would be more economically efficient for Horizon to service the proposed development.” (page 2)

11. In a Decision and Order dated March 13, 2009 in EB-2009-0059, approving a SAA in favour of Horizon Utilities in respect of a proposed SmartCentres commercial development located a short distance east of the Project, also along the south side of Rymal Road, the Board noted that:

“The proposed development is contiguous to an existing commercial development known as the Brooks of Rymal/20 which is currently serviced by Horizon. Horizon submits that it has surplus capacity on its existing distribution facilities bordering the development to supply the proposed load for the SmartCentres Commercial development, while Hydro One’s distribution facilities in the proposed amendment area are not sufficient to supply the load for the proposed development without additional investment. Hydro One supports the proposed service area amendment and confirms that it would be more economically efficient for Horizon to service the proposed development.” (page 2)

12. Each of the above-noted SAA Applications granted by the Board has resulted in a near complete encirclement of the Summit Park Phase 7 lands by Horizon Utilities’ service territory. With the exception of lands immediately east and contiguous to the Project which are undeveloped lands that will form a future phase of the Summit Park development, the Project is surrounded by Horizon Utilities’ service territory.

13. Despite these earlier SAA Applications by Horizon Utilities and the fact that the within Application is currently before the Board, to Horizon Utilities’ surprise, it learned on October 4, 2012, as a result of a site visit, that HONI has commenced work to construct the “27.6 kV circuit,

approximately two kilometers in order to serve [the Project]”.³ While the Work has not been completed, it is clear to Horizon Utilities what HONI’s current plans are. It is also clear that a material portion of this Work has and is planned to occur within Horizon Utilities’ service territory and will impinge upon Horizon Utilities’ distribution operations. HONI has replaced or caused to be replaced numerous poles, conductors and insulators, and added new arms and wires in the approximate two-kilometer stretch between the Project and its proposed interconnection with the Nebo M3 and/or M4 feeder which currently exclusively serve Horizon Utilities. These feeders are currently at full capacity. Indeed, HONI has confirmed in a Capital Cost Recovery Agreement with Horizon Utilities that:

“The 230/27.6 kV Nebo Transformer Station (TS) supplies Horizon Utilities and Hydro One Distribution at 27.6 kV. The 27.6 kV load at Nebo TS has exceeded the capacity of the 215.5/27.6 kV facilities. More specifically, the BY bus at Nebo TS has exceeded the 10 day LTR. The two 27.6 kV feeders designed for Horizon Utilities are the M3 and M4 feeders which are connected to the BY bus.”

14. Accordingly, Horizon Utilities is of the view that HONI’s interconnection with either the M3 or M4 feeder will negatively impinge upon its distribution operations. Additionally, Horizon Utilities is surprised that HONI would undertake the Work, which is clearly intended to solely provide service to the Project, in the face of a live application before the Board. If Horizon Utilities’ Application for the SAA is granted, it will likely result in all or a material portion of the Work completed to date being stranded. It is submitted that it is completely inappropriate for an incumbent utility to proceed to incur costs that would not be incurred in the event that an application before the Board is granted. For these reasons, Horizon Utilities submits that the Board should immediately order HONI to cease and desist.

³ HONI’s letter to the Board referenced in the Board’s Decision and Order, EB-2006-0311, dated January 5, 2007.

15. This includes work HONI plans for Tuesday, October 16, 2012 for which it has requested that Horizon Utilities cause a service interruption of four hours to several of its customers to facilitate this work. More specifically, HONI has requested a work permit for Tuesday, October 16, 2012 in order to string new 556 MCM conductor in proximity of Horizon Utilities' own 13 kV (3541X circuit). While a permit was issued in the normal course of business by Horizon Utilities on October 5, 2012 (Job No. 25705), it is important to understand that this request for a work permit involves work by HONI on the approximately 2 kilometer 27.6 kV circuit which is intended to serve the Project. Horizon Utilities submits that this work should not proceed and its customers inconvenienced under the circumstances noted above. Horizon Utilities is currently taking all reasonable steps to rescind the work permit and notify HONI that its planned work may not proceed.

16. In Horizon Utilities' update to the within Application, which was submitted to the Board under a letter dated August 10, 2012, Horizon Utilities provided a copy of HONI's OTC and frustratingly attempted to make a comparison between HONI's OTC and Horizon Utilities' OTC.

As noted in the August 10, 2012 letter, at page 6:

"A direct and fair comparison of the two OTCs is not possible for a number of reasons. In particular, Hydro One has not included upstream or expansion costs in its OTC. Since Hydro One has not included these costs in its OTC, such costs will have to be socialized across all Hydro One customers. As identified in 7.2.1(a), not only has Hydro One not included such costs in its OTC, but it also has not included any and all civil costs. Horizon Utilities' OTC is inclusive of all costs to service this development. Additionally, Hydro One's transfer price to the Customer appears extremely low due to this lack of inclusion of the civil costs."

17. The above submission was made at a time when the details of HONI's intentions to construct a new 27.6 kV circuit to the Project were not known. Having recently reviewed the Work completed to date and taking into consideration the balance of the work required to construct this new circuit, it is apparent that HONI's OTC does not fully account for the costs of

the Work. In addition, HONI's OTC does not provide any details in respect of anticipated future revenues and O&M costs and any future capital project plans to provide service to the Project. It is submitted that a fair comparison of the economics of the two utilities providing service to the Project cannot be undertaken until a detailed examination occurs in respect of HONI's OTC and all costs to provide service to the Project are identified and included. It should be noted that despite Horizon Utilities' above submission, HONI has not provided any additional information or detail about its economic evaluation and OTC.

18. Instead, HONI has proceeded, apparently on an accelerated timetable, and without notice to the Board, Horizon Utilities and the School Energy Coalition of its intention to construct its approximately two kilometer 27.6 kV circuit. It is believed that the School Energy Coalition is an intervenor in this proceeding because the Project contemplates the construction of two schools, and these future customers have an interest in the outcome of this Application.

19. While every effort has been made to fairly describe the environs surrounding the Project, it is the belief of Horizon Utilities that it is difficult to fully appreciate all of the issues in play in the vicinity of the SAA without a personal attendance to take a view of the environs. There are numerous physical, geographic, political and legal matters which need to be observed and considered for the purposes of the Board understanding the context of Horizon Utilities' SAA Application. As well, it should be recognized that the within Application is the ninth application dealing with the Summit Park development and contiguous lands. These applications come at a significant cost to Horizon Utilities, the developer, HONI, the Board, and other stakeholders. It is submitted that a site visit by the Board to take a view would inform the Board in respect of the balance of the Summit Park lands and neighbouring properties with the goal of addressing anticipated future SAA applications on a more holistic basis.

20. Horizon Utilities submits that the Board should immediately issue an Order, even if only on an interim basis until the site visit occurs, requiring HONI to cease the Work. Horizon Utilities further submits that neither its ratepayers nor HONI's should be at risk of paying for the cost of the Work which may be rendered redundant in the event that the Board approves Horizon Utilities' current Application. It is the understanding of Horizon Utilities that the model homes constructed at the Project have sufficient power and that there is sufficient temporary power for construction purposes. Horizon Utilities is unaware of any "emergency" which requires the approximate 2 kilometer 27.6 kV circuit to be constructed immediately.

Documents in Support of the Motion

- (a) Horizon Utilities SAA Application, including all updates and amendments;
- (b) This Notice of Motion and such further and future filings in support as Horizon Utilities deems appropriate;
- (c) Such further and other material as counsel may advise and the Board permit.

Dated: October 10, 2012.

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