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BY EMAIL and RESS

October 17, 2012
Our File No. 20120047

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
M4P 1E4

Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2012-0047 – Horizon Utilities Service Area Amendment

We are counsel for the School Energy Coalition. We have sought intervenor status in this proceeding, although the Board has not approved that request. However, in light of the request of Hydro One to have the proceeding terminated before it has begun, we are writing this letter to express our concern about that proposal. We request the Board's indulgence in allowing our submissions, notwithstanding that we are not yet confirmed as intervenors.

SEC believes that the Board should hear the application, and in the meantime should advise both parties that amounts expended with the purpose of serving the customers in question will be at the risk of the utility and its shareholders until the Board has made a determination in this matter.

Overall Issue

This is one example of what may be an increasing problem going forward. As urban areas expand, they can outstrip the boundaries of either the municipality, or the LDC serving that urban area. Where that is the case, it is sometimes better for the customers if they are served by the urban LDC, even though they are actually in the service area of an adjacent LDC (often Hydro One).

The reason SEC is involved in this Application in the first place is that we have seen numerous instances of schools that are, to all intents and purposes, part of an urban area, but are

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nonetheless served by the abutting rural distributor. In many cases, their distribution bills are higher as a result. Further, their service quality, and the utility's responsiveness, are not necessarily better, because they are often geographically closer to the service centre of the urban LDC across the "border".

In our view, LDCs should be working together co-operatively to ensure that the LDC that supplies any new load near a service boundary is the one best suited to provide that service to the affected customers. In all of these cases, the LDCs should have as their primary goal the best interests of the customers.

The DSC is intended to promote this result, and in fact it is rare that SAA applications are contested. It was the fact that this Application has been contested, and in an area that is essentially part of a growing Hamilton, that caused us to intervene.

Fact-Based Issues

In the Horizon Motion, the Hydro One letter and submissions of October 15, 2012, and the Horizon reply letter of October 16, 2012, numerous allegations are made by the two LDCs against each other. Virtually all of these allegations are allegations of fact. Some of them are inconsistent with each other.

Further, many of the alleged facts have the potential, even if true, to be less than full disclosure of what actually happened. For example, Hydro One alleges that Horizon approved and agreed to its work in Horizon's service territory to service Phase 7. Who at Horizon "agreed"? Was it a junior employee who only deals with routine requests, and would have no knowledge of a pending SAA application? Or, was it a senior executive whose agreement could be considered binding on Horizon? Similarly, Horizon alleges that Hydro One's OTC fails to include all costs caused by the development, potentially meaning that some costs will be socialized to other ratepayers when they should be part of this cost analysis instead. What additional work has been done, and why, if at all, should it be considered to be project-specific rather than general reinforcement?

There are many examples like this. In a Motion, or in these essentially informal submissions from parties, the Board is not in a position to determine the truth. That requires some form of discovery, and probably (given the nature of the disagreements) an oral hearing so that the Board and parties can question the witnesses and get to the truth.

The Position of the Developer

This factual uncertainty extends to what may be the key issue: Does Horizon actually have a potential customer in Hydro One's service territory?

Horizon says they had a signed OTC with the developer, but then Hydro One "convinced" the developer - in the face of a live application before the Board - to withdraw and sign up with Hydro One instead. The implication is that potential regulatory delays were brought to the attention of the developer, and under that pressure the developer accepted a less favourable deal in order to get it done sooner and avoid being caught in the crossfire.

On the other hand, Hydro One alleges that Horizon obtained their OTC from the developer without advising him that Hydro One might also be interested in providing the service, and in effect "misled" the developer into thinking that Horizon was the incumbent LDC.

If either of these allegations is true, the Board should, in our view, be concerned. Customers should not be put in the middle of disputes between LDCs. LDCs who cause this to happen, without consideration of the best interests of the customers, should be required to face their (unhappy) regulator to explain themselves.

Recommendation of SEC

What is of primary concern is that none of this back and forth between the utilities appears to focus on the best interests of the customers.

To resolve the current situation, SEC asks the Board to consider taking the following steps:

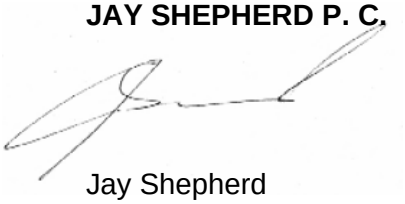
1. Determine that, at this point, neither signed OTC is determinative, and the Horizon SAA application will proceed on the merits. This should in our view include discovery of both Hydro One and Horizon (by each other and by SEC and any other intervenors), and potentially an oral hearing to get the facts straight.

2. Advise both LDCs that, while the Board is not ordering them to stop work on their projects affecting the area in dispute, any spending before a determination by the Board will be at the risk of the utility and its shareholders. If the Board's decision is that one of the LDCs should serve this area, the other may have wasted the money they spend on these capital improvements.

SEC is aware that the developer in this case may experience a delay as a result of this approach, and that is a legitimate concern. However, in our view the harm that arises – both in this case and in future cases where other LDCs joust about service areas – if the Board does not address the issue, is sufficiently serious to warrant the short delay this developer may experience.

All of which is respectfully submitted.

Yours very truly,
JAY SHEPHERD P. C.



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cc: Wayne McNally, SEC (email)
Interested Parties