



EB-2012-0047

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

AND IN THE MATTER OF an application under section 74 of the Act by Horizon Utilities Corporation for a licence amendment.

AND IN THE MATTER OF a motion by Horizon Utilities Corporation.

AND IN THE MATTER OF a motion by Hydro One Networks Inc.

NOTICE OF APPLICATION AND NOTICE OF MOTIONS AND PROCEDURAL ORDER NO. 1

November 21 2012

THE APPLICATION

Horizon Utilities Corporation (“Horizon”) filed an application on June 18, 2012 with the Ontario Energy Board under section 74 of the *Ontario Energy Board Act, 1998* (the “Act”) for an order of the Board to amend Horizon’s licensed service area in Schedule 1 of its electricity distribution licence ED-2006-0031.

Horizon seeks to expand its distribution service area to include specific lands currently located in Hydro One Networks Inc.’s (“Hydro One”) licensed service area. The lands, described as “Summit Park Phase 7” and being developed by Multi-Area Developments Inc. (“Multi-Area”), are located at the south east corner of Fletcher’s Road and Rymal Road East, in the City of Hamilton and designated as part of Lots 4 and 5, Block 4 of Concession 1 of the geographic Township of Binbrook. The application contains a letter, dated July 24, 2012, from Multi-Area to Horizon, wherein Multi-Area confirmed its request that Horizon supply electricity to Summit Park Phase 7 and its support of Horizon’s service area amendment (“SAA”) application.

Horizon filed additional information on August 17, 2012 in order to complete its application. The Board has assigned file number EB-2012-0047 to the proceeding.

The School Energy Coalition (“SEC”) applied for intervenor status on June 22, 2012 and requested eligibility for cost awards. Multi-Area, being directly affected by the application, also requested intervenor status on October 19, 2012.

On September 11, 2012, the Board received a letter from Multi-Area stating that it had accepted an offer to connect (“OTC”) for Summit Park Phase 7 from the incumbent distributor, Hydro One, and therefore no longer wished to pursue a connection to the applicant, the adjacent distributor, Horizon.

On October 10, 2012, Horizon filed a letter with the Board stating that it intends to continue with its application and that it planned to amend its application to include several other related properties which should be considered contemporaneously.

Horizon filed an update to its service area amendment application on October 24, 2012, making several new SAA requests. Horizon’s amended application consists of the following five parts:

Part I: This Part consists of the original application, amended on August 17, 2012.

New service area amendments to include:

Part II: Three residential homes which were excluded from earlier Horizon SAAs as they were being served by Hydro One at the time. These homes continue to be supplied by Hydro One but are now embedded completely within an earlier phase of the Summit Park residential development. Horizon states that Hydro One sent an email request on September 26, 2012 for a transfer of these customers from Hydro One to Horizon Utilities, but on October 22, 2012, Hydro One orally advised Horizon Utilities that it no longer supports an application for the transfer of these customers.

Part III: Seven residential homes, three commercial properties and two vacant lots presently served by Hydro One. Five of the properties were excluded from earlier Horizon SAAs as they were being served by Hydro One at the time.

Part IV: Lands owned by the Hamilton-Wentworth Catholic District School Board (the “School Board”) which is currently constructing the Bishop Ryan Catholic Secondary School. The School Board has requested that Horizon provide

electrical distribution service. The lands also include a parcel of undeveloped land owned by Multi Area.

Part V: All undeveloped lands east of Summit Park Phase 6 (which was the subject of an earlier successful Horizon service area amendment application consented to by Hydro One) and the proposed Summit Park Phase 7, which is the subject of Part I of this Application. The description includes two contiguous commercial developments, both of which were the subject of earlier successful Horizon SAA applications.

THE HORIZON MOTION

On October 10, 2012, Horizon filed a Notice of Motion (the “Horizon Motion”) in this proceeding seeking the following relief:

- (a) an order requiring Hydro One to immediately cease certain work within Horizon’s service territory until the Board has made a decision on the application;
- (b) a declaration that the work being undertaken by Hydro One may negatively impinge upon Horizon’s operations (contrary to section 6.3.4 of the Distribution System Code), and an order requiring Hydro One to permanently cease undertaking all work which so impacts Horizon’s operations;
- (c) a procedural order requiring Hydro One to provide certain additional information about its offer to connect made to Multi-Area; and
- (d) a procedural order scheduling a date for a visit by the panel hearing this matter to take a view of the Summit Park Phase 7 development for context purposes (Horizon submits that the Board should immediately issue an order, even if only on an interim basis until the site visit occurs, requiring Hydro One to cease the work).

In response to Horizon’s Motion, Hydro One filed a submission on October 15, 2012 in which it stated that the Board should not deal with Horizon’s application because there is no customer within Hydro One’s service area who is requesting a connection to Horizon. Hydro One also submitted that the work being undertaken by Hydro One should not be stopped by the Board because, among other things, Horizon has been

aware of the work, has cooperated and facilitated the work, and Hydro One has not breached any of the three preconditions in section 6.3.4 of the Distribution System Code.

On October 16, 2012 Horizon filed a letter in response stating that it had at no time withdrawn its application. Horizon submitted that Hydro One's decision to undertake work despite Horizon's application before the Board should not prejudice this application.

On October 17, 2012 Hydro One filed a letter reiterating that there is no customer within Hydro One's service area who is requesting a connection to Horizon. Hydro One also stated that it will continue to proceed to do work to meet the needs of Multi-Area based on the signed offer to connect and in fulfillment of its Distribution System Code obligation to connect customers in its service area.

Also on October 17, 2012, SEC filed a letter submitting that the Board should hear the application and should, in the interim, 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.

On October 19, 2012, Multi-Area filed a letter reiterating its position that there is no reason to consider the service area amendment request from Horizon as the developer is seeking service from Hydro One.

THE HYDRO ONE MOTION

On October 30, 2012, Hydro One filed a Notice of Motion (the "Hydro One Motion") seeking the following relief from the Board:

- (a) an order striking out and dismissing Part I of the update to the service area amendment application, dated October 24, 2012, which was filed with the Board on October 25, 2012;
- (b) an order striking out and dismissing the service area application dated June 15, 2012, as updated twice by replacement pages on August 16, 2012;

- (c) an order striking out and dismissing Parts II, III and V of the update to the application, and striking out the portion of Part IV of the update to the application that deals with a small parcel of undeveloped land;
- (d) an order staying, as premature and incomplete, the portion of Part IV of the update to the application that deals with the school that is being built; and
- (e) an order requiring the applicant to provide full cooperation to Hydro One to enable the completion of work described in Hydro One's letters to the Board dated October 15 and October 17, 2012.

BOARD FINDINGS

The Board grants SEC and Multi-Area intervenor status in this proceeding, and the Board confirms SEC's cost-eligibility. The Board has determined that it is also appropriate to give Hydro One intervenor status in this proceeding. Appendix "A" to this order sets out the names and addresses for service of the intervenors to this proceeding.

The Board has considered the submissions made by both Hydro One and Horizon on their respective motions.

The Board has referred Horizon's allegation of Hydro One's non-compliance with section 6.3.4 of the Distribution System Code to the Board's Compliance and Consumer Protection Department. The Board will hold an oral hearing to deal with the other matters raised in the Horizon Motion (parts (c) and (d)).

The Board's oral hearing will also deal with the Hydro One Motion with the exception of part (e), which forms part of the referral to the Board's Compliance and Consumer Protection Department.

The Board will determine next steps on the application after it has heard the two motions.

The Board considers it necessary to make provision for the following matters related to this proceeding. Please be aware that this order may be amended, and further orders may be issued from time to time.

THE BOARD ORDERS THAT:

1. Horizon shall immediately serve a copy of this Notice of Application and Notice of Motions and Procedural Order No. 1 (the "Notice") on the intervenors listed in Appendix "A" and, to the extent that it has not already done so, Horizon shall immediately provide a copy of its application to the intervenors listed in Appendix "A", together with a copy of all other materials it has filed in this proceeding.
2. Horizon shall immediately serve a copy of the Notice on the owners of each property listed in Parts II, III, IV and V of Horizon's application that is presently being served by Hydro One or which lies in Hydro One's service area.
3. Horizon shall post the Notice on its website.
4. Horizon shall provide proof of service and confirmation of posting of the Notice and application to the Board by way of affidavit.
5. An oral hearing shall be held on November 30, 2012, beginning at 9:30 a.m. in the Board's West Hearing Room on the 25th Floor, to hear matters (c) and (d) of the Horizon Motion and matters (a) to (d) of the Hydro One Motion.

All filings to the Board must quote file number EB-2012-0047, be made through the Board's web portal at <https://www.pes.ontarioenergyboard.ca/eservice/>, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and email address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.ontarioenergyboard.ca. If the web portal is not available, parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a CD or diskette in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

IMPORTANT

IF A PARTY DOES NOT PARTICIPATE IN THE HEARING IN ACCORDANCE WITH THIS NOTICE, THE BOARD MAY PROCEED WITHOUT THEIR PARTICIPATION AND THEY WILL NOT BE ENTITLED TO FURTHER NOTICE IN THE PROCEEDING.

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DATED at Toronto November 21, 2012

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

**APPENDIX "A" TO
NOTICE OF APPLICATION AND NOTICE OF MOTIONS
AND PROCEDURAL ORDER NO. 1
NOVEMBER 21, 2012**

**APPLICANT & LIST OF INTERVENORS
BOARD FILE NO. EB-2012-0047**

Applicant

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