



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.

BEFORE: Paula Conboy
Presiding Member

Emad Elsayed
Member

Cathy Spoel
Member

**DECISION AND ORDER
MARCH 15, 2013**

THE APPLICATION

Horizon Utilities Corporation (“Horizon”) filed a Service Area Amendment (“SAA”) application on June 18, 2012 under Section 74 of the *Ontario Energy Board Act, 1998* (the “Act”) for an order of the Board amending Horizon’s licensed service area in Schedule 1 of its electricity distribution licence ED-2006-0031. Horizon filed additional information on August 17, 2012 in order to complete its application. The Board assigned file number EB-2012-0047 to the application.

Initially, the application sought to expand Horizon’s distribution service area to include only those lands described below as “Summit Park Phase 7” or Part I, in Hydro One

Networks Inc.'s ("Hydro One") licensed service area in the City of Hamilton. The first 6 phases of the Summit Park development were the subject of prior successful SAA applications by Horizon, which were either consented to, or unopposed by, Hydro One.

Horizon amended its application on October 24, 2012, making several new SAA requests incorporating additional lands in the vicinity of the Summit Park Phase 7 development, described in more detail as Parts II through V below. Horizon filed additional information required to complete its SAA application, as amended, on December 17, 2012.

As amended, Horizon's application consists of five parts, described as follows:

Part I: This part consists of the Summit Park Phase 7 lands that were the subject of the original SAA application. The proposed development is a residential subdivision consisting of approximately 287 lots and is being developed by Multi-Area Developments Inc. ("Multi-Area"). Part I also contains vacant land on which one or more schools may be developed.

Part II: Part II is a request by Horizon for the inclusion of three residential homes in its service area. These homes were excluded by the Board in its decisions on earlier SAA applications by Horizon as they were being served by Hydro One at the time. These homes continue to be supplied by Hydro One but are now almost completely embedded within an earlier phase of the Summit Park residential development.

Part III: This part includes seven residential homes, three commercial properties, and two vacant lots presently served by Hydro One. Five of the properties were excluded by the Board from earlier Horizon SAA applications as they were being served by Hydro One at the time. Several of the customers in this part are now fully embedded in Horizon's service area.

Part IV: This part includes lands owned by the Hamilton-Wentworth Catholic District School Board (the "School Board") on which it is currently constructing the Bishop Ryan Catholic Secondary School. Part IV also includes a parcel of undeveloped land owned by Multi-Area.

Part V: This part consists of a block of vacant, undeveloped lands east of Summit Park Phases 6 and 7 to Swayze Road and bounded on the north side by Rymal Road and on the south side by the Hydro One Transmission Corridor.

The incumbent utility, Hydro One, has contested all five parts of Horizon's application.

THE PROCEEDING

Two procedural motions were filed prior to the oral hearing of Horizon's application; one by Horizon on October 10, 2012, and the other by Hydro One on October 30, 2012. The Board convened an oral hearing on November 30, 2012 to hear matters associated with these motions. The details of, and the findings on, these motions can be found on the public record.

On December 7, 2012, the Board issued Procedural Order No. 2 setting out the process for the filing of materials by Horizon to complete its application, as amended, and making provision for the filing of evidence by intervenors and Board staff. The procedural order also included a schedule for the filing of interrogatories and responses, and set dates for an oral hearing of this matter.

Intervention Requests

The Board granted intervenor status in this proceeding to Hydro One, the School Energy Coalition ("SEC"), Multi-Area, the Power Workers' Union ("PWU"), the "Distributors" (consisting of Brant County Power Inc., EnWin Utilities Ltd., and Essex Powerlines Corporation) and the International Brotherhood of Electrical Workers ("IBEW").

Oral Hearing

An oral hearing was convened on February 7, 15 and 21, 2013 to hear the application. Horizon's witnesses appeared on February 7 and Hydro One's on February 15. The Board heard oral argument from all parties on February 21, 2013.

Relevant Board Objectives and Principles

The Board's objectives relevant to this proceeding are set out in section 1(1) of the Act. They are:

1. To protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service; and
2. To promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry.

Section 74(1) of the Act allows the Board to amend electricity licences where the amendment is in the public interest, having regard to its objectives and the purposes of the *Electricity Act, 1998*.

In coming to its decision in this proceeding, the Board considered the key relevant principles articulated in RP-2003-0044 (involving SAA applications by nine distributors, also referred to as the "Combined Proceeding"), in light of the Board's specific legislative authority as set out above. The key principles are summarized as follows:

1. Overlapping service areas will not generally be found to be in the public interest. Applicants for service area amendments that propose overlap should provide clear evidence that in the particular case, the advantages of overlap outweigh the disadvantages.
2. New embedded service areas will not generally be found to be in the public interest. Applicants for service area amendments that propose embedding should provide clear evidence that in the particular case, the advantages of embedding outweigh the disadvantages.
3. Amendments to service areas at the border of contiguous distributors may be in the public interest. Applicants should file evidence demonstrating that the proposed amendment is in the public interest, addressing economic efficiency, the impacts on the distributors involved and their customers, both inside and outside the amendment area, the mitigation of these impacts, and customer preference.

4. Applicants for SAA's are encouraged to obtain the consent of all affected parties before filing the application. Consent applications will be expeditiously processed, and the evidence required will be less than for an opposed application.
5. Economic efficiency is a primary consideration in assessing a service area amendment application. All applicants should address the effects of the proposed amendment on economic efficiency.

In the Combined Proceeding decision, the Board further stated that amendments that involve contiguous distribution companies, but that are opposed by the incumbent distributor, may be in the public interest where the amendment results in the most effective use of existing distribution infrastructure, and a lower incremental cost of connection for the customer or group of customers.

The Board also stated that, in all instances, the costs associated with a connection should be the fully loaded costs, which capture all of the relevant indirect and direct costs reasonably associated with the project at issue, not merely the price of connection quoted to the prospective connection customer.

In several instances throughout the Combined Proceeding decision, the Board stated that, in addressing economic efficiency, the applicant should demonstrate that the proposed amendment does not reduce economies of contiguity, density and scale, and preferably enhances these economies.

As well, the Board stated that, while in a contested application the onus will be on the applicant to demonstrate that the amendment is in the public interest, at the same time, the Board expects incumbent distributors to give proper consideration to rational and efficient service area realignment, even where it results in the loss of some territory. In other words, service area amendments should not be resisted where the proponent is clearly the most efficient service provider for the affected customer.

Position of the Parties and Board Findings

The first section below provides an overview of the distribution infrastructure in the area, and the general positions of the parties. Following that, a summary of Board

observations and views, common to all parts of this application, is provided. Then, each of the five parts of this application is considered, and the position of the various parties regarding that particular part is summarized, followed by the Board findings.

Overview of Distribution Infrastructure and Parties' Views

Horizon's position is that its existing distribution facilities in the area are capable of serving all of the proposed SAA lands with minimal upstream investment costs, whereas Hydro One's facilities in the area are currently insufficient to supply the load and will require additional investment, which will be duplicative of the existing Horizon facilities.

Hydro One's position is that the application should be denied because the area is currently part of its service area, and it can all be economically and reliably served as "lie-along" customers by a 14 kilometer, 27.6kV loop feed that is currently being constructed along Rymal Road through the SAA lands to the Binbrook area ("the Binbrook Loop"), some 7-8 kilometers to the south. Hydro One conceded that the facilities currently in place (an 8.32 kV line) are inadequate to serve all of the customers in question but submitted that the 27.6 kV line will be more than adequate.

It is Hydro One's position that the Binbrook Loop is an "enhancement" as defined in section 1.2 of the Distribution System Code ("DSC"), which it submitted was planned years ago, with construction starting in 2012 and completion expected within the next few months. In its final argument, Hydro One relied upon section 3.3.3 of the DSC which reads that "the distributor shall bear the cost of constructing an enhancement....and therefore shall not charge a customer a capital contribution to construct an enhancement".

Horizon, however, argued that construction of the Binbrook Loop by Hydro One is an "expansion" project under section 3.2.1 of the DSC which states that if a distributor must construct new facilities to its main distribution system or increase the capacity of existing distribution system facilities in order to be able to connect a specific customer or group of customers, the work will be deemed an expansion project and the distributor shall charge these expansion costs to the customers, and perform an initial economic evaluation based on estimated costs and forecast revenues of the project.

The SEC, the Distributors and the IBEW made submissions in support of Horizon's application. Multi-Area and the PWU made submissions in support of Hydro One's position. Board staff's submission focused on the Board's jurisdiction and the criteria relevant to SAA applications in general.

General Board Observations and Views

In this application, the primary factor considered by the Board in assessing the competing proposals of Horizon and Hydro One is the economic and rational use of the distribution system as a whole.

One of the key elements factored in the Board's findings regarding this application is the principle articulated in the Combined Proceeding decision regarding economic efficiency, and particularly the need to compare connection costs using fully loaded costs.

Reaching a conclusion with respect to relative economic efficiency in some parts of this application was difficult. While the applicant for a service area amendment bears the burden of demonstrating that the amendment is in the public interest, the incumbent distributor, if it opposes the application, must provide a reasonable amount of persuasive evidence of its own plans and costs, at a level of detail to enable a comparison between the two service proposals.

Hydro One's argument regarding the inclusion of upstream costs in the connection cost estimate hinged on the distinction between enhancement work and expansion work as defined in the DSC. Hydro One did not provide any of the costs associated with the 27.6kV Binbrook Loop, as it took the position that the line is an enhancement and that no costs are to be borne by the end-user. As a result, there was no evidence on which the Board could compare costs for various parts of this application in the event that the Board disagreed with Hydro One's interpretation of the DSC.

The Board notes that the DSC contains definitions which clearly explain the distinction between an expansion and an enhancement. An enhancement means a modification to the main distribution system that is made to improve system operating characteristics. An expansion is defined as a modification to the main distribution system in response to

one or more requests for one or more additional customer connections that otherwise could not be made, for example, by increasing the length of the main distribution system. The DSC does not, however, define a lie-along customer.

Appendix B to Hydro One's pre-filed evidence is a document entitled "Hydro One – Dundas Area, Loop Feed to Binbrook". This document was (according to Hydro One's answer to Board Staff's IR #7) specifically prepared for this proceeding. The document provided the evaluation of two routes considered for the loop feed both of which extend to feed the SAA lands.

When asked in the oral hearing about the alternative routes considered for the loop feed and the reasons for the ultimate route selection, Hydro One witnesses acknowledged that other alternative routes might have been shorter than the route chosen but that their evaluation was not documented. Given that Appendix B was prepared for this proceeding, the Board finds it unacceptable that Hydro One did not address the option of a more direct route to Binbrook which bypasses the SAA lands when Hydro One must have known that this would be the subject of some scrutiny at the hearing.

Based on the above, the Board does not accept Hydro One's evidence that the provision of service to various parts of this application had no bearing whatsoever on its decisions regarding the design, the routing, or the construction timing of the Binbrook Loop. The Board does not agree with Hydro One's characterization of the Binbrook Loop as an enhancement. In fact the evidence is clear that Hydro One is increasing its main distribution system in order to be able to connect a specific group of customers. As expansion work, Hydro One was required to perform an economic evaluation, as set out by section 3.2.1 of the DSC. Hydro One has failed to do so.

On another topic, Hydro One expressed concern that Horizon included the load of the SAA areas in its forecast for contracted extra capacity at the upstream Nebo transformer station which provides capacity for large parts of Horizon's and Hydro One's distribution systems in the area. The Board finds that it is not unreasonable that Horizon had done so. In the Combined Proceeding, the Board stated that, in its consideration of the economic efficiency of any given amendment proposal, an important factor will be the extent to which a proposal builds upon existing, well-developed electricity distribution assets from high or medium density systems. The

Board recognized that, in many instances, this will favour proposals that represent the extension of an existing local distribution system into a contiguous area. Horizon had been granted a service area amendment to serve Summit Park Phases 1 to 6 and has the necessary distribution infrastructure in place to serve this area, as well as its large service area to the north. It should not have come as a surprise to Hydro One that Horizon might have planned for the additional load of Summit Park Phase 7. In addition, Hydro One did not inform Horizon that it had plans to expand its capacity in the area via the Binbrook Loop.

The Board is concerned about the lack of communication between the two companies and the sequence of events that has resulted in a more adversarial, costly, and lengthy process than should have been necessary.

In the Combined Proceeding, the Board noted that the simple fact that a distribution system operator has a defined service area does not guarantee that it will be insulated from competing entities, who can demonstrate that their proposal is more economically efficient. The efficient and optimized development of the overall distribution system is more important than the interests of any single operator within the system.

PART I

Horizon

In its closing argument, Horizon made reference to Tab 9 in Hydro One's Exhibit K2.3, which provides a table comparing the connection costs of Horizon and Hydro One for Part I of this application. Horizon stated that while the estimated costs are similar, Horizon offered a lower connection cost based on its argument that, unlike Horizon's offer to connect which includes upstream expansion costs to be borne by the customer, Hydro One's offer to connect does not include any expansion costs.

Horizon's position was that Hydro One's offer to connect should include as expansion costs either the estimated cost to build a 2.2 kilometer radial line to the Summit Park Phase 7 development or some portion of the cost of the Hydro One 27.6 kV Binbrook Loop which will be used to serve this development. Hydro One declined to do so. In Horizon's view, the inclusion of these costs in Hydro One's offer would mean Horizon's costs would be lower. Horizon submitted that Hydro One's decision to not require a capital contribution to expansion costs from the customer sacrifices the principle of cost

causality. Horizon further argued that, since Hydro One's offer to connect does not include upstream expansion costs, Hydro One's contract with Multi-Area for Summit Park Phase 7 is not compliant with the DSC.

Hydro One

Hydro One opposed Horizon's view stating in its argument that the DSC is clear in not containing a provision to charge costs where a customer, in this case Summit Park Phase 7, benefits from an enhancement. Hydro One stated that upgrading the service to its existing customers in Binbrook is an enhancement under the DSC and stated that Horizon, for the purposes of this proceeding, needed to convince the Board that the line was being built for the purpose of serving a specific customer, Summit Park Phase 7, in order to classify the line as an expansion.

Hydro One also argued that Horizon had not satisfied the onus on an applicant to show that its connection costs were lower, and noted that its position was supported by a letter to the Board from counsel for Multi-Area dated October 19, 2012 which stated "our client determined that Hydro One's offer to connect was economically preferable to that provided by Horizon".

Other Parties

Multi-Area, the developer of Summit Park Phase 7, provided two letters in support of Horizon's application when it was initially filed on June 18, 2012 and subsequently updated on August 17, 2012. Multi-Area was provided offers to connect by both Horizon and Hydro One. On September 11, 2012, the Board received a letter from Multi-Area stating that it had accepted Hydro One's offer to connect, signed a binding contract, and that it therefore no longer wished to pursue a connection to Horizon.

SEC submitted that Part I should be served by Horizon, stating that it seemed, both geographically and from a system point of view, to be an efficient use of the system. SEC submitted that the Board's jurisdiction in this case was based on acting in the interests of the ratepayers, which included the rates that are charged to the end-use customers (the schools in this case) and how the assets are used so that the costs are, overall, minimized.

Board Staff noted that Multi-Area, which is not an end-use customer, had requested

service from Hydro One. Board Staff submitted that if the Board considered Hydro One's Binbrook Loop to be a planned system enhancement and should, therefore, not be incremental to the cost comparison between the two utilities for the purpose of this application, then the connection costs for Part I are comparable. Board Staff further submitted that the Board may then also look to customer preference, rate impact on prospective customers, and other relevant factors.

Board Findings

Part I constitutes a border amendment wherein Horizon is seeking to serve a customer (Multi Area) that is contiguous to its service area but within the existing service area of Hydro One. The onus as per the Combined Proceeding is, therefore, on the applicant (Horizon) to demonstrate that the proposed amendment is in the public interest.

Horizon provided a comparison of Horizon's and Hydro One's connection cost estimates and showed them to be similar. However, Horizon submitted that it offered a lower connection cost based on its argument that, unlike Horizon's offer to connect which includes upstream expansion costs to be borne by the customer, Hydro One's offer to connect does not include any expansion costs.

The Board does not accept Hydro One's evidence that the provision of service to Part I (or other parts of this application) had no bearing whatsoever on Hydro One's decisions regarding the design, the routing, or the construction timing of the Binbrook Loop.

As noted above, the Board finds that Hydro One's work is properly considered as an expansion and therefore, in order to provide a fair comparison of connection costs, some portion of Hydro One's estimate for the Binbrook Loop construction should have been included in its estimate as an upstream expansion cost. Given that the estimated costs for Horizon and Hydro One, without factoring Hydro One's upstream expansion costs, were similar, the exact portion of the Binbrook Loop cost that needs to be added to Hydro One's estimate is not critical to this decision as it will result in Horizon's cost being lower regardless.

While customer preference is not an overriding factor in this instance, the Board notes that Multi Area, who provided letters in support of Hydro One, will not be the end-use consumer once Summit Park Phase 7 is completed.

Based on the above, in the Board's opinion, the test of economic efficiency and cost effectiveness favours Horizon. The Board grants Part I of the application to Horizon.

PART II

Horizon

Horizon's pre-filed evidence stated that Hydro One sent an email request on September 26, 2012 for a transfer of these customers from Hydro One to Horizon, but that on October 22, 2012, Hydro One orally advised Horizon that it no longer supported an application for the transfer of these customers.

Horizon's evidence noted that the three existing residential customers in Part II are currently being served by Hydro One's 8.32kV overhead system but that commitments were made by the developer of these homes to the City of Hamilton that the homes would be supplied by underground service. Noting that Hydro One had indicated that all customers, existing and prospective, in the SAA lands would eventually be served by its 27.6kV Binbrook Loop, Horizon argued that, because its existing underground circuits run immediately in front of these homes, it could provide immediate power at a lower connection cost than Hydro One.

Horizon stated that it has not only put the potential affected customers on notice, it has also included evidence in this proceeding about the complete extent to which each customer will be impacted, and has confirmed that the transfer of service to Horizon will come at no cost to any of the customers. Horizon provided a signed affidavit to the Board on December 17, 2012 confirming support for Part II of the application by two of the affected customers. None of the other affected customers filed letters of comment or participated in the proceeding.

Hydro One

Hydro One argued that Part II of the application should be denied. Hydro One submitted that the Board's MAADs process (i.e. mergers, amalgamations, acquisitions and divestitures) should be used if the transfer of customers is to take place. Hydro One submitted that the MAADs process is a commercial one, voluntary and it protects the interests of ratepayers at large.

Other Parties

Board Staff noted that these customers are each currently being serviced by the Hydro One 8.32kV line. Board staff submitted that the Board has stated in the Combined Proceeding that SAA applications should not result in the Board-mandated transfer of customers from one distributor to another. In Board staff's submission, as per the criteria from the Combined Proceeding, the Board should first assess whether the applicant has sufficiently established that it would be the safer, more reliable and more economically efficient utility to service the area that is the subject of Part II, before considering such other factors as customer preference.

Board Findings

The three residential homes which make up Part II of this application are now almost completely embedded within an earlier phase of the Summit Park residential development which is now served by Horizon.

While customer preference is not an overriding factor in this instance, the Board notes that Horizon provided a signed affidavit to the Board confirming support for Part II of the application by two of the affected customers.

The Board acknowledges the general principle articulated in the Combined Proceeding decision that:

“Service area amendments should not result in the Board-mandated transfer of customers from one distributor to another. Such transfers should be the subject of bilateral arrangements between distributors, wherein all of the issues engaged by such transfers can be addressed. Such issues involved appropriate compensation for any assets stranded as a result of the arrangement. In this way, the interests of the customers of the surrounding distributor can be reasonably protected.”

The Board notes that the Decision in the Combined Proceeding does not state that under no circumstances will the Board consider the transfer of customers in an application. The Board certainly retains the authority to do so where it deems it to be in the public interest. The Board finds that applying the principle articulated in the Combined Proceeding regarding embedded service areas in this case would favour Horizon in terms of serving the public interest. This is supported by the fact that

Horizon's existing underground circuits run immediately in front of these homes, and that the transfer of service to Horizon will come at no cost to any of the customers. The Board grants Part II of the application to Horizon.

PART III

Horizon

Horizon's position was that Part III should be treated no differently than Part II in that several of the customers in Part III are fully embedded in Horizon's service area. Moreover, Horizon has distribution infrastructure in the vicinity capable of serving all the customers in Part III immediately and cost-effectively. Horizon argued that the work to connect these customers to either Horizon's 27.6kV line or to Hydro One's Binbrook Loop is identical in nature. Horizon argued, however, that the costs provided by Hydro One with respect to these customers were not the fully loaded costs and that Hydro One had "buried" some of it in its enhancement costs, which Hydro One then refused to disclose.

Hydro One

Hydro One argued that Part III of the application should be denied. Hydro One stated that the customers in Part III who are currently served by Hydro One's 8.32 kV line will be safely and reliably served by the 27.6kV Binbrook Loop once completed. Referencing the Combined Proceeding decision, Hydro One submitted that SAAs should not result in the Board-mandated transfer of customers from one distributor to another. Hydro One argued that this reasoning was followed by the Board in EB-2005-0504, an application in which Horizon sought, but failed, to acquire several of the same existing Hydro One customers included in this part of the application. Hydro One also submitted that it was not in the interest of ratepayers that service for the vacant lands in this part of the application, as well as in other parts, be forcibly transferred when there is evidence that the incumbent distributor has facilities in the area to serve existing and future customers.

Other Parties

Board staff's submission with respect to Part III was the same as Part II of the application.

Board Findings

Some of the customers in this part are totally embedded in Horizon's service area, and some are contiguous. As per the Combined Proceeding decision, the onus for the contiguous service areas is on the applicant to demonstrate that the proposed amendment is in the public interest.

Horizon stated that it has distribution infrastructure in the vicinity capable of serving all the customers in Part III. Hydro One's position was that the customers in Part III who are currently served by Hydro One's 8.32kV line will be served by the 27.6kV Binbrook Loop once completed. Horizon argued that the work to connect these customers to either Horizon's 27.6kV line or to Hydro One's Binbrook Loop is identical in nature.

As stated in the reasons for Part I above, the Board does not accept Hydro One's evidence that the provision of service to Part I (or other parts of this application) had no bearing whatsoever on Hydro One's decisions regarding the design, the routing, or the construction timing of the Binbrook Loop. Therefore, in order to provide a fair comparison of connection costs, some portion of Hydro One's estimate for the Binbrook Loop construction should be included in the cost comparison. As with Part I, this would favour Horizon in terms of economic efficiency and cost effectiveness. The Board grants Part III of the application to Horizon.

As with Part II, the Board finds it to be in the public interest for these customers to be transferred to Horizon.

PART IV

Horizon

The School Board initially sought, and Horizon provided, service for construction on this site as both parties mistakenly believed that Part IV was in Horizon's service area. By the fall of 2012, the error had been noted, and the School Board formally requested service from Horizon on October 17, 2012. Horizon's offer to connect to the School Board was filed as part of its updated application to include Part IV on October 24, 2012. In accordance with the Board's *Filing Requirements for Service Area Amendment Applications*, Horizon filed with the Board on December 17, 2012 Hydro One's offer to connect, which was provided to the School Board on November 28, 2012. Hydro One provided a revised offer to connect to the School Board on December 14, 2012 and filed a copy with the Board on December 19, 2012.

Horizon's submissions regarding connection costs are similar to its submissions in Part I of the application. Horizon stated that it has 27.6kV lines within this area capable of serving the school whereas Hydro One has no such assets in the area. Horizon stated that it offered the lowest connection costs and referenced Tab 7, in Exhibit K 2.1, which provided a comparison of the connection offers. Horizon argued that Hydro One had not done an economic evaluation and, therefore, not included any expansion costs to serve the school. Horizon also argued that, under Hydro One's offer to connect, the transformation facilities and related equipment would be owned by the School Board. It stated that the School Board had filed a letter with the Board dated December 18, 2012 including its calculation of the additional costs that the School Board would have to pay to install, own, operate and maintain the transformation equipment. Horizon submitted that these costs were included in its offer to connect as the transformation equipment would be owned by it. Horizon concluded that, if these costs were added to Hydro One's cost for proper comparison, Horizon's costs would be significantly lower.

Horizon stated that the Part IV lands are completely surrounded by Horizon's service area. Horizon also argued that customer preference should be taken into consideration by the Board as it was a matter of importance in this case, where the rates provided by Hydro One and Horizon are similar and where the end-use customer, the School Board had elected to obtain service from Horizon.

Hydro One

Hydro One argued that the School Board preferred and accepted the Horizon offer, seemingly only because the School Board prefers not to own a transformer. Hydro One disagreed with Horizon during the hearing as to the costs of purchase, installation and maintenance of a transformer. Hydro One stated that such costs are actually significantly lower than what was estimated by the School Board and that the School Board could contract for this service rather than own the facilities if it so chose. Hydro One also highlighted that its monthly delivery charges are lower than Horizon's.

Hydro One submitted that it was not in the interest of ratepayers that service for the vacant lands in this part of the application (as well as in other parts of the application) are forcibly transferred when there was evidence that the incumbent distributor will have facilities in the area to serve future customers.

Other Parties

SEC reiterated that the School Board wished to have service from Horizon. SEC further noted that as Hydro One did not cross-examine the School Board witness who was made available during the proceeding, the analysis by the School Board of what was in its interest was unchallenged.

Board Staff's submission on Part IV was identical to Part I in that if the Board considered Hydro One's Binbrook Loop to be a planned system enhancement and should not be incremental to the cost comparison between the two utilities for the purpose of this application, then the costs for connection for Part IV are comparable. Board Staff further submitted that the Board may then look to customer preference, rate impact on prospective customers, and other relevant factors.

Board Findings

This Part is embedded within Horizon's service area. In addition, it appears from the evidence that Horizon offered the lowest connection costs.

Given the principle articulated in the Combined Proceeding decision regarding embedded service areas, the Board finds that applying this principle in this case would favour Horizon in terms of serving the public interest. In terms of cost comparison (economic efficiency and cost effectiveness), the Board is of the view that the same reasoning provided for Part I regarding the allocation of a portion of Hydro One's cost for the Binbrook Loop also applies here in favour of Horizon.

While customer preference is not an overriding factor in this instance, the Board notes that the School Board, the end-use customer, had elected to obtain service from Horizon in this Part. The Board grants Part IV of the application to Horizon.

PART V

Horizon

Part V of the SAA application is an amendment request for the inclusion of vacant lands.

Horizon had stated in its pre-filed evidence and in sworn testimony that it was applying for this territory in the interest of the efficiency of not bringing forward a number of other future similar service area amendment applications. Horizon acknowledged that no

economic evaluation had been undertaken as it did not know the details of the residences and institutions that would be built there.

Hydro One

Hydro One also stated that no economic analysis had been done with respect to the Part V lands. Hydro One submitted that there was no information whatsoever that the Board could use to determine whether Horizon had satisfied the requirements for an applicant distributor to be awarded the service area of an incumbent distributor. Hydro One stated that the Board had already dismissed the same request by Horizon in EB-2004-0536, wherein Horizon was requesting vacant land slated for future Summit Park Phases.

Board Findings

The Board agrees with Hydro One's position that, given that neither party was able to perform an economic analysis, no information was available to the Board to determine whether Horizon had satisfied the requirements for an applicant distributor to be awarded this service area. Given that there was no opportunity for an economic analysis in this case, coupled with the absence of other extenuating reasons for the amendment, the Board concludes that the public interest test has not been met by the applicant. Therefore, the Board denies this part of Horizon's application.

The Board, however, expects that the principles articulated in this decision will be a prime consideration by all parties in any future application regarding Part V.

The Board notes that no amendment is needed to Hydro One's licence, given the manner in which Schedule 1 of that licence is worded.

IT IS THEREFORE ORDERED THAT:

Horizon Utilities Corporation's electricity distribution licence (ED-2006-0031), specifically Schedule 1 of the licence, is amended to include the lands in the former Township of Binbrook in the former Township of Glanbrook as of December 31, 1973, now in the City of Hamilton described as:

- i. Part of Township Lots Four(4) and Five(5), Block Four (4) known as Summit Park Phase Seven;

- ii. 1898, 1900, 1910, 1912, 2062, 2064, 2066, 2068, 2070, 2070B, 2080, 2120 Rymal Road East;
- iii. 70, 80 and 134 Fletcher Road; and
- iv. Plans 62M-1154, Blocks 1 and 2, 62R-18589 Parts 8 and 9, and 62R-18707 Parts 1, 2, 3, and 4.

Cost Awards

The Board will issue a separate decision on cost awards once the following steps are completed:

1. SEC shall file with the Board and forward to Horizon, its cost claims within **14 days** from the date of this Decision and Order.
2. Horizon shall file with the Board and forward to the SEC any objections to the claimed costs within **21 days** from the date of this Decision and Order.
3. SEC shall file with the Board and forward to Horizon any responses to any objections for cost claims within **28 days** from the date of this Decision and Order.
4. Horizon shall pay the Board's costs incidental to this proceeding upon receipt of the Board's invoice.

All filings to the Board must quote file number **EB-2012-0047**, be made through the Board's web portal at, 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 e-mail 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 document to BoardSec@ontarioenergyboard.ca. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies.

DATED at Toronto, March 15, 2013

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary