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April 11, 2014

BY EMAIL, RESS and COURIER

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: Application under Sections 19 and 74(1) of the *Ontario Energy Board Act, 1998* regarding Parts II and III of Horizon Utilities Corporation Service Area Amendment Application (“SAA Application”)
Board File: EB-2012-0047**

We are counsel to Horizon Utilities Corporation (“**Horizon Utilities**”) and bring this application seeking the assistance of the Ontario Energy Board (“**OEB**” or “**Board**”) resolving a matter arising out of the above-noted SAA Application which approved several amendments to the service territory of Horizon Utilities, including the transfer of 13 legacy Hydro One Networks Inc. (“**HONI**”) customers. Horizon Utilities has offered to pay for the reasonable costs of the minor assets of HONI which will be stranded. In addition to this amount, HONI is also seeking compensation for the future revenue stream over time of the customers who are the subject of the SAA Application. It is our understanding that the Board has earlier determined that claims of this nature should not be advanced. As a result, Horizon Utilities has not accepted HONI’s demand for compensation, and this has necessitated this application.

Introduction

Horizon Utilities applied to the Board under docket number EB-2012-0047 for various service area amendments in respect of lands to the south of Rymal Road East, between Trinity Church Road and Swayze Road, Hamilton. The SAA Application had five parts. Part II included three HONI legacy residential customers on Fletcher Road. Part III included seven residential homes, three small commercial properties, and two vacant lots on the south side of Rymal Road East.

Horizon Utilities included these customers in the SAA Application, for several reasons. First, in respect of the Part II Fletcher Road legacy customers, HONI had requested that Horizon Utilities agree to the transfer of these customers to Horizon Utilities. Second, given prior nearby residential subdivision developments and earlier SAA Applications by Horizon Utilities which were granted by the Board, the Part II legacy customers and some of the Part III customers along Rymal Road East were already embedded within Horizon Utilities' service area. Third, should that part of Horizon's SAA Application which related to the Summit Park Phase 7 development of Multi-Area Developments Inc. (which formed Part I of the SAA Application) be granted, additional legacy customers would become fully embedded within Horizon Utilities' service area. Finally, whereas Horizon Utilities could connect these customers at minimal cost given its immediately contiguous urban distribution system, HONI would have to incur the cost of a new 2.2 km., 27.6 kV line which HONI was proposing to construct along Rymal Road East which would serve these customers in future.

In the SAA Application, Horizon Utilities stated that to its knowledge, HONI's lines and poles along Rymal Road East and Fletcher Road were decades old and likely fully depreciated. Horizon Utilities submitted that it would be economically more efficient for it to serve the Part II and Part III customers. Following an oral hearing and the examination of witnesses produced by both utilities, by a Decision and Order dated March 15, 2013 ("**Decision**"), the Board agreed with Horizon Utilities and granted Parts I through IV of the SAA Application. More specifically, the Board stated at page 15 of the Decision that: "As with Part II, the Board finds it to be in the public interest for these customers [i.e. Part III] to be transferred to Horizon."

The Board then ordered that the following municipal addresses be added to Horizon Utilities' service territory:

- | | |
|------------|--|
| [Part II] | 70, 80 and 134 Fletcher Road |
| [Part III] | 1898, 1900, 1910, 1912, 2062, 2064, 2066, 2068, 2070,
2070B, 2080, 2120 Rymal Road East |

HONI did not appeal the Decision or request a review.

Stranded Assets

Horizon Utilities understood, and continues to understand, that it would be responsible for the reasonable costs of any stranded assets resulting from the Decision in respect of Parts II and III. During the SAA Application proceeding, HONI introduced evidence about what assets would be stranded in the event that the orders sought were approved. At page 11 of HONI's pre-filed evidence, HONI stated in respect of Parts II and III of the Application that:

“HONI has existing assets in place in order to currently service these customers. Horizon Utilities' assessment of the asset value is incorrect. HONI estimates that there is approximately \$15,000 of existing assets that would be stranded, currently used to service the existing customers in these two Parts of the Application.”

Board Staff and Horizon Utilities asked several interrogatories about stranded assets. Board Staff Interrogatory No. 8 asked HONI to provide a detailed description of the assets being used to serve the customers in Parts II and III of the SAA Application. The interrogatory also asked HONI to provide a detailed breakdown of HONI's estimate of stranded costs of \$15,000 and to distinguish between the stranded costs related to customers in Parts II and III.

Briefly stated, HONI responded advising that given the age of the assets related to Part II customers, there were no stranded costs related to these assets as part of the \$15,000 figure used in its pre-filed evidence. HONI indicated that there would be removal costs in an unquantified amount. In respect of Part III, HONI advised that there would be 15 transformers of various ages stranded, with a total value of \$14,217. While HONI also advised that the cost to remove these transformers were not included in this amount, since Horizon Utilities will remove any assets that require removal, no removal costs should be included.

Subsequent to the Decision, Horizon Utilities requested the total amount claimed by HONI in respect of the stranded assets and HONI has advised that the claim is now \$44,449. No explanation has been given for the increase in the amount over the \$14,217 figure which HONI stated was appropriate in evidence during the SAA Application. While Horizon Utilities questions the correctness of the most recent number, it is prepared to pay

the remaining undepreciated value of the stranded assets. However, HONI is also seeking compensation for the future revenue stream of the Part II and III customers. It is in respect of this latter claim by HONI and, if necessary, the value of the stranded assets, that Horizon Utilities requests the Board's assistance.

HONI Foregone Revenues Claim

HONI has demanded compensation for the loss of the future revenues of the Part II and Part III customers totalling \$156,000. While it is presumed that this number is a net present value, Horizon Utilities is not certain of the methodology used by HONI to calculate the claim. This amount does not appear to be net of the operations, maintenance, and administrative costs that HONI will not incur in future by reason of the fact that it is no longer serving these customers. HONI could not point to any Board approved methodology to calculate the amount claimed, as no approved methodology exists. What portion of a particular customer's distribution bill should be used, whether the revenue stream should be the average of several years of distribution bills, and the length of time over which the loss of revenue should be calculated are all matters which it appears HONI arbitrarily decided for purposes of advancing the claim.

Horizon Utilities objects to HONI's claims for a number of reasons, not least of which is the fact that HONI attempted to advance such a claim during the SAA Application and the Board denied the request. During HONI's oral testimony, both in chief¹ and under cross-examination², it specifically requested compensation for foregone customers in the event of the transfer of Parts II and III customers. The Board specifically identified this request in its Decision, at page 12, stating:

"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."

¹ Transcript Volume 2, page 42

² Transcript Volume 2, pages 187/8

The Board heard HONI's request for compensation but rejected the request. It instead applied the principles set out in the Combined Proceeding (RP-2003-0044) and granted Parts II and III of the SAA Application to Horizon.

The Board specifically noted, at page 14, that "Horizon's existing underground circuits run immediately in front of these homes and that the transfer of service to Horizon Utilities will come at no cost to any of these customers." In other words, the Board determined that it was more economically efficient for Horizon Utilities to serve these customers in future. Accordingly, Horizon Utilities submits that the Board entertained HONI's request that the transfer of the Parts II and III customers be undertaken on a basis other than that provided for by the criteria set out in the Combined Proceeding (RP-2003-0044) and HONI's position was not accepted. HONI is therefore pursuing a claim against Horizon Utilities for relief requested in the SAA Application which was not granted by the Board.

In addition to the Board having already dealt with the matter, Horizon Utilities' position is supported by other compelling reasons and earlier determinations by the Board. HONI was aware of the fact that one of the critical determinations in the SAA Application was which of the two utilities could provide service to the Parts II and III customers on the more economically efficient basis. The value of any stranded assets, being an obvious consideration, was raised and confirmed as noted above. Had HONI truly believed that it was entitled to some further lost revenue stream for many years into the future, HONI should have quantified the amount and raised it during the SAA Application so that the Board would have been able to compare the cost of Horizon Utilities providing service in future, including such a payment to HONI. Stated differently, if a utility which is the subject of an order in respect of the transfer of customers is entitled to a payment for the loss of future revenues over a number of years into the future, this amount should have been considered by the Board as part of its determination of which utility was in the better position to provide the most economically efficient service.

The Combined Proceeding (RP-2003-0044)

HONI argued strenuously for the right to make such claims for any loss of customers during the Combined Proceeding (RP-2003-0044). This is abundantly clear from the Decision with Reasons ("**Reasons**") of the Board dated February 27, 2004.

At paragraph 253 of the Reasons, the Board noted that: “Hydro One also argued that existing customers should not be transferred to an applicant distributor from an incumbent distributor, except where there is agreement or consent among both distributors and the customer. Where there is such a transfer by agreement, it should proceed by way of a MAADs application rather than a license amendment application.” This is the same argument which HONI made during the SAA Application, which was rejected by the Board. While the Board did indicate in its Reasons that any transfers of customers should be the subject of bilateral arrangements between distributors, the Board stated, at paragraph 267, that the appropriate compensation would involve any assets stranded as a result of the transfer. Indeed, the issue of what assets should be considered as being stranded was the subject of detailed evidence and argument during the Combined Proceeding.

In this regard, HONI retained and produced Dr. Chamberlin as an expert witness. It is clear from paragraphs 285 and 286 of the Reasons that Dr. Chamberlin argued for a definition of stranded assets that would include the fixed cost stream that customers or group of customers would otherwise pay the utility. Dr. Chamberlin went further stating that the compensation should relate not just to direct connections but also to all upstream facilities, services and aspects of the utility’s service. The Board specifically summarized HONI’s submission at paragraph 289 of the Reasons:

“Hydro One argued that in cases of service area amendments, where there is no agreement between the distributors, compensation must be paid to the incumbent for stranded assets and lost revenues associated with existing and future customers, less the costs that can be mitigated.”
(emphasis added)

The Board disagreed. It first found, at paragraph 292 of the Reasons, that existing customers of the connecting utility ought not to be subsidizing any connection. This, of course, would be the case if Horizon Utilities was required to pay HONI a future revenue stream that it will never collect from the Parts II and III customers.

The Board also made it clear, at paragraphs 292 and 293 of the Reasons, that in respect of the determination of what constitutes a stranded asset:

“The Board will have regard to the extent to which an asset thought to be stranded is genuinely referable and connected or connectable to the project site, and part of the necessary infrastructure to serve that specific location. [292] ...

The Board heard some argument to the effect that all of the upstream assets of a given utility are to some extent stranded when connections are approved for other utilities within an incumbent’s service area. The Board does not adopt this point of view. Stranding will only be recognized to the extent that a utility can demonstrate that the assets involved meet the characteristics outlined in this section.” [293]

The Board continued, at paragraph 294, stating:

“Similarly, the Board heard argument to the effect that utilities ought to be compensated for lost opportunities for revenue where a service area amendment results in a connection within their former service area being made by another utility. The Board does not adopt this point of view. Apart from the stranding of assets demonstrated as outlined in this section, the Board will generally not recognize any other type of compensation.”

It therefore appears clear from the Combined Proceeding that HONI strenuously argued in favour of the right to claim a loss of revenue stream in the event of a SAA application. This position was not accepted by the Board at the time. HONI made a similar argument during Horizon Utilities’ SAA Application. This argument was noted by the Board in its Decision and was, once again, not accepted. HONI is now trying to extract a revenue stream from Horizon Utilities despite these Board decisions and is leveraging the need for its cooperation to effect the transfer of the Parts II and III customers as a means to advance its claim.

Conclusion and Relief Sought

The Board, in its Reasons, anticipated that there might be occasions where utilities would fail to agree upon the value of stranded assets. At paragraph 292, the Board stated that where stranding issues arise, they must be resolved, but where parties are unable to resolve issues respecting stranding, “the Board will do so”. This application seeks the Board’s assistance in this regard.

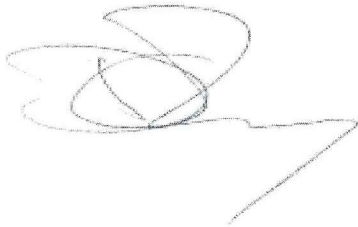
Horizon Utilities therefore respectfully requests an Order from the Board confirming that the compensation payable to HONI for the assets stranded as a result of the Board’s

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granting of Parts II and III of the SAA Applications is \$14,217 or whatever is the correct aggregate of the remaining undepreciated value of the stranded assets.

Yours truly,

AIRD & BERLIS LLP

A handwritten signature in blue ink, appearing to read "Dennis M. O'Leary". The signature is stylized with overlapping loops and a long horizontal stroke extending to the right.

Dennis M. O'Leary

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