

August 5, 2014

Delivered by RESS and Courier

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, Ontario M4P 1E4

Dear Ms. Walli:

**Re: EB-2014-0002
Horizon Utilities Corporation – Five Year Distribution Rate Application**

We are counsel to Horizon Utilities Corporation (“Horizon Utilities”) with respect to the above-captioned matter. We are writing to you today regarding certain interrogatories in respect of which Horizon Utilities proposes to file responses in confidence. Certain material is being filed confidentially in its entirety, while redacted versions of other material are being placed on the public record.

Horizon Utilities will be delivering, under separate cover, unredacted versions of the subject material to the Board in confidence in accordance with its *Practice Direction on Confidential Filings* (the “Practice Direction”). Horizon Utilities will also be delivering copies in confidence to those of the parties’ counsel and/or consultants who have executed the Board’s form of Declaration and Undertaking with respect to confidentiality, subject to Horizon Utilities’ right to object to the Board’s acceptance of a Declaration and Undertaking from any person, and with the exception of material identified as personal or irrelevant information.

Responses in respect of which confidentiality is being claimed:

Horizon Utilities has received and responded to over 800 questions from Board staff and intervenors in respect of its Application. Among those questions are the following in respect of which Horizon Utilities has requested that certain information be maintained in confidence:

Board Staff:	Question 2-Staff-21 and Question 4-Staff-26(f)
AMPCO:	Questions 4-AMPCO-16(b) and 4-AMPCO-21
CCC:	Questions CCC.1, CCC.2 and CCC.8
Energy Probe:	Questions 4-Energy Probe-29(b) and 4-Energy Probe-43
SEC:	Questions 2-SEC-18, 4-SEC-23 and 4-SEC-36
VECC:	Question 4.2-VECC-41

Horizon Utilities offers the following comments on the confidentiality of information being provided in respect of these questions. Horizon Utilities anticipates having further submissions in the event of

objections to any of the matters addressed in this letter, and trusts that the Board will provide Horizon Utilities the opportunity to make those submissions.

Board Staff:

Question 2-Staff-21

In this question, Board staff have requested information related to various Horizon Utilities programs planned for the test period. Certain programs relate to the security of Horizon Utilities' facilities. The Horizon Utilities Physical Security Report (Exhibit 2/ Appendix 2-4/Appendix L) and descriptions of security-related projects contained in the Application were filed in confidence. That approach was approved by the Board in PO#1, where the Board recognized that security of Horizon Utilities' facilities is an important aspect in maintaining safe and reliable electricity service, and for the privacy of its customers and employees, and held that the security information is to remain confidential.

Consistent with the Board's findings in PO#1, information being provided in response to this Interrogatory that relates to matters of the security of Horizon Utilities' facilities (at pages 29-31 of the response) is being filed in confidence.

Question 4-Staff-26(f)

In this question, Board staff have asked Horizon Utilities to provide the undertakings by "Hayes" described in the letter dated October 28, 2013 in Reference 4 to IR 4-Staff-26 (Exhibit 4 Tab 4 Appendix 4-6.2 – Mercer Letters, although Horizon Utilities believes that this reference should be to Appendix 4-5). Staff note that in the referenced letters, Mercer "describes the scope of the work it has performed for Horizon as of October 28, 2013 in regards to executive and non-executive compensation for fiscal 2012 and 2013."

There are five items related to this question:

- i. The MEARIE Management Salary Survey of Local Distribution Companies (including a 2013 Addendum);
- ii. A Mercer 2012 CEO Compensation Analysis pertaining to Horizon Utilities' CEO;
- iii. A Mercer 2012 Executive Compensation Review addressing all Horizon Utilities executives with the exception of the CEO;
- iv. A Mercer 2013 Compensation Cost Benchmarking Study sponsored by Hydro One Networks Inc. but reflecting information related to Horizon Utilities; and
- v. A Short Term Incentive Pay Design Survey.

We will address each of these below.

Item (i): The MEARIE Management Salary Survey of Local Distribution Companies (including a 2013 Addendum)

Horizon Utilities is filing item (i), the MEARIE Management Salary Survey of Local Distribution Companies (including the 2013 Addendum), on the public record in this proceeding.

Items (ii) and (iii): Mercer 2012 CEO Compensation Analysis and Mercer 2012 Executive Compensation Review

Items (ii) and (iii), the 2012 CEO Compensation Analysis and 2012 Executive Compensation Review (this latter review addressed all executives with the exception of the CEO), were prepared by Mercer for Horizon Utilities. This material has been provided to Horizon Utilities by Mercer in confidence, and Horizon Utilities does not have authorization to place it on the public record. Moreover, for the reasons discussed below, the material should not be placed on the public record. Horizon Utilities is prepared to file copies of these documents in confidence in accordance with the Board's Practice Direction, with certain exceptions in that (a) certain information constitutes personal information and Horizon Utilities does not intend to disclose it in any event; and (b) certain information in the Executive Compensation Review relates to employees of affiliates of Horizon Utilities and it is not relevant to this proceeding. The basis for the confidentiality request is as follows:

The public disclosure of this material could reasonably be expected to prejudice the economic interest of, significantly prejudice the competitive position of, cause undue financial loss to, and be injurious to the financial interests of Horizon Utilities, its affiliates, and the employees discussed in the study, in several ways:

- As an LDC, Horizon Utilities competes for employees with other LDCs and with private sector employers. Public disclosure of Horizon Utilities' compensation strategies could reasonably be expected to prejudice Horizon Utilities' competitive position in the labour market in that the disclosure would allow other employers to outbid Horizon Utilities for executive employees;
- As noted above, the Executive Compensation Review relates in part to employees of affiliates of Horizon Utilities, and information related to that individual is not relevant to this proceeding. Moreover, salary strategies as they relate to the activities of the competitive affiliates of Horizon Utilities are commercially sensitive and their disclosure could reasonably be expected to prejudice those affiliates' competitive positions in two ways:
 - (i) in the labour market in that the disclosure would allow other employers to outbid them for employees; and
 - (ii) in their respective competitive markets as competitors would have access to sensitive employee cost information; and
- With respect to the employees themselves, disclosure of Horizon Utilities' compensation strategies and the salary ranges of executives could reasonably be expected to prejudice the employees' own competitive positions in the labour market in that the disclosure would allow other prospective employers to reduce compensation that might otherwise be offered to attract those individuals.

The Practice Direction recognizes that these are among the factors that the Board will take into consideration when addressing the confidentiality of filings. They are also addressed in subsection 17(1) of the *Freedom of Information and Protection of Privacy Act* (“FIPPA”), and the Practice Direction notes (at Appendix B of the Practice Direction) that third party information as described in subsection 17(1) of FIPPA is among the types of information previously assessed or maintained by the Board as confidential.

Horizon Utilities has also redacted a limited amount of information from these documents that, in Horizon Utilities’ submission, is not relevant to this proceeding or constitutes personal information. Information in the study related to the Vice President of Horizon Energy Services Inc. (“HESI”) has been redacted as that position is not a Horizon Utilities position, and that information is therefore not relevant to this proceeding. Similarly, information in the study related to the Vice President of Business Development has been redacted as that position is not a Horizon Utilities position (it is a Horizon Holdings Inc. [“HHI”] position), and that information is therefore not relevant to this proceeding. Information related to a “Top Legal Executive” (General Counsel) position is not relevant as no such position exists, nor is it being proposed in the Application.

Information in the reports related to identifiable individuals’ actual salaries and other compensation and how those may relate to the midpoints or other points in the ranges identified by Mercer has also been redacted as this constitutes personal information, and in accordance with the Practice Direction, Horizon Utilities does not intend to disclose it in any manner, whether publicly or in confidence, notwithstanding that individuals may have executed the Board’s form of Declaration and Undertaking with respect to confidentiality. Horizon Utilities notes that this approach is consistent with the Board’s refusal to require Horizon Utilities to produce the salaries of its top five executives in Horizon Utilities’ 2011 Cost of Service Application (EB-2010-0131).

In light of the foregoing, Horizon Utilities requests that the 2012 CEO Compensation Analysis and 2012 Executive Compensation Review study be kept confidential, and that items identified as personal information and redacted from the studies not be disclosed in any event, in accordance with section 4.3.1 of the Practice Direction and Rule 9A.02 of the Board’s *Rules of Practice and Procedure*. Horizon Utilities is prepared to provide copies of the 2012 CEO Compensation Analysis and 2012 Executive Compensation Review (with the exception of personal information and information related to the position of VP of HESI, the position of VP Business Development of HHI and the Top Legal Executive position) to parties’ counsel and experts or consultants provided that they have executed the OEB’s form of Declaration and Undertaking with respect to confidentiality and that they comply with the Practice Direction, subject to Horizon Utilities’ right to object to the OEB’s acceptance of a Declaration and Undertaking from any person.

In keeping with the requirements of the Practice Direction, Horizon Utilities is filing confidential versions of the 2012 CEO Compensation Analysis and 2012 Executive Compensation Review (with the personal information and information related to the position of VP of HESI, the VP Business Development of HHI and the Top Legal Executive position redacted). This material has been placed in a sealed envelope marked “Confidential”. Separately from that, Horizon Utilities is filing with the Board confidential, unredacted versions of these documents that includes the personal information but not the information related to the position of VP of HESI, the VP Business Development of HHI and

the Top Legal Executive position. This version has been placed in a sealed envelope marked “Confidential – Personal Information”.

Item (iv): Mercer 2013 Compensation Cost Benchmarking Study sponsored by Hydro One Networks Inc. but reflecting information related to Horizon Utilities

With respect to item (iv), the Compensation Cost Benchmarking Study sponsored by Hydro One, Horizon Utilities has taken a similar approach to that taken in respect of items (ii) and (iii), for the reasons set out above. As with items (ii) and (iii) this material has been provided to Horizon Utilities by Mercer in confidence, and Horizon Utilities does not have authorization to place it on the public record. Moreover, the material should not be placed on the public record. Information in the report related to identifiable individuals’ actual salaries and other compensation and how those may relate to the midpoints or other points in the ranges identified by Mercer has been redacted as this constitutes personal information, and in accordance with the Practice Direction, Horizon Utilities does not intend to disclose it in any manner, whether publicly or in confidence, notwithstanding that individuals may have executed the Board’s form of Declaration and Undertaking with respect to confidentiality. Horizon Utilities again notes that this approach is consistent with the Board’s refusal to require Horizon Utilities to produce the salaries of its top five executives in Horizon Utilities’ 2011 Cost of Service Application (EB-2010-0131). The balance of the report is being filed in confidence due to its potential to prejudice the economic interest of, significantly prejudice the competitive position of, cause undue financial loss to, and be injurious to the financial interests of Horizon Utilities and the employees discussed in the study, in the ways discussed in the context of items (b) and (c).

Item (v): Short Term Incentive Pay Design Survey

Finally, with respect to item (v), the Short Term Incentive Pay Design Survey, Horizon Utilities was not a sponsor of the survey – it simply provided information to Mercer. It was provided in confidence to Horizon Utilities. Horizon Utilities has attempted to obtain authorization from the sponsors of the survey to release it, but has been unable to obtain authorization to release it in any form, and will not do so. Horizon Utilities expects to have submissions on confidentiality in the event that it is ordered to release the document.

AMPCO:

Question 4-AMPCO-16(b)

Note that this response is also applicable to the following questions:

- **4-AMPCO-21(p)**
- **4-Energy Probe-29(b)**
- **4-SEC-23**
- **4.2-VECC-41**

In this question, AMPCO has requested the annual non-union wage increases for 2011-2014 and proposed for 2015-2019. Consistent with the Board’s findings on confidentiality set out in Procedural Order No.1 (“PO#1”), Horizon Utilities has provided the historical information but will maintain the

2015-2019 information in confidence. As it explained in the cover letter to its Application, the disclosure of assumed 2015-2019 wage and benefit increases for the Union employee group could reasonably be expected to prejudice Horizon Utilities' negotiating position in the upcoming collective bargaining process and interfere significantly with those negotiations. However, Horizon Utilities has redacted information related to all employee groups from the public version of the response (although it has disclosed values for total salary and benefits) for the 2015-2019 Test Years because, without those redactions, the budgeted adjustments to Union wages and benefits for the 2015-2019 period will be easier to estimate, nullifying the effect of any specific Union-related redactions.

Horizon Utilities is filing an unredacted version of the requested information in accordance with the Practice Direction. The rationale set out above also applies to other interrogatories requesting information about assumed increases for specified employee groups.

Question 4-AMPCO-21

Part (e):

In this question, AMPCO has requested the pay grades for management employees. For the reasons discussed above in respect of question 4-Staff-26, Horizon Utilities is providing this information in confidence.

Part (p):

In this question, AMPCO has requested that Horizon Utilities reproduce Tables 4-53 and 4-54 with Non-management – Union and Non-union shown separately. For the reasons accepted by the Board in PO#1 and discussed by Horizon Utilities in relation to Question 4-AMPCO-16(b) above, Horizon Utilities will be redacting the 2015-2019 compensation information for the individual employee groups from the public version of the requested expanded Table 4-54.

CCC:

Question CCC.1:

In this question, CCC has asked for materials provided to senior management and Horizon Utilities' Board of Directors related to this Application, and materials provided to senior management and Horizon Utilities' Board of Directors regarding the decision to file for a Custom IR plan for the period 2015-2019. For the reasons set out in its response to Question CCC.1 (these include the fact that certain of these documents contain commercially sensitive information related to both regulated and unregulated business activities carried on by Horizon Utilities and members of its corporate family; forward looking financial information; and assumptions with respect to labour cost increases), three of the eight documents referred to in the response are being filed in confidence.

Question CCC.2

In this question, CCC has asked for correspondence provided to Horizon Utilities' employees regarding the development of this Application. Attachment 1 to Horizon Utilities' response includes an email message to certain employee groups and individuals regarding the commencement of work on the

Application. Names of individual addressees have been redacted from the document. The addressee names constitute personal information, and they have been redacted in a manner consistent with the Board's treatment of individuals' names in Horizon Utilities' tax returns.

Question CCC.8:

In this question, CCC has asked for copies of certain studies and information on their costs and the costs of certain reports included in the Application. In its response, Horizon Utilities advised that all of the requested reports were included in the Application, although the CAPSYS Security Study was filed in confidence. That approach was approved by the Board in PO#1, where the Board recognized that security of Horizon Utilities' facilities is an important aspect in maintaining safe and reliable electricity service, and for the privacy of its customers and employees, and held that the security information is to remain confidential.

Horizon Utilities will not provide the costs of the reports on the public record. Pricing information is highly commercially sensitive and its release could reasonably be expected to prejudice the economic interest of, significantly prejudice the competitive position of, cause undue financial loss to, and be injurious to the financial interest of the consultants preparing the reports as it would enable competitors to ascertain the pricing for the services provided by these consultants, which would create an advantage for those competitors in future proposal calls. It could also reasonably be expected to prejudice the economic interest of, significantly prejudice the competitive position of, cause undue financial loss to, and be injurious to the financial interest of Horizon Utilities since it would enable other potential consultants to ascertain the scope and pricing of similar projects that Horizon Utilities may be prepared to accept, and this may reduce Horizon Utilities' ability to obtain truly competitive proposals in the future.

The Board's Practice Direction recognizes that these are among the factors that the Board will take into consideration when addressing the confidentiality of filings. They are also addressed in section 17(1) of FIPPA, and the Practice Direction notes (at Appendix B of the Practice Direction) that third party information as described in subsection 17(1) of the *Freedom of Information and Protection of Privacy Act* ("FIPPA") is among the types of information previously assessed or maintained by the OEB as confidential.

Energy Probe:

Question 4-Energy Probe-29(b)

In this question, Energy Probe has asked for updates to information contained in Tables 4-53 and 4-54. For the reasons accepted by the Board in PO#1 and discussed by Horizon Utilities in relation to Question 4-AMPCO-16(b) above, Horizon Utilities will be redacting the 2015-2019 compensation information for the individual employee groups from the public version of the requested expanded Table 4-54.

Question 4-Energy Probe-43

In this question, Energy Probe has asked for a copy of Horizon Utilities' 2013 Corporate Tax Return. Horizon Utilities has provided a version of the Corporate Tax Return from which employee names have been redacted. The redactions are consistent with the Board's findings in this regard in PO#1.

SEC:

Question 2-SEC-18

In this question, SEC has requested a copy of the retainer and instructions provided to Innovative Research Group ("Innovative"). For the reasons set out in Horizon Utilities' response to the question (in part, Innovative is a consulting firm engaged in a competitive business, and the public disclosure of its proposed methodologies and pricing with respect to this project could reasonably be expected to prejudice the economic interest of, significantly prejudice the competitive position of, cause undue financial loss to, and be injurious to the financial interest of Innovative), Horizon Utilities proposes to file the Letter of Agreement between Innovative and Horizon Utilities in confidence.

Question 4-SEC-23

In this question, SEC has requested the cost assumptions embedded in this Application regarding Horizon Utilities' next collective agreement scheduled to take effect June 1, 2015, and those embedded in the Application regarding the next collective agreement if the June 1, 2015 agreement is not expected to extend to the end of the test period. For the reasons accepted by the Board in PO#1 and discussed by Horizon Utilities in relation to Question 4-AMPCO-16(b) above, Horizon Utilities has redacted the value from the public version of the response and will be providing this information in confidence.

Question 4-SEC-36

In this question, SEC has requested a copy of the "Power in Motion Labour Market Information Study" (updated in 2012). Horizon Utilities is prepared to file this survey in confidence. Electricity Human Resources Canada (formerly the Electricity Sector Council) is engaged in a competitive business. The disclosure of the terms of the survey could reasonably be expected to prejudice the economic interest of, significantly prejudice the competitive position of, cause undue financial loss to, and be injurious to the financial interests of Electricity Human Resources Canada since it would enable its competitors to ascertain Electricity Human Resources Canada's survey methodology. The disclosure of information related to the survey participants could also reasonably be expected to result in survey participants no longer participating in surveys of this kind, as their participation has been premised on the understanding that their information would remain confidential. Horizon Utilities requested authorization from Electricity Human Resources Canada to place the study on the public record, and the request was denied.

The Practice Direction recognizes that these are among the factors that the Board will take into consideration when addressing the confidentiality of filings. They are also addressed in section 17(1) of FIPPA, and the Practice Direction notes (at Appendix B of the Practice Direction) that third party information as described in subsection 17(1) of FIPPA is among the types of information previously assessed or maintained by the OEB as confidential.

VECC:

Question 4.2-VECC-41

In this question, VECC has asked Horizon Utilities to provide the annual total Human Resource costs as shown in Table 4-28 if the cost increase were limited to (1) Horizon's annual inflation assumption (please provide inflation assumptions) and (2) Horizon's assumed percentage annual increase in FTEs. Because it is necessary to include assumed compensation increases in answering this question, and for the reasons accepted by the Board in PO#1 and discussed by Horizon Utilities in relation to Question 4-AMPCO-16(b) above, Horizon Utilities will be providing a redacted version of its response on the public record.

Horizon Utilities anticipates that it will have an opportunity to reply to any submissions regarding the confidential treatment requested above. Should you have any questions or require further information with respect to these matters, please do not hesitate to contact me.

Yours very truly,

BORDEN LADNER GERVAIS LLP

Original Signed by James C. Sidlofsky

James C. Sidlofsky

JCS/ac

Encl.

cc. Christie Clark, Ontario Energy Board
Maureen Helt, Ontario Energy Board
Keith Ritchie, Ontario Energy Board
John G. Basilio, Horizon Utilities Corporation
Indy J. Butany-DeSouza, Horizon Utilities Corporation
Intervenors of Record

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