

**Horizon Utilities Corporation
Custom Incentive Rates Application for 2015 - 2019
EB-2014-0002**

Board Staff Submission

Background

By way of letter dated August 5, 2014 Horizon filed a letter with the Board requesting confidential treatment with respect to the following interrogatories:

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

Submission

Board staff makes this submission directly in response to the request for confidential treatment of the Board staff interrogatories and makes a general submission with respect to the remainder of the interrogatory responses for which confidential treatment is sought.

Board staff Interrogatory 21

Horizon submitted that 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 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. Board staff does not disagree and offers no further submission

Board staff Interrogatory 26 (f)

There are five items related to this question. Board staff addresses each of these items below:

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

Horizon has noted that it has filed this item on the public record. Board staff has no submission.

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; and

iv. A Mercer 2013 Compensation Cost Benchmarking Study sponsored by Hydro One Networks Inc. but reflecting information related to Horizon Utilities; and

Board staff addresses items ii – iv below:

Board staff recognizes that Mercer has provided its reports on Compensational Analysis and Compensation Review to Horizon in confidence however, Board staff submits the Board has consistently allowed this type of information to form part of the public record in the past.

Board staff has considered the findings of the Board in the combined decision for EB-2013-0115, EB-2013-0159 and EB-2013-0174 wherein the Board had to make a very similar determination about confidential treatment of similar information. In this case, all three applicants were requested to produce a benchmarking survey prepared by a third party, MEARIE. In its decision, the Board stated:

“As set out in the Board's *Practice Direction on Confidential Filings*, it is the Board's general policy that all records should be open for inspection by any person unless disclosure of the record is prohibited by law. This reflects the Board's view that its proceedings should be open, transparent and accessible. The Practice Direction seeks to balance these objectives with the need to protect information that has been properly designated as confidential. In short, placing materials on the public record is the rule and confidentiality is the exception. The onus is on the person requesting confidentiality to demonstrate why confidentiality is appropriate.”

The Board recognizes that the distributors have non-disclosure agreements with Mercer. However, as noted by this Board in previous decisions, applicants must be cognizant of the fact that it is up to the Board to determine confidentiality and that when regulated entities enter into confidentiality agreements with third parties that extend to the provision of information and documents, the utility knows or ought to know that they may reasonably be required to produce the documents as part of the regulatory process.

Horizon is concerned that the public disclosure of this document, even in redacted form, potentially exposes the business processes of Horizon to its competitors. Board staff submits that the onus is on Horizon to demonstrate this. However, Horizon has not presented any evidence of what or how the disclosure would allow other competitors to use this information in a manner that would prejudice Horizon's competitive position.

v. A Short Term Incentive Pay Design Survey.

Board staff submits that Horizon has failed to establish any reason for treating this document as confidential other than to say that it been unable to obtain authorization to release it. Board staff relies on the submissions noted above that having an agreement with a third party that a document will remain confidential is not sufficient to warrant confidential treatment. Board staff submits that this document should be placed on the public record.

General Submission on Confidentiality

With respect to the other requests for confidentiality Board staff relies on the submissions noted above and offers the following general submission. While the Board's general policy as stated in its Practice Direction on Confidential Filings (the "Practice Direction") is that all evidence should be on the public record, the Board has also recognized that some information may be of a confidential nature and should be protected.

Appendix A of the Practice Direction outlines some of the factors that the Board may consider in addressing the confidentiality of filings, one of which is the potential harm that could result from the disclosure of the information, including, among other factors, "whether the information could interfere significantly with negotiations being carried out by a party".

Board staff submits that public disclosure of information related to wage increases prior to negotiation of its collective agreements has the potential to have a negative impact on the course or outcome of these negotiations, and that this information should remain confidential.