



**EB-2014-0002**

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

**AND IN THE MATTER OF** an application by Horizon Corporation for an order approving just and reasonable rates and other charges for electricity distribution to be effective January 1, 2015, and for each following year through to December 31, 2019.

**BEFORE:** Christine Long  
Presiding Member

Emad Elsayed  
Member

Cathy Spoel  
Member

**DECISION ON CONFIDENTIALITY**  
**September 18, 2014**

Horizon Corporation (“Horizon” or the “Applicant”) filed a Custom Incentive Rate application (the “Application”) with the Ontario Energy Board (the “Board”) on April 17, 2014 under section 78 of the Ontario Energy Board Act, 1998, S.O. 1998, c. 15, (Schedule B), seeking approval for changes to the rates that Horizon charges for electricity distribution, to be effective January 1, 2015 and each year thereafter until December 31, 2019. The Board has assigned the application file number EB-2014-0002.

By way of Procedural Order No. 3, the Board made provision for the filing of interrogatories and interrogatory responses. Horizon, in responding to the interrogatories, filed a letter with the Board dated August 5, 2014 requesting that certain information related to the following questions 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

The Board received submissions from Board Staff and the School Energy Coalition (“SEC”). Horizon responded to the submissions. The Board has reviewed all submissions and finds the following:

### **Submissions on the Request for Confidentiality**

#### ***Question 2-Staff-21***

Horizon requested confidentiality over the Horizon Physical Security Report (Exhibit 2/ Appendix 2-4/Appendix L) and descriptions of security-related projects contained in the Application which were filed in confidence.

SEC and Board Staff did not oppose the request.

The Board grants the request consistent with its finding as set out in Procedural Order No. 1 where the Board stated that documents relating to the security of Horizon’s facilities should be maintained in confidence.

#### ***Question 4-Staff-26(f)***

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

Horizon has already filed the MEARIE Management Salary Survey of Local Distribution Companies (including the 2013 Addendum), on the public record in this proceeding. No further action is required.

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

Horizon submitted that this material was provided to Horizon by Mercer in confidence. Horizon stated that it is prepared to file copies of these documents in confidence in accordance with the Board's Practice Direction on Confidential Filings (the "Practice Direction"), with certain exceptions. The exceptions relate to (a) certain information that constitutes personal information that Horizon does not intend to disclose in any event; and (b) certain information in the Executive Compensation Review that relates to employees of affiliates of Horizon that is not relevant to this proceeding. Horizon stated that the basis for the confidentiality request is that the public disclosure of this material could reasonably be expected to do the following:

- prejudice the economic interest and the competitive position of Horizon; and,
- cause undue financial loss to, and be injurious to the financial interests of Horizon, its employees and its affiliates.

Horizon submitted that it competes for employees with other local distribution companies and with private sector employers. Public disclosure of Horizon's compensation strategies could reasonably be expected to prejudice Horizon's competitive position in the labour market in that the disclosure would allow other employers to outbid Horizon for executive employees.

With respect to the employees themselves, Horizon submitted that disclosure of Horizon's 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.

Horizon also submitted that Appendix B of the Practice Direction recognizes third party information as described in section 17(1) of the *Freedom of Information and Protection of Privacy Act* ("FIPPA") as among the types of information previously assessed or maintained by the Board as confidential.

Horizon has also redacted a limited amount of information from these documents that, in Horizon's submission, is not relevant to this proceeding or constitutes personal

information. Horizon does not intend to disclose it in any manner, whether publicly or in confidence. Horizon notes that this approach is consistent with the Board's refusal to require Horizon to produce the salaries of its top five executives in Horizon 2011 Cost of Service Application (EB-2010-0131).

SEC submitted that the Ontario Power Authority, Hydro One Networks Inc., and Ontario Power Generation are all required to provide details of their top executives' compensation, by employee, on the annual Public Salary Disclosure prepared by the Ontario Ministry of Finance. Further, SEC submitted that it is not reasonable for Horizon to spend ratepayer money on the compensation of senior executives, and expect to have that information not only secret in the public disclosure sense, but secret even from the regulator and the parties. SEC therefore submitted that all redactions in these documents should be removed, and the documents should be filed on the public record.

In Reply, Horizon referred to the 2006 Electricity Distribution Rate Handbook (the "2006 EDR Handbook"<sup>2</sup>), to support its submission that the Board has taken steps to avoid the disclosure of individual employees' compensation information. At pages 40-41 of the 2006 EDR Handbook, the Board states:

To review the reasonableness of the applicant's total compensation expense, information is required on the number of employees and compensation levels. The applicant is to provide three years of historical data (2002, 2003 and 2004) for the following four broad categories of distributor employees and contract workers in Schedule 6-4:

- executive: CEO, COO, VP(s), General Manager(s), Director(s)
- management: operational, middle, and supervisory managers
- non-unionized: positions not included in union bargaining units that have no supervisory or management responsibilities
- unionized: positions that are part of a union bargaining unit

Where there are three, or fewer, full-time equivalents (FTEs) in any category, the applicant may aggregate this category with the category to which it is most closely related. This higher level of aggregation may be continued, if required, to ensure that no category contains three, or fewer, FTEs.

Horizon also made reference to SEC's attempt to obtain personal compensation information for Horizon Utilities' top five executives in its 2011 Cost of Service hearing (EB-2010- 0131). Having considered the *Freedom of Information and Protection of Privacy Act*, the Board determined that it would not require Horizon Utilities to provide individual compensation information for each of its top five executives. Rather, it requested for the public record the total compensation for the top five executives without any names.<sup>1</sup>

Horizon argued in Reply that there is a distinction between the MEARIE survey, which has been placed on the public record in this proceeding and the Mercer information which Horizon submits ought not to be disclosed. Horizon submits that the MEARIE survey consists of aggregated information across dozens of Ontario distributors, while the Mercer documents include personal compensation information related to specific identifiable Horizon employees.

### **Board Findings**

Horizon has provided two grounds for seeking confidential treatment of the requested information. These exceptions relate to relevance and personal information. Where information is not relevant to a proceeding, the Board need not consider the confidential treatment of the information. Information contained within the Executive Compensation Review that relates to employees of affiliates of Horizon is not relevant to this proceeding and therefore the confidential treatment of such information need not be considered. As it is not relevant, this information need not be filed at all.

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

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<sup>1</sup> See EB-2010-0131 Tr. Vol.3, p.29, lines 1-22

onus is on the person requesting confidentiality to demonstrate why confidentiality is appropriate.

Horizon has submitted that personal compensation levels are personal information. The Board disagrees. The definition of personal information under FIPPA does not list an individual's compensation level. As such, the Board refuses to grant confidentiality on this ground.

However, Horizon also relies on section 17(1) of FIPPA which provides an exemption from disclosure of certain information provided to the government by a third party. The section states:

17(1) A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organizations;
- (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied,
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency; or
- (d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute.

The Board agrees that both FIPPA and Appendix A of the Board's Practice Direction are instructive in evaluating claims for confidentiality.

The overall guiding principle within FIPPA is outlined in section 23. That section states:

An exemption from disclosure of a record under section 13, 15, 17, 18, 20, 21 and 21.2 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

In terms of criteria for evaluating a claim of confidentiality of third party information, the Board has to consider the public interest by weighing on one hand, the objectives of having an open and transparent process and, on the other hand, the prejudice to the competitive or negotiating position of third parties seeking to have documents marked as confidential. As such the basic test is whether there is significant prejudice to the competitive position or negotiating or contractual relations of any person or organization arising from the disclosure of the documents in question such that it is appropriate to remove those documents from the Public Record.

The Board finds that Horizon has demonstrated that there is a reasonable expectation that Horizon could incur harm, and/or its employees' competitive position in the labour market could be prejudiced if the information is released in the public domain. The Board finds that the material related to identifiable individuals' actual salaries and other compensation is properly redacted, however all aggregate information and other information relating to midpoint or other points in the ranges identified by Mercer ought not to be redacted.

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

With respect to item (iv), the Compensation Cost Benchmarking Study sponsored by Hydro One, Horizon has taken a similar approach to that taken in respect of items (ii) and (iii), and argues that it was provided the information by Mercer in confidence, and Horizon does not have authorization to place it on the public record.

Board Staff submitted that the Board recognizes that distributors have non-disclosure agreements with Mercer. However, as noted by the 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.

SEC submitted that the Board has determined in numerous previous cases that the existence of a confidentiality agreement with a third party is not a valid reason to claim confidentiality.

The Board has previously determined that the existence of a confidentiality agreement with a third party is not a valid reason for an applicant to claim confidentiality. However, the Board finds that, for the reasons outlined in response to items ii) and iii) above, the material related to identifiable individuals' actual salaries and other compensation is properly redacted, however all aggregate information and other information relating to midpoint or other points in the ranges identified by Mercer ought not to be redacted.

### **Item (v): Short Term Incentive Pay Design Survey**

With respect to the Short Term Incentive Pay Design Survey, Horizon was not a sponsor of the survey – it simply provided information to Mercer. It was provided in confidence to Horizon. Horizon 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 proposes to have submissions on confidentiality in the event that it is ordered to release the document.

SEC noted that the only rationale given for refusing to provide this document to the Board and the parties is that it was provided to the Applicant in confidence. SEC argued that this is not a valid justification for confidential treatment, and is certainly not a justification to refuse to provide the document at all, even in confidence.

Further, SEC submitted that it would be inappropriate to allow Horizon an opportunity to make submission on confidentiality if the Board orders that the document is relevant.

Board Staff's argument is the same as noted above with respect to confidentiality agreements with third parties.

In its Reply, Horizon stated that it has been in communication with the sponsors of the survey and is able to file the survey in confidence if ordered by the Board to do so.

The Board finds that the fact that the document was provided to Horizon in confidence is not a valid reason for Horizon to claim confidentiality. However, as Horizon is not relying on this document in its application, it is not relevant and therefore the Board does not need to make a determination regarding the claim for confidential treatment.



**Questions 4-AMPCO-16(b); 4-AMPCO-21(p) & 4-Energy Probe-29(b); 4-SEC-23; and 4.2-VECC-41**

As these five interrogatories relate to similar information and similar grounds are provided for the confidentiality request, the Board sets out below a description of these five interrogatories and Horizon's request for confidential treatment, followed by the submissions made by SEC and Board Staff and the Board's findings.

**Question 4-AMPCO-16(b)**

In this question, AMPCO has requested the annual non-union wage increases for 2011-2014 and proposed increases for 2015-2019. Horizon has provided the historical information related to wage increases for all employee groups but has proposed to maintain the 2015-2019 information in confidence. Horizon explained that it is insufficient to simply redact the union-related forecasts, as it then becomes possible to calculate that forecast using the other employee groups' forecasted increases and the forecasted total compensation increases. Horizon requested that the Board approve the proposed redactions as filed.

**Questions 4-AMPCO-21(p) and 4- Energy Probe-29(b)**

Both AMPCO and Energy Probe have requested that Horizon reproduce Tables 4-53 and 4-54 which set out compensation information for individual employee groups, with Non-management – Union and Non-union shown separately. Horizon stated that, for the reasons accepted by the Board in Procedural Order No.1 and discussed by Horizon in relation to Question 4-AMPCO-16(b) above, Horizon will be redacting the 2015-2019 compensation information for the individual employee groups from the public version of the requested expanded Table 4-54. Horizon requested that the Board confirm that this redacted information will remain confidential.

**Question 4-SEC-23**

In this question, SEC has requested the cost assumptions embedded in this Application regarding Horizon's 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. Horizon has redacted the value from the public version of the response and will be providing this information in confidence.

**Question 4.2-VECC-41**

In this question, VECC has asked Horizon 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. Horizon provided a redacted version of its response on the public record.

**Submissions**

For these questions, Horizon reiterated its request that the forecasted compensation information be maintained in confidence as disclosure could reasonably be expected to prejudice Horizon's negotiating position in upcoming collective bargaining.

With respect to these interrogatories, SEC did not disagree with the thrust of Horizon's submissions stating that forecasts of unionized rate increases in the Test Period should be treated as confidential. SEC did however submit that the proposed redactions are extensive and more than required to keep the union rate increases confidential.

SEC also made the observation that as compensation costs are a major component of future revenue requirements, this will inevitably mean that the level of transparency of the Board's processes will decrease over time.

Board Staff submitted that public disclosure of information related to wage increases prior to negotiation of Horizon's 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.

In Reply, Horizon stated that because of the upcoming collective bargaining process between Horizon and its unionized employees, Horizon has provided the historical information related to wage increases for all employee groups but has proposed to maintain the 2015-2019 information in confidence, while disclosing values for total salary and benefits, for the reasons set out in its August 5th letter. This approach is consistent with the approach taken by Horizon in the Application, and approved by the Board in Procedural Order No1.

### **Board Findings**

The Board finds that the requests for confidential treatment of 4-AMPCO-16(b), 4-AMPCO-21(p), 4-Energy Probe-29(b), 4-SEC-23 and 4.2-VECC-41 are appropriate on the basis that the information sought could adversely affect the competitive position of Horizon as it may contain information related to collective bargaining. As a result, Horizon's request that the information provided in response to these interrogatories be treated as confidential is granted.

#### ***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 has provided this information in confidence.

Board Staff made no specific submission. SEC relied on its submission in response to 4-Staff-26.

The Board finds that the information is appropriately confidential only for pay grades where there are fewer than three employees.. All other pay grades should be made public.

**Question CCC.1:**

In this question, CCC has asked for materials provided to senior management and Horizon' Board of Directors related to this Application, and materials provided to senior management and Horizon' Board of Directors regarding the decision to file for a Custom IR plan for the period 2015-2019. Horizon submitted that the materials requested contain commercially sensitive information related to both regulated and un-regulated business activities carried on by Horizon 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.

SEC submitted that all of the information in these documents can be placed on the public record. There are a few cases where information related to un-regulated affiliates, or to future union contract negotiations, is included. Those could be redacted, leaving most of these documents on the public record. SEC therefore proposes that Horizon be ordered to do so.

In Reply, Horizon submitted that its proposed confidential treatment of this material is consistent with the Board's treatment of similar material in its 2011 cost of service application (EB-2010-0131) and with its treatment of similar material in other cases. Horizon Utilities' reasonable expectation was, and remains, that this material will remain confidential. Horizon Utilities reiterates its request that these documents be treated as confidential in their entirety, for the reasons set out in its letter of August 5th.

The Board finds that the request for confidentiality over the entire document is inappropriate and agrees with SEC that it appears that most of the information appears as if it should be placed on the public record. The Board directs Horizon to re-file an appropriately redacted response at which time the Board will review the response and make a determination on the appropriateness of the redactions.

**Question CCC.2**

In this question, CCC has asked for correspondence provided to Horizon' employees regarding the development of this Application. Names of individual addressees have been redacted from the document. Horizon submitted that 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' tax returns.

SEC stated that it was not provided with any version of these documents, redacted or unredacted. From the description, it appears the concern is with the email addresses of employees. SEC agrees that the email addresses should be redacted, but the names of the employees who received the communications should not be redacted.

In Reply, Horizon submitted that the email correspondence was provided to employees who would be working on its 2015-2019 rate application. The names and email addresses of the individual employees constitute personal employee information, and Horizon maintained that it is reasonable to redact both the names and the email addresses. Moreover, Horizon submitted that the names of the addressees of a "kick-off" memo in respect of the 2015-2019 rate application project are entirely irrelevant to this proceeding. According to Horizon, it is the outcome of their work – the Application – that is before the Board and is relevant to this proceeding.

The Board agrees that the email addresses should be redacted from the document. The Board does however find that the individual names on the correspondence should not be redacted. It is relevant for the purposes of the interrogatory as to which individuals received the information. The names of individuals working at a business are not personal information and therefore do not qualify under the exemption put forward by the Horizon.

**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.

Horizon stated that it will not provide the costs of the reports on the public record. In Horizon's submission, 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.

Horizon also submitted that 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 as it would enable other potential consultants to ascertain the scope and pricing of similar projects that Horizon may be prepared to accept, and this may reduce Horizon' ability to obtain truly competitive proposals in the future.

Horizon submitted that this type of information is recognized in the Practice Direction and it is also addressed in section 17(1) of FIPPA.

In Reply, Horizon noted that no party has opposed Horizon Utilities' request to maintain the cost information in confidence, and Horizon Utilities requests that the Board confirm that this information will remain confidential.

The Board recognizes the competitive nature of pricing information as it relates to the pricing of certain reports filed in this application. The Board will therefore allow that these costs be filed in confidence. However, the Board also recognizes that ratepayers have a right to understand the costs associated with the preparation of a rate application as these costs will ultimately be collected through rates. The Board therefore orders Horizon to file on the public record the aggregate cost of the studies referred to in the interrogatory.

#### ***Question 4-Energy Probe-43***

In this question, Energy Probe has asked for a copy of Horizon' 2013 Corporate Tax Return. Horizon 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 Procedural Order No. 1. Neither SEC nor Board Staff made a submission.

The Board finds that the names are appropriately redacted consistent with its Decision in Procedural Order No.1.

**Question 2-SEC-18**

In this question, SEC has requested a copy of the retainer and instructions provided to Innovative Research Group (“Innovative”). Horizon submitted that 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 proposed to file the Letter of Agreement between Innovative and Horizon in confidence.

SEC agreed that the pricing of the consultant’s work should be redacted. However, none of the parts of the response that deal with the scope of work, the nature of the retainer, the schedule, or any other aspect of the contract, aside from price require secrecy and should be placed on the public record.

In Reply, Horizon stated that it has discussed this matter further with Innovative, and is prepared to place the Letter of Agreement on the public record with the exception of (i) the Cost and Billing Terms set out on page 2 of the Letter of Agreement; and (ii) Appendix C (Estimated Budget).

The Board finds that Horizon’s placement of the Letter of Agreement with the noted exceptions on the public record is appropriate.

**Question 4-SEC-36**

In this question, SEC requested a copy of the “Power in Motion Labour Market Information Study” (updated in 2012). Horizon submitted that it will file this survey in confidence. The author of the study; Electricity Human Resources Canada (formerly the Electricity Sector Council) is engaged in a competitive business. 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 requested authorization from Electricity Human Resources Canada to place the study on the public record, and the request was denied.

Horizon also relies on section 17(1) of FIPPA to keep this document confidential. As set out above, and as noted by the 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.

In Reply, Horizon stated that it has re-considered the SEC submission and will provide this information on the public record.

The Board agrees that this document should be filed on the public record as it is already in the public domain.

### **General Observation**

Horizon has stated that some personal information will not be provided “in any event”. The Board wishes to be clear that any information that the Board has determined will receive confidential treatment will be available to the Board and those intervenors who have signed the appropriate Declaration and Undertaking.

**DATED** at Toronto, September 18, 2014

**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli  
Board Secretary