



**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**  
**October 29, 2014**

Horizon Utilities Corporation (“Horizon” or the “Applicant”) filed a Custom Incentive Rate (“CIR”) 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.

A motion was filed by the City of Hamilton (the “City”) on September 4, 2014 with a supporting affidavit sworn by Gord McGuire, an employee of the City who is the Manager of Geomatics and Corridor Management in the Department of Public Works. The motion concerned the appropriate rates for the street lighting class.

A partial settlement proposal was filed regarding Horizon's Application on September 22, 2014. The partial settlement proposal dealt with all matters in the proceeding except for the issues of cost allocation and rate design.

On September 22, 2014 the City filed an Amended Motion (the "Motion").

In its Motion, the City seeks the following:

- a) An order that the rates for the street lighting class not be set until the report of Navigant Consulting Services Limited ("Navigant") in EB-2012-0383 (proceeding related to proposed amendments to the DSC regarding minimum requirements distributors must include in their conditions of service in relation to unmetered loads) has been received and acted upon;
- b) In the alternative, an order requiring that rates for the street lighting class be interim and reconsidered following receipt of the Navigant report and, if appropriate, re-set following the outcome of the Board's considerations in EB-2012-0383.

Horizon filed responding materials to the Motion on September 25, 2014, including an affidavit of John Basilio, Vice-President and Chief Finance Officer for Horizon. The City responded with a further affidavit of Mr. McGuire in response to Mr. Basilio's affidavit.

The Board heard the Motion orally on October 9, 2014. The Board also heard cross-examination of Mr. McGuire and Mr. Basilio on their affidavits as well as submissions from Horizon, intervenors and Board staff.

### **Submissions**

The City submitted that the Board, by way of a letter dated August 21, 2014, gave notice that it had engaged Navigant to undertake a study to, among other things:

- a) Assess the appropriateness of the application of existing methods of cost allocation to various street lighting system configurations, and
- b) Update the Board's Cost Allocation Model as required with respect to the cost allocation to various street lighting system configurations.

A similar motion was filed by the City in another Board proceeding, the Hydro One Networks Inc. EB-2013-0416 ("Hydro One proceeding"). In that case, where the motion was denied, the Board made the following finding:

*The Board considers certainty of rates paid at the time of system use to be a very*

*important attribute of a fair and reasonable ratemaking scheme.*

In this Horizon proceeding, the City relied on what it argued was new material evidence to support its Motion. Specifically, the City relied on the submission that Navigant is anticipated to produce a draft of its report by sometime in October 2014, a timeline which would coincide roughly with the completion of the hearing phase of the Horizon proceeding.

In addition, the City raised the following grounds for the Motion:

- a) Horizon's street lighting rates should be based on the best information regarding how the costs of street lights should be determined and allocated. Not doing so would be contrary to public and regulatory policy. The Navigant report may provide that information.
- b) Horizon has applied for approval of a rate plan to last five years. If street lighting rates are approved on the basis of inaccurate or incomplete information, the prejudice to the City will last for five years.

The City further submitted that the rates resulting from inadequate or defective information would be neither just nor reasonable and would be contrary to the statutory requirement to set just and reasonable rates. The City also submitted that there would be no harm in the Board considering holding off considering street lighting rates until the Navigant report has been received and acted upon.

Horizon and other parties submitted that the Board is always in the process of making policies and the Board cannot hold up other proceedings because of concurrent policy proceedings. In response, the City submitted that "there are policies and there are policies."<sup>1</sup> The City argued that the EB-2012-0383 proceeding, is different in that Board said that there is a "specific concern with the fairness and accuracy of the allocation of costs to unmetered scattered loads, and in particular the street light class".<sup>2</sup> The City argued that the specific concern in the EB-2012-0383 proceeding speaks to the very issues in this case.

Horizon opposed the Motion. Horizon noted that the Board made a very clear decision in dismissing what is essentially the same motion that the City brought in the Hydro One proceeding, and the Board should render the same decision on this Motion. Horizon based its submission on six points.<sup>3</sup>

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<sup>1</sup>EB-2014-0002, Transcript Volume 3 at page 75

<sup>2</sup>*ibid*

<sup>3</sup>*Ibid* at pages 82-88

- a) The original motion and the amended Motion in this proceeding are essentially the same;
- b) There is no new material information or changes that would cause the Board to deviate from the decision in the Hydro One proceeding;
- c) The Board has not refrained from setting final rates, due to policy initiatives that the Board is undertaking at any given time. This was the central finding of the Board's decision in dismissing the City's motion in the Hydro One proceeding. It should also apply here.
- d) If the Board intended to freeze street lighting rates or make them interim because of a policy review it would have expressly said so in the 2015 filing requirements;
- e) There is a fairness argument to be made. If street lighting rates were frozen, other classes would be forced to pick up the revenue shortfall; and,
- f) This Motion is an attempt by the City to frustrate the street lighting proposal before the Board.

Oral submissions were also made by two Intervenors the School Energy Coalition ("SEC") and the Vulnerable Energy Consumer Coalition ("VECC") and Board staff. The Consumers Council of Canada ("CCC") filed a written submission and both Energy Probe and the Association of Major Power Consumers of Ontario ("AMPCO") filed letters supporting and adopting the CCC submission. The Board notes that all intervenors and Board staff opposed the Motion for many of the same reasons submitted by Horizon, namely;

- a) There was no evidence filed to support the City's submission that the evidence relating to cost allocation that is on the record is inadequate or incorrect;
- b) The Board should not hold up a rates proceeding because of an ongoing policy review;
- c) If the Board does implement a new policy, it is the Board's practice to set out how that policy will be implemented; and
- d) There is nothing to distinguish the City's Motion from the motion made in the Hydro One proceeding and, therefore, there is no reason why the Board should decide this case differently.

## Findings

The Board rejects the City's argument that the Board does not have the best available evidence with respect to the street lighting revenue to cost ratios and cost allocation. The Board finds that this submission is not substantiated. The City had an opportunity to file its own evidence to refute the evidence presented in the Application. The City originally filed evidence, but later chose to withdraw it, taking the position that the Settlement Proposal resulted in the evidence being out of date.

The fact that there is an ongoing policy review of the issue of cost allocation does not necessarily mean that there is inadequate or inappropriate evidence before the Board in this proceeding. The Board agrees with the submission of SEC and Board staff that the Board has the jurisdiction to hear the matter before it and to make a determination of rates. The Board recognizes that there may be more evidence available at a later date, however, that does not mean that the evidence before the Board is not sufficient to make a determination.

Further, with respect to the ongoing policy review of the cost allocation methodology, the Board finds that there is no reason why street lights should be singled out for special treatment pending the review. This in fact is the direction set out by the Board in the *Review of the Board's Cost Allocation Policy for Unmetered Loads EB-2013-0383* Report where the Board introduced the need for further work on the cost allocation methodology as it related to street lights. The Board did not suggest that the revenue-to-cost ratios or rates for street lights should be frozen pending the result. As the Board decided in the City's motion made in the Hydro One proceeding:

*The Board has not refrained from setting final rates, even though the ranges have been known to be in a state of flux. The Board considers certainty of rates paid at the time of system use to be a very important attribute of a fair and reasonable ratemaking scheme.*<sup>4</sup>

Finally, the Board notes that in its pre-filed evidence, Horizon proposed certain "reopeners" and stated that adjustments outside the normal course of business will be sought for unexpected events that will have a material impact on the operation of the utility and are outside of Management's control. Horizon's proposal for these adjustments included the following:<sup>5</sup>

Changes to the revenue allocated to unmetered load customers resulting from changes to the Board's policies on cost allocation for unmetered loads. For

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<sup>4</sup>Ibid at page 97

<sup>5</sup>EB-2014-0002 Exhibit 1, Tab 12, Schedule 2 Pages 1 -3

example, on December 19, 2013 the Board issued its *Report on its Review of the Board's Cost Allocation Policy for Unmetered Loads (EB-2012-0383)*.<sup>6</sup>

The Settlement Proposal filed with the Board on September 22, 2014 and accepted by the Board on October 10, 2014, (with reasons to follow) sets out the following Issue 2.4:

*Are Horizon's proposed off-ramps, re-openers, annual adjustments, and annual adjustments outside the normal course of business appropriate?*

In the Settlement Proposal, at page 29 of 62:

*The proposed off-ramps, reopeners and annual adjustments outside the normal course of business are generally consistent with the current Board policy and practice under the Board's FRRF framework, and therefore are appropriate with respect to Horizon Utilities' custom IR application.*

In its reply submission, the City confirmed that its concerns would be addressed if the Board's order embodied the reopener concerning any changes arising out of the EB-2013-0383 policy review.

Horizon provided clarification about the reopener provision and stated that the Settlement Proposal was not to be considered a one-off treatment for Horizon. Any Board policy change would apply to Horizon as it would to all other utilities as directed and on the timeline imposed by the Board.

The Board finds that the reopener clause in the Settlement Proposal is sufficient to ensure that, in the event that there is direction from the Board with respect to a new policy concerning the methodology for cost allocation related to street lighting, Horizon will be treated in a manner consistent with all distributors with respect to the implementation of that policy.

As a result, the Board finds that the issue has been sufficiently resolved through the accepted Settlement Proposal. In the event that the outcome of the Board's policy review in EB-2013-0383 results in a Board directed change in the cost allocation for street lighting, the Settlement Proposal requires that Horizon will adjust street lighting rates accordingly.

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<sup>6</sup>[http://www.onatrioenergyboard.ca/oeb/\\_Documents/EB-2012-0383/Report\\_of\\_the\\_Board\\_Unmetered\\_Loads.pdf](http://www.onatrioenergyboard.ca/oeb/_Documents/EB-2012-0383/Report_of_the_Board_Unmetered_Loads.pdf)

Therefore, the claim for relief requested in the City's Motion is not required. The Board denies the City's Motion.

**DATED** at Toronto, October 29, 2014  
**ONTARIO ENERGY BOARD**

*Original Signed By*

On behalf of the panel  
Christine Long  
Presiding Member