



EB-2009-0332

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 Utilities
Corporation for an order approving the recovery of certain
amounts related to an unforeseen loss of revenue to be
effective May 1, 2010.

BEFORE: **Pamela Nowina**
Presiding Member

Cynthia Chaplin
Vice Chair

DECISION

March 24, 2010

INTRODUCTION

On September 3, 2009 Horizon Utilities Corporation (“Horizon” or the “Applicant”) filed an application (the “Application”) with the Ontario Energy Board (the “Board”) requesting an order or orders of the Board granting approval for the recovery of certain amounts related to an unforeseen and significant distribution revenue deficiency due to a change in operations on the part of one of its Large Use customers (the “Subject Customer”). Horizon proposed to recover this deficiency through a Z-factor related rate rider that would take effect January 1, 2010, subsequently revised to May 1, 2010, and would remain in place until the rate order arising out of Horizon’s next forward test year cost of service distribution rate application took effect on May 1, 2011.

The Board issued a Notice of Application and Hearing on September 29, 2009.

On October 23, 2009, the Board issued Procedural Order No. 1 granting the Consumers Council of Canada (“CCC”), Energy Probe, School Energy Coalition (“SEC”), Vulnerable Energy Consumers Coalition (“VECC”), and U.S. Steel Canada Inc. (“U.S. Steel”) intervenor and cost eligibility status. Procedural Order No. 1 also established dates for the filing of interrogatories and responses to those interrogatories. On November 5, 2009, the Board issued Procedural Order No. 2 clarifying that although U.S. Steel had been granted intervenor status, it had not been granted eligibility for cost awards.

On November 27, 2009, the Board issued Procedural Order No. 3, granting Horizon’s request for an extension to the date for filing responses to the interrogatories from November 26, 2009 to December 1, 2009 and seeking submissions from parties by December 10, 2009 regarding the need for an oral hearing in this proceeding.

On December 1, 2009, Horizon filed its responses to the interrogatories. In accordance with section 5.1.5 of the Board’s *Practice Direction on Confidential Filings* (the “Practice Direction”), Horizon filed a cover letter requesting confidential treatment by the Board of certain interrogatory responses that were filed in confidence, together with a description of the basis on which confidentiality was being claimed.

On December 17, 2009, the Board issued Notice of Hearing and Procedural Order No. 4, which established a process for making submissions on Horizon’s requests for confidentiality. The Board stated that it would issue a decision on the confidentiality issues prior to the commencement of the oral hearing; that all parties should be prepared to make oral argument following the conclusion of the evidentiary portion of

the hearing; and that a one-day oral hearing would be held on Thursday January 14, 2010.

On December 29, 2009, the Board received a letter from Horizon requesting a postponement of the date of the oral hearing to no earlier than January 28, 2010 due to both workload and availability issues related to its staff. Horizon argued that its proposed postponement was both reasonable and appropriate under the circumstances. Horizon also expressed the concern that the timing of the balance of the proceeding, as set out in Procedural Order No. 4, would allow little time between the Board's determination on the confidentiality issues in this proceeding and the beginning of the oral hearing.

On January 5, 2010, the Board issued Procedural Order No. 5, which moved the date of the oral hearing to Thursday January 28, 2010, but left all other dates set out in Procedural Order No. 4 unchanged.

On January 18, 2010, the Board issued its Decision and Order on Confidentiality Issues which granted confidential treatment for specified interrogatories, or portions of interrogatories, and ordered that the remainder be placed on the public record (the "Decision and Order"). The Decision and Order also stated that in accordance with the Practice Direction, Horizon would have a period of five business days in which it could make a written request to the Board that the information be withdrawn, which request the Board would consider promptly; and that Horizon might also, within a period of five business days, advise that it intended to appeal or seek a review of the decision to place the information on the public record. The Decision and Order stated that if Horizon indicated that it intended to appeal, the Board would not place the information on the public record until the appeal or review had been concluded or the time for filing an appeal or review had expired without an appeal or review having been commenced, failing which the Board would implement its Decision and Order.

In order to protect the confidentiality of information specific to the Subject Customer, the Board stated that it would hold the January 28, 2010 oral hearing entirely *in camera* in accordance with Section 6.2 of the Practice Direction and, upon completion of the oral hearing, the Board would establish a process to determine which portions of the transcript could subsequently be made public.

On January 25, 2010, the Board issued Procedural Order No. 6, which confirmed that the oral hearing would commence on January 28, 2010; established a process for dealing with the concerns of U.S. Steel related to the confidentiality of certain interrogatories arising from the Decision and Order; and determined that given the complexity of the issues raised by this application, the Board would no longer require oral argument, but would instead establish a process for written argument, which was outlined. The dates for this process were modified by the Panel at the conclusion of the oral hearing.

Horizon filed its Argument-in-Chief on February 5, 2010. Intervenors and Board staff filed their submissions on February 12, 2010 and Horizon filed its reply argument on February 23, 2010. All of these submissions were filed in confidence.

THE APPLICATION

Horizon applied under Section 78 of the *Ontario Energy Board Act 1998*, S.O. 1998, c. 15, (Schedule B), for approval of a proposed rate rider effective January 1, 2010, subsequently revised to May 1, 2010, through which the distribution revenue deficiency of \$926,075, related to the significant reduction in electricity consumption by the Subject Customer for the period May 2008 to June 2009, and the anticipated distribution revenue deficiency of \$1,924,411 for the period July 2009 to April 30, 2011, which total \$2,850,486, would be recovered through a Z-factor adjustment. This proposed recovery was based on a projected customer demand by the Subject Customer of 12,000 kW per month for the period from July 2009 until April 2011.

Horizon subsequently provided an update of these numbers to incorporate Subject Customer demand data for July through October 2009. This produced a lower recovery claim for the period of May 2008 to October 2009, and a reduced projected distribution revenue deficiency for the period of November 2009 to April 2011. The projected deficiency was based on a significant increase in the revised projected monthly Subject Customer demand.

At the oral hearing, the recovery claim was lowered again, for the same time periods. Again this was because of a significant increase in the revised projected monthly Subject Customer demand.

Horizon proposed that the Z-factor adjustment be recovered through a variable rate rider as the distribution revenue deficiency is related to the decline in the Subject Customer's load. Horizon sought recovery for the sixteen month period commencing January 1, 2010 and ending April 30, 2011. This was subsequently revised to a twelve month implementation period beginning May 1, 2010.

Horizon also provided calculations to support a fixed rate rider which Horizon suggested better reflected the recovery of the distribution revenue deficiency required to continue to meet the fixed capital investment and ongoing operating costs of providing distribution service to the Subject Customer. Horizon submitted that the fixed rate rider was the appropriate method to recover the distribution revenue deficiency and sought the Board's consideration and direction on the recovery methodology.

Horizon's application also incorporated a proposal that the difference between the anticipated distribution revenue from the Subject Customer at a baseline volume of 12,000 kW per month during the period of the rate rider and the actual amount of distribution revenue received from the Subject Customer during the same period be recorded in the variance account 1572 for disposition at a date to be determined.

Horizon stated that, among other Board documents, the July 14, 2008 *Report of the Board on 3rd Generation Incentive Regulation for Ontario's Electricity Distributors* (the "3GIRM Report") and the September 17, 2008 *Supplemental Report of the Board on 3rd Generation Incentive Regulation for Ontario's Electricity Distributors* including Appendix B: Amended Filing Guidelines, Z-factors (the "Supplemental 3GIRM Report") provided for the recovery of amounts related to unforeseen events through the application of a Z-factor Adjustment. Horizon cited the following paragraph from page 35 of the 3GIRM Report in support of its position:

"The Board has determined that the eligibility criteria [Causation, Materiality and Prudence] are sufficient to limit Z-factors to events genuinely external to the regulatory regime and beyond the control of management and the Board."

Horizon stated that it had complied with the Board's 3GIRM and Supplemental 3GIRM Reports as they pertained to the recovery of amounts related to unforeseen events. Horizon noted that it had given notice to the Board on December 23, 2008, of its concerns with the Large User shutdowns and the resulting impacts on its ability to meet its revenue requirement, and advised the Board that "The persistence of the Large User

shutdowns noted [in the letter] will result in a Z-factor claim by Horizon Utilities.” Horizon further stated that a Z-factor event had occurred and it had met the Board’s three criteria for Z-factor adjustments – causation; materiality; and prudence. In addition, Horizon argued that its applications for Z-factor relief were appropriate with respect to events occurring in both rebasing and IRM years, and the forward-looking revenue losses should be recoverable.

In this Decision, the Panel summarizes the evidence and submissions only to the extent necessary to provide context to its findings. The full record is available at the Board’s offices.

The Board’s findings follow in five sections:

1. Is it a Z-factor event?
2. Z-factor Criteria Evaluation
3. Off-ramp Treatment
4. Large Customer Revenue Losses – The Appropriate Remedy
5. Remaining Issues

The Board has concluded that the application should not be granted, and that the appropriate venue for seeking relief is a full cost of service application. The reasons of the Board are set out below.

1. IS IT A Z-FACTOR EVENT?

Section 2.6 of the 3GIRM Report states that Z-factors are intended to provide for unforeseen events outside of management’s control and: “In general, the cost to a distributor of these events must be material and its cost causation clear.”

The Board also stated, at page 37:

“The Board expects that any application for a Z-factor will be accompanied by a clear demonstration that the management of the distributor could not have been able to plan and budget for the event and that the harm caused by extraordinary events is genuinely incremental to their experience or reasonable expectations.”

In order for amounts to be considered for recovery in the Z-factor, the amounts must satisfy all three eligibility criteria described as follows in the Appendix to the 3GIRM Report (the “Appendix”):

- | | |
|-------------|--|
| Causation | Amounts should be directly related to the Z-factor event. The amount must be clearly outside of the base upon which rates were derived. |
| Materiality | The amounts must exceed the Board-defined materiality threshold and have a significant influence on the operation of the distributor; otherwise they should be expensed in the normal course and addressed through organizational productivity improvements. |
| Prudence | The amount must have been prudently incurred. This means that the distributor’s decision to incur the amount must represent the most cost-effective option (not necessarily least initial cost) for ratepayers. |

The 3GIRM Report states the eligibility criteria are sufficient to limit Z-factors to events genuinely external to the regulatory regime and beyond the control of management and the Board.

Horizon acknowledged that events prompting Z-factor applications are often one-time occurrences (e.g. ice storms or other natural disasters). Horizon stated that in the present application, the Z-factor precipitating event consists of both the past reduction in revenue due to the Subject Customer and the anticipated forgone revenue in the 2010 rate year.

Horizon submitted that it was appropriate to treat both the past loss of the Subject Customer’s load and the anticipated ongoing reduction of the Subject Customer’s load as a single event, as other events which may lead to Z-factor applications, such as changes in tax policy, may also have prospective consequences for utilities.

Horizon argued that unnecessary complexity and a multiplicity of proceedings would result if the Applicant was required to file a Z-factor application for revenue forgone to date and an application for a rate adjustment for anticipated forgone revenue. Horizon submitted that its variance account proposal provided an appropriate safeguard against over or under recovery of the lost revenue that the Board may approve in this application.

Board staff submitted that a two step process was required when evaluating an application for Z-factor relief. First, there must be a finding that a Z-factor event had occurred, that is, that the event or events were genuinely external to the regulatory regime and beyond the control of management and the Board. Second, if such an event was found to have occurred, the amounts sought to be recovered must satisfy the three criteria of causation, materiality and prudence to determine whether or not rate relief was justified. Staff submitted that to be “genuinely external to the regulatory regime” required the event or occurrence to be one which is not experienced frequently and ordinarily as part of the utility’s operations. Given the frequency of Large Use customer revenue losses which Horizon has experienced, and that such losses are predictable during periods of economic downturn, staff submitted that Horizon had failed to establish that a Z-factor event had occurred. Staff submitted that because a Z-factor event had not occurred, Horizon was not eligible for the claimed relief.

Energy Probe, VECC, SEC and CCC all made submissions on this issue and all were in agreement with Board staff that Horizon had not demonstrated that it met the criteria for Z-factor relief.

Energy Probe argued that as all distributors have probably experienced some adverse effects on revenue because the load forecasts underlying their rates have at times been temporarily inaccurate, if relief is granted on this ground, other distributors and transmitters would potentially have a similar basis for a Z-factor application. Energy Probe submitted that the risk inherent in load forecasting is one of the risks distributors are compensated for in their rate of return.

VECC submitted that it was incorrect to characterize the loss of a load relating to a single customer as a Z-factor event simply because the customer’s load is beyond the control of the utility, as it was obviously true that a utility has no control over the load of any of its customers. VECC argued that if Horizon was correct, then any load reduction related to a single customer would be recoverable as a Z-factor, subject only to the materiality threshold, a result VECC submitted could not be intended by the 3GIRM Report.

SEC stated that it was not taking a position as to whether or not a loss of revenue from a specific event should, as a matter of interpretation or Board policy, qualify for Z-factor treatment, but believed that this was a live issue and one that in the appropriate circumstances will likely have to be addressed by the Board. SEC argued that in this

case the matter does not need to be addressed as the claim does not qualify on other grounds.

CCC submitted that increases and decreases in load relative to a forecast are not external to the regulatory regime, and that Horizon has not met the eligibility criteria established by the Board in the 3GIRM Report.

In its reply submission Horizon argued that the two step process put forward by staff meant that an event could meet all of the Board's Z-factor criteria, but fail to be treated as a Z-factor. It submitted that the staff position, if accepted by the Board, could be used to arbitrarily deny any application that relates to an event that otherwise meets the Board's criteria and it would be difficult to see what could properly be considered an "extraordinary event" for which Z-factor relief would be available.

Horizon expressed the concern that staff had mischaracterized the Board's treatment of Z-factors and argued it is the Board's eligibility criteria that should establish the existence of a Z-factor, not a new threshold test established by staff. Horizon took the position that when the Board's three tests are met, there is a Z-factor event. Horizon urged the Board to reject what it saw as staff's new test, but stated that even if the Board was to accept such a test, Horizon's claim met this test as well, as the severity of the event distinguished the loss of the Subject Customer's load from other reductions experienced by Horizon and rendered this event "genuinely external to the regulatory regime."

Board Findings

The Board finds that Horizon has not demonstrated in the present application that a Z-factor event has occurred. The Board agrees with the submissions made by Board staff that a two step process is required when evaluating an application for Z-factor relief. First, there must be a finding that a Z-factor event has occurred, that is, that an event or events genuinely external to the regulatory regime and beyond the control of management and the Board have occurred. Once a Z-factor event is found to have occurred, the Board must determine whether the amounts sought to be recovered satisfy the three criteria of causation, materiality and prudence; if all three criteria are satisfied, rate relief is justified.

The Board is of the view that the 3GIRM Report makes clear that a Z-factor event must be found to have occurred before the criteria of causation, materiality and prudence are applicable. This is evident from the reference to the 3GIRM Report cited earlier in this Decision:

“The Board expects that any application for a Z-factor will be accompanied by a clear demonstration that the management of the distributor could not have been able to plan and budget for the event and that the harm caused by extraordinary events is genuinely incremental to their experience or reasonable expectations.”

Further support is found in the causation criteria cited on the same page which states: “Amounts should be directly related to the Z-factor event. The amount must be clearly outside of the base upon which rates were derived”. It is clear that the determination that there is a direct relationship of the amounts to the Z-factor event can only be determined after the occurrence of a Z-factor event has been established. Finally, the Board notes that the Appendix to the 3GIRM Report states that “A distributor may record amounts which meet the eligibility criteria presented below for Z-factor events.” This statement also suggests that the intent of the 3GIRM Report is that a Z-factor event must first be established to have occurred, after which the eligibility criteria are assessed.

As has been noted previously, a Z-factor event has two characteristics: (i) it is an event genuinely external to the regulatory regime and (ii) it is beyond the control of management and the Board.

The Board accepts that the loss of large customer revenue experienced by Horizon is an event beyond the control of its management and the Board.

However, the Board is in agreement with staff and intervenors that Horizon has not demonstrated that the revenue losses experienced are an event genuinely external to the regulatory regime for which the management of the Applicant could not plan and budget, and thus has failed to establish that a Z-factor event has occurred.

The Board notes that there was evidence placed on the record during the proceeding which demonstrated that the Subject Customer’s industry is one that is sensitive to economic changes and that Horizon has experienced similar events in the past.

In addition, Horizon provided information which showed that the actual/anticipated impact of the distribution revenue losses related to the Subject Customer were significantly lower on a percentage basis than those in the Oakville Hydro case referenced by staff in this proceeding (EP-2004-0527), which were in the 4% range.

Finally, Mr. Basilio (CFO for Horizon) testified that Horizon is experiencing neither a cash flow deficiency, nor inability to finance the business, and that it plans to deal with any long-term effects of these losses through the filing of a cost of service application later this year.

For these reasons, the Board finds that Horizon has not demonstrated that the harm caused by the Subject Customer's reduced load is genuinely incremental to Horizon's experience or reasonable expectations. Having failed to do so, Horizon has not established that a Z-factor event has occurred.

As a general matter, the Board finds that revenue loss deficiencies of the kind sought for recovery through this application by Horizon are not appropriately addressed through the Z-factor mechanism because of the need to assess the impacts of such losses on a total utility basis. The Board is in agreement with the views of some intervenors that the Z-factor criteria were not intended to be used for the recovery of revenue losses.

2. Z-FACTOR CRITERIA

The Board has found that a Z-factor event has not occurred making an assessment of the relevant eligibility criteria unnecessary, however, for completeness the Board has also assessed each of the Z-factor criteria. Had the Board accepted that a Z-factor event occurred, Horizon's application would still not be granted as the Board finds that Horizon has failed to demonstrate that the amounts for which it requests relief meets two of the three criteria for such relief, specifically, those of causation and materiality.

(a) Causation

The causation criterion has two components, which are: (i) the amounts should be directly related to the Z-factor event and (ii) the amount must be clearly outside the base upon which rates were derived.

Staff argued that a Z-factor event had not occurred and, as such, this criterion had not been met. The submissions of intervenors have already been discussed in the section of this Decision dealing with whether or not a Z-factor event had occurred. Intervenors did not believe that such an event had taken place.

Horizon submitted that none of the intervenors had suggested that the amount that is the subject of the application is within the base on which Horizon's rates were derived, but had suggested that any risk of a decline in load – even of the scale set out in the application – should be borne entirely by Horizon. Horizon stated that it accepted that a certain level of risk is appropriately borne by the distributor, but submitted that the appropriate level had already been determined by the materiality threshold which, in its view, represented a reasonable demarcation between a normal business risk to be borne by the distributor and an extraordinary event that will be eligible for relief.

Board Findings

The Board finds that the causation criterion has not been met.

In making this finding, the Board is aware of the difficulty which arises in assessing whether or not the causation criterion has been met given that Horizon's application does not fit with the type of cost recovery Z-factor applications which have previously come before the Board.

The Board agrees with Horizon that the loss of the large customer revenue was outside its control, but notes that this would normally be true of the loss of any customer's revenue.

The Board does not accept that these losses can be seen to be totally unexpected. The Board notes that industries, including that of the Subject Customer, do have patterns of success and decline which can be analyzed.

Horizon argues, in effect, that if the amount exceeds the materiality threshold, then the amount meets the causation requirement of being clearly outside the base upon which rates were derived. The Board does not agree. Each of the criteria should be assessed separately. Not all material events are necessarily outside the basis upon which rates were derived.

The Board is in agreement with the views expressed by a number of parties to this proceeding that Horizon is already compensated for load-related risks, such as the loss of large customer revenue that is the basis of this application, through its allowed ROE.

As discussed later in this Decision, the Board believes that the criteria for establishing off-ramps in the 3GIRM plan is also relevant in assessing whether or not the load losses experienced are eligible for relief. The Board notes the impact of these losses in combination with the other losses (for which recovery is not being sought in this proceeding) does not exceed the 300 basis point threshold.

(b) Materiality

The materiality criterion consists of two components. These are: (i) exceeding the Board-defined materiality threshold and (ii) having a significant influence on the operation of the distributor.

Intervenors submitted that the materiality criterion had not been met.

Energy Probe questioned whether either materiality criterion had been met, and whether the monthly decline in demand experienced represented an individual event, or might better be characterized as a succession of individual events. Energy Probe also suggested that the fact that the load rebounded six months after the triggering event confused the claim of a single event, and suggested that the Applicant did not have a good idea of what the Subject Customer's intentions were, or how its load would vary over time.

Energy Probe also submitted that because the Applicant had not shown that it had taken the necessary steps to reassess its business in light of declining loads, it had not demonstrated that reduced revenue would have an ongoing significant influence on its operations and accordingly had also not met the materiality test on these grounds. VECC agreed with Energy Probe.

SEC argued that Horizon's claim did not meet the materiality test since when properly calculated to take into account both losses and gains from the same cause, the revenue loss from the Subject Customer did not meet the formal materiality threshold in either 2009 or 2010, nor the criterion of having a significant influence on the operations of the distributor. SEC argued that this was because Horizon had been able to continue with

business as usual in spite of the revenue erosion arising from the large customer loss. In this context, SEC noted that Horizon's 2008 ROE of 8.59% was higher than the Board approved level.

VECC submitted that it would be entirely inappropriate for the Board to consider providing relief for lost load without accounting for the reduction in costs included in revenue requirement specifically associated with that load.

Board staff and Horizon took the position that the materiality threshold had been met.

Horizon disagreed with the submissions of intervenors that the forgone revenue for each year should be reduced by the corresponding reductions in working capital, which would result in the materiality threshold not being met for 2009 or 2010. Horizon argued that any attempt to impute savings in working capital based on a strict calculation of the working capital related to the Subject Customer is misleading when compared to the reality of actual changes for related periods, and is outweighed by Horizon's increased costs and by other revenue shortfalls across the utility.

Board Findings

The Board finds that this criterion has not been met. The Board is in agreement with the views of intervenors that the impact on the working capital allowance should have been taken into account in determining the amount of lost revenue and an applicant should also attribute an additional reduction to mitigation effects that have been undertaken to offset the revenue losses. Horizon has not made such adjustments to its materiality threshold calculations and accordingly has not demonstrated that this test has been met. In making this finding, the Board is also mindful of the significant decrease in the amount of the anticipated revenue loss from the Subject Customer that has occurred since the time of the filing of this application.

(c) *Prudence*

This criterion requires that the amount must have been prudently incurred and that the distributor's decision to incur the amount must represent the most cost-effective (not necessarily least initial cost) for ratepayers.

Board staff submitted that there is no evidence on the record in this proceeding which would suggest that imprudent actions by Horizon led to the loss of revenues from the Subject Customer. Horizon expressed its agreement with staff on this matter.

Intervenors expressed doubts as to the applicability of the prudence criterion to revenue losses. VECC argued that utilities should not generally qualify for Z-factor relief with respect to loss of load insofar as it results in lost revenue. VECC further submitted that the Z-factor recovery mechanism was intended for unexpected costs, not incorrect load forecasts.

Energy Probe also questioned the applicability of the prudence criteria to a situation where the applicant has not incurred any unusual costs. Energy Probe concluded that there did not appear to be any need for Z-factor relief to maintain a safe and reliable system and, if so, the prudence test relying on that need must fail. Energy Probe also noted that under cross examination, Horizon's witness revealed that it had no customer service staff dedicated to large customers and no key account program to ensure that the distributor has up to date information about a customer's operations.

Horizon disagreed with VECC's suggestion that the prudence criterion has no application to revenue lost in association with reduced load, arguing that imprudent actions by a distributor could, in some cases though not the present one, contribute to a reduction in load, such as where a distributor allowed service reliability to deteriorate in relation to a large customer.

Board Findings

The Board shares the concerns raised by Energy Probe related to Horizon's lack of customer service staff dedicated to large customers and is of the view that Horizon should have developed a better working relationship with the Subject Customer in order to gain a better understanding of its operations and business, and its future plans, particularly given the relative size of the customer. However, there is no evidence to suggest that this shortcoming affected the outcome in this case, namely the load reduction. Therefore, the Board concludes that the prudence criterion has been met in relation to the amount of the revenue loss.

The Board is mindful of the concerns expressed by intervenors about the applicability of the prudence criterion to revenue losses. However, the Board has already found earlier

that the Z-factor criteria are not generally applicable to revenue losses and this matter is subsumed by that finding.

3. OFF-RAMP TREATMENT

Although the Board finds that Horizon's application failed to establish that a Z-factor event occurred, the Board considered whether rate relief might be granted to Horizon on a different basis.

The Board finds there are two possible ways in which Horizon could be entitled to some or all of the relief which it has requested in this application. The first would be if the application met the criteria for Z-factor relief. The second would be if the impact on Horizon's financial situation resulting from the loss of large customer revenue was significant enough to meet the off-ramp conditions of an IRM plan.

Having considered and rejected an application based upon a Z-factor event having occurred, the Board considered the application as a request for rate relief under the off-ramp section of an IRM application. In the Board's view, the events and the resulting revenue losses were more accurately characterized as events and losses which might support an off-ramp application.

The Board's 3GIRM Report states that the incentive regulatory plan includes a trigger mechanism with an annual ROE dead band of ± 300 basis points. When a distributor performs outside of this earnings dead band, a regulatory review may be initiated.

Horizon's allowed ROE was set at 8.57% in the Board's EB-2007-0697 Decision with Reasons of October 3, 2008. During the present proceeding, it was established that Horizon's 2008 achieved ROE of 8.59% was higher than the Board approved level and its forecast 2009 and 2010 ROEs of 6.29% and 6.11% respectively were less than 300 basis points below its allowed ROE.

Board Findings

In this application, the evidence demonstrates that Horizon's achieved ROE has not fallen, nor is it expected to fall, below the 300 basis points threshold established for off-

ramp treatment. As a result, Horizon has not met the off-ramp criteria and cannot be granted rate relief even if the application is characterized as an off-ramp application. In making this finding the Board is mindful of the Oakville Hydro Decision (EB-2004-0527) referred to during this proceeding. Unlike Horizon, Oakville Hydro's ROE was significantly outside the 300 basis point band. The evidence was that its rate of return in 2005 would fall to approximately 0.3% if the application were denied, and amount to approximately 1.4% if the application were approved as compared to its then allowed ROE of 9.88%.

The Board notes that some intervenors argued that neither Z-factor nor off-ramp treatment is available to applicants in a cost of service year. Although the 3GIRM Report does not specifically address cost of service years, the Board does not agree that the fact that an extraordinary event occurs in a cost of service year renders it ineligible for relief of some kind if the circumstances are appropriate. The Board notes that this is consistent with the Board's findings in EB-2009-0243, an application by Toronto Hydro-Electric System Limited for recovery of contact voltage remediation costs.

4. LARGE CUSTOMER REVENUE LOSSES – THE APPROPRIATE REMEDY

In this Decision the Board has found that Horizon's application for recovery of large customer revenue losses does not meet either the Z-factor criteria, or those of the off-ramp from its incentive regulatory plan

In making these findings, the Board is mindful of the need to provide guidance to distributors as to the appropriate approach to take when confronted with such revenue losses. The Board notes the importance of assessing the actions taken by a distributor to deal with customer load loss in the context of their overall impact on the utility, including the overall financial impacts on the utility. The Board believes that the most appropriate approach for a distributor to take under such circumstances is to file a cost of service application. A distributor could also bring forward a request for special treatment of such losses within the context of the overall cost of service application.

However, the Board cautions distributors that such an approach should not be undertaken lightly. The Board expects that any requests for load loss recoveries would be defended in the context of the overall business, that the Applicant would provide a

detailed explanation of all mitigation actions it had undertaken and why further relief continued to be required under such circumstances.

5. REMAINING ISSUES

The Board finds that it is unnecessary for it to make findings on the remaining issues raised by this application as it has not found that there is justification for any relief to be provided.

COST AWARDS

The Board may grant cost awards to eligible stakeholders pursuant to its power under section 30 of the *Ontario Energy Board Act, 1998*. When determining the amount of the cost awards, the Board will apply the principles set out in section 5 of the Board's Practice Direction on Cost Awards. The maximum hourly rates set out in the Board's Cost Awards Tariff will also be applied.

The Board will issue a decision on costs awards after the completion of the following steps:

1. Intervenors shall file with the Board and forward to Horizon their respective cost claims by April 7, 2010.
2. Horizon shall file with the Board and forward to intervenors any objections to the claimed costs by April 14, 2010.
3. Intervenors shall file with the Board and forward to Horizon any responses to any objections for cost claims by April 21, 2010.

Horizon shall pay the Board's costs incidental to this proceeding upon receipt of the Board's invoice.

DATED at Toronto, March 24, 2010

ONTARIO ENERGY BOARD

Original Signed By

Pamela Nowina
Presiding Member

Original Signed By

Cynthia Chaplin
Vice Chair