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By electronic filing

November 2, 2010

Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
27th floor
Toronto, ON M4P 1E4

Dear Ms Walli,

Hydro One Networks Inc. ("Hydro One")
2011-2012 Transmission Rate Case
Board File No.: EB-2010-0002
Our File No.: 339583-000057

Please find attached the Written Argument of Canadian Manufacturers & Exporters ("CME") in this proceeding.

The Argument includes a Non-Confidential version of Appendix A. The Confidential version of Appendix A will be circulated to those who have executed the Confidentiality Undertaking.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Peter Thompson', is written over a horizontal line.

Peter C.P. Thompson, Q.C.

\slc
enclosure

c. Anne-Marie Reilly (Hydro One)
Intervenors EB-2010-0002
Paul Clipsham

OTT01\4252014\1

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

AND IN THE MATTER OF a review of an application filed by Hydro One Networks Inc. for an order or orders approving a transmission revenue requirement and rates and other charges for the transmission of electricity for 2011 and 2012.

**ARGUMENT OF
CANADIAN MANUFACTURERS & EXPORTERS (“CME”)**

November 2, 2010

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APPENDIX A – NON-CONFIDENTIAL

I. OVERVIEW

1. Hydro One Networks Inc. (“Hydro One”) asks the Board to approve transmission revenue requirements of \$1,446M for 2011 and \$1,447M for 2012. These revenue requirements produce a 25.5% increase in transmission rates over the two (2) years commencing January 1, 2011.¹ The revenue deficiencies Hydro One seeks to recover are \$188.1M for 2011 and \$121.7M for 2012.²
2. These requests for large increases in transmission revenue requirements and rates come when consumer concerns with the very significant year-over-year increases in their electricity bills are at an all-time high; and when more overall bill increases of significance are in the offing.³
3. In times of significant year-over-year increases in electricity prices, protection of consumers should become the Board’s rate-making priority; and particularly so when the economic feasibility of the end-state contemplated by the Government of Ontario’s (the “Government”) “greening” of Ontario’s integrated power system has yet to be established.⁴
4. The protective relief the Board can grant, without compromising system reliability and safety, is broad.⁵
5. An exercise of that broad power is required, in the circumstance of this case, in order to bring the revenue requirement amounts Hydro One asks the Board to approve within the limits of reasonableness.⁶

¹ Hydro One Argument, Transcript Vol. 11, p.4.

² Transcript Vol. 3, p.133.

³ CME Evidence of Bruce Sharp (“Sharp Evidence”), Ex.M-2; CME Responses to Interrogatories, Ex.____; Affidavit of Bruce Sharp sworn October 7, 2010; and letter from Borden Ladner Gervais (“BLG”) to the Ontario Energy Board (the “Board”) dated October 7, 2010, containing Mr. Sharp’s written response to cross-examination questions submitted in writing by Hydro One.

⁴ See paras. 8 to 26 of this Argument.

⁵ See paras. 49 to 59 of this Argument.

⁶ See paras. 67 to 83 of this Argument.

6. The Application should not be approved as filed, as Hydro One argues. The revenue requirement amounts for 2011 and 2012 and resulting rates should be materially reduced.

II. CONTEXT AND GUIDING PRINCIPLES

7. We submit that matters relevant to a determination of the questions contained in the Issues List include the items described in the paragraphs that follow.
 - A. Significantly Increasing Electricity Prices and their Causes
8. Consumers are currently attempting to cope with overall increases in their 2010 electricity bills in the 15% to 20% range. The 2010 electricity bill of a typical Hydro One residential consumer is about 17.7% higher than the 2009 bill.⁷ Media reports indicate that consumers of other electricity distributors are experiencing increases in their 2010 electricity bills in the same order of magnitude.⁸ More overall bill increases of significance are in the offing.
9. The evidence filed by CME indicates that over the years 2011 to 2015, non-residential consumers should expect annualized increases in their bills ranging between 8.0% and 10.4% per year. In the same period, residential consumers should expect annualized bill increases ranging between 6.7% and 8.0%.⁹
10. The unprecedented multi-year electricity price increases that consumers have recently experienced and will continue to face in the future are primarily attributable to the initiatives of the Government pertaining to the “greening” of Ontario’s integrated power system. These initiatives require massive transmission and distribution system

⁷ Ex.J6.4 and Transcript Vol. 7, pp. 51 to 53.

⁸ Ex.K10.1 provides the total estimated monthly bill information from the Board’s website for each of the electricity distributors the Board regulates. The information pertains to a residential consumer using 1000 kWh/month. The Board can derive year-over-year increases for such consumers by comparing the current information on its website to the information that existed a year ago. Our expectation is that such a comparison will show increases for most of the consumers analyzed in the 15% to 20% range.

⁹ Sharp Evidence, Ex.M2, pp. 6 to 8.

expenditures to accommodate the attachment of more and more renewable generation sources to the grid. This, in combination with the very high prices that the Ontario Power Authority (“OPA”) is agreeing to pay for renewable generation under the auspices of long-term fixed price, and the large sums that are being directed towards conservation and demand management (“CDM”) are currently producing and will continue to produce significant year-over-year electricity price increases. In combination, these year-over-year price increases pose a material risk of irreparable harm to Ontario’s economy unless considerable care is taken to mitigate that risk by managing the pace and level at which these year-over-year price increases are implemented.

11. For manufacturers, Ontario’s electricity prices are now greater than electricity prices available to their competitors in other jurisdictions. A large proportion of the manufacturers represented by CME are “price takers”. This means that if care is not taken in managing the year-over-year price increases associated with the “greening of the grid”, then manufacturers, currently located in Ontario, will leave and go elsewhere. In this context, it should be remembered that manufacturing is a core component of Ontario’s economy.
12. The absence of a well planned and disciplined approach to the “greening of the grid” is illustrated by the Government’s erratic approach to the matter. The events that prompt our suggestion that the Government’s approach has been erratic includes the following:
 - (a) The Integrated Power System Plan (“IPSP”), EB-2007-0707, upon which the “greening” initiatives were based, was supposed to be subject to public scrutiny and approved by the Board. The Government effectively placed that process in limbo by a Directive issued on or about September 17, 2008.
 - (b) When the “greening of the grid” initiatives were announced back in the spring of 2009, the then Minister of Energy stated in the Legislature that their implementation would lead to electricity bill increases of about 1% per year over

the next fifteen (15) years.¹⁰ No study was ever produced to show how the Government derived that electricity pricing estimate.

- (c) The prices the OPA established for wind and solar power and agreed to pay under the auspices of long-term contracts made the achievement of a 1% per year increase in electricity prices over the next fifteen (15) years impossible. Using a renewable end-state target of 10 MW¹¹ and a mix of wind, solar and other renewable generation considered to be reasonable, one can readily determine that electricity prices are going to increase exponentially. Moreover, the transmission and distribution system investments required to accommodate the renewable generation end-state the Government envisages are in the billions of dollars. Based on the foregoing, the Government's notion that electricity prices would remain relatively stable and increase at a level of about 1% per year over fifteen (15) years beyond 2009 is a notion that lacks any credibility.
- (d) Despite the many indicators that the impact of the initiatives on electricity prices would be severe, neither the Government nor any of its wholly owned entities involved in the initiatives such as the OPA, the Independent Electricity System Operators ("IESO"), Hydro One and Ontario Power Generation Inc. ("OPG") have yet to complete an economic feasibility analysis of the end-state electricity pricing that will be the likely result of these initiatives. An analysis of the economic feasibility of all of this apparently remains a work-in-progress.¹²
- (e) Undaunted by the absence of any economic analysis estimating the likely electricity pricing end-state of the initiatives and the economic consequences that could ensue, the Minister of Energy issued a letter to Hydro One in September 2009 directing it to undertake a broad range of projects to facilitate the implementation of renewable generation.¹³ This letter, characterized during the hearing as the "rush to renewables" letter, is the basis for a portion of the transmission system planning that forms the subject matter of this Application.
- (f) By letter dated February 25, 2010, the Ministers of Energy and Finance expressed concurrence with Hydro One's initial spending plans for 2011 and 2012.¹⁴ However the steep rise in electricity prices in 2010 and the resulting hue and cry prompted the new Minister of Energy to take the following actions:
 - (i) Verbally requesting Hydro One, on or about March 29, 2010, to refrain from filing its initially planned Application for rate increases, thereby countermanding the concurrence with the business plans that had been provided by letter about a month earlier;

¹⁰ Legislative Assembly of Ontario, *Hansard*, First Session, 39th Parliament, No. 116, March 2, 2009, p. 5121.

¹¹ Transcript Vol. 3, p. 124, line 25 to p. 124, line 6.

¹² Transcript Vol. 6, p. 56 to 92 where counsel for CME discussed the issue of the lack of any publically available economic feasibility study with Mr. Struthers.

¹³ Ex.A, Tab 11, Schedule 4, Attachment A, letter dated September 21, 2009, to Hydro One; Transcript Vol. 3, pp. 111 and 112.

¹⁴ Ex.I, Tab 7, Schedule 8.

- (ii) Submitting a letter to Hydro One dated May 5, 2010, requesting Hydro One to review its rate increase Application with a view to reducing the amount of the requested increases;¹⁵ and
 - (iii) Issuing a further letter dated May 7, 2010, to the OPA countermending the “rush to renewables” letter issued approximately eight (8) months earlier and calling for the OPA to re-examine the situation.¹⁶ This letter came to be characterized as the “down tools” letter during the course of the hearing because, in response to it, Hydro One stopped all work on projects listed in the “rush to renewables” letter, except those currently ripe for implementation.
13. The primary reason for the issuance of the “down tools” letter was undoubtedly the concerns raised by consumers over the steep rise in their 2010 electricity bills. A contributing factor may have been the system operation difficulties that attaching more and more wind and solar generation is imposing on the IESO. An operational outcome of the implementation of the Government’s “greening of the grid” initiatives is that more and more hydro-electric generation is being wasted. We are now spilling far more water than ever before and thereby wasting the most environmentally friendly and cheapest form of electricity generation.¹⁷
14. It is in the midst of this turmoil that Hydro One brings forward its request for a 25.5% increase in transmission rates over two (2) years based on its attitude of “entitlement” to recover whatever costs it plans to incur to respond to the wishes of its owner, the Government of Ontario.¹⁸ Hydro One suggests that the Company has no accountability for factors that are beyond its control, including the actions of its owner.¹⁹ Details of the extent to which electricity prices have increased and are likely to increase over the

¹⁵ Ex.I, Tab 1, Schedule 98, Attachment 2.

¹⁶ Ex.I, Tab 1, Schedule 98, Attachment 1; Transcript Vol. 3, p. 112.

¹⁷ Ex.I, Tab 3, Schedule 7, p. 2, para. (c). We recognize that the attachment of more and more wind and solar power generation is only one of the drivers of increasing actual Surplus Base load Generation (“SBG”). However, our understanding from the evidence is SBG will likely be experienced as more and more renewable generation resources are added to the grid.

¹⁸ The “consumers must pay whatever it costs” theme appears in Hydro One’s Argument-in-Chief, for example, at Transcript Vol. 11, p. 17, lines 3 to 5, and at other places in the record where counsel for Hydro One referred to “government policy” as the basis upon which “consumers must pay” the costs Hydro One incurs.

¹⁹ Transcript Vol. 11, p. 15, lines 3 to 6.

course of its planning cycle are of no interest to Hydro One.²⁰ It neither prepares nor considers current and prospective electricity price increase estimates as part of its planning process. Nor is it aware of any such estimates having been prepared by the Government or any of the other entities it owns whose coordinated actions are critical to the achievement of the Government's initiatives in a cost-effective manner. We are told that whatever costs Hydro One plans to incur must be recovered from consumers and that any other result makes no economic sense.²¹

15. We disagree with the positions Hydro One takes based on its attitude that there can be no "denial of cost recovery".²² We submit that the overall electricity price increases consumers are facing and will likely face over the course of Hydro One's five (5) year planning cycle are a critical consideration when determining the overall reasonableness of the revenue requirement amounts Hydro One asks the Board to approve for 2011 and 2012. We submit that when exercising its rate-making jurisdiction under the *Ontario Energy Board Act, 1998* (the "OEB Act"), in the midst of a period of very significant electricity price increases, the Board should accord a high priority to its statutory objective of protecting consumers with respect to electricity price increases.
16. It is not enough to merely assert, as Hydro One argues, that it considered, in an unquantifiable way, that electricity prices would increase.²³ One needs some idea of the year-over-year price increases consumers are experiencing and likely to face over the balance of the planning period in order to determine the degree of consumer protection that is appropriate in a particular test period.

²⁰ Transcript Vol. 3, p. 111, lines 3 to 13; Transcript Vol. 5, pp. 143 to 146; Transcript Vol. 6, p. 65, line 8 to p. 71, line 19.

²¹ Hydro One Argument-in-Chief Transcript Vol. 11, p. 16, line 23 to p. 17, line 2.

²² See Hydro One's September 3, 2010 letter to the Board criticizing CME's evidence that uses the phrase "denial of cost recovery".

²³ Hydro One Argument-in-Chief, Transcript Vol. 11, p. 19, line 26 to p. 20, line 1.

17. The need to consider overall bill impacts was emphasized by the Board in its April 9, 2010 Decision with Reasons in EB-2009-0096, being Hydro One's Application for approval of 2010 and 2011 distribution rates (the "Decision"). In the Decision, the Board expressly acknowledged that:

"In giving effect to the Board's objective to protect the interests of consumers the Board cannot ignore the overall impacts on customers."

18. The Decision also states that:

"... the Board must take into account the overall increase and prospect of further increases in the commodity portion of the bill. While these charges are outside of the control of the applicant, they are no less real for customers." ²⁴

19. In the context of that acknowledgement and Hydro One's failure to provide in evidence any estimates of the electricity price increases consumers were experiencing in 2010 and facing in the other years of its five (5) year planning cycle, CME commissioned and filed the evidence of Mr. Bruce Sharp.
20. Mr. Sharp's evidence, containing estimates of the 2010 electricity price increases consumers are experiencing, and the level of electricity price increases consumers will likely experience over the balance of Hydro One's planning cycle, is evidence pertaining to the "overall increase and prospect of further increases in the commodity portion of the bill". His evidence is precisely the type of evidence that the Decision states cannot be ignored.
21. The bill impact evidence submitted by Hydro One does not reflect the total bill impacts of all of the factors that prompt Hydro One's five (5) year business plans from which its spending plans for 2011 and 2012 are derived. Only the evidence prepared by Mr. Sharp addresses the overall impacts on customers. The Board's statutory objective to

²⁴ EB-2009-0096 Decision with Reasons dated April 9, 2010, p. 12.

protect the interests of consumers demands that this kind of evidence be considered in this case, and in any other rate increase case, the Board considers.

22. While CME is very gratified by the Board's October 27, 2010 announcement of its three (3) policy initiatives to review ways of exercising its rate-making jurisdiction to manage the pace or rate of bill increases for consumers, we wish to emphasize that the Board's plan to proceed with these initiatives should not detract from its duty to discharge its statutory obligation in this case, and in every other rate increase case, to consider current and prospective increases in electricity bills when determining the extent to which protecting the interests of consumers with respect to electricity price increases should influence an exercise of its rate-making jurisdiction. The announced initiatives should not relieve the Board from considering the evidence of CME when determining the extent to which the Board should take action, in this case, to protect the interests of consumers.
23. The Board's obligation to consider this type of evidence, articulated in the Decision, could not be overridden by the ruling made on Issues Day to which Board Staff refers in its Argument. A ruling pertaining to the scope of matters in issue in a subsequent case cannot set aside an important feature of a decision rendered in a prior proceeding. Moreover, the ruling to which Board Staff refers confirms that matters pertaining to consumer impacts are subsumed within the ambit of Issue 1.3. During the course of its ruling, the Board stated:

"The Board considers that the consumer impacts and affordability issues are subsumed under the revised section 1.3 with the following observation. The Board is prepared to enable intervenors to pose interrogatories respecting consumer impacts and affordability with considerable latitude."

We submit that what the Board was seeking to avoid when it made its ruling with respect to the Issues List was a methodology debate. It was not purporting to exclude evidence

of the overall price increases consumers are experiencing and facing in the near term that the Board had already decided in the Decision was the type of evidence that could not be ignored.

24. The Board cannot ignore the reality that consumers are experiencing 2010 electricity price increases of significance and are facing further significant increases over the five (5) year planning horizon from which Hydro One's test year spending plans have been derived. The Government itself recognized that these circumstances justify consumer protection relief in that the Minister of Energy required Hydro One to refrain from filing its initially planned application and to consider reducing the amount of the revenue requirement rate increases then being contemplated in order to respond to consumer concerns.²⁵
25. For reasons that follow, it is CME's position that the 2011 and 2012 revenue requirement reductions made by Hydro One in May 2010 were insufficient to bring them within the limits of reasonableness. Further revenue requirement reductions are required.
- B. In This Current and Prospective Electricity Price Increase Environment, Protection of Consumers Should Be the Board's Rate-Making Priority
26. We submit that the weight the Board should accord to the consumer price protection objective set out in section 1.(1).1 of the *OEB Act* should vary with the significance of the year-over-year price increases consumers are experiencing and will face over the planning period Hydro One uses to derive its test year spending plans. In this case, where the very significant 2010 price increases are likely to be followed by further significant year-over-year price increases in years 2011 to 2015, the consumer price protection objective should be accorded a high priority.

²⁵ See para. 12 (f) of this Argument.

C. Economic Feasibility and Rate-Making

27. Economic feasibility considerations are a cornerstone of utility rate regulation. They should remain a matter of the highest priority.
28. It is of significant concern to CME that there has not yet been any objective and publically available demonstration of the economic feasibility of the Government's "greening of the grid" initiatives that form the basis for a material component of Hydro One's 2011 and 2012 spending plans.
29. The status of the development of a long-term economic feasibility analysis of these initiatives is unclear. Hydro One acknowledges that it is not engaged in preparing such a study. It is apparently looking to the OPA and the Board to evaluate feasibility.²⁶ The Board has already granted a series of rate approvals for Hydro One and other utilities on the assumption that something with respect to feasibility will be forthcoming from the OPA. An Economic Connection Test ("ECT") is one item that the OPA is working on and we understand that economic feasibility analysis will be included in the Long-Term Energy Plan ("LTEP") that is another OPA work-in-progress.
30. The continued absence of economic feasibility analysis should prompt the Board to carefully scrutinize spending plans prompted by the Government's "greening of the grid" initiatives. We urge the Board to proceed with caution and to constrain the revenue requirement amounts it approves until a long-term economic feasibility analysis has been completed, disclosed and tested on the public record. A cautious approach of this nature is particularly appropriate now that individuals experienced with Ontario's electricity market are questioning the sustainability of the initiatives upon which the Government has embarked.²⁷

²⁶ Transcript Vol. 6, p. 60, line 25 to p. 62, line 13.

²⁷ Ex.K6.1, being a paper by Prof. Michael Trebilcock questioning the sustainability of the initiatives and referring to similar views held by others.

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31. Utility owners who fail to substantiate that utility spending plans are based on forecast circumstances that are likely to be economically feasible run the risk of having material portions of their spending plans rejected by an economic regulator.
- D. Government Policy and Rate-Making Implications of Government's Ownership of Hydro One
32. As it did in prior cases, Hydro One argues that, in this case, the Board must approve those portions of its spending plans that are prompted by Government policy.²⁸
33. It is fair to assert that regulators cannot disregard Government policy when exercising their rate-making jurisdiction. However, regulators are not powerless when it comes to considering spending plans that a particular utility asserts have been prompted by Government policy. For example, Government policy does not override the Board's obligation to exercise its statutory jurisdiction in accordance with the objectives set forth in its enabling legislation. More specifically, in the circumstances of this case, Government policy does not override the Board's obligation to approve revenue requirements and resulting rates for Hydro One that are just and reasonable and in accordance with the Board's obligation to protect consumers with respect to electricity price increases.
34. In a rate-setting context, medium term planning prompted by Government policy that is unsupported by any advance economic feasibility analysis should be rigorously scrutinized. Government policy should not trump the Board's consideration of matters pertaining to economic feasibility. An independent economic regulator, statutorily mandated to carry out its responsibilities so as to protect the overall public interest, should adopt a guarded approach when evaluating the utility spending implications of such policies.

²⁸ Hydro One Argument-in-Chief, Transcript Vol. 11, p. 14, lines 15 to 26.

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35. Moreover, in the case of Government owned utilities such as Hydro One, care must be taken to distinguish between matters of Government policy and matters that the Government tells Hydro One to do in its capacity as the owner of Hydro One. The Board is not obliged to automatically approve revenue requirement amounts stemming from spending plans prepared by Hydro One in response to informal or formal directives from its owner operating under the auspices of its Memorandum of Agreement (“MOA”) with Hydro One dated March 27, 2008.²⁹ Letters sent by the Government in its capacity as owner to its utility, Hydro One, are not policy directives to the Board under section 27.(1) of the *OEB Act*. According to Mr. Gregg, such letters do not qualify as directives under the MOA.³⁰
36. We submit that, for the purposes of rate regulation, Government directives made to Hydro One in its capacity as the utility owner, stand on no higher footing than directives Enbridge Inc. (“EI”), the parent of Enbridge Gas Distribution Inc. (“EGD”), might provide to its utility, or that Spectra Energy (“Spectra”), the parent of Union Gas Limited (“Union”), might provide to Union. The spending implications of such directives stand to be carefully scrutinized by the regulator for reasonableness. Formal or informal directives a utility receives from its Government owner do not preclude the Board from considering matters pertaining to the economic feasibility and prudence of the outcomes of such directives.
37. A directive from EI to EGD or from Spectra to Union to spend as much as 2, 3, or 4 times the amounts that have been traditionally spent on the gas storage, transmission and/or distribution systems of utilities would not be automatically approved by the OEB on the basis of assertions by the utility that the spending plans were prompted by a particular Government policy. In an exercise of its rate-making jurisdiction, the Board

²⁹ Ex.K3.1, Tab 1.

³⁰ Transcript Vol. 3, p. 82, lines 14 to 18.

would carefully evaluate the reasonableness of the proposed spending in accordance with the objective criteria the Board is obliged to and has traditionally applied. The Board would only approve the amount of planned spending that falls within the limits of reasonableness.

38. Spending as a consequence of directives Hydro One receives from its owner, the Government of Ontario, stand on no higher footing than the spending consequences of directives any non-Government owned utility receives from its owner. Hydro One agrees that in regulatory proceedings before the Board, its owner should be treated in the same manner as other utility owners.³¹
39. For these reasons, we submit that, as a matter of principle, the Board is not obliged to approve Hydro One's spending plans because they stem from directives it has received from its owner. Hydro One's position to this effect should be rejected.
40. A corollary of the proposition that the Government, as the owner of Hydro One, stands on no higher footing than the non-Government owner of any other Board regulated utility, is the point that, like any other Board regulated utility, Hydro One is accountable for the utility-related actions of its owner.
41. We submit that Hydro One cannot credibly pretend that it is unaccountable for the utility-related actions of its owner. For rate-setting purposes, a direction by the Government, as owner of Hydro One, that the utility immediately plan to spend some \$4B on system expansion stands on no higher footing than a plan by the owner of EGD to radically increase capital spending to increase system reliability and safety.³² In each case, the utility plans are subject to careful scrutiny by the Board for reasonableness.

³¹ Transcript Vol. 3, p. 83, lines 9 to 19.

³² See EGD case, EB-2005-001/EB-2005-0437, Decision with Reasons dated February 9, 2006, at pp. 9 to 13, and in particular, paras. 2.2.17 and 2.2.18.

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42. Hydro One seeks relief from the Board that includes benefits for its owner. The merits of the relief requested must be evaluated, regardless of the identity of Hydro One's owner, and not granted, as Hydro One suggests, merely because its owner is the Government of Ontario, over which it has no control. We submit that Hydro One's submissions about the lack of control over its owner have no bearing on the determination of the appropriateness of the relief Hydro One requests. We submit that Hydro One's arguments to the contrary are without merit.

E. Rate-Making as a Surrogate for a Competitive Market Outcome

43. It is often stated, that one objective of utility rate-making is to produce a result that mirrors the outcome that would prevail in a competitive market.
44. We submit this principle has some relevance to a consideration of the overall reasonableness of the 2011 and 2012 revenue requirement amounts Hydro One asks the Board to approve. If one envisages a hypothetical competitive market in which Hydro One customers could acquire electricity from other neighbouring jurisdictions, then, in the face of the significantly increased electricity prices Ontario consumers are experiencing, and the further significant increases that are expected in the near term, these customers would likely chose to acquire their electricity from Manitoba or Quebec, or from any neighbouring American states where electricity prices are lower. Hydro One's customers do not have that option because of the monopoly nature of the electricity generation, transmission and distribution system in Ontario. They must cope, as best they can, with increasing prices that are significantly moving higher because Ontario wants to be a leader in transforming its integrated power system to a green grid.
45. An entity operating in an entirely unregulated electricity market would likely make efforts to keep its prices in line with those of its competitors during the capital intensive period involved with a transformation of its system to what is perceived to be a better system for

the future. If necessary, such an entity would likely forgo a full return on investment during the transition period in order to preserve market share and to maintain overall electricity price stability.

46. We submit that the foregoing hypothetical competitive market scenario provides some guidance with respect to an appropriate regulatory response to the situation in which the Government of Ontario, as owner of Hydro One, finds itself. That situation is somewhat analogous to the situation facing a competitive market participant engaged in a capital intensive transformation of its infrastructure to produce what is perceived to be a better system for the future.
47. During the course of the capital intensive transition period, a business owner in a competitive market is likely to temporarily forgo some return on investment in order to maintain some pricing stability in the marketplace.
48. We submit that in exercising its rate-making jurisdiction under the *OEB Act*, in a manner that protects consumers with respect to electricity price increases, the Board can consider what competitive market participants would likely do in similar circumstances and can approve a revenue requirement amount that reflects a temporarily lower return on investment in order to maintain some reasonable electricity price increase stability in the marketplace. In these types of transitional circumstances, limiting a revenue requirement envelope in this way is compatible with the principle that utility rate-making should produce a result that mirrors a competitive market outcome.

F. System Safety and Reliability and Consumer Electricity Price Protection

49. We accept that when considering the amounts of the revenue requirement envelopes for 2011 and 2012 and resulting rates to be approved in this case, the Board should be constrained by considerations of system reliability and safety. We accept the proposition

that system reliability and safety should not be compromised to protect consumers from electricity price increases.

50. However, in applying that concept, it needs to be recognized that a temporary reduction in the recovery by Hydro One of a full equity return poses no threat to transmission system safety or reliability.
51. Hydro One's witnesses acknowledged that Hydro One does not raise any equity in the capital markets. The Government, as the owner of Hydro One, does not incur any costs to attract equity capital. It does not require funds to support the issuance of shares and the raising of equity in the capital markets. This is a fact that cannot reasonably be disputed.
52. We submit that the evidence in this case establishes, without doubt, that Hydro One incurs no utility-related equity capital costs. Stated another way, the inability of Hydro One to recover a full equity return poses no threat to transmission system safety or integrity. This was expressly acknowledged by Mr. Struthers, the Chief Financial Officer of Hydro One, in cross-examination by counsel for CME.³³
53. Moreover, back in 2008 when it established the initial payment amounts for OPG, the Government itself acknowledged that it does not need a full equity return to cover its actual costs of capital. At that time, the Government used a 5% Return on Equity ("ROE") to establish the revenue requirement to be recovered in OPG's regulated hydro-electric and nuclear payment amounts. The rate of 5% was the approximate cost of debt the province incurred to finance Ontario Hydro. In announcing the appropriateness of recovering less than a full equity return, the Government, recognizing that a full equity return would be in the order of 10%, stated that an ROE of 5% "balances the needs of customers and ensures a fair return for taxpayers", and that an ROE of 5% would

³³ Transcript Vol. 6, p. 94, lines 10 to 17.

“generate revenue to service the OPG debt held by the Ontario Electricity Financial Corporation while putting significant discipline on OPG to contain costs and approval for all operating efficiencies.”³⁴

54. We reiterate that the evidence in this case establishes that Hydro One does not raise equity in the capital markets. In this respect, this case is distinguishable from the recent Hydro One distribution Decision where the Board found that there was no evidence adduced to support intervenors’ arguments to the effect that Hydro One’s owner does not incur any costs to raise equity in the capital markets.³⁵
55. In this case, the evidence is clear. Hydro One’s owner could provide some added consumer protection without compromising system safety or integrity by waiving the recovery of some equity investment return, just as it did when it initially set OPG’s regulated Payment Amounts.
56. We submit that in the significantly increasing electricity price environment that currently prevails, the Board, in exercising its rate-making responsibilities in a manner that accords a high priority to consumer protection against price increases, is empowered to impose any measure that the utility itself might take without compromising transmission system safety and reliability.
57. We submit that, in addition to disallowing a portion of budgeted capital and operating costs that the Board finds to be unreasonable, the scope of revenue requirement reductions that the Board could make, when setting Hydro One’s rates for 2011 and 2012, includes reducing the revenue requirement envelopes for each of those years by

³⁴ Ex.K6.3 and Transcript Vol. 6, p. 132, line 13 to p. 133, line 12.

³⁵ EB-2009-0096 Decision with Reasons dated April 9, 2010, at pp.; 49 and 50 where the Board stated: “*The fact is that none of these arguments seeking to displace all of, or portions of, the Revised Guideline on cost of capital is supported by any evidence whatsoever. Whatever the relative merit of any of these arguments may be, in order to prevail they must be underpinned with persuasive evidence, which has been subjected to the usual testing processes. This is a basic tenet of law; in order to succeed an argument must be founded on evidence properly before the decision maker.*”

the amounts of transmission-related dividends and consequential taxes that Hydro One currently plans to pay to its owner.³⁶ These funds are not needed to cover any utility-related costs.

58. That the dividends and related taxes the Government receives from Hydro One are not needed to raise utility-related capital is effectively acknowledged by counsel for Hydro One in argument when he asserts that amounts Hydro One pays to the province are “used to support a host of social programs, such as, for example, our school system.”³⁷ This submission constitutes an unequivocal acknowledgement that some dividends are not needed to cover utility-related costs.
59. The point is that the scope of the Board’s ability to protect consumers with respect to increases in electricity prices, without compromising system safety and reliability, is far broader than Hydro One suggests in its Argument.

G. The Board’s Rate-Making Independence

60. When it comes to rate-making, the Board is a quasi-judicial regulatory tribunal that determines, independently, whether the revenue requirement and rates proposed by a particular utility are just and reasonable.³⁸
61. The fact that the Government, as a utility owner, tells its rate-regulated utility to spend billions of dollars is not, in and of itself, determinative of whether the resulting rates are just and reasonable. There are limits to what can be rationalized as just and reasonable rates for a particular test period. Matters pertaining to economic feasibility, of which overall electricity prices are an important feature, can have a limiting effect on the determination of this issue.

³⁶ Transcript Vol. 6, p. 94, line 18 to p. 97, line 16, and Ex.JX6.5.

³⁷ Hydro One Argument-in-Chief, Transcript Vol. 11, p. 16, lines 17 to 26.

³⁸ Article of Robert B. Warren, WeirFoulds LLP, in *APPRO Magazine*, August 2010.

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62. When it comes to utilities owned by the Government, the Board is not powerless to disallow budgeted costs, as Hydro One implies. The Board has statutory responsibilities that it exercises independently and objectively. These responsibilities include the obligation, in appropriate circumstances, to protect the interests of consumers with respect to electricity price increases.
63. The Board approves revenue requirement and rates that reflect its independent and objective evaluation of the amounts for which approval is sought. If amounts lower than those requested are approved, then the utility owner has the option of adjusting its spending plans to achieve a particular investment return, or to spend as initially planned and realize a return on investment somewhat lower than requested.
64. It is the Board's objective and independent evaluation of reasonableness that protects the overall public interest.
65. CME submits that the Board's independence is not and should not be compromised by the fact that a utility seeking approvals for revenue requirements and rates is owned by the province of Ontario.

H. Summary

66. The submissions that follow pertaining to those matters on the Issues List on which CME takes a position are informed by the foregoing circumstances and guiding principles.

III. **ISSUES**

A. Overall Reasonableness of 2011 and 2012 Revenue Requirement

67. Issue 1.3 in the Board's Issues List poses the following question:

"Is the overall increase in 2011 and 2012 revenue requirement reasonable?"

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68. Subsumed within a determination of this question are matters pertaining to Hydro One's consideration, if any, of the electricity price increases consumers are facing in 2010 and will likely face during Hydro One's five (5) year planning cycle before Hydro One finalized its Application for revenue requirement and rate increases for 2011 and 2012. Also subsumed within the issue are matters pertaining to the extent to which the Board can grant electricity price increase protection for consumers when exercising its statutory mandate to fix and approve just and reasonable rates.
69. CME's priority focus in this case has been on the reasonableness of Hydro One's 2011 and 2012 revenue requirements in the context of the overall electricity price increases consumers have experienced in 2010 and are facing during the five (5) year planning cycle upon which Hydro One's requests for revenue requirement and rate increases are based.
1. Hydro One Failed to Adequately Consider Current and Prospective Electricity Price Increases
70. While Hydro One did consider the combined effect of current and prospective transmission and distribution rate increases on electricity prices, before finalizing its May request for revenue requirement and rate increases, it did not consider the current and prospective total electricity price increases facing consumers. We submit that Hydro One's failure to consider these total electricity price increases is incompatible with the Decision explicitly stating that this information cannot be ignored.
71. Hydro One suggests in argument that it lacks the ability to estimate prospective electricity price increases.³⁹ This assertion is incompatible with the testimony provided by Mr. Gregg who acknowledged that the rate impact analysis charts provided to the Hydro One Board of Directors in February 2010 could accommodate the commodity and regulatory cost changes that are expected to occur, respectively, as a result of all of the

³⁹ Transcript Vol. 11, p. 14, lines 3 and 4.

external factors influencing Hydro One's five (5) year plans.⁴⁰ Mr. Struthers agreed with Mr. Gregg and indicated that, using publically available information, it would be relatively simple to include estimates of the bill elements not classified as either transmission or distribution.⁴¹

72. In these circumstances, we submit that Hydro One's argument that it lacks the ability to reasonable estimate current and prospective electricity price increases is an argument that lacks credibility.
73. Hydro One works closely with the IESO, OPA and the Ministry with respect to the planning and operating implications of the Government's "greening of the grid" initiatives. In these circumstances, Hydro One is in a better position than most to estimate the price increases that will likely ensue from the combined effects of its owner's "greening of the grid" initiatives and the transformation of the integrated transmission and distribution system in Ontario needed to implement them. Given the level and degree of coordination between Hydro One and these related entities, we submit that Hydro One easily has access all of the information necessary to produce a reliable and accurate estimate of total price and bill increases over a five (5) year planning horizon.
74. As already noted, when determining the extent to which consumers are in need of protection against electricity price increases, it is not enough to merely consider that prices are and will be increasing. The answer to the questions of "by what amount" or "by what percentage" are critical to a determination of the extent, if any, to which consumer electricity price protection action is warranted.
75. Since Hydro One did not consider the current and prospective electricity price increases that the Board, in the Decision, said cannot be ignored. We submit that a finding should

⁴⁰ Transcript Vol. 3, p. 108, line 23 to p. 111, line 12; p. 124, line 16 to p. 125, line 19; p. 127, line 15 to p. 128, line 19.

⁴¹ Transcript Vol. 6, p. 65, lines 8 to 19; p. 66, line 22 to p. 69, line 5.

be made in this case that Hydro One's consideration of consumer impacts was inadequate. The Board should establish revenue requirements for 2011 and 2012 that reflect a proper consideration of the current and prospective electricity price increases consumers are experiencing and facing over Hydro One's five (5) year planning horizon.

2. Magnitude of the Increases

76. The evidence with respect to the magnitude of electricity price increases in 2010 is that they have been very significant and probably in the 15% to 20% range for most electricity consumers. Mr. Sharp provides estimates of the total electricity price increases consumers will be facing in the years 2011 to 2015. Hydro One's cross-examination questions of Mr. Sharp were submitted and answered in writing.⁴² Mr. Sharp's evidence pertaining to the magnitude of electricity price increases consumers will be facing was not questioned. The information sources Mr. Sharp used in deriving his estimates are described in his pre-filed evidence. The estimates are based on assumptions that he regards as reasonable. There is no evidence from Hydro One or from anyone else suggesting that Mr. Sharp's annualized price increase estimates for 2011 to 2015 are inappropriately excessive.⁴³ In these circumstances, we submit that the evidence CME has adduced supports a finding that electricity consumers have experienced very significant electricity price increases in 2010 and that, over the years 2011 to 2015, they will face a series of likely price increases in the percentage ranges estimated by Mr. Sharp. On the basis of this evidence, we submit that the electricity price increase environment that is likely to prevail in the medium term is of a magnitude that calls for a regulatory price increase protection response.

⁴² See footnote 3.

⁴³ A suggestion was made by counsel for Hydro One at Transcript Vol. 10, p. 5, lines 12 to 15 that the Company would be submitting argument on the relevance of Mr. Sharp's evidence. Subsequently, Hydro One posed its cross-examination questions to Mr. Sharp in writing and received written responses to those questions. No submissions on Mr. Sharp's evidence were made by Hydro One in its Argument-in-Chief. In these circumstances, we submit that it is no longer open to Hydro One to question the relevance of Mr. Sharp's evidence and any attempt to do so in Reply Argument would be improper and unfair.

3. What is the Appropriate Regulatory Response?

77. For reasons already outlined, the scope of available regulatory responses to the significant price increase environment facing consumers currently and over the next five (5) years includes one or more of the following:
- (a) Approval of reduced Operation, Maintenance and Administration (“OM&A”) expenses envelopes for 2011 and 2012;
 - (b) Approval of reduced Capital Expenditure envelopes for 2011 and 2012; and/or
 - (c) Approval of a reduction in Equity Return and related taxes in 2011 and 2012 to the extent that system safety and integrity is not compromised.
78. We consider it curious that, in response to the request made by its owner to consider ways and means of protecting consumers from electricity price increases, Hydro One management never invited its owner to consider waiving recovery of the equity return and taxes it does not need to support its utility-related activities.⁴⁴
79. If Hydro One’s owner is sincerely concerned about the electricity price increases consumers are facing, then it should readily waive the amount of investment return that is not needed to support Hydro One’s utility-related activities.
80. Yet, Hydro One’s management did not even pose that question to its owner. Instead, it asserts in argument in this case that price protection action of the nature we are suggesting could jeopardize Ontario’s school system. These submissions demonstrate conclusively that the dividends and related taxes Hydro One is planning to flow through its owner in 2011 and 2012 are not needed for any utility related costs. Hydro One’s argument, based on the notion that the funds will be used by Hydro One’s owner to support social programs formerly funded through taxes, demonstrates that Hydro One and its owner wish to assure that electricity prices remain high enough so that ratepayer

⁴⁴ Transcript Vol. 6, p. 93, lines 6 to 20.

dollars can be used to support Ontario's social programs. These circumstances call into question the assertions by Hydro One's owner that it is concerned with electricity price increases.

81. The notion argued by Hydro One that temporarily reducing the equity return Hydro One realizes from its ratepayers requires taxpayers to subsidize ratepayers lacks merit.⁴⁵ The reality is that, by allowing Hydro One's owner to recover more than the actual costs of capital it incurs for utility purposes, ratepayers are subsidizing social programs that taxpayers formerly funded. Temporarily reducing the amount of recovery to a level that does not compromise system safety and integrity reduces that subsidy, but only for the duration of a factual situation that calls for a regulatory response that protects consumers from significant electricity price increases. The measure does not require taxpayers to subsidize utility-related activities as Hydro One contends. It reduces the extent to which ratepayer funds are being used to support Government programs.
82. We submit that, in the significant electricity price increase environment that currently prevails, the appropriate regulatory response to Hydro One's Application is for the Board to approve revenue requirement envelopes for 2011 and 2012 that reflect further reductions in the OM&A and Capital Expenditure envelopes of the types suggested by Board Staff and other intervenors, along with a temporary disallowance of equity return and related taxes not needed to maintain system safety and integrity. These amounts can be derived from the transmission-related dividends shown in Confidential Exhibit JX6.5. CME will provide a confidential schedule to this Argument containing its estimates of these dividend and related tax amounts.
83. For all of these reasons, we submit that the overall revenue requirements Hydro One seeks to recover in 2011 and 2012 are unreasonable and should be reduced.

⁴⁵ Hydro One Argument-in-Chief, Transcript Vol. 11, p. 16, lines 23 to 26.

B. Deficiencies in Hydro One's Business Planning Process

84. The following question is posed in Issue 1.2:

“Are Hydro One's economic and business planning assumptions for 2011/2012 appropriate?”

85. In the context of the Board's April 9, 2010 Decision to the effect that current and prospective electricity price changes cannot be ignored, we submit and urge the Board to find that Hydro One's business planning process is now deficient in that it does not currently call for the preparation of total year-by-year bill increase estimates for the five (5) year planning cycle it uses to derive its applications for Board approval of prospective test period transmission and distribution rates.
86. For reasons already articulated, we submit that, as a result of its close relationship with the OPA, IESO, and the Ministry of Energy, Hydro One is in a better position than most to prepare these price increase estimates.⁴⁶ Information pertaining to these estimates is relevant in any revenue requirement and rate increase case the Board considers.
87. We reiterate that, in our view, the recent consultative process the Board has announced should not relieve Hydro One and other utilities the Board regulates from including current and prospective electricity price increase estimates in their planning processes. Our expectation is that the outcome of the initiatives the Board has announced will likely be the adoption of a standardized approach for compiling and presenting current and prospective electricity price increase estimates in each rate case the Board considers. Disputes, if any, pertaining to the method to apply or information sources to be considered under a standardized approach will be discussed and hopefully resolved during the course of the consultative process. However, the eventual adoption of such a standardized approach should not relieve the utilities from including information of this nature in their planning processes that take place before any standardized approach is

⁴⁶ Transcript Vol. 3, p. 127, line 15 to p. 128, line 9.

adopted. The information is required now and for any rate increase case the Board considers.

88. For these reasons, we urge the Board to direct Hydro One to prepare and consider this type of information in its business planning processes. The failure of those working closely together to implement the Government's "greening of the grid" initiatives such as Hydro One, the OPA, the IESO and the Ministry of Energy to prepare and provide this critical pricing information to manufacturers and other consumers creates uncertainty. Manufacturers need this information for business planning purposes. Without it, they may assume the worst and take decisions to either reduce or eliminate their continued presence in Ontario. Hydro One and other utilities the Board regulates should be required now to prepare and consider this type of information in their planning processes. Until such time as a standardized method for preparing and presenting the information as being adopted, Hydro One and the other utilities the Board regulates should use whatever method they consider to be appropriate to prepare the pricing estimates. Similarly, until such time as a standardized approach has been approved by the Board, intervenors should be free to file evidence pertaining to the current and prospective electricity price increases consumers are experiencing and facing.

C. Export Revenue Forecast

89. The School Energy Coalition ("SEC") and the Vulnerable Energy Consumers Coalition ("VECC") are the ratepayer representatives that took the lead on this issue. We support the positions they will be urging the Board to adopt.

D. Operations, Maintenance and Administration ("OM&A") Costs

90. We agree with the approach Board Staff advocates and urge you to adopt an envelope approach when considering the reasonableness of the total OM&A expenses Hydro One asks the Board to approve for 2011 and 2012.⁴⁷
91. We urge you to render a decision on transmission OM&A that is compatible with the decision the Board rendered on April 9, 2010, pertaining to Hydro One's distribution OM&A. In that case, the Board reduced the total budget amounts for distribution of about \$560M in 2010 and \$575M in 2011 by \$40M in each year.⁴⁸ This translates into a reduction amount, expressed on an envelope basis, of about 7% of the amount budgeted.
92. The OM&A envelope amount Hydro One initially budgeted before making its May 2010 adjustments were \$456M in 2011 and \$470M in 2012. A 7% reduction in these amounts produces an envelope OM&A allowance for 2011 of about \$424M and an envelope OM&A allowance for 2012 of about \$437M. These amounts are about \$12M and \$13M lower than the amounts of \$436M for 2011 and \$450M for 2012 that Hydro One asks the Board to approve.
93. The business plans upon which the Board's April 9, 2010 distribution Decision were based and the business plans upon which this 2011 and 2012 transmission revenue requirement rates application are based are one and the same.⁴⁹
94. In these circumstances, we respectfully submit that the OM&A expenses envelopes Hydro One asks the Board to approve of \$436M for 2011 and \$450M for 2012 are too high by about \$12M and \$13M respectively. To be compatible with the recent

⁴⁷ Board Staff Submissions, pp. 4 to 8.

⁴⁸ EB-2009-0096 Decision with Reasons dated April 9, 2010, pp. 8 to 20.

⁴⁹ Transcript Vol. 4, p. 120, line 26 to p. 121, line 4.

distribution rates Decision, the transmission OM&A expenses envelopes should be allowed at amounts of about \$424M for 2011 and about \$437M for 2012.

95. Included within these reduced OM&A expenditure envelopes are the disallowances for compensation to which Board Staff and Energy Probe refer in their submissions that we support and adopt and disallowances for other questionable line item expenses to which we expect other ratepayer representatives will refer in their arguments.

E. Capital Expenditures and Rate Base

96. Ratepayer representatives other than CME took the lead on matters pertaining to the Rate Base consequences of Hydro One's proposed Capital Expenditures for 2011 and 2012, excluding those expenditures related to the *Green Energy Plan*, which we address later in this argument.
97. Once again, we urge the Board to adopt an envelope approach to the issue and to determine an overall amount for each of the Sustaining, Development, Operations and Shared Services categories of Capital Expenditures that reflect the total of any line item amounts the Board finds to be questionable.
98. We understand that at least one ratepayer representative will be questioning the reasonableness of the in-service date forecast of December 2012 for the Bruce to Milton Transmission Line. We support any submissions that are made suggesting that a December 2012 in-service date is overly optimistic. The in-service date is likely to be later than December 2012 with the result that the Rate Base amount Hydro One proposes for that year should be reduced.
99. Apart from the foregoing, we rely on the submissions of other ratepayer representatives pertaining to the envelope amounts for each category of capital expenditure that the Board should approve.

F. Green Energy Plan

100. We are in agreement with the analysis of the facts pertaining to Hydro One's transmission Green Energy Plan ("GE Plan") contained in the submissions of Board Staff.⁵⁰ As a result of the Minister's May 7, 2010 letter to the OPA requiring new advice regarding transmission planning, the GE Plan Hydro One asks you to "conceptually" approve is in suspension. In current circumstances, there is no GE Plan to approve and we urge you to refrain from granting the "conceptual" approval Hydro One requests.
101. The issue of GE Plan approval should be revisited after the OPA has provided the Minister of Energy with new advice regarding transmission planning and Hydro One has developed specific plans that it can support as a reasonable forecast of the future activities in which it is likely to be engaged to implement the transmission planning that flows from the new advice the OPA has provided to the Minister. Until that happens, the Board should confine its approval to GE Plan projects to those particular projects that are currently ripe for implementation.
102. We agree with Board Staff that these specific approvals for projects ripe for implementation should encompass the Leaside, TS Hearn TS and Manby TS short-circuit upgrades and the Protection and Control ("P&C") upgrades to which Board Staff refer in their submissions.
103. Subject to subscribing to the concept that cost responsibility for these projects should be determined in accordance with the provisions of the Transmission System Code ("TSC"), we take no position on the question of whether Board Staff's submissions⁵¹ on the points are compatible with the TSC. We will rely on the Board to apply its expertise in determining those cost responsibility questions.

⁵⁰ Board Staff Submissions, pp. 10 to 14.

⁵¹ Board Staff Submissions, pp. 14 to 18.

G. Accelerated Cost Recovery Proposals

104. We agree with Board Staff's analysis of the Board's January 15, 2010 Report of the Board: The Regulatory Treatment of Infrastructure Investment in connection with the Rate Regulated Activities of Distributors and Transmitters in Ontario (the "Report"). In particular, we agree that the Bruce to Milton transmission project does not pose "unique" risks. It should continue to be treated, for regulatory purposes, just as any other large transmission line project. We submit that the Board should find, as Board Staff submits, that conventional cost recovery methods are sufficient to address any risks associated with the Bruce to Milton transmission line.⁵²
105. Moreover, for consumers, Hydro One's Bruce to Milton transmission line Construction Work-in-Progress ("CWIP") proposal is a "front-end load" proposal. In the significantly increasing electricity price environment that consumers currently find themselves, any "front-end load" proposal is untimely. We submit that the proposal should not be approved, at this time, even if it is cheaper in the long run as Hydro One argues. Hydro One should be at liberty to renew the proposal later when the significant year-over-year electricity price increases currently facing consumers have abated and the electricity pricing environment has stabilized.
106. Disallowance of Hydro One's Bruce to Milton CWIP proposal reduces the 2011 and 2012 revenue deficiencies by \$43.7M and \$26.0M respectively.⁵³

H. Cost of Capital/Capital Structure

107. Our questioning of Hydro One witnesses in this topic area was for the primary purpose of establishing that the scope of relief the Board can grant to protect consumers from electricity price increases encompasses the temporary disallowance of some equity

⁵² Board Staff Submissions, pp. 18 to 20.

⁵³ Transcript Vol. 3, p. 133, line 22 to p. 134, line 23.

return and related taxes, being costs that Hydro One does not actually incur, provided system safety and integrity is not compromised.⁵⁴

108. While we reserve our rights for future cases, we are not suggesting, in this case, any permanent override of Hydro One's right to seek the benefit of the Board's December 2009 Cost of Capital Report. We accept that the consumer protection relief that we say the Board should grant can be relaxed when the situation of significant year-over-year electricity price increases has abated.
109. As already noted, there is clear and unequivocal evidence in this case that the amounts that we say the Board is entitled to temporarily disallow this case are not costs that Hydro One or its owner actually incurs for the purposes of conducting Hydro One's utility activities.
110. Our Cost of Capital analysis in this case is confined to determining the extent to which there can be a temporary disallowance of amounts not required by Hydro One or its owner for utility purposes in order to temporarily implement a feature of regulation that protects consumers to a degree from significant year-over-year electricity price increases prompted by massive infrastructure investments to transition Ontario's integrated power system to more and more renewable electricity generation sources. As already noted, our position is that this temporary disallowance amount should be derived from the transmission-related dividends and associated taxes Hydro One plans to pay to its owner, the Government.

⁵⁴ Transcript Vol. 6, p. 93, line 6 to p. 97, line 17.

I. Deferral and Variance Accounts

111. We agree with the submissions of Board Staff.⁵⁵ In particular, we agree that Hydro One has failed to justify its proposal to continue the OEB cost differential deferral account and that the following deferral accounts should remain in force and effect, namely:

- Export service credit revenue
- External secondary land use revenue
- External station maintenance and E and CS revenue

J. AMPCO'S High Five Proposal

112. As a supporter of the proposed regulation to amend O.Reg.429/04 to apportion the cost of the Global Adjustment by means of a charge nearly identical to the AMPCO High Five Proposal, CME urges the Board to approve and implement it.

113. The cost shifts to which Board Staff refers in its submissions⁵⁶ may be overstated in that they do not reflect the advantages that LDCs can derive from shifting their peak period loads under the AMPCO proposal in order to obtain benefits for their customers with interval meters. LDCs obtaining peak load shifting benefits under the AMPCO proposal as a result of the demand management activities of their customers with interval meters must pass on those benefits to those customers so that all customers with interval meters can derive benefits from the AMPCO proposal.

114. Moreover, if the magnitude of the cost shifts associated with the proposal are of concern to the Board, then the appropriate response is not to reject the proposal but to phase it in; in the same manner that EGD gradually implemented the change to the methodology

⁵⁵ Board Staff Submissions, pp. 24 and 25.

⁵⁶ Board Staff Submissions, pp. 26 and 27.

it used to allocate upstream transportation costs leading to consequential changes in rate design.⁵⁷

115. For these reasons, CME supports the proposal.

K. Transition to International Financial Reporting Standards ("IFRS")

116. We have no submissions to make with respect to this topic.

IV. COSTS

117. CME requests that it be awarded 100% of its reasonably incurred costs in connection with this matter.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 2nd day of November, 2010.



Peter C.P. Thompson, Q.C.
Vincent J. DeRose
Jack Hughes

Counsel for Canadian Manufacturers & Exporters

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⁵⁷ EGD case, RP-2003-0203, Decision with Reasons, Appendix B, Settlement Proposal, November 1, 2004, and in particular, sections 14.1 (a) and 15.4.

**APPENDIX A
TO CME ARGUMENT PARAGRAPH 83 – NON-CONFIDENTIAL**

The transmission-related dividends Hydro One plans to pay to the Government in 2011 and 2012 are shown in Confidential Exhibit JX6.5 and are \$_____ and \$_____ respectively, for a total of \$_____.

We estimate the associated taxes ("PILS"), assuming a 30% tax rate, to be about \$_____ over the two (2) years.

Accordingly, for the two (2) years between January 1, 2011, and December 31, 2012, we estimate that, to protect consumers from electricity price increases, there is a total sum of up to about \$_____ of equity return and associated taxes that could be temporarily disallowed without compromising transmission system safety or reliability.