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File 92867

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VIA RESS FILING and COURIER

Ms. Kirstin Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

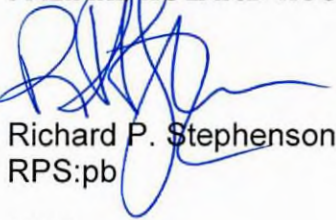
Dear Ms. Walli,

**Re: Hydro One Networks Inc.
Board File No.: EB-2018-0269**

Attached please find the Written Argument of the Power Workers' Union in connection with the above-noted proceedings. An electronic copy has been filed through the Board's RESS filing system, and two paper copies will follow by courier delivery.

Yours very truly,

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP



Richard P. Stephenson
RPS:pb

Attach.

Doc 2734226 v1

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(1934 - 2006)

IN THE MATTER OF a cost of service application made by Hydro One Networks Inc. on May 31, 2016 under section 78 of the *Ontario Energy Board Act*, 1998, S.O. 1998, c. 15, (Schedule B), seeking approval for changes to its transmission revenue requirement and to the Ontario Uniform Transmission Rates, to be effective January 1, 2017 and January 1, 2018 (EB-2016-0160);

AND IN THE MATTER OF the Decision and Order dated September 28, 2017 in proceeding EB-2016-0160;

AND IN THE MATTER OF the Decision and Order dated November 9, 2017 in proceeding EB-2016-0160;

AND IN THE MATTER OF the Decision and Order dated August 31, 2018 in proceeding EB-2017-0336; and

AND IN THE MATTER OF sections 40 and 42 of the Ontario Energy Board's *Rules of Practice and Procedure*.

WRITTEN ARGUMENT OF THE POWER WORKERS' UNION

1. These submissions are filed pursuant to the Board's Procedural Order #1 ("PO #1") dated November 6, 2018.
2. The PWU adopts and supports the submissions made by Hydro One. The PWU submits that the answers to the questions posed by the Board in PO #1 are as follows:
 - a. Accepting the errors identified by the Review Panel, is the conclusion reached in the Original Decision regarding allocation of future tax savings reasonable?
Answer: No.
 - b. What is the appropriate outcome?

Answer: Hydro One should receive the benefit of the full amount of the Future Tax Savings.

a. Was the Conclusion Reached in the Original Decision Reasonable?

3. The PWU notes that the Board's first question is framed in terms of the "reasonableness" of the Board's original conclusion in the face of the errors identified by the Review Panel¹ (the "Identified Errors"). The PWU understands that what the Board is seeking here is not an assessment of whether the each or all of the Identified Errors are properly considered to be "unreasonable" errors (in an administrative law sense).² Rather, the PWU understands that what the Board is seeking is whether the conclusion reached in the Original Decision³ is unreasonable once the Identified Errors have been removed from the supporting analysis.⁴

4. As described in PO#1, the Review Panel found four errors in the Original Decision:

1. The Decision did not follow the stand alone utility principle and was inconsistent with prior OEB applications of the stand-alone utility principle.
2. The Decision found that the PILs departure tax was "variable".
3. The Decision did not accept that Hydro One Networks paid the departure tax in substance and that it was a real cost to the utility.
4. The two allocation methodologies used in the Decision appeared to be inappropriate.⁵

5. The PWU does not dispute one conclusion reached in the Original Decision. Specifically, the PWU does not dispute that the disposition of the Future Tax Savings is an allocation issue, over which the Board has jurisdiction. However, the PWU submits

¹ EB-2017-0336

² In the NGEIR decision, and in the decisions applying it, the Board has not introduced a *Dunsmuir*-like analytical framework into review and variance motions. Because review and variance involves the Board reviewing its own decisions, standard of review issues arising in judicial reviews and/or statutory appeals are simply not applicable.

³ EB-2016-0160

⁴ Insofar as it is applicable, the PWU agrees with the submissions made by Hydro One that each of the identified errors could properly be viewed as "unreasonable" errors.

⁵ PO #1, p. 1.

that the Identified Errors are essential to the substrata of the Original Decision. Once removed, nothing remains in the Original Decision which is capable of supporting (reasonably, or otherwise) the conclusion reached.

6. Critically, the Review Panel found fundamental fault with each of the two allocation methodologies identified in the Original Decision. Essentially, the Review Panel found that each of the methodologies was tainted by reliance upon fundamental errors it had previously identified in the Original Decision.⁶ As consequence, in accordance with the observations of the Board in PO #1, it is not open to the parties to re-argue that one or the other of these methodologies should be resurrected.

7. This conclusion is supported by a review of the positions taken by parties which opposed Hydro One's position in their original submissions in the case. For example, the SEC opposed Hydro One's position, but did so on the basis that Hydro One had not "actually paid" the departure tax. However, the SEC made the following acknowledgement:

*If the Board accepts the assertion that Hydro One actually paid the departure tax, then the fact that the ratepayers effectively pay that tax back over time through an over-collection of tax expense in rates can be justified as fair.*⁷ (emphasis in original)

8. The PWU agrees with this submission. By virtue of the Reasons of the Review Panel, the Board has now accepted that the departure tax was "actually paid" by Hydro One.⁸ That finding is final and not subject to debate in this proceeding.

b. What is the Appropriate Outcome?

9. The appropriateness of this outcome is evident when the underlying transactions are considered at a conceptual, rather than technical level. Conceptually, the departure tax is a lump sum pre-payment of future income taxes. The government captures these taxes in a lump sum at the outset, but the company pays lower taxes in the years following. If neither of these two connected events had occurred, ratepayers would

⁶ The PWU acknowledges that the natural justice issue identified by the Review Panel (i.e. the failure of the Original Panel to put the parties on notice regarding these potential methodologies) could theoretically be cured by the current proceeding. However, the substantive errors are final, and cannot be cured.

⁷ SEC Submissions dated February 1, 2017 in EB-2016-0160, at pp. 69-70. Similarly see: CME Submissions at p. 25; BOMA Submissions at p. 3.

⁸ EB-2017-0336, at pp. 6-7

have paid the full amount of the unreduced taxes as they were collected over the years. Therefore, allocating the full amount of the future tax savings to the company has the twin effects of:

- a. Reimbursing the company (over time) for the lump sum pre-payment made by it; and
- b. Keeping ratepayers in exactly the same position as they would have been, had the transactions not been undertaken.

10. These outcomes are manifestations of the “benefit follows cost” principle. The company incurred the cost, and reaps the ensuing benefit. The ratepayers incurred no cost and receive no benefit.

11. As a consequence, the PWU agrees with Hydro One that the only reasonable allocation, in view of the Identified Errors, is an allocation of 100% in favour of Hydro One.

All of which is respectfully submitted.

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