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Our File No. 339583-237

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By Electronic Filing

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

Dear Ms. Walli

**Re: Hydro One Networks Inc. 2018 Transmission Revenue Requirement and Charge Determinants, Reconsideration of Future Tax Savings Issue
Board File No.: EB-2018-0269**

Pursuant to Procedural Order #1 dated November 6, 2018, please consider this letter to be Canadian Manufacturers & Exporters' ("CME") submissions regarding the future tax savings issue.

Procedural History

On November 9, 2017, the OEB released its decision in file number EB-2016-0160 regarding Hydro One Networks Inc.'s ("HONI") 2017 and 2018 transmission revenue requirements and charge determinants (the "Original Decision"). As part of that decision, the Board determined that the regulatory income taxes that HONI sought to recover from ratepayers were notional sums that exceeded the actual income taxes payable. Accordingly, the Original Decision determined that HONI's regulatory taxes recoverable from ratepayers should be reduced from \$89.1 and \$89.6 million, to \$51.0 million and \$55.0 million respectively.

As a result of a motion to review the Original Decision in file number EB-2017-0336, the Board determined that the Original Decision was flawed in several respects. These flaws were:

- 1) The Original Decision did not follow the stand alone utility principle and was inconsistent with prior OEB applications of the stand-alone utility principle.
- 2) The Original Decision found that the PILs departure tax was “variable”.
- 3) The Original 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 Original Decision appeared to be inappropriate.

The Board also determined that the future tax savings issue would be returned to the original panel to reconsider the future tax savings determination.¹

Submissions

CME remains concerned that, to the extent that HONI is allocated the full benefit of the future tax savings, ratepayers will be paying for regulatory taxes that are not actually being collected from HONI. CME submits that the Board should endeavor to avoid and minimize mismatches between amounts in rates and taxes, as articulated in RP-2004-0188:

“Rates must be just and reasonable, and any substantial variation between taxes determined for regulatory purposes and actual taxes paid by the [utility] must be justifiable.”²

CME has had the benefit of reviewing the submissions of School Energy Coalition (“SEC”), and agrees that the text of the review panel’s decision,³ as well as the panel’s determination that the matter be remitted to the original panel for redetermination mean that while the allocation methodologies were found to be inappropriate, the final outcome of the future tax savings issue is not a foregone conclusion.

CME submits that this Board panel has a range of reasonable outcomes and methodologies that it could select that would minimize the disconnect between the amount of taxes that are deemed for regulatory purposes and actual taxes paid by the utility, including the methodology submitted by SEC. In determining the issue, the Board should endeavor to adopt a methodology that not only avoids the errors articulated by the Board in EB-2017-0336, but also ensures an

¹ Ontario Energy Board, Decision and Order, EB-2017-0336, Hydro One Networks Inc., Motion to review and vary the Decision and Order dated November 1, 2017, regarding Hydro One Networks Inc.’s electricity transmission revenue requirement and charge determinants beginning January 1, 2017 (EB-2016-0160), p.11.

² RP-2004-0188, p.46.

³ Ontario Energy Board, Decision and Order, EB-2017-0336, Hydro One Networks Inc., Motion to review and vary the Decision and Order dated November 1, 2017, regarding Hydro One Networks Inc.’s electricity transmission revenue requirement and charge determinants beginning January 1, 2017 (EB-2016-0160), p.6, “two allocation *methodologies* used in the decision appear to be inappropriate” (emphasis added).

equitable and fair outcome for ratepayers in allocating the approximately \$2 billion deferred tax asset.

Yours very truly

Borden Ladner Gervais LLP



Scott Pollock

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Gordon M. Nettleton (McCarthy Tetrault)
EB-2016-0160 Intervenors
Alex Greco and Ian Shaw (CME)

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