

ONTARIO ENERGY BOARD

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*.

**REPLY ARGUMENT OF HYDRO ONE NETWORKS INC.
(Reconsideration of Future Tax Savings Allocation)**

Date: December 18, 2018

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AND TO: Intervenors of Record

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PART I - INTRODUCTION

1. Hydro One Networks Inc. (“**Hydro One**”) offers the following submissions in reply to SEC, CME, and BOMA. It notes that they are the only intervenors that have opposed its requested relief. Staff and all other intervenors have not opposed Hydro One’s requested relief. PWU has supported it. Hydro One does not have any reply to PWU’s submissions.
2. Defined terms not otherwise defined herein have the meaning ascribed to them in Hydro One’s Written Argument, dated November 20, 2018.

PART II - REPLY

A. SEC

i. The nature of this process

3. At paragraphs 12-22, SEC makes submissions concerning the nature of the process being followed by the Board. To be clear, Hydro One’s position is not that, as SEC puts it, “the debate is over” as a result of the Review Panel’s Decision. Rather, Hydro One’s position is that in light of the evidentiary record, the Original Decision, and the Review Panel decision, there is only one reasonable outcome.
4. SEC submits that it is not the law that the findings of the Review Panel are binding on this panel. The Review Panel directed this panel to “reconsider in light of these findings and all of the evidence and argument that it heard.”¹ It would be inconsistent with that direction, and this panel’s mandate, not to follow the findings of the Review Panel. Notably, despite the direction that this panel consider “all of the evidence...

¹ Review Panel Decision at p 9.

heard”, SEC cites no evidence from the evidentiary record in its submissions – that is because the facts of the case support the position of Hydro One and not SEC.

5. The process followed in this case is not unusual. Administrative bodies and courts regularly make findings and refer the matter back to the original hearing panel in light of their findings and the evidentiary record. For example, in *Power Workers' Union (Canadian Union of Public Employees, Local 1000) v. Ontario (Energy Board)* the Court of Appeal held that a decision of the Board was not reasonable and remitted the matter back to the Board to be heard in accordance with the principles in the reasons of the Court of Appeal (of course, this decision was later reversed by the Supreme Court).²
6. In Procedural Order #1, this panel directed that the parties are not to reargue matters decided by the Review Panel – because the findings of the Review Panel are binding. That should not be controversial. This does not mean that this panel does not have discretion. It does. The task of this panel is to consider the Review Panel’s reasons, the Original Decision, and the evidentiary record in order to make a final decision.
 - ii. **There is no conflict between the Board’s mandate to set just and reasonable rates and the benefits follows cost principle**
7. Throughout its submissions, SEC asserts that there is a conflict between the “just and reasonable principle” and the “benefits follows cost principle”, but no such conflict exists.

² *Power Workers' Union (Canadian Union of Public Employees, Local 1000) v. Ontario (Energy Board)*, 2013 ONCA 359 at para 39 rev'd [2015] 3 SCR 147.

8. Setting just and reasonable rates, is not a regulatory principle, it is the statutory mandate of the Board. The benefits follows cost principle has been adopted by the Board, and the Review Panel determined that it must be applied when determining whether rates are just and reasonable.
9. The benefits follows cost principle works harmoniously with the Board's mandate to set just and reasonable rates – they are not in conflict. As SEC admitted “the lower taxes under the federal system clearly arise as a result of the same event that generated the Departure Tax.”³ Hydro One paid the cost of the IPO - the Departure Tax and, therefore, the benefits follows cost principle informs us that it should be entitled to the benefit - the Future Tax Savings.
10. SEC asserts there is a conflict because the result of the application of the benefits follows cost principle allows Hydro One to recover taxes that it will not pay, and therefore Hydro One's rates are not just and reasonable. But SEC's argument ignores why the taxes that are included in rates in a year should be greater than Hydro One's federal and provincial tax liability in such year: it is because Hydro One obtained the benefit of the Future Tax Savings as a result of the IPO Transaction, which it paid for through the Departure Tax. This is neither unreasonable nor unfair. In fact, SEC has already admitted that this precise outcome is fair:

If the Board accepts the assertion that Hydro One actually paid the departure tax, then the fact that the ratepayers effectively

³ SEC Submissions, December 4, 2010 at para 34.

pay that tax back over time through an over-collection of tax expense in rates can be justified as fair.⁴

11. The Review Panel concluded that Hydro One actually paid the Departure Tax. SEC previously agreed that Hydro One's position is fair in light of this finding.
12. Rates will be just and reasonable if Hydro One is given the benefit of the Future Tax Savings because it incurred a cost to obtain the benefit.

iii. SEC misstates the Fair Return Standard

13. At paragraphs 51 to 61, SEC submits that Hydro One is seeking an exception to the Fair Return Standard. In fact, Hydro One is not seeking an exception to the Fair Return Standard as there is no need for an exception. SEC's calculations include the benefit of the Future Tax Savings, but do not include the cost of the Departure Tax. Hydro One paid the Departure Tax of \$2,271 million in 2015. If the Future Tax Savings are included in calculations of return on equity, then the payment of the Departure Tax must be included as well. As a result, there is no exception needed to the Fair Return Standard. The only situation in which an exception would be needed is if Hydro One were required to pay the Departure Tax, but was not entitled to the Future Tax Savings. In that case, Hydro One would not have the opportunity to earn a return on equity at the level set by the Board.

⁴ SEC Final Argument, EB-2016-0160 at 5.2.10.

iv. The recapture approach does not “make sense” given the findings of the Review Panel

14. At paragraphs 62 to 66, SEC addresses the recapture methodology in the Original Decision. Its argument is internally inconsistent. On the one hand, SEC submits that if “you accept that Hydro One paid the Departure Tax” the recapture approach still “makes sense”. On the other hand, SEC submits that in the Original Decision, the recapture approach was seeking a fair way to allocate a “windfall” between shareholders and customers because no tax was actually paid. SEC then agrees that, since the Departure Tax was paid, the logic for the recapture methodology in the Original Decision can no longer hold.
15. That must be why, in the very same section, SEC reverts to submitting that there is a conflict between the benefits follows cost principle and setting just and reasonable rates. SEC submits that the result of this alleged conflict should be that all of the Future Tax Savings should be assigned to ratepayers. So, SEC effectively acknowledges that the recapture methodology is inappropriate in light of the Review Panel’s findings, the Original Decision, and the evidentiary record. But SEC’s solution, an unprincipled assignment of all of the Future Tax Savings to ratepayers, is not a reasonable alternative because it ignores the cost paid by Hydro One, and is inconsistent with the cost-causation and user-pay principles, which are fundamental to this Board’s setting of just and reasonable rates.

v. SEC repeats errors found by the Review Panel in its analysis of the May 2005 Report

16. At paragraph of 78, SEC submits that this case is “slightly different, but in substance the same” as the case considered by the Board in the May 2005 Report because it asserts that there was no cost incurred by the shareholder to obtain the Future Tax Savings. The situation addressed in the May 2005 Report was the allocation of tax savings arising from an increase in the tax basis of assets to fair market value as a result of a change in tax legislation. There was no tax paid. While SEC acknowledges that it would be inconsistent with the stand-alone principle for this Board to consider the flow of funds from the Province to Hydro One and then to the OEFC, SEC now takes the position that the shareholder did incur a cost because the Province paid money to Hydro One Limited and took back shares of identical value, and therefore it had “less cash, but more assets.” SEC’s characterization is wrong.
17. SEC is wrong because the Province, qua shareholder, incurred a cost. Prior to the IPO transaction, the Province owned 100% of Hydro One Limited.⁵ Due to the IPO transaction, Hydro One incurred a liability of \$2,271 million (the amount of the Departure Tax). This reduced the value of the asset owned by the Province (the shares of Hydro One Limited) by \$2,271 million. The Province then paid \$2,271 million to Hydro One Limited, which (after a trickle-down recapitalization) Hydro One used to pay the Departure Tax, which restored the value of Hydro One to what it had been before the liability of the Departure Tax was incurred. The Province took shares back, but since it owned 100% of Hydro One Limited, those shares did not increase the

⁵ Oral Hearing Transcript Volume 2, pp. 172-173.

assets it owned – it was already the sole shareholder. So, at the end of these transactions (before the IPO itself): 1) the Province still owned 100% of Hydro One Limited; 2) Hydro One Limited had the same value as it had before the IPO; and 3) the Province, qua shareholder, was down the \$2,271 million payment to Hydro One Limited. That \$2,271 million is the cost paid by the Province (as shareholder of Hydro One Limited), and that is why this transaction was not costless – from the perspective of Hydro One and the shareholder.

18. At paragraph 80, SEC submits that the May 2005 Report “dealt with the principle that the amounts recovered in rates should be the actual taxes the utilities expect to pay.” But SEC goes on to acknowledge another practice of the Board: that taxes recovered in rates are calculated using only deductions of the amounts that are also recoverable in rates. The May 2005 Report was an exception to that practice. The reason that exception was made was because the May 2005 Report was, as noted above, considering a costless bump, the benefits of which needed to be allocated. That is not the case here. Here, a cost was paid for the benefit, which is why the usual practice of the Board should be followed and the benefits should follow the costs.
19. Indeed, the fundamental problem with SEC’s submissions is that they ignore the findings of the Review Panel: 1) that Hydro One paid the Departure Tax; and 2) that the Departure Tax and Future Tax Savings were related.⁶ The reason SEC does this is clear: because the finding that Hydro One paid the Departure Tax results in the reasoning in the May 2005 Report being inapplicable. Indeed, SEC has already

⁶ Review Panel Decision at pp 8-9.

admitted that the 2005 Report is not applicable in the event that Hydro One paid the Departure Tax. In its final argument before the Original Decision, SEC submitted “if Hydro One actually paid the departure tax, then OEB Staff may be correct that [the May 2005 report] is not applicable here.”⁷

B. CME

20. Like SEC, CME focuses exclusively on the allocation of the benefit: the Future Tax Savings without regard to the cost of the Departure Tax. This focus on one half of the equation leads it to submit that there is a “disconnect” between the amount of taxes that are deemed for regulatory purposes and the actual taxes paid by the utility. That disconnect only exists due to CME’s approach of ignoring the cost that was paid by Hydro One.

C. BOMA

i. BOMA’s reliance on a misleading transcript

21. In its final argument before the Original Decision, BOMA included extracts from Hansard. It used those extracts to argue that the payment of the Departure Tax was not a real cost to Hydro One. The extracts were not introduced through any witness and did not form part of the evidentiary record before the Original Panel.
22. The same extract was used by SEC at the motion to review and vary. At that motion, Hydro One identified to the Review Panel that the extract originally prepared by BOMA was misleading. What BOMA has presented as a single quote from one

⁷ SEC Final Argument, EB-2016-0160 at 5.3.4.

transcript was, in fact, an amalgamation of quotes from two different days of hearing: September 29, 2015 and October 20, 2015. The September 29, 2015 quote was sandwiched between quotes from October 20, 2015. Attached to these submissions as Schedule B is a reproduction of a hand-up provided to the panel at the review hearing. The splicing of quotes is marked and identified.

23. BOMA has continued to rely on this misleading quote in response to Procedural Order #1.⁸ The same quote is reproduced, in the same misleading fashion, twice in BOMA's submissions in response to Procedural Order #1. This is the danger of attempting to introduce evidence after the evidentiary record is closed. It comes onto the record without an opportunity for review, or an opportunity for witnesses to explain its significance.
24. In any event, the above is irrelevant because it is relied on by BOMA to reargue an issue that was decided by the Review Panel: whether Hydro One incurred a cost when it paid the Departure Tax. The Review Panel concluded that it did, and pursuant to this panel's direction in Procedural Order #1, that point cannot be reargued as BOMA has attempted to do.

ii. Reply to BOMA's submissions

25. Throughout its submissions, BOMA refers to the Future Tax Savings as a "windfall". They are not a windfall. They are a benefit that arose due to the IPO transaction and the payment of the Departure Tax. BOMA's characterization of the Future Tax

⁸ BOMA Submissions, December 4, 2010 at pp 8 and 11.

Savings as a windfall is a repetition of arguments that it made to the Review Panel, which were rejected. As the Review Panel held:

The OEB does not accept the argument by some of the intervenors that the departure tax payment and the future tax savings are unrelated. They both arise as a result of the same transaction. PILs are payable because the ITA does not apply to municipally and provincially owned entities. It is only because of the change in Hydro One Network's tax status as a result of shares being sold that any of these payments and savings occur.⁹

26. On page 6 of its submissions, BOMA submits that the recapture methodology is still appropriate. That submission is directly contrary to the finding of the Review Panel that the recapture methodology was “inappropriate” because it “did not recognize the real cost of the departure tax liability paid by” Hydro One.¹⁰ BOMA then goes on, in the rest of its argument, to reargue that a real cost was not incurred when Hydro One paid the Departure Tax. These submissions are explicitly a re-argument of an issue that was decided by the Review Panel: the Departure Tax was a real cost.
27. BOMA also argues, at page 17 of its submissions, that the standalone utility principle has “no obvious application to the facts in this case.” The Review Panel did not agree with BOMA. It found that the standalone utility principle was relevant and was violated by the reasons in the Original Decision.¹¹ BOMA had the opportunity to make submissions on those arguments in front of the Review Panel. It did so and lost; it cannot make a second attempt now that the issue has been decided.

⁹ Review Panel Decision at p 9.

¹⁰ Review Panel Decision at p 8.

¹¹ Review Panel Decision at p 1.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 18th day of December, 2018.

Signed in the original _____

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SCHEDULE “A”
LIST OF AUTHORITIES

1. *Ontario (Energy Board) v. Ontario Power Generation Inc.*, 2013 ONCA 359 rev'd [2015] 3 SCR 147

SCHEDULE “B”
REPRODUCTION OF HAND-UP

HYDRO ONE NETWORKS INC.

HAND-UP RE: ONTARIO STANDING COMMITTEE ON ESTIMATES EXCERPT

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Tab	Document
1.	Annotated Extract of the Submission of Building Owners and Managers Association, Greater Toronto dated February 6, 2017 in EB-2016-0160, p. 4.
2.	Extract of the Written Reply Submission of School Energy Coalition dated January 29, 2018 in EB-2017-0336, p. 11.
3.	Extract of Ontario, Legislative Assembly of Ontario, <i>Standing Committee on Estimates, Official Reports of Debates (Hansard)</i> , First Session, 41st Parliament (29 Sept 2015), E20 at E-419.
4.	Extract of Ontario, Legislative Assembly of Ontario, <i>Standing Committee on Estimates, Official Reports of Debates (Hansard)</i> , First Session, 41st Parliament (20 Oct 2015), E23 at E-497.

TAB 1

ONTARIO ENERGY BOARD

Hydro One Networks Inc. Transmission

**Application for electricity transmission revenue requirement
and related changes to the Uniform Transmission Rates
beginning January 1, 2017 and January 1, 2018**

SUBMISSION OF

**BUILDING OWNERS AND MANAGERS ASSOCIATION, GREATER TORONTO
("BOMA")**

February 6, 2017

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testimony in the 2015 Estimate Committee hearings in October 2015, during the annual legislative review of the Estimates of the Ministry of Energy and the Environment. During the review, the following exchange occurred between Peter Tabuns, the NDP energy critic, and Serge Imbrogno, the Deputy Minister of Energy.

Ontario, Legislative Assembly of Ontario, Standing Committee on Estimates, *Official Reports of Debates (Hansard)*, First Session, 41st Parliament (20 Oct 2015) at E-497.

“Mr. Peter Tabuns: OK, Mr. Imbrogno, you previously said that the \$2.6 billion transaction from the Ontario Financing Authority to Hydro One and then on to the OEFC would be both cash neutral and fiscally neutral (our emphasis). Was this not correct?

Mr. Serge Imbrogno: Yes.

Mr. Peter Tabuns: I want to just get into that a bit further. This is a \$2.6 billion contribution to Hydro One.

Mr. Serge Imbrogno: That is correct.

Mr. Peter Tabuns: So it’s coming out of our treasury.

Mr. Serge Imbrogno: Well it’s fiscally neutral, because when Hydro One exited the PILs regime under the Income Tax Act, it makes a departure tax payment like any other corporation would. That’s a \$2.6 billion tax payment to the Province. To keep Hydro One whole, there is a \$2.6 billion payment back to Hydro One, to maintain its capital, so it can optimize its valuation going forward.

Mr. Peter Tabuns: So we’re recycling the cash. It goes from our working capital to Hydro One. Hydro One pays it to the OEFC. I am assuming the OEFC isn’t paying off debts, because if I understand you correctly, the cash comes back to the Ontario Financing Authority [Ontario government]. Is that correct?

Mr. Serge Imbrogno: That’s correct.” [Page E419, Estimate Committee Proceeding of September 29, 2015]. The relevant pages from the Estimates proceeding are in Appendix A to this Submission.

This excerpt demonstrates that, notwithstanding HONI’s statements to the contrary, neither HONI nor the Ontario government incurred any cost in connection with the “departure tax”.

Second, Hydro One Limited (HONI) is the owner of 100% of Hydro One Networks Inc., a transmission and distribution monopoly regulated by the Ontario Energy Board, and 98% of the revenue of Hydro One Limited is derived from the income stream generated by the networks businesses. 85% of its assets are assets, the return on which is regulated. The regulated business constitutes almost all of the value of the group, and that revenue is provided by HONI’s

Ontario, Legislative Assembly of Ontario, Standing Committee on Estimates, *Official Reports of Debates (Hansard)*, First Session, 41st Parliament (29 Sept 2015) at E-419.

Ontario, Legislative Assembly of Ontario, Standing Committee on Estimates, *Official Reports of Debates (Hansard)*, First Session, 41st Parliament (20 Oct 2015) at E-497.

TAB 2

ONTARIO ENERGY BOARD

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;

AND IN THE MATTER OF the Decision and Order dated September 28, 2017 in this proceeding;

AND IN THE MATTER OF the Decision and Order dated November 9, 2017 in this proceeding; and

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

WRITTEN SUBMISSIONS OF THE SCHOOL ENERGY COALITION

January 29, 2018

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“Accordingly, as a pragmatic matter, to facilitate the privatization of its wholly owned utilities, the Province had to either reduce or eliminate this departure tax burden on the Exempt Utility FMV of the assets. This is the reality that faced the Province and Hydro One in connection with the IPO. In response to that reality, the Province and Hydro One arranged to eliminate the departure tax obligation before completing a sale of shares to the public.” [emphasis added]

- 2.4.9** We note that the Province agreed with the Board’s characterization of the transaction in the Decision, as shown in this excerpt from the 2015 Estimate Committee hearings, quoted by BOMA in its Final Argument in EB-2016-0160²⁷:

"Mr. Peter Tabuns [MP]: OK, Mr. Imbrogno, you previously said that the \$2.6 billion transaction from the Ontario Financing Authority to Hydro One and then on to the OEFC would be both cash neutral and fiscally neutral. Was this not correct?

Mr. Serge Imbrogno [Deputy Minister of Energy]: Yes.

Mr. Peter Tabuns: I want to just get into that a bit further. This is a \$2.6 billion contribution to Hydro One.

Mr. Serge Imbrogno: That is correct.

Mr. Peter Tabuns: So it's coming out of our treasury.

Mr. Serge Imbrogno: Well it's fiscally neutral, because when Hydro One exited the PILs regime under the Income Tax Act, it makes a departure tax payment like any other corporation would. That's a \$2.6 billion tax payment to the Province. To keep Hydro One whole, there is a \$2.6 billion payment back to Hydro One, to maintain its capital, so it can optimize its valuation going forward.

Mr. Peter Tabuns: So we're recycling the cash. It goes from our working capital to Hydro One. Hydro One pays it to the OEFC. I am assuming the OEFC isn't paying off debts, because if I understand you correctly, the cash comes back to the Ontario Financing Authority. Is that correct?

Mr. Serge Imbrogno: That's correct."²⁸ [emphasis added by SEC]

- 2.4.10** Thus, what actually transpired – a circulation of funds between the Province and Hydro One – has the same substantial result as the Province exempting Hydro One from Departure Tax in the first place. Did the Applicant pay the Departure Tax if the result is the same as if they had not paid the Departure Tax? In substance, the answer as the Decision correctly points out, is they did not.

²⁷ EB-2016-0160, BOMA Final Argument, p. 4.

²⁸ Ontario, Legislative Assembly, Standing Committee on Estimates, *Official Report of Debates (Hansard)*, E-20, (29 September 2015), at p. E-419-420.

TAB 3



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**Legislative Assembly
of Ontario**

First Session, 41st Parliament

**Assemblée législative
de l'Ontario**

Première session, 41^e législature

**Official Report
of Debates
(Hansard)**

Tuesday 29 September 2015

**Journal
des débats
(Hansard)**

Mardi 29 septembre 2015

**Standing Committee on
Estimates**

Ministry of Energy

**Comité permanent des
budgets des dépenses**

Ministère de l'Énergie

from tax revenue, it's not coming from cutting services, it's not coming from debt—

Mr. Todd Smith: It's coming from selling the golden goose, is where it's coming from. You are selling the golden goose.

Hon. Bob Chiarelli: The reality is, there are going to be a number of solutions that will be put in place for infrastructure funding. We have always said that the proceeds from Hydro One are part of a solution. They go into a Trillium fund for infrastructure and it will be spent on infrastructure. There is other funding that is being realized from other assets as well. Selling assets is not the only solution. Part of the solution is running good government.

Mr. Todd Smith: Well, that would be nice. It's been a long time since we've had good government in this province—12 years, as a matter of fact, since we've had good government.

I'll end on that note. Thank you, Minister.

The Chair (Ms. Cheri DiNovo): Thank you, Mr. Smith. We now go to the—

Mr. Chris Ballard: We've got a comedy routine

The Chair (Ms. Cheri DiNovo): Quiet, please. We now go to the third party.

Mr. Peter Tabuns: Thank you, Chair. Good morning, Minister, Ms. Geraghty, Mr. Imbrogno.

I want to start off with the supplementary estimates that came out last week. There is an expenditure of \$2.663 billion for assets management and transformation. It shows a cost of \$2.6 billion for tax adjustment offset. What is this meant to pay for?

Hon. Bob Chiarelli: It's part of the transitioning, the transactions that have to take place in creating a new Hydro One as a public company. We do have the numbers and the deputy will explain what those are.

Mr. Serge Imbrogno: Mr. Tabuns, the \$2.6 billion represents the capital contribution that the province is making to Hydro One. It's related to the departure tax that Hydro One pays.

Mr. Peter Tabuns: I want to just get into that a bit further. This is a \$2.6-billion contribution from the province to Hydro One?

Mr. Serge Imbrogno: That is correct.

Mr. Peter Tabuns: So it's coming out of our treasury?

Mr. Serge Imbrogno: Well, it's fiscally neutral because when Hydro One leaves the PILs regime under the Income Tax Act, it makes a departure tax payment, like any other corporation would. That's a \$2.6-billion payment to the province. To keep Hydro One whole, there is a \$2.6-billion payment back to Hydro One to maintain its capital so it can optimize its valuation going forward.

Mr. Peter Tabuns: Just a second. You're telling me the \$2.6 billion comes from our treasury, goes into Hydro One, Hydro One writes a cheque back to the government of Ontario for taxes—

Hon. Bob Chiarelli: The other way around.

Mr. Peter Tabuns: Pardon?

Hon. Bob Chiarelli: Hydro One, as an LDC, is required to pay the tax. We're paying a tax to ourselves. Our entity is paying \$2.6 billion to ourselves, the treasury. It's going from one bank account that we have to another one, and we're putting it back in. So it's revenue-neutral.

Mr. Peter Tabuns: Let's just get the names of those accounts. The \$2.6 billion is coming from the treasury—

Hon. Bob Chiarelli: No.

Mr. Serge Imbrogno: The \$2.6 billion is paid from Hydro One into the Ontario Electricity Financial Corp.—

Mr. Peter Tabuns: Ah, it goes to the OEFC. Okay.

Mr. Serge Imbrogno: That's correct. We consolidate the OEFC so that \$2.6 billion then comes back onto the province's book. So that's fiscally neutral. Then there's another transaction where the province then makes a payment, a capital contribution, into Hydro One. We have assets in Hydro One as a set-off to that. So both those transactions are fiscally neutral to the province, and we're doing that to maintain a capital structure that, I guess, optimizes our proceeds going forward.

Mr. Peter Tabuns: So the \$2.6 billion is going to reduce the debts that OEFC is liable for?

Mr. Serge Imbrogno: That's correct.

Mr. Peter Tabuns: So is this part of the \$5-billion debt reduction that's supposed to come out of this deal?

Mr. Serge Imbrogno: No. This is different. This is like any corporation that leaves the tax regime—that goes from the payments-in-lieu regime to income taxable under the federal Income Tax Act. There's a departure tax that's paid. Any PIL payment goes to the OEFC—

Mr. Peter Tabuns: And why is it that Hydro One is not paying this out of the revenues it receives from the sale?

Mr. Serge Imbrogno: The tax is due before you actually go into the IPO. It's the second before, technically.

Mr. Peter Tabuns: So where is the government of Ontario getting the \$2.6 billion that's used to pay OEFC ultimately?

Hon. Bob Chiarelli: From Hydro One.

Mr. Serge Imbrogno: Hydro One is making that payment into the Ontario Electricity Financial Corp.

Mr. Peter Tabuns: The government of Ontario gives money to Hydro One; Hydro One gives the money to OEFC.

Mr. Serge Imbrogno: No; sorry. Let's just start from the first part of it: Hydro One is required to pay the departure tax. So Hydro One pays the \$2.6 billion into the Ontario Electricity Financial Corp.

Mr. Peter Tabuns: Fair enough. So the new investors start off with \$2.6 billion they've paid out.

Mr. Serge Imbrogno: Right. And those—

Mr. Peter Tabuns: So why are we giving them \$2.6 billion?

Mr. Serge Imbrogno: Let me just finish that. That payment—the tax and the payment—is neutral because we consolidate Hydro One. So they're down \$2.6 billion,

TAB 4



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First Session, 41st Parliament

**Assemblée législative
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Première session, 41^e législature

**Official Report
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Mardi 20 octobre 2015

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**Comité permanent des
budgets des dépenses**

Ministère de l'Énergie

it has. I just don't know exactly what's left in terms of the initial debt-for-equity swap versus how much is in this payable.

0940

Mr. Todd Smith: So how in the world do we ever expect to pay down that \$26 billion that's there?

Mr. Serge Imbrogno: Not to get into too much technicality, there is total debt, but part of that is that there have been loans made from the OEFC to OPG. OPG, unlike Hydro One, doesn't borrow in the capital markets; it borrows from the OEFC. That additional debt is backed by assets at OPG, so it's not part of the stranded debt. Even though OEFC's debt hasn't reduced by as much as the stranded debt, that's because we've added borrowing from OPG through the OEFC. It's almost like the banker to OPG.

Mr. Todd Smith: Isn't the OEFC, though, just supposed to be paying down the debt? Why is it lending money to the province?

Mr. Serge Imbrogno: Part of its objects allows it to lend money to the successor companies. Hydro One was able to go into the market and borrow. OPG at the time wasn't able to borrow into the market, so they borrowed from the OEFC.

Mr. Todd Smith: Okay. Over the last week, we've had—I don't know exactly what you can say, but the final prospectus came out. You're looking at initial share prices of \$19 to \$21 per share, which would bring, for the first 15% segment or tranche of the sale of Hydro One—if those numbers are legitimate numbers and that's what we can expect, we're talking about raising \$1.7 billion in the first tranche of the sale. If you multiply that over the next three sell-offs, if those numbers hold true, are we talking about \$6.8 billion—I see that counsel is ready to answer. Are we talking about \$6.8 billion, or where does the \$9 billion come from?

Ms. Sharon Geraghty: It won't surprise you; I'm just going to say it again. We're in the quiet period, and so the references to that price spread in that prospectus are part of the pricing process, the marketing process. It would be inappropriate for the minister or the deputy to speculate either as to what the value of the company will be at this time or at future times. Obviously, they're going to respond to your question, but I just wanted to mention again that we have to be very cautious and they really cannot be speculating about the value of the company.

Hon. Bob Chiarelli: I think it would be fair to say that our financial advisers are telling us that we're still on target to meet the \$9 billion that was referred to in the prospectus. I don't think we should go beyond that.

Mr. Todd Smith: There are no guarantees. This is the open market, and there are no guarantees.

Hon. Bob Chiarelli: It could go up.

Mr. Todd Smith: It could go up. It could go down. It could, right? There are a lot of variables at work here. I know we have to tread lightly there, so—

The Chair (Ms. Cheri DiNovo): Mr. Smith, your time is up.

Mr. Todd Smith: Oh, I guess I won't move on.

The Chair (Ms. Cheri DiNovo): We now move on to the third party. Mr. Tabuns?

Mr. Peter Tabuns: Thank you, Chair. Just a question for the deputy minister first, because I'm not sure I heard a statement correctly: Did you just say a few minutes ago that OPG borrowing increases the stranded debt, or did I mishear you?

Mr. Serge Imbrogno: It increases the total debt, but it's not stranded because it has an asset. It lends, but it has an asset in OPG.

Mr. Peter Tabuns: Okay. Thank you.

On October 10, a government backgrounder said, "The province remains on track to dedicate approximately \$4 billion to the Trillium Trust and \$5 billion towards debt repayments, as outlined at the time of the 2015 budget." The same backgrounder said that these dedications would include a \$2.2-billion one-time fiscal gain from an enhanced, deferred tax benefit resulting from the revaluation of its fixed asset. Am I to understand that the \$4-billion total includes this \$2.2 billion, or should the backgrounder have said that the government is now on track to dedicate a total of \$6.2 billion to the Trillium Trust?

Mr. Serge Imbrogno: No, the \$4 billion would include the \$2.2 billion.

Mr. Peter Tabuns: Okay. Mr. Imbrogno, you previously said that the \$2.6-billion transaction from the Ontario Financing Authority to Hydro One and then on to the OEFC would be cash neutral and fiscally neutral. Was this not correct?

Mr. Serge Imbrogno: Yes.

Mr. Peter Tabuns: So we're recycling the cash. It goes from our working capital to Hydro One. Hydro One pays it to the OEFC. I'm assuming the OEFC isn't paying off debts because, if I understand you correctly, the cash comes back to the Ontario Financing Authority. Is that correct?

Mr. Serge Imbrogno: That's correct.

Mr. Peter Tabuns: Okay. In other words, this \$2.6 billion in cash, including this \$2.2 billion that's going to be dedicated to the Trillium Trust, is already sitting there in the government's treasury, regardless of what accounting has done. There is no new cash coming in or going out. Is that not correct?

Mr. Serge Imbrogno: The Ontario Financing Authority would have working capital cash on hand, so that would be part of their normal course.

Mr. Peter Tabuns: So they're not borrowing?

Mr. Serge Imbrogno: No, they're not doing additional borrowing.

Mr. Peter Tabuns: And that working capital doesn't need to be replenished because the money is coming straight back into it, correct?

Mr. Serge Imbrogno: You can see it almost as an instantaneous transaction.

Mr. Peter Tabuns: Yes. It's a circle: Ontario Financing Authority, Hydro One, OEFC, back to the Ontario Financing Authority. Correct?