McCarthy Tétrault LLP
Suite 3300
421-7th Avenue S.W.
Calgary AB T2P 4K9
Canada
Tel: 403-260-3500
Fax: 403-260-3501

Gordon M. Nettleton
Partner
Direct Line: (403) 260-3622
Email: gnettleton@mccarthy.ca

Assistant: Feser, Monique
Direct Line: (403) 260-3607
Email: mfeser@mccarthy.ca

VIA RESS, EMAIL & COURIER

June 5, 2019

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
Suite 2700, 2300 Yonge Street
P.O. Box 2319
Toronto, ON M4P 1E4

Dear Ms. Walli,

Re: EB-2019-0122 Motion to Review and Vary – Hydro One Argument

We write on behalf of Hydro One Networks Inc. ("**Hydro One**"). Pursuant to Procedural Order No. 1 in this proceeding, please find enclosed Hydro One's argument and motion record/book of authorities.

Please contact the undersigned with any questions in regards to the foregoing.

Yours truly,

McCarthy Tétrault LLP

Signed in the original

Gordon M. Nettleton

cc: EB-2017-0049/EB-2019-0122 Intervenors

ONTARIO ENERGY BOARD

IN THE MATTER OF an application made by Hydro One Networks Inc. on March 31, 2017 under section 78 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B) for an order or orders approving just and reasonable rates and other charges for electricity distribution to be effective January 1, 2018 and for each following year effective January 1 through December 31, 2022;

AND IN THE MATTER OF the Decision and Order dated March 7, 2019 in EB-2017-0049; 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 MOVING PARTY, HYDRO ONE NETWORKS INC. (motion for review and variance)

Date: June 5, 2019

McCarthy Tétrault LLP
Suite 5300, TD Bank Tower
Toronto ON M5K 1E6
Fax: 416-868-0673

Gordon M. Nettleton
gnettleton@mccarthy.ca
Tel: 403-260-3622

George Vegh
gvegh@mccarthy.ca
Tel: 416-601-7815

Counsel for Hydro One Networks Inc.

Filed: June 5, 2019
EB-2019-0122

TO: Ontario Energy Board
P.O. Box 2319
26th. Floor
2300 Yonge Street
Toronto ON M4P 1E4

Tel: (416) 481-1967
Fax: (416) 440-7656

AND TO: Intervenors of Record

TABLE OF CONTENTS

PAGE

Filed: June 5, 2019
EB-2019-0122

PART I - OVERVIEW

1. On March 7, 2019, the Ontario Energy Board (the "**OEB**" or the "**Board**") released its decision and order in EB-2017-0049 (the "**Decision**"). In the Decision the Board disallowed the recovery of Hydro One Networks Inc. ("**Hydro One**")'s pension costs for 2018 and throughout the term of the IRM plan (2018-2022). The amount of the disallowance for 2018 base rates is $37 million ($17 million in OM&A and $20 million in capital) (Issue 38, page 96, "Pension Costs") (the "**Pension Findings**").

2. The Pension Findings assumed that the presence of a "surplus" in the December 31, 2016 valuation led to the result that Hydro One does not have to make pension contributions.[1] Since the time of the Decision, there has been a change in circumstances that is relevant to the Pension Findings and as a result, the Pension Findings are not correct. Specifically, as is described in paragraphs 11 to 19 below, there have been a number of changes to regulations and interpretation of regulations made under the *Pension Benefits Act* ("**PBA**") (the regulations under the PBA, the "**Regulations**").

3. These changes, which culminated in amendments to the Regulations on May 21, 2019, included material changes to the test under the PBA which must be applied in order for a company to take a contribution holiday. In Hydro One's case, it is not known when the new test will apply because as detailed herein, it is not currently possible to know when Hydro One's current valuation will cease to be operative. The new test may apply as early as March 1, 2018 or as late as December 31, 2020. Given the uncertainty caused by the changes to the Regulation, Hydro One submits that this change constitutes a change in circumstances under

[1] Decision, paragraph 96; Application and pre-Filed Evidence Exhibit C1-2-2 attachment 1, p 3.

Rule 42.01(a) of the Board's *Rules of Practice and Procedure* (the "**Rules**"). Moreover, the Pension Findings' assumption that the presence of a "surplus" in the December 31, 2016 valuation resulted in Hydro One not having to make pension contributions[2] was an error under section 42.01(a) of the Rules; as set out herein, Hydro One was in fact required to make a pension contribution for 2018 and will be required to make pension contributions for much, if not all, of the period covered by the Decision.

4. To address this in an orderly and even-handed way, Hydro One proposes that the Board allow it to recover its legally mandated pension contributions in rates for the period 2018-2022 and record any differences between those amounts and the amounts finally determined to be paid in the Pension Cost Differential Account (1508) (the "**PCDA**"). These differences can be cleared annually in Hydro One's annual update applications.

5. With respect to 2018 pension costs in particular, Hydro One was required to, and did, make pension contributions for 2018. Moreover, for much if not all of the period to which the Decision relates, pension contributions are expected to be required. Legally required pension contributions have historically been determined by the Board to be prudently incurred costs for the provision of rate regulated services that Hydro One provides to its customers and will continue to be prudently incurred under the legislative scheme governing pension contribution obligations.

6. As described herein, the proposed treatment of required pension contribution is material such that a reviewing panel would vary the Pension Findings.

[2] Decision, paragraph 96; Application and pre-Filed Evidence Exhibit C1-2-2 attachment 1, p 3.

PART II - THE FACTS

7. The obligation to make pension contributions is governed by the PBA and the Regulations.

8. In EB-2017-0049, Hydro One sought approval of distribution rates for the period January 1, 2018 to December 31, 2022 by way of a Custom incentive ratemaking application (the "**Application**"). The Application sought recovery of $37M in pension contributions in 2018, which reflected the share of Hydro One's pension contributions attributable to distribution service, and which was comprised of $17M in OM&A and $20M in capital.[3] Hydro One also sought to recover amounts for pension contributions from 2019 to 2022.

9. The Application was filed on March 31, 2017. At that time, and to date, Hydro One was making pension contributions as required in accordance with the PBA and Regulations.[4]

10. On December 14th, 2017, the Ontario government announced amendments to the Regulations to support a new funding framework for pension plans[5]. Historically, an employer could take a contribution holiday provided that a plan was fully funded on both a going concern and solvency basis[6] (the "Pre-May 1, 2018 Rules"). The government's announcement contemplated that the circumstances under which an employer, such as Hydro One, could take a contribution holiday would change.[7] At the time, it was expected that the

[3] See Application and pre-filed evidence Exhibit C1-2-2, p 2.

[4] At the time the Application was filed, Hydro One was funding the Hydro One Pension Plan in accordance with the December 31, 2016 valuation report. As of May 1, 2018, Hydro One was funding the Hydro One Pension Plan in accordance with the December 31, 2017 valuation report.

[5] Reform of Ontario's Funding Rules for Defined Benefit Pension Plans: Description of Proposed Funding Rules published December 14, 2017. See Motion Record and Book of Authorities ("**MR**") Tab A.

[6] As documented in a cost certificate filed with the Financial Services Commission of Ontario ("FSCO") within the first 90 days of the applicable calendar year.

[7] Reform of Ontario's Funding Rules for Defined Benefit Pension Plans: Description of Proposed Funding Rules published December 14, 2017, p 1 and 8-10, see MR Tab A.

anticipated funding regulations would only apply to valuation reports filed after the new rules took effect. Hydro One filed a new December 31, 2017 valuation report on April 30, 2018 under the Pre-May 1, 2018 Rules.[8]

11. On March 28, 2018, the Ontario Budget was released and announced that work was continuing on new funding rules. On April 20, 2018, the new Regulations were announced effective May 1, 2018 pursuant to section 55.1 of the PBA and pursuant to O. Reg 250/18,[9] which amended the Regulations (the "**Post-May 1, 2018 Rules**"). The Post-May 1, 2018 Rules introduced a new test which provided that a private employer such as Hydro One can only take a contribution holiday in a year if an actuary certifies the plan has a funded ratio of at least 105% calculated on a wind-up basis.[10]

12. As this new wind up test related to Hydro One's circumstances, under the December 31, 2016 valuation report, the Hydro One Pension Plan was only approximately 69% funded on a wind-up basis.[11] Under the new December 31, 2017 valuation report filed on April 30, 2018, this ratio increased to 73%, however, this is still well below the 105% funding threshold associated with the newly prescribed contribution holiday test.[12]

13. Based on the PBA and Regulations alone, it was initially unclear whether contribution holidays would be permitted based on the Pre-May 1, 2018 Rules (in place at the time the

[8] Hydro One's notice of motion dated March 26, 2019 stated that this valuation report was filed as part of EB-2017-0049 but in fact, it was filed as part of Hydro One's transmission rates application (EB-2019-0082).

[9] O. Reg 250/18, see MR Tab B.

[10] Section 55.1 of PBA and section 7.0.2 of the Regulations, see MR Tab C.

[11] See Application and pre-filed evidence in EB-2017-0049 Exhibit C1-2-2 attachment 1, p 7.

[12] December 31, 2017 valuation report filed as part of Hydro One's transmission rates application (EB-2019-0082) p 12. Under the December 31, 2017 valuation report, the Hydro One Pension Plan was more than 100% funded on a going concern and solvency basis but was only approximately 73% funded on a wind-up basis (see p 12).

Hydro One valuation report effective December 31, 2017 was filed) on a grandfathered basis during the operation of the last report filed under the Pre-May 1, 2018 Rules, and, if so, for how many years the grandfathering would apply. The transition from Pre-May 1, 2018 Rules to Post-May 1, 2018 Rules required clarification.

14. That was the context in which the oral hearing was conducted in June 2018. The focus of the oral hearing, and the Pension Findings, was largely on the possibility of taking a contribution holiday in 2018, and Hydro One's evidence was that it was uncertain whether it would be able to take a holiday in 2018, and whether it would take a holiday if it was able.[13] Hydro One explained this uncertainty as follows:

> MR. CHHELAVDA: So this valuation is done on a going concern basis and the pension plan is in a surplus position, so it has -- at the point in time it has, based on the valuation methodology, it has …more assets than the liabilities, so you would have -- that's why it would estimate the minimum contribution as being zero.
>
> That being said, there are some challenges with this, so there are new pension rules that have come out in 2018, I believe, in the month of May -- April, May, which changes the funding ratio, so this may be true for, we think, for '18, but we're not sure if it holds beyond that, and the new rules, what they do is, the pension plan has to be in a stronger financial position to be able to take a contribution holiday, so this may not be applicable for the full test period, and it may not even be applicable for 2018.[14]

15. Hydro One's reply submissions were filed on August 31, 2018 (the final opportunity for submissions in the proceeding), and by that time, Hydro One had confirmed that, while there was still some uncertainty, it was "extremely unlikely" that it would be in a position to take a contribution holiday:

[13] See EB-2017-0049 Volume 4 transcript pp 75-80.

[14] EB-2017-0049 Volume 4 transcript p 76.

> Importantly, however, in regards to what is permitted by the applicable legislation, pension regulator FSCO recently communicated its position with respect to the application of new funding rules which limit the use of a contribution holiday beyond 2018. Even though the December 31, 2017 actuarial valuation indicates that the minimum employer contribution requirement for 2018-2020 is zero, the actuarial valuation also states that the Application of Surplus amounts shown reflect the funding rules in force at the time the current valuation was filed. The actuarial valuation also states that this is subject to the preparation of a cost certificate at the beginning of each year confirming the level of available surplus that may be applied for 2019 and 2020. In August 2018, FSCO issued their position which states that for a contribution holiday to be taken in 2019 and beyond a cost certificate will need to be filed certifying that, at the beginning of the year, the assets of the plan exceed the windup liabilities by 5%. Based on this, it is extremely unlikely that Hydro One will be able to take a contribution holiday in the near future, as assets would have to outperform windup liabilities by more than $2.7 billion to first cover the windup deficit and then further exceed windup liabilities by 5%.[15]

16. As stated above, guidance from FSCO published on its website on August 29, 2018 indicated that the contribution holiday restrictions in the Post-May 1, 2018 Rules (notably the 105% wind up test) would apply starting January 1, 2019.[16] Moreover, the FSCO guidance clarified that companies may only take a contribution holiday for 2018 if they had filed a cost certificate with FSCO by March 31, 2018. As a result, FSCO's guidance made clear that Hydro One could not use its new December 31, 2017 valuation report to satisfy the cost certificate filing requirement.[17] Therefore, Hydro One was not permitted to take a contribution holiday in 2018.

17. The most recent change in the Regulations occurred May 21, 2019,[18] after the release of the Decision. These further amendments have a direct effect on the Hydro One Pension Plan but do not alter the result that Hydro One was not permitted by law to take a contribution holiday

[15] See Hydro One Reply Submissions filed August 31, 2019 p 129.

[16] See FSCO guidance on funding reform of August 29, 2018, MR Tab D.

[17] In the past, in accordance with general guidance from FSCO, practice was that a full valuation report – which is prepared by an actuary and is much more detailed than a cost certificate – would be sufficient in order to establish the ability to take a contribution holiday in the year the full valuation report was filed.

[18] O. Reg 105/19 filed May 21, 2019, MR Tab E.

for 2018. These May 21, 2019 amendments do, however, alter FSCO's position set out above regarding when the Post-May 1, 2018 Rules relating to contribution holidays may be applied in Hydro One's case. Pursuant to the May 21, 2019 amendments, the Post-May 1, 2018 Rules regarding contribution holidays have now been declared to take effect when a new valuation report becomes effective (and not on January 1, 2019 as had been indicated by the FSCO guidance described above).

18. An additional fact applicable to the determination of the wind-up test's applicability relates to Hydro One's initiative to in-source call centre functions previously carried out by Inergi LP ("**Inergi**") and Vertex Customer Management (Canada) Ltd. ("**Vertex**"). As discussed during the EB 2017-0049 proceeding,[19] Hydro One is repatriating its call centre function, having previously outsourced this function to Inergi, who then subcontracted the function to Vertex for a period of time. This transition includes the transfer of pension assets and liabilities from the pension plans of Inergi and Vertex to the Hydro One Pension Plan, which transfer must be approved by FSCO under section 80 of the PBA before taking effect.[20] FSCO's approval of the transfer is pending. The proposed pension asset and liability transfer does not impact the amount of Hydro One's current pension contribution obligations. However, it does impact the date that the December 31, 2017 valuation report will cease to be operative and when the Post-May 1, 2018 Rules will begin to apply to the Hydro One Pension Plan.

19. For Hydro One, the Post-May 1, 2018 Rules will take effect once Hydro One's December 31, 2017 valuation report ceases to be operative, which will be the earlier of (i) the date on which

[19] EB-2017-0049 Volume 4 transcript at pp 199 – 202 and Vol. 5 transcript at pp 10-11.

[20] The Inergi and Vertex asset transfer application was submitted to FSCO on November 28, 2018.

the Inergi/Vertex Asset Transfer Report becomes operative and (ii) the effective date of the next actuarial valuation of the Hydro One Pension Plan (which will be no later than December 31, 2020). The effective date for the Post-May 1, 2018 Rules could therefore be as early as March 1, 2018 (the earliest possible operative date of the proposed Inergi/Vertex Asset Transfer Report), or as late as December 31, 2020 (the latest possible effective date of the next valuation report required under the PBA).[21] As a result, and as it applies to the Application and the 2018-2022 rate period, there is continuing uncertainty as to when the Post-May 1, 2018 Rules will apply to Hydro One although it is certain this will occur within the 2018-2022 rate period.

PART III - ISSUES AND THE LAW

A. The test on a review and variance motion

20. Hydro One's request that the Pension Findings be varied meets the Board's threshold test for a review of the Decision. Specifically, there is a change in circumstances and error which is material such that a reviewing panel would vary the Pension Findings.

21. Rule 42.01(a) of the Board's *Rules of Practice and Procedure* provides as follows (emphasis added):

> Every notice of a motion made under Rule 40.01, in addition to the requirements under Rule 8.02, shall: (a) set out the grounds for the motion that **raise a question as to the correctness of the order or decision**, which grounds may include:
>
> (i) error in fact
>
> (ii) change in circumstance […]

[21] Regulations, s. 14(1), see MR Tab C.

22. In the Board's review of its Decision with Reasons in the Natural Gas Electricity Interface Review proceeding, the Board considered and described the threshold test which it would apply in a motion to review. It found that in a motion to review and vary before the Board, the moving party must demonstrate that a) there is an error, change in circumstance or something of a similar nature that rasies a question as to the correctness of the decision; and b) that the error, change in circumstances or equivalent is material such that if corrected, a reviewing panel would vary the decision.[22]

23. Hydro One's request that the Board review the Pension Findings decision meets this threshold test:

(a) The changes under the PBA and Regulations constitute a change in circumstance and raise important questions as to the correctness of the Pension Findings;

[22] As stated by the Board in EB-2006-0322/0338/0340 p 18 (see MR Tab F):

> [T]he grounds [of review] must "raise a question as to the correctness of the order or decision". In the panel's view, the purpose of the threshold test is to determine whether the grounds raise such a question. This panel must also decide whether there is enough substance to the issues raised such that a review based on those issues could result in the Board deciding that the decision should be varied, cancelled or suspended.
>
> With respect to the question of the correctness of the decision, the Board agrees with the parties who argued that there must be an identifiable error in the decision and that a review is not an opportunity for a party to reargue the case.
>
> In demonstrating that there is an error, the applicant must be able to show that the findings are contrary to the evidence that was before the panel, that the panel failed to address a material issue, that the panel made inconsistent findings, or something of a similar nature. It is not enough to argue that conflicting evidence should have been interpreted differently.
>
> The applicant must also be able to demonstrate that the alleged error is material and relevant to the outcome of the decision, and that if the error is corrected, the reviewing panel would change the outcome of the decision.

In the Board's view, a motion to review cannot succeed in varying the outcome of the decision if the moving party cannot satisfy these tests, and in that case, there would be no useful purpose in proceeding with the motion to review.

(b) The Pension Findings contain an error as they hold that Hydro One should not be permitted to recover pension contributions due to the presence of a "surplus" in the Hydro One Pension Plan and apparently assume that Hydro One was legally entitled to take a contribution holiday. However, despite the "surplus" in the Hydro One Pension Plan, under the PBA and Regulations Hydro One was in fact required to make a pension contribution for 2018 and will be required to make pension contributions for much, if not all, of the period covered by the Decision;

(c) the change in circumstance and error identified above and the resulting question as to correctness of the Decision is material and relevant to the outcome of the Decision such that if the new information is taken into account and the error is corrected, the reviewing panel would change the outcome of the Decision; and,

(d) Hydro One is not re-arguing its case or arguing that evidence at the hearing should have been interpreted differently. Instead, Hydro One is, as noted, bringing to the Board's attention with this motion a change in circumstance and error that result in a need for the Board to review and vary the Pension Findings, all as explained in detail below.

B. The Change in Circumstance

24. As detailed in paragraphs 11 to 19 above, there have been significant changes to the PBA and Regulations which result in the Pension Findings being incorrect, as set out below.

C. The Decision is not correct

25. The Decision is not correct because:

(a) Hydro One is not legally permitted to take a contribution holiday under the PBA and the Regulations in 2018 and for much of the period covered by the Decision; as a result, the Decision erroneously denied Hydro One costs that are and will be prudently incurred; and

(b) the denial of costs that are required by law was not expressly considered in EB-2017-0049 and the Board's decision on that unargued point failed to provide Hydro One with a fair hearing.

The surplus position relied upon by the Board is insufficient to permit Hydro One to legally take a contribution holiday under the PBA and the Regulations

26. The OEB stated that it disallowed the recovery of pension contributions because of the "magnitude of the current surplus" of the Hydro One Pension Plan[23] and because there was "a significant surplus in its pension plan and there is no justification for continued inclusion of additional pension contributions in rates".[24] The surplus position referenced in the decision is that the Hydro One Pension Plan is in a surplus position on a going concern and solvency basis.

27. Hydro One was not permitted to take a contribution holiday in 2018.[25] Furthermore, the going concern and solvency surplus status of the Hydro One Pension Plan cannot be relied upon as a basis for Hydro One to take a contribution holiday under the Hydro One Pension Plan for the 2018-2022 rate period given the PBA requirements for contribution holidays under the Post-May 1, 2018 Rules (i.e, the requirement that a valuation report or cost certificate state that the plan has a funded ratio of at least 105% calculated on a wind-up basis) that will begin to apply during the 2018-2022 rate period. The Board's reasons and

[23] Decision p 96.

[24] Decision p 94

[25] See paragraph 16, above.

basis for disallowing recovery of pension costs in rates is therefore no longer correct and the Decision should be corrected.

The pension contributions are and will be prudently incurred

28. The OEB and other regulatory tribunals regularly use the prudent investment test to assess whether or not payments to a utility are just and reasonable. As recently stated by the Supreme Court of Canada (the "**Supreme Court**") in *Ontario Energy Board v. Ontario Power Generation Inc*.[26]:

> The prudent investment test, or prudence review, is a valid and widely accepted tool that regulators may use when assessing whether payments to a utility would be just and reasonable.[27]

29. In *Enbridge Gas Distribution Inc. v. Ontario Energy Board*[28], the Ontario Court of Appeal endorsed the Board's specific formulation of the prudent investment test which included the following component:

> To be prudent, **a decision must have been reasonable under the circumstances** that were known or ought to have been known to the utility at the time the decision was made.[29]

[26] *Ontario Energy Board v. Ontario Power Generation Inc.*, 2015 SCC 44 (the "**OPG Decision**"), see MR Tab G.

[27] OPG Decision para 102, see MR Tab G.

[28] *Enbridge Gas Distribution Inc. v. Ontario Energy Board* (2006), 210 O.A.C., see MR Tab H.

[29] *Enbridge Gas Distribution Inc. v. Ontario Energy Board* (2006), para 10, see MR Tab H. In the OPG Decision, the Supreme Court accepted this component of the prudence test. It did not endorse the presumption of prudence, which is not in issue in this case.

30. The decision at issue in this motion is whether Hydro One management should make pension contributions required by legislation. Ontario's legislation governing the payment of pension contributions is the PBA and the Regulations[30].

31. It is reasonable for Hydro One's management make decisions in accordance with the law. The alternative – i.e., to not follow the law and not make required pension contributions – is both unreasonable and would expose Hydro One and its directors and officers to prosecution and/or fines under the PBA since a failure to make pension contributions is an offence under the PBA.[31] A decision that exposes Hydro One to a legal liability would surely be deemed imprudent by the Board and the Board would not allow recovery of costs associated with this liability. It follows that the decision to follow the law and make mandatory pension contributions when required is reasonable and prudent.

32. Hydro One is not aware of any Board decision where the cost of complying with a legislative or regulatory requirement was found to be imprudent.

The denial of costs required by law was not considered in EB-2017-0049

33. No party in EB-2017-0049 suggested that Hydro One's pension contributions should not be recovered in rates if legislation prevented Hydro One from taking a contribution holiday. Instead, parties noted that it was not clear as to whether Hydro One could take a contribution holiday given the recent changes to the PBA[32] or made submissions on pension contributions

[30] Section 55 PBA, ss. 4 and 5 Regulations, see MR Tab C.

[31] Ss. 109 and 110, see MR Tab C.

[32] See, for example, Energy Probe final argument in EB-2017-0049 para 79 and SUP submissions at p 6.

which assumed that Hydro One could legally take a contribution holiday.[33] As a result, no party, including Hydro One, was afforded the opportunity to make submissions as to whether Hydro One's pension costs should be denied if they were legally required.

34. In *Flamborough (Town) v. National Energy Board,* the National Energy Board ("**NEB**") held that applicants have a right to be heard with respect to conditions imposed by a regulatory tribunal in making an order.[34] Hydro One submits that the Board's imposition of the Pension Findings is a denial of the right to be heard in respect of the Pension Findings. The right to a fair hearing is fundamental. As stated by the NEB:

> [t]he right to a fair hearing must be regarded as an independent, unqualified right which finds its essential justification in the sense of procedural justice which any person affected by an administrative decision is entitled to have.[35]

35. The denial of the right to a fair hearing in respect of the Pension Findings is an error of law which renders the Pension Findings incorrect.

PART IV - CONCLUSION

36. In conclusion, the Pension Findings should be amended to allow Hydro One to recover the pension contributions that it makes during the years covered by the Application. These contributions are, and will be, prudently incurred.

---

[33] Several EB-2017-0049 final submissions explicitly assume the continued correctness of Hydro One's valuation report which states that employer contributions may be zero for 2018 and 2019: see CME submissions para 280, AMPCO submissions p 57, SEC submissions s 4.4.4 and CCC submissions p 19.

[34] *Flamborough (Town) v. National Energy Board (Can)* [1987] FCJ No 460, para 7, see MR Tab I.

[35] *Flamborough (Town) v. National Energy Board (Can)* [1987] FCJ No 460, para 7, see MR Tab I.

37. Moreover, Hydro One notes that the Board's disallowance of legally required pension costs would lead to great uncertainty in the sector and therefore, as a policy matter, is inappropriate.

38. Hydro One will continue to track the difference between the cost of pension contributions it makes and the amount it collects in rates and proposes to address differences, if any, at the time the PCDA is cleared. Hydro One proposes to clear the PCDA in its annual update applications.

39. Hydro One also asks for such further relief as it may request and that the Board may deem appropriate in these circumstances.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 5th day of June, 2019.

Signed in the original
Gordon Nettleton
McCarthy Tétrault LLP
Counsel for Hydro One Networks Inc.

Signed in the original
George Vegh
McCarthy Tétrault LLP
Counsel for Hydro One Networks Inc.