

December 19, 2019

Christine Long
Registrar and Board Secretary
Ontario Energy Board
2300 Yonge Street
P.O. Box 2319
Toronto, Ontario
M4P 1E4

Dear Ms. Long:

Re: EB-2019-0234 – Hydro One Network Inc. - Motion to Review OEB Decision to Eliminate Seasonal Rates

We represent the Consumers Council of Canada (Council) in the above-referenced proceeding. In 2015 the Ontario Energy Board, in its 2015-2017 distribution rates Decision determined that Hydro One Networks Inc.'s (HON) seasonal rates class should be eliminated¹. The OEB initiated a proceeding to consider the remaining steps for the elimination of the seasonal class in November 2016². HON filed reports regarding the elimination of the Seasonal Class on August 4, 2015 and November 2016.

The OEB resumed the Seasonal Class elimination implementation proceeding on April 17, 2019, and ordered HON to file an updated report. The report was filed on July 19, 2019 (2019 Seasonal Report). That report includes a proposed alternative that would maintain the seasonal class, despite the OEB's finding that the Seasonal Class should be eliminated. On September 17, 2019, the OEB indicated that it would view Section 5 of the 2019 Seasonal Report (the alternative approach) as a Motion to review the 2015 Decision pursuant to its Rules of Practice and Procedure. The OEB noted that it may, with or without a hearing, decide a threshold question of whether the matter should be reviewed before conducting any review on the merits.

On October 1, 2019, HON filed additional material for the purposes of the motion and its submission on the threshold question of whether the March 2015 Decision should be reviewed. These are the submissions of the Council on the threshold question.

The OEB's Rules of Practice and Procedure allow for the review of an OEB Decision. Every notice of Motion must set the grounds for the motion that raise a question as to the correctness of the decision. The grounds may include:

- 1) error in fact;
- 2) change in circumstances;
- 3) new fact that have arisen;
- 4) facts that were not previously placed in the evidence in the proceeding and could not have been discovered by reasonable diligence at the time.

¹ EB-2013-0416/0247 Decision, dated March 12, 2015

² EB-2016-0135

It is HON's position is that although it only needs to show one of those grounds in order to meet the threshold, all four grounds are met.³ The Council agrees that there are grounds that have arisen that warrant a review and possible variance of the Decision. Specifically, the Council of the view that there have been changes in circumstances sufficient to warrant a review and possible variance of the Decision. Those changes are:

- **The OEB's Decision to move all residential customers to fully fixed rates.** On April 2, 2015, the OEB issued its policy on a new distribution rate design for residential electricity customers. The rate design would move from a fixed and variable rate structure to a fully fixed rate structure. On September 30, 2015, the OEB ordered that the move to a fully fixed charge would apply to all of HON's residential customers including those in HON's seasonal class. Although parties may have been aware that the OEB was considering changing the rate structure, the final policy determination was not before the panel in the 2015-2017 rates proceeding. In addition, the rate impacts of moving seasonal customers to the year-round residential rates, under a fully fixed rate structure, would now be different than the rate impacts presented at the hearing.
- **The Introduction of Distribution Rate Protection.** *The Ontario Energy Board Act, 1988* was amended after the March 15 Decision and through those amendments the Distribution Rate Protection Plan (DRP) was established. Regulation 198/17 specified that the DRP was effectively not available to seasonal customers. The implication of this is that even if the Seasonal Class is eliminated, customers in the same classes will be paying different distribution charges (seasonal and non-seasonal customers). Although this would be the case because of Rural and Remote Rate Protection the introduction of the DRP exacerbates the problem, particularly for the R2 customers. The OEB was not aware of this at the time it issued its Decision. If the Seasonal Class were eliminated, the fact that seasonal customers would not get the DRP would violate the original intent of the Decision - to provide for rate equity between customers in the same location.

The Council submits that these changes in circumstances warrant a review of the OEB's March 15 Decision regarding the elimination of HON's Seasonal Class. The OEB should proceed to hear the motion. The Council urges the OEB to allow for a discovery phase with respect to the motion, to give parties an opportunity to consider the rate impacts of alternative approaches to deal with HON's Seasonal Class. The OEB issued its Decision in March 2015. HON's underlying cost structure and rates have changed since that decision. It will be important for the OEB to have the most updated information in assessing the merits of the motion and any proposals to vary the decision.

Yours truly,

Julie E. Girvan

Julie E. Girvan

CC: All parties

³ Submission of HON, dated September 17, 2019, p. 2