

**Hydro One Networks Inc.  
2017- 2022 Transmission Revenue Requirement and Charge Determinants and  
2018-2022 Distribution Revenue Requirement and Rates, Remittal of Future Tax  
Savings Issue**

**NOTICE AND PROCEDURAL ORDER NO. 1  
October 2, 2020**

The Ontario Energy Board (OEB) determined in the EB-2016-0160 Decision and Order (Original Decision), that a portion of the future tax savings resulting from the Government of Ontario's decision to sell a portion of its ownership interest in Hydro One Limited by way of an Initial Public Offering on October 28, 2015 and subsequent sale of shares should be applied to reduce Hydro One Networks Inc.'s (Hydro One) transmission revenue requirement for 2017 and 2018.

On October 18, 2017, Hydro One filed with the OEB, a Notice of Motion to Review and Vary portions of the Original Decision in accordance with Rules 40 and 42 of the OEB's *Rules of Practice and Procedure*. The OEB assigned case number EB-2017-0336 to the proceeding.

The OEB's Review Panel's decision (Review Decision) identified four factors that the Original Panel relied on, "some of which included errors."<sup>1</sup>

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 payments in lieu of taxes 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.

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<sup>1</sup> EB-2017-0336 *Decision and Order* August 31, 2018, pp. 5-7

The Review Decision ordered that the part of the Original Decision dealing with the future tax savings should be returned to the Original Panel to reconsider in light of these findings and all the evidence and argument the Original Panel and the Review Panel heard on this issue. The OEB assigned case number EB-2018-0269 to this proceeding (the Rehearing Proceeding).

On March 7, 2019, the Rehearing Panel issued its decision on this matter (the Rehearing Decision). The Rehearing Panel stated that in response to the direction provided by the Review Panel, it had considered the Review Panel's findings of certain errors in the Original Decision in addition to the record of evidence relied on in the Original Decision and determined that the outcome of the Original Decision was reasonable.

Hydro One had appealed the Original Decision to the Ontario Divisional Court (the Court), and that appeal had been held in abeyance pending the outcome of the motion to review and subsequent Rehearing Proceeding. Following release of the Rehearing Decision, Hydro One resumed its appeal. The appeal was heard in November 2019 and the Court issued its decision on July 16, 2020. An order certifying the Court's opinion was issued on September 21, 2020.

The Court granted Hydro One's appeal and ordered that the matter be remitted back to the OEB for a new panel to make an appropriate order varying the tax savings allocation. In remitting the matter back to the OEB, the Court specified that "no portion of the Future Tax Savings should be allocated to ratepayers when the evidence is clear that [Hydro One] paid all of its costs under the stand-alone utility principle", and that "no part of the benefit of the Future Tax Savings is allocable to ratepayers and should instead be paid to the shareholders in its entirety." The OEB is establishing the current proceeding to implement the clear direction of the Court that all of the future tax savings should be allocated to Hydro One's shareholders.

The OEB notes that the decision of the Court will also have implications for Hydro One's distribution rates. As part of the proceeding for Hydro One's 2018-2022 distribution rates,<sup>2</sup> the OEB determined that it would not permit the matter of tax savings to be reconsidered pending the outcome of the Hydro One motion and appeal. On that basis, the treatment of the tax savings for Hydro One's distribution rates reflected the approach from the Original Decision. The OEB further noted that it would "implement the ultimate outcome of any appeal of the Tax Savings Determination issue, in the event that the appeal process results in a change to the allocation of the tax savings as set

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<sup>2</sup> EB-2017-0049 *Decision and Order*, March 7, 2019

out in the Tax Savings Determination.”<sup>3</sup> As Hydro One was successful on its appeal, the OEB will now also reflect the Court’s instructions for Hydro One’s transmission rates to Hydro One’s distribution rates.

The findings in the Original Decision with respect to the tax savings allocations for the 2017-2018 period have subsequently been incorporated by the OEB into transmission revenue requirements and charge determinants for the years 2019 to 2022 as well as into distribution revenue requirements and rates for the 2018 to 2022 period. The OEB has determined that as a first step it will require Hydro One to file evidence on such matters as the total amount that Hydro One is entitled to recover for the 2017 to 2022 period as a result of the Court’s decision. The information should be divided between the transmission business and the distribution business, along with detailed supporting calculations and potential customer bill impacts. Hydro One should also file one or more proposed implementation options for the recovery of the amounts owed through rates, and the annual forecast of rate impacts for these various options. Hydro One may also include any other information related to this matter that it believes would be useful.

The OEB is also making provision for interrogatories on Hydro One’s evidence and implementation proposals from OEB staff and intervenors. Subsequently OEB staff and intervenors may provide any submissions they may have and Hydro One may reply to any such submissions.

The OEB deems the parties granted intervenor status in the Hydro One transmission and distribution proceedings EB-2016-0160, EB-2017-0049 and EB-2019-0082 as intervenors in this proceeding. Intervenors are eligible for cost awards with respect to the implementation of the Court’s decision if they were eligible for cost awards for these prior proceedings.

#### THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Hydro One shall file its evidence with the OEB, and provide a copy to all intervenors, by **October 28, 2020**.
2. OEB staff and intervenors shall request any relevant information and documentation from Hydro One that is in addition to the evidence already filed, by written interrogatories filed with the OEB and served on all parties by **November 16, 2020**.

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<sup>3</sup> P. 12

3. Hydro One shall file with the OEB complete written responses to all interrogatories and serve them on all intervenors by **December 4, 2020**.
4. OEB staff shall file any submissions with the OEB and forward them to all parties by **December 23, 2020**.
5. Intervenors shall file any submissions with the OEB and forward them to all parties by **January 8, 2021**.
6. Hydro One shall file its reply submission, if any, with the OEB and forward it to all parties on or before **January 22, 2021**.

All materials filed with the OEB must quote the file number, **EB-2020-0194**, be made in searchable/unrestricted PDF format with a digital signature through the OEB's web portal at <https://pes.ontarioenergyboard.ca/eservice>. Filings must clearly state the sender's name, postal address, telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at <https://www.oeb.ca/industry>. If the web portal is not available, parties may email their documents to [registrar@oeb.ca](mailto:registrar@oeb.ca).

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Martin Davies at [Martin.Davies@oeb.ca](mailto:Martin.Davies@oeb.ca) and OEB Counsel, Michael Millar at [Michael.Millar@oeb.ca](mailto:Michael.Millar@oeb.ca).

### **ADDRESS**

Email: [registrar@oeb.ca](mailto:registrar@oeb.ca)  
Tel: 1-888-632-6273 (Toll free)  
Fax: 416-440-7656

**DATED** at Toronto, October 2, 2020

### **ONTARIO ENERGY BOARD**

*Original Signed By*

Christine E. Long  
Registrar