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BY EMAIL AND RESS

December 10, 2020

Ms. Christine E. Long, Registrar
Ontario Energy Board
Suite 2700, 2300 Yonge Street
P.O. Box 2319
Toronto, ON M4P 1E4

Dear Ms. Long:

EB-2020-0194 – 2017- 2022 Transmission Revenue Requirement and Charge Determinants and 2018-2022 Distribution Revenue Requirement and Rates, Remittal of Future Tax Savings Issue – SEC Notice of Motion

Hydro One is in receipt of the Notice of Motion prepared by Schools Energy Coalition (SEC) dated December 9, 2020.

This submission provides Hydro One's reply to School Energy Coalition's Motion for Board directions regarding Hydro One's responses to certain interrogatories filed in the EB-2020-0194 Proceeding. For the reasons that follow, Hydro One submits that the Motion is without merit and should therefore be dismissed.

On October 2, 2020, the Board issued its Notice and Procedural Order No. 1 into this proceeding. The Board expressly stated the scope of this proceeding concerned the remittal instructions from the Ontario Divisional Court which required the Board to make an appropriate order varying the tax savings allocations such that no portion of the Future Tax Savings should be allocated to ratepayers and should instead be paid to shareholders in its entirety. In so doing, the Board directed 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" and to prepare and 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's evidence addressed these requirements. The matter at hand, as indicated in Procedural Order No. 1 is threefold (1) calculation of the total amount that Hydro One is entitled

to recover for the 2017-2022 period (2) stopping any future misallocation of tax savings to ratepayers; and (3) determination of the period to recover the amounts in (1).

SEC's impugned interrogatories do not pertain to any of these issues. Instead, the information sought concerns how Hydro One has gone about calculating the entirety of the Future Tax Savings amounts. Yet these amounts have been determined by the Divisional Court to fall outside of the rate-making process. Notwithstanding that the calculation of the Future Tax Savings is included in the original application, that amount is now irrelevant, because the portion allocable to ratepayers is zero. How Hydro One has gone about calculating this value therefore has no bearing on this Board's jurisdiction to set just and reasonable rates. Moreover, this information has no bearing on the exercise at hand: (1) the determination of the total amount Hydro One is entitled to recover for the 2017-2022 period or (2) stopping any further misallocations of tax savings to rate payers on a go forward basis; or (3) determination of the appropriate period to recover the amounts in (1).

SEC's Motion submissions mischaracterizes Hydro One's proposal as a request for the Board to order payment by transmission and distribution customers of \$2.6 billion of Future Tax Savings without any evidence".¹ In so doing, SEC mischaracterizes ratepayers as having already received the full benefit of Future Tax Savings allocations, they should be entitled to know the basis upon which this amount has been calculated.² This is categorically incorrect. The Board's Procedural Order and Hydro One's evidence makes it clear that the total amount Hydro One seeks to recover are the amounts included in its rates calculations and actually paid to ratepayers for the period 2017-2022. Table 1 of its Evidence states how these amounts were determined and cross-references provided to the proceedings in which each annual amount was included in rates. Attachments 1 to 4 of Hydro One's response to SEC-02 included excerpts from the applicable draft rate orders showing the actual Future Tax Savings amounts paid to ratepayers. The effect of the Divisional Court's Decision is to disallow the misallocations from the outset of the Original Decision and going forward. None of these features are in any way dependent upon the manner in which Hydro One calculates its Future Tax Savings or the information which is the subject-matter of SEC's Motion.

¹ SEC Motion Submission at Para 10

² See for example paragraph 20 where SEC states "SEC submits that it is not credible to say that the Board can order recovery from customers of \$2.6 billion in taxes that will not actually be paid...." Not only is this statement in conflict with the Decision already reached by the Divisional Court (i.e. overturning the Original Decision) it is a false characterization of the relief Hydro One is seeking in this proceeding, which is to say (1) recovery of the misallocated amounts in the 2017-2022 period and (2) altering any further allocation of tax savings going forward.

SEC's Motion submissions attempt to characterize the information requested as being necessary in order for parties to test and consider an appropriate recovery period. SEC's theory seems to be premised upon misinterpreting the Divisional Court's Decision as allowing the Board discretion to have Future Tax Savings continue to be distributed to ratepayers and then returned to shareholders *over time*.³ Yet nowhere in the Divisional Court's Decision is there any suggestion that misallocations could continue or that shareholders must await until after the full impact of the error created by the Original Decision (i.e. full allocation of Future Tax Savings) is felt.

Throughout much of SEC's submission, justification given for the requested information appears to be based upon explanations of concepts in past proceedings, such as calculations of the FMV Bump, continuity schedules addressing actual tax savings achieved, the pattern of those savings, detailed breakdowns of CCA classes and the basis upon which information was filed before the Divisional Court. At paragraph 27, SEC asserts that production of a "straightforward table of savings and allocations" would be beneficial to the Board and "it is better to come from Hydro One than from SEC".

Hydro One makes two observations regarding SEC's assertions. First, the ultimate purpose that SEC seeks from the impugned interrogatory responses has not been demonstrated to relate to the issues set out in Procedural Order No. 1. Instead, the only reasonable conclusion one can take from reviewing paragraphs 6-35 is SEC's intention to seek re-consideration, review and re-litigation of Original Decision, the Rehearing Decision and indeed, the Divisional Court's Decision. Second, SEC's remarks about introducing new evidence itself on these topics demonstrates a need for the Board to provide additional guidance on what its expectations are regarding the subject-matter content of Final Argument.

Regarding OEB Staff- 2(a)(v) and CCC-1, Hydro One provides the following comments. It is unclear what additional information SEC requires from Hydro One's Response to OEB Staff- 2(a)(v). The fact is that SEC has provided its argument to support a carrying cost rate different from that which Hydro One has proposed. Consideration of this difference can and should be a matter considered in final argument. Regarding CCC-1, SEC's references to the "now-standard" request for Board of Directors materials is inconsistent with the nature and scope of this proceeding. While such materials have been commonly filed as interrogatories in major multi-year rates applications and where management oversight and Board of Director approvals and governance matters are in issue, those are features distinct from the narrow and specific issues which the Board has established with Procedural Order No. 1 in this case. There is no "standardized" requirement that each rate application filed by Hydro One necessitates the disclosure of Board of Director documentation. Relevance is the test. SEC has not established or

³ SEC Motion Submission para. 13

met this threshold. The Board is in the best position to assess and determine whether such information is appropriate taking into account the issues set down in this proceeding.

In conclusion, Hydro One submits the Motion is without merit and should be dismissed. How Hydro One has gone about calculating the full value of Future Tax Savings or how it plans to engage in tax planning exercises are topics not relevant to this proceeding. SEC's interrogatories and Motion submission can best be described as a fishing expedition intended to allow issue creep and re-litigation of the Original Decision. Hydro One urges the Board not to depart from the course set out in Procedural Order No. 1.

An electronic copy has been submitted using the Board's Regulatory Electronic Submission System.

Sincerely,

A handwritten signature in cursive script that reads "Frank D'Andrea".

Frank D'Andrea