

BY EMAIL

December 22, 2020

Christine E. Long
Registrar
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto ON M4P 1E4

Dear Ms. Long:

**Re: Hydro One Networks Inc.
Transmission Revenue Requirement and Distribution Revenue
Requirement and Tax Issue – Future Tax Savings Evidence
Ontario Energy Board File Number: EB-2020-0194**

In accordance with Notice of Motion and Procedural Order No. 2, please find attached OEB staff's submission in the above proceeding.

Yours truly,

Jerry Wang
Advisor
Electricity Distribution: Major Rate Applications & Consolidations

Encl.

Hydro One Networks Inc.

EB-2020-0194

ONTARIO ENERGY BOARD

**STAFF SUBMISSION ON SEC NOTICE OF
MOTION DECEMBER 9, 2020**

December 22, 2020

INTRODUCTION

The Ontario Energy Board (OEB) determined in the EB-2016-0160 Decision and Order (Original Decision) that a portion of the future tax savings (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. The total value of the Future Tax Savings is approximately \$2.6 billion, which can be claimed by Hydro One as deductions in the calculation of its taxable income. The Original Decision indicated that a portion of the Future Tax Savings was expected to be allocated to ratepayers over approximately 15 years or more.

Following a motion to review filed by Hydro One, an OEB panel reconsidered the Future Tax Savings issue and determined that the outcome of the Original Decision was reasonable (Rehearing Decision).

With the release of the Rehearing Decision, Hydro One resumed an appeal of the Original Decision to the Ontario Divisional Court (Court). The appeal was heard in November 2019 and the Court issued its decision on July 16, 2020 (Court Decision).

The Court granted Hydro One's appeal. The Court's decision stated that no part of the benefit of the Future Tax Savings is allocable to ratepayers and should instead be allocated to Hydro One's shareholders in its entirety. The Court's decision also 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 the Original Decision.

On October 2, 2020, the OEB issued Notice and Procedural Order No. 1 (PO#1) for this proceeding to implement the Court Decision. The OEB noted that although the Court Decision dealt only with the Original Decision (which covered the 2017 and 2018 rate years for Hydro One's transmission business), it was also relevant to two subsequent OEB decisions in which the OEB had also applied the Future Tax Savings allocation methodology from the Original Decision. The OEB noted that 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.

In PO#1, the OEB determined that as a first step it would require Hydro One to file evidence on matters related to implementing the Court's decision, in particular with respect to a calculation of the total amount Hydro One is entitled to recover for the 2017-2022 rate years (for both the transmission and distribution business) as a result of the Court's decision. The OEB also made provision for interrogatories on Hydro One's evidence and implementation proposals from OEB staff and intervenors.

On October 28, 2020, Hydro One filed its evidence as directed by the OEB.

On December 4, 2020, Hydro One filed its responses to the interrogatories which it received from OEB staff and intervenors related to this evidence.

On December 9, 2020, the School Energy Coalition (SEC), an intervenor in this proceeding, filed a motion (SEC Motion) requesting an order requiring Hydro One to provide full and adequate responses to the following interrogatories:

- a. Interrogatories SEC-2 through 6
- b. Interrogatory OEB Staff-2(a)(v)
- c. Interrogatory CCC-1

SEC additionally requested such further and other relief as it may request and the OEB may grant. SEC proposed that the motion be heard in writing.

On December 10, 2020, Hydro One filed a letter responding to SEC's motion. On December 11, 2020, the OEB issued Procedural Order #2, which set out a schedule for submissions on the SEC Motion. These are the submissions of OEB staff.

OEB Staff Submission Summary

OEB staff will make its submissions on this matter under the three subsections listed above from the SEC Motion. Overall, OEB staff does not support the requests listed by SEC under sections (a) and (c) above, but submits that Hydro One should be required to provide the information requested under section (b).

*a. Interrogatories SEC-2 through 6***Background**

SEC states¹ that it had asked this series of interrogatories to get on the record the full calculation of the Future Tax Savings in order to examine ways that the amount owing from ratepayers to shareholders can be repaid. The interrogatories generally ask for details regarding the entire value of the Future Tax Savings and how they have already been realized or may be realized as deductions against taxable income into the future. SEC argued that responses to these questions would allow the OEB and parties to see the components of the Future Tax Savings (for allocation and other purposes), the periods over which they arise and the pattern of the benefits. SEC submitted that this would in turn allow the OEB and parties to test the appropriateness of various methods of collecting the Future Tax Savings from ratepayers and paying those amounts over to the shareholders.

In its initial response to the SEC Motion,² Hydro One submitted that the ultimate purpose that SEC sought from the interrogatory responses had not been demonstrated to relate to the issues set out in PO#1. Hydro One argued that instead the only reasonable conclusion that could be taken from reviewing paragraphs 6 to 35 of the submission is SEC's intention to seek re-consideration, review and re-litigation of the various OEB decisions related to this matter as well as the Divisional Court's Decision.

Submission

OEB staff notes that in PO#1, the OEB had stated the purpose of Hydro One's evidence in this proceeding as follows:

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

¹ P. 3.

² P. 3.

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.

OEB staff submits that Hydro One has provided the information that the OEB required in PO#1. The purpose of the current proceeding is to ensure that the amounts associated with Future Tax Savings that were allocated to ratepayers through the decisions covering the period 2017-2022 are returned to Hydro One. OEB staff submits that Hydro One has provided this information and divided it between the transmission and distribution segments of the business as required, along with the inclusion of other required information such as bill impacts and implementation options.

OEB staff further submits that additional information, for example relating to the total quantum of the Future Tax Savings beyond 2022 and the allocation of those Future Tax Savings, is not necessary to determine how much was allocated to ratepayers for the period 2017-2022. Presumably Hydro One's applications for rates beyond 2022 will be consistent with the Court Decision and will not allocate any Future Tax Savings to ratepayers (irrespective of what the total quantum of the Future Tax Savings is); regardless, that is not a matter that is currently before the OEB.

OEB staff's view is that the purpose of the current proceeding is to essentially reverse the effects of the OEB's finding in the Original Decision (and carried over to subsequent cases decisions) which established the allocations to ratepayers relating to the Future Tax Savings. Hydro One's evidence has focused on calculating the amounts related to the Future Tax Savings that were allocated to ratepayers in these decisions (i.e. from 2017-2022) and proposing a methodology to return these amounts to Hydro One. In OEB's staff's view, this is the most effective way to achieve the stated purpose of this proceeding and is also consistent with the Court Decision. OEB staff submits that the information requested in interrogatories SEC-2 through 6 is not needed in order for the OEB to determine the amounts related to the 2017-2022 period that should be returned to Hydro One.

*b. Interrogatory OEB Staff-2(a)(5)***Background**

SEC noted³ that OEB staff had requested in the above-referenced interrogatory information on the actual interest rates of Hydro One's borrowing for 2017-2022, but that Hydro One had refused to provide this information on the basis that only OEB-approved interest rates are relevant to the issues in this proceeding.

SEC argued that as such, Hydro One's position appeared to be that the OEB could not and should not consider the utility's actual interest costs in determining the appropriate carrying costs, if any, applicable to the Future Tax Savings.

In its response to the SEC Motion,⁴ Hydro One submitted that it is unclear what additional information SEC requires from that provided in its response to this interrogatory. Hydro One argued that SEC has provided its argument to support a carrying cost rate different from that which Hydro One has proposed. Hydro One submitted that consideration of this difference can and should be a matter considered in final argument.

Hydro One's response to this interrogatory stated that it had always used approved interest rates for calculations relating to interest and saw no reason to deviate from this practice. Hydro One noted that all historic rates relevant to the approved rates had been included in the schedules used to develop the approved rates.

Hydro One further stated that the interest rates on actual debt issued from the prior approval would be reflected in the rebasing of the approved weighted average cost of debt (WACD) in 2023 and would impact any future interest calculations starting in 2023, in the event that the Future Tax Savings are not fully recovered by 2023.

Hydro One submitted that while approved WACD and weighted average cost of capital rates and associated carrying charge amounts had been provided in the application, the requested actual rates are not applicable for these reasons.

³ P. 8.

⁴ P. 3.

Submission

OEB staff notes that the requested actual rates would not be onerous for Hydro One to provide and would be of assistance to parties in preparing arguments on the carrying costs issue. In OEB staff's view, the details of the approach to calculating carrying costs applicable to the Future Tax Savings have not been opined on in either the Court Decision or prior OEB decisions associated with the Future Tax Savings, and clearly remains within the scope of this proceeding. Accordingly, OEB staff submits that Hydro One should be required to provide this information.

c. Interrogatory CCC-1

Background

SEC noted⁵ that in the above-noted interrogatory, the Consumers Council of Canada (CCC) requested the materials provided to the Hydro One Board of Directors with respect to this application and that Hydro One had responded that this information was not relevant to the scope of this proceeding.

SEC argued that the OEB regularly sees reports from management of utilities to their respective Boards of Directors, particularly when those reports are specific to the subject matter of the application the OEB is considering.

SEC submitted that not only do those reports supply context that the utility may not include in its application, but where the OEB has to consider various ways of doing something, as is the case here, it is helpful to the OEB to see the options considered by the applicant's Board of Directors, the rationale for the direction chosen by the utility and the rationale for rejecting the other options.

While SEC observed that in this particular case, the OEB cannot be sure what will be in these materials until it sees them, SEC argued that this material will likely have information the OEB would like to see. SEC suggested that this could include items such as a comparison of the Hydro One regulatory proposal to the actual tax savings that Hydro One will achieve, with discussion of the benefits or costs arising out of those differences as well as options to, for example, present value the tax savings and add them to rate base permanently,

⁵ PP. 9-10.

or to propose fixed rate riders in place of the annual or other periodic calculation of the savings.

In its response to the SEC Motion,⁶ Hydro One submitted that SEC's references to the "now-standard" request for Board of Directors materials is inconsistent with the nature and scope of this proceeding. Hydro One stated that 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 OEB has established with PO#1 in this case.

Hydro One argued that there is no "standardized" requirement that each rate application it files necessitates the disclosure of Board of Director documentation, but that relevance is the test. Hydro One submitted that SEC has not established or met this threshold. Hydro One concluded that the OEB is in the best position to assess and determine whether such information is appropriate taking into account the issues set down in this proceeding.

Submission

OEB staff submits that, because Hydro One has provided the information for this proceeding that the OEB had required in PO#1, as outlined earlier in OEB staff's submissions on the SEC interrogatories, it is not necessary for Hydro One to additionally provide the information requested by CCC in this interrogatory. OEB staff submits that given the significantly more limited scope of this application, the provision of this information is not necessary.

-All of which is respectfully submitted-

⁶ PP. 3-4.