



PUBLIC INTEREST ADVOCACY CENTRE  
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December 23, 2020

VIA E-MAIL

Christine E. Long  
Registrar and Board Secretary  
Ontario Energy Board  
Toronto, ON

Dear Ms. Long:

**Re: EB-2018-0194– SEC Notice of Motion Hydro One Network Inc. Remittal of  
Future Tax Savings  
Responding materials of Vulnerable Energy Consumers Coalition (VECC)**

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In response to Procedural Order No.2 (December 11, 2020) these are the responding materials in support in part of the motion of the School Energy Coalition (SEC) of December 9, 2020.

VECC supports the motion in respect to relieve sought to respond to interrogatories OEB Staff-2 and SEC-2 through 6.

OEB Staff-2

Hydro One has responded to part of this interrogatory. The Company responds in part in this interrogatory:

*Hydro One has always used approved interest rates for calculations relating to interest and sees no reason to deviate from this practice. All historic rates relevant to the approved rates are included in the schedules used to develop the approved rates. The interest rates on actual debt issued from the prior approval would be reflected in the rebasing of the approved WACD in 2023 and will impact any future interest calculations starting in 2023, in the event that the Misallocated Tax 2 Savings are not fully recovered by 2023.*

Part (v) of the response then goes on with reference to this response to state that actual interest rates are not applicable.

This response to OEB-Staff-2 is essentially a reiteration of the evidence provided by the Utility:

*Hydro One observes that the OEB's prescribed rates of interest are applied in normal course utility operations involving the deferral account variances and construction work in progress matters. Matters involving the payment of monies made under errors of law and impacted by lengthy appeal periods are distinguishable from normal utility operation circumstances. To that end, Hydro One is unaware of similar fact circumstances where this Board has had to implement Court decisions requiring the recovery or payment of amounts determined to be for the benefit or cost of the regulated utility's shareholders. (Exhibit A, Tab 1, Schedule 1, page 9)*

the evidence goes on to state:

*That said, Hydro One observes that in circumstances where the issue of carrying costs associated with the refund of imprudently incurred costs to customers is in issue, the Alberta Utilities Commission has approved the use of the utility's weighted average cost of capital in calculating carrying costs included in the overall amount returned to ratepayers. The Commission's designated interest rate used for the purpose of calculating deferral account variances was not selected given the different and unique circumstances associated with a customer refund resulting from costs that were determined to be imprudently incurred as compared to normal course variance account operations. (Ibid)*

Having raised the matter of interest rates and put forth evidence on that very matter Hydro One cannot, in our submission, then refuse to elucidate inquiring parties on the issue. The nature of the interrogatory response as it stands appears to be in the form of an argument that choosing anything other than proscribed notional interest rates would be punitive and unlawful. To consider that argument (if it indeed is being made), or an argument that actual carrying interest rates are more appropriate, requires an understanding of the alternative interest outcomes. That is the information being sought. As to its lawfulness, we can find no reference in the Decision of the Divisional Court which opines on the appropriate rate to be employed.

#### SEC-2 through SEC-6

It is Hydro One's position that the information requests of SEC amount to a collateral attack on the Divisional Court Decision.<sup>1</sup> We think this unlikely and, in its motion, SEC plainly states that "[T]he Board is therefore charged by the Court with the responsibility of ensuring that 100% of the benefit of the Future Tax Savings be paid to the shareholders."

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<sup>1</sup> See for example, page 3 of December 10, 2020: "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."

The Board's Procedural Order No. 1 states: "[T]he 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." In our view the questions of SEC go to precisely this question. To implement the Court's decision the Board is moving in two parts and the first is to consider repayment of the 2017 to 2022 collection in rates. Presumably the second will be to adjust rates on a post 2022 basis to remedy the matter on an ongoing basis. However, while the scope of this proceeding is focused on the refunding of 2017-2022 amounts that issue cannot easily or simply be divorced from the issue of the post 2022 taxes. That is because the collection of tax amounts and therefore the incurrence of the ratepayers' liability changes over time. Furthermore, the allocation of that liability as between transmission and distribution customer's needs to be considered. In this regard we agree with the SEC when they said:

*..... These questions will allow the Board 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. This will in turn allow the Board 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.<sup>2</sup>*

Furthermore, the Court has granted sufficient latitude to deal with the matter in a comprehensive fashion.

*[61] The Court therefore orders that the matter be remitted back to the Board and (a) a new panel of the OEB shall consider and make an appropriate order varying the tax savings allocation in Original Decision by correcting the errors identified in it by the Review Panel; and (b) in doing so, the OEB shall apply and give effect to the findings of the Review Decision and each of the errors it identified in the Original Decision, including in respect of the applicable ratemaking principles.<sup>3</sup>*

VECC knows SEC to have broad and expert experience in matters of tax and tax law. And in conformance with the Board's long-standing direction for parties to be efficient and work together where possible, we at times rely upon that expertise. In our submission it would assist all the parties to have the Board grant SEC broad latitude so as to allow for an exploration of the issues as to both the payment and allocation of that liability from different ratepayer groups. We also note that other than the marginal amount of time needed for this exploration there appears to be no harm in Applicant in meeting SEC's request. Given the quantum of the matter at issues in the proceeding more information – not less - will lead to the best outcome.

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<sup>2</sup> SEC Notice of Motion, December 9, 2020, page 3

<sup>3</sup> See Energy Probe – 1, Attachment 1 for Decision

CCC-1

The Consumer Counsel of Canada (CCC) interrogatory seeks Board of Directors material with respect to this matter. As noted by SEC such information has become proforma in comprehensive rate hearings. Information garnered from this source can provide insight into complex and multi-faceted decisions around such things as capital planning. In the absence of seeing a response to the CCC request it is difficult for us to come to a conclusion as to its relevance in this proceeding. It does seem to us that providing a response would take a *de minimis* amount of effort. Having said that, VECC relies on the filed Application as setting forth the entire position of both the Applicant's managers and its owners.

These are the submissions of VECC on the motion.

Yours truly,

A handwritten signature in black ink, appearing to read "M. Garner".

Mark Garner  
Consultant for VECC/PIAC

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