

January 4, 2021

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

Dear Ms Long:

EB-2020-0194 – Hydro One Networks Inc. – Tax Savings Application - Motion by the School Energy Coalition

Please find, attached, the submissions of the Consumers Council of Canada pursuant to the above-referenced proceeding. The Council supports the Motion made by the School Energy Coalition.

Please feel free to contact me if you have questions.

Yours truly,

Julie E. Girvan

Julie E. Girvan

CC: All parties

SUBMISSIONS OF THE CONSUMERS COUNCIL OF CANADA

RE: EB-2020-0194 – MOTION BY THE SCHOOL ENERGY COALITION

HYDRO ONE NETWORKS INC. – DIVISIONAL COURT DIRECTION - FUTURE TAX SAVINGS

The Ontario Energy Board (OEB) determined in Hydro One Network Inc.'s 2017-2018 transmission revenue requirement proceeding 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 public offering should be applied to reduce HON's revenue requirement.

HON filed a motion for review with the OEB and the outcome of that motion was that the OEB's original decision was reasonable. HON resumed an appeal to the Ontario Divisional Court (Divisional Court). The Divisional Court decision was issued on July 16, 2020 and an order certifying the Divisional Court's opinion was issued On September 21, 2020. The Divisional Court granted HON'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.

On October 2, 2020, the OEB issued its Procedural Order No. 1 in the current proceeding to implement the direction of the Divisional Court. HON was required to file new evidence on matters related to implementing the Divisional Court's decision which also applies to its distribution rates. The OEB also set out a schedule for interrogatories. On December 4, 2020, HON filed its responses to the interrogatories posed by OEB Staff and intervenors.

On December 9, 2020, the School Energy Coalition (SEC) filed a motion requesting an OEB order requiring HON to provide full and adequate responses to the following interrogatories:

- a) SEC interrogatories 2-6
- b) OEB Staff interrogatory 2(a)(5)
- c) CCC interrogatory 1

On December 10, 2020, HON filed a response to the SEC motion. On December 11, 2020, the OEB issued its Procedural Order No. 2 in which it indicated would hear the motion and it set a schedule for submissions. These are the submissions of the Consumers Council of Canada in support of the motion filed by SEC. The Council acknowledges that the scope of this proceeding is only for the OEB to implement the direction of the Divisional Court that all of the future tax savings should be allocated to HON's shareholders.

SEC Interrogatories 2-6

In its motion SEC states:

In a series of five interrogatories SEC sought to have placed on the record the detailed calculations of the Fair Market Value (FMV) Bump and its impacts, including the calculation of the deferred tax savings, so that the Board and parties can determine when and how the savings arise over time, the appropriate application of those savings as between distribution and transmission, and the appropriate recovery of those savings from customers in accordance with the Court decision. Hydro One has in general refused to provide any information on the calculation of the Future Tax Savings.

In its submission HON states:

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 the 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.

The Council agrees with SEC that the detailed calculations it requests are relevant to this proceeding. The OEB has been charged by the Divisional Court with the task of ensuring 100% of the benefit of the Future Tax Savings be paid to the shareholders. It is important for the OEB, OEB Staff and intervenors to be able to test the numbers provided by HON. As noted by SEC the amount of information on the record is insufficient for the OEB and customers to understand the amount of tax savings, when those savings will be utilized by HON to reduce its taxes, how much has already been available, what proportion of the savings available have been utilized already and when.

The Council sees no reason why HON cannot provide this information. In addition, there is no reason that providing this information will somehow harm HON, and the Council is of the view that it is readily available. It will ultimately be up to the OEB to assess the relevance of this information, but it should only do so once final submissions are filed.

OEB Staff Interrogatory 2 (a)(5)

In this interrogatory OEB Staff requested information on the actual interest rates of HON's borrowing for the period 2017-2022. HON's response was that the actual rates are not applicable as it has always used approved interest rates for calculations relating to interest and sees no reason to deviate from this practice.¹ As noted by SEC HON's position appears to be that the OEB cannot and should not consider the utility's actual interest costs in determining the appropriate carrying costs, if any, applicable to the Future Tax Savings.

¹ OEB Staff IR 2-(a)(5)

The Council supports SEC as the information requested is clearly relevant to the determination of the carrying cost issue. This issue is an important and relevant issue in this proceeding. In addition, providing this information should be relatively simple for HON to do.

CCC Interrogatory 1

In this interrogatory the Council asked HON to produce all materials provided to its Board of Directors regarding this Application. HON replied that the question is not relevant to the scope of this proceeding².

The Council notes that the OEB regularly sees the presentations made to a Board of Directors when an Application is the subject of those presentations. The Council is of the view that in many cases it is important to see the options that the Board of Directors considered in approving an Application. There is no reason to make a distinction in this case. As noted by SEC the OEB cannot be sure what will be in the materials until it sees them. However, the OEB should not deem the materials irrelevant prior to a review of them. Accordingly, the Council is of the view that a full answer to this interrogatory should be required.

² CCC Interrogatory 1