

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

DECISION ON MOTION AND PROCEDURAL ORDER NO. 3
February 8, 2021

The Ontario Energy Board (OEB) determined in its 2017-2022 transmission revenue requirement and charge determinants Decision and Order (Original Decision)¹ 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 (Future Tax Savings) should be applied to reduce Hydro One Networks Inc.'s (Hydro One) transmission revenue requirement for 2017 and 2018.

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).²

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. An order certifying the Court's opinion was issued on September 21, 2020.³

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.

¹ EB-2016-0160, pp. 106-109

² EB-2018-0269

³ Ontario Superior Court of Justice Divisional Court File No. 200/19, July 16, 2020.

On October 2, 2020, the OEB issued Notice and Procedural Order No. 1 (PO#1) in 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.

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. The OEB also made provision for interrogatories on Hydro One's evidence and implementation proposals from OEB staff and intervenors, and for submissions from OEB staff and intervenors and reply submissions from Hydro One.

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

On December 9, 2020, the School Energy Coalition (SEC), an intervenor in this proceeding, filed a 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) (5)
- c. Interrogatory CCC-1⁴

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 11, 2020, the OEB issued Notice of Motion and Procedural Order No. 2 (PO#2), in which it determined that it would hear the motion and established a schedule for the filing of submissions on it. The OEB also postponed the remaining procedural steps set out in PO#1 which were to be rescheduled after the hearing of the motion.

Decision

The OEB denies the SEC motion. Dates for the filing of final submissions in this proceeding are set out at the end of this decision.

Background

SEC Motion

The interrogatories with which the SEC motion was concerned were the following:

⁴ Consumers Council of Canada (CCC)

a. Interrogatories SEC-2 through 6⁵

2. [Ex. A/1/1, p. 6, 7, 14] Please provide, in Excel format, a table showing, with relevant dates, and covering the period from 2016 until the remaining amount of the Deferred Tax amount included in the Applicant's financial statements is expected to be less than the Applicant's materiality threshold:

a. The original Deferred Tax amount booked in the financial statements as a result of the change in tax status, and any additions to the Deferred Tax amount as a result of acquisitions or any other factors, in each case including the calculation of that amount;

b. The maximum drawdown of the Deferred Tax amount as a result of the availability of the FMV Bump in each year, divided between transmission and distribution businesses; and

c. If the drawdown of the Deferred Tax amount in any year was or is expected to be less than the maximum, because of limited taxable income or for any other reason, the actual or forecast drawdown of the Deferred Tax amount as a result of the FMV Bump in each year, divided between transmission and distribution businesses.

3. [Ex. A/1/1, p. 7] Please add to Table 1 columns for each of transmission and distribution showing the total tax savings amounts available in each year, the total tax savings claimed or expected to be claimed in the year, the amount allocated to the shareholders, and the remaining amount (already shown) originally allocated to the customers.

4. [Ex. A/1/1, throughout] With respect to the calculation of the impact of the FMV Bump:

a. Please provide, in Excel format, a full CCA continuity schedule for all depreciable assets subject to the FMV Bump, whether at the time of the IPO, or as a result of any subsequent event, all broken down by CCA class, from 2016 until the Deferred Tax amounts are below the materiality threshold.

b. Please provide an identical CCA continuity schedule, calculated on the assumption that the FMV Bump was not applicable, and that the assets continued to be subject to CCA based on their previous undepreciated capital costs.

⁵ Interrogatories from the School Energy Coalition, November 13, 2020, pp. 1-2.

c. Please reconcile the differences between those continuity schedules to the initial and any additional calculations of the Deferred Tax amounts included or to be included in the financial statements.

d. In the event that any of the assets are amortized pursuant to the CEC rules, please provide similar continuity schedules with and without the FMV Bump, and a similar reconciliation.

5. [Court Decision, p. 4] Please provide, in Excel format, the full calculation of the net present value figure of \$1.2 billion related to the Future Tax Savings referred to in note 4 of the Court's Decision, and originally alleged by the Applicant in its Factum in that proceeding, at page 5. Please include the annual amount of tax savings for each year from 2016 onward, including the calculation of that tax savings amount, and the discounting calculations used including all assumptions.

6. [Ex. A/1/1, throughout] Please provide the accountants' working papers for the original and any subsequent calculations of the deferred taxes as recognized for financial statement purposes.

b. Interrogatory OEB Staff-2(a) (5)⁶

Ref: p. 8 – Table 2, pp. 9-11, 16

At the above references, carrying charges and related matters are discussed:

a) Carrying charge rates are provided on page 8, Table 2. The weighted average cost of debt (WACD) appears to be equal to Hydro One's approved WACD. The weighted average cost of capital (WACC) does not appear to be equal to Hydro One's approved WACC.

v. Please provide both the actual and approved WACD and WACC rates and associated carrying charge amounts, if not already provided in Table 2 and 3.

c. Interrogatory CCC-1⁷

Please provide all materials provided to HON's Board of Directors regarding this Application.

⁶ Ontario Energy Board Staff Interrogatories November 13, 2020, p. 2.

⁷ Consumers Council of Canada Interrogatories November 16, 2020, p. 1.

With respect to interrogatories SEC-2 through 6, SEC stated⁸ that these interrogatories had been asked 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.

SEC noted⁹ that in OEB staff Interrogatory 2(a)(5), OEB staff had requested information on the actual interest rates of Hydro One's borrowing for 2017-2022, and it appeared that Hydro One had refused to provide this information as not being needed to determine the appropriate carrying costs.

With respect to interrogatory CCC-1, SEC noted¹⁰ that Hydro One had also refused to provide the information requested on the basis that it was not relevant to the scope of the proceeding. SEC suggested that the information CCC had requested could include items such as a comparison of the Hydro One regulatory proposal to the actual tax savings that Hydro One will achieve, with an accompanying discussion of the benefits or costs arising out of any differences associated with options to the Hydro One proposal.

OEB Staff Submission

With respect to the SEC interrogatories, OEB staff submitted that Hydro One has provided the information that the OEB required in PO#1 in an appropriate format in accordance with the purpose of the current proceeding.¹¹ OEB staff further submitted that additional information, 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. OEB staff concluded 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 shareholders.

With respect to OEB staff interrogatory 2(a)(5), OEB staff noted 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.

With respect to SEC's request for information in response to the CCC interrogatory, OEB staff submitted that, given the limited scope of this application, the provision of this information was not necessary.

⁸ P. 3.

⁹ P. 8.

¹⁰ PP. 9-10.

¹¹ Ontario Energy Board Staff Submission, December 22, 2020.

Intervenor Submissions

VECC, Energy Probe, and AMPCO filed submissions which were largely in support of the positions taken by SEC in its motion. CCC also filed a similar submission.¹²

Hydro One Response

After considering OEB staff's submission respecting the OEB staff interrogatory on carrying costs, Hydro One accepted the relevance of the request and provided the information. However, Hydro One submitted that the motion with respect to the SEC and CCC interrogatories was without merit and should be dismissed.¹³ Hydro One argued that how it had calculated the full value of the Future Tax Savings or how it planned to engage in tax planning exercises are outside the rate-setting process and not relevant concerns for the implementation of the Court decision, which requires all Future Tax Savings be allocated to Hydro One's shareholders instead of ratepayers.

Hydro One noted, in support of its position, that in PO#1, the OEB had identified three areas requiring evidence: (1) the amount of Future Tax Savings misallocated since the time of the error; (2) the method used to recover the misallocated amounts; and (3) the timing of such recovery. In Hydro One's view, the disputed SEC and CCC interrogatories are not relevant to any of these three areas and/or the task of placing the parties in the position they would have been in, but for the OEB's error in misallocating the Future Tax Savings.

Hydro One further submitted that the Board of Directors materials sought by the CCC interrogatory have no relevance to the implementation of the Court Decision.

SEC Reply Submission

SEC submitted that the purpose of this proceeding is to implement the Court decision.¹⁴ The Court had ordered that a specific benefit, Future Tax Savings, should be allocated in its entirety to the shareholders of Hydro One and none of that benefit should flow to the ratepayers. However, the Court decision did not limit the application of its decision to correcting misallocated amounts from existing rates, and that the OEB had also not placed such a limit on the proceeding.

¹² VECC, Energy Probe and AMPCO Submissions December 23, 2020, CCC Submission January 4, 2021.

¹³ Submissions, December 10, 2020 and January 11, 2021

¹⁴ SEC Reply Submission, January 18, 2021.

SEC submitted that its position was supported by the OEB's requirement that 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.

SEC further submitted that there are a number of potential approaches to payment by the ratepayers to the shareholders of Future Tax Savings. SEC suggested that while it is premature to say whether any of these alternatives are appropriate in the circumstances, it also suggested four alternatives that could be considered by the OEB.¹⁵

SEC concluded that each of these four approaches can have many variations, and there are likely completely different approaches that it had not even considered. SEC stated that it is impossible to determine the best approach at this point. According to SEC, the only way to do so would be for the OEB to have an evidentiary basis on which to make that assessment. That determination could be assisted by the Hydro One interrogatory responses that have been requested.

Findings

The OEB notes first that the motion request with respect to the OEB staff interrogatory is now moot as Hydro One has filed details of its actual debt rates and costs. The OEB will accordingly make no additional findings on this part of the motion.

The remaining orders sought by the SEC Motion are denied. The OEB is satisfied that Hydro One has provided the information required in accordance with the scope of the proceeding set out in PO#1. The provision of additional information to develop approaches for the regulatory treatment of Future Tax Savings beyond 2022 is not necessary for the determination of how much was allocated to ratepayers for the period 2017-2022, as well as for the method for its recovery. The information sought by the CCC interrogatory associated with Board of Directors materials related to Future Tax Savings is also not relevant to the scope of this proceeding, and the motion request concerning that interrogatory is not granted.

The OEB reiterates that the scope of this proceeding is to reallocate to Hydro One's shareholders any deferred tax savings allocated to ratepayers only for the 2017 to 2022 period. Any determinations related to the calculation of taxes (including future tax savings) for 2023 onwards that may be required will be the responsibility of a future OEB panel. That panel will also determine the scope of the information required by the

¹⁵ *Ibid*, pp 6-10.

OEB for the purpose of any such determinations in that proceeding. The OEB notes that Hydro One is expected to file its rate application for 2023 and subsequent years later this year.

Procedural Order No. 3

As noted earlier, the OEB, in PO#2 postponed the remaining procedural steps set out in PO#1 relating to the filing of submissions by parties. These were to be rescheduled after the hearing of the motion.

The OEB, having denied the SEC Motion, is now rescheduling these steps.

The OEB considers it necessary to make provision for the following matters related to this proceeding.

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. The SEC Motion is denied.
2. OEB staff shall file any submissions with the OEB and forward them to all parties by **February 22, 2021**.
3. Intervenors shall file any submissions with the OEB and forward them to all parties by **February 26, 2021**.
4. Hydro One shall file its reply submission, if any, with the OEB and forward it to all parties on or before **March 8, 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://p-pes.ontarioenergyboard.ca/PivotalUX/>. 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.

All communications should be directed to the attention of the Registrar 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 and OEB Counsel, Michael Millar at Michael.Millar@oeb.ca.

Email: registrar@oeb.ca
Tel: 1-888-632-6273 (Toll free)
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DATED at Toronto, February 8, 2021

ONTARIO ENERGY BOARD

Original Signed By

Christine E. Long
Registrar