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February 26, 2021

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

Dear Ms. Long

RE: EB-2020-0194 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 Energy Probe Argument Submission

Attached is the argument submission of Energy Probe Research Foundation (Energy Probe) in the Hydro One Networks Inc. EB-2020-0194 proceeding.

Respectfully submitted on behalf of Energy Probe.

Tom Ladanyi
TL Energy Regulatory Consultants Inc.

cc. Patricia Adams (Energy Probe Research Foundation)
Frank D'Andrea (Hydro One Networks Inc.)
Martin Davies (OEB Staff)

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ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Schedule B, as amended (the “OEB Act”);

AND IN THE MATTER OF a proceeding on the Board’s own motion to implement the decision of the Divisional Court dated July 16, 2020 in its File #200/19, and for an Order or Orders approving or fixing just and reasonable rates for Hydro One Networks Inc. for the transmission and distribution of electricity as of January 1, 2021.

AND IN THE MATTER OF Rule 27 of the Board’s *Rules of Practice and Procedure*.

Hydro One Remittal of Future Tax Savings

Energy Probe Argument Submission

February 26, 2021

Executive Summary

Energy Probe submits that the amount of deferred tax savings allocated to Hydro One Transmission ratepayers for the 2017 to 2022 period is \$189.8 million. It should be collected by Hydro One from Transmission ratepayers through a rate rider over a 31-year period, which is the remaining life of Hydro One Transmission assets based on its latest depreciation study report. The outstanding balance should be recorded in a Transmission deferral account with no interest.

The amount of deferred tax savings allocated to Hydro One Distribution ratepayers for the 2018 to 2022 period is \$113.4 million. It should be collected by Hydro One from Distribution ratepayers through a rate rider over a 24-year period, which is the remaining life of Hydro One Distribution assets based on its latest depreciation study report. The outstanding balance should be recorded in a Distribution deferral account with no interest.

Regulatory Background

The OEB determined in its EB-2016-0160 Decision 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's transmission revenue requirement for 2017 and 2018.

Following a motion to review filed by Hydro One, EB-2018-0269, an OEB panel reconsidered the Future Tax Savings issue and determined that the outcome of the EB-2016-0160 Decision was reasonable.

Hydro One appealed the EB-2016-0160 Decision to the Ontario Divisional Court. 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. On October 2, 2020, the OEB issued Notice for the current proceeding, EB-2020-0194, to implement the direction of the Court that all of the Future Tax Savings should be allocated to Hydro One's shareholders.

The OEB did not set a scope for the proceeding or approve an issues list. In the interrogatory phase of the proceeding Hydro One refused to provide responses to certain interrogatories claiming that they were not in scope. In response to a motion by an intervenor seeking responses to OEB issued its Procedural Order No.3 on February 8, 2021, denying the motion describing the scope for the proceeding.

“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.”¹

The scope of the proceeding is therefore limited to the following issues:

- the amount of deferred tax savings allocated to ratepayers for the 2017 to 2022 period,
- the time period over which the ratepayers will pay the money to the shareholders of Hydro One, and
- the carrying cost to be charged by Hydro One to ratepayers for the outstanding balance.

The Amount of Tax Savings Allocated to Ratepayers for the 2017 to 2022 Period

According to Hydro One², the amount of tax savings allocated to Transmission ratepayers for the 2017 to 2021 period was \$165.0 million. The amount allocated to Distribution ratepayers was \$92.4 million for the 2018 to 2022 period. There were no tax savings allocated to Distribution for 2018. Hydro One estimated the 2022 amounts to be \$24.8 million for Transmission and \$21.0 million for Distribution³. The total amounts are therefore \$189.8 million for Transmission and \$113.4 million for Distribution. Energy Probe accepts those amounts.

¹ Decision on Motion and PO No.3, page 7

² Exhibit A, Tab 1, Schedule 1, Page 7, Table 1

³ Exhibit A, Tab 1, Schedule 1, Page 14, Table 8

The Time Period for Recovery

In its evidence Hydro One proposed three different options for time periods for recovery: one year, four years and seven years. It did not provide an explanation why these three options were selected. Hydro One did not recommend the appropriate recovery period but noted that the seven-year period was best at mitigating impact on ratepayers⁴.

There is no particular reason why the consideration of the time periods should be limited to three alternatives proposed by Hydro One. There is no accounting basis supporting any one of these alternatives.

Energy Probe believes that the appropriate recovery period is the remaining life of the assets. Basing the recovery period over the life of assets that gave rise to the CCA tax deductions satisfies the Matching Principle in accounting. The Matching Principle requires that revenues and any related expenses be recognized together in the same reporting period. The three recovery periods proposed by Hydro One do not agree with the Matching Principle.

The appropriate recovery period is the remaining life of assets. The EB-2016-0160 decision dealt with the increase in the value of assets resulting from the transaction, referred to as the fair market value (FMV) bump, and the resulting increase in the CCA on those assets. These increased value assets will give rise to increased CCA over their remaining life. It is therefore appropriate to spread the recovery of the deferred tax savings over the remaining life. According to the most recent depreciation studies filed by Hydro One, the Remaining Life of Transmission assets is 30.77 years⁵, and the Remaining Life of Distribution assets is 23.38 years⁶.

⁴ Exhibit A, Tab 1, Schedule 1, Page 16

⁵ EB-2019-0082, Exhibit F, Tab 6, Schedule 1, Attachment 1, 2017 *Depreciation Rate Review, Hydro One Transmission Operations*, Foster Associates, Statement A, page 14 of report, page 20 of 62 of exhibit

⁶ EB-2017-0049, Exhibit C1, Tab 6, Schedule 1, *Depreciation Rate Review, Hydro One Distribution Operations Common Operations*, Foster Associates, Statement A, page 14

Energy Probe submits that \$189.8 million should be collected from Transmission ratepayers over a 31-year period as a rate rider. Similarly, \$113.4 million should be collected from Distribution ratepayers as a rate rider over a 24-year period. The outstanding balances should be recorded in respective deferral accounts as regulatory assets.

The Carrying Cost

Hydro One in its evidence proposed three options for the carrying cost: OEB prescribed rate, Weighted Average Cost of Debt (WACD), and Weighted Average Cost of Capital (WACC). Hydro One in its evidence provided support for WACC, the highest carrying cost citing references to several decisions in Alberta. OEB Staff in its submission proposes two alternative rates: Average Annual Prescribed CWIP rate and the Bank of Canada Rate + 150 basis points. Energy Probe submits that none of the alternatives proposed by Hydro One and OEB Staff are appropriate.

Energy Probe agrees with the submission of SEC on the appropriate carrying cost. SEC proposes that the appropriate carrying cost is zero because the Departure Tax including the Deferred Tax Asset were financed by the issuance of common shares at zero cost. Since the cost of financing was zero, the appropriate carrying cost should also be zero. Energy Probe submits that no interest should be charged on the outstanding balances in the Transmission and Distribution deferral accounts.

Respectfully submitted on behalf of Energy Probe by its consultant,

Tom Ladanyi

TL Energy Regulatory Consultants Inc.