



PUBLIC INTEREST ADVOCACY CENTRE
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**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
EB-2020-0194**

Submission of the
Vulnerable Energy Consumers Coalition
(VECC)

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Vulnerable Energy Consumers Coalition

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Issues

In EB-2016-0160 the Board made a determination that a portion of future tax savings arising from the public offering sale of shares of Hydro One Limited by the Government of Ontario should be shared with ratepayers (the 'Transmission Decision'). The result was a lower transmission revenue requirement than would have otherwise been the case. Hydro One sought a review of that Decision and in EB-2017-0336 a new panel of the Board found four errors in the Transmission Decision and remitted the matter back to the original panel. The Transmission Decision panel, in the Rehearing proceeding, EB-2018-0269 declined to alter its original decision on the tax issues. The same tax sharing principles were applied in the subsequent Hydro One 2018-2022 distribution rate application EB-2017-0049 (the 'Distribution Decision').

That tax sharing aspect of the EB-2016-0160 Decision was subsequently overturned by the Ontario Divisional Court. In setting aside the rehearing decision, and thereby the original Transmission Decision's findings with respect to the sharing of the IPO related tax shield, the Court stated:¹

(b) The matter shall be remitted back to the OEB and:

- (i) A new panel of the OEB shall consider and make an appropriate order varying the tax savings allocation in the Original Decision by correcting the errors identified in it by the Review Panel.*
- (ii) 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.*

The referenced errors were identified in Procedural Order No. 1 of this proceeding and are:

- 1. The Decision did not follow the stand-alone utility principle and was inconsistent with prior OEB applications of the stand-alone utility principle.*
- 2. The Decision found that the payments in lieu of taxes departure tax was "variable".*
- 3. The Decision did not accept that Hydro One Networks paid the departure tax in substance and that it was a real cost to the utility.*
- 4. The two allocation methodologies used in the Decision appeared to be inappropriate.*

¹ Decision found in response to Exhibit I, Tab 4, Schedule 1

Procedural Order No. 1 also provided these directions:

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 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.

In Procedural Order No. 3 the Board further clarified that it was limiting the scope of this proceeding to the remedy of any deferred tax savings inappropriately allocated to ratepayers during the 2017 to 2022 period. As such the current proceeding only partially address the findings of the Court.

Submissions of other Parties

Board Staff ('Staff') filed its submission on the matter on February 22, 2021. VECC has also had the opportunity to consider the submission of the School Energy Coalition (SEC) and those of Energy Probe. The positions put forward by Staff and SEC are not entirely incongruent but they do present alternative approaches to the issue. Fundamentally (at least as we see it), SEC argues that the Court's Decision taken in its entirety should cause a reconsideration of the original Transmission Decision and in light of the now indisputable finding that the entirety of the deferred tax asset is to the benefit of Hydro One's shareholders.

This approach seems a logical approach since the Transmission Decision spoke at length as to the appropriate recovery methodology based on a now faulty premise of shared allocation. We also believe that SEC argues persuasively that establishing one or more deferral accounts with related rate riders is from a regulatory practice, the preferred method for a long-run and complete remedy of this issue. If one accepts all aspects of their argument it is also possible that the SEC proposed method of addressing the matter would relieve some of the impact on ratepayers while optimizing receipt of benefits to Hydro One's shareholders.

However, VECC finds itself in the position similar to that represented by the submissions of Energy Probe (again at least insofar as we correctly interpret them). The Board has limited this

proceeding to: the amount of improperly allocated tax savings incorporated into rates for the period 2017 to 2022; the amount of carrying charges on those balances; and the period over which the balances should be remitted to the shareholders of Hydro One. It did so in Procedural Order No.1 and, in our respectful opinion, the Board improperly put itself in the position of the proponent of a proposal for implementing (at least in part) the Court's decision. In doing this the Board also fetters its responsibility to find a solution best in the public interest. The denial of the SEC motion for information that would be in support of its propositions only reinforced to us the Board's unwillingness to entertain alternative methods of remedying the original Transmission Decision.

Submissions of VECC

Given the limited scope determined by the Board these are our submissions.

Amounts

Hydro One provides the following tables showing the 2017-2022 amounts

Table 1: Misallocated Tax Savings Amounts Deducted from Regulatory Income Tax

Year	Transmission	Proceeding	Distribution	Proceeding
2017	\$31.2M ⁴	EB-2016-0160	-. ⁵	N/A
2018	\$35.1M ⁶	EB-2016-0160	19.3M ⁷	EB-2017-0049
2019	\$35.4M ⁸	EB-2018-0130	26.3M ⁹	EB-2017-0049
2020	\$32.8M ¹⁰	EB-2019-0082	24.2M ¹¹	EB-2017-0049
2021	\$30.5M ¹²	EB-2019-0082	22.5M ¹³	EB-2017-0049
Total for 2017-2021	\$165.0M		\$92.4M¹⁴	

Table 8: Adjustment to 2022 Regulatory Income Taxes

Year	Transmission	Proceeding	Distribution	Proceeding
2022	\$28.4M ²⁵	EB-2019-0082	21.0M ²⁶	EB-2017-0049

Source: Exhibit A, Tab 1, Schedule 1, page 7 & page 14

VECC does not dispute the amounts calculated for the 2017 to 2021 period.

Carrying Charges

Board Staff has provided a table of alternative carrying charges to be applied to the balances. It is simply speculative as to the lost opportunity cost by Hydro One for amounts of monies deemed to be properly the shareholders. Lost opportunity can conceivably include negative rates.

The proposals put forth by Board Staff represent a reasonable spectrum of interest. The proposal of Hydro One to use the weighted average cost of debt (WACD) is misguided as it confuses a regulatory rate making cost calculation for the actual attempt to measure lost opportunity cost. If Hydro One wished to refer to the opportunity cost of money as related to itself as an investment then it should have demonstrated the implied interest of holding shares. While this would also be a selective proxy (as are Staff's suggestion) at least it is one based on a logically coherent approach to finding opportunity cost.

Period for Recovery

Hydro One did not propose a recovery period in its initial evidence instead inviting parties to propose plans². Recovery periods of 1 to 7 years have discussed in the interrogatories and in Staff's submission.

While VECC is sensitive to the rate impact to the consumers, we submit the monies, if the Board determines its partial implementation of the Court Decision is appropriate, should be recovered as soon as possible. A period as short as one year is warranted for the following reasons.

1. Delay in repayment is financed by ratepayers meaning that while the rate impacts are less the amounts are higher.
2. If one accepts the determination that the amounts in the 2017 to 2021 period were wrongly paid to ratepayers then specific ratepayers also benefited. The Board should consider the issue in the same way a customer who has a credit. In this case the debit in question should not be transferred to different customer than those who previously benefited.

² Exhibit A, Tab 1, Schedule 1, page 18

3. There are increasing intergenerational inequities over long-run repayment periods. Wrongly enriched ratepayers will over that time be substituted more and more by ratepayers who received no benefit and therefore are not “paying back” monies. This is confiscatory.

It may be that larger rate increase will need to be explained by Hydro One and given the history of the increase, the Ontario Energy Board. We certainly understand the current pandemic might make it difficult for some customers to meet their payments. In case of hardship Hydro One has a number of remedies at its disposals including voluntarily waiving charges. As well, given the exceptional nature matter the Board might wish to consider how it can assist customers with information on finding financial assistance.

Reasonably Incurred Costs

VECC submits that it has acted responsibly and efficiently during the course of this proceeding and requests that it be allowed to recover 100% of its reasonably incurred costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED