March 1, 2021

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

Dear Ms. Long:

<u>EB-2020-0194 – Hydro One Networks Inc. – Remittal of Future Tax Savings</u>

Please find, attached, the Final Submissions of the Consumers Council of Canada in the above-reference proceeding.

Yours truly,

Julie E. Girvan

Julie E. Girvan

CC: All Parties

FINAL SUBMISSSIONS OF THE CONSUMERS COUNCIL OF CANADA

EB-2020-0194 – HYDRO ONE NETWORKS INC. – REMITTAL OF FUTURE TAX SAVINGS

Introduction:

The Ontario Energy Board ("OEB"), on November 9, 2017, released its Decision ("Original Decision") regarding Hydro One Networks Inc.'s ("HON") 2017 and 2018 transmission revenue requirement. In that Decision the OEB determined that a portion of the future tax savings resulting from the Ontario Government's decision to sell a portion of its ownership interest in HON should be applied to reduce the revenue requirement for 2017 and 2018.

The Original Decision was overturned by the Divisional Court of Ontario on July 16, 2020. The Divisional court remitted the matter back to the OEB with the following directions:

1. 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; and

2. 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[1].

The Divisional Court also specified that "no portion of the Future Tax Savings should be allocated to ratepayers when the evidence is clear that Hydro One paid all of its costs under the stand-alone principle.[2]"

Following the filing of evidence by HON and a discovery process, the OEB, in its Procedural Order No. 3 stated:

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 t the calculation of taxes (including future tax savings) for 2023 onwards that may be required will be the responsibility of a future OEB panel[3].

The scope of this proceeding, as determined by the OEB is the following:

- To determine the amount of deferred tax savings allocated to ratepayers for the years 2017-2022;

[1] Divisional Court Decision, dated July 16, 2020, p. 17
[2] Ibid, p. 16
[3] Decision on Motion and Procedural Order No. 3, dated February 8, 2021, p. 7

- To determine the time period over which the ratepayers will pay; and
- To determine the carrying costs to be applied to the amounts.

These are the submissions of the Consumers Council of Canada ("Council").

Submissions:

Amounts

In its Submissions HON has set out the amount to be recovered from ratepayers. This is based on the amounts that were reported as a single line item deduction to the calculation of regulatory income taxes, and included in the 2017-2022 Rate Orders approved by the OEB for both Transmission and Distribution. The amount for Transmission is $165 million and the amount for Distribution is $94.4 million[4].

The Council does not take issue with the amounts proposed by HON, as they represent the actual amounts approved by the OEB in the relevant Rate Orders related to the misallocated tax savings.

Carrying Costs

In its Submissions HON has stated:

> In the present circumstances, four years has lapsed between the effective date of the Original Decision and conclusion of the ensuing appeal process. In order to give effect to the Divisional Court's Decision, an appropriate carrying cost is proposed to be included in the misallocated tax savings amounts[5].

HON considered three options for the carrying costs:

- The OEB prescribed rates of interest which are applied in the normal course utility operations involving deferral and variance accounts and construction work in progress matters;
- The weighted average cost of debt (WACD); and
- The weighted average cost of capital.

HON is proposing the WACD be used in these circumstances. HON's position is that it is the most appropriate carrying charge because the misallocated tax savings amounts were funds otherwise expected to be received by HON in its normal operations. The cost to finance this shortfall would reasonably attract HON's WACD given its was over a 4-year period

[4] Ex. A/T1/S1/p. 7
[5] Ex. A/T1/S1/pp. 7-8

The use of the WACD would increase the amount recoverable from ratepayers to $183.3 m for Transmission and $100.2 million for Distribution.[6]

The Council does not believe that the amounts should be subject to carrying charges for a couple of reasons.

The first reason is that it was the OEB that erred in making the original Decision. This was confirmed by the Divisional Court. It is questionable why ratepayers should be responsible for the carrying costs that are the direct result of an error made by the OEB. As noted by the London Property Management Association ("LPMA") the OEB has deal with a similar issue in the past. In an Application by Natural Resource Gas Limited ("NRG") (EB-2002-0147/204-0004) the OEB considered how to deal with an issue where its Purchase Gas Commodity Variance Account resulted in an under-collection from its customers over a period of time. Given the customers were not at fault, the OEB decided that the customers should not be burdened with any interest charges related to the uncollected amounts.[7] The Council submits that this is an analogous situation. While customers are now responsible for the misallocated tax savings amounts, eliminating any carrying costs associated with those amounts represents an appropriate balance between the interests of HON's customers and its shareholders.

In addition, HON has argued that, as a result of the Original Decision, it incurred a higher level of debt that it otherwise would have. HON has provided no evidence to demonstrate this claim. There is no evidence that the Uniform Transmission rates and the Distribution rates were not sufficient to allow HON to recover its cost of capital.

If the OEB decides that HON is entitled to carrying costs associated with the misallocated tax savings the Council is of the view that the OEB's prescribed rate should be applied. This provides HON with a level of carrying costs consistent with OEB policies regarding DVAs, and at the same time minimizes the overall burden to customers.

Recovery Period:

HON has not taken a position regarding an appropriate recovery period for the misallocated tax savings. The Council does not support a recovery period that goes on for years as this increases the costs to customers (if a carrying cost is approved). In addition, it contributes to intergenerational inequities as increasingly, those that pay are not those that benefited with lower rates in the 2017-2021 period.

The Council submits that the recovery of the Transmission amounts should be over a two-year period as the overall bill impacts will be relatively small as Transmission represents a smaller portion of the overall bill.

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[6] Ex. A/T1/S1/pp. 10-11
[7] Submissions of LPMA, dated February 26, 2021, p. 2

With respect to Distribution the Council supports a 7-year recovery period. This will mitigate the impact to HON's customers at a time when many customers are facing economic pressures due to the COVID-19 pandemic.

All of which is respectfully submitted.