Ontario Energy Board | Commission de l'énergie de l'Ontario

DECISION AND ORDER

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 Issue

BEFORE: Lynne Anderson
Presiding Chief Commissioner

Michael Janigan
Commissioner

Robert Dodds
Commissioner

April 8, 2021

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1 OVERVIEW

This is a Decision of the Ontario Energy Board (OEB) approving a refund from ratepayers to Hydro One Networks Inc. (Hydro One) related to taxes for the transmission and distribution businesses of Hydro One for the period 2017 to 2022.

As a result of 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, Hydro One became entitled to certain tax credits that could be applied against its future taxes (Future Tax Savings). One of the issues in Hydro One's application for transmission rates was how those savings should be treated for ratemaking purposes. Hydro One argued that none of the value of the Future Tax Savings should be used to reduce the rates paid by ratepayers. The OEB's decision relating to Hydro One's 2017-2018 transmission rates (Original Decision) determined that a portion of the value of the Future Tax Savings should be allocated to the ratepayers, and thereby reduce rates.

After a number of review proceedings at the OEB,[1] Hydro One appealed the Original Decision to the Divisional Court. In a decision dated July 16, 2020, the Divisional Court allowed Hydro One's appeal. The Court ordered that the matter be remitted back to the OEB for a new panel to make an appropriate order varying the allocation of the Future Tax Savings allocation. In remitting the matter back to the OEB, the Court 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 utility principle",[2] and that "no part of the benefit of the Future Tax Savings is allocable to ratepayers and should instead be paid to the shareholders in its entirety."[3] The OEB established 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.

As part of the proceeding for Hydro One's 2018-2022 distribution rates,[4] the OEB determined that it would not permit the matter of the allocation of Future Tax Savings to be reconsidered pending the outcome of the Hydro One motion and appeal. On that basis, the treatment of the tax savings for Hydro One's distribution rates reflected the approach from the Original Decision, and a portion of the Future Tax Savings was allocated to ratepayers, resulting in lower distribution rates. In that distribution

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[1] EB-2017-0336 and EB-2018-0269
[2] P.l6 Divisional Court File No. 200/19, Between Hydro One Networks Inc. and Ontario Energy Board, Order, July 16, 2020
[3] *Ibid.*
[4] EB-2017-0049 *Decision and Order,* March 7, 2019

proceeding, the OEB further noted that it would "implement the ultimate outcome of any appeal of the Tax Savings Determination issue, in the event that the appeal process results in a change to the allocation of the tax savings as set out in the Tax Savings Determination."[5] As Hydro One was successful on its appeal, the OEB is now also reflecting the Court's instructions for Hydro One's transmission rates to Hydro One's distribution rates.

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.

In this Decision, the OEB has accepted and approved the recovery of amounts from ratepayers as proposed by Hydro One to redress the misallocation of the Future Tax Savings. These amounts are $165.0 million for transmission customers and $92.4 million for distribution customers and shall bear interest in accordance with the findings in this Decision. The OEB will not attempt to remake the Original Decision apart from the correction of the effect of its mistake.

The OEB has concluded that the repayment of the misallocated amounts to ratepayers should be accompanied by interest that recognizes the time value of money. The misallocation of the Future Tax Savings provided real monetary benefits to ratepayers that should have been provided to Hydro One's shareholders. The repayment amounts shall include carrying charges calculated with simple interest on the opening monthly principal balance at the rate that the OEB uses for construction work in progress (CWIP).

The OEB has also approved the establishment of a Disposition and Recovery of Future Tax Savings Account and the Carrying Cost Differential Account, as proposed by Hydro One.

The OEB finds that the start date for recovery of the misallocated amount of Future Tax Savings shall be July 1, 2021, and for consistency and administrative convenience, that date will apply to both transmission and distribution. The recovery will be over two-years to minimize carrying costs and also to reduce the possibility that customers that received the benefit of the misallocated amount of Future Tax Savings might no longer be available to pay back the misallocation.

[5] *Ibid, p*. 12

To refund to Hydro One the misallocated amount of Future Tax Savings the OEB will adjust the Uniform Transmission Rates effective July 1, 2021 for the transmission portion and will approve a rate rider effective July 1, 2021 for the distribution portion. The OEB agrees that it is appropriate to adjust the base distribution rates and transmission revenue requirement for 2022 to eliminate any further misallocation of amounts going forward.

A future panel of the OEB will determine the appropriate regulatory income taxes to be recovered in future revenue requirements/rates proceedings for 2023 and beyond. The OEB acknowledges the clear decision of the Court that no portion of the Future Tax Savings resulting from the sale of shares of Hydro One Limited should be allocated to ratepayers.

2 PROCESS

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 the Future Tax Savings should be allocated to Hydro One's shareholders.

The OEB deemed the parties granted intervenor status in the Hydro One transmission and distribution proceedings EB-2016-0160, EB-2017-0049 and EB-2019-0082 as intervenors in this proceeding. The OEB stated that intervenors are eligible for cost awards with respect to the implementation of the Court's decision if they were eligible for cost awards for these prior proceedings.

Intervenors active in this proceeding included Association of Major Power Consumers in Ontario (AMPCO), Canadian Manufacturers & Exporters (CME), Consumers Council of Canada (CCC), Energy Probe Research Foundation (Energy Probe), London Property Management Association (LPMA), Power Workers' Union (PWU), School Energy Coalition (SEC), Society of United Professionals (the Society), and Vulnerable Energy Consumers Coalition (VECC).

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, SEC 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-1[6]

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

[6] Consumers Council of Canada (CCC)

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.

On February 8, 2021, the OEB issued a Decision on Motion and Procedural Order No. 3, which denied the SEC motion and established dates for the filing of final submissions in this proceeding.

On February 22, 2021, OEB staff filed its final submission. Intervenors filing submissions included PWU on February 25, 2021, AMPCO, CME, Energy Probe, LPMA, SEC, the Society and VECC on February 26, 2021 and CCC on March 1, 2021. On March 8, 2021, Hydro One filed its reply submission.

3 AMOUNT TO BE RECOVERED

3.1 Misallocated Tax Savings- Determination of Amount

Background

The first question for the OEB to answer in this decision is how much money has been improperly allocated to ratepayers (for both transmission and distribution) since the Original Decision. In section 3.1 of its evidence, Hydro One noted that since January 1, 2017, it had applied the OEB-prescribed allocation percentage from the Original Decision to share the Future Tax Savings with ratepayers. Future Tax Savings amounts that were allocated to ratepayers were reported in various OEB proceedings as summarized in the table below:[7]

MISALLOCATED TAX SAVINGS AMOUNTS DEDUCTED FROM REGULATORY INCOME TAX ($M)

Year	Transmission	Proceeding	Distribution	Proceeding	Total
2017	31.2	EB-2016-0160	N/A		31.2
2018	35.1	EB-2016-0160	19.3	EB-2017-0049	54.4
2019	35.4	EB-2018-0130	26.3	EB-2017-0049	61.7
2020	32.8	EB-2019-0082	24.2	EB-2017-0049	57.0
2021	30.5	EB-2019-0082	22.5	EB-2017-0049	53.0
Total	165.0		92.4		257.4

Hydro One stated that the amounts shown in the above table were reported and used in the annual regulatory income tax calculations included in the rate orders for the applicable proceedings, as approved by the OEB.

OEB staff submitted that Hydro One had provided the information that the OEB required in PO#1, and the purpose of the current proceeding is to reverse the OEB's finding in the Original Decision. OEB staff noted that Hydro One's evidence included the Future Tax Savings that were allocated to ratepayers from 2017-2022 and a methodology to return these amounts to Hydro One was proposed, together with bill impacts and implementation options. This methodology divided the amounts to be recovered between transmission and distribution business segments as required. OEB staff concluded that this approach was consistent with the purpose of the proceeding and the

[7] EB-2020-0194, *Hydro One Networks Inc. Transmission Revenue Requirement and Distribution Revenue Requirement and Tax Issue – Future Tax Savings Evidence*, October 28, 2020. (Hydro One Evidence), Exh A/Tab 1/Sch 1/Table 1, p.7.

Court Decision, and information about Future Tax Savings and their allocation beyond 2022 was not required.

OEB staff also did not object to Hydro One's proposed approach to determining the Future Tax Savings, without escalating amounts for 2021 transmission and 2020 to 2021 distribution by the revenue cap index. OEB staff noted the proposed approach would benefit Hydro One's ratepayers.

AMPCO, CCC, Energy Probe, LPMA, PWU and the Society all accepted Hydro One's evidence on this matter.

SEC submitted that the OEB should put itself in the position of the original panel and determine what is the best way to ensure that Hydro One receives all of its benefit arising out of the payment of the Departure Tax,[8] and that the best ratemaking result is achieved. SEC maintained that its proposed approach was consistent with PO# 3 and the Court Decision. The approach would leave current rates unchanged but would:

(1) establish two deferral accounts to record the amounts to be recovered from customers related to the misallocated Future Tax Savings

(2) calculate a rate rider to collect the misallocated Future Tax Savings over the expected life of the deferred tax asset

(3) apply no carrying charges

(4) deduct an amount from the balance to be recovered for amounts that have already been recovered, or will be recovered in existing rate plans

CME stated that, while SEC's approach had merit, CME had focussed its submission on addressing the appropriate recovery of carrying costs, and the appropriate recovery period over which to recover the amounts allocated to ratepayers in the event that the OEB wished to solely determine the approach to amounts outstanding between the 2017-2022 period.

VECC submitted that the limitations the OEB had placed on this proceeding in PO#1 were not in the public interest. VECC argued that the OEB had fettered its discretion to entertain alternatives to remedy the Original Decision. However, VECC was making submissions based on the limited scope.

[8] Hydro One paid a Departure Tax when it exited the exited the PILS Regime when the Province ceased to own 90% of its ownership interest in the company.

Hydro One stated that only SEC took issue with the calculations of the amounts to be recovered and that SEC did so by asserting that the OEB must “re-decide” the Original Decision in order to make the calculations. The effect of this assertion was to push recovery as far as possible into the future at no cost to ratepayers and full cost to shareholders. In so doing, SEC was ignoring the clear directions from the OEB in PO#1 and PO#3.

Findings

The OEB accepts and approves the recovery of amounts from ratepayers as proposed by Hydro One to redress the misallocation of the Future Tax Savings. These amounts are $165.0 million for transmission customers and $92.4 million for distribution customers and shall bear interest in accordance with the findings below.

This proceeding must resolve the financial consequences arising from the misallocation of the Future Tax Savings in rates to the benefit of Hydro One’s ratepayers. The OEB’s approach to reallocation of the tax savings attributed to ratepayers recognizes the nature of the error sought to be corrected. The amount of reallocation arises from a Court decision that determined the OEB had made an error and required that the error be corrected. The remedial measures must simply address the adjustment of rates to collect the amounts that were improperly allocated to ratepayers, and to return those amounts to the shareholder. The OEB is satisfied that Hydro One has calculated these amounts correctly. These calculated amounts must now be returned to the shareholder over a period of time, together with carrying charges. The OEB does not accept SEC’s submission that the OEB should rehear the issue as if it was the original panel. The OEB intends to establish the amount of the misallocation of the Future Tax Savings to ratepayers and will simply devise the best way to correct the mistake and return those amounts to Hydro One.

3.2 Carrying Charges

Background

Hydro One proposed to recover carrying charges on the misallocated Future Tax Savings stating that it is well-accepted that awarding interest is the fairest and most effective way of compensating for the lost time value of money.[9] Hydro One further stated that it is appropriate to apply the approved weighted average cost of debt

[9] Exhibit A Tab 1, Schedule 1, p. 7

(WACD) to the Future Tax Savings amounts, as it has incurred a higher level of debt than would have otherwise been incurred as a result of the misallocation of those amounts. Hydro One proposed that simple, non-compounding interest would apply.[10]

PWU and the Society supported Hydro One's position.

OEB staff, supported by VECC, agreed with Hydro One that carrying charges should apply to the misallocated Future Tax Savings proposed for recovery to compensate Hydro One for the lost time value of money. However, with respect to the rate to be charged, OEB staff disagreed with Hydro One's proposed use of approved WACD. OEB staff submitted that either the OEB prescribed rate for CWIP, or the Bank of Canada (BoC) plus 150 basis points rate would be the appropriate interest rate. OEB staff noted that the misallocation of the Future Tax Savings had not had an impact on the OEB's decision on Hydro One's capital program and projects, the financing of those projects or the refinancing of existing assets. As such, the Uniform Transmission Rates (UTRs) reflected the appropriate level of Hydro One's financing costs.

OEB staff submitted that the misallocation of Future Tax Savings could be analogized to a loan of those funds to ratepayers for a five-year period, from 2017 to 2021 (recovery of Future Tax Savings is proposed to commence in 2021). OEB staff also noted that Hydro One's approved WACD is comprised of 7% short-term debt and 93% long-term debt[11] and that the majority of the long-term debt component is for a 30-year period.[12] OEB staff submitted that because this is a substantially longer period than the five-year period noted above, it is therefore, not the appropriate carrying charge rate to use.

SEC argued that the carrying cost rate should be zero because the assets in question were financed with zero-cost equity.

AMPCO, CCC, CME, and Energy Probe all agreed with SEC that the rate should be zero. CME suggested that if the OEB did decide that a rate other than zero was appropriate, it should be the BoC rate plus 150 basis points. CCC argued that under such circumstances, it should be the OEB's prescribed rate for deferral and variance accounts.

LPMA also argued for a zero rate, but for different reasons than those cited by SEC. These included; (1) that it was not the fault of customers that the OEB had made an error and customers accordingly, should not have to pay for it – a view also supported

[10] IRR CCC IRR #4
[11] Debt structure of 4% short-term debt, 56% long-term debt.
[12] Energy Probe IRR #4, Attachments 1-4

by other intervenors; (2) the Court had made no determination on carrying costs; (3) no evidence had been provided in support of Hydro One's contention that it had incurred incremental debt to finance these payments; (4) no deferral and variance account was associated with the Future Tax Savings; (5) intergenerational equity concerns concerning differences between those who received the benefit of the misallocation and who will pay it back, and (6) these payments were not a regulatory asset.

LPMA further argued that if the OEB felt otherwise and wanted to impose carrying costs, the OEB's prescribed interest rate for deferral and variance accounts should be used and treated in the same manner as amounts in the new sub account under account 1592 relating to the impact of capital cost allowance rule changes.

Hydro One, in its reply submission, noted the support for its position provided by PWU and the Society. PWU submitted that only the return on equity would truly make shareholders 'whole', but that Hydro One's proposed use of WACD is fair and balanced. The Society submitted that WACD is a reasonable option based on the premise that, had the misallocated amount been available to Hydro One, long-term debt could theoretically have been retired and interest costs could have been avoided.

Hydro One rejected the arguments of LPMA, AMPCO, and CCC that if a carrying cost is to be applied, the OEB's prescribed interest rate for deferral and variance accounts is appropriate. Hydro One submitted that the current situation involves a cost component that falls outside the rate-making exercise and the misallocation resulted from the OEB's error, not Hydro One's.

Hydro One argued that OEB staff had not provided any support to establish that these are reasonable terms of a consensual loan and submitted that no company would fund a long-term debt with simple interest.

Hydro One concluded that how its original shareholder had financed the original liability had no bearing on the question of carrying costs. This was because these were separate and distinct events with the misallocation of the Future Tax Savings having occurred after incurrence of the Departure Tax for payments in lieu of taxes and Hydro One's initial public offering.

Findings

The OEB concludes that the repayment of the misallocated amounts to ratepayers should be accompanied by carrying charges that recognize the time value of money. The carrying charges will be calculated using the mid-term interest rate set by the OEB for CWIP.

The OEB does not accept that the circumstances of Hydro One's payment of the provincial Departure Tax with the issuance of common shares negates the necessity to add interest to the repayment amounts. The amount of misallocated Future Tax Savings provided real monetary benefits to ratepayers that should have gone to Hydro One's shareholders.

The OEB also does not accept Hydro One's proposed equivalence between the repayment amounts and avoided long-term capital debt by its suggestion of an interest rate calculated by the WACD. The WACD is heavily weighted to reflect long-term debt. Hydro One reported that the weighted average term to maturity of long-term debt for its parent company, Hydro One Inc., is 14.8 years.

The recovery period of two years specified in Section 4 of this Decision makes the application of the WACD unreasonable, even when considering that the misallocation started in 2017 for transmission and 2018 for distribution. The OEB finds that a mid-term interest rate is more appropriate than the long-term rate proposed by Hydro One. The repayment amounts shall bear simple interest at the interest rate that the OEB uses for construction work (CWIP). The interest rate used for CWIP is calculated by the OEB each quarter based on the FTSE Canada (formerly DEX) Mid Term Bond Index All Corporate yield. It is a mid-term rate, more aligned to the recovery period being approved by the OEB.

Hydro One shall recalculate the carrying charges based on the OEB's findings in this Decision including simple interest at the CWIP interest rate with the recovery period approved in Section 4.

3.3 Accounting Treatment

Background

Hydro One proposed that two accounts be established to manage the recovery of the Future Tax Savings:[13]

1. An account for Distribution to track the difference between the amount of misallocated Future Tax Savings approved in this Decision and the amount recovered, with differences to be disposed of at the end of the recovery period

[13] OEB IRR #2

2. A Carrying Cost Differential Account for Transmission and Distribution to capture the monthly carrying charge on the outstanding balance of the Future Tax Savings over the recovery period

Hydro One proposed that the balances be brought forth for disposition at its 2028 rebasing, or such other time as the OEB determines.

OEB staff stated that the first proposed account to track differences between approved and recovered amount of misallocated Future Tax Savings, serves the same purpose as the generic Account 1595 - Disposition and Recovery/Refund of Regulatory Balances, Sub-account Principal Balances, available to all electricity distributors. On that basis, OEB staff supported the establishment of the proposed account for Distribution arguing that this would ensure that neither Hydro One, nor its ratepayers, benefit from (or are harmed by) any differences between approved and recovered amounts. OEB staff noted that this account would not be applicable to Transmission as the disposition of deferral and variance accounts are applied against the Transmission revenue requirement instead of being disposed through rate riders, which can be easily tracked.

OEB staff noted that the proposed Carrying Cost Differential Account would serve the same purpose as Account 1595 - Disposition and Recovery/Refund of Regulatory Balances, Sub-account Carrying Charges for Net Principal, available to all electricity distributors. On that basis, OEB staff supported the establishment of the account that would record carrying charges on the opening monthly principal balance.

Rather than using the existing Account 1595 sub-accounts, OEB staff agreed that the two new accounts would allow greater transparency in the tracking of the recovery of the misallocated Future Tax Savings.

Findings

The OEB approves the establishment of a Disposition and Recovery of Future Tax Savings Account and the Carrying Cost Differential Account, as proposed by Hydro One. The carrying cost interest rate (the OEB’s CWIP rate) shall be applied on the opening monthly principal balance. Hydro One shall file a draft accounting order for these accounts.

4 RECOVERY TIMING

4.1 Start Date for Recovery

Background

Hydro One proposed that the implementation date for the recovery of the misallocated Future Tax Savings should be January 1, 2021 or, if that is not possible, approximately 30 days from the date that the OEB issues its decision in this matter.

Hydro One stated that implementation in 2021 is recommended in order to reduce costs for customers. Hydro One noted its proposal to adjust base rates in 2022 for the Future Tax Savings and its plan to file a joint transmission and distribution rebasing application for its 2023 revenue requirement. Hydro One stated that its proposed approach mitigates rate impacts to customers by staggering rate increases over time.

OEB staff noted that it will not be possible to implement recovery of misallocated Tax Savings amounts on January 1, 2021. However, OEB staff agreed with Hydro One that given that rates will be impacted in 2022 and 2023 as described above, recovery of these amounts as early as possible would assist with mitigation of rate impacts.

OEB staff, however, also noted that there may be some element of administrative convenience for these changes to commence on January 1, 2022.

OEB staff suggested that the earliest date for implementation would be June 1, 2021 for distribution and July 1, 2021 for transmission. AMPCO agreed with this assessment and also submitted that implementation should take place as soon as possible if the OEB approves the application of carrying charges. LPMA also argued for a start date as soon as possible, as did the Society.

In its reply submission, Hydro One submitted that there is no additional complication to starting recovery of the distribution amounts in 2021 with a rate rider, and that the OEB has previously approved the resetting of transmission rates mid-year.

Hydro One stated that it supported OEB staff's recommendation that recovery of the transmission misallocated Future Tax Savings amount begin as part of a change to UTRs on July 1, 2021.

However, Hydro One submitted that the OEB should consider the impact of 2021 being only a partial 'stub year' so resetting UTRs on July 1, 2021 would mean that recovery of the misallocated Future Tax Savings amount would occur over the remaining half year in 2021.

Hydro One submitted that implementing recovery of the distribution portion of the misallocated Future Tax Savings amount on June 1, 2021 would mean that recovery would be evenly spread over the remaining seven months in 2021. Hydro One noted that it would be possible to implement recovery of the distribution portion of the misallocated Future Tax Savings amount at any time in 2021, with the total distribution misallocated Future Tax Savings amount recovered evenly over the balance of 2021 and the remaining period.

Findings

The OEB finds that the start date for recovery of the misallocated Future Tax Savings shall be July 1, 2021, and for consistency and administrative convenience, that date will apply to both transmission and distribution.

The OEB concludes that starting recovery of the misallocated amount of Future Tax Savings in 2021 will mitigate rate impacts that may arise in 2022 and 2023. This approach will also minimize the carrying charges that will accrue on the balance to be recovered. The OEB will adjust the Uniform Transmission Rates effective July 1, 2021 to recover the transmission portion of the misallocated amount. The OEB will also approve a rate rider effective July 1, 2021 to recover the distribution portion of the misallocated amount.

4.2 Duration of Recovery

Background

Hydro One presented three options for the recovery of the misallocated amount of Future Tax Savings.

Option 1 – Recovery from 2021 to 2022

Option 1 was to recover this misallocated amount and carrying costs over the 2021 and 2022 rate periods with this option commencing as early as possible in 2021.

Hydro One proposed that a base rate adjustment rider would be used for purposes of its distribution rates, while for transmission, an adjustment would be made to the calculation of Hydro One’s rates revenue requirement included in the calculation of the 2021 UTRs.

Hydro One provided year-over-year bill and rate impacts for this option which showed that for a typical medium density residential customer (R1), bill impacts would be 1% or lower in both years, while for a transmission customer they would be 0.4% or lower.

Option 2 – Recovery from 2021 to 2024

Hydro One stated that under this option, it would commence recovery of the misallocated amount and carrying costs as soon as possible in 2021 and over a four-year period ending December 31, 2024, rather than the two-year period proposed under Option 1.

Hydro One provided year-over-year bill and rate impacts for this option which showed that for a typical medium density residential customer (R1), bill impacts would be below 0.5% in all years, while for a transmission customer they would be 0.2% or lower.

Option 3 – Recovery from 2021 to 2027

Hydro One stated that under this option, it would commence recovery of the misallocated amount and carrying costs as soon as possible in 2021 and over a seven-year period ending December 31, 2027, rather than the four-year period proposed under Option 1.

Hydro One provided year-over-year bill and rate impacts for this option which showed that for a typical medium density residential customer (R1), bill impacts would be in the 0.3% range or less in all years, while for a transmission customer they would be 0.1% or lower.

For all three options, Hydro One stated its expectation that R1 and R2 distribution customers would be protected from distribution rate increases associated with the recovery of the misallocated amount as a result of the distribution rate protection (DRP) program.

Hydro One took no position on the recovery period, provided that interest accrued at the WACD as requested. Hydro One did observe that a longer period (Option 3) would increase carrying costs and the risk of intergenerational inequity, but would mitigate rate impacts to customers.

OEB staff argued that it would be best for the OEB to select Hydro One's Option 3 to recover amounts from customers over a seven-year period to lower rate impacts, given the economic pressures created by the current COVID-19 pandemic. AMPCO, the PWU and the Society agreed with this approach. LPMA also agreed with a two-year recovery period for transmission but made no specific recommendation for distribution customers.

CME argued that Option 2, a four-year recovery period, reflected an appropriate balance between recovery equity and rate impacts given the fragile state of many businesses and households in Ontario today.

CCC argued that a two-year recovery period for transmission customers would be appropriate, while for distribution customers, a seven-year recovery period would be appropriate to mitigate the effects of COVID-19.

VECC argued that a recovery period as short as one year would be appropriate because of increasing intergenerational inequities between customers arising from prolonged repayment periods.

Energy Probe and SEC argued that the appropriate recovery period is the remaining life of the assets and on this basis Energy Probe concluded that a 31-year recovery period was appropriate for transmission customers, along with a 24-year recovery period for distribution customers. SEC supported 30 years for transmission customers and 23 years for distribution customers.

Findings

The OEB finds that the recovery period should be two years to minimize carrying costs and also to reduce the possibility that customers that received the benefit of the misallocated amount of Future Tax Savings might no longer be available to pay back the misallocation.

The OEB agrees with VECC and LPMA that the longer the recovery period the higher the cost to the customers when interest charges accrue. The OEB also agrees with VECC that the customers that benefitted from reduced rates as a result of the misallocated amount of Future Tax Savings should bear the cost for the recovery, to the extent practical. This is best done by setting a recovery period as short as possible. With a longer recovery period, there is an increased likelihood that some customers that gained the benefit of the misallocated amount will no longer be available to refund the misallocated amount to Hydro One. As well, in that scenario, there will be newer customers paying for a refunded benefit they never received. The OEB finds that the objectives of minimizing costs and considering equity between past and future customers are best met by setting a recovery period over two years.

Some parties argued for a long recovery period to reduce bill impacts. The OEB has reviewed the three options proposed by Hydro One. For 2021, the bill impacts for a distribution residential R1 customer are: Option 1 (two-year recovery) 0.9%, Option 2 (four-year recovery) 0.5% and Option 3 (seven-year recovery) 0.3%. Based on these impacts, the OEB concludes it is unnecessary to mitigate the impacts by extending the recovery beyond two years, particularly when this will accrue additional carrying charges.

5 APPROACH TO RECOVERY

5.1 Transmission

Background

Hydro One proposed that the misallocated amount of Future Tax Savings attributable to transmission with carrying charges would be included as an adjustment in the Hydro One rates revenue requirement collected via the UTRs.

Hydro One proposed that the total amount to be recovered be divided equally over the number of years of recovery and included in the Hydro One rates revenue requirement used to set the UTRs for 2021 and over the recovery period. Hydro One noted that the resetting of UTRs would impact all customers connected to the transmission system (i.e., LDCs and large industrial customers) in the year in which the UTRs are reset.

OEB staff supported Hydro One's proposal for the recovery of the misallocated amount for transmission, subject to the OEB's decision on the implementation date. OEB staff stated that if its recommendations are accepted, the UTRs would be adjusted effective July 1, 2021 to commence the transmission portion of the recovery, subject to the timing of the OEB's decision.

Findings

The OEB agrees with the approach of dividing the total amount to be recovered, inclusive of carrying charges, by the number of years of recovery, which in this case is two years.

The OEB plans to update the UTRs effective July 1, 2021. Approximately 25% of the total amount will be recovered in 2021 because the revised UTRs will be in place for half the year. An adjustment to Hydro One's transmission revenue requirement is expected to remain in place until June 30, 2023.

Hydro One shall file a draft revenue requirement order with the calculation of the revenue requirement adjustment approved in this Decision for the July 1, 2021 UTRs. For the UTR setting process for the remaining years, Hydro One is expected to file an update to the revenue requirement adjustment in advance of the UTR setting process, reflecting carrying charges using the most up-to-date CWIP interest rates. The timing of that filing will be determined by the OEB based on when the UTRs will be reset.

When the UTRs are set for January 1, 2022 and January 1, 2023, to the extent that information is available, the remaining balance of the misallocated amount for transmission should be reviewed to assess whether the recovery is on target. The OEB can then determine if any new circumstances warrant a shortening or lengthening of the timeframe for recovery of the remaining balance.

5.2 Distribution

Background

Hydro One noted that the misallocated amount of Future Tax Savings attributable to distribution was part of the total annual rates revenue requirement. This amount was allocated across rate classes in proportion to each rate class' allocated share of Net Fixed Assets ("NFA") in accordance with the OEB's approved Cost Allocation Model.

Hydro One proposed that the total misallocated amount of $100.2 million be split among distribution rates classes in proportion to the NFA amounts allocated to each rate class, as per the 2018 Cost Allocation Model approved in Hydro One's most recent distribution cost of service application.[14]

Hydro One proposed that the base rate adjustment riders would be calculated assuming a recovery of the amount allocated to each rate class over the balance of 2021. For the remaining recovery period. Hydro One further proposed that the approved fixed and volumetric charge determinants would then be used to recalculate the base rate adjustment riders applicable in each year of the recovery.

OEB staff supported Hydro One's proposal for the recovery of misallocated amount for distribution, subject to the OEB's decision on the implementation date.

Findings

The OEB accepts Hydro One's approach of a base rate adjustment rider, including how costs are allocated across customer classes. The allocation approach is consistent with how the distribution rates have been set, and therefore is appropriate. A rate rider will be implemented effective July 1, 2021 and will remain in place until June 30, 2023. The OEB notes that the Disposition and Recovery of Future Tax Savings Account has been approved to track the difference between approved and recovered amount for future disposition.

[14] EB-2017-0049

5.3 Adjustment to Base Rates/Revenue Requirement

Background

Hydro One proposed, that starting in 2022, it would amend its method of calculating regulatory income taxes included in its base revenue requirement by removing the following line item deductions attributable to the Future Tax Savings amounts:

HYDRO ONE 2022 REGULATORY INCOME TAXES ADJUSTMENT ($M)

BUSINESS	AMOUNT	CASE NUMBER
Transmission	$28.4	EB-2019-0082
Distribution	$21.0	EB-2017-0049

Hydro One stated that this adjustment to the calculation of regulatory income taxes would be reflected in Hydro One's annual distribution and transmission filings for 2022 revenue requirements and rates.

Hydro One provided 2022 bill impacts for this adjustment of 0.5% or lower for all of its residential classes, except for Seasonal which was 0.7%. The impact for a transmission customer was estimated at 0.1%. These bill impacts are in addition to those arising from the impact of recovering the misallocated amount accumulated from 2017 to 2021.

OEB staff agreed with Hydro One's recommendation that the future revenue requirement be adjusted as part of its 2022 annual updates for transmission and distribution. OEB staff supported this recommendation on the basis that it would eliminate any further misallocation flowing to customers in 2022, which would have to be refunded at a later date. However, OEB staff qualified this position by indicating that this adjustment should only be done if it does not cause excessive complications to the 2022 annual update proceedings.

With respect to these concerns expressed by OEB staff, Hydro One stated that adjusting the 2022 revenue requirement would not complicate or delay the processing and approval of the 2022 annual applications, provided that the OEB approves the 2022 regulatory income tax adjustment amounts to be recovered in 2022 (i.e. $28.4 for transmission and $21.0 for distribution). Hydro One stated that it did not intend to introduce any additional complications associated with adjusting the 2022 revenue requirement calculation to account for IRM adjustments to regulatory income tax adjustment amounts up to 2022.

Hydro One stated that it understood that changes in circumstances and new facts regarding the method of calculating regulatory income taxes are considerations that can be tested in future rate cases. However, Hydro One submitted that it is important for the

OEB to acknowledge in this proceeding that future regulatory income tax calculations cannot include any Future Tax Savings, consistent with the Court Decision.

Findings

The OEB agrees that it is appropriate to adjust the base distribution rates and transmission revenue requirement for 2022 to eliminate any further amounts of Future Tax Savings flowing to customers.

In is reply submission, Hydro One identified that these adjustments for 2022 would be $28.4 million for transmission and $21.0 million for distribution. These amounts were identified in the EB-2019-0082 proceeding for transmission and the EB-2017-0049 proceeding for distribution. The amounts were provided in the Income Tax Exhibit 1.5 of the draft rate orders for both these previous proceedings, which were approved by the OEB. The OEB therefore approves the 2022 regulatory income tax adjustment amounts for 2022 of $28.4 million for transmission and $21.0 million for distribution.

A future panel of the OEB will determine the appropriate regulatory income taxes to be recovered in future revenue requirements/rates for 2023 and beyond. The OEB acknowledges the clear decision of the Court that no portion of the Future Tax Savings resulting from the sale of shares of Hydro One Limited should be allocated to ratepayers.

6 IMPLEMENTATION AND ORDERS

The OEB directs Hydro One to file draft revenue requirement / rate orders for transmission and distribution reflecting the OEB's findings in this Decision and Order, complete with detailed calculations and supporting material, including:

- Recalculation of the carrying charges to June 30, 2021 based on the OEB's findings
- Calculations for the July 2021 base distribution rate rider
- Calculations for the adjustment to the transmission revenue requirement for July 2021
- Draft accounting orders for the Disposition and Recovery of Future Tax Savings Account and Carrying Cost Differential Account
- All other requirements specified by the OEB in this Decision and Order for inclusion in the draft revenue requirement / rate order
- Any other documentation that would assist intervenors, OEB staff and the OEB in their consideration of the proposed draft rate order, including bill impacts

THE ONTARIO ENERGY BOARD ORDERS THAT:

Distribution

1. Hydro One shall file with the OEB, and forward to all intervenors, a draft rate order that includes all items listed above, and a proposed Tariff of Rates and Charges reflecting the OEB's findings no later than **April 22, 2021**.

2. OEB staff and intervenors shall file any comments on the draft rate order with the OEB and provide a copy to Hydro One no later than **May 3, 2021**.

3. Hydro One shall file with the OEB and forward to intervenors, responses to any comments on its draft rate order no later than **May 10, 2021**.

Transmission

1. Hydro One shall file the draft revenue requirement/charge determinant order and the draft UTR rate order and supporting schedules no later than **April 22, 2021**.

2. Intervenors, OEB staff and other Ontario transmitters may submit comments on Hydro One's draft revenue requirement/charge determinant order and the draft UTR rate order and supporting schedules no later than **May 3, 2021**.

3. Hydro One shall file with the OEB, and forward to intervenors, responses to any comments on its draft revenue requirement/charge determinant order and the draft UTR rate order and supporting schedules no later than **May 10, 2021**.

All materials filed with the OEB must quote the file number **EB-2020-0194** and be submitted in a searchable / unrestricted PDF format with a digital signature through the OEB's web portal at https://p-pes.ontarioenergyboard.ca/PivotalUX/. Filings should clearly state the sender's name, postal address, telephone number, fax number and e-mail address and please use the document naming conventions and document submission standards outlined in the Regulatory Electronic Submission System (RESS) Document Guidelines found at www.oeb.ca/industry. Stakeholders are encouraged to use RESS. Those who have not yet set up an account, or require assistance using the web portal can contact 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 April 8, 2021

ONTARIO ENERGY BOARD

Original Signed By

Christine E. Long
Registrar