



EB-2018-0269

**Hydro One Networks Inc.
2018 Transmission Revenue Requirement and Charge Determinants,
Reconsideration of Future Tax Savings Issue**

**PROCEDURAL ORDER NO. 1
November 6, 2018**

The Ontario Energy Board (OEB) determined in the EB-2016-0160 Decision and Order (Original Decision), that a portion of the future tax savings resulting from the Government of Ontario's decision to sell its ownership interest in Hydro One Limited by way of an Initial Public Offering on October 28, 2015 and subsequent sale of shares should be applied to reduce Hydro One Networks Inc.'s (Hydro One) revenue requirement for 2017 and 2018.

On October 18, 2017, Hydro One filed with the OEB, a Notice of Motion to Review and Vary portions of the Original Decision in accordance with Rules 40 and 42 of the OEB's *Rules of Practice and Procedure*. The OEB assigned case number EB-2017-0336 to the proceeding.

The OEB's Review Panel identified four factors that the Original Panel relied on, "some of which included errors."¹

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 PILs 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 EB-2017-0336 *Decision and Order* August 31, 2018, pp. 5-7

The OEB Review Panel found that the part of the Original Decision dealing with the future tax savings should be returned to the Original Panel to reconsider in light of its review findings and all the evidence and argument the Original Panel and the Review Panel heard on this issue. The OEB assigned case number EB-2018-0269 to this proceeding

In its decision with respect to the NGEIR Motion,² the OEB first articulated its threshold test for consideration of requests to review and vary a decision. This test has been applied on numerous occasions in OEB proceedings. What is unique about the current proceeding is that, in the OEB's view, the threshold test is being applied in two stages with only the first stage having been performed by the Review Panel. The Review Panel determined that errors were made but did not determine whether these errors, if corrected, would change the outcome of the Original Decision. The reconsideration of the Original Decision by the Original Panel in view of the identified errors, in the OEB's view, represents the second stage of the threshold test as articulated by the NGEIR decision. The OEB finds the following determinations of that decision to be relevant to this review.³

With respect to the question of the correctness of the decision, the Board agrees with the parties who argued that there must be an identifiable error in the decision and that a review is not an opportunity for a party to reargue the case.

In demonstrating that there is an error, the applicant must be able to show that the findings are contrary to the evidence that was before the panel, that the panel failed to address a material issue, that the panel made inconsistent findings, or something of a similar nature. It is not enough to argue that conflicting evidence should have been interpreted differently.

The applicant must also be able to demonstrate that the alleged error is material and relevant to the outcome of the decision, and that if the error is corrected, the reviewing panel would change the outcome of the decision.

In the Board's view, a motion to review cannot succeed in varying the outcome of the decision if the moving party cannot satisfy these tests, and in that case, there would be no useful purpose in proceeding with the motion to review.

² EB-2006-0322/EB-2006-0338/EB-2006-0340 *Decision With Reasons Motions To Review The Natural Gas Electricity Interface Review Decision*, May 22, 2007

³ *ibid*, p.18

The Original Decision also relied on the principles expressed in the May 2005 *Report of the Board on the 2006 Electricity Distribution Rate Handbook* (May 2005 Report),⁴ which addressed the allocation of future tax savings between shareholders and ratepayers. Although the Review Decision referenced the May 2005 Report, it did not rely on it for its findings.

The OEB does not see the need for any additional discovery at this time and will proceed directly to receive submissions on the following:

In response to the Review Panel's direction and in alignment with the threshold test first articulated in the NGEIR Motion Decision, the OEB will consider, in addition to all previously filed pertinent evidence and arguments, submissions on the following question:

If the errors identified by the Review Panel are accepted, and with due consideration given to the May 2005 Report and any other matters argued in the original case, would the Original Decision be reasonable regarding the allocation of future tax savings between shareholders and ratepayers? If not, what is the appropriate outcome?

For clarity, the errors identified by the Review Panel are not to be re-argued in these submissions.

The OEB deems the parties granted intervenor status in the EB-2016-0160 proceeding as intervenors in this proceeding. In addition, those parties that were granted cost eligibility status in the EB-2016-0160 case are also eligible for cost awards in this proceeding.

The OEB has also determined a schedule for the filing of written submissions on this matter.

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Hydro One shall file its submission with the OEB, and provide a copy to all intervenors, by November 20, 2018.
2. OEB staff and intervenors shall file any submissions with the OEB and forward them to all parties by December 4, 2018.

⁴ RP-2004-0188 *2006 Electricity Distribution Rate Handbook Report of the Board*, May 11, 2005.

3. Hydro One shall file its reply submission, if any, with the OEB and forward it to all parties on or before December 18, 2018.

All filings to the OEB must quote the file number, **EB-2018-0269**, be made in searchable /unrestricted PDF format electronically through the OEB's web portal at <https://www.pes.ontarioenergyboard.ca/eservice/>. Two paper copies must also be filed at the OEB's address provided below. Filings must clearly state the sender's name, postal address and 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 <http://www.oeb.ca/Industry>. If the web portal is not available parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a memory stick in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, 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.

ADDRESS

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto ON M4P 1E4
Attention: Registrar

E-mail: registrar@oeb.ca
Tel: 1-888-632-6273 (Toll free)
Fax: 416-440-7656

DATED at Toronto, November 6, 2018

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary