

Court File No.:

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Divisional Court)**

B E T W E E N :

HYDRO ONE NETWORKS INC.

Appellant

- and -

ONTARIO ENERGY BOARD

Respondent

**NOTICE OF APPEAL**

**THE Appellant Hydro One Networks Inc. (“Hydro One”) APPEALS** to the Divisional Court the order of the Ontario Energy Board (“OEB”) dated September 28 2017 (OEB File No. EB-2016-0160), made at Toronto (the “**Order**”).

**THE APPELLANT ASKS** that the findings in section 15 of the Order be set aside and that an order be made as follows:

1. Directing the OEB that none of the 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 (“**IPO**”) should be applied to reduce Hydro One’s revenue requirement for the period January 1, 2017 to December 31, 2018;
2. costs of this appeal; and
3. such further and other relief as counsel may advise and this court may permit.

**THE GROUNDS OF APPEAL** are as follows:

1. Prior to the IPO, Hydro One was a Crown corporation owned by the Province of Ontario. As such, it was not subject to federal or provincial income tax but instead was subject to a payment in lieu of taxes regime under the *Electricity Act, 1998*, S.O. 1998, c. 15 (the “**PILs Regime**”). As a result of the IPO, Hydro One exited the PILs Regime and became subject to ordinary federal and provincial income tax.

2. Upon exit from the PILs Regime, Hydro One was required to pay a departure tax of approximately \$2.3 billion (the “**PILs Departure Tax**”).

3. In the Order, the OEB concluded that the PILs Departure Tax was a “variable” cost, on the basis that the Province of Ontario *could* have promulgated a regulation or made a remission order that waived the requirement for Hydro One to pay it. In fact, no such regulation was promulgated and no such remission order was made. The PILs Departure Tax was incurred in full, and was not variable.

4. The OEB’s conclusion in this regard does not fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law. As such it is unreasonable and ought to be set aside. The decision is unreasonable for the following reasons (among others):

- (a) It is based on hypothetical circumstances that did not in fact occur, and were speculative to begin with. The PILs Departure Tax was a real cost, and it was paid. Even if the Province of Ontario could theoretically have waived the requirement for Hydro One to pay it, the OEB had no

evidence before it to evaluate the basis upon which the Province of Ontario might take such a step. Moreover, the decision oversteps the bounds of the OEB's role to suggest that the government's authority, discretion, and policy should have been exercised in a particular manner. Any decision to waive or not waive the PILs Departure Tax was a discretionary policy decision for the Government of Ontario to make. It was unreasonable for the OEB to second guess such a decision.

- (b) It considered irrelevant factors and considerations in the rate setting exercise, including (i) recognizing benefits but not costs arising from the IPO to be matters caused by and relevant to the provision of rate regulated service; and (ii) establishing rates based on artificial and arbitrary distinctions regarding the parties who own the outstanding shares of Hydro One Limited.
- (c) It resulted in a windfall to ratepayers. Exiting from the PILs Departure Tax regime to the ordinary tax regime is supposed to be neutral to the ratepayers, yet under the Order the exit resulted in a significant windfall to ratepayers and violates the fair return standard.

5. Hydro One will also rely on such further and other grounds as counsel may advise and this court may permit.

**THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:**

1. Section 33 of the *OEB Act, 1998*; and

2. the appeal is on a question of law or jurisdiction and leave to appeal is not required.

The appellant requests that this appeal be heard at Toronto.

October 27, 2017

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Respondent

HYDRO ONE NETWORKS INC.      ONTARIO ENERGY BOARD  
Appellant      and      Respondent

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Proceeding commenced at Toronto

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