Ontario

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CABINET MEETING OF: April 15, 2015

CABINET MINUTE NO: 2 – 24/2015

Agenda Item:

Direct to Cabinet

Policy

MINISTRY OF ENERGY

- **Hydro One**

Cabinet agreed that:

1. The Ministry of Energy (ENERGY) direct Hydro One Inc. ("Hydro One") to implement an Initial Public Offering (IPO) of Hydro One, including all of its subsidiaries at the time of the IPO, consisting of approximately 15 per cent of the Government's interest in Hydro One during the 2015-2016 fiscal year. In this regard:
   A. ENERGY work with Cabinet Office, the Premier's Advisory Council on Government Assets, the Ministry of Finance (MOF), the Ontario Financing Authority, theTreasury Board Secretariat (TBS), and Hydro One on the development of the proposed IPO for Hydro One.
   B. ENERGY proceed to Treasury Board and Management Board of Cabinet (TB/MBC) for approval of the IPO and related financial and governance approvals.

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C. ENERGY and MOF work with the Ontario Financing Authority to seek TB/MBC approval for a regulation to designate Hydro One shares as qualifying assets under the Trillium Trust Act so that the net proceeds of the transaction are credited to the Trillium Trust to support investments in transit and major infrastructure.

2. Consistent with previously approved Cabinet direction, ENERGY direct Hydro One to immediately enter into exclusive negotiations to combine its wholly owned subsidiary Hydro One Brampton with one or more urban local distribution companies, including Enersource, Horizon and/or Powerstream in exchange for shares of the combined entity or cash.

3. The following specific elements be included as part of the IPO process and that these elements may be included in any of the constating documents of Hydro One including revised Articles of Incorporation and/or by-laws, a Governance Agreement to be executed between the Minister of Energy on behalf of the Crown, proposed legislation, and an underwriting agreement:

   A. A portion of the shares comprising the IPO be allocated to retail investors, with the remaining shares to be allocated to institutional investors;

   B. Disclose an intention to sell subsequent tranches of shares that would, once complete, reduce the province's ownership position of Hydro One to not less than 40 per cent of the number of Hydro One's common shares outstanding on the date of the closing of the IPO;

   C. With the exception of the Province, no single person, corporation, or group of persons acting jointly or in concert, may own more than 10 per cent of any class or series of Hydro One's voting shares;

   D. Hydro One be prohibited from doing any of the following:

      i) Selling, leasing, divesting or otherwise disposing of all or substantially all of the business, property or assets related to the transmission system of Hydro One regulated by the Ontario Energy Board;

      ii) Selling, leasing, divesting or otherwise disposing of all of substantially all of the business, property or assets related to the distribution system of Hydro One regulated by the Ontario Energy Board;

      iii) Continuing under the laws of a jurisdiction other than Ontario.

E. The Province be restricted from reducing its ownership position in Hydro One to less than 40 per cent of the number of Hydro One's common shares outstanding on the day of the closing of the IPO;

F. If the Province's ownership is reduced to 10 per cent or less, the Province shall be restricted to acquiring shares in the same manner as other shareholders, the Governance Agreement would no longer apply, but all other statutory restrictions would remain in place; and,

G. Hydro One be required to:
   i) maintain its principal executive head office in the Province of Ontario;
   ii) ensure that substantially all of its executives with strategic decision-making or management authority reside in the Province of Ontario;
   iii) subject to meeting ongoing listing requirements, maintain a listing of its common shares on the Toronto Stock Exchange;
   iv) maintain the location of its transmission and distribution grid control functions for Ontario operations, in the Province of Ontario;
   v) set the initial number of directors on the Hydro One's Board of Directors;
   vi) follow Ontario Securities Commission requirements, including:
      a. publicly disclosing the total compensation levels of the CEO, CFO and the three other highest paid executives of the corporation each year;
      b. publicly disclosing the annual remuneration for each member of the Board of Directors.
   vii) establish an Office of the Ombudsperson to act as a liaison with customers and report to the Hydro One Board of Directors on matters raised with the Ombudsman by or on behalf of customers of Hydro One, including with regard to services provided to customers of Hydro One, and ensure this office is functional prior to the end of the six-month transition from the application of the Ombudsman Act.

H. All of these and any other proposed substantive governance changes related to the Board of Directors for Hydro One proceed to TB/MBC for approval.

4. ENERGY bring forward proposed legislative amendments such that the Province would be restricted from selling Hydro One's common shares if, after any such sale, it would own fewer than 40 per cent of the number of Hydro One's common shares outstanding on the day of the closing of the IPO.

a) ENERGY introduce legislative amendments such that if the Province's ownership is reduced to 10 per cent or less it shall be restricted to acquiring shares in the same manner as other shareholders, but all other statutory restrictions would remain in place in perpetuity.

5. The Electricity Act, 1998 be amended to allow for a transaction between the Ontario Electricity Financial Corporation and the Province to ensure that a financial benefit equivalent to the adjusted net proceeds from the Hydro One IPO is provided to the Ontario Electricity Financial Corporation.

6. The Electricity Act be amended so that, despite the limitations in sections 23 and 24 of the Business Corporations Act (Ontario), the Hydro One Board of Directors may authorize the issuance of shares of Hydro One to employees of Hydro One, or any of its subsidiaries, or for their benefit or on their behalf, for no consideration or for such consideration as the Board of Directors may approve. In addition, Hydro One may add to the appropriate stated capital account for the shares issued, the amounts received by Hydro One for those shares.

7. ENERGY working with MOF, seek Treasury Board approval to provide a financial benefit, such as a capital contribution, to Hydro One in an amount up to the amount of the departure tax to be paid to the Ontario Electricity Financial Corporation by Hydro One.

8. Hydro One be exempt from all TB/MBC directives that currently apply to Hydro One, subject to the approval of TB/MBC.

9. ENERGY proceed to TB/MBC for procurement approvals related to:

   A. Contracting of a book runner and underwriters for the Hydro One IPO process,

   B. Acquiring the services of an executive recruitment firm to recruit nominees for consideration by government in respect of their potential appointment to the Hydro One Board of Directors, and if necessary the Board of Directors for the Hydro One Brampton combined entity,

   C. Acquiring the services of executive recruitment firms to recruit nominees for consideration by government in respect of their potential appointment to the Hydro One senior management, and,

   D. Acquiring the services of an independent process advisor to provide strategic financial advice as needed on the IPO process and its effective execution.

10. ENERGY working with Cabinet Office, MOF, the Ministry of the Attorney General, the Ministry of Government and Consumer Services, and TBS, pursue legislative and/or regulatory amendments to remove or amend a number of current legislative and regulatory provisions that currently apply to Hydro One, as well as ones that would impose certain new requirements upon Hydro One, prior to the IPO, including but not limited to the following:

   A. Electricity Act, 1998, in order to:

      i) Remove a prohibition in the Electricity Act, 1998 which precluded Hydro One from owning or operating transmission and distribution systems outside of Ontario;

      ii) Require Hydro One to establish an Office of the Ombudsman to act as a liaison with customers and report to the Hydro One Board of Directors on matters raised with the Ombudsman by or on behalf of customers of Hydro One;

      iii) Require Hydro One to maintain its principal executive head office in the Province of Ontario;

      iv) Ensure that substantially all of the executives of Hydro One with strategic decision-making and management authority reside in the Province of Ontario;

      v) Prohibit Hydro One from selling, leasing, divesting or otherwise disposing of all or substantially all of the business, property, or assets related to its transmission system regulated by the Ontario Energy Board;

      vi) Prohibit Hydro One from selling, leasing, divesting or otherwise disposing of all or substantially all of the business, property, or assets related to its distribution system regulated by the Ontario Energy Board;

      vii) Limit any one shareholder from owning more than 10 per cent of any class or series of voting shares of the company;

      viii) Restrict the Province from reducing its ownership position in Hydro One to less than 40 per cent of the number of Hydro One's common shares it held immediately prior to the IPO;

      ix) Provide for a transaction between the Ontario Electricity Financial Corporation and the Province as described in Section (5.) above so that the gain from disposition can be credited to the Trillium Trust as described in Section (1.) (C.) above.

x) Amend the transfer tax and payments-in-lieu of tax (PILs) rules as follows, effective for a three year period beginning on January 1, 2016 and ending December 31, 2018, with these rules to remain in effect for any utility with a related Merger, Acquisition, Amalgamation and Divestiture application before the OEB before January 1, 2019, and a written agreement completed before January 1, 2019 provided the agreement is not materially changed thereafter:

   a. Reduce the transfer tax rate from 33 per cent to 22 per cent;

   b. Reduce the transfer tax rate from 33 per cent to 0 per cent for municipal electric utilities with less than 30,000 customers; and

   c. Exempt capital gains arising under the PILs departure tax rules.

B. Management Board of Cabinet Act

   i) Exclude Hydro One and its subsidiaries from being considered part of the "public service" under the Management Board of Cabinet Act so that the Act, including policies and directives made under it, could no longer apply to Hydro One and its subsidiaries.

C. Lobbyist Registration Act, 1998

   i) Remove the reference to Hydro One and its subsidiaries from the definition of "public office holder" in subsection 1(1) of the Lobbyists Registration Act;

   ii) Remove three unproclaimed references to Hydro One and its subsidiaries from subsections 4(4), 5(3) and 6(3) of the Act.

D. Public Sector Salary Disclosure Act, 1996

   i) Remove Hydro One and its employees from salary disclosure requirements in respect of salaries and benefits paid after December 31, 2014.

E. Financial Administration Act

   i) Remove Hydro One and its subsidiaries from oversight of the Act. However, retain the right to request information from Hydro One and the administrator of the pension plan sponsored by it for the sole purpose of preparing the consolidated financial statements of the Province (annual and quarterly). Hydro One and the pension plan administrator are not required to provide any information that relates to a period for which Hydro One has not yet disclosed to the public its audited or unaudited financial statements.

F. Auditor General Act

i) Exclude Hydro One and its subsidiaries from the purview of the Auditor General and provide the Auditor General with 6 months to complete any open special audits or special assignments commenced before Royal Assent. Create a new right of the Auditor General to access information from Hydro One and its auditors that is necessary and relevant to enable the Auditor General to prepare his or her report, for inclusion in the Public Accounts, on the consolidated financial statements of the Province. Hydro One and its auditors are not required to provide information for a period for which Hydro One has not yet disclosed to the public its audited or unaudited financial statements.

G. Ombudsman Act

i) Exclude Hydro One and its subsidiaries from the purview of the Ombudsman, with provision for transitional matters.

a. For transition purposes, the Ombudsman may continue to exercise his or her powers for six months after Royal Assent with respect to investigations started prior to Royal Assent, but is prohibited from starting any new investigation of Hydro One and its subsidiaries.

b. An investigation of Hydro One and its subsidiaries taking place during the six month transition period may be reported on after that period.

H. Freedom of Information and Protection of Privacy Act (FIPPA)

i) Exclude Hydro One and its subsidiaries from FIPPA. As of the date of Royal Assent, provide that no new access to information requests be made to Hydro One and its subsidiaries, but allow for the completion of existing requests and any related appeals.

ii) Provide the Information and Privacy Commissioner with six months to complete all outstanding appeals and privacy investigations after the date of Royal Assent.

iii) Amend the schedule of institutions in Ontario Regulation 460 under FIPPA to remove Hydro One and its subsidiaries.

I. Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)

   i) Exclude Hydro One and its subsidiaries from MFIPPA. As of the date of Royal Assent, provide that no new access to information requests be made to Hydro One and its subsidiaries, but allow for the completion of existing requests and any related appeals.

   ii) Provide the Information and Privacy Commissioner with six months to complete all outstanding appeals and privacy investigations after the date of Royal Assent.

   iii) Amend Ontario Regulation 372/91 under MFIPPA to clarify that MFIPPA does not apply to any Hydro One subsidiaries.

J. Public Sector Expenses Review Act

   i) Exclude Hydro One and its subsidiaries from being considered "public entities" under the Public Sector Expenses Review Act, but provide for a six month transition period during which the Integrity Commissioner can continue to exercise her powers in respect of expense claims made before April 1, 2015 and Hydro One and its expense officers continue to have duties in respect of those expenses.

K. Broader Public Sector Executive Compensation Act, 2014

   i) Exclude Hydro One from application of the Act.

L. Broader Public Sector Accountability Act, 2010

   i) Create an exception in section 3 of the Broader Public Sector Accountability Act so that Hydro One and its subsidiaries could not be prescribed by regulation to be "designated broader public sector organizations" or "publicly funded organizations" for the purposes of the Act; and remove the reference to Hydro One and its subsidiaries in section 4 of the Act so that they would no longer be prohibited from paying lobbyists to lobby government and create an exception so that they could not be prescribed for the purpose of that prohibition by regulation from the time of the IPO.

   ii) Create an exception in section 7.5 of the Broader Public Sector Accountability Act, 2010 to end the compensation restraint measures applicable to Hydro One and its subsidiaries, designated executives and designated office holders and amend section 7.13 to ensure that certain limits on restructuring do not apply to Hydro One and its subsidiaries; create an exception to exclude Hydro One and its subsidiaries from the requirement to conduct compensation studies if required by Management Board of Cabinet directive.

M. Financial Accountability Officer Act

i) Exclude Hydro One and its subsidiaries from obligation to provide information to the Financial Accountability Officer, but include a transition period of six months with respect to research commenced before Royal Assent.

11. With respect to appointments:

A. The Minister of Energy would appoint a new Chair of Hydro One;

B. The Minister of Energy would appoint a new Board of Directors of Hydro One, based on the recommendation of the new Chair;

C. The Board of Directors of Hydro One would then be authorized to make a determination as to whether to appoint new or additional senior management of Hydro One including but not limited to the Chief Executive Officer, Chief Financial Officer, and Chief Regulatory Officer.

12. ENERGY develop a legislative and regulatory package to further strengthen the powers and processes of the Ontario Energy Board, for introduction during the 2015-16 fiscal year, that would include:

A. Enhancing consumer protection by implementing a suite of recommendations from the OEB regarding the Energy Consumer Protection Act that would, among other things, include:

i) Limiting or prohibiting door to door sales by energy retailers;

ii) Enabling the OEB to:

a. Ensure retail contracts are in prescribed forms;

b. Enhance price disclosure statements and price comparison requirements for retailers; and,

c. Extend the cooling-off period for contracts to 20 days.

iii) Enhancing the OEB's enforcement powers;

iv) Removing contract-cancellation penalties;

v) Providing greater oversight of green energy retail offerings;

vi) Amending the Ontario Energy Board Act to add consumer education to the OEB's objectives, and providing for greater OEB-led consumer education.

B. Ensuring reliability / continuity of service to customers by:

   i) Ensuring the OEB can extend its current emergency provisions to transmission;

   ii) Providing authority to the OEB to appoint supervisors or require a third party to take over the operations/management of distributors if those distributors are unable to fulfil their licence conditions; and,

   iii) Amending legislation to allow for the sharing of safety-related information between the OEB, TSSA and ESA.

C. Providing further OEB compliance tools, including:

   i) Increasing penalties for non-compliant activities.

D. Providing the OEB with oversight of utility transactions and structure, including:

   i) Reducing the current change of control threshold to 10%;

   ii) Maintaining head offices, key personnel, and records in Ontario; and,

   iii) Ensuring all corporate/transaction structures are appropriately reviewed/defined.

E. Providing new or enhanced tools to ensure that critical transmission infrastructure is built, including creating a new tool to deem transmission projects as priorities that do not have to undergo a needs test, subject to the approval of an Order in Council by the Lieutenant Governor In Council.

F. Clarifying relationships among local distribution companies and their affiliates by:

   i) Creating level playing field between utilities regardless of ownership, and

   ii) Providing the OEB with greater discretion with respect to utility and non-utility business activities.

G. Enhance the OEB's consumer advocacy role by providing consumers with a direct voice in OEB proceedings.

H. Other administrative amendments, as appropriate.

13. Ministries proceed to TB/ MBC to seek approvals to have all government procurement and transaction costs offset from the proceeds resulting from the IPO.

14. The Minister of Energy issue to Hydro One one or more unanimous shareholder declarations and resolutions to assume control of the current Board of Directors for all decisions, direction, and instructions related to the IPO of Hydro One and the divestment and merger of Hydro One Brampton.

15. ENERGY report back to TB/MBC prior to proceeding with any further divestment of the government's interest in Hydro One beyond the divestments authorized in this minute.

16. ENERGY continue to work with Cabinet Office, Premier's Office, MOF, and TBS on a communications plan.

Stephen Orsini
Secretary of the Cabinet