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February 22, 2013

**Our File Number: 74994**

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street  
Suite 2700, P.O. Box 2319  
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: Hydro One Networks**  
**Board File No. EB-2012-0136**

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Attached please find Hydro One Network Inc.'s Reply Submission to the Threshold Question raised by the Board in Procedural Order No. 5.

Yours very truly,



Anita M. Varjacic

/nb  
Encl.

**HYDRO ONE NETWORK INC.'S REPLY SUBMISSION TO THE THRESHOLD  
QUESTION RAISED BY THE BOARD IN PROCEDURAL ORDER NO. 5**

In accordance with the Board's Procedural Order No. 5, Hydro One Networks Inc. ("Hydro One") is providing its reply submission to the Ontario Energy Board (the "Board"). Hydro One filed its initial submission on the threshold question on January 30, 2013. Only Board Staff filed a responding submission. No intervenors challenged Hydro One's position.

Hydro One's position is that the principles established in the Combined PILs Proceeding do not apply to Hydro One for the period 1999 to April 2006. Hydro One submits that Account 1562 only applied to those distributors subject to section 93 of the *Electricity Act, 1998* ("the Act") and that the rationale for the variance account does not apply to Hydro One. Moreover, the Board and other stakeholders were aware that Hydro One was not using Account 1562. To now require Hydro One to do so would be retroactive ratemaking, contrary to general ratemaking principles.

**The Canadian Niagara Power Inc ("CNPI") Decision (EB-2012-0112)**

Board Staff maintained that the CNPI Decision does not apply to Hydro One because its circumstances are different based on the fact that CNPI is a privately owned distributor which pays taxes in accordance with the Income Tax Act.

Hydro One submits that its circumstances are similar to that of CNPI. Hydro One had been making tax payments in accordance with sections 89 and 90 of the Act prior to 2001. Thus, akin to CNPI there was no change in its status in 2001 and no new category of expense to be recovered in rates. Hydro One had not carried any deferred tax balance in its rate base as was the case for CNPI. Both Hydro One and CNPI are not subject to section 93 of the Act. In the CNPI Decision, the Board found that the wording in the Accounting Procedures Handbook ("APH") regarding Account 1562 clearly includes only section 93 utilities and that it was created for the Municipal Electricity Utilities ("MEUs") for whom the whole concept of taxes was new at the

1 time. Therefore Hydro One submits that the Board should be consistent and confirm that  
2 Account 1562 does not apply to Hydro One.

3  
4 **Board's Recent Decision on Algoma Power Inc. ("API") (EB-2012-0217)**

5  
6 Hydro One's position is further supported by the Board in its API Decision. As mentioned by  
7 Board Staff in their submission, on February 7, 2013, the Board issued its Decision on the  
8 applicability of Account 1562 for API and accepted API's request to withdraw its application to  
9 dispose of the variance account. The Board found that API's situation was analogous to the  
10 CNPI situation. A utility is not required to use Account 1562 if it is not subject to section 93 of  
11 Act. Secondly, the 2003 Frequently Asked Questions ("FAQ") should not extend the scope of the  
12 Board's policy regarding Account 1562. The Board found that the wording of the APH  
13 regarding Account 1562 clearly includes only section 93 utilities and reiterated the fact that  
14 Account 1562 was created for the MEUs for whom the whole concept of taxes was new at the  
15 time.

16  
17 **Section 89/90 and Section 93 of the Act**

18  
19 Board Staff submitted that there should be no distinction between Hydro One and MEUs on the  
20 tax matters in question, arguing that section 89 and section 93 of the Act effectively holding both  
21 Hydro One and MEUs to the same standard and have the same legislative intent.

22  
23 Hydro One submits that although both sections of the Act refer to payments in lieu of taxes  
24 ("PILs"), there was a distinction made in the treatment of utilities subject to these sections of the  
25 Act in rate applications for periods prior to May 1, 2006. Hydro One has been making PILs  
26 payments since April 1, 1999 in accordance with sections 89 and 90 of the Act. The Board did  
27 not establish a variance account for use by Hydro One to track any PILs variance. The MEUs  
28 were not required to start making PILs payments until the proclamation of section 93 of the Act  
29 in October 1, 2001. Since the MEUs had been previously tax-exempt, there was no historical  
30 information that could be used to reliably forecast their PILs payment. Thus, the Board

1 established Account 1562 as a mechanism to capture both the deferred amount for 2001 and the  
2 difference between the PILs proxy and the actual amount paid for those utilities that had been  
3 tax-exempt. When this change came into force for the MEUs, Hydro One already had a two year  
4 history of forecasting these payments. It did not require a variance account.

5  
6 The APH and December 21, 2001 Filing Guidelines outline that Account 1562 was designed to  
7 address PILs required under section 93 of the Act. In fact, in both the CNPI and API Decisions,  
8 the Board was quite clear that Account 1562 was only applicable to section 93 utilities.  
9 Therefore Hydro One submits that a distributor subject to sections 89 and 90 of the Act is not  
10 subject to Account 1562 or to any subsequent findings from the Combined PILs Proceeding.

### 11 12 **Retroactive Rate Making**

13  
14 Board Staff submitted that the prudence review and true up of an existing Variance Account  
15 (1562) in the Combined PILs Proceeding is not retroactive rate making. Hydro One agrees.  
16 However, unlike the MEUs, Hydro One was never required to use Account 1562, and thus, there  
17 is no account to be reviewed and no balance to be trued up. The MEUs were ordered to establish  
18 the variance account in 2002 but Hydro One has never been required to do so. Hydro One  
19 submits that requiring it to review and account for tax changes over a decade later now would  
20 indeed be retroactive rate making.

### 21 22 **Board Guidance on Account 1562**

23  
24 The Board considered this matter extensively in both the CNPI Decision and API Decision. The  
25 Board concluded that the wording of the APH and 2001 FAQ support the conclusion that  
26 Account 1562 was only applicable to section 93 utilities. Moreover, the 2003 FAQ as well as the  
27 Combined PILs Proceeding cannot operate to extend the scope of Account 1562 to include  
28 utilities which are not subject to section 93.

1 Hydro One submits that there is nothing in the current proceeding which should cause the Board  
2 to reach a different conclusion.

3  
4 In its original submission, Hydro One reminded the Board that Hydro One implemented a rate  
5 mitigation plan to reduce the rate impact on customer bills from 2001 to 2003 by reducing its  
6 revenue requirement by \$251 million. This reduction in revenue requirement was well above the  
7 adjustment that would be made by applying PILs guidelines to reflect timing differences and  
8 lower statutory rates.

9  
10 Board Staff submitted that there is no clear evidence that the Board had considered this in the  
11 Decision in that proceeding. The Board was encouraged to now determine if it is persuaded that  
12 it was understood by the Board at the time that a different approach to PILs was being approved  
13 for Hydro One.

14  
15 Hydro One confirms that the issue on PILs, which was part of the revenue requirement, had been  
16 scrutinized by the intervenors in the previous proceeding. An agreement was made between  
17 Hydro One and all intervenors, as discussed in section 1.0 of the Settlement Agreement and  
18 approved by the Board. Hydro One submits that requiring it to review and account for tax  
19 changes over those years would mean that the Board is rescinding its approval of the Settlement  
20 Agreement of the RP-2000-0023 Proceeding. Hydro One requests that the Board not do so.

21  
22 **Hydro One's MEU Acquisitions**

23  
24 Further to the request of Board Staff, Hydro One confirms that it made no other MEU  
25 acquisitions, aside from Terrace Bay, after October 1, 2001.

26  
27 Accordingly, Hydro One respectfully submits that its proposal that Hydro One need not account  
28 for any tax changes from the time of its first Board rate order to April 30, 2006 be approved by  
29 the Board.