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BY EMAIL

July 11, 2019

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto ON M4P 1E4

Dear Ms. Walli:

**Re: Niagara-on-the-Lake Hydro Inc. (NOTL Hydro)
Motion to Review and Vary the Decision and Order EB-2018-0056
OEB Staff Submission
OEB File No. EB-2019-0143**

In accordance with Procedural Order No. 1, please find attached the OEB Staff Submission for the above-noted proceeding. This document has been sent to Niagara-on-the-Lake Hydro Inc. and to all other registered parties in this proceeding.

Niagara-on-the-Lake Hydro Inc. is reminded that its Reply Submission is due by July 25, 2019, should it choose to file one.

Yours truly,

Original Signed By

Tina Li
Project Advisor, Major Applications

Encl.

**Motion to Review and Vary the Decision and
Order EB-2018-0056**

Niagara-on-the-Lake Hydro Inc.

EB-2019-0143

OEB Staff Submission

July 11, 2019

1 INTRODUCTION AND SUMMARY

Niagara-on-the-Lake Hydro Inc. (NOTL Hydro) filed a motion to review and vary (Motion)¹ the Decision and Order (Decision) in respect of NOTL Hydro's application for electricity rates effective May 1, 2019.²

The Motion requested a review and variance of those portions of the Decision in which the OEB determined NOTL Hydro's Operating, Maintenance and Administration (OM&A) budget for 2019 and an Order approving a revised 2019 OM&A budget of \$2,964,765. The Motion also requested an Order that NOTL Hydro satisfies the "threshold test" in Rule 43.01 of the OEB's *Rules of Practice and Procedure*.

In Procedural Order No 1 the OEB determined that it will hear submissions on both the threshold question and the merits of the Motion. If the OEB determines that the threshold has been met, it will then consider the merits of the Motion.³

On June 20, 2019 NOTL Hydro filed a written submission on the threshold question and to supplement the arguments made in the Motion (Submission).⁴

OEB Decision in EB-2018-0056

In its application, NOTL Hydro requested an OM&A budget of \$2,964,765, which represented a 38% (\$809,503) increase over its 2014 OEB-approved OM&A budget of \$2,155,262.⁵ In the Decision, the OEB approved an OM&A budget for 2019 of \$2,671,367, which was \$293,398 lower than NOTL Hydro's requested budget.

In evaluating the reasonableness of the proposed 38% increase in OM&A in the 2019 budget (relative to the 2014 OEB-approved 2014 budget), the OEB considered the 2014 OEB approved OM&A budget and applied accepted parameters, escalators including inflation, minus NOTL Hydro's cohort stretch factors, as well as customer growth factors multiplied by the recommended elasticity factor set out in the Pacific Economics Group (PEG) Report.⁶ The resulting 'envelope' from that analysis was \$2,442,148.⁷ The panel then added \$130,784, which amount had previously been capitalized costs, as well as \$98,435 for certain expenditures for new requirements that the panel found the

¹ EB-2019-0143, Notice of Motion, April 29, 2018 (originally referred to as EB-2018-0056) (Motion)

² EB-2018-0056, Decision and Order, April 23, 2019 (Decision)

³ EB-2019-0120, Procedural Order No. 1, June 6, 2019

⁴ EB-2019-0143, Supplementary Written Submissions of Niagara-on-the-Lake Hydro Inc., June 20, 2019 (Submission)

⁵ Niagara-on-the-Lake Hydro Decision and Order EB-2013-0155

⁶ Pacific Economics Group (PEG), "Empirical Research in Support of Incentive Rate-Setting: 2016 Benchmarking Update Report to the Ontario Energy Board", July 2017 (PEG Report).

⁷ Decision, pages 10-11

utility must meet.⁸ The Decision concluded that the resulting OM&A envelope for 2019 would project to \$2,671,367, an increase of \$516,105 (24%) over the 2014 OEB-approved amount and that this amount was reasonable.

Motion to Review

The Motion asserts that the Decision contains four (4) errors which raise material questions about the correctness of the Decision and are grounds for a motion to review under the Rules.

The Decision errors stated in the Motion are generally as follows:

- i. Failure to consider the evidence about the actual and forecast costs⁹
- ii. Failure to include the impact of growth in NOTL Hydro's kWh delivered and system peak capacity in using the envelope approach¹⁰
- iii. Failure to include relevant new and increased costs¹¹
- iv. Failure to include previously capitalized costs in 2014 base OM&A costs¹²

NOTL Hydro submitted that the Motion satisfies the threshold test of Rule 43.01 of the OEB's *Rules of Practice and Procedure*¹³ because the alleged errors raise questions about the correctness of the Decision.

In the Submission, NOTL Hydro also stated that the OEB failed to consider the context of NOTL Hydro's requests, namely that:¹⁴

- NOTL Hydro has maintained low rates and only added costs where necessary
- The OEB's failure to take account of actual OM&A expense will have negative impacts on customer service

OEB staff's submission will address each of the alleged errors set out in the Motion, with respect to both the Threshold Test (Part 1) and the Merits (Part 2) of the Motion.

⁸ Decision, pages 11-12

⁹ Motion, pages 5-6

¹⁰ Motion, pages 6-9

¹¹ Motion, pages 10 - 11

¹² Motion, page 11

¹³ https://www.oeb.ca/oeb/Documents/Regulatory/OEB_Rules_of_Practice_and_Procedure.pdf

¹⁴ Submission, pages 2-6

2 STAFF SUBMISSION

1) Threshold Test

Under Rule 43.01, the OEB may determine, with or without a hearing, a threshold question of whether a matter should be reviewed before conducting any review on the merits.

The factors considered under Rule 43.01 are similar to the grounds for a motion to review under Rule 42.01 requires that a motion for review set out grounds that raise a question as to the correctness of the order or decision in question, and may include the following: (i) error in fact; (ii) change in circumstances; (iii) new facts have arisen; and (iv) facts that were not placed in evidence in the proceeding and could not have been discovered by reasonable diligence at the time. However, as the OEB has stated in other cases, this list is not exhaustive but illustrative.¹⁵

The purpose of the threshold test was articulated by the OEB in its decision on a Motion to Review the Natural Gas Electricity Interface Review Decision (NGEIR Review Decision).¹⁶ In the NGEIR Review Decision, the OEB stated that the purpose of the threshold question is to determine whether the grounds put forward by the moving party raise a question as to the correctness of the order or the decision. In order to proceed with a review on the merits of a motion to review, the OEB had to determine that there was enough substance to the issues raised such that a review based on those issues could result in the OEB varying, cancelling or suspending the decision.

In the NGEIR Review Decision the OEB stated:

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.¹⁷ (emphasis added)

In *Grey Highlands v. Plateau*¹⁸ the Divisional Court dismissed an appeal of an OEB decision where the OEB had determined that the motion to review did not meet the

¹⁵ Natural Gas Electricity Interface Review Decision with Reasons, EB-2006-0322/0338/0340 (May 22, 2007) (NGEIR Review Decision)

¹⁶ NGEIR Review Decision, page 18

¹⁷ NGEIR Review Decision, page 18

¹⁸ *Grey Highlands (Municipality) v. Plateau Winds Inc.* [2012] O.J. No. 847 (*Grey Highlands v. Plateau*) at

threshold test and the OEB did not proceed to review the earlier decision. In upholding the OEB's decision, the Divisional Court stated:

The OEB's decision to reject the request for review was reasonable. There was no error of fact identified in the original decision, and the legal issues raised were simply a re-argument of the legal issues raised in the original hearing.¹⁹
(emphasis added)

Having set out the principles of the threshold test articulated in the OEB's *Rules of Practice and Procedure* and case law, OEB staff's submission will now address the alleged grounds for review raised in the Motion and Submission, in the context of the Threshold Test.

i. Evidence re 2019 Forecast OM&A Costs and 2018 Actual Costs

In the Motion and Submission NOTL Hydro stated that it had filed 356 pages of evidence in support of its actual and forecast OM&A costs.²⁰ NOTL Hydro asserted that, in making its findings, the OEB did not take into account this detailed evidence, which "raises serious questions about the correctness of the Decision".²¹

OEB staff submits that the Decision, in both the Background and Findings sections, noted the evidence and submissions of NOTL Hydro, OEB staff and intervenors that were relevant to the panel's decision-making.²²

In the Background portion of the OM&A section the Decision states:

In its reply submission, NOTL Hydro stated that a key way to evaluate the OM&A budget in the test year is to look at the most recent actual expenditures. NOTL Hydro submitted that applying this approach to the 2018 actual OM&A of \$2,838,525 would result in a 2019 OM&A budget very close to the as-filed budget.²³ (emphasis added)

As indicated in the excerpt above, the panel clearly had turned its mind to the approach submitted by NOTL Hydro, i.e. considering the most recent actual expenditures. However, the panel chose a different, but reasonable approach, which is to compare the

para 7

¹⁹ *Grey Highlands v. Plateau* at paragraph 7

²⁰ Submission, page 2, para 7

²¹ Ibid

²² Decision, pages 7-11

²³ Decision, page 10

requested budget with an analysis using accepted parameters for measuring sources of cost increases to utility expenses, evaluating the reasonableness of the requested increase against that measure and making adjustments for other costs or reductions, as the panel finds reasonable. The Decision states:

The fixing of the OM&A budget, however, is assisted by reference to accepted parameters measuring sources of cost increases to utility expenses including inflation and customer growth. The development of a guide in the form of an envelope approach to the budget helps provide a yardstick that avoids micromanagement of the regulated utility and helps the regulator cope with any asymmetries of information that can be present. In this application, the OEB has determined to use this guide to assist in evaluating the reasonableness of the NOTL Hydro's request for a 38% increase in OM&A.

In doing so, the OEB has used the 2014 OEB approved OM&A budget and applied escalators including inflation, minus NOTL Hydro's cohort stretch factors, as well as customer growth factors multiplied by the recommended PEG elasticity factor. The resulting calculations are set out in Table 2 below.²⁴ (emphasis added)

OEB staff submits that it is appropriate for the OEB to use established parameters and factors in determining the reasonableness of the costs claimed, without referring in the Decision to detailed evidence regarding specific costs that were accepted or disallowed. This does not mean that the OEB did not consider all evidence. The OEB used this approach to assess a reasonable OM&A budget. In the end, the OEB viewed an average annual increase of approximately 5% as reasonable, rather than the requested average annual increase of 8% over a five year period.

The jurisprudence on administrative tribunal decision-making has established that it is not necessary for a tribunal to include explicit findings "on each constituent element leading to its final conclusion" or to address all of the evidence or arguments, especially if they are not part of the path to its decision.²⁵

OEB staff submits that there is no error in the Decision arising from the OEB not providing detailed reasons or not referring to the extensive evidence on OM&A expenditures or not accepting NOTL Hydro's submission on the appropriate approach to calculating OM&A costs.

²⁴ Decision, page 10

²⁵ *S.E.I.U., Local 333 v. Nipawin District Staff Nurses Assn.*, 1973, [1973] S.C.J. No. 148 at para 11. See also *N.I.N.U. v. Newfoundland & Labrador (Treasury Board)*, 2011, [2011] S.C.J. No. 62 at para 16 and *Clifford v. Ontario (Attorney General)*, 2009, [2009] ONCA 670, [2009] O.J. NO.3900 at paras37-44

ii) Impact of Growth in NOTL Hydro's kWh Delivered and System Peak Capacity

In its Motion, NOTL Hydro asserted that, in using the envelope approach to setting the O&A budget, the Decision failed to include the impact of growth in NOTL Hydro's kWh delivered and system peak capacity.

In the Background section of the Decision, the panel noted that NOTL Hydro used three out of the five growth factors used provided in the PEG Report - customer growth, load growth and system peak growth - in the total cost benchmarking to measure the impact of growth on the OM&A expense.²⁶

Hence, the Decision clearly acknowledges that NOTL Hydro proposed three growth factors from the PEG Report and notes that all parties provided submissions on this evaluation approach and proposed a reduction to the OM&A budget.²⁷ OEB staff notes that the submissions of intervenors thoroughly addressed the applicability of the PEG Report growth factors.²⁸

In the Findings section, the Decision states:

NOTL Hydro also suggested additional load and peak growth factors as escalators to the 2014 OEB-approved OM&A. However, there is no indication that any increases caused by these factors would not be captured in whole or in part by the customer growth factor.²⁹ (emphasis added)

It is clear from the excerpt above that the panel considered the factors proposed by NOTL Hydro but decided that only one (customer growth) should be applied. OEB staff submits that this is not an error that satisfies the threshold test to review and vary the Decision, as there is no indication that this finding is contrary to or inconsistent with the evidence before the panel. As stated in other cases, it is not enough to argue that the panel should have reached a different conclusion on the evidence.³⁰

In the Motion, NOTL Hydro also argued that the PEG Report factors are meant to be used as a starting point of comparison in evaluating OM&A costs and not as the determinant of future approved budgets.³¹

²⁶ Decision, pages 8-10

²⁷ Decision, page 8

²⁸ VECC submission, page 12; SEC submission, page 4

²⁹ Decision, page 11

³⁰ NGEIR Review Decision, page 18

³¹ Motion, page 6, para 22

OEB staff submits that the Decision correctly applied the PEG Report factors - the level of inflation reduced by a stretch factor and accounting for customer growth – and has taken this approach in other recent cost of service decisions.³² Further, it is not correct in OEB staff's view to characterize the use of the PEG Report factors as "determinative". As noted above, the use of the accepted parameters measuring sources of cost increases to utility expenses was for purposes of establishing a "yardstick" against which NOTL's evidence and cost recovery request was measured. There is no error in fact nor in law by the OEB deciding on this approach.

iii) New and Increased Costs

NOTL Hydro's Motion asserts that the OEB failed to consider some but not all of NOTL Hydro's costs for new and increased services totalling \$237,040.

However, the Decision did consider the costs that NOTL Hydro attributed to 'new and increased services over five years'.³³ The panel found that the escalation factors should accommodate the costs of most of such changes, although it did allow \$98,435 to recognize new requirements that have arisen since 2014.³⁴

Accordingly, OEB staff submits that the panel did consider the costs claimed by NOTL Hydro for new costs but the fact that the panel reached a different conclusion is not enough to demonstrate an error in the Decision.

iv) Previously Capitalized Costs in Base OM&A

The Motion and Submission assert that, while the Decision properly determined that NOTL Hydro should be permitted to include in the 2019 Test Year budget certain previously capitalized OM&A costs (\$130,784), the panel failed to include those costs in the base 2014 OM&A budget that was adjusted to arrive at the 2019 Test Year budget.³⁵ Had the OEB included the \$130,784 in base 2014 OM&A then the appropriate inflation, growth and stretch factors would be applied and the resulting 2019 OM&A budget would have increased by \$25,269.³⁶

The Background section of the Decision noted OEB staff's submission that the accounting adjustment of \$130,784 should not be allowed as this item should have been presented in NOTL Hydro's 2014 cost of service application. As of July 2012, all

³² Hydro One Networks Inc. Decision with Reasons EB-2009-0096, page 12; Kingston Hydro Decision and Order EB-2010-0136, page 30; Canadian Niagara Power Inc. Decision and Order EB-2016-0061, pages 5-6; Innpower Corporation Decision and Order EB-2016-0085, page 23

³³ Decision, page 9

³⁴ Decision, pages 11 and 12

³⁵ Motion, page 11, para 36

³⁶ Motion, page 11, para 38

distributors were required to change their capitalization and depreciation policies to be consistent with the OEB's regulatory accounting policies.³⁷

Notwithstanding OEB staff's submission, the Decision allowed the \$130,784 that resulted from this accounting change to be included in the 2019 OM&A approved amount; however the OEB declined to depart from the actual OM&A approved figure that went into the 2014 rates.³⁸ This meant that NOTL Hydro would not be given the benefit of inflation increases over the five year period between rebasing applications associated with this amount in so far as establishing the yardstick against which its proposed spending envelope would be measured.

The accounting change that gave rise to the \$130,784 should have been captured in NOTL Hydro's 2014 rates. In its submission in the cost of service application, OEB staff argued that the amount should have been recorded in Account 1576 and recovered from ratepayers as part of the 2014 cost of service application. NOTL Hydro failed to do so. NOTL is arguing that notwithstanding this oversight, it should be given the benefit of the inflation adjustment. In OEB staff's view, while it is arguable as to what is the most appropriate manner in which to approach the establishing of the spending "yardstick", there is no error in the OEB's Decision for not adjusting the 2014 starting point for this item. In its judgement, the OEB decided to include in NOTL Hydro's 2019 rates the \$130,784 but not to make an adjustment to the 2014 starting point. And in any event, if the OEB had included the amount as a 2014 cost item, there is no guarantee that the OEB would have approved an amount that was approximately \$25k higher than the amount eventually approved. As stated earlier, the OEB was establishing a yardstick against which to measure NOTL Hydro's 2019 proposed expenses.

Other Arguments in Submission

In the Submission, NOTL Hydro asserted two additional errors in the Decision, in that the OEB failed to consider the context of NOTL Hydro's requests, namely that³⁹:

- NOTL Hydro has maintained low rates and only added costs where necessary
- The OEB's failure to take account of actual OM&A expense will have negative impacts on customer service

OEB staff notes that the Decision did refer to submissions made about NOTL's past performance and rate trends. In the Background section, the Decision noted:

³⁷ Decision, page 8

³⁸ Decision, pages 11 and 12

³⁹ Submission, pages 2-6

SEC, VECC and OEB staff all commented on NOTL Hydro's OM&A costs per customer. All parties noted that the OM&A per customer in 2017 actual, 2018 and 2019 forecast are trending negatively, and submitted that this trend also supports reducing the proposed test year OM&A budget.⁴⁰

In the Findings section, the Decision stated:

NOTL Hydro, OEB staff and intervenors have made submissions as to relevant aspects of NOTL Hydro's performance that support their position as to the quantum of the OM&A budget that should be approved. While the various measurements of performance have been examined, the OEB has not approached the setting of this budget with a view to rewarding NOTL Hydro's past performance achievements as claimed by the applicant, or remedying a perceived decline in performance, as argued by OEB staff and intervenors.⁴¹

It is clear from the above excerpts that the panel considered the submissions of all parties with respect to past performance and declined to establish the 2019 OM&A budget with that approach.

OEB staff submits that this is not an error that satisfies the threshold test to review and vary the Decision, as there is no indication that this finding is contrary to or inconsistent with the evidence before the panel.

The second additional point raised in the Submission was that the OEB's alleged failure to take account of actual OM&A expenses will have negative impacts on customer service.

OEB staff notes that the Background section of the Decision does acknowledge this argument and stated:

NOTL Hydro submitted that the OEB approve the as-filed 2019 OM&A budget forecast and it will support continued safe, reliable and responsive service to NOTL Hydro's customers.⁴²

In OEB staff's view, the argument regarding negative impacts on customer service are a repetition of NOTL Hydro's submissions that the OEB erred by not setting the 2019 OM&A budget with reference to NOTL Hydro's actual 2018 OM&A expenses. OEB staff has already addressed this argument earlier in this submission.

⁴⁰ Decision, pages 9-10

⁴¹ Decision, page 10

⁴² Decision, page 10

Conclusion re Threshold Test

OEB staff submits that the grounds put forward by NOTL Hydro's Motion and Submission have failed to demonstrate that the Decision panel made an identifiable error that raises a question as to the correctness of the Decision and has failed to meet the threshold test under Rule 43.01 and the Motion should be dismissed without further review on the merits.

2) Merits of the Motion

If the OEB determines that the Motion does meet the threshold question, OEB staff's submission on the merits of the Motion is outlined below.

i) Evidence re 2019 Forecast OM&A Costs and 2018 Actual Costs

As discussed in Part 1 (Threshold Test), OEB staff submits that the decision-making panel is not required to fix an OM&A budget by approving (or disallowing) specific actual and forecast costs and using an 'envelope' approach instead. OEB staff submits that this approach is appropriate and has been applied in several other OEB decisions.

For example, in Hydro One Networks' 2010 and 2011 cost of service decision and order the OEB stated:

In the past, the Board has used different techniques to determine the allowed OM&A. In some cases a detailed line by line examination has resulted in an equally detailed funding prescription from the Board. In other cases the Board has provided the applicant with an overall envelope of funding. In such cases the Board does not stipulate an approved amount of spending for any particular category of spending, but rather leaves to the applicant the freedom to apply that spending according to its own prioritization.⁴³

In its decision and order regarding Kingston Hydro Corporation's 2011 cost of service rate application the OEB stated:

In recent decisions the Board has approved a total amount, commonly referred to as the "envelope" to support the Company's OM&A activities. In this way, the Board provides the Company with the funding it believes has been supported by the evidence, without specifically directing the Company as to how the funds should be allocated among the various categories of OM&A spending. It is the

⁴³ Hydro One Networks Inc. Decision with Reasons EB-2009-0096, page 12

Board's view that this approach allows for the ongoing management of the company leaving the priority setting in response to daily ongoing responsibilities to those charged with that responsibility.⁴⁴

The Motion relies on the OEB's decision in Thunder Bay Hydro's cost of service decision in support of the view that the starting point for fixing the Test Year budget should be the most recent OM&A expenditure and adjusting for inflation, growth and stretch factor.⁴⁵ However, there are several decisions that do not take that approach but rather the approach taken by the panel in the Decision.

In its Decision on Canadian Niagara Power Inc. (CNPI)'s 2017 distribution rates, the OEB stated:

The OEB finds that Canadian Niagara Power's budget should remain, at most, close to the level of inflation reduced by the stretch factor of 45 basis points and should account for customer growth. This should be applied against actual OM&A spends in 2013. Taking the adjusted \$9.3 million base in 2013 and increasing it by the actual inflation rate net of expected productivity improvements (stretch factor) and factoring in customer growth, the 2017 OM&A budget will be \$10.017 million. The OEB finds that this is both fair and reasonable for the safe and efficient operation of Canadian Niagara Power's system and is a fair and reasonable increase for its customers.⁴⁶ (emphasis added)

The OEB also used the same approach in its analysis of Innpower Corporation's OM&A budget in that 2017 cost of service decision.⁴⁷ For the calculation of the expected OM&A increase in 2017 test year, the OEB started with the 2013 OM&A budget removing 2013 expenses related to affiliate for comparison purpose, applied customer growth and inflation minus stretch factors from 2013 to 2017, and then added the annual expense increase related to the building. OEB staff notes that this approach is essentially the same as was in the Decision.

OEB staff therefore submits that there is no reviewable error in the Decision with respect to the envelope approach or the PEG Report factors used by the panel in setting NOTL Hydro's 2019 OM&A budget, as this is an accepted approach that has been used in several other OEB decisions.

⁴⁴ Kingston Hydro Decision and Order EB-2010-0136, page 30

⁴⁵ Thunder Bay Hydro Decision and Order EB-2016-0105, page 4

⁴⁶ Canadian Niagara Power Inc. Decision and Order EB-2016-0061, pages 5-6

⁴⁷ Innpower Corporation Decision and Order EB-2016-0085, page 23

ii) Impact of Growth in NOTL Hydro's kWh Delivered and System Peak Capacity

In its Motion, NOTL Hydro asserted that, in using the envelope approach to setting the OM&A budget, the Decision failed to include the impact of growth in NOTL Hydro's kWh delivered and system peak capacity. As discussed in Part 1 of this submission, it is clear in the Decision that the panel considered the factors proposed by NOTL Hydro but was not convinced that increases in load or peak growth would not be captured by the one factor (customer growth).

OEB staff submits that there is no reviewable error in the Decision on this point, as such a finding is not contrary to or inconsistent with the evidence before the panel in this case, and the approach has been applied in other cost of service cases.

iii) New and Increased Costs

NOTL Hydro's Motion asserts that the OEB failed to consider some but not all of NOTL Hydro's costs for new and increased services. As discussed in Part 1 of this submission, the Decision to allow some, but not all of the extraordinary costs over five years, is not a reviewable error.

OEB staff submits that there other cases in which the OEB did not make an allowance for extraordinary costs which could be covered by escalation factors and productivity improvement (stretch factor).

The OEB's decision for CNPI used the same escalators that the Decision panel used. While the OEB noted CNPI's argument that it would incur increased costs to deal with certain issues, it did not make an allowance for extraordinary costs claimed by the decision in that case stated:

Canadian Niagara Power argues that it would have increased costs to deal with issues such as the emerald ash borer program and pole testing. The OEB finds that there will always be one time or additional costs for various maintenance programs but these should be offset by some savings resulting from improvements in productivity and efficiency.⁴⁸

The fact that the panel did not allow all of the extraordinary expenses claimed by NOTL Hydro is not a reviewable error.

⁴⁸ Canadian Niagara Power Inc. Decision and Order EB-2016-0061, page 6

iv) Previously Capitalized Costs in Base OM&A

As discussed in Part 1, the Motion asserts that certain previously capitalized costs should have been included in the base 2014 OM&A budget that was adjusted to arrive at the 2019 Test Year budget and that doing so would have provided an additional \$25,269.

OEB staff submits that there is no error in the Decision on the point that NOTL Hydro should not earn the inflation on an amount that was caused by the accounting change. The accounting standard is a way to account for an item and a change in the accounting standard changes the method of accounting in the utility's books but does not change the total value of an item. As a result, there is no error in not applying the inflation factor to the impact of the accounting change itself in determining the appropriate yardstick by which to assess NOTL Hydro's spending envelope for 2019.

Conclusion

OEB staff submits that the grounds put forward by NOTL Hydro's Motion and Submission have failed to demonstrate that the Decision contains any identifiable errors that raise a question as to the correctness of the Decision and has failed to meet the threshold test under Rule 43.01 and the Motion should be dismissed without further review on the merits.

In the event that the OEB determines that some or all of the matters that are subject to this Motion pass the threshold test, then OEB staff also submits that for the reasons noted in this submission, NOTL Hydro has failed to demonstrate on the merits that the Decision should be reviewed and varied for any of the items discussed in this submission, and the Motion should be dismissed.

All of which is respectfully submitted.