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December 1, 2021

Delivered by Email & RESS

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

Dear Ms. Long:

**Re: Board File No. EB-2021-0038
Kitchener-Wilmot Hydro Inc. - Licence No. ED-2002-0573
Reply Submissions**

We are counsel to Kitchener-Wilmot Hydro Inc. (“**KWHI**”) for the above-noted proceeding.

Pursuant to Procedural Order No. 1 dated October 6, 2021, please find enclosed KWHI’s reply submissions in this proceeding.

Please do not hesitate to contact the undersigned if you have any questions.

Yours very truly,

BORDEN LADNER GERVAIS LLP

Per:

A handwritten signature in black ink, appearing to read 'Flora Ho', is written over a light blue horizontal line.

Flora Ho

cc: Margaret Nanninga, KWHI
Parties to EB-2021-0038

IN THE MATTER OF the *Ontario Energy Board Act, 1998*,
S.O. 1998, c.15, (Schedule B);

AND IN THE MATTER OF an Application by Kitchener-
Wilmot Hydro Inc. to the Ontario Energy Board for an Order or
Orders approving or fixing just and reasonable distribution rates
and other service charges to be effective January 1, 2022.

REPLY SUBMISSION

KITCHENER-WILMOT HYDRO INC.

EB-2021-0038

DECEMBER 1, 2021

A. INTRODUCTION

1. Kitchener-Wilmot Hydro Inc. (“**KWHI**”) filed an Incentive Rate-setting Mechanism (“**IRM**”) application with the Ontario Energy Board (“**OEB**”) on August 19, 2021 under section 78 of the *Ontario Energy Board Act, 1998*, seeking approval for changes to its electricity distribution rates, to be effective January 1, 2022 (the “**Application**”) The OEB approved School Energy Coalition (“**SEC**”), and Vulnerable Energy Consumers Coalition (“**VECC**”) as Intervenors.
2. In accordance with the OEB’s Procedural Order No.1 dated October 6, 2021, parties were required to submit written submissions by November 17, 2021 with the KWHI’s reply submission due December 1, 2021. KWHI received written submissions from OEB Staff, SEC and VECC on November 17, 2021.
3. KWHI makes reply submissions on the following:
 - (a) Group 1 Deferral and Variance Accounts (“**DVAs**”)
 - (b) Account 1584 – Retail Transmission Network Charge
 - (c) Lost Revenue Adjustment Mechanism Variance Account (“**LRAMVA**”)

B. KWHI REPLY SUBMISSIONS

(a) Group 1 DVAs

4. OEB Staff is supportive of KWHI’s request to dispose of its December 31, 2020 Group 1 DVA balances on a final basis.¹ OEB Staff has reviewed the 2020 DVA balances and the supporting evidence substantiating these balances and is of the view that the Group 1 DVA balances are reasonable.²

¹ OEB Staff Submissions dated November 17, 2021 (“**OEB Staff Submission**”) at page 2.

² Ibid.

5. SEC and VECC did not make submissions on Group 1 DVAs generally. Their submissions focused on Account 1584 – Retail Transmission Network Charge (“**Account 1584**”), as detailed in the next section.
6. KWHI submits that the request to dispose of its December 31, 2020 Group 1 DVA balances on a final basis should be approved as filed.

(b) **Account 1584 – Retail Transmission Network Charge**

(i) Summary of Positions

7. In the Application, KWHI seeks to dispose of an amount of \$5,991,524³ (the “**Unbilled Amounts**”) that were not previously billed by the Independent Electricity System Operator (“**IESO**”) in connection with the networks service charges for a single meter delivery point that serves KWHI.
8. The Unbilled Amounts relate to network service charges that were incurred but not billed between June 8, 2015 and November 30, 2020.
9. KWHI confirmed that the volumes and charges that were missing resulting from the missing meter point have been considered in determination of RTSRs for this application and OEB Staff confirms that the 2022 Rate Generator Model reflects the impact of these volumes.⁴
10. OEB Staff⁵ and VECC⁶ support KWHI’s request to collect the Unbilled Amounts that are payable to the IESO from its customers. Both OEB Staff⁷ and VECC⁸ agree that KWHI was not in control of the error in Account 1584 and noted that this was confirmed by the IESO.

³ EB-2021-0074, Interrogatory Responses, Appendix A, April 8, 2021, Staff-2(a).

⁴ OEB Staff Submission at page 7.

⁵ OEB Staff Submission at page 7.

⁶ VECC Submission dated November 17, 2021 (“**VECC Submission**”) at page 3.

⁷ OEB Staff Submission at page 7.

⁸ VECC Submission at page 3.

11. SEC submits that the amounts attributable to unbilled network retail transmission service in 2015, 2016, 2018 and 2019, and potentially 2017 may not be recoverable from ratepayers as it may constitute “retroactive ratemaking”.⁹ Specifically, SEC argues that the rule against retroactive ratemaking applies because KWHI proposes to collect the Unbilled Amounts even though Account 1584 was disposed of on a final basis for 2015, 2016, 2018 and 2019. SEC argues that the account is no longer available for KWHI to “attribute costs for those years”.¹⁰
12. KWHI does not agree with SEC’s argument for the reasons set out below.
13. Section 27 of the *Electricity Act, 1998* provides that a person shall not cause or permit electricity to be conveyed into, through or out of the IESO-controlled grid except in accordance with this Act and the market rules. Section 32(2)(b) of the *Electricity Act* further provides that the IESO has the authority to create market rules governing, *inter alia*, the conveying of electricity into, through or out of the IESO-controlled grid.
14. Chapter 10 of the Market Rules is intended to satisfy these requirements.¹¹ Section 2.2 of Chapter 10 of the Market Rules sets out the procedures governing the billing and settlement for transmission services, including the network service charge. And in response to Staff-7, the IESO explained how errors like the Unbilled Amounts are addressed under the Market Rules, explaining:

“Section 6C.1.2 and 6C.1.3 of Chapter 10 of the Market Rules collectively provide that where an inaccuracy exists in respect of meter point documentation, the IESO shall include an amount equal to the correction on the applicable invoice.

The IESO deferred invoicing KWHI for the amount of the correction because this matter, including the timing of invoicing, was being brought to the OEB for determination.

If the OEB confirms that these amounts are due and owing by KWHI and does not issue an order for the IESO to align invoicing with KWHI’s collection, the IESO is required by

⁹ SEC Submission dated November 17, 2021 (“**SEC Submission**”) at page 4.

¹⁰ SEC Submission at page 2.

¹¹ Available online at (last accessed November 26, 2021): <https://www.ieso.ca/-/media/Files/IESO/Document-Library/Market-Rules-and-Manuals-Library/market-rules/mr-chapter10.ashx>

the Market Rules to issue a single invoice for the entire amount of the unbilled historical amount.

If the OEB confirms these amounts are due and owing by KWHI, approves KWHI's application to recover the historical amounts over a one-year period and issues an order for the IESO to align its invoicing with KWHI's collection, the IESO would comply with such an order."

15. KWHI submits that the rule against retroactive ratemaking as it applies to section 78 of the *Ontario Energy Board Act* does not apply to the Market Rules created pursuant to section 32(2)(b) of the *Electricity Act*. Rather, the provisions of the Market Rules address the circumstances where retroactive adjustments are, and are not, allowed.

16. In this context, on October 7, 2021 the Ministry of Energy has proposed certain legislative amendments to create a statutory-based two-year limitation period on IESO settlement adjustments (Ontario Regulatory Registry Proposal No. 21-ENDM027).¹² These legislative amendments are proposed to be implemented as part of the omnibus *Bill 13, Supporting People and Businesses Act, 2021*, which is scheduled for third reading November 30 and December 1, 2021 – and may in fact be law by the time these submissions are filed. This legislative amendment would not be necessary if, as SEC incorrectly alleges, the rule against retroactive ratemaking applied to errors under the Market Rules.

17. This is not to suggest that the rule against retroactive ratemaking is not a relevant consideration in this case. Certainly, it does apply to applications under Section 78 of the *Ontario Energy Board Act, 1998*. As a consequence, KWHI submits that the relevant consideration in this case is the specific operation of Account 1584. If the Unbilled Amounts were not eligible to be recorded in Account 1584 in the years where Account 1584 was disposed of on a final basis, then there is no retroactive ratemaking.

¹² Ontario Regulatory Registry -2-year Limitation Period for Certain Statutory and Regulatory Entitlements via Independent Electricity System Operator (IESO) settlements, Available Online: <https://www.ontariocanada.com/registry/view.do?postingId=39176&language=en> (Last Accessed: November 28, 2021).

(ii) Proper use of Account 1584 does not violate the rule against retroactive ratemaking

18. It is accepted law that the use of deferral accounts does not constitute retroactive ratemaking. KWHI has proposed recording the Unbilled Amounts to Account 1584 properly and in accordance with the requirements of the Accounting Procedures Handbook.
19. This limitation to the rule against retroactive ratemaking was established by the Supreme Court of Canada in *Bell Canada v. Bell Alliant Regional Communications* (“**Bell Alliant**”).¹³
20. In *Bell Alliant*, the Supreme Court ruled that deferral accounts are acceptable regulatory tools that enable a regulator to defer consideration of a particular item of expense or revenue without violating the rule against retroactive ratemaking. Specifically, the Supreme Court ruled that:

*“[63] In my view, the credits ordered out of the deferral accounts in the case before us are neither retroactive nor retrospective. They do not vary the original rate as approved, which included the deferral accounts, nor do they seek to remedy a deficiency in the rate order through later measures, since these credits or reductions were contemplated as a possible disposition of the deferral account balances from the beginning. **These funds can properly be characterized as encumbered revenues, because the rates always remained subject to the deferral accounts mechanism established in the Price Caps Decision. The use of deferral accounts therefore precludes a finding of retroactivity or retrospectivity. Furthermore, using deferral accounts to account for the difference between forecast and actual costs and revenues has traditionally been held not to constitute retroactive rate-setting** (EPCOR Generation Inc. v. Energy and Utilities Board, 2003 ABCA 374, 346 A.R. 281, at para. 12, and Reference Re Section 101 of the Public Utilities Act (1998), 164 Nfld. & P.E.I.R. 60 (Nfld. C.A.), at paras. 97-98 and 175).”¹⁴ (**emphasis added**)*

¹³ *Bell Canada v. Bell Alliant Regional Communications*, 2009 SCC 40, [2009] 2 S.C.R. 764 at para. 54.

¹⁴ *Ibid* at paras 61 and 63.

21. In response to SEC-7, KWHI acknowledged that Account 1584 was previously cleared on a final basis for 2015 and 2016 in EB-2017-0056, on an interim basis for 2017 in EB-2018-0048, and on a final basis for 2018 and 2019 in EB-2020-0035.
22. However, the question of whether or not the adjustment proposed in this application amounts to retroactive ratemaking or a permitted 2022 adjustment turns on: (1) the exact wording and operations of Account 1584 - the deferral account in question; and (2) the facts surrounding the Unbilled Amounts.
23. The legal framework governing the operation of Account 1584 is in the OEB's Accounting Procedures Handbook, it provides, in part, that (**emphasis added**):

1584 RSVA_{NW}

A. This account shall be used monthly by distributors deemed to be transmission customers to record the net of:

i. **the amount charged by the Independent Electricity System Operator, based on the monthly settlement invoice**, for transmission network services, including accruals

AND

ii. the amount billed to customers for the same services using the Board-approved Transmission Network Charge Rate, including accruals.¹⁵

24. As explained by KWHI in its interrogatory response (“**IRR**”) to SEC-3, the event leading to an entry into Account 1584 is the IESO charging the distributor for transmission network services as evidenced by the issuance of a monthly settlement invoice by the IESO.

¹⁵ Article 220 – Ontario Energy Board Accounting Procedures Handbook, Issued December 2011, Effective January 1, 2012 at page 35 to 36.

25. It is not possible for KWHI to record amounts to Account 1584 if it is not charged by the IESO.
26. This means that when KWHI applied for final disposition of Account 1584 in prior years, those decisions settled on a final basis the difference between what had been charged by the IESO based on the monthly settlement invoices that then existed and the amounts billed to customers for the same service.
27. In the unlikely event the IESO made an error, and failed to charge KWHI for certain amounts, that error would be addressed in the year that the IESO actually charges KWHI to correct for the error, as evidenced by the monthly settlement invoice.
28. In this context, SEC argues that the fact that the IESO did not bill KWHI for these amounts until 2020 “is not relevant to the legal question relating to the recovery of these past amounts.” It further submits that the amounts relate to a previous period expenditure, so the only way that these amounts can be recovered is if there is an exception to the rule against retroactive ratemaking.¹⁶
29. KWHI does not agree. The fact that the IESO did not charge KWHI for the Unbilled Amounts is critical to the analysis of whether or not there is retroactive ratemaking.
30. By ignoring this key fact, SEC is attempting to extend the rule against retroactive ratemaking to the operations of the IESO Market Rules in a way that is entirely inconsistent with the statutory scheme and Market Rules that govern errors of this nature. KWHI submits that this is not appropriate.
31. As noted in SEC-2, KWHI could not have possibly recorded the Unbilled Amounts in these prior years.¹⁷ KWHI was only informed by the IESO in December 2020 that the IESO had not

¹⁶ SEC Submission at page 2.

¹⁷ IRR SEC-2.

billed KWHI for a meter point since June 2015 due to an improper end date being input into the IESO system used to bill network service charges.¹⁸

32. The key fact regarding the operation of Account 1584 is the IESO charging KWHI for the amount, as is evidenced by a settlement invoice.
33. As stated in Staff-2, the IESO has deferred invoicing KWHI for the Unbilled Amounts because this matter, including the timing of invoicing, has been brought to the OEB for determination.¹⁹
34. Once the IESO charges KWHI and issues the relevant settlement invoice, it will trigger an obligation to record the Unbilled Amounts in Account 1584 at that time and the amounts can be disposed without violating the rule against retroactive ratemaking. That is because Account 1584 is designed to capture exactly these types of variances, without violating the rule against retroactive ratemaking.
35. In this case, KWHI has proposed a proper use of Account 1584 solely for the purpose as stipulated in the OEB's Accounting Procedures Handbook in a way that addresses the Unbilled Amounts without violating the rule against retroactive ratemaking.

(iii) The rule against retroactive ratemaking is not an ironclad rule

36. As explained above, KWHI's primary argument is that it is using Account 1584 properly to correct for the Unbilled Amounts in a way that does not constitute retroactive ratemaking. In the alternative, KWHI submits that the rule against retroactive ratemaking is not ironclad and retroactive adjustments are routinely allowed pursuant to the OEB's broad ratemaking authorities.

¹⁸ 2022 IRM Application, Manager's Summary at page 12.

¹⁹ IRR Staff-2a) and b).

37. SEC readily acknowledges that there are multiple examples of exceptions being made to the rule against retroactive ratemaking.²⁰ Put another way, the rule against retroactive ratemaking is not ironclad.
38. In this case, the letter issued by the OEB on October 31, 2019 on retroactive adjustments to previously cleared “pass-through” variance accounts (“**Retroactive Adjustments Guidance**”) is directly relevant.²¹
39. As noted by OEB Staff, the Retroactive Adjustments Guidance provided generic guidance to distributors with respect to correcting errors through retroactive adjustments for “pass-through costs” related to certain commodity, IESO and other third-party charges that electricity distributors have paid or that are payable, and there are intended to be passed through to their customers without earning a profit or incurring a loss.²²
40. The Retroactive Adjustment Guidance states that where an accounting or other error is discovered after the balance in one of the Group 1 variance accounts that have “pass-through costs” has been cleared by a final order of the OEB, the OEB will determine on a case-by-case basis whether to make a retroactive adjustment based on the particular circumstances of each case, including factors such as:
- whether the error was within the control of the distributor
 - the frequency with which the distributor has made the same error
 - failure to follow guidance provided by the OEB
 - the degree to which other distributors are making similar errors²³

²⁰ SEC Submission at page 2.

²¹ *Adjustments to Correct for Errors in Electricity Distributor “Pass-Through” Variance Accounts After Disposition*, letter from the OEB dated October 31, 2019 (“**Retroactive Adjustments Guidance**”)

²² OEB Staff Submission at page 6.

²³ Retroactive Adjustments Guidance at page 2.

41. KWHI has discussed the relevant factors set out in the Retroactive Adjustments Guidance in its Application²⁴ and in response to interrogatories,²⁵ which includes the following undisputed facts:

- KWHI was not in control of the error. The IESO confirmed that KWHI was not in control of the error and that it was not notified of the error until November 27, 2020.
- KWHI is not aware of any other similar billing errors. KWHI did not make any errors. In addition, KWHI has never experienced errors like this in the past.
- KWHI followed all guidance issued by the OEB, including Article 490 of the Accounting Procedures Handbook and the Retroactive Adjustments Guidance.
- This error was not made by a distributor. This error was within an IESO system which KWHI does not access.

42. In this context, OEB Staff agreed that KWHI was not in control of the error. OEB Staff submits that the incorrect end-date of the meter in the IESO's system (i.e. the source of the error) is not the utility's responsibility. It further notes that KWHI had disclosed the error on a timely basis and in accordance with the Retroactive Adjustments Guidance. OEB Staff also submits that it does not appear that the utility somehow failed to take responsible steps to identify this problem sooner.²⁶ On this basis, OEB Staff is supportive of KWHI collecting the Unbilled Amounts from its customers and to retroactively adjust the amount in Account 1584.

43. In this context, SEC agrees with KWHI that the factors listed in the Retroactive Adjustments Guidance would strongly militate towards allowing the adjustment.²⁷

²⁴ 2022 IRM Application at page 13.

²⁵ IRR VECC-3(a), IRR VECC-1(c) and (d), SEC-3.

²⁶ OEB Staff Submission at page 7.

²⁷ SEC Submission at page 3.

44. However, SEC goes on to argue that the Retroactive Adjustments Guidance itself is not binding on any OEB panel. SEC further submits that it is not clear on what legal basis the OEB in this case can depart from the rule against retroactive ratemaking and that the letter does not provide any legal analysis or discussion. SEC submits that the rule is not a discretionary consideration for the OEB, but a legal prohibition.²⁸

45. KWHI does not agree.

46. SEC relies on *Union Gas Limited v. Ontario Energy Board*²⁹ to support its submission that the rule of retroactive ratemaking is a “legal prohibition”. This is not a correct interpretation of this case. The paragraph cited by SEC is (**emphasis added**):

“[82] *It is well established that an economic regulatory tribunal, such as the Board, operating under a positive approval scheme of ratemaking must exercise its rate-making authority on a prospective basis. **Generally speaking**, absent express statutory authorization, such a regulator may not exercise its rate-making authority retroactively or retrospectively.*”

47. KWHI submits that the choice of words by the court clearly indicates that this statement was subject to a qualification: “Generally speaking”. It is not a legal prohibition. It is a general rule that is subject to various exceptions.

48. In addition to the traditional exceptions to the rule against retroactive ratemaking related to: 1) rates that are set on an “interim” basis, or 2) when a deferral or variance account is created for specified purpose,³⁰ there have been several recent cases where the OEB has approved adjustments even if the balances have been disposed of on a final basis.³¹

²⁸ SEC Submission at page 3.

²⁹ 2015 ONCA 453, para. 82

³⁰ *Bell Canada v. Bell Aliant Regional Communications*, [2009] 2 S.C.R. 764

³¹ In EB-2014-0043 the OEB approved \$10.1M a retroactive adjustment to Enbridge’s QRAM orders that were previously declared as final in EB-2012-0352. In EB-2016-0090, the OEB approved a 65,112.46 refund to customers arising from after the fact discovery of accounting errors even though Account 1588/1589 had previously been disposed of on a final basis.

49. As was explained by the Ontario Court of Appeal, citing favourable the Alberta Court of Appeal:

“ “[s]lavish adherence to the use of interim rates and deferral accounts should not prohibit adjustments” in a proper case: at para. 62. Moreover, “[s]imply because a ratemaking decision has an impact on a past rate does not mean it is an impermissible retroactive decision”: at para. 56. Rather, “[t]he critical factor for determining whether the regulator is engaging in retroactive ratemaking is the parties’ knowledge [that the rates were subject to change]”: at para. 56.”³²

50. The *Ontario Energy Board Act, 1998* provides broad powers to the OEB with respect to rate-setting. In approving or fixing just and reasonable rates, the OEB may adopt any method or technique it considers appropriate.

51. As noted in *Toronto Hydro-Electric System Limited v. Ontario Energy Board*,³³ the OEB's power in respect of setting rates is to be interpreted broadly and extends well beyond a strict construction of the task.

52. In *Advocacy Centre for Tenants-Ontario v. Ontario (Energy Board)*³⁴ (“**Advocacy Centre**”) the majority of the court held that the OEB had the jurisdiction to establish a rate affordability assistance program for low-income consumers purchasing the distribution of natural gas from the utility. In paras. 53-56, the majority noted the breadth of the OEB's rate-setting power when its actions are in furtherance of its statutory objectives:

“ [T]he Board is authorized to employ “any method or technique that it considers appropriate” to fix “just and reasonable rates.” . . . the Board must determine what are “just and reasonable rates” within the context of the objectives set forth in s. 2 of the Act. Objective #2 therein speaks to protecting “the interests of consumers with respect to prices.”

³² *Union Gas Ltd. v. Ontario (Energy Board)*, [2015] O.J. No. 3276 at para. 91.

³³ 99 OR (3d) 481 at para. 25.

³⁴ [2008] O.J. No. 1970, 293 D.L.R. (4th) 684 (Div. Ct.)

.....

[T]he Board in the consideration of its statutory objectives might consider it appropriate to use a specific "method or technique" in the implementation of its basic "cost of service" calculation to arrive at a final fixing of rates that are considered "just and reasonable rates." This could mean, for example, to further the objective of "energy conservation", the use of incentive rates or differential pricing dependent upon the quantity of energy consumed. As well, to further the objective of protecting "the interests of consumers" this could mean taking into account income levels in pricing to achieve the delivery of affordable energy to low income consumers on the basis that this meets the objective of protecting "the interests of consumers with respect to prices.

The Board is engaged in rate-setting within the context of the interpretation of its statute in a fair, large and liberal manner."

53. Section 1(1) of the *Ontario Energy Board Act, 1998* provides that the OEB's statutory objectives includes:

*2. To promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the **maintenance of a financially viable electricity industry.** (emphasis added)*

54. OEB Staff agrees with KWHI that KWHI's financial position could be negatively impacted if the utility is required to immediately pay the full Unbilled Amounts and that the resulting financial constraints on the utility could have negative consequences for ratepayers.³⁵

55. Specifically, and as stated in the evidence,³⁶ if KWHI pays the Unbilled Amounts to the IESO and subsequently is unable to collect the amount from its customers, the financial viability of

³⁵ OEB Staff Submission at page 7 and 8.

³⁶ Application at pg. 13.

KWHI is at risk. It is estimated that KWHI's ROE would fall to 3.8%, which is more than 300 basis points below KWHI's approved ROE.

56. In addition, and as stated in the evidence³⁷ and noted by VECC in its submissions,³⁸ in order to finance the payment to the IESO, KWHI would be required to use its line of credit, increasing its financing costs. Increased borrowing would decrease KWHI's financial standing and possibly increasing financing costs in the future.

57. Under these circumstances, it is well within the OEB's powers to ensure that the statutory objective of maintaining a financially viable electricity industry to issue the Retrospective Accounting Guidelines as it relates to the treatment of "pass-through costs".

58. Finally, in its submissions, SEC comments that it may seem to be unfair to KWHI that regardless of KWHI's ability to seek recovery from ratepayers, the IESO will still seek recovery of these balances from it. SEC goes on to submit that the customers should not be responsible for the billing error and are now being asked to pay close to \$6M in extra costs based on consumption decisions that occurred up to 6 years earlier.

59. KWHI disagrees. KWHI customers received the benefit of transmission network services that they have not yet paid for.³⁹

(iv) Alignment of IESO Invoicing

60. In the Application, KWHI requested an order from the OEB to align the IESO invoicing of the Unbilled Amounts with KWHI's collection of such amounts in accordance with the OEB's Decision and Order in respect of the Application.⁴⁰

³⁷ IRR Staff-7(c).

³⁸ VECC Submission at page 3.

³⁹ SEC-3.

⁴⁰ 2022 IRM Application at page 2.

61. OEB Staff submits that there is a public interest in IESO aligning its invoices with KWHI's collection of the Unbilled Amounts.⁴¹
62. SEC submits that the OEB should order for the IESO to align its collection from KWHI with the disposition period.⁴²
63. VECC did not state its position on the alignment of IESO invoicing, but notes that the IESO confirms that if the OEB confirms the Unbilled Amounts are due and owing by KWHI and issues an order for the IESO to align its invoicing with KWHI's collection, the IESO would comply with such order.⁴³
64. KWHI submits that the evidence supports the request for an order from the OEB to align the IESO invoicing of the Unbilled Amounts with KWHI's collection.
65. The primary public policy reason to align the IESO invoicing is to avoid incremental interest costs for ratepayers arising from the Unbilled Amounts and to avoid adverse financial impacts on KWHI arising from the Unbilled Amounts.
66. As explained in response to VECC-2(b), if KWHI is required to pay the entire Unbilled Amount to the IESO in December 2021, but the rate rider is collected over a 5 year period, then ratepayers would incur an additional \$86,700 in interest costs.
67. In response to IRR Staff-7, the IESO advised that if the OEB confirms the Unbilled Amounts to be due and owing by KWHI and does not issue an order for the IESO to align invoicing with KWHI's collection, the IESO is required by the Market Rules to issue a single invoice for the entire amount of the Unbilled Amounts.

⁴¹ OEB Staff Submission at page 8.

⁴² SEC Submission at page 4.

⁴³ VECC Submission at page 4.

68. In that case, KWHI would be required to use its line of credit in order to immediately pay the full Unbilled Amounts to the IESO. This would adversely affect KWHI as it would increase its financing costs and decrease its financial standing.⁴⁴
69. Also in response to IRR Staff-7, IESO noted that if the OEB confirms that the Unbilled Amounts are due and owing by KWHI, approves KWHI's application to recover the Unbilled Amounts over a one-year period and issues an order for the IESO to align its invoicing with KWHI's collection, the IESO would comply with such an order.
70. Therefore, in order to prevent an adverse effect on KWHI's financial viability, KWHI requests that the OEB make an order for the IESO to align its invoicing with KWHI's collection. Finally, KWHI notes that in response to SEC-5(b) the IESO confirmed that:

“If the OEB were to order a different time period for the recovery and invoicing of these amounts greater than the one-year period KWHI has applied for, the IESO would comply with such an order.”

(v) Timing of Disposition

71. KWHI is proposing to collect the Unbilled Amounts over a one year period.
72. OEB Staff notes that, according to the IESO, the unbilled historical amount is not sufficiently large to impact the Network Transmission Charge and overall transmission rates (UTR) charged to all electricity customers. OEB Staff is of the view that if the impact of the Unbilled Amounts on the provincial UTRs is “extremely low” as stated by the IESO, then whether the amounts are recovered over a one-year period or as a lump sum, the impacts on amounts payable to the IESO would be insignificant.⁴⁵

⁴⁴ IRR Staff-7(c).

⁴⁵ OEB Staff Submission at page 8.

73. VECC submits that the OEB should take the above facts into consideration when setting 2022 Uniform Transmission Rates.⁴⁶ KWHI does not have a position on the setting of 2022 UTRs.
74. Both SEC⁴⁷ and VECC⁴⁸ submit that a longer period to recover the significant Unbilled Amounts is desirable and recommend a five year period be implemented to mitigate bill impacts.⁴⁹ SEC and VECC submitted that the five-year disposition period would help mitigate bill impacts.
75. VECC⁵⁰ and SEC⁵¹ note that if the OEB were to order a different time period for the recovery and invoicing of these amounts greater than the one-year period, the IESO would comply with such an order.
76. If the OEB determines a five-year disposition period is preferable, KWHI would not oppose such an order so long as the OEB also orders that the IESO's invoicing align with KWHI's collection of the Unbilled Amounts from ratepayers (see above).
77. While it is true that the IESO confirmed that if the OEB were to order a different time period for the recovery and invoicing of these amounts greater than the one-year period KWHI has applied for, the IESO would comply with such an order,⁵² KWHI submits that there are valid reasons to use a one-year disposition period.
78. First, rate mitigation is not required if a one-year disposition period is used.

⁴⁶ VECC Submission at page 5.

⁴⁷ SEC Submission at page 3.

⁴⁸ VECC Submission at page 4.

⁴⁹ VECC Submission at page 4.

⁵⁰ VECC Submission at page 4.

⁵¹ SEC Submission at page 3.

⁵² IRR SEC-4

79. As stated in the Application, KWHI has assessed the bill impacts by customer class and has determined that the increase in the total bill before taxes is between -0.3% and 3.1% for all classes except the Embedded Distributor.⁵³
80. While the evidence shows that bill impact to the Embedded Distributor is greater than 10%, KWHI has notified the Embedded Distributor of this and it is supportive of the Application as filed.⁵⁴
81. As the bill impacts are under 10% for all other classes, this case does not trigger a need for mitigation.
82. Second, a one-year disposition ensures the error will be resolved as quickly as possible, which would remove any further issues of inter-generational inequity created by using a longer disposition period. If the disposition period is spread over five years, then the effects of the error are simply prolonged.
83. In summary, a one-year disposition does not require any rate mitigation and has the benefit of resolving the problem expeditiously to avoid creating further inter-generational inequities.
84. In addition, SEC further submits that the OEB should order that no interest should accrue on the balance and make an order for the IESO to align its collection from KWHI with this disposition period.⁵⁵
85. KWHI does not agree that the OEB should order that no interest should accrue on the balance.
86. As noted in VECC-2(a), such an order is not required if the OEB grants KWHI's request to order the IESO to align its invoicing of the Unbilled Amounts with KWHI's collection of those amounts.

⁵³ 2022 IRM Application at page 14.

⁵⁴ Application at page 8.

⁵⁵ SEC Submission at page 4.

87. But more to the point – for the same reasons set out in paragraph 41 above – KWHI should not be “punished” for an error that it did not cause. If KWHI is required to repay the entire Unbilled Amounts to the IESO all at once and collects the rate riders over a five year period, a total of \$86,700 in carrying charges would accrue in the account.⁵⁶ It is appropriate for KWHI to collect this interest from customers to compensate KWHI for the incremental financing costs it will incur, as further explained in Staff 7(c).
88. Finally, KWHI submits that if the OEB does choose to order a five year disposition period, this should be implemented by splitting the DVA amounts into two separate rate riders:
- a. One rate rider would be based on the Unbilled Amounts in Account 1584, to be disposed of over a five year basis; and
 - b. The second rate rider would be based on all other DVA amounts excluding the Unbilled Amounts, to be disposed of over a one year basis as is typical for these types of accruals.

The existence of the Unbilled Amounts should not prejudice the normal disposition of DVA balances in the ordinary course.

(c) LRAMVA

89. OEB Staff supports KWHI’s request to dispose of its December 31, 2019 LRAMVA on a final basis. OEB Staff reviewed the December 31, 2019 LRAMVA balance and the supporting evidence substantiating these balances and OEB Staff is of the opinion that the LRAMVA balance is reasonable.
90. SEC and VECC did not make submissions on KWHI’s LRAMVA request.
91. KWHI submits that its request to dispose of the LRAMVA should be approved as filed.

⁵⁶ VECC-2(b).

- All of which is respectfully submitted -