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**Kathleen Burke**  
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BY EMAIL AND RESS

January 7, 2022

Ms. Nancy Marconi  
Acting Registrar  
Ontario Energy Board  
Suite 2700, 2300 Yonge Street  
P.O. Box 2319  
Toronto, ON M4P 1E4

Dear Ms. Marconi:

**EB-2021-0033 - Hydro One Networks Inc. (Hydro One) - Application for Approval of 2022 Electricity Distribution Rates for Acquired LDCs (EB-2021-0033) – Motion to Review and Vary**

Please find enclosed Hydro One's Notice of Motion to Review and Vary the Ontario Energy Board's Decision and Order dated December 16, 2021 in respect of Hydro One's application for rates and other charges for the Norfolk Power, Haldimand County Hydro, and Woodstock Hydro service territories to be effective January 1, 2022.

Included in the Notice of Motion is an urgent partial stay request. As the Draft Rate Order must be filed by January 13, 2022, Hydro One respectfully requests a decision on the partial stay request as soon as possible.

Feel free to call me at 416-770-0592 if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Kathleen Burke".

Kathleen Burke

**ONTARIO ENERGY BOARD**

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

**AND IN THE MATTER OF** an Application by Hydro One Networks Inc. for an Order or Orders pursuant to section 78 of the OEB Act for distribution rates and related matters in the service areas formerly served by Norfolk Power Distribution Inc., Haldimand County Hydro Inc. and Woodstock Hydro Services Inc., to be effective January 1, 2022;

**AND IN THE MATTER OF** Rules 40, 42 and 43 of the Ontario Energy Board’s *Rules of Practice and Procedure*.

**NOTICE OF MOTION**

Hydro One Networks Inc. (“Hydro One”) will make a motion to the Ontario Energy Board (the “OEB” or the “Board”) at its offices at 2300 Yonge Street, Toronto, on a date and at a time to be fixed by the OEB.

**THE MOTION IS FOR:**

1. An Order that Hydro One has met the “threshold test” described in Rule 43.01 of the OEB’s *Rules of Practice and Procedure*;
2. An Order for a hearing of the Motion on its merits in such manner as the OEB deems appropriate, but having regard for Hydro One’s preference that the Motion be heard in writing;
3. An Order partially staying the implementation of the OEB’s December 16, 2021 Decision and Order in EB-2021-0033 (the “Decision”), specifically by staying the Account 1576 (Woodstock Hydro) aspects of the Decision insofar as they relate to the 2016-2022 period, and the Account 1592 (All Acquired Utilities) aspects of the Decision, each pending the outcome of this motion, but otherwise proceeding with the Draft Rate Order and implementation of the Decision, as further described in this notice of motion. As the Draft Rate Order must be filed by January 13, 2022, a decision on the partial stay is requested on an urgent basis;

4. An Order reviewing and varying the Decision in respect of:

- a) The finding, in relation to the former Woodstock Hydro Services Inc. (“Woodstock Hydro”), that Hydro One should continue to record transactions in Account 1576 to the end of 2022, and the direction that Hydro One must therefore quantify the Account 1576 balance for 2016 to the end of 2022 in the draft rate order process and dispose of this remaining balance in Account 1576 specifically to legacy Woodstock Hydro customers as part of its 2023 rebasing application that is currently before the OEB (the “Account 1576 Findings”);<sup>1</sup> and
- b) The findings, in relation to the former service areas for each of Norfolk Power Distribution Inc., Haldimand County Hydro Inc. and Woodstock Hydro (the “Acquired Utilities”), that:
  - i. there should be balances in Account 1592, Sub-account CCA Changes, for each of the Acquired Utilities,
  - ii. notwithstanding rates were frozen for five years, there are additions for which accelerated capital cost allowance (“CCA”) would apply that are “embedded in the Acquired Utilities” from 2018 onwards,
  - iii. the Accelerated Investment Incentive Program changed the CCA rule such that for each year from 2018 until base rates are reset Hydro One will realize a windfall gain as it should be claiming CCA under accelerated rules, and
  - iv. the direction that Hydro One must calculate balances in Account 1592, Sub-account CCA Changes, including a forecast to the end of 2022, for each of the Acquired Utilities, where this balance should equal 100% of the revenue requirement impact of the CCA difference on actual (and forecast, as applicable) annual capital additions between (i) the CCA calculated using the prior CCA rules underpinning rates, and (ii) the CCA calculated using the accelerated CCA rules, applicable to each year of the period (the “Account 1592 Findings”);<sup>2</sup> and

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<sup>1</sup> Decision, p. 15

<sup>2</sup> Decision, p. 12

5. An Order varying the Decision:

- a) By substituting the Account 1576 Findings with a finding that, in respect of the former Woodstock Hydro service area, Hydro One does not need to record transactions in Account 1576 for the period from 2016 to the end of 2022, and therefore revoking the direction to quantify the balance over this period and to dispose of such balance in Hydro One's 2023 rebasing application; and
- b) By substituting the Account 1592 Findings with a finding that, in respect of the former service areas for each of the Acquired Utilities, it is appropriate that there are no balances in Account 1592, Sub-account CCA Changes, and therefore revoking the direction to calculate balances for the 2018-2022 period.

**THE GROUNDS FOR THE MOTION ARE:**

**Account 1576 Findings re: Woodstock Hydro**

6. Two key errors were made in connection with the Account 1576 Findings, namely:

- a) Erroneously interpreting the scope of Account 1576 as applying to a utility on US GAAP and incorrectly assuming, contrary to the evidence, that there are relevant financial differences for 2016-2022 to be recorded in Account 1576, and
- b) In doing the foregoing, the OEB made a ruling that is contrary to the rule against retroactive ratemaking.

***The Decision Erroneously Interprets the Scope of Account 1576 as Applying to a Utility on US GAAP***

7. The purpose of Account 1576, CGAAP Accounting Changes, is to record financial differences arising as a result of certain accounting changes to depreciation expense and capitalization policies permitted by the OEB under CGAAP in 2012, or mandated by the OEB in 2013, as further described in the OEB's relevant accounting guidance.<sup>3</sup>

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<sup>3</sup> Application, pp. 36-37.

8. The relevant accounting guidance includes the OEB's letter of July 17, 2012 in which it advises that Account 1576 has been established on a generic basis, as well as the OEB's July 2012 edition of the Accounting Procedures Handbook Frequently Asked Questions ("July 2012 FAQ").<sup>4</sup> This accounting guidance, particularly as set out in Appendix A to the July 2012 FAQ, explains that the purpose of Account 1576 is to record financial differences arising from accounting changes to depreciation expense and capitalization policies permitted or required by the OEB under Canadian Generally Accepted Accounting Principles ("CGAAP"). The specific amounts to be recorded in the account relate strictly to such financial differences that arise as between CGAAP and Modified International Financial Reporting Standards ("MIFRS"). There is nothing in the OEB's accounting guidance that says or otherwise suggests that Account 1576 in any way applies to a distributor that uses the United States Generally Accepted Accounting Principles ("US GAAP") as their basis for financial or regulatory accounting.
9. It is apparent from the OEB's accounting guidance and subsequent consideration of Account 1576 that it was designed to capture differences in Property, Plant and Equipment ("PP&E") that arose from accounting policy changes that were caused by utilities transitioning from CGAAP to MIFRS. In particular, the account was designed to capture such differences in PP&E until such time that the utility rebased under MIFRS,<sup>5</sup> at which point it would no longer be necessary to record further transactions because the newly established rates following rebasing and the basis of accounting would then be in alignment and there would be no further financial differences regarding PP&E. Under this framework, Account 1576 was designed to be applied as follows:
  - a) A utility has its rates approved under CGAAP.
  - b) Mid-rate period, the utility transitions to MIFRS.
  - c) During the balance of the rate-period, the utility continues to recover rates based on CGAAP but accounts under MIFRS.<sup>6</sup>
  - d) This gives rise to differences in PP&E due to capitalization changes and a change in asset useful lives as noted in the July 2012 FAQ (Appendix A).
  - e) Account 1576 tracks these differences.
  - f) The utility rebases under MIFRS, its new rates align with MIFRS, differences in PP&E no longer arise, and Account 1576 is disposed of and discontinued.

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<sup>4</sup> See in particular FAQ #1, #2, Appendix A, and Appendix B ([July 2012 FAQ](#)).

<sup>5</sup> Accounting Procedures Handbook, FAQ July 2012

<sup>6</sup> In the case of Woodstock, MIFRS was used for the purpose of Regulatory Reporting only. The Final Audited Financial Statements as of October 30, 2015 prior to Acquisition were prepared on the basis of CGAAP.

10. With the exception of the last step listed above, the foregoing is consistent with the circumstances of Woodstock Hydro. It rebased in 2011 under CGAAP and transitioned to MIFRS in 2012. Starting in 2012 Woodstock Hydro recorded differences in PP&A in Account 1576. However, instead of rebasing under MIFRS, Woodstock Hydro was acquired by Hydro One. In approving the acquisition, the OEB permitted Hydro One to adopt US GAAP as the basis for accounting in respect of the acquired utility effective from the October 31, 2015 closing of the acquisition and approved a 5-year deferred rebasing period in respect of the acquired utility's rates.<sup>7</sup> The former Woodstock Hydro has continued to use US GAAP as its basis of accounting and has not had its rates rebased since the acquisition.
11. In the Decision, the OEB (i) found that Hydro One should continue to record transactions in Account 1576 for the former Woodstock Hydro from 2016 to the end of 2022, and (ii) directed Hydro One to quantify the annual Account 1576 balances for this period and to dispose of the remaining balance to the legacy Woodstock Hydro customers in Hydro One's 2023 rebasing application (EB-2021-0110). However, the former Woodstock Hydro has used US GAAP since October 31, 2015. This accounting treatment is not within the scope of Account 1576, which was established by the OEB only for the purpose of allowing distributors to record financial differences between CGAAP and MIFRS until such time that they rebase under MIFRS. The OEB misinterpreted the scope of Account 1576 and erred in its determination that Hydro One should continue to record transactions in this account for the former Woodstock Hydro for a period during which US GAAP applied at all times.

***The Decision Incorrectly Assumes there are Relevant Financial Differences for 2016-2022 to be Recorded in Account 1576***

12. Implicit in the OEB's direction for Hydro One to quantify the Account 1576 balance from 2016 to the end of 2022 and to dispose of that balance to legacy Woodstock Hydro customers as part of Hydro One's 2023 rebasing application, is the assumption that there are relevant financial differences for that period to be recorded and returned. However, this assumption is contrary to the evidence. There are no such differences, and the Decision was incorrect to assume there would be any such amounts to record for that period.

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<sup>7</sup> EB-2014-0213, Decision and Order, September 11, 2015, p. 20.

13. Even if the scope of the account and the associated accounting guidance required amounts to be recorded in the account in relation to differences between CGAAP and US GAAP (which, for greater certainty, it does not), the result would be nil entries for each year since there are no material differences in PP&E between CGAAP and US GAAP. From 2012 to 2015, Woodstock Hydro was under MIFRS and its assets were therefore subject to longer useful lives. During that period, which was in the midst of a 5-year rate term that commenced in 2011 based on CGAAP accounting, Woodstock Hydro over-collected depreciation amounts in its rates, which justified the need to record and return the over-collected amounts to customers. The balance that Hydro One proposed to return to customers from Account 1576 arises from that period. Once Hydro One was approved by the OEB to use US GAAP for the former Woodstock Hydro commencing October 31, 2015, it stopped depreciating the former Woodstock Hydro assets on the same basis as was done under MIFRS, and depreciated assets consistent with US GAAP.
14. The foregoing is wholly consistent with the OEB's approval of the acquisition of Woodstock Hydro. In response to SEC Interrogatory #37 in EB-2014-0213, Hydro One indicated that it would continue to track variances between IFRS and CGAAP in the account until the closing of the proposed transaction, that it was proposing to defer clearance of the balance until the next rebasing of rates for Woodstock Hydro and that from the closing date forward, *no new principal was expected to be added* to the account balance.<sup>8</sup> No party expressed an objection nor was one expressed by the OEB in its Decision.
15. Based on the foregoing, the assumption in the Findings that there are relevant financial differences for 2016 to 2022 to be recorded in Account 1576 is incorrect. Rather, the proposed balance of - \$2.1M captured in Account 1576, derived from the 2012 to 2015 period when Woodstock Hydro was using MIFRS, appropriately captures the full amount that should be refunded to customers.

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<sup>8</sup> EB-2014-0213, Exhibit I, Tab 2, Schedule 37, Hydro One Response to SEC Interrogatory #37, filed September 22, 2014.

***The Account 1576 Findings are Contrary to the Rule Against Retroactive Ratemaking***

16. The Account 1576 Findings in effect amend the scope of Account 1576 and thereby established a new and expanded account. If applied prospectively, the OEB has the discretion to create and apply any applicable account. However, the Findings retroactively apply Account 1576, as modified. The scope of Account 1576 was modified by the Decision from (a) its established and approved purpose of capturing financial differences arising from accounting changes to depreciation expense and capitalization policies permitted by the OEB under CGAAP in relation to MIFRS, to (b) its expanded purpose of capturing any such financial differences under CGAAP in relation to both MIFRS and US GAAP. The Decision retroactively applies the modified Account 1576 to Hydro One in respect of the former Woodstock Hydro by requiring Hydro One to record amounts arising in a time period prior to the date on which the account is created, and in respect of amounts that were the subject of a final rate order and were not eligible to be recorded in a pre-existing account based on an approved scope. Requiring Hydro One to do so violates the long-established rule against retroactive ratemaking.
17. The rule against retroactive ratemaking provides that an economic regulator, in approving rates, must exercise its rate-making authority prospectively and, without express statutory authorization, may not exercise its rate-making authority retroactively or retrospectively.<sup>9</sup>

**Account 1592 Findings re All Acquired Utilities**

18. Two key errors were made in connection with the Account 1592 Findings, which result in the OEB not correctly applying the long-established ratemaking principle that benefits follow costs, namely:
- a) Misapplying the concept of rate base additions and incorrectly finding that there were “additions embedded in the acquired utilities” from 2018 onward; and
  - b) Misapplying the foregoing finding by determining that Hydro One realizes “windfall gains” from accelerated CCA on those additions.

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<sup>9</sup> *Union Gas Limited v. Ontario Energy Board*, 2015 ONCA 453 (CanLII), para 82.



***The Decision Misapplies the Concept of Rate Base Additions and Incorrectly Finds there were “Additions Embedded in the Acquired Utilities” from 2018 Onward and Misapplies this Finding by Determining Hydro One Realizes “Windfall Gains” from Accelerated CCA on those Additions***

19. Account 1592, PILs and Tax Variances, Sub-account CCA Changes, was established on a generic basis for utilities to track the revenue requirement impact of changes in CCA rules (“accelerated CCA”) arising from the Accelerated Investment Incentive Program (“AIIP”) introduced by Bill C-97, the *Budget Implementation Act, 2019, No. 1* and given Royal Assent on June 21, 2019. Accelerated CCA effectively allows the first year CCA claim to be increased up to three times the legacy amount for eligible assets, but only if those assets are acquired after November 21, 2018 and in-serviced before 2027.<sup>10</sup> In the OEB’s letter dated July 25, 2019, the OEB established this separate sub-account to track the impact of any differences that result from the accelerated CCA to the tax rates or rules that were used to determine the tax amounts that underpin rates.<sup>11</sup>
20. Given the purpose of Account 1592, Sub-account CCA Changes, the primary issue for the Account 1592 Findings is whether the amounts at issue relate to tax amounts that underpin rates for the Acquired Utilities during the period from 2018 to 2022. For the reasons described below, the amounts at issue do not relate to tax amounts that underpin rates during the 2018 to 2022 period. Consequently, the Account 1592 Findings are incorrect and result in the recording of amounts that are not related to rates, contrary to the established regulatory principle that benefits follow costs.
21. Hydro One explained in response to Staff Interrogatory #9 that “as there were no additions embedded in the Acquired Utilities’ rate filings from 2018 onwards, there would be no accelerated CCA impacts recorded in Account 1592”. Implicit in this statement is that Hydro One was referring to rate base additions as those are the only type of additions that would underpin rates. Notwithstanding this explanation, the Decision incorrectly finds that there in fact were “additions embedded in the Acquired Utilities from 2018 onwards”. Moreover, the Decision referenced but did not take issue with OEB staff’s flawed submission that “(t)he additions underpinning rates that prevailed during the Acquired Utilities’ incentive-rate setting, and subsequent deferred rebasing period, were included in each of the Acquired Utility’s last rebasing application.” Hydro One notes that OEB staff provided no support in its submissions for this incorrect assertion, which was reflected in the Account 1592 Findings. Hydro One further notes that while it did seek to rebase each of the Acquired Utilities in EB-2017-0049, that proposal was rejected by the OEB and the rebasings therefore did not occur. As such, if the OEB assumed in its Account 1592 Findings that the Acquired Utilities were rebased in EB-2017-0049, this would not be correct.

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<sup>10</sup> OEB Staff IR-9

<sup>11</sup> OEB Letter, Account 1592 – PILs and Tax Variances – CCA Changes, dated July 25, 2019

22. There have been no assets underpinning the Acquired Utilities' existing distribution rates for which accelerated CCA has been claimed or could have been claimed, as follows:

- a) Norfolk Power's last Cost of Service application was EB-2011-0272, in which it sought approval for rates effective May 1, 2012. While that application included a capital forecast to 2014, it only established rates for one year, after which Norfolk Power's rates were subject to mechanistic rate adjustments under incentive regulation or the five-year rate freeze with 1% reduction following approval of the acquisition by Hydro One;
- b) Haldimand County Hydro's last Cost of Service application was EB-2013-0134, in which it sought approval for rates effective May 1, 2014. While that application included a capital forecast to 2018, it only established rates for one year, after which Haldimand County Hydro's rates were subject to mechanistic rate adjustments under incentive regulation or the five-year rate freeze with 1% reduction following approval of the acquisition by Hydro One;
- c) Woodstock Hydro's last Cost of Service application was EB-2010-0145, in which it sought approval for rates effective May 1, 2011. While that application included a capital forecast to 2015, it only established rates for one year, after which Woodstock Hydro's rates were subject to mechanistic rate adjustments under incentive regulation or the five-year rate freeze with 1% reduction following approval of the acquisition by Hydro One;
- d) Subsequent to the Acquired Utilities' last Cost of Service applications, capital investments have continued to be made and capital assets have continued to be put into service each year for each Acquired Utility, and normal depreciation has continued to be applied. However, for any such capital assets that have been put into service subsequent to the last Cost of Service (rebasings) application for an Acquired Utility, the cost of such assets has not been added into the rate base underpinning that Acquired Utility's rates because rates have been set on a mechanistic basis either under incentive regulation, as part of deferred rebasing or pursuant to the OEB's decision in EB-2017-0049 where it denied Hydro One's request to rebase the Acquired Utilities. The addition of in-service amounts to rate base is not expected to occur until 2023, at which time (subject to OEB approval in EB-2021-0110) the applicable asset costs less normal accumulated depreciation will be added to rate base and thereafter will underpin rates for customers in those service areas. In the interim, the customers of the Acquired Utilities receive the benefit of the use of the assets that have been placed into service without paying for the costs of those assets in rates.

- e) As none of the Acquired Utilities have had their rates rebased since prior to November 21, 2018 (i.e. the effective date for the accelerated CCA tax changes), it is not possible for there to have been any capital assets placed into service and added to rate base so as to underpin rates in respect of any of the Acquired Utilities since the AIIP came into effect. Consequently, there are no assets underpinning the Acquired Utilities' existing distribution rates for which accelerated CCA has been claimed or could have been claimed.
23. Based on the foregoing, when finding that there were "additions embedded in the Acquired Utilities from 2018 onward", the OEB was incorrect because it is clear from the record that there have been no rebasings and therefore no rate base additions in respect of any of the Acquired Utilities since prior to the accelerated CCA becoming available under the AIIP. By finding that the tax benefits from accelerated depreciation on assets that are not in rate base should be for the benefit of ratepayers, the Account 1592 Findings are contrary to the long-established ratemaking principle that benefits follow costs. This is discussed further in the section below.

***The Account 1592 Findings are Contrary to the Ratemaking Principle that Benefits Follow Costs***

24. The Account 1592 aspects of the Decision are inconsistent with the benefits follow costs principle of ratemaking and are therefore in error. This is because the effect of the Account 1592 Findings is that tax benefits from accelerated depreciation, on assets that were put into service during the 2018-2022 period but which were not added to the rate bases underpinning the Acquired Utilities' rates during that period, will be for the benefit of ratepayers despite that ratepayers have not borne any of the costs underlying those assets in their rates.
25. With respect to the principle of "benefits follow costs", the Ontario Divisional Court recently explained as follows:

If a cost, not included in the utility's revenue requirement, causes or produces a benefit, then, for ratemaking purposes, that benefit is allocated to utility shareholders and not to its ratepayers. This principle of allocation is considered in the determination of issues related to the allocation of tax benefits between utility ratepayers and shareholders.

Charitable donations are an example of costs not recoverable from ratepayers that produce a tax benefit. A portion of the donation can be used as a tax credit when calculating taxes payable. The utility's actual income tax is lower because of the tax credit produced by the charitable donation. However, ratepayers do not receive the benefit of this lower tax amount because they did not pay the costs that caused it. The tax benefit is allocated to the shareholders who are responsible for the donation costs.

The taxes collected from ratepayers will be a notional sum that is higher than the actual amount paid by the utility. The notional sum will be calculated on the basis of a taxable income amount that excludes the charitable donation expense and its related tax credit . . .

. . . Therefore, under the long-established benefits follow costs principle, no part of the benefit of the Future Tax Savings is allocable to ratepayers and should instead be paid to the shareholders in its entirety. The application of this principle is not affected by the Board's mandate to approve "just and reasonable rates" or to achieve a reasonable balance between the interests of utility ratepayers and the interests of shareholders.<sup>12</sup>

26. With respect to assets put into service during the 2018-2022 period, the customers of the Acquired Utilities are receiving benefits from the use of those assets but have not and will not be paying for any of the costs of those assets until after rebasing in 2023. Similarly, in respect of those same assets, Hydro One has not been receiving and will not receive any return of or return on its investments until after rebasing in 2023 despite having incurred the costs associated with putting those assets into service. Normal depreciation will be accumulated and applied to those assets such that the costs of the assets that Hydro One proposed to add to rate base in 2023 and which will underpin rates thereafter will be reduced relative to the original costs incurred by Hydro One.
27. In the aforementioned circumstances, all of the costs associated with all capital assets that have been placed into service for the Acquired Utilities from 2018 to 2022 have or will be incurred by Hydro One. As there has and will be no recovery of those amounts through rates until 2023, the costs of those investments have been borne by Hydro One's shareholder. To the extent that those in-service additions, which are not part of rate base, give rise to tax benefits from accelerated CCA claims under the AIP, those tax benefits should be for the benefit of Hydro One's shareholder consistent with the principle of benefits follow costs. Retaining these tax benefits is not a windfall by Hydro One as it is Hydro One's shareholder that has borne the costs that have given rise to the tax benefits. By finding that those benefits should be recorded in Account 1592, Sub-account CCA Changes, and by directing that those benefits flow to ratepayers rather than being retained by Hydro One's shareholder, the OEB in making the Account 1592 Findings has violated the principle of benefits follow costs and thereby erred.

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<sup>12</sup> Hydro One Networks Inc. v. Ontario Energy Board, 2020 ONSC 4331, July 16, 2020, pp. 6 and 16.

## **PARTIAL STAY REQUEST**

28. As indicated at the outset of this notice, Hydro One is requesting an Order staying the implementation of the Account 1576 (Woodstock Hydro) and Account 1592 (All Acquired Utilities) aspects of the Decision, as further described below, pending the outcome of this motion, but otherwise proceeding with the Draft Rate Order and implementation of the Decision. In addition, as the Draft Rate Order must be filed by January 13, 2022, Hydro One has requested that a decision on the partial stay be issued on an urgent basis.
29. With respect to the Account 1576 Findings, Hydro One notes that the OEB approved the disposition of Woodstock Hydro's Account 1576 balance of -\$2,124,659 which covers the balances in the account up to 2015. The OEB ordered that amount to be disposed of over one year subject to a WACC of 6.74%. As Hydro One does not take issue with that aspect of the Account 1576 Findings, Hydro One intends to reflect those findings in the Draft Rate Order. Therefore, in relation to the Account 1576 Findings, Hydro One's partial stay request relates only to the findings (a) that Hydro One should continue to record transactions in Account 1576 to the end of 2022, (b) that Hydro One is directed to quantify the Account 1576 balance for 2016 to the end of 2022 in the Draft Rate Order Process, and (c) that Hydro One is ordered to dispose of that remaining balance from 2016 to the end of 2022 to the legacy Woodstock Hydro customers as part of its 2023 rebasing application that is currently before the OEB. Hydro One anticipates that the motion will be determined prior to the conclusion of the 2023 rebasing application, which will enable the outcome of the motion in respect of Account 1576 to be reflected at the Draft Rate Order stage in the 2023 rebasing application (EB-2021-0110).
30. With respect to the Account 1592 Findings, Hydro One notes that the OEB directed Hydro One to calculate balances for Account 1592, Sub-account CCA Changes, for each year from 2018 to the end of 2022 on the basis described in the Decision. The OEB did not direct or order the disposition of any such remaining balance, or otherwise provide guidance with respect to disposition. Therefore, in relation to the Account 1592 Findings, Hydro One's partial stay request relates to the direction to calculate balances for Account 1592, Sub-account CCA Changes, for each year from 2018 to the end of 2022 on the basis described in the Decision. No amounts in respect of this account will be reflected in the Draft Rate Order for disposition. Hydro One anticipates that the motion will be determined prior to the conclusion of the 2023 rebasing application. As such, to the extent that there are any amounts in Account 1592, Sub-account CCA Changes for any of the Acquired Utilities based on the outcome of the motion, Hydro One would propose to dispose of those amounts to the applicable legacy customers at the Draft Rate Order Stage in the 2023 rebasing application (EB-2021-0110).

**THE THRESHOLD TEST IS MET**

31. This motion raises relevant issues that are material enough to warrant a review of the Decision on its merits. Specifically:

- a) There are material and clearly identifiable errors of fact and law, or of mixed fact and law, in respect of:
  - i. The Account 1576 Findings, namely, the OEB erroneously interpreted the scope of Account 1576 as applying to a utility on US GAAP and incorrectly assumed, contrary to the evidence, that there are relevant financial differences for 2016-2022 to be recorded in Account 1576, and in doing so the OEB made a ruling that is contrary to the rule against retroactive ratemaking; and
  - ii. The Account 1592 Findings, namely, the OEB misapplied the concept of rate base additions and incorrectly found that there were “additions embedded in the Acquired Utilities” from 2018 onward, and misapplied this finding by determining that Hydro One realizes “windfall gains” from accelerated CCA on those additions.

32. These errors, if rectified, will result in material changes to the Decision, namely:

- a) Substitution of the Account 1576 Findings with a finding that, in respect of the former Woodstock Hydro, Hydro One does not need to record transactions in Account 1576 for the period from 2016 to the end of 2022, and therefore revoking the direction to quantify the balance over this period and to dispose of such balance in Hydro One’s 2023 rebasing application; and
- b) Substitution of the Account 1592 Findings with a finding that, in respect of the former service areas for each of the Acquired Utilities, it is appropriate that there are no balances in Account 1592, Sub-account CCA Changes, and therefore revoking the direction to calculate balances for the 2018-2022 period.

33. Hydro One's interests are materially harmed by the Decision sufficient to warrant a full review of the motion on the merits. Specifically:

- a) While the impact of the Account 1576 Findings are difficult to quantify given that the grounds for the motion are directly related to the question of whether and how any amounts should be quantified and reflected in the account, Hydro One notes that OEB staff in its submissions conservatively estimated that credits of \$500K per year over seven years, for a total of an additional \$3.5 million, represents a reasonable approximation of the amount that should be added to Account 1576 and returned to ratepayers. However, it is important to note that the OEB in the Decision did not accept this calculation and Hydro One does not agree with or otherwise endorse OEB staff's estimate; and
- b) The Account 1592 Findings, if not varied, would result in an estimated revenue requirement impact of approximately \$1.2 million based on Hydro One's calculation of accelerated CCA on actual and forecast in-service additions for the 2019-2022 period in relation to the Acquired Utilities, which impact is material in the context of the Acquired Utilities.

#### **RULES AND OTHER GROUNDS**

34. Rules 8, 40, 42 and 43 of the OEB's Rules of Practice and Procedure.

35. Such further grounds and material as counsel may advise and the OEB may permit.

#### **DOCUMENTARY EVIDENCE**

36. The following documentary evidence will be used at the hearing of the motion:

- a) The OEB's Decision and Order in EB-2021-0033, dated December 16, 2021;
- b) Materials from the record of this proceeding, including but not limited to interrogatory responses dated November 5, 2021, and Hydro One's reply submission dated December 3, 2021;
- c) Materials from the record of the MAADs proceedings for each of the Acquired Utilities in EB-2013-0196/0187/0198 (Norfolk); EB-2014-0244 (Haldimand); and EB-2014-0213 (Woodstock);
- d) Materials from the record of Hydro One's 2023 rebasing application in EB-2021-0110;
- e) Materials from the records of each of the Acquired Utilities' cost of service applications in EB-2011-0272 (Norfolk); EB-2013-0134 (Haldimand); and EB-2010-0145 (Woodstock);

- f) Relevant OEB Reports, guidelines or letters, including but not limited to:
  - i. The Addendum Report of the Board in EB-2008-0408 (Appendix A) issued June 13, 2011
  - ii. The July 17, 2012 letter that approved the new variance account for Account 1576
  - iii. The July 2012 Accounting Procedure Handbook FAQs, including but not limited to Appendix A thereof
  - iv. The July 25, 2019 letter that established a separate sub-account for Account 1592 – PILs and Tax Variances – CCA Changes;
- g) Hydro One's submissions on this Motion, which will be delivered in accordance with the OEB's procedural order(s) in regards to this Motion; and
- h) Such further and other documentary evidence as counsel may advise, and the OEB may permit.



January 7, 2022

**TORYS LLP**

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