

Hydro One Networks Inc.
7th Floor, South Tower
483 Bay Street
Toronto, Ontario M5G 2P5
www.HydroOne.com

Tel: (416) 345-1507
Fax: (416) 345-6833
Kathleen.Burke@HydroOne.com



Kathleen Burke
Director, Applications Delivery
Regulatory Affairs

BY EMAIL AND RESS

January 31, 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-2022-0071 - 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 – Argument in Chief

In accordance with Procedural Order No. 1, please find enclosed Hydro One Networks Inc.'s Argument in Chief with respect to a Motion to Review and Vary aspects of the EB-2021-0033 Decision and Order relating to Account 1576 and Account 1592 pursuant to Rule 42 of the Ontario Energy Board's Rules of Practice and Procedure.

An electronic copy of this has been filed through the Ontario Energy Board's Regulatory Electronic Submission System (RESS).

Sincerely,

A handwritten signature in black ink that reads "Kathleen Burke". The signature is written in a cursive, flowing style.

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 a Motion to Review and Vary aspects of the EB-2021-0033 Decision and Order relating to Account 1576 and Account 1592 pursuant to Rule 42 of the Ontario Energy Board’s *Rules of Practice and Procedure*.

ARGUMENT IN CHIEF

A. OVERVIEW

1. On December 16, 2021, the Ontario Energy Board (OEB or the Board) issued a Decision and Order in EB-2021-0033 (the “Decision”). The Decision concerned an application (the “2022 Rate Application”) by Hydro One Networks Inc. (Hydro One) for approval of 2022 distribution rates in respect of the legacy service areas for the former Norfolk Power Distribution Inc. (Norfolk Power), the former Haldimand County Hydro Inc. (Haldimand County Hydro) and the former Woodstock Hydro Services Inc. (Woodstock Hydro) (together, the “Acquired Utilities”).
2. On January 7, 2022, Hydro One filed a Notice of Motion to review and vary the Decision pursuant to Rule 42 of the OEB’s *Rules of Practice and Procedure*. Further to the OEB’s Notice of Hearing, Procedural Order No. 1 and Decision on Request for a Partial Stay, issued January 12, 2022, the following is Hydro One’s Argument in Chief. The motion is in respect of two discrete aspects of the Decision, namely the OEB’s findings in relation to

- (a) Account 1576 (CGAAP Accounting Changes) for the former Woodstock Hydro, and
- (b) Account 1592 (Sub-account CCA Changes) for all three of the Acquired Utilities.

Account 1576

3. Account 1576 (CGAAP Accounting Changes) is an account that was established by the OEB on a generic basis to allow for the recording of certain financial differences that were expected to arise, in relation to depreciation expense and capitalization policies, for distributors transitioning from Canadian Generally Accepted Accounting Principles (CGAAP) to Modified International Financial Reporting Standards (MIFRS). In relation to Account 1576 for the former Woodstock Hydro, the OEB found in the Decision that Hydro One should continue to record transactions in this account to the end of 2022, and 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 such remaining balance in Account 1576 specifically to legacy Woodstock Hydro customers as part of its 2023 rebasing application that is currently before the OEB in EB-2021-0110 (the “Account 1576 Findings”).¹
4. As discussed in Part B, below, the OEB erred in its Account 1576 Findings by:
 - a. interpreting the scope of Account 1576 as applying to the former Woodstock Hydro which at all relevant times used and was approved by the OEB to use US GAAP as its accounting standard, and thereby amending and expanding the scope of Account 1576 and retrospectively applying that new scope to prior periods, which is contrary to the rule against retroactive ratemaking; and
 - b. incorrectly assuming, contrary to the evidence, that there are relevant financial differences for 2016-2022 to be recorded in Account 1576 in respect of the former Woodstock Hydro.

¹ Decision, p. 15 [Tab 01 of the Book of Authorities of Hydro One Networks Inc. (BOA)].

Account 1592

5. Account 1592 was established by the OEB on a generic basis to allow utilities to track the revenue requirement impacts of certain PILs and tax variances. The OEB established a separate sub-account within Account 1592, referred to as “Sub-account CCA Changes”, to track the revenue requirement impact of any differences that result from changes in capital cost allowance (CCA) rules arising from the Accelerated Investment Incentive Program (“Accelerated CCA”). More particularly, this sub-account was established to track the impact of any differences that result from Accelerated CCA to the tax rates or rules that were used to determine the tax amounts that underpin rates. The OEB in the Decision found there should be balances in this sub-account for each of the Acquired Utilities. The OEB determined that, notwithstanding that rates were frozen for five years for each of the Acquired Utilities, there are “additions” for which Accelerated CCA would apply that are “embedded in the Acquired Utilities” from 2018 onwards. The OEB also found that 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 the Accelerated CCA rules. The OEB therefore directed Hydro One to calculate balances in Account 1592, including a forecast to the end of 2022, for each of the Acquired Utilities, such that 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”).²
6. As discussed in Part C, below, the OEB erred in its Account 1592 Findings by:
 - a. misapplying the concept of rate base additions and incorrectly finding that there were “additions embedded in the acquired utilities” from 2018 onward, upon which Hydro One realizes “windfall gains”;

² Decision, p. 13 [Tab 01 of the BOA].

- b. incorrectly applying the long-established ratemaking principle that benefits follow costs by finding that tax benefits from accelerated depreciation on assets in-service during the 2018-2022 period, but not added to the respective rate bases underpinning the Acquired Utilities' rates, should be for the benefit of ratepayers despite the fact that ratepayers had not borne any of the costs of the in-serviced assets in their rates; and
 - c. requiring Hydro One to use a method for calculating balances for 2018 to 2022 that is not consistent with the approved terms of Account 1592.
7. Hydro One therefore respectfully requests that:
- a. in substitution for the Account 1576 Findings, the OEB order, in respect of the former Woodstock Hydro service area, that Hydro One is not required to record transactions in Account 1576 for the period from 2016 to the end of 2022, and that Hydro One is not directed to quantify the balance over this period or to dispose of such balance in Hydro One's 2023 rebasing application; and
 - b. in substitution for the Account 1592 Findings, the OEB order, in respect of the former service areas for each of the Acquired Utilities, that there are no balances in Account 1592, Sub-account CCA Changes, and that Hydro One is not directed to calculate balances for the 2018-2022 period.
8. The following sections set out the relevant facts, followed by a discussion of the issues and the law in relation to each of the above errors

B. SUBMISSIONS RELATING TO THE ACCOUNT 1576 FINDINGS

(a) Facts

9. On July 17, 2012, the OEB issued a letter to all licensed distributors to provide regulatory accounting policy direction on matters arising from the announcement of a one-year

deferral option for transitioning to IFRS.³ The OEB indicated that it had approved a new variance Account 1576 (Accounting Changes Under CGAAP). The context for approving the new account, as described in the July 17, 2012 letter, was as follows:

- a. The Canadian Accounting Standards Board (CASB) announced in March 2012 that it would allow rate-regulated entities a one-year deferral option for transitioning to IFRS in 2012.
 - b. In light of the CASB's announcement, the OEB issued a letter to electricity distributors on April 30, 2012 to provide direction regarding the deferral option. The letter indicated, among other things, that, the OEB would not require regulatory accounting and reporting for 2012 to be in MIFRS if a distributor is not required to adopt IFRS for financial reporting and opts to remain on CGAAP. In addition, the letter indicated that, for those distributors that have already transitioned to IFRS or whose rates are set based on MIFRS, the OEB expects such distributors to conduct regulatory accounting and reporting for 2012 in MIFRS.
 - c. Following the April 30, 2012 letter, the OEB received numerous inquiries for regulatory accounting direction from distributors in relation to their transition to IFRS. In particular, distributors were requesting to make changes to their depreciation rates and capitalization policies while still under CGAAP in 2012, and sought direction on whether the OEB would allow those accounting changes and, if so, what would be the approval process.
10. The July 17, 2012 letter set out the OEB's regulatory accounting policy direction regarding changes to depreciation expense and capitalization policies for those distributors that were transitioning to MIFRS but who remained under CGAAP in 2012. The OEB noted that a key benefit that was expected under MIFRS was that "changes to the depreciation expense and capitalization policies would be applied uniformly and in the same timeframe by all

³ OEB Letter re regulatory accounting policy direction regarding changes to depreciation expense and capitalization policies in 2012 and 2013, July 17, 2012 (Letter re Approval of Account 1576) [Tab 02 of the BOA].

distributors (with a few exceptions, for example, distributors adopting US GAAP)”. The OEB explained that several distributors had already adopted the relevant changes in their 2012 rate applications, that the OEB would permit those distributors that were deferring their transitions to IFRS to also adopt the regulatory accounting changes in 2012, and that these regulatory accounting changes would become mandatory in 2013 for those distributors that defer their transitions to IFRS but do not elect to make the regulatory accounting changes in 2012.

11. Regarding the establishment of Account 1576, the July 17, 2012 letter states at p. 3:

The Board has approved a new variance Account 1576, Accounting Changes Under CGAAP, for distributors to record the financial differences arising as a result of the election to make these accounting changes under CGAAP in 2012 or to make these changes as mandated by the Board in 2013, if applicable.

The account description of Account 1576 and the associated accounting requirements, including an illustrative example, are provided in the July 2012 Accounting Procedures Handbook – Frequently Asked Questions (see question and answer #2) posted on the Board’s website . . .

12. The OEB’s July 2012 edition of its Accounting Procedures Handbook Frequently Asked Questions (the “July 2012 FAQ”) provides the following additional direction with respect to Account 1576:

- a. The purpose of Account 1576 (Accounting Changes Under CGAAP) is “for distributors to record the financial differences arising as a result of the election to make accounting changes under Canadian GAAP in 2012 or to make these accounting changes in 2013 as mandated by the Board (see Q and A #1 above). The account description for Account 1576 is provided in Appendix A of the APH-FAQs.” The referenced Q and A #1 reiterates the July 17, 2012 letter by describing the OEB’s regulatory accounting policy direction to distributors deferring the

adoption of IFRS in 2012 and requesting accounting changes while reporting under CGAAP in 2012.⁴

- b. Appendix A of the July 2012 FAQ specifies the required accounting for Account 1576, which includes the following (**emphasis** added):

- A. Distributors shall maintain records before any accounting changes are made to Canadian GAAP of the amounts in the PP&E accounts eligible for inclusion in rate base, commencing in 2011 under their previous accounting policies in Canadian GAAP (or 2012 if mandatory application is applicable), **and continuing until their first cost of service application under modified IFRS**. This will produce a figure for the PP&E accounts that is consistent with previous accounting policies and their last cost of service application.
- B. Distributors shall also calculate “adjusted” values for the PP&E accounts eligible for inclusion in rate base arising from the implementation of accounting changes for depreciation expense and capitalization policies prospectively on January 1, 2012 (or January 1, 2013 if mandatory application is applicable) and as recorded in their accounting system applicable in each year between the previous Canadian GAAP in 2011 (or 2012 if mandatory application is applicable) **and their first cost of service application under modified IFRS**.
- C. **Distributors shall record in this variance account the cumulative difference between items A and B above**. The offsetting entry will go to Account 4305, Regulatory Debit or Account 4310, Regulatory Credit. **A journal entry to record the variance is required at the end of the fiscal year for each year until the distributor’s rates are reset under modified IFRS through a cost of service application**. The distributor may elect to use monthly journal entries. No interest carrying charges or a rate of return is permitted in this account.

⁴ See Ontario Energy Board Accounting Procedures Handbook Frequently Asked Questions, July 2012, FAQ #1 and #2 [Tab 03 of the BOA].

13. Woodstock Hydro rebased in 2011 under CGAAP and transitioned to MIFRS in 2012.⁵ Consistent with the OEB's accounting guidance described above, Woodstock Hydro started to record differences in Property, Plant and Equipment (PP&E) in Account 1576 in 2012.
14. Woodstock Hydro was acquired by Hydro One in 2015. In approving Hydro One's acquisition of Woodstock Hydro, 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. In addition, the OEB approved a 5-year deferred rebasing period in respect of the acquired utility's rates.⁶ Hydro One has continued to use US GAAP as its basis of accounting in respect of the former Woodstock Hydro and has not rebased the rates of the former Woodstock Hydro since the acquisition.
15. In the 2022 Rate Application, with respect to Account 1576 for the former Woodstock Hydro, Hydro One proposed to dispose of a credit balance of \$2,267,861 and noted that transactions in this account ceased in 2015, coinciding with the year of Woodstock Hydro's transition to US GAAP.⁷
16. In its submission, Hydro One explained that the purpose of Account 1576 is to record the financial differences arising as a result of accounting policy changes to depreciation expense and capitalization policies permitted by the OEB for distributors transitioning from CGAAP to MIFRS, and that since Woodstock Hydro was permitted to adopt US GAAP for accounting and regulatory purposes in 2015 and was no longer applying MIFRS, there was no need to continue recording entries in Account 1576 because Account 1576 was no longer relevant to its circumstances.⁸

⁵ 2022 Rate Application, August 27, 2021, p. 39.

⁶ EB-2014-0213, Decision and Order, September 11, 2015, p. 20 [Tab 04 of the BOA].

⁷ 2022 Rate Application, August 27, 2021, pp. 36-37, 39-40 [Tab 05 of the BOA]. See also EB-2021-0033, Hydro One's response to OEB Staff #19(c) [Tab 06 of the BOA]. See Footnote 29 of the Decision regarding OEB Staff's updated calculation of the balance [Tab 01 of the BOA].

⁸ EB-2021-0033, Hydro One, Reply Submission, December 3, 2021, pp. 14-15 [Tab 07 of the BOA].

17. In the Decision, the OEB accepted the submissions of OEB staff without explanation, stating:

The OEB agrees with OEB staff that Hydro One should continue to record transactions in Account 1576 to the end of 2022, which will coincide with rebasing for Woodstock Hydro. The OEB therefore directs Hydro One to quantify the Account 1576 balance for 2016 to the end of 2022 in the draft rate order process, and orders Hydro One to dispose of this remaining balance in Account 1576 specifically to the legacy Woodstock Hydro customers as part of its 2023 rebasing application that is currently before the OEB.⁹

(b) Issues and Law

18. It is Hydro One's submission that the OEB erred in its Account 1576 Findings in three key respects, each of which is discussed below.

(i) *Erroneously Interpreting the Scope of Account 1576 as Applying to a Utility on US GAAP*

19. Because the OEB required Hydro One to record transactions in Account 1576 to the end of 2022 in respect of the former Woodstock Hydro, notwithstanding that the former Woodstock Hydro had OEB approval to use US GAAP from the effective date of the acquisition in late 2015, the OEB in the Decision effectively determined that Account 1576 applies to a utility that uses US GAAP even though this was not contemplated within the OEB approved scope of Account 1576.
20. The finding that Account 1576 applies to a utility that uses US GAAP is inconsistent with the OEB's own accounting policy directions from the time that Account 1576 was established, and there have been no changes that have subsequently expanded the scope of Account 1576 to apply to utilities using US GAAP. It is clear from the facts set out in Part B(a), above, that the purpose and scope of Account 1576 has, at all times since its inception, been specific to distributors transitioning from CGAAP to MIFRS and, as a result, it is not

⁹ Decision, p. 15 [Tab 01 of the BOA].

applicable to distributors that use US GAAP, especially during the 2015 – 2022 time period in question. In particular,

- a. The July 17, 2012 letter establishing Account 1576 was issued to provide regulatory accounting direction to distributors that were in the process of transitioning from CGAAP to MIFRS and who, as a result of an announcement from the CASB, were presented with the option of deferring their transitions to MIFRS by one year;
- b. The July 17, 2012 letter indicates that the OEB recognized at the time that the circumstances being addressed by its policy direction, and by its approval of Account 1576, were not applicable to distributors on or transitioning to US GAAP. This is evident from the OEB’s statement that a key benefit expected under MIFRS was that “changes to the depreciation expense and capitalization policies would be applied uniformly and in the same timeframe by all distributors (with a few exceptions, for example, distributors adopting US GAAP)”;
- c. The language used in the July 17, 2012 letter to announce the account implicitly references its purpose as being in relation to distributors transitioning to MIFRS. Specifically, the letter states that the Board has approved a new variance Account 1576, Accounting Changes Under CGAAP, for distributors to record the financial differences “arising as a result of the election to make these accounting changes under CGAAP” in 2012 or to make these changes as mandated by the Board in 2013, if applicable. The “election” that the OEB refers to arises from the option that became available to distributors at the time to continue with their transitions to MIFRS or to defer their transitions to MIFRS by one year based on the announcement by the CASB; and
- d. The specific accounting requirements for Account 1576, as set out in Appendix A of the July 2012 FAQ, include multiple express references indicating that the mechanics of the account assumed and were dependent upon the relevant distributor transitioning to MIFRS.

21. It is also notable that OEB staff, in its submission, expressly acknowledges that Account 1576 was not intended to apply to a distributor that uses US GAAP as its basis for accounting. Specifically, OEB staff stated that “Account 1576 did not contemplate a situation where a distributor would implement the OEB mandated capitalization and depreciation policy changes, then adopt US GAAP instead of International Financial Reporting Standards (IFRS)”.¹⁰ If the account did not contemplate such a situation and was not established to address such a situation, but that situation is exactly what transpired for the former Woodstock Hydro, then it is unreasonable and incorrect to conclude that Account 1576 should now be interpreted as applying to the former Woodstock Hydro once it adopted US GAAP in 2015.
22. The amounts to be recorded in Account 1576 relate strictly to financial differences that arise as between CGAAP and 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 or was transitioning to US GAAP as their basis for financial or regulatory accounting.
23. Account 1576 was designed to capture differences in 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, at which point it would no longer be necessary to record further transactions in the account 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.

¹⁰ EB-2021-0033, OEB Staff Submission, November 19, 2021, p. 12 [Tab 08 of the BOA].

- c. During the balance of the rate-period, the utility continues to recover rates based on CGAAP but accounts under MIFRS.
 - 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.
24. With the exception of the last step listed above, the foregoing is consistent with the circumstances of Woodstock Hydro. As described in Part B(a), it rebased in 2011 under CGAAP and transitioned to MIFRS in 2012. Starting in 2012 Woodstock Hydro recorded differences in PP&E in Account 1576, but 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 for 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. The former Woodstock Hydro has continued to use US GAAP and has not had its rates rebased since the acquisition.
25. Upon adopting US GAAP at the end of 2015, Account 1576 stopped applying to the former Woodstock Hydro and, as such, no further amounts were recorded in the account from that point onward. The OEB's finding that Hydro One should continue to record transactions in Account 1576 for the former Woodstock Hydro from 2016 to the end of 2022, and directing Hydro One to quantify the annual Account 1576 balances for this period for disposal to legacy Woodstock Hydro customers is not correct. This accounting treatment is not within or supported by the established scope of Account 1576.

**(ii) *Making Findings on Account 1576 that are Contrary to the Rule
Against Retroactive Ratemaking***

26. The Account 1576 Findings in effect amend the scope of Account 1576 from that which was previously approved by the OEB and thereby established a new and expanded Account 1576. The OEB has the discretion to create and apply any applicable account, including a new and expanded Account 1576, on a prospective basis. However, that is not what the OEB did in the Decision. Rather, the OEB required the new and expanded, modified Account 1576 to be applied retroactively, which it was not permitted to do.
27. 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 modified account was created, and in respect of amounts that were the subject of final rate orders and which were not eligible to be recorded in a pre-existing account based on its approved scope. Requiring Hydro One to do so violates the long-established rule against retroactive ratemaking.
28. 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.¹¹ By applying the modified Account 1576 to the period beginning in 2016, the OEB in the Decision exercised its ratemaking authority retroactively and it did not have express statutory authority to do so.

¹¹ *Union Gas Limited v. Ontario Energy Board*, 2015 ONCA 453 (CanLII), para 82. (*Union Gas*) [Tab 09 of the BOA].

29. The courts have found that a critical factor for determining whether a regulator is engaging in retroactive ratemaking is the party's "knowledge".¹² As the Alberta Court of Appeal in *ATCO 2014* explained in reference to two Supreme Court of Canada decisions, "both *Bell Canada 1989* and *Bell Alliant* illustrate the same preoccupation: were the affected parties aware that the rates were subject to change? If so, the concerns about predictability and unfairness that underlie the prohibitions against retroactive and retrospective ratemaking become less significant".¹³ The Ontario Court of Appeal in *Union Gas* agreed with the decision in *ATCO 2014* in this respect and considered the question of knowledge in assessing whether the circumstances at issue resulted in prohibited retroactive ratemaking.¹⁴
30. Hydro One had no knowledge that any amounts in respect of the 2016-2022 period for the former Woodstock Hydro were subject to change. Based on the OEB's July 17, 2012 letter establishing Account 1576, Hydro One (including the former Woodstock Hydro) has understood that distributors adopting US GAAP are an exception to the OEB's regulatory accounting treatment for changes to depreciation and capitalization policies, to which Account 1576 relates. In addition, the letter indicated that Account 1576 was approved for the purpose of recording financial differences resulting from an election that was only available to distributors transitioning from CGAAP to MIFRS. Moreover, the OEB took no issue when Hydro One advised at the time of its acquisition that it did not intend to record any amounts in Account 1576 during those years. These factors further demonstrate that the Account 1576 Findings are contrary to the rule against retroactive ratemaking.

¹² *ATCO Gas and Pipelines Ltd. v. Alberta (Utilities Commission)*, 2014 ABCA 28, para 51-54 (*ATCO 2014*) [Tab 10 of the BOA].

¹³ *ATCO 2014*, para 56-57 [Tab 10 of the BOA].

¹⁴ *Union Gas*, para 90-103 [Tab 09 of the BOA].

***(iii) Incorrectly Assuming there are Relevant Financial Differences for
2016-2022 to be Recorded in Account 1576***

31. 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 is the assumption that there are relevant financial differences for that period to be recorded and returned. However, this assumption is incorrect and contrary to the evidence. There are no such differences, and the Decision was wrong to assume there would be any such differences to record for that period.
32. 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 on account of there being 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 than those that underpinned its rates. Consequently, during that period, which was in the midst of a 5-year rate term that commenced in 2011 based on CGAAP accounting, Woodstock Hydro had higher depreciation amounts in its rates, which justified the need to record and return the over-collected amounts to customers through Account 1576. The balance that Hydro One proposed to return to customers from Account 1576 arises from that period. However, once Hydro One was approved to use US GAAP for the former Woodstock Hydro commencing October 31, 2015, it stopped depreciating the former Woodstock Hydro's assets on the same basis as was done under MIFRS, and instead depreciated those assets consistent with US GAAP. As a result, the fact is that there are no financial differences for the period 2016-2022 to be recorded in Account 1576.
33. It is also important to recognize that the foregoing is wholly consistent with the OEB's approval of the acquisition of Woodstock Hydro in EB-2014-0213. In response to SEC Interrogatory #37 in that proceeding, Hydro One advised that it intended to 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.¹⁵ This is exactly what Hydro One has done, and no party expressed an objection nor was one expressed by the OEB in its Decision in EB-2014-0213.

34. Based on the foregoing, the assumption underlying the OEB's Account 1576 Findings that there are relevant financial differences for 2016 to 2022 to be recorded in Account 1576 is incorrect. Rather, the proposed principal 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.

C. SUBMISSIONS RELATING TO THE ACCOUNT 1592 FINDINGS

(a) Facts

35. On July 25, 2019, the OEB issued a letter to all rate-regulated utilities in Ontario to provide accounting direction regarding certain changes in regulatory or legislated tax rules for CCA.¹⁶ The OEB noted that under the Accounting Procedures Handbook, distributors are required to record the impact of any differences that result from legislative or regulatory changes to tax rates or rules in Account 1592 – PILs and Tax Variances. The OEB indicated in the letter that it was establishing on a generic basis a new separate sub-account of Account 1592 specifically for the purposes of tracking the impact of changes in CCA rules. The context for establishing the new sub-account and related OEB direction, as described in the July 25, 2019 letter, was as follows:

- a. Bill C-97, the *Budget Implementation Act, 2019, No. 1*, had recently received Royal Assent and included various changes to federal income tax, including in particular the introduction of the Accelerated Investment Incentive Program (AIIP), which

¹⁵ EB-2014-0213, Hydro One Response to SEC Interrogatory #37 [Tab 11 of the BOA].

¹⁶ OEB Letter re Accounting Direction Regarding Bill C-97 and Other Changes in Regulatory or Legislated Tax Rules for Capital Cost Allowance. July 25, 2019 (OEB Letter re Account 1592) [Tab 12 of the BOA].

provides for a first-year increase in CCA deductions on eligible capital assets acquired after November 20, 2018;

- b. In anticipation of material impacts on taxes payable by utilities, the OEB found it appropriate to provide accounting direction in respect of the impacts of the AIIP and future legislative or regulatory changes to tax rates or rules for CCA;
 - c. Pursuant to the Accounting Procedures Handbook, Account 1592 is used to record the impact of differences resulting from legislative or regulatory changes to tax rates or rules that are assumed in the OEB Tax Model which is used to determine the tax amount underpinning rates, whereby the impact of difference not reflected in rates are to be recorded in Account 1592;
 - d. Distributors were expected to record the impacts of CCA rule changes in Account 1592 for the period from November 21, 2018 until the effective date of their next cost-based rate order and, for greater transparency, the OEB established a separate CCA Changes sub-account for this purpose; and
 - e. Utilities were expected to record, in the CCA Changes sub-account, “the full revenue requirement impact of any changes in CCA rules that are not reflected in base rates”, and to bring forward any tracked amounts for review and disposition in accordance with the OEB’s filing requirements but generally coinciding with the utility’s next cost-based rate application.
36. Accelerated CCA allows a first year CCA claim to be increased up to three times the legacy amount (i.e. the amount allowed prior to the AIIP) for eligible assets, but only if those assets are acquired after November 21, 2018 and in-serviced before 2027.¹⁷
37. There have been no assets underpinning the Acquired Utilities’ existing distribution rates for which accelerated CCA has been claimed or could have been claimed based on the

¹⁷ EB-2021-0033, Hydro One, Response to OEB Staff Interrogatory #9 [Tab 13 of the BOA].

timing of their prior rebasings relative to the introduction of the AIIP and the manner in which their rates have subsequently been established, 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 either to mechanistic rate adjustments under incentive regulation or to 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 either to mechanistic rate adjustments under incentive regulation or to the five-year rate freeze with 1% reduction following approval of the acquisition by Hydro One; and
 - 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 either to mechanistic rate adjustments under incentive regulation or to the five-year rate freeze with 1% reduction following approval of the acquisition by Hydro One.
38. While Hydro One acknowledges that it sought 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.¹⁸ Instead, Hydro One is seeking to rebase the Acquired Utilities in 2023 through EB-2021-0110, which is currently before the OEB.

¹⁸ EB-2017-0049, Decision and Order, March 7, 2019, p. 39 [Tab 14 of the BOA].

39. As the Decision refers ambiguously to “additions”, it is helpful to clarify the distinction between ‘in-service additions’ and ‘rate base additions’ in the context of the Acquired Utilities. Following each of the Acquired Utilities’ last Cost of Service applications, capital investments have been made and capital assets have been put into service each year for each Acquired Utility (i.e. in-service additions), and normal depreciation has continued to be applied to those in-service assets. However, for any such capital assets that have been put into service subsequent to the last Cost of Service (rebasing) application for an Acquired Utility, the costs of such assets have not been added into the rate base underpinning that Acquired Utility’s rates (i.e. there have been no rate base additions). Instead, rates for the Acquired Utilities have been set on a mechanistic basis either under incentive regulation (whether prior to commencement of the deferred rebasing period or pursuant to the OEB’s decision in EB-2017-0049), or as part of deferred rebasing. 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.
40. The 2022 Rate Application did not include any balances in Account 1592 (Sub-account CCA Changes) for any of the Acquired Utilities. Hydro One indicated in response to an interrogatory that, as there were no in-service additions embedded in the Acquired Utilities’ rates from 2018 onwards (i.e. no rate base additions), there were no Accelerated CCA impacts recorded in that sub-account for any of the Acquired Utilities.¹⁹
41. In its submissions, Hydro One further explained that, because the Acquired Utilities have not rebased, the approved rates that have been in effect since rebasing have been disconnected from the various components of revenue requirement, including fixed asset additions (i.e. in-service additions).²⁰ Therefore, because the Acquired Utilities have not rebased, their rates are not based on any of the fixed asset additions that have been in-

¹⁹ Hydro One, Response to OEB Staff IRR #9 [Tab 13 of the BOA].

²⁰ Hydro One, Reply Submission, December 3, 2021, p. 13 [Tab 07 of the BOA].

served since those utilities were acquired. On that basis, Hydro One argued that it would not be appropriate for it to return to customers any tax benefits arising from Accelerated CCA in relation to in-service fixed asset additions that are not reflected in rates and, therefore, it is appropriate that there are zero balances in Account 1592 (Sub-account CCA Changes) for each of the Acquired Utilities.²¹

42. In the Decision, the OEB accepted and largely adopted the submissions of OEB staff, stating:

The OEB agrees with OEB staff's submission that there should be 1592 sub-account balances for each of the Acquired Utilities. The OEB does not agree with Hydro One's Reply submission that because rates were frozen over a five-year period that fixed assets are also frozen and that there are no additions for which accelerated CCA would apply. Nor does the OEB accept Hydro One's rationale that there were no additions embedded in the Acquired Utilities from 2018 onwards. Notwithstanding that rates were frozen for five-years, the Accelerated Investment Incentive Program (AIIP) 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.

The OEB directs Hydro One to calculate 1592 sub-account balances including a forecast to the end of 2022. The balances in the sub-accounts 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.²²

(b) Issues and Law

43. It is Hydro One's submission that the OEB erred in its Account 1592 Findings in three key respects, each of which is discussed below:

²¹ Hydro One, Reply Submission, December 03, 2021, p. 13 [Tab 07 of the BOA].

²² Decision, pp. 12-13 [Tab 01 of the BOA].

(i) *Misapplying the Concept of Rate Base Additions and Incorrectly Finding there were “Additions Embedded in the Acquired Utilities” from 2018 Onward, Upon Which Hydro One Realizes “Windfall Gains”*

44. Despite that the Acquired Utilities have not rebased since the introduction of Accelerated CCA under the AIIP, the OEB in the Decision concluded that there nevertheless are “additions” for which Accelerated CCA would apply. The Decision provides no explanation for this finding or clarification as to what “additions” are considered to be subject to Accelerated CCA. For the reasons set out below, it is apparent that the OEB in the Decision has misapplied the concept of rate base additions and, as a result, incorrectly found that there were “additions embedded in the Acquired Utilities” and that Hydro One realizes “windfall gains” by claiming Accelerated CCA on those additions.
45. As described in Part C(a), above, Account 1592 (Sub-account CCA Changes) was established for utilities to track the revenue requirement impact of Accelerated CCA, which is only available for assets are acquired after November 21, 2018 and in-serviced before 2027.²³ 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 Accelerated CCA relative to the tax rates or rules that were used to determine the tax amounts that underpin rates.²⁴ Tax amounts that underpin rates were identified as the key aspect that would generate the variance.
46. Given the purpose of the sub-account, 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. As set out below, the amounts at issue do not relate to tax amounts that underpin the Acquired Utility rates during the 2018 to 2022 period. Consequently, the Account 1592 Findings are incorrect and result in the recording

²³ Hydro One, Response to OEB Staff Interrogatory #9 [Tab 13 of the BOA].

²⁴ OEB Letter re Account 1592 [Tab 12 of the BOA].

of amounts that are not related to rates, contrary to the established regulatory principle that benefits follow costs.

47. Hydro One explained in response to an interrogatory 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”.²⁵ Implicit in this statement is that Hydro One was referring to rate base additions, as those are the only type of additions that could underpin rates. Notwithstanding this explanation, the Decision incorrectly finds that there in fact were “additions embedded in the Acquired Utilities from 2018 onwards”.
48. The Decision references, and effectively adopts, 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. The AIIP introduced a change in the CCA rule that previously underpinned rates approved in the Acquired Utilities’ last rebasing application. For each year from 2018 until the year in which base rates are reset to reflect the new CCA rules, for its Acquired Utilities, Hydro One is realizing a windfall gain associated with CCA changes as it would be claiming CCA at an accelerated rate compared to the CCA embedded in its rates”.²⁶
49. The foregoing submission that the OEB accepted in the Decision is flawed because the additions underpinning rates from the time of each Acquired Utility’s last rebasing application, i.e. their rate base additions, would have been made up of assets that were placed into service prior to or during the test years for those rebasing applications. Those test years ranged from 2011-2014 for the three utilities. The AIIP applies to first year CCA claims for eligible assets, but only if those assets are acquired after November 21, 2018 and in-serviced before 2027. Therefore, none of the rate base additions underpinning rates from the time of each Acquired Utility’s last rebasing applications could possibly have been eligible for Accelerated CCA. Those assets had to have been acquired well before

²⁵ Hydro One, Response to OEB Staff Interrogatory #9 [Tab 13 of the BOA].

²⁶ See OEB Staff Submission, pp. 10-11; and the Decision, p. 12 [Tabs 08 & 01 of the BOA].

November 21, 2018. Moreover, none of the assets acquired and in-serviced after November 21, 2018 have been added to the rate bases of the Acquired Utilities because their rates have not been rebased since well before that date. Consequently, such assets do not underpin rates for customers of the Acquired Utilities. Therefore, contrary to OEB staff's submission and the OEB's Account 1592 Findings, Hydro One has not at any point realized any "windfall gains" in relation to Accelerated CCA for the Acquired Utilities.

50. 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. Moreover, none of the rate base additions made in the last rebasing applications for each of the Acquired Utilities could have been eligible for Accelerated CCA. By finding that the tax benefits from accelerated depreciation, on assets that are not in rate base and that do not underpin rates, 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.

(ii) The Account 1592 Findings are Contrary to the Ratemaking Principle that Benefits Follow Costs

51. The Account 1592 Findings 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 will be for the benefit of ratepayers even though ratepayers have not borne any of the costs underlying those assets in their rates. As ratepayers have not borne the costs of those assets in their rates, they should not receive any tax benefits that may arise from those assets.
52. 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.²⁷

53. 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 (in EB-2021-0110) and which will underpin rates thereafter will be reduced relative to the original costs incurred by Hydro One and at no point will ratepayers incur costs relating to those depreciated amounts.

²⁷ *Hydro One Networks Inc. v. Ontario Energy Board*, 2020 ONSC 4331, July 16, 2020, pp. 6 and 16 [Tab 15 of the BOA].

54. In the above-noted 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 AIIP, 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 for Hydro One as it is Hydro One's shareholder that has borne all of the costs that have given rise to those tax benefits. By finding that those tax benefits should be recorded in Account 1592 (Sub-account CCA Changes), and by directing that those benefits flow to ratepayers rather than be 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.

(iii) Requiring a Method for Calculating Balances for 2018 to 2022 that is Not Consistent with the Approved Terms of Account 1592

55. While Hydro One's primary submission with respect to Account 1592 is that, for the reasons set out above it is not appropriate to require any calculation of balances for Account 1592 for the 2018 to 2022 period, Hydro One further submits that the method with which the OEB directed Hydro One to calculate balances for this period is inconsistent with the terms under which Account 1592 was established, as follows.
56. In the Account 1592 Findings, the OEB directs Hydro One to calculate balances in Account 1592 (Sub-account CCA Changes), for each of the Acquired Utilities, as follows:

The balances in the sub-accounts 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.²⁸

²⁸ Decision, p. 13 (emphasis added) [Tab 01 of the BOA].

57. The purpose of the sub-account is to track the revenue requirement impact of the change in CCA rules which introduced Accelerated CCA under the AIIP. In establishing the sub-account, the OEB noted that under the Accounting Procedures Handbook, Account 1592 is used to record the impact of differences that result from legislative or regulatory changes to tax rates or rules that are assumed in the tax model that is used to determine the tax amount that underpins rates. The sub-account is used for this purpose specifically in relation to the tax rule change relating to Accelerated CCA.
58. To track the revenue requirement impacts of tax rule changes, including Accelerated CCA, it is not appropriate to calculate the relevant amounts using actuals because this would have the effect of capturing more variables than just the tax impact arising from the tax rule change. Specifically, using actuals would result in the calculations also capturing tax variances arising from differences in fixed asset additions between the assets that are in rate base and which underpin rates, and assets that are in service but which have not been added to rate base and which therefore do not underpin rates. As such additional variables are not intended to be captured in the sub-account, and the use of actuals ignores whether the assets are included in rate base, the method of calculation required by the Account 1592 Findings is incorrect and, in Hydro One's submission, inappropriate. It is also inconsistent with the manner in which Hydro One calculates its Account 1592 balances for its Transmission and Distribution businesses.

D. CONCLUSION

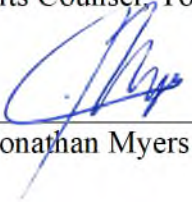
58. The OEB erred in its Account 1576 Findings by interpreting the scope of Account 1576 as applying to the former Woodstock Hydro, which at all relevant times used US GAAP as its accounting standard. The OEB thereby amended and expanded the scope of Account 1576, and retrospectively applied that new scope to prior periods contrary to the rule against retroactive ratemaking. The OEB also incorrectly assumed, contrary to the evidence, that there are relevant financial differences for 2016-2022 to be recorded in Account 1576 in respect of the former Woodstock Hydro.

59. The OEB erred in its Account 1592 Findings by misapplying the concept of rate base additions and incorrectly finding there were “additions embedded in the acquired utilities” from 2018 onward, upon which Hydro One realizes “windfall gains”. The OEB incorrectly applied the ratemaking principle that benefits follow costs by finding that tax benefits from accelerated depreciation on assets in-service but not added to the respective rate bases underpinning the Acquired Utilities’ rates during the 2018-2022 period, should be for the benefit of ratepayers despite that ratepayers bore none of the costs of those assets in rates. In addition, the OEB erred by requiring Hydro One to use a method for calculating balances for 2018 to 2022 that is not consistent with the approved terms of Account 1592.
60. The reviewing panel should grant the motion and correct the errors by providing the requested relief.

All of which is respectfully submitted this 31st day of January, 2022.

HYDRO ONE NETWORKS INC.

By its Counsel, Torys LLP



for Jonathan Myers and Charles Keizer

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15 (Sched. B) (the 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 a Motion to Review and Vary aspects of the EB-2021-0033 Decision and Order relating to Account 1576 and Account 1592 pursuant to Rule 42 of the Ontario Energy Board's *Rules of Practice and Procedure*.

BOOK OF AUTHORITIES OF HYDRO ONE NETWORKS INC.

Date: January 31, 2022

Mr. Charles Keizer
Torys LLP
79 Wellington St. W., 30th Floor
Box 270
TD South Tower
Toronto, Ontario M5K 1N2
Tel: 416-865-7512
ckeizer@torys.com

Mr. Jonathan Myers
Torys LLP
79 Wellington St. W., 30th Floor
Box 270
TD South Tower
Toronto, Ontario M5K 1N2
Tel: 416-865-7532
jmyers@torys.com

INDEX

Tab	Description
1.	EB-2021-0033, Decision and Order, December 16, 2021
2.	OEB Letter re Regulatory accounting policy direction regarding changes to depreciation expense and capitalization policies in 2012 and 2013, July 17, 2012
3.	Ontario Energy Board Accounting Procedures Handbook Frequently Asked Questions, July 2012, FAQ #1 and #2
4.	EB-2014-0213, Decision and Order, September 11, 2015
5.	2022 Rate Application, August 27, 2021, pp. 36-37, 39-40.
6.	EB-2021-0033, Hydro One Response to OEB Staff Interrogatory #19(c)
7.	EB-2021-0033, Hydro One Reply Submission, December 3, 2021
8.	EB-2021-0033, OEB Staff Submission, November 19, 2021
9.	<i>Union Gas Limited v. Ontario Energy Board</i> , 2015 ONCA 453 (CanLII)
10.	<i>ATCO Gas and Pipelines Ltd. v. Alberta (Utilities Commission)</i> , 2014 ABCA 28 (<i>ATCO 2014</i>)
11.	EB-2014-0213, Hydro One Response to SEC Interrogatory #37
12.	OEB Letter re Accounting Direction Regarding Bill C-97 and Other Changed in Regulatory or Legislated Tax Rules for Capital Cost Allowance, July 25, 2019
13.	EB-2021-0033, Hydro One Response to SEC Interrogatory #9
14.	EB-2017-0049, Decision and Order, March 7, 2019
15.	<i>Hydro One Networks Inc. v. Ontario Energy Board</i> , 2020 ONSC 4331

TAB 1



DECISION AND ORDER

EB-2021-0033

HYDRO ONE NETWORKS INC.

Application for rates and other charges for the Norfolk Power, Haldimand County Hydro, and Woodstock Hydro service territories to be effective January 1, 2022

BEFORE: Pankaj Sardana
Presiding Commissioner

Anthony Zlahtic
Commissioner

December 16, 2021

Account 1592, Sub-account CCA Changes

There are no balances in each of the Acquired Utility's Account 1592, Sub-account CCA Changes. Hydro One indicated that, as there were no additions embedded in the Acquired Utilities' rate filings from 2018 onwards, there would be no accelerated Capital Cost Allowance (CCA) impacts recorded in the 1592 sub-account.²⁷

OEB staff submitted that all Acquired Utilities should have balances in the 1592 sub-account that should be returned to ratepayers.²⁸ OEB staff stated that the additions underpinning rates that prevailed during the Acquired Utilities' incentive-rate setting period, and subsequent deferred rebasing period, were included in each of the Acquired Utility's last rebasing application. OEB staff further stated that for each Acquired Utility, for each year from 2018 until the year in which base rates are reset to reflect the new CCA rules, Hydro One realized a windfall gain associated with CCA changes, as it would be claiming CCA at an accelerated rate compared to the CCA embedded in its rates. OEB staff further submitted that Hydro One should be directed to calculate the balances (including a forecast to the end of 2022) in the 1592 sub-account for each of the Acquired Utilities for the period of November 21, 2018 to December 31, 2022.

Hydro One noted that the rates for the Acquired Utilities were frozen over a five-year period since the MAADs application. This resulted in a disconnect between approved rates and the underlying components of revenue requirement during the deferred rebasing period. As the Acquired Utilities have not rebased, there was no linkage between any components of revenue requirement, including the fixed asset additions based on which the benefit of accelerated CCA originates. Hydro One also expressed concerns with OEB staff's calculation approach of using the additions embedded in the Acquired Utilities' last rate application, as rates were frozen during this time.

Findings

The OEB agrees with OEB staff's submission that there should be 1592 sub-account balances for each of the Acquired Utilities. The OEB does not agree with Hydro One's Reply submission that because rates were frozen over a five-year period that fixed assets are also frozen and that there are no additions for which accelerated CCA would apply. Nor does the OEB accept Hydro One's rationale that there were no additions embedded in the Acquired Utilities from 2018 onwards. Notwithstanding that rates were frozen for five-years, the Accelerated Investment Incentive Program (AIIP) changed the

²⁷ IRR OEB Staff #9

²⁸ OEB staff submission, pages 10 to 11

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.

The OEB directs Hydro One to calculate 1592 sub-account balances including a forecast to the end of 2022. The balances in the sub-accounts 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.

Woodstock Hydro's Account 1508, Sub-account ICM

In its pre-filed evidence, Hydro One requested to dispose a debit balance of \$187,825 in Account 1508 - Other Regulatory Assets, Sub-account ICM. In its interrogatory responses, Hydro One withdrew the disposition request as it was expected that the year-end 2020 account balance would be drawn down by the incremental capital module (ICM) rate rider collected by the end of 2021. As such, Hydro One requested that the OEB discontinue the ICM rate rider as that funding is no longer required.

In its submission, OEB staff agreed with Hydro One that no amounts in the 1508 sub-account needed to be disposed as the net balance in the account should be close to nil.

Findings

The OEB approves Hydro One's request to withdraw its disposition request for the debit balance in Account 1508 – Other Regulatory Assets Sub-account ICM for Woodstock Hydro as the balances in this account will be immaterial by the end of 2021.

Woodstock Hydro's and Haldimand County Hydro's Account 1576 balances

i) Woodstock Hydro's Account 1576

Hydro One proposed to dispose a credit balance of \$2,267,861²⁹ in Woodstock Hydro's Account 1576 - Accounting Changes Under CGAAP. Transactions in the account ceased in 2015, coinciding with the year prior to Woodstock Hydro's transition to US GAAP.

²⁹ Calculated by OEB staff to include the update to Woodstock rate zone's Account 1576 balance to reflect a WACC of 6.74% per page 14 of Hydro One's reply submission

OEB staff submitted that Account 1576 transactions should not cease in 2015, but should cease when Woodstock Hydro rebases its rates, as was intended by the establishment of Account 1576.³⁰ OEB staff noted that the account specifies that journal entries are required starting with the year of accounting policy changes until the year prior to when a distributor rebases its rates. OEB staff acknowledged that Hydro One was approved to adopt USGAAP for Woodstock Hydro upon integration with Hydro One in 2015. However, that did not displace the need to continue recording transactions in Account 1576 leading up to rebasing, as the purpose of Account 1576 is to capture the full impact on property, plant, and equipment from accounting policy changes. OEB staff submitted that the 2016 to 2022 transactions may be conservatively estimated to be a credit of \$500,000 annually, resulting in an updated total principal credit balance of \$5,624,659, instead of the \$2,124,659 proposed by Hydro One.

Hydro One submitted that disposition of a credit balance of \$2,124,659 is appropriate.³¹ Account 1576 records the financial differences arising as a result of accounting policy changes to depreciation expense and capitalization policies permitted by the OEB from Canadian GAAP to Modified IFRS (MIFRS). Since Woodstock Hydro was permitted by the OEB to adopt USGAAP for accounting and regulatory purposes in 2015, there was no need to continuing recording entries into the account as Woodstock Hydro was no longer applying MIFRS.

In its interrogatory responses, Hydro One's proposed, updated Account 1576 balance included a return component based on the OEB's 2022 weighted average cost of capital (WACC) of 5.47%. Hydro One indicated that it applied the OEB's 2022 WACC, consistent with the OEB's decision to apply the OEB's 2021 WACC on Newmarket-Tay Power Distribution Inc.'s (Newmarket-Tay Power) Account 1576 related base rate adjustment.

OEB staff submitted that the appropriate WACC to apply to the Account 1576 balance is the WACC approved by the OEB in the distributor's last approved cost of service proceeding, which would be 6.74% instead of 5.47%.³² OEB staff referenced previously approved dispositions of Account 1576, in which the last approved WACC was applied to Account 1576. OEB staff further noted at issue in this proceeding is the WACC applied to the Account 1576 balance; and that in the Newmarket-Tay Power proceeding Hydro One referenced, the OEB only approved the OEB's 2021 WACC to be applied to the base rate adjustment. In that proceeding, the OEB applied the last approved WACC on the Account 1576 balance. In its reply submission, Hydro One accepted OEB staff's rationale for applying the WACC approved in the distributor's last approved cost of

³⁰ OEB staff submission, pages 12 to 14

³¹ Hydro One reply submission, pages 14 to 15

³² OEB staff submission, pages 12 to 14

service proceeding and indicated it would update the Account 1576 balance to reflect a WACC of 6.74% in the draft rate order process.³³

ii) Haldimand County Hydro's Account 1576

In its pre-filed evidence, Hydro One proposed to dispose a debit balance of \$5,439 in Haldimand County Hydro's Account 1576, representing a residual balance remaining from a previous approved disposition. In response to interrogatories, Hydro One removed its disposition request for the residual Account 1576 balance.³⁴ OEB staff submitted that Hydro One's removal of the Account 1576 balance for disposition is appropriate.³⁵

Findings

The OEB approves the disposition of Woodstock Hydro's Account 1576 balance of \$2,124,659, which covers the balances in the account up to 2015. This amount will be disposed of over a one-year period and a WACC of 6.74% is to be applied. The OEB's rationale for applying a WACC of 6.74% is because of the consistency of this with the last approved WACC in effect when the variance occurred. The OEB agrees with OEB staff that Hydro One should continue to record transactions in Account 1576 to the end of 2022, which will coincide with rebasing for Woodstock Hydro. The OEB therefore directs Hydro One to quantify the Account 1576 balance for 2016 to the end of 2022 in the draft rate order process, and orders Hydro One to dispose of this remaining balance in Account 1576 specifically to the legacy Woodstock Hydro customers as part of its 2023 rebasing application that is currently before the OEB.

The OEB accepts Hydro One's removal of its disposition request of the balance in Account 1576 for Haldimand County Hydro.

³³ Hydro One reply submission, pages 14 to 15

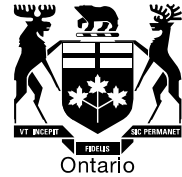
³⁴ IRR OEB Staff #15

³⁵ OEB staff submission, pages 12 to 14

TAB 2

**Ontario Energy
Board**
P.O. Box 2319
27th. Floor
2300 Yonge Street
Toronto ON M4P 1E4
Telephone: 416- 481-1967
Facsimile: 416- 440-7656
Toll free: 1-888-632-6273

**Commission de l'énergie
de l'Ontario**
C.P. 2319
27e étage
2300, rue Yonge
Toronto ON M4P 1E4
Téléphone: 416- 481-1967
Télécopieur: 416- 440-7656
Numéro sans frais: 1-888-632-6273



VIA EMAIL AND WEB POSTING

July 17, 2012

**TO: Licensed Electricity Distributors
All Other Interested Parties**

**RE: Regulatory accounting policy direction regarding changes to depreciation
expense and capitalization policies in 2012 and 2013**

This letter serves to provide the Board's regulatory accounting policy direction to electricity distributors on matters arising from the one-year deferral option for the IFRS changeover in 2012. The Board will permit electricity distributors electing to remain on Canadian GAAP ("CGAAP") in 2012 to implement regulatory accounting changes for depreciation expense and capitalization policies effective on January 1, 2012. The Board however will require that these changes be mandatory in 2013 for all distributors that have not yet made these changes, even if there is a further option to defer IFRS changeover in 2013. A new variance account is created and authorized for distributors to record the financial differences arising from these accounting changes.

Background

The Canadian Accounting Standards Board ("AcSB") announced in March 2012 that it would allow rate-regulated entities a one-year deferral option for the IFRS changeover in 2012. In light of the AcSB's announcement, the Board issued a letter to electricity distributors on April 30, 2012 and provided direction regarding this deferral option. The letter indicated, among other things, that,

- The Board will not require regulatory accounting and reporting for 2012 to be in modified IFRS ("MIFRS") if a distributor is not required to adopt IFRS for financial reporting and opts to remain on CGAAP.
- For those distributors that have transitioned to IFRS or whose rates are set based on MIFRS, the Board expects these distributors to conduct regulatory accounting and reporting for 2012 in MIFRS.

The Board has received numerous inquiries for regulatory accounting direction from distributors requesting to make changes to their depreciation rates (for example, using the *Depreciation Study for Use by Electricity Distributors* (EB-2010-0178), (the “Kinectrics Report”) or own depreciation study) and capitalization policies while still under CGAAP in 2012. Several distributors indicated that they have already completed sufficient detailed accounting work in these areas in their transition to IFRS, and as such, they are positioned and wish to make these accounting changes while still under CGAAP in 2012. They are seeking accounting direction on whether the Board will allow these accounting changes, and if so, what would be the approval process.

Regulatory accounting policy direction regarding Changes to the Depreciation Expense and Capitalization Policies

A key benefit that was expected to be derived from the Board’s established accounting policies under the IFRS accounting framework (“modified IFRS”) was that the changes to the depreciation expense and capitalization policies would be applied uniformly and in the same timeframe by all distributors (with a few exceptions, for example, distributors adopting US GAAP).

There were several distributors that have adopted these and other accounting changes for regulatory purposes including ratemaking in their 2012 cost of service applications which were approved by the Board. The same approach is expected from distributors filing 2013 cost of service rate applications, which are required to be filed on an MIFRS basis. The Board encourages and will permit distributors that have deferred the changeover to IFRS in 2012 to also implement regulatory accounting changes for depreciation expense and capitalization policies effective on January 1, 2012. The Board however will require that these changes be mandatory in 2013 (i.e., effective on January 1, 2013) for those distributors that do not elect to make these accounting changes in 2012 regardless of whether the AcSB permits further deferrals beyond 2012 for the changeover to IFRS. These accounting changes should be implemented consistent with the Board’s regulatory accounting policies as set out for modified IFRS as contained in the *Report of the Board, Transition to International Financial Reporting Standards*, EB-2008-0408, the Kinectrics Report, and the Revised 2012 *Accounting Procedures Handbook for Electricity Distributors* (“APH”).

The Board will not require distributors to seek Board approval in order to make these accounting changes that otherwise would have been required as specified in the “CGAAP-based” APH (dated July 2007), which is applicable and in force for these distributors still under CGAAP. These accounting changes for adherence to Board requirements for MIFRS and their associated rate impacts will be reviewed as part of a distributor’s next cost of service application.

Account 1576 and Accounting Requirements

The Board has approved a new variance Account 1576, Accounting Changes Under CGAAP, for distributors to record the financial differences arising as a result of the election to make these accounting changes under CGAAP in 2012 or to make these changes as mandated by the Board in 2013, if applicable.

The account description of Account 1576 and the associated accounting requirements, including an illustrative example, are provided in the July 2012 *Accounting Procedures Handbook – Frequently Asked Questions* (see question and answer #2) posted on the Board's website at www.ontarioenergyboard.ca.

Distributors are expected to reflect these accounting changes in their CGAAP-based financial statements since rate-regulated accounting is recognized in CGAAP.

Any questions regarding the above should be directed to the Market Operations Hotline at 416-440-7604 or by e-mail at market.operations@ontarioenergyboard.ca. The Board's toll free number is 1-888-632-6273.

Yours truly,

Original signed by

Kirsten Walli
Board Secretary

TAB 3

Ontario Energy Board

Accounting Procedures Handbook

Frequently Asked Questions

July 2012

INDEX

Board approval of new requirements for regulatory accounting changes in relation to Canadian GAAP in 2012 (or 2013 if applicable) and Board approval of new accounts in relation to CGAAP accounting changes, account balance dispositions and LRAM:

- Q.1 Board issuance of direction on regulatory accounting changes to distributors deferring adoption of IFRS in 2012 and continuing under CGAAP in 2012.
- Q.2 Board issuance of new variance Account 1576 to record the required accounting changes for depreciation expense and capitalization policies in 2012.
- Q.3 Clarifying new accounting procedures for the yearly set up of new sub-accounts of Account 1595 when deferral and variance account balances are approved for disposition.
- Q.4 Providing the account description of new Account 1568, LRAM Variance Account.
- Q.5 Clarifying the reporting requirements for Account 1568, LRAM Variance Account and requirements to update reported balances.

Accounting treatment guidance on a variety of issues arising from the regulatory process, such as the issuance of Board decisions and orders and guidelines:

- Q.6 Accounting treatment for Account 1562 approved PILs balances for disposition.
- Q.7 Accounting classification of a distributor's capital contribution payments in respect of capital expenditures in new Account 1609, Capital Contributions Paid.
- Q.8 Accounting treatment of the late payment penalty amounts approved by the Board (due to the court settlement) and usage of the applicable account.
- Q.9 Accounting treatment guidance for recording standby power charges in sub-accounts of Account 4080.
- Q.10 Providing the accounting treatment for stranded conventional meters approved for recovery.

INDEX Continued

- Q.11 Providing the accounting treatment for SMDR and SMIRR cost recoveries (re Guideline G-2011-0001) and the transfer date to other accounts for amounts approved in Accounts 1555 and 1556.
- Q.12 Clarifying the applicability of previous guidance on the disposition of Accounts 1555 and 1556 in the August 2008 APH-FAQs
- Q.13 Accounting treatment of OPA-Contracted Province-Wide CDM Programs and their classifications to non-rate regulated accounts.
- Q.14 Providing the accounting treatment for tax sharing and LRAM rate riders.
- Q.15 Clarifying the status of implementing accrual accounting for RSVAs and RCVAs.
- Q.16 Accounting treatment of IESO Charge Type 1412 for FIT contract settlements and other generation contracts in Account 4705.
- Q.17 Accounting classification of IESO new wholesale market service charge types, CT 1650, Forecasting Service Balancing Amount

Accounting treatment guidance on issues arising from the implementation of IFRS and the revised 2012 Accounting Procedures Handbook:

- Q.18 Accounting treatment of transitional issues related to Account 1575, IFRS-CGAAP Transitional PP&E Amounts.
- Q.19 Clarifying the status of the previous version of the APH in light of the Board's regulatory guidance on the optional one-year deferral of IFRS adoption.
- Q.20 Clarifying the status and use of previously issued APH-FAQs.
- Q.21 Clarification of regulatory accounting requirements outlined in the APH for newly issued or amended IFRS standards and requirements.
- Q.22 Clarification of several new accounting and reporting requirements in the IFRS report of the Board and the Addendum report.
- Q.23 Clarifying the PP&E retirement gains and losses in relation to new Accounts 4357 and 4362.
- Q.24 Clarifying the level of componentization for capital contributions required in deferred revenue Account 2440.
- Q.25 Clarifying the regulatory requirements on adoption of IFRS for changes in asset useful lives and changes to depreciation rates.
- Q.26 Clarifying the requirements for (interest) borrowing cost allowed to be capitalized in CWIP (construction work in progress).

ACCOUNTING PROCEDURES HANDBOOK

Frequently Asked Questions

The questions and answers in this section address the Board's approval of regulatory accounting changes in relation to Canadian GAAP in 2012 (or 2013 if applicable) and Board approval of new accounts for CGAAP accounting changes, account balance dispositions in Account 1595 and LRAM:

Q.1 What is the Board's regulatory accounting policy direction to distributors deferring the adoption of IFRS in 2012 and requesting accounting changes to depreciation expense and capitalization policies while reporting under CGAAP in 2012?

A.1 The Board has addressed the issue of CGAAP accounting changes in its letter of July 17, 2012 to distributors. The letter indicates that the Board encourages and will permit distributors that have deferred the changeover to IFRS in 2012 to implement regulatory accounting changes for depreciation expense and capitalization policies effective on January 1, 2012. In addition, the Board will require that these changes be mandatory in 2013 (i.e., effective on January 1, 2013) for those distributors that do not elect to make these accounting changes in 2012 regardless of whether the Canadian Accounting Standards Board permits a further deferral beyond 2012 for the changeover to IFRS. These accounting changes should be implemented consistent with the Board's regulatory accounting policies as set out for modified IFRS as contained in the *Report of the Board, Transition to International Financial Reporting Standards (EB-2008-0408)*, the *Depreciation Study for Use by Electricity Distributors (EB-2010-0178)* and the *Revised 2012 Accounting Procedures Handbook for Electricity Distributors*.

The Board will not require a distributor to seek Board approval in order to make these accounting changes that otherwise would have been required as specified in the "CGAAP-based" APH (dated July 2007), which is still applicable and in force for a distributor under CGAAP (see related Q and A #19 below). These accounting changes for adherence to Board requirements for modified IFRS and their associated rate impacts will be reviewed as part of the distributor's next cost of service application.

[Back to index](#)

ACCOUNTING PROCEDURES HANDBOOK

Frequently Asked Questions

Q.2 What account should be used to record the required accounting changes in relation to depreciation expense and capitalization policies in 2012 or 2013, and what are the accounting requirements?

A.2 The Board's letter of July 17, 2012 to distributors also indicated that the Board has approved new Account 1576, Accounting Changes Under CGAAP, for distributors to record the financial differences arising as a result of the election to make accounting changes under Canadian GAAP in 2012 or to make these accounting changes in 2013 as mandated by the Board (see Q and A #1 above). The account description for Account 1576 is provided in [Appendix A](#) of the APH-FAQs.

The accounting treatment for Account 1576 is illustrated through an example that cites a scenario showing the accounting changes for depreciation and capitalization in 2012 (based on assumptions), the calculation of the financial differences (or variances) and the accounting journal entries to record the variances. The illustrative example is provided in [Appendix B](#) of the APH-FAQs.

The accounting requirements and treatment are as follows:

- Distributors will use Account 1576 to record the financial differences arising as a result of changes to accounting depreciation or capitalization policies permitted by the Board under Canadian GAAP in 2012 or as mandated by the Board in 2013.
- A journal entry to record the variance (i.e., the financial differences) arising from these accounting changes is required at the end of the fiscal year for each year starting with the year of the changes until the year prior to when a distributor rebases its rates through a cost of service application. A distributor may elect to use monthly journal entries.
- The offsetting entry will be recorded in Account 4305, Regulatory Debit or Account 4310, Regulatory Credit.
- No interest carrying charges or a rate of return is permitted in this account.
- The amount of the cumulative variance recorded in this account would be recovered from, or refunded to, ratepayers in the year of the distributor's cost of service application through an adjustment to depreciation expense over the approved amortization period.
- The reporting of the account balance will be annually under section 2.1.7 of the electricity reporting and record-keeping requirements.

ACCOUNTING PROCEDURES HANDBOOK

Frequently Asked Questions

For distributors reporting under CGAAP, since rate-regulated accounting is recognized in CGAAP, these accounting changes are expected to be reflected in their CGAAP-based financial statements.

Q.3 Will the OEB continue to annually issue new sub-accounts of Account 1595 for deferral and variance account balances that are approved for disposition?

A.3 No. Electricity distributors are required to annually open new sub-accounts of Account 1595, Disposition and Recovery/Refund of Regulatory Balances. New accounting procedures for Account 1595 are provided in the revised 2012 APH in Article 220. The account description of (control) Account 1595 specifies that for each year the deferral or variance account balances are approved for disposition by the Board, distributors are required to set-up under the control account three sub-accounts using the format of a vintage year classification of the year in which the balances are approved for disposition and recovery from or refund to customers.

The three sub-accounts are as follows:

1. Sub-account Principal Balances Approved in "20yy"
2. Sub-account Carrying Charges Approved in "20yy"
3. Sub-account Carrying Charges for Net Principal in "20yy"

For example, if the approval of the account balances resulted in disposition through a rate rider effective on May 1, 2012, the vintage year classification represents the year the balances were approved which in this case would be "...2012" added to the suffix of the three sub-accounts. Note that the nature of the amounts recorded in the three sub-accounts remains unchanged from previously issued guidance in the October 2009 APH-FAQs and as updated in the revised 2012 APH.

[Back to index](#)

TAB 4



Ontario Energy Board
Commission de l'énergie de l'Ontario

DECISION AND ORDER

EB-2014-0213

HYDRO ONE INC., HYDRO ONE NETWORKS INC., WOODSTOCK HYDRO SERVICES INC.

**Applications for the Acquisition of Woodstock
Hydro Services Inc. by Hydro One Inc.**

BEFORE: Ellen Fry
Member

Cathy Spoel
Member

September 11, 2015

5 OTHER REQUESTED APPROVALS

As part of these applications, Hydro One requested OEB approval to:

- Continue to track costs to the deferral and variance accounts currently approved by the OEB for Woodstock and to seek disposition of their balances at a future date
- Utilize USGAAP for Woodstock financial reporting.

OEB staff supported the granting of these requested approvals if the OEB approves the consolidation transaction. OEB staff indicated that similar requests were granted in prior proceedings⁹.

OEB Findings

The OEB grants approval to continue to track costs to the deferral and variance accounts currently approved by the OEB for Woodstock and to seek disposition of their balances at a future date. The OEB accepts Hydro One's argument for the utilization of US GAAP for financial reporting and grants this request.

⁹ Hydro One Inc./Norfolk Power Distribution Inc. EB-2013-0196/EB-2013-0187/EB-2013-0198
Hydro One Inc./Haldimand County Hydro Inc. EB-2014-0244

TAB 5

1 infrastructure whose functionality exceeds the minimum functionality adopted in O. Reg 425/06
2 of O. Reg 393/07.³⁷

3
4 The balance in this account as of December 31, 2020, inclusive of projected carrying charges to
5 December 31, 2021, is \$424,379. At the time of integration with Hydro One in 2016, a \$383K
6 principal balance was recorded and there has been no movement in the account except for
7 interest since integration with Hydro One.

8
9 5. Account 2405: Revenue Difference Account – Pole Attachment Charge Variance Account

10 In July 20, 2018, the OEB established a new variance account (Account 1508 – sub account –
11 pole attachment revenue variance) related to pole attachment charges, as the updated pole
12 attachment charge from \$22.25 to \$43.63 per pole, per year (effective January 1, 2019) would
13 result in an excess incremental revenues to be returned to customers. As a transitional measure,
14 the OEB approved an increase of the rate from \$22.25 rate to \$28.09 effective September 1,
15 2018 until December 31, 2018, with the \$43.63 charge being effective on January 1, 2019. The
16 pole attachment charge has been adjusted annually based on the OEB's inflation factor since
17 January 1, 2020. The inflationary increase was recently suspended for January 1, 2021 until
18 further notice in EB-2020-0288.³⁸

19
20 Account 2405 has been used to track this pole attachment revenue variance, including accrued
21 interest charges based on the OEB prescribed interest rates. The balance in this account as of
22 December 31, 2020, inclusive of projected carrying charges to December 31, 2021, is (\$101,737).

23
24 6. Account 1576: Accounting Changes Under CGAAP Balance + Return Component

25 Account 1576, CGAAP Accounting Changes, records the financial differences arising as a result of
26 accounting changes to depreciation expense and capitalization policies permitted by the OEB
27 under Canadian GAAP in 2012, or as mandated by the OEB in 2013. Woodstock has included a

³⁷ EB-2010-0145, Decision and Order, page 4

³⁸ EB-2020-0288, Order, December 10, 2020

1 balance of (\$2,230,892) to be returned to ratepayers, and prepared entries in this account in
2 accordance with the OEB's accounting guidance as shown in Appendix 2-EB (Appendix G.1 in the
3 current Application).³⁹ Details on Account 1576 are included in Section 3.5 of this Application.

4
5 7. Account 1508: Incremental Capital Module (ICM)

6 In the Report of the Board, New Policy Options for the Funding of Capital Investments: The
7 Advanced Capital Module, dated September 18, 2014, it set out the requirements for an
8 ACM/ICM request and established reporting requirements for the distributor's next cost of
9 service, where the LDC will need to file calculations showing actual ACM/ICM amounts to be
10 incorporated into the rate base. At that time, the OEB will make a determination on the
11 treatment of any difference between forecasted and actual capital spending under the
12 ACM/ICM, if applicable, and the amounts recovered through ACM/ICM rate riders and what
13 should have been recorded in the historical period during the preceding price cap IR term.⁴⁰

14
15 In Woodstock's 2012 IRM application (EB-2011-0207), Woodstock was approved of ICM funding
16 of \$4.4M associated with a capital contribution to Hydro One Networks for the Commerce Way
17 Transmission Station, and the purchase/installation of Woodstock owned wholesale metering
18 assets for this transmission station through a rate rider effective until April 30, 2015. As part of
19 the MAADs application in EB-2014-0213, the OEB approved Woodstock's request for the
20 extension of the ICM rate rider relating to the Commerce Way TS until rates are rebased in 2020
21 or until such date as approved by the OEB, and to true-up the balance at the time of rebasing.⁴¹

22
23 In this proceeding, Hydro One is submitting the balance in Account 1508 for the disposition. The
24 balance in this account as of December 31, 2020, inclusive of projected carrying charges to
25 December 31, 2021, is \$187,825, which is net of annual drawdowns related to the amortization
26 of Woodstock's contributed capital contribution.

³⁹ July 2012 FAQ (Appendix A) to Accounting Procedures Handbook. OEB Letter, Accounting Policy Changes for Accounts 1575 and 1576, dated June 25, 2013

⁴⁰ Report of the Board, New Policy Options for the Funding of Capital Investments: The Advanced Capital Module, dated September 18, 2014, page 26

⁴¹ EB-2014-0213, OEB Letter dated April 30, 2015

3.5 WHSI Account 1576 Disposition

Hydro One is requesting final disposition of its Account 1576 balance of \$(2.2M) for WHSI in the current Application. As previously stated, WHSI last rebased through a cost of service application in 2011, and implemented regulatory accounting changes for depreciation and capitalization policies effective January 1, 2012. During the course of the MAADs proceeding (EB-2014-0213), Hydro One noted that it planned on deferring clearance of WHSI's Account 1576 balance until its next rebasing of rates in 2020, at that time, and that WHSI will continue to track variances between IFRS and CGAAP in this account until the closing of the transaction. Hydro One is bringing forward an Account 1576 balance of \$(2.2M) for final disposition in the current Application to provide an immediate benefit to customers effective January 1, 2022.

WHSI has followed the OEB's directions to record the financial difference in depreciation and capitalization policies in Account 1576 based on section 2.9.3 of the Chapter 2 Filing Requirements for 2018 rebasers, July 2012 FAQ to the Accounting Procedures Handbook, and Article 510 of the Accounting Procedures Handbook. Since the 2022 Filing Requirements no longer address Account 1576, the prior Chapter Appendix 2-EB schedule (Appendix G.1) was used as supporting evidence to derive the balance in Account 1576 for accounting changes implemented in 2012.

Since WHSI last rebased in 2011, Account 1576 is comprised of a cumulative net PPE changes (2012 to 2015) related to the previous and revised CGAAP accounting policy. The closing net PPE balance in Account 1576 of \$(2.1M) was carried forward based on balance recorded in 2015. Following the MAADs decision in EB-2014-0213, WHSI was approved to use USGAAP for financial reporting purposes. With a 5% WACC applied on the closing PPE change based on the OEB's 2021 cost of capital parameters last issued on November 9, 2020, the return component of \$(106,234) is included upon disposition of the account balance and is proposed to be amortized over 1 year. Together with the closing PPE balance, a total amount of \$(2.2M) will be returned to customers. No carrying charges have been applied to the balance in this account.

Closing PP&E amounts in 2015 under the CGAAP and IFRS were determined based on the change in net additions and depreciation expense from 2012-2015. Starting in 2012, the year that the change in accounting standards occurred, the accounting policy change was applied on a prospective basis.⁴²

3.5.1 Derivation of Rate Riders for Disposition of Account 1576

Hydro One is proposing to dispose of the balances in Account 1576 over a 1-year period, beginning on January 1, 2022. Table 11 below summarizes the rate riders by rate class for HCHI and WHSI. Detailed derivation of these rate riders is provided in Appendix K.

Table 11 - Rate Riders for Disposition of Account 1576

Rate Class	Billing Unit	Rate Rider for Disposition of Account 1576	
		HCHI	WHSI
Residential	\$/month	\$0.02	-\$7.79
GS <50 kW	\$/kWh	\$0.0000	-\$0.0062
GS 50-4,999 kW	\$/kW	\$0.0019	
GS 50-999 kW	\$/kW		-\$0.9158
GS >1,000 kW	\$/kW		-\$0.7853
USL	\$/kWh	\$0.0000	-\$0.0052
Sentinel Lighting	\$/kW	\$0.0192	
Street Lighting	\$/kW	\$0.0272	-\$9.3367

⁴² In the MAADs proceeding (EB-2014-0213), see Woodstock's December 31, 2012 financial statements, page 10, which shows the change in estimate of the useful lives of depreciable assets effective January 1, 2012.

TAB 6

OEB STAFF INTERROGATORY #19

Reference:

Appendix G.1

Interrogatory:

Hydro One is requesting Woodstock's Account 1576 - Accounting Changes Under CGAAP Balance (credit balance of \$2,230,892) for disposition.

a) The balance includes a return component of a credit of \$106,233, based on a 5% weighted average cost of capital (WACC) per the OEB's 2021 cost of capital parameters. Woodstock's 2011 approved WACC was 6.74%. OEB staff notes that in other cases where Account 1576 has been approved for disposition (e.g. EB-2020-0041 and EB-2018-0079), a distributor's last approved WACC have been used to calculate the return component for Account 1576. Please explain why Hydro One has applied the OEB's 2021 WACC instead of Woodstock's last approved WACC to Account 1576.

b) It states that Woodstock has followed the Chapter 2 Filing Requirements for 2018 rebasers. Per the noted filing requirements, please identify and quantify the drivers of the change in closing net PP&E.

c) In Appendix G, Note 5 states that differences due to the adoption of MIFRS is to be recorded in Account 1575. Hydro One has noted this is not applicable to Hydro One. Please explain whether this account is not applicable because there was no differences identified upon adoption of IFRS, or for other reasons. If for other reasons, please explain.

Response:

a) Hydro One originally applied the OEB's 2021 WACC of 5% to the Account 1576 balance, consistent with the OEB's decision in EB-2020-0041 to apply the 2021 WACC on the base rate adjustment to Newmarket-Tay's Account 1576 balance. The OEB noted that the 2021 WACC parameter was applicable in that case, as the adjustment will apply to rates going forward.¹ As noted in the Newmarket-Tay decision, the OEB did not find the Whitby settlement to be determinative of, or applicable to, the cost of capital parameters for base rate adjustment to NTRZ.² Since the OEB's update to the 2022 cost of capital parameters issued on October 28, 2021, Hydro One has updated the return component on Woodstock's

¹ EB-2020-0041, Decision and Order, April 22, 2021, page 25

² Ibid

Account 1576 balance using a WACC of 5.47%, and included the updated account balance for disposition in the DVA continuity. A revised version of Appendix 2-EB has been filed in response to OEB Staff IR-20.

b) Since 2012, Woodstock recorded the financial differences arising from accounting changes as they relate to PP&E in the OEB variance account, "Accounting Changes under CGAAP". These PP&E variances have been included in Woodstock's financial statements as a regulatory liability under MIFRS regulatory adjustment. At time of integration, Woodstock supplied Hydro One with the below chart, which formed the basis for the balance in Account 1576. Woodstock recognized a liability of \$603,173 (in 2012), \$507,474 (in 2013), \$509,780 (in 2014), and \$504,233 (in 2015), bringing the total liability to \$2,124,659 as at October 30, 2015. As shown in the chart below, differences in depreciation expense are the primary drivers of the change in net PP&E which can be based on the following factors:

- Change in service life of assets that have reduced depreciation expense due to longer useful lives. In Woodstock's first year of transition to MIFRS in 2012, the 2012 year-end financial statements filed in its Application in the MAADs proceeding (EB-2014-0213) noted that Woodstock changed its estimate of useful lives of depreciable assets effective Jan. 1, 2012 following a comprehensive third party review, whose changes have been applied prospectively and had the effect of decreasing depreciation expense.

Asset	Rate
Buildings and distribution system	15-75 years
Organization expense	40 years
Machinery and equipment	3-15 years
Other plant and equipment	20 years

Source: EB-2014-0213, Notes to Financial Statements, year ended Dec. 31, 2012, page 10

Impact of OEB Adjustment for Accounting Changes					
	2011 Actual	2012	2013	2014	2015
PP&E Values Assuming "Previous CGAAP Accounting Policies continued					
Opening net PP&E	\$21,051,422	\$ 22,893,797	\$23,242,449	\$ 24,084,198	\$ 25,557,977
Additions	\$ 3,945,551	\$ 2,490,965	\$ 3,293,488	\$ 3,763,967	\$ 2,384,004
Depreciation	\$ (2,103,177)	\$ (2,142,312)	\$ (2,451,740)	\$ (2,290,187)	\$ (1,865,068)
Closing net PP&E	\$22,893,797	\$ 23,242,449	\$24,084,198	\$ 25,557,977	\$ 26,076,913
PP&E Values Assuming Accounting Changes under CGAAP					
Opening net PP&E	\$21,051,422	\$ 22,893,797	\$23,845,622	\$ 25,194,844	\$ 27,178,403
Additions	\$ 3,945,551	\$ 2,410,393	\$ 3,200,968	\$ 3,682,486	\$ 2,333,027
Depreciation (MIFRS based)	\$ (2,103,177)	\$ (1,458,568)	\$ (1,851,746)	\$ (1,698,927)	\$ (1,309,858)
Closing net PP&E	\$22,893,797	\$ 23,845,622	\$25,194,844	\$ 27,178,403	\$ 28,201,572
Difference in Closing net PP&E "Previous" CGAAP vs "Changed" CGAAP					
	\$ -	\$ (603,173)	\$ (1,110,646)	\$ (1,620,426)	\$ (2,124,658)
OEB Variance Account 1576					
Opening Balance	\$ -	\$ -	\$ (603,173)	\$ (1,110,646)	\$ (1,620,426)
Amount added Annually	\$ -	\$ (603,173)	\$ (507,474)	\$ (509,780)	\$ (504,232)
Closing Balance in Variance Account	\$ -	\$ (603,173)	\$ (1,110,646)	\$ (1,620,426)	\$ (2,124,658)
Change in Additions		\$ 80,572	\$ 92,520	\$ 81,481	\$ 50,977
Change in Depreciation		\$ (683,745)	\$ (599,994)	\$ (591,260)	\$ (555,210)
Annual Change		\$ (603,173)	\$ (507,474)	\$ (509,780)	\$ (504,233)

As noted in response to OEB Staff IR 10, Hydro One wishes to reiterate that it indicated in prior rate proceedings, including EB-2016-0082, EB-2017-0050 and EB-2020-0331, that it does not have readily available detailed data from the pre-integration period for each of the Acquired Utilities. In all prior proceedings noted above, the OEB has approved for disposition the pre-integration Group 1 balances for the Acquired Utilities on a final basis, and in the most recent proceeding, the OEB also approved the post-integration Group 1 balances on a final basis.

c) "Not applicable to Hydro One" was included with Note 5 of Appendix 2-EB to indicate that there are no differences identified in PPE, beyond 2016, once Woodstock was granted approval to utilize US GAAP for financial reporting purposes in EB-2014-0213 upon integration with Hydro One.

TAB 7

Hydro One Networks Inc.

7th Floor, South Tower
483 Bay Street
Toronto, Ontario M5G 2P5
www.HydroOne.com

Tel: (416) 345-5680
Fax: (416) 568-5534
Frank.dandrea@HydroOne.com



Frank D'Andrea

Vice President, Reliability Standards and Chief Regulatory Officer

BY EMAIL AND RESS

December 3, 2021

Ms. Christine E. Long
Registrar
Ontario Energy Board
Suite 2700, 2300 Yonge Street
P.O. Box 2319
Toronto, ON M4P 1E4

Dear Ms. Long:

EB-2021-0033 – Hydro One Networks Inc. – Distribution Rate Application for the Areas Formerly Served by Norfolk Power Distribution Inc., Haldimand County Hydro Inc., and Woodstock Hydro Services Inc. – Reply Submission

In accordance with Procedural Order No. 1, please find enclosed Hydro One Networks Inc.'s reply submission in the Hydro One Networks' 2022 Distribution Rate Application for the Areas Formerly Served by Norfolk Power Distribution Inc., Haldimand County Hydro Inc., and Woodstock Hydro Services Inc.

An electronic copy of this reply submission has been submitted using the Board's Regulatory Electronic Submission System.

Sincerely,

A handwritten signature in black ink that reads "Frank D'Andrea". The signature is written in a cursive, flowing style.

Frank D'Andrea

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

AND IN THE MATTER OF an Application by Hydro One Networks
Inc. to the Ontario Energy Board for an Order or Orders pursuant
to section 78 of the *Ontario Energy Board Act, 1998* 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.

**REPLY SUBMISSION OF
HYDRO ONE NETWORKS INC.**

December 3, 2021

3. ACCOUNT 1592, SUB-ACCOUNT CCA CHANGES (FOR ALL THREE UTILITIES)

Account 1592 captures the revenue requirement impact relating to changes in regulatory taxes embedded in rates that arises from changes in tax legislation during the approved application period.

In this proceeding, the OEB staff noted that “the 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.” OEB staff submitted that Hydro One should be directed to calculate the balances in the 1592 sub-account for each of the Acquired Utilities for the period of November 21, 2018 to December 31, 2022, as Hydro One is realizing a windfall gain associated with CCA changes by claiming CCA at an accelerated rate compared to the CCA embedded in its rates. As part of OEB staff’s submission, OEB staff invited Hydro One to explain why it should not be ordered to dispose of the 1592 balances in the current proceeding in its reply submission.²³

Reply Submission

Hydro One submits that the rates for Norfolk, Haldimand, and Woodstock were frozen over a five-year period since the MAADs applications based on their respective OEB-approved rates established in prior applications before acquisition and including a 1% rate reduction.²⁴ This resulted in a disconnect between the approved rates and the underlying components of revenue requirement for the deferred rebasing period. In other words, as the Acquired Utilities have not rebased, there was no linkage between any components of revenue requirement including the fixed asset additions based on which the benefit of accelerated CCA originates. Fixed asset additions lead to a higher overall level of fixed assets, which results in a corresponding change to revenue requirement. However, as the Acquired Utilities have, in fact, not rebased their revenue requirements and their rates are not based on fixed asset additions. Hydro One submits that it would be inequitable and unfairly penalize Hydro One to only return the tax benefits originated from accelerated CCA for the same fixed assets addition. As such, Hydro One continues to believe that the nil balances in each of the Acquired Utility’s 1592 sub-account remain appropriate.

Hydro One also has concerns with OEB staff’s calculation approach of using the additions embedded in the Acquired Utilities’ last rate application, as rates were frozen during this time. In deriving rates, there was no forecasted additions relating to 2018 to 2022 embedded in those applications. By virtue of rates being frozen, the fixed assets are also frozen and there would be no additions for which accelerated CCA would apply. Consequently, OEB’s staff’s calculation approach of using the additions embedded in the Acquired LDCs last rate application to calculate the tax benefits associated with accelerated CCA is

²³ OEB staff submission, p. 11

²⁴ Norfolk, Haldimand, and Woodstock’s approved rates have been frozen for a five-year period, since September 8, 2014; July 1, 2015; and October 31, 2015, respectively

inappropriate. For the reasons noted above, Hydro One continues to believe that the nil balances in each of the Acquired Utility's 1592 sub-account remain appropriate.

4. WOODSTOCK RATE ZONE'S ACCOUNT 1576

Hydro One proposed to dispose of a credit balance of \$2,240,878 (comprised of both principal and projected interest amounts) in Woodstock rate zone's Account 1576 – Accounting Changes under CGAAP. Transactions in the account ceased in 2015, coinciding with the year prior to Woodstock rate zone's transition to US GAAP. The Account 1576 included a return component based on the OEB's 2022 weighted average cost of capital (WACC) of 5.47%. Hydro One indicated that it applied the OEB's 2022 WACC, consistent with the OEB's decision to apply the OEB's 2021 WACC on Newmarket-Tay Power Distribution Inc.'s (Newmarket-Tay Power) Account 1576 related base rate adjustment.

OEB staff submitted that Account 1576 transactions should not cease in 2015, but should cease when Woodstock rate zone rebases its rates. Account 1576 is intended to capture the property plant and equipment (PP&E) impact for capitalization and depreciation policy changes from those embedded in rates at last rebasing, made during the incentive-rate setting term. As noted in the Accounting Procedures Handbook, the account specifies that journal entries are required starting with the year of accounting policy changes until the year prior to when a distributor rebases its rates. OEB staff further submitted that a credit of \$500,000 annually should accrue to ratepayers, based on forecasting 2016 to 2022 transactions, which should result in a total principal credit balance of \$5,624,659 instead of \$2,124,659.

OEB staff also submitted that the appropriate WACC to apply to the Account 1576 balance is the WACC approved by the OEB in the distributor's last approved cost of service proceeding, which would be 6.74% instead of 5.47%. OEB staff notes that the OEB previously approved interim disposition of Newmarket-Tay Power's 2017 Account 1576 balance and final disposition of Newmarket-Tay Power's 2020 Account 1576 balance, in which the last approved WACC was applied to Account 1576.

Reply Submission

Hydro One submits that Woodstock's Account 1576 balance of -\$2,124,659 is appropriate. Account 1576 – Accounting Changes under CGAAP records the financial differences arising as a result of accounting policy changes to depreciation expense and capitalization policies permitted by the OEB from Canadian GAAP to Modified IFRS (MIFRS). Since Woodstock was permitted by the OEB to adopt US GAAP²⁵ for accounting and regulatory purposes in 2015, there was no need to continuing recording entries into the account as Woodstock was no longer applying MIFRS. If Woodstock continued to use MIFRS, then there

²⁵ EB-2014-0213, Decision and Order, September 11, 2015, p. 20

is a basis for entries to continue in Account 1576 until rebasing. However, given that Woodstock adopted US GAAP, Account 1576 is no longer relevant and therefore, Hydro One strongly disagrees with OEB staff's view that the principal balance needs to be updated. In fact, recording any principal balances after adopting US GAAP would be incorrect and is contrary to the purpose of this account.

With respect to the WACC rate to be applied to the principal balance in Account 1576, Hydro One accepts OEB Staff's rationale for applying the WACC approved by the OEB in the distributor's last approved cost of service proceeding, which would be 6.74% instead of 5.47%.

Hydro One will prepare an updated DVA Continuity Schedule, for the updated return component on the principal balance of -\$2,214,659, as part of the Draft Rate Order process.

5. LOST REVENUE ADJUSTMENT MECHANISM VARIANCE ACCOUNT (LRAMVA) DISPOSITION (FOR ALL THREE UTILITIES)

In this Application, Hydro One requested to dispose of the LRAMVA balances for the Norfolk, Haldimand and Woodstock rate zones, totaling \$2,105,387, which is inclusive of forecasted interest amounts to December 31, 2022.²⁶ Hydro One proposed to dispose of all LRAMVA balances over 24 months to mitigate rate impacts to its customers. OEB staff submitted that the LRAMVA balances were reasonable, and invited Hydro One to forecast the 2022 year-end balances for LRAMVA and be disposed in this proceeding on a final basis.²⁷

Reply Submission

Hydro One noted that it was not planning to recover any incremental savings from 2016 to the end of the Conservation First Framework that are associated with the Acquired Utilities in a future proceeding. Hydro One also confirmed in response to OEB staff interrogatories that it is permanently forgoing any LRAMVA balances associated with incremental savings from 2016 to the end of the Conservation First Framework for the Acquired Utilities.²⁸

As it relates to savings prior to 2016 specifically the historical savings from 2011 to 2015 CDM programs that persist into 2021 and 2022 rate years, Hydro One submits that it is in the process of obtaining all the necessary inputs for the purpose of the calculation. In the event that the OEB agrees with the

²⁶ Response to OEB Staff IR 4

²⁷ OEB staff submission, pp. 7 and 17

²⁸ Response to OEB Staff IR 1.

TAB 8



Ontario
Energy
Board | Commission
de l'énergie
de l'Ontario

BY EMAIL

November 19, 2021

Christine E. Long
Registrar
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto ON M4P 1E4
Registrar@oeb.ca

Dear Ms. Long:

**Re: Ontario Energy Board (OEB) Staff Submission
Hydro One Networks Inc. - Former Service Areas of Norfolk Power
Distribution Inc., Haldimand County Hydro Inc., and Woodstock Hydro
Services Inc.
Application for 2022 Rates
OEB File Number: EB-2021-0033**

Please find attached OEB staff's submission in the above referenced proceeding, pursuant to Procedural Order No. 1.

Yours truly,

Kelli Benincasa

Kelli Benincasa
Incentive Rate-setting & Regulatory Accounting

Encl.

cc: All parties in EB-2021-0033



ONTARIO ENERGY BOARD

OEB STAFF SUBMISSION

**Hydro One Networks Inc. - Former Service Areas of Norfolk Power
Distribution Inc., Haldimand County Hydro Inc., and Woodstock Hydro
Services Inc.**

2022 Rates Application

EB-2021-0033

November 19, 2021

in nature and the disposition approach is mechanistic, whereas Group 2 accounts may be used for a wide variety of items and necessarily require a prudence review.

For the reasons above, OEB staff submits that the Group 2 balances for the above noted accounts should be disposed after a reduction of 50%. A 50% reduction recognizes the fact that Hydro One maintains responsibility to support its claims, despite the fact that it acquired these balances in a MAADs proceeding.

Account 1592, Sub-account CCA Changes

The OEB established Account 1592 PILS and Tax Variances, Sub-account CCA Changes effective November 21, 2018 to track the impact of any differences that result from the capital cost allowance (CCA) change to the tax rate or rules that were used to determine the tax amount that underpins rates.³⁰ This sub-account would include the impact from the introduction of the Accelerated Investment Incentive program (AIIP), which provides for a first-year increase in CCA deductions on eligible capital assets acquired after November 20, 2018.

There are no balances in each of the Acquired Utility's 1592 sub-account. Hydro One indicated 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 the 1592 sub-account.³¹

Submission

OEB staff submits that all Acquired Utilities should have balances in the 1592 sub-account that should be returned to ratepayers. As noted above, the sub-account is intended to track differences resulting from CCA changes that were used to determine the tax amount underpinning rates. OEB staff is unclear why Hydro One has stated that there were no additions embedded in the Acquired Utilities' rate filings from 2018 onwards. The 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. The AIIP introduced a change in the CCA rule that previously underpinned rates approved in the Acquired Utilities' last rebasing application. For each year from 2018 until the year in which base rates are reset to reflect the new CCA rules³², for its Acquired Utilities, Hydro One is realizing a windfall gain associated with CCA changes as it would be claiming CCA at an

³⁰ July 25, 2019 letter regarding Accounting Direction Regarding Bill C-97 and Other Changes in Regulatory or Legislated Tax Rules for Capital Cost Allowance

³¹ IRR OEB Staff #9

³² Assumed to be EB-2021-0110 for 2023 rates

accelerated rate compared to the CCA embedded in its rates. OEB staff therefore submits that the 1592 sub-account is applicable to each of the Acquired Utilities.

OEB staff further submits that Hydro One should be directed to calculate the balances (including a forecast to the end of 2022) in the 1592 sub-account for each of the Acquired Utilities for the period of November 21, 2018 to December 31, 2022. The balances in the sub-accounts should equal to 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. Hydro One may wish to address why it should not be ordered to dispose of these balances in the current proceeding in its reply submission.

Woodstock Rate Zone's Account 1508, Sub-account ICM

In its pre-filed evidence, Hydro One requested to dispose a debit balance of \$187,825 in Account 1508 - Other Regulatory Assets, Sub-account ICM. In its interrogatory responses, Hydro One withdrew the disposition request as it is expected that the year-end 2020 account balance would be drawn down by the incremental capital module (ICM) rate rider collected by the end of 2021. As such, Hydro One requests that the OEB discontinue the ICM rate rider as that funding is no longer required.

Submission

OEB staff agrees with Hydro One that no amount pertaining to the 1508 sub-account needs to be disposed. Although OEB staff finds the opening 2016 balance integrated into Hydro One's general ledger questionable, OEB staff is of the view that the net balance in the account should be close to nil. OEB staff notes that the former Woodstock Hydro was approved an ICM revenue requirement of \$337,412.³³ The rate rider collected has ranged between approximately \$325,000 and \$350,000 annually from 2017 to 2020.³⁴ Therefore, assuming actual ICM costs were close to approved ICM costs, the annual ICM revenue requirement would be more or less offset with the annual rate riders collected, and the variance in the 1508 sub-account should be close to nil.

³³ March 22, 2012, ICM Workform, EB-2011-0207

³⁴ As shown by annual principal transactions in the sub-account in IRR Attachment 7 and IRR OEB Staff #18

Woodstock and Haldimand Rate Zone's Account 1576***i) Woodstock Rate Zone's Account 1576***

Hydro One is proposing to dispose a credit balance of \$2,240,878 in Woodstock rate zone's Account 1576 - Accounting Changes Under CGAAP. Transactions in the account cease in 2015, coinciding with the year prior to Woodstock rate zone's transition to US GAAP.³⁵ The Account 1576 balance includes a return component based on the OEB's 2022 weighted average cost of capital (WACC) of 5.47%. Hydro One indicated that it applied the OEB's 2022 WACC, consistent with the OEB's decision to apply the OEB's 2021 WACC on Newmarket-Tay Power Distribution Inc.'s (Newmarket-Tay Power) Account 1576 related base rate adjustment.^{36,37} Hydro One further noted that in that decision, the OEB noted that the 2021 WACC parameters were applicable as the adjustment will apply to rates going forward.

Submission

OEB staff submits that Account 1576 transactions should not cease in 2015, but should cease when Woodstock rate zone rebases its rates. Account 1576 is intended to capture the property plant and equipment (PP&E) impact for capitalization and depreciation policy changes from those embedded in rates at last rebasing, made during the incentive-rate setting term. The account specifies that journal entries are required starting with the year of accounting policy changes until the year prior to when a distributor rebases its rates.³⁸

OEB staff understands that Hydro One was approved to adopt US GAAP for the Woodstock rate zone upon integration with Hydro One in 2015. However, OEB staff submits that the adoption of US GAAP does not displace the need to continue recording transactions in Account 1576 leading up to rebasing. The purpose of Account 1576 is to capture the full PP&E impact from accounting policy changes, and Hydro One should be required to do so irrespective of the accounting policy in place leading up to rebasing. **Account 1576 did not contemplate a situation where a distributor would implement the OEB mandated capitalization and depreciation policy changes, then adopt US GAAP instead of International Financial Reporting Standards (IFRS).** If Hydro One were to cease recording amounts in 2015, then from that date until the year prior to rebasing, the differences in PP&E as presented under US GAAP versus those presented under

³⁵ Close of acquisition between Hydro One and the former Woodstock Hydro Services Inc. was on September 30, 2015.

³⁶ EB-2020-0041

³⁷ IRR OEB Staff #5

³⁸ Accounting Procedures Handbook, July 2012 Frequently Asked Questions #2

the former Canadian GAAP would represent a windfall gain for Hydro One. OEB staff submits that Account 1576 was designed to correct this exact circumstance. OEB staff submits that Account 1576 should continue to apply until rebasing to fully capture the PP&E impact from accounting policy changes as was intended by the OEB's establishment of Account 1576.

OEB staff is does not know whether Hydro One would have tracked the applicable post-2015 transactions that should have been recorded in this account. OEB staff notes that annual transactions in the account from 2013 to 2015 have approximated a credit of \$500,000. Therefore, OEB staff submits that the 2016 to 2022 transactions may similarly be estimated to be a credit of \$500,000 annually (or a cumulative impact of \$3,500,000 in favour of ratepayers). OEB staff notes that the actual annual transactions may be even higher due to higher PP&E amounts capitalized under US GAAP, as administration and other general overhead costs are not explicitly prohibited from capitalization under US GAAP (unlike IFRS). Forecasting the 2016 to 2022 transactions in a credit amount of \$500,000 per year will result in an updated total principal credit balance of \$5,624,659, instead of \$2,124,659.

OEB staff also submits that the appropriate WACC to apply to the Account 1576 balance is the WACC approved by the OEB in the distributor's last approved cost of service proceeding, which would be 6.74% instead of 5.47%.³⁹ Applying a WACC of 6.74% would increase the Account 1576 balance by a credit of \$26,983 on a 2015 year-end balance or a credit of \$71,433 on a forecasted 2022 year-end balance.

OEB staff notes that the OEB previously approved interim disposition of Newmarket-Tay Power's 2017 Account 1576 balance⁴⁰ and final disposition of Newmarket-Tay Power's 2020 Account 1576 balance⁴¹, in which the last approved WACC was applied to Account 1576.⁴² OEB staff further notes that the OEB approved interim disposition of Orillia Power Distribution Corporation's 2014 Account 1576 balance,⁴³ in which the last approved WACC was applied to Account 1576.

Hydro One has referenced the decision in which the OEB approved the final disposition of Newmarket-Tay Power's 2020 Account 1576 balance and base rate adjustment in support of its application of the OEB's 2022 WACC on the Account 1576 balance. At issue in this proceeding is the WACC applied to the Account 1576 balance. OEB staff notes that the OEB only approved the OEB's 2021 WACC to be applied to the base rate

³⁹ Woodstock Draft Rate Order Revenue Requirement Workform, April 26, 2011, EB-2010-0145

⁴⁰ EB-2018-0055. WACC applied is noted in IRR OEB-Staff #3.

⁴¹ EB-2020-0041. WACC applied is noted in DRO Appendix 2-EC.

⁴² Newmarket-Tay Power's was approved to use the OEB's 2011 WACC of 7.03% in EB-2009-0269

⁴³ Decision and Rate Order, EB-2015-0286, January 14, 2016

adjustment, and not the Account 1576 balance, in which the OEB applied the last approved WACC. Hydro One is not adjusting base rates going forward for these specific impacts, which is a key differentiation between the circumstances in the Newmarket-Tay Power's decision, and the current request being put forth by Hydro One. Had Hydro One's proposal been to adjust base rates in lieu of continuing to track amounts in Account 1576 on a go forward basis, OEB staff would agree that these cases would be considered comparable. Therefore, OEB staff submits that to appropriately account for the impact of accounting policy changes during the incentive rate-setting term, the most recently approved WACC should be applied to Account 1576.

ii) Haldimand Rate Zone's Account 1576

In its pre-filed evidence, Hydro One proposed to dispose a debit balance of \$5,439 in Haldimand rate zone's Account 1576, representing a residual balance remaining from a previous approved disposition. In response to interrogatories, Hydro One removed its disposition request for the residual Account 1576 balance and invited the OEB to clarify its position on disposition of residual rider balances and associated materiality thresholds.⁴⁴

Submission

OEB staff submits that Hydro One's removal of the Account 1576 balance for disposition is appropriate as the OEB has not provided guidance that indicates residual Account 1576 balances are to be requested for disposition and has not historically done so.⁴⁵ OEB staff also notes that the residual balance in the account is not material.

Haldimand Rate Zone's Account 1533

In its response to interrogatories, Hydro One indicated that it is not requesting disposition of Haldimand rate zone's Account 1533 – Distribution Generation – Other Provincial – Deferral Account, which has a credit balance of \$1,084,440.⁴⁶ Hydro One noted that the account captures the revenue requirement associated with the in-servicing of certain distributed generation assets. Hydro One is not requesting disposition because the funding adder amounts recorded in the account have been greater than the revenue requirement associated with the in-servicing of distributed

⁴⁴ IRR OEB Staff #15

⁴⁵ Per the March 2015 Accounting Guidance #6, upon disposition of Account 1575, the approved disposition is reflected as an offset to depreciation expense. The approved disposition is not transferred to Account 1595 Disposition and Recovery/Refund of Regulatory Balances, which is the typical treatment for Group 2 accounts.

⁴⁶ IRR OEB Staff #16

TAB 9

COURT OF APPEAL FOR ONTARIO

CITATION: Union Gas Limited v. Ontario Energy Board, 2015 ONCA 453

DATE: 20150622

DOCKET: C58756

Hoy A.C.J.O., and Simmons and Tulloch JJ.A.

BETWEEN

Union Gas Limited

Appellant

and

Ontario Energy Board

Respondent

Patricia D.S. Jackson, Crawford Smith and Alex Smith, for the appellant

Michael Millar, for the respondent

Heard: December 16, 2014

On appeal from the order of the Divisional Court (Justices Colin D.A. McKinnon and Susan G. Himel, Justice Herman J. Wilton-Siegel dissenting) dated December 20, 2013, with reasons reported at 2013 ONSC 7048, 316 O.A.C. 218, affirming the decision of the Ontario Energy Board, dated November 19, 2012.

Simmons J.A.:

A. INTRODUCTION

[1] Union Gas Limited appeals with leave from an order of the Divisional Court dismissing Union's appeal from a decision of the Ontario Energy Board. The

qualify for that treatment. Accordingly, in my view, the Board's decision cannot be seen as unreasonable on the basis that it was a departure from the IRM Agreement. Nor was its conclusion that the FT-RAM revenues did not qualify for sharing under the ESM unreasonable.

[80] Moreover, I am not convinced that the fact that the FT-RAM revenues were not segregated in a special deferral account relating specifically to gas supply cost reductions means that the Board engaged in impermissible retroactive ratemaking by reclassifying them as gas supply cost reductions. Rather, I conclude that the FT-RAM revenues brought forward by Union for disposition as part of the ESM proceeding were effectively "encumbered" and subject to further disposition by the Board.

[81] This issue requires a discussion of the principle against retroactive ratemaking.

[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.

TAB 10

In the Court of Appeal of Alberta

Citation: Atco Gas and Pipelines Ltd v Alberta (Utilities Commission), 2014 ABCA 28

Date: 20140120

Docket: 1201-0090-AC

Registry: Calgary

Between:

Atco Gas and Pipelines Ltd.

Appellant

- and -

Alberta Utilities Commission and Office of the Utilities Consumer Advocate

Respondents

The Court:

**The Honourable Madam Justice Carole Conrad
The Honourable Mr. Justice Ronald Berger
The Honourable Mr. Justice Peter Martin**

**Reasons for Judgment Reserved
of The Honourable Madam Justice Conrad
Concurred in by The Honourable Mr. Justice Martin**

**Concurring Reasons for Judgment
of The Honourable Mr. Justice Berger**

Appeal from the Decision by
Alberta Utilities Commission
Dated the 16th day of March, 2012
(Decision 2012-068)

**Reasons for Judgment Reserved
of the Honourable Madam Justice Conrad**

Introduction

[1] The appellant, Atco Gas and Pipelines Ltd. [Atco] appeals from a decision of the Alberta Utilities Commission [Commission], Decision 2012-068, removing certain assets related to Atco's salt cavern storage facilities from the rate base effective July 2009. The decision arose from Atco's application to dispose of certain assets it had determined were no longer used or required in the operations of the utility.

Issues

[2] Leave to appeal was granted on two grounds:

- i. Did the Commission err in setting an effective date for removal of the Salt Cavern Excess Assets from the rate base at July 1, 2009?
- ii. Did the Commission err by requiring Atco to bear the costs and burdens attributed to non-utility use of portions of a single, indivisible asset originally acquired for the purposes of the utility?

Decision

[3] The appeal is dismissed.

Issue one:

[4] The Commission did not err in law by making its decision to remove assets from the rate base effective July 1, 2009; nor was its decision unreasonable.

Issue two:

[5] This issue deals with the removal of a portion of an asset from the rate base where that portion is no longer required for utility purposes. There is little authority on this issue and every case will have to be dealt with on its circumstances.

[6] Depending on the specific facts and circumstances, the decision to remove a portion of an asset from the rate base and the method of doing so may raise many considerations including such matters as: whether the asset can be physically, practically or legally divided; ease of division; associated costs involved and who should pay them; length of time the asset has been in the rate base; whether the divided portion has other potential uses; and generally whether

amounts collected through rates associated with those assets from and after that date. In arriving at its decision, the Commission considered the facts, the submissions and the law.

[48] The Commission has broad, discretionary powers to set just and reasonable rates: *Gas Utilities Act*, sections 36 and 37. The Commission is required to balance the interests of the public while acting in a fair manner towards the utility. This regulatory compact between the Commission and Atco is well known:

Under the regulatory compact, the regulated utilities are given exclusive rights to sell their services within a specific area at rates that will provide companies the opportunity to earn a fair return for their investors. In return for this right of exclusivity, utilities assume a duty to adequately and reliably serve all customers in their determined territories, and are required to have their rates and certain operations regulated.

Stores Block at para 63

[49] Discussing the statutory requirement to set just and reasonable rates, the Supreme Court of Canada noted:

Rate regulation serves several aims — sustainability, equity and efficiency — which underlie the reasoning as to how rates are fixed:

. . . the regulated company must be able to finance its operations, and any required investment, so that it can continue to operate in the future . . . Equity is related to the distribution of welfare among members of society. The objective of sustainability already implies that shareholders should not receive “too low” a return (and defines this in terms of the reward necessary to ensure continued investment in the utility), while equity implies that their returns should not be “too high”. (R Green and M Rodriguez Pardina, *Resetting Price Controls for Privatized Utilities: A Manual for Regulators* (1999), at 5)

Stores Block at para 62

[50] Fairness to customers requires that the rate base include only assets used or to be used for operation of the utility and not assets with no production value. At the same time, the Commission has an obligation of fairness to the utility. The Commission recognized the effect of its directions to Atco when it selected a July 1, 2009 implementation date.

[51] I do not accept Atco’s submission that the Commission erred in law by engaging in prohibited retroactive ratemaking. Whether a decision is impermissible retroactive ratemaking is an issue of fact. (See *Atco Gas, Re*, 2010 ABCA 132, 477 AR 1, discussed below.) There are two fundamental policy concerns behind retroactive ratemaking. With regard to the utility, retroactive ratemaking is unfair because a utility relies on certain rates to make business

decisions. To change them after the fact could cause unexpected results for the utility: Yvonne Penning, “Can Economic Policy and Legal Formalism Be Reconciled: The 1986 Bell Rate Case” (1989) 47 *U Toronto Fac L Rev* 607 at 610. With regard to consumers, retroactive ratemaking redistributes the cost of utility service by asking today’s customers to pay for expenses incurred by yesterday’s customers: “Can Economic Policy and Legal Formalism Be Reconciled” at 610. Clearly, that should be avoided.

[52] In this case, removing the salt cavern assets from the rate base or revenue requirement would cause a decrease in rates and a benefit for customers, not an increase after the fact. Thus, retroactivity to July 1, 2009 works in favour of customers from that date forward. The question here involves the question of fairness to the utility.

[53] Where a utility has knowledge that assets are not required for operational purposes, and knows it can unilaterally remove them, the utility must also be taken to know that the rates will be subject to change as a result of the non-inclusion of those assets in the rate base. It has the choice to remove the assets and utilize them in other revenue generating operations. Once there is knowledge, the harm of retroactive ratemaking from the utility’s perspective vanishes.

[54] Retroactive ratemaking was considered by this court in *Calgary (City) v Alberta (Energy and Utilities Board)*, 2010 ABCA 132, 477 AR 1 at paras 46-47 [*Deferred Gas Accounts* decision], where it confirmed the problems surrounding retroactive ratemaking by a regulatory authority:

Generally, ratemaking and rates must be prospective: *Coseka Resources Ltd v Saratoga Processing Co* (1980), 31 A.R. 541 at para. 29, 16 Alta. L.R. (2d) 60 (C.A.). A utility’s past financial results can be used to forecast future expenses, but a regulator cannot design future rates to recover past revenue deficiencies: *Northwestern Utilities Ltd., Re* (1978), [1979] 1 SCR 684 at 691 and 699 [*Northwestern Utilities*].

Retroactive ratemaking “establish[es] rates to replace or be substituted to those which were charged during that period”: *Bell Canada v. Canada (Canadian Radio-Television & Telecommunications Commission)*, [1989] 1 SCR 1722 at 1749. Utility regulators cannot retroactively change rates because it creates a lack of certainty for utility consumers. If a regulator could retroactively change rates, consumers would never be assured of the finality of rates they paid for utility services.

[55] The *Deferred Gas Accounts* decision of this court, following *Stores Block*, set down guiding principles for determining whether ratemaking was impermissibly retroactive.

[56] Simply because a ratemaking decision has an impact on a past rate does not mean it is an impermissible retroactive decision. The critical factor for determining whether the regulator is engaging in retroactive ratemaking is the parties’ knowledge. Hunt JA stated at para 57:

Both *Bell Canada 1989* [*Bell Canada v Canada (Canadian Radio-Television and Telecommunications Commission)*, [1989] 1 SCR 1722] and *Bell Aliant* [*Bell Canada v Bell Aliant Regional Communications*, 2009 SCC 40, [2009] 2 SCR 764] (which concerned deferral accounts rather than interim rates) illustrate the same preoccupation: **were the affected parties aware that the rates were subject to change?** If so, the concerns about predictability and unfairness that underlie the prohibitions against retroactive and retrospective ratemaking become less significant. (Emphasis added.)

[57] If a utility is aware that a rate is interim and subject to change, then a regulator's revision of the rate will not be disallowed for impermissible retroactive ratemaking. This was the conclusion reached by the Supreme Court of Canada in *Bell Canada v Canada (Canadian Radio-Television and Telecommunications Commission)*, [1989] 1 SCR 1722, 60 DLR (4th) 682 [*Bell Canada 1989*].

[58] According to the Supreme Court of Canada in *Bell Canada 1989* at 1756, alteration of an interim rate by a regulator is simply a function of regulators who have the mandate to ensure rates and tariffs are, at all times, just and reasonable.

[59] In this appeal, the Commission expressly reserved the issue of the salt cavern assets, among others, from the revenue requirement determination: Commission's Decisions 2009-033 and 2010-228. Atco says the use of a placeholder (reserving the issue of the salt cavern assets for future determination) was not enough to enable the Commission to revisit the matter in subsequent years. Atco submits that the terms "interim rate order" and "deferral account" are well understood by all parties and that the use of the word "placeholder", without more, is not enough to achieve the same purpose as interim rates and deferral accounts. I do not agree. Atco had all the information it required by June 2009 to know that it was not entitled to revenue from inclusion of those assets in the rate base.

[60] In 2009 and 2010, as permitted under the *Gas Utilities Act*, Atco engaged in negotiation of issues related to the salt cavern assets and revenue requirements. The resulting Negotiated Settlements in 2009 and 2010 expressly reserved making a decision about removing the salt cavern assets from the revenue requirement because the parties were addressing the matters in separate proceedings. The Negotiated Settlements (found in the Commission's Decision 2009-033 and Decision 2010-228) set Atco's revenue requirement for 2009 and 2010. Atco knew that the Negotiated Settlements only represented a partial rate, subject to the determination of the proceedings relating to the salt cavern assets. This is apparent when in 2010 the parties to the Negotiated Settlements agreed to not delay the rate setting proceedings for the sake of determining the fate of the salt cavern assets:

In a letter dated January 22, 2010, the Commission agreed with all parties that the present proceeding should not be delayed as a result of any issues regarding the Identified Salt Cavern Assets. The Commission granted [Atco's] request to deal with the Identified Salt Cavern Assets in a separate, subsequent proceeding. Given that the removal of Identified

TAB 11

School Energy Coalition (SEC) INTERROGATORY #37

Interrogatory

Reference: Exhibit A / Tab 3 / Schedule 1 / Attachment 11/ Page 16

Please confirm that WHSI has a balance in Account 1575 or 1576 owing to ratepayers of \$1,110,647, plus accrued interest, as of December 31, 2013. Please confirm that WHSI is proposing to defer clearance of that balance until 2020. Please provide a projection of the balance in the account as of the time WHSI expects to clear the account.

Response

The balance as at December 31, 2013 in account 1576, IFRS-CGAAP Transitional PP&E Amounts, is \$1,110,647. The WHSI account balance does not include interest carrying charges. This is consistent with the guidance provided from the Board in, 'Ontario Energy Board Accounting Procedures Handbook Frequently Asked Questions July 2012' whereby Appendix A; Account Description of Account 1576 (page 26), part "C", provides that "No interest carrying charges or a rate of return is permitted in this account."

Confirmed. Hydro One is proposing to defer clearance of that balance until the next rebasing of rates, currently expected in 2020.

WHSI will continue to track variances between IFRS and CGAAP in this account until the closing of the proposed transaction. If, for example, the proposed acquisition of WHSI by Hydro One closes on December 31, 2014, the forecast principal balance of the deferral account is approximately \$1.6 million. From the closing date forward, no new principal is expected to be added to the Deferral Account balance.

TAB 12



Ontario
Energy
Board | Commission
de l'énergie
de l'Ontario

BY E-MAIL AND WEB POSTING

July 25, 2019

**To: All Rate-regulated Electricity and Natural Gas Utilities
Ontario Power Generation Inc.
All Intervenors in 2019 and 2020 Electricity and Natural Gas Rate
Applications
All Other Interested Parties**

**Re: Accounting Direction Regarding Bill C-97 and Other Changes in Regulatory
or Legislated Tax Rules for Capital Cost Allowance**

On June 21, 2019, Bill C-97, the *Budget Implementation Act, 2019, No. 1*, was given Royal Assent. Included in Bill C-97 are various changes to the federal income tax regime.

One of the changes introduced by Bill C-97 is the Accelerated Investment Incentive (AII) program, which provides for a first-year increase in capital cost allowance (CCA) deductions on eligible capital assets acquired after November 20, 2018.

The Ontario Energy Board (OEB) anticipates that these Bill C-97 CCA rule changes may have a material impact on the taxes payable of electricity and natural gas utilities and Ontario Power Generation Inc. (OPG) (collectively, Utilities). This letter provides accounting direction to Utilities in respect of the impacts of these and future legislative or regulatory changes to the tax rates or rules for CCA.

Under the Accounting Procedures Handbook, electricity distributors and transmitters are to record the impact of any differences that result from a legislative or regulatory change to the tax rates or rules assumed in the OEB Tax Model that is used to determine the tax amount that underpins rates. The impact of any differences that are not reflected in rates (due to such factors as timing of known changes) are to be recorded in Account 1592 - PILs and Tax Variances. Natural gas utilities and OPG have similar accounts.

The OEB expects Utilities to record the impacts of CCA rule changes in the appropriate account (Account 1592 - PILs and Tax Variances and similar accounts for natural gas utilities and OPG) for the period November 21, 2018 until the effective date of the Utility's next cost-based rate order. For the purposes of increased transparency, the

OEB is establishing a separate sub-account of Account 1592 - PILs and Tax Variances – CCA Changes specifically for the purposes of tracking the impact of changes in CCA rules. Electricity distributors and transmitters are to use this sub-account for the impact of the Bill C-97 CCA rule changes as well as any future CCA changes instituted by relevant regulatory or taxation bodies. Natural gas utilities and OPG are to create separate sub-accounts within their respective similar accounts to record the same impacts.

For natural gas utilities and electricity distributors and transmitters, the OEB's long-standing practice with respect to the impact of changes in taxes due to regulatory or legislated tax changes during an incentive rate-setting period has been to share the impacts between Utility shareholders and ratepayers on a 50/50 basis¹. However, Utilities should not expect that this practice will necessarily apply in respect of CCA rule changes, and determinations as to the appropriate disposition methodology will be made at the time of each Utility's cost-based application. The OEB therefore expects that all Utilities will record the full revenue requirement impact of any changes in CCA rules that are not reflected in base rates. The impacts should be recorded as of the effective date of the changes in CCA rules, which for the Bill C-97 changes is November 21, 2018.

Consistent with the OEB's filing requirements for the disposition timing and parameters of deferral and variance accounts, the OEB expects Utilities to bring forward any amounts tracked in their applicable CCA-related sub-account for review and disposition in accordance with the OEB's filing requirements for the disposition of deferral and variance accounts². Unless the OEB orders otherwise, this would generally coincide with a Utility's next cost-based rate application.

The OEB expects Utilities, including those whose applications are currently before the OEB, to reflect any impacts arising from CCA rule changes in their cost-based applications for 2020 rates and beyond. The OEB recognizes that there may be timing differences that could lead to volatility in tax deductions over the rate-setting term. The OEB may consider a smoothing mechanism to address this.

Any questions relating to this letter should be directed to Industry Relations at industryrelations@oeb.ca.

Yours truly,

Original signed by

Kirsten Walli
Board Secretary

¹ EB-2007-0673: Supplemental Report of the Board on 3rd Generation Incentive Regulation for Ontario's Electricity Distributors, Section 3 - Tax Changes in Relation to the Z-factor, p.35

² The OEB expects that Utilities will combine the impacts associated with the 2018 stub period with future years when disposing of the CCA-related sub-account.

TAB 13

OEB STAFF INTERROGATORY #9

Reference:

(i) Appendix E.2

(ii) EB-2021-0110 - Exhibit G / Tab 1 / Schedule 1 / p.30

Interrogatory:

In Hydro One's 2023 rebasing application as per the second reference, Hydro One noted that Hydro One Distribution's 2020 Group 2 balances requested for disposition in that application only reflects Distribution balances and do not include the Acquired Utilities' balances. In the DVA Continuity Schedule of this proceeding, there are no balances for each of the Acquired Utilities for the following generic accounts.

- Account 1592, Sub-account CCA Changes, and
- Account 1522 Pension & OPEB Forecast Accrual versus Cash Payment Differential Carrying Charge, and related control and contra-accounts

a) Please explain why there are no balances for each of the Acquired Utilities for the accounts noted above.

b) Please provide the balances for the Account 1522 accounts for each year in which it is applicable and provide any supporting calculation.

c) For Account 1592, Sub-account CCA Changes, please provide the balances for each year. Please provide a calculation of the full revenue requirement for each year from 2018 to 2022 for each of the Acquired Utilities using the following two methods:

- i. The difference in CCA between the calculations embedded in each Acquired Utility's rates and what that calculation would have been had the Accelerated Investment Incentive Program (AIIP) rules been applied in its last rebasing application (i.e. based on approved capital additions)
- ii. The difference in CCA between the amounts claimed for each Acquired Utility in 2018 to 2020 and what the claims would have been had the AIIP program not been introduced (i.e. based on actual capital additions in the year).

d) Please update the DVA Continuity Schedules, as needed.

1 **Response:**

- 2 a) Account 1592, Sub-account CCA Changes – CCA rule changes effective November 21, 2018
3 captures the tax impact arising from tax rules changes arising from accelerated depreciation.
4 Accelerated depreciation effectively allows the first year CCA claim to be increased up to 3x
5 the legacy amount for assets acquired after November 21, 2018 and in-serviced before
6 2027. As there were no additions embedded in the Acquired Utilities' rate filings from 2018
7 onwards, there would be no accelerated CCA impacts recorded in Account 1592, Sub-
8 account CCA Changes.

9
10 Account 1522, Pension & OPEB Forecast Accrual versus Cash Payment Differential Carrying
11 Charge – these accounts were effective January 1, 2018. As indicated in the rebasing
12 applications of the Acquired Utilities, each of the Acquired Utilities participated in the
13 OMERS plan.¹ The Report of the OEB Regulatory Treatment of Pension and Other Post-
14 employment Benefits (OPEBs) Costs, Appendix C, dated September 14, 2017, states that
15 utilities who are members of OMERS do not need to post pension entries to the account. As
16 such, there were no entries in Account 1522 required for the Acquired Utilities with respect
17 to Pension.

18
19 Haldimand – As noted in EB-2013-0134, Exhibit 4, Tab 2, Haldimand did not provide OPEBs
20 to employees. There would be no entries in Account 1522 required with respect to OPEBs.

21
22 Woodstock and Norfolk – The Report of the OEB Regulatory Treatment of Pension and
23 Other Post-employment Benefits (OPEBs) Costs, Appendix C states:

24
25 *[U]tilities do not need to post OPEB entries if both the amount embedded in rates and*
26 *recognized on the financial statements is based on the cash paid to beneficiaries for the*
27 *period. This would likely be the case for smaller utilities with OPEB plans that are not*
28 *material.*

29
30 Hydro One notes there is no clear distinction in Woodstock and Norfolk's rate applications
31 on whether these Acquired Utilities recovered their OPEB expenses on a cash or accrual
32 basis.

¹ Haldimand: EB-2013-0134, Exhibit 4, Tab 2, Schedule 4, page 4; Woodstock: EB-2010-0145, Exhibit 4, Tab 2, Schedule 4, page 7; Norfolk: EB-2011-0272, Exhibit 4, Tab 2, Schedule 4, page 1

1 Based on Hydro One's review of the Acquired Utilities' previous rebasing applications,
2 Woodstock's 2011 test year OPEB premiums (as embedded in their Application²) were
3 \$67,102, and Norfolk's 2012 test year OPEB premiums (as embedded in their Application³)
4 were \$31,908. As at January 1, 2018, there were no OPEB plans remaining for these
5 Acquired Utilities. Any applicable interest differential on amounts collected in rates and
6 actual cash payments made (\$0) would be nominal in any event had they recorded OPEBs
7 on an accrual basis; and therefore, no updates to the DVA Continuity Schedules are
8 proposed.

9
10 b) Not applicable. Please refer to response (a) above.

11
12 c) Please refer to response (a) above.

13
14 d) Please refer to response (a) above.

² EB-2010-0145, Exhibit 4, Tab 2, Schedule 4, Table 4-13

³ EB-2011-0272, Exhibit 4, Tab 2, Schedule 4, Table 2.21

TAB 14



**Ontario
Energy
Board** | **Commission
de l'énergie
de l'Ontario**

DECISION AND ORDER

EB-2017-0049

HYDRO ONE NETWORKS INC.

**Application for electricity distribution rates beginning January 1,
2018 until December 31, 2022**

BEFORE: Ken Quesnelle
Presiding Member

Emad Elsayed
Member

Lynne Anderson
Member

March 7, 2019

Findings

The OEB finds that the cost of capital and the load forecast will not be updated for 2021 and 2022 rates. As noted by most intervenors, this is contrary to the Rate Handbook.⁸² While the integration of the Acquired Utilities may be unique, in that this is the first time there will be integration of an acquired utility during a Custom IR term, the OEB does not find this to be an exceptional reason to permit the proposed update.

Given the OEB's findings under Issue 56, there is no need for the OEB to make a finding on the cost of capital parameters for the Acquired Utilities in this proceeding. Rates for the Acquired Utilities will be based on the Price Cap IR approach once the deferred rebasing period concludes.

Hydro One has provided a load forecast for the five-year term, and this will be used for the setting of rates. The five-year customer count forecast, as updated as a result of this Decision and Order, will also be used for the whole five-year term. Given that the load forecast and cost of capital will not be updated, and the revenue requirement for the Acquired Utilities will not be consolidated in 2021, there is no need to update the cost allocation model during the plan term.

3.2.6 Integration of Acquired Utilities (Issue 14)

Issue 14. Is Hydro One's proposed integration of the Acquired Utilities in 2021 appropriate?

Hydro One proposed to integrate the customers in the legacy service areas of the Acquired Utilities in 2021. All three Acquired Utilities had a five-year deferred rebasing period, which ends in 2020 for Haldimand and Woodstock, and 2019 for Norfolk.⁸³ Hydro One proposed to maintain a rate freeze for Norfolk rates for 2020 so that all three Acquired Utilities could be integrated in 2021.⁸⁴

⁸² Rate Handbook, *op. cit.*, p. 26.

⁸³ Decision and Order (EB-2013-0196/-0187/-0198), July 3, 2014 regarding Hydro One's acquisition of Norfolk Power's service territory and assets. Decision and Order (EB-2014-0244), March 12, 2015, regarding Hydro One's acquisition of Haldimand County Hydro's service territory and assets, and Decision and Order (EB-2014-0213), September 11, 2015 regarding Hydro One's acquisition of Woodstock Hydro's service territory and assets.

⁸⁴ Tr., Vol. 1 (June 11, 2018), p. 16/l. 28 to p. 18/l. 9.

As part of the integration, Hydro One has proposed to create six new rate classes for the customers of the Acquired Utilities.

Findings

Under Issue 56, the OEB has determined that the Acquired Utilities will not be integrated into the revenue requirement of the rest of Hydro One during the plan term. For this reason, there is no need to create new rate classes for the customers of the Acquired Utilities. The rates for the Acquired Utilities will be based on the Price Cap IR approach once the deferred rebasing period concludes.

The rationale for extending the deferred rebasing period for the Norfolk service area is no longer relevant. Hydro One may either extend the deferred rebasing period by the one year as planned, or apply to move to the Price Cap IR approach.

3.2.7 Earnings Sharing Mechanism (Issue 15)

Issue 15. Is the proposed Earnings/Sharing mechanism appropriate?

Hydro One proposed an earnings sharing mechanism (ESM) that would apply to all years of the Custom IR plan.⁸⁵ The proposed ESM is asymmetrical, with a 50/50 sharing of any achieved ROE exceeding the allowed ROE on a regulated basis by 100 basis points for each test year. The mid-year rate base would be used to calculate the ROE for each year. Any excess earnings to be refunded to customers would be adjusted for tax impacts in the year, and accumulated in a deferral account (DVA). Hydro One proposed that any refund would be disposed of at the time of its next rebasing application.

SEC supported Hydro One's proposed ESM, noting that "it is generally consistent with other ESMs that have been approved by the Board."⁸⁶ In its submission, OEB staff did not oppose the proposed ESM, but made two submissions with respect to the calculation of carrying charges on the balances of the proposed DVA and disposition of any balance at Hydro One's next rebasing application. OEB staff noted that Hydro One had concurred with the proposals in responses to interrogatories.⁸⁷

⁸⁵ Exhibit A/3/2/p. 9/section 2.1.

⁸⁶ SEC, *op. cit.*, p. 19.

⁸⁷ OEB staff, *op. cit.* p. 40. The interrogatories referenced were Exhibit I/15/CME-7 part h) and Exhibit I/15/Staff-64.

TAB 15

CITATION: Hydro One Networks Inc. v. Ontario Energy Board, 2020 ONSC 4331
DIVISIONAL COURT FILE NO.: 200/19
DATE: 20200716

**ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

CORBETT, DUCHARME and GOMERY JJ.

B E T W E E N:

HYDRO ONE NETWORKS INC.

Appellant

- and -

ONTARIO ENERGY BOARD

Respondent

)
)
) *Geoff R. Hall, Gordon M. Nettleton and*
) *Brandon Kain* for the Appellant
)
)
)
) *Fred Cass*, for the Respondent
)
) *Mark Rubenstein*, for the Intervenor
) Ontario Education Services Corp.
)
) *Richard Stephenson and Hailey Bruckner*
) For the Intervenor Power Workers' Union
)
) **Heard:** November 21, 2019¹

REASONS FOR DECISION

Ducharme J.:

PART I: NATURE OF PROCEEDING

[1] Hydro One Networks Inc. (“HONI”) appeals from the March 7, 2019, decision (the “Rehearing Decision”) of the Ontario Energy Board (the “OEB” or “the Board”) affirming its

¹ The Court also considered written argument provided by the parties in March 2020 in light of the decision of the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65.

September 2017 decision (the “Original Decision”) with respect to the allocation of Future Tax Savings of \$2.595 billion (the “Future Tax Savings”). HONI argued throughout the Board’s proceedings that all of the Future Tax Savings should be allocated to its shareholders. In the Rehearing Decision, the OEB ordered, as it had in the Original Decision, that 38% of the Future Tax Savings (or roughly \$900 million) should instead be used to reduce HONI’s revenue requirements for 2017 and 2018, with the result that HONI’s customers would pay lower rates.

[2] HONI argues that the Rehearing Decision cannot stand because it fails to address errors in the Original Decision. It was these errors, identified by the OEB review panel (the “Review Panel”) in August 2018, that led to a rehearing on the allocation issue and the Rehearing Decision. HONI asks this Court to set aside the Rehearing Decision and substitute an order requiring the Future Tax Savings be allocated entirely to HONI’s shareholders or, in the alternative, directing that OEB should reconsider the allocation in light of errors in the Original Decision identified by the Review Panel.

PART II: OVERVIEW

[3] This appeal concerns nearly \$900 million in Future Tax Savings that the Rehearing Decision allocated to HONI’s ratepayers instead of HONI’s shareholders. The Future Tax Savings arose after HONI’s ultimate shareholder, the Province of Ontario, made a public offering of its indirect parent company’s shares in 2015. HONI was then required to pay \$2.271 billion (the “PILs Departure Tax”) to exit the provincial payments in lieu of taxes (“PILs”) regime. This increased the tax value of HONI’s assets, and thus its deductions in computing future federal/provincial income tax.

[4] HONI did not seek to recover the PILs Departure Tax from its ratepayers, as it was not a cost incurred to provide them with regulated utility services. The PILS Departure Tax instead arose from a transaction involving HONI’s unregulated indirect parent for the purchase of shares by Ontario. HONI submits that as it, and not its ratepayers, paid the cost of the PILs Departure Tax, HONI’s shareholders and not its ratepayers are entitled to the benefit of the Future Tax Savings flowing from this transaction.

[5] In the Original Decision on September 28, 2017, an OEB panel (the “Original Panel”) held that the PILs Departure Tax was not a real cost to HONI, as it was variable in the Province’s discretion and was funded by Ontario. The Original Panel therefore concluded that some of this money should benefit HONI’s ratepayers. It directed that HONI’s revenue requirements, and by extension its rates, should be reduced by 38% of the Future Tax Savings that the PILs Departure Tax produced or nearly \$900 million. The remaining 62% of the Future Tax Savings could be paid to HONI’s shareholders.

[6] In the Review Decision on August 31, 2018, however, a different OEB panel (the “Review Panel”) found numerous errors with this reasoning. In particular, the Review Panel held that the Original Panel’s failure to treat the PILs Departure Tax as a real cost to HONI was contrary to both the evidence and the stand-alone utility principle, which distinguishes a utility

corporation, like HONI, from its shareholders and limits its business activities and recoverable costs to the provision of regulated services. The Review Panel also found that the methodologies the Original Panel applied in allocating the Future Tax Savings to HONI's ratepayers were flawed. It thus directed that the Original Decision should be "reconsider[ed] in light of these findings and all the evidence and argument the original panel and the reviewing panel heard".

[7] The OEB panel that reheard the matter (the "Rehearing Panel") failed to address the errors in the Original Decision identified by the Review Panel. The Rehearing Panel instead simply recited the arguments made by the parties and then concluded that the Original Panel's allocation of Future Tax Savings was "within the realm of reasonable outcomes." It also specifically failed to explain what methodology, if any, it relied on for this conclusion.

[8] As a result, pursuant to the Rehearing Decision, 38% of the Future Tax Savings, or nearly \$900 million, was once again allocated for the benefit of HONI's ratepayers instead of its shareholders. HONI submits that for two reasons, the Rehearing Decision must be set aside.

[9] First, HONI argues that once the Review Panel found that the PILs Departure Tax was a real cost to HONI based on the evidence and the stand-alone utility principle, the only reasonable decision possible was that HONI's shareholders were entitled to all of the Future Tax Savings. The fundamental regulatory principle that "benefits follow costs" dictates that all Future Tax Savings be allocated to HONI's shareholders, because HONI rather than its ratepayers incurred all the expenses necessary to generate them. Similarly, the stand-alone utility principle prevented HONI from recovering any costs for non-rate regulated activities from its ratepayers, so ratepayers cannot be allocated any benefits that these costs produce. In fact, the Review Panel found that the Original Panel's failure to follow these principles was found to result in an "inappropriate allocation of the future tax savings". HONI submits that there was no logical basis on which the Rehearing Panel could depart from these principles, and its reasons did not even attempt to explain why it did so.

[10] Second, HONI submits that the Rehearing Panel applied the wrong legal test. It held that the reconsideration motion required it to determine only whether the Original Decision would be "reasonable" if the errors found by the Review Panel were accepted. The Rehearing Panel failed to address the flaws identified by the Review Panel. It thus misapprehended its role and fettered its statutory discretion to vary the Original Decision without deference to the Original Panel.

[11] HONI therefore requests that the Rehearing Decision be set aside, and that the Court substitute an order that none of the Future Tax Savings be applied to reduce HONI's transmission revenue requirements for 2017 and 2018. Alternatively, HONI requests that the Court remit the matter back to the OEB with the directions that: (a) the OEB shall consider and make an appropriate order varying the tax savings allocation in Original Decision by correcting the errors identified in it by the Review Panel; and (b) in doing so, the OEB shall apply and give effect to the findings in the Review Decision and each of the errors it identified in the Original Decision, including in respect of the applicable ratemaking principles.

PART III: THE FACTUAL CONTEXT

[12] HONI is an electric utility corporation that is regulated by the OEB. As of 2017, its transmission system accounted for about 98% of Ontario's electricity transmission capacity, and it is also the Province's largest electricity distributor.

[13] Currently, HONI is a wholly owned subsidiary of Hydro One Inc. ("HOI"), which is itself a wholly owned subsidiary of Hydro One Limited ("HOL"). Unlike HONI, neither HOI nor HOL is regulated by the OEB, because only HONI provides regulated electric transmission and distribution services.

[14] In 2015, the Province of Ontario, which until then had been the sole owner of HONI's parents, undertook an initial public offering (the "IPO") to begin divesting itself of HOL's shares. The IPO had two interrelated tax consequences for HONI.

[15] First, HONI was required to immediately pay the PILs departure tax of \$2.271 billion in exiting the PILs regime established by the *Electricity Act* (Ontario) and the *Payments in Lieu of Corporate Taxes Regulation* (the "*PILs Regulation*").

[16] Prior to the IPO, HOL and its subsidiaries, including HONI, were exempt from federal income taxes pursuant to s. 149(1) of Canada's *Income Tax Act*, which in turn made them exempt from provincial corporate income taxes under s. 27(2) of Ontario's *Taxation Act, 2007*. So long as HONI was exempt from these taxes, it was required by ss. 88-89 of the *Electricity Act* to make PILs to the Ontario Electricity Financial Corporation in amounts equivalent to the federal and provincial taxes it would have paid were it a taxable entity.

[17] The IPO changed this. The province's sale of more than 10% of HOL's shares terminated HONI's exemption from federal and provincial income taxes, such that the PILs regime ceased to apply to it. For tax purposes, this triggered a deemed disposition and reacquisition of all HONI's assets at fair market value ("FMV") under s. 149(10)(b) of the *Income Tax Act* ("ITA") (the "Deemed Transaction"). The Deemed Transaction, in turn, triggered HONI's liability to pay the PILs Departure Tax under s. 16.1 of the *PILs Regulation* in an amount equal to the tax under the *ITA* where an entity sells or is deemed to sell its assets at FMV.

[18] Second, the Deemed Transaction also provided HONI with Future Tax Savings of \$2.595 billion.² The Future Tax Savings arose because the Deemed Transaction increased the tax value

² The \$2.595 billion figure represents the book value of the Future Tax Savings, but the present value of the Future Tax Savings (taking into account the time value of money over the approximately 20-year period when HONI can use them, by using an average weighted cost of capital of 9% and average annual tax depreciation of 5.5% on a

of certain of HONI's assets by \$9.794 billion, which increased the capital cost allowance and cumulative eligible capital claims that HONI could deduct in computing its taxable federal and provincial income in years after 2015.

[19] It is important to note that the Future Tax Savings do not represent a windfall for HONI. In order to receive the Future Tax Savings, HONI had to exit the PILs regime and pay the PILs Departure Tax as a result of the Deemed Transaction. In effect, the Future Tax Savings are a recovery over time of the PILs Departure Tax paid by HONI and funded by its shareholders.

1. The Transmission Approval Application

[20] In Ontario, utility rates are regulated through a process by which a utility seeks approval from the OEB for costs it has incurred or expects to incur in a specified period of time. Where the OEB approves of such costs as just and reasonable, it incorporates them into the utility's rates pursuant to s. 78(3) of the *OEB Act*, so that the utility has a reasonable opportunity to recover them and earn a fair return during a rate period.³

[21] On May 31, 2016, HONI applied under s. 78(7) of the *OEB Act* for approval of the 2017 and 2018 "revenue requirements" for its transmission business, i.e., "the total revenue that is required by the company to pay all of its allowable expenses and also to recover all costs associated with its invested capital", which once approved are "allocated to customers in the form of just and reasonable rates".⁴

[22] In doing so, HONI did not seek to recover any part of the PILs Departure Tax applicable to its transmission business from ratepayers. The rationale for this decision was that the PILS Departure Tax was not a cost that pertained to the provision of rate-regulated utility services; rather, it arose from a transaction involving its unregulated indirect parent. HONI therefore paid the PILs Departure Tax itself, using funds it obtained by issuing shares to HOI as part of a trickle-down recapitalization of the corporation by its ultimate shareholder, the Province.

[23] Consistent with this decision, HONI took the position, supported by OEB staff, that all of the Future Tax Savings should be retained by its shareholders, and not be allocated to reduce its revenue requirement so as to lower the regulatory taxes that HONI's ratepayers pay. It did so on the basis of rate-making principles accepted by the OEB in the Original Decision, including the "stand-alone or pure utility" and "benefits follow costs" principles. The Original Panel described these principles as follows:

declining balance) is only \$1.2 billion. The PILS Departure Tax paid by HONI was therefore materially greater than the amounts it may recover back by the Future Tax Savings over time.

³ *Ontario (Energy Board) v. Ontario Power Generation Inc.*, 2015 SCC 44 at paras. 1, 15-20 and 76.

⁴ *ATCO Gas and Pipelines Ltd. v. Alberta (Utilities Commission)*, 2015 SCC 45, at para. 3.

3.3 STAND ALONE OR PURE UTILITY PRINCIPLE

This principle limits the amounts recoverable in utility rates to costs related to the provision of regulated utility services. For ratemaking purposes, costs related to unregulated or non-utility business activities are excluded from the ambit of the “standalone” or “pure” utility activities.

The business activities of a “stand-alone” or “pure” utility are limited to the provision of regulated services. For regulatory purposes, a “pure” utility is distinguishable from a holding company parent that already controls and is actively acquiring several other subsidiary enterprises.

...

3.5 BENEFITS FOLLOW COSTS

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.

2. The Original Decision

[24] On September 28, 2017, the Original Panel disposed of the application in the Original Decision, as subsequently revised by it on October 11 and November 1, 2017.

[25] The Original Panel rejected HONI’s position with respect to the Future Tax Savings. It determined that they should not be allocated in their entirety to HONI’s shareholders, but instead be divided between its shareholders and ratepayers, with the ratepayer portion being applied to reduce HONI’s transmission revenue requirements for 2017 and 2018 (the “Future Tax Savings Determination”).

4. What is The Appropriate Remedy?

[55] Pursuant to s. 33(4) of the *OEB Act* on the hearing of an appeal under the *Act*, “The Divisional Court shall certify its opinion to the Board and the Board shall make an order in accordance with the opinion, but the order shall not be retroactive in its effect.”

[56] HONI submits that the proper remedy in this case is for the court to substitute for the decision of the Rehearing Panel an order that none of the Future Tax Savings will be applied to reduce HONI’s transmission revenue requirements for 2017 and 2018. In this regard, HONI relies on s. 134(1)(a) of the *Courts of Justice Act* which makes clear that the Court’s opinion to the OEB can be in substitution for the one given in the Rehearing Decision:

134 (1) Unless otherwise provided, a court to which an appeal is taken may,
(a) make any order or decision that ought to or could have been made by the court
or tribunal appealed from;

HONI submits that this is the appropriate remedy as this is the only reasonable decision that was available on the evidence, given the findings of the Review Panel.

[57] In the alternative, HONI submits that this court should remit the matter back to the OEB with the directions that: (a) the OEB shall consider and make an appropriate order varying the tax savings allocation in Original Decision by correcting the errors identified in it by the Review Panel; and (b) in doing so, the OEB shall apply and give effect to the findings in the Review Decision and each of the errors it identified in the Original Decision, including in respect of the applicable ratemaking principles.

[58] The OEB submits that s. 33(4) of the *OEB Act* does not confer on the court a statutory right to substitute its decision in place of the decision of the Rehearing Panel. The OEB submits that 134(1)(a) of the *Courts of Justice Act* does not apply in this appeal, because s. 33(4) of the *OEB Act* “provides otherwise” by limiting the available remedy to the certification of the Divisional Court’s opinion. The OEB points out that there are no cases where the Divisional Court has simply substituted its own decision for the OEB’s decision under appeal.

[59] In the alternative, the OEB submits that this court should not substitute its opinion for that of the Board since that should only be done in “exceptional circumstances” which do not exist here. The OEB argues that remitting the case to the Board would not be pointless and that this is not a case where there is only one reasonable outcome that can be reached if the matter is sent back. Rather the OEB submits that this Court should certify its opinion about any errors of law or jurisdiction so that the Board can reconsider the matter in view of that opinion, applying its expertise and experience to that task.

[60] I agree that s. 33(4) of the *OEB Act* precludes us from simply issuing the ruling that we think the Rehearing Panel should have issued. Rather we must certify our opinion to the Board. But I also agree with the submissions of HONI that no portion of the Future Tax Savings should be allocated to ratepayers when the evidence is clear that HONI paid all of its costs under the

stand-alone utility principle. 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.

PART IV: FINAL ORDER

[61] The Court therefore orders that the matter be remitted back to the Board and (a) a new panel of the OEB shall consider and make an appropriate order varying the tax savings allocation in Original Decision by correcting the errors identified in it by the Review Panel; and (b) in doing so, the OEB shall apply and give effect to the findings of the Review Decision and each of the errors it identified in the Original Decision, including in respect of the applicable ratemaking principles.



Ducharme J.

I agree: _____
D.L. Corbett J.

I agree: _____
Gomery J.

Released: July 16, 2020

CITATION: Hydro One Networks Inc. v. Ontario Energy Board, 2020 ONSC 4331
DIVISIONAL COURT FILE NO.: 200/19
DATE: 20200716

ONTARIO

**SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

D.L. Corbett, Ducharme and Gomery JJ.

BETWEEN:

HYDRO ONE NETWORKS INC.

Appellant

- and -

ONTARIO ENERGY BOARD

Respondent

REASONS FOR DECISION

Ducharme J.

Released: July 16, 2020