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*.

SUBMISSIONS OF THE SCHOOL ENERGY COALITION

February 14, 2022

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1 GENERAL COMMENTS

1.1 *Introduction*

1.1.1 On December 16, 2021 the OEB issued a decision with reasons (the "Decision") in the matter of EB-2021-0033, an Application by Hydro One Networks ("Hydro One" or the "Applicant") for 2022 rates for three acquired utilities (the "Acquired Utilities"), Norfolk Power Distribution Inc., Haldimand County Hydro Inc., and Woodstock Hydro Services Inc.

1.1.2 In the Decision the OEB made, *inter alia*, two specific determinations (the "Determinations") with respect to deferral and variance accounts (DVAs) for the Acquired Utilities:

(a) That the Applicant was required to continue to record amounts in Account 1576 for Woodstock for the period 2016 to 2022 (assuming rebasing for Woodstock in 2023).

(b) That the Applicant was required to record amounts in Account 1592, Subaccount CCA Changes for each of the Acquired Utilities for the period 2018 to 2022 (again assuming a 2023 rebasing).

In the case of each of these four accounts, it is expected (subject to some uncertainty below with respect to 1576) that the amounts to be recorded in the accounts would be credits that would, at a time determined by the OEB, likely on rebasing, be refunded to customers. Hydro One has not disclosed to the OEB what the credit amounts due to the customers would be.

1.1.3 On January 7, 2022, the Applicant filed a notice of motion under Rule 42 with respect to the Determinations. The OEB has assigned this proceeding EB-2022-0071, and by Notice of Hearing dated January 12, 2022 (the "Notice") has deemed certain parties, including the School Energy Coalition, to be intervenors in this proceeding, and established a timetable for submissions. Hydro One filed its Argument in Chief, which supplements its Notice of Motion, on January 31, 2022.

1.1.4 These are the Submissions of the School Energy Coalition with respect to the Motion to Review.

1.1.5 The OEB did not, in the Notice, make a determination as to whether the threshold test is met as set forth in Rule 43. However, the OEB did determine that it did not want preliminary submissions on the threshold test from the parties. These Submissions therefore do not include any submissions with respect to the threshold test.

1.1.6 Unlike most proceedings, in this case the short time frames made it difficult for parties to co-ordinate their activities, sharing drafts and positions as we normally do. Indeed, because the list of intervenors has been deemed, SEC does not know which of those intervenors who are deemed will be making submissions. Notwithstanding that, SEC does not believe its submissions herein will be duplicative of the submissions of any other party.

1.1.7 SEC has organized these Submissions into the two claims of error by the Applicant, one for account 1576 (Woodstock[1]), which essentially depends on whether that account ended when Woodstock was allowed to move to USGAAP, and the other for account 1592 (all three Acquired Utilities), which is basically founded on the concept of Benefits Follow Costs.

1.2 *Summary of Submissions*

1.2.1 The detailed submissions of the School Energy Coalition can be summarized a follows.

1.2.2 ***Account 1576.***

(a) ***A Technicality, Nothing Else.*** The purpose of this account was to ensure that if the accounting principles and rules built into rates were changed, and as a result on the next rebasing rate base (PP&E) was higher or lower than it otherwise would have been, the rate base differential would be recovered from, or refunded to, customers. The Decision implements this purpose. Hydro One seeks to establish and benefit from a technicality that, they say, limits this account to changes from CGAAP to IFRS or modified IFRS (MIFRS), and does not apply to utilities that move to USGAAP, thus subverting the purpose of the account.

(b) ***Impact and Information Asymmetry***. When the OEB approved the move to USGAAP for each of the Acquired Utilities, Hydro One implied that the impacts that would arise moving to IFRS would not arise moving to USGAAP. That is continued in its Argument in Chief, but may in fact not mean what it appears to mean. Hydro One has not in fact disclosed whether the technicality on which they propose to rely will in fact cost the ratepayers money. As long as the MIFRS depreciation rates established prior to 2015 continue during USGAAP, the annual impacts on rate base will also continue. Further, USGAAP may add new capitalization of overhead that will again increase PP&E over the CGAAP baseline. Hydro One has this information, but to the

[1] SEC has not been able to identify why the same issues would not arise with respect to both Norfolk and Haldimand, and eventually with respect to Orillia and Peterborough. However, as the Motion and the Decision on Account 1576 relate only to Woodstock, these Submissions are restricted on the 1576 issue to Woodstock.

best of our knowledge has not disclosed it to the Board.

(c) ***The Board Policy on Which Account 1576 is Based.*** Hydro One cites certain OEB documents to create its technicality, but does not go back to the Board policy document determining that a PP&E deferral account should be created. That policy document not only sets out the principles on which it is based, but also expressly states that all aspects of the policy document will apply to utilities that shift to USGAAP, and, pointedly, does not make an express exception for the PP&E deferral account.

(d) ***Retroactive Ratemaking.*** The Applicant's claim that applying account 1576 to any period after Woodstock moved to USGAAP is retroactive ratemaking is wrong on at least four counts:

(i) ***Not Retroactive.*** The original Board policy on which the account was based expressly contemplates that changing to USGAAP will involve the same policy guidance, so there is in fact no retroactivity. The expectations were known at the outset.

(ii) ***USGAAP Approvals based on Applicant's Representations.*** Approval of the use of USGAAP was based on representations by Hydro One that customers would not experience any negative consequences of the change, which may not have been correct.

(iii) ***Rule Against Retroactivity is Not Symmetrical.*** The retroactivity rule is not symmetrical, and does not apply where the result of information known to the utility is that customers are charged more during a past period than a just and reasonable amount. Where an order would provide a credit to ratepayers for these past overcharges it is, in these circumstances, allowed.

(iv) ***The Issue of Appropriate Rate Base in 2023 Remains.*** The issue of the impact of changed accounting standards on opening 2023 rate base would in any case remain an issue in the 2023 rebasing, and any solution to that issue would have a current (not retroactive) solution that has the same impact as account 1576.

(e) ***Hydro One Seeking a Retroactive Order.*** The essence of the claim with respect to 1576 is that, in approving USGAAP, the OEB should have ordered Hydro One to end the use of Account 1576. Hydro One did not request such an order at the time of the USGAAP approvals, and is now seeking to obtain such an order retroactively.

1.2.3 **Account 1592.** It is not clear whether Hydro One is challenging the CCA Changes

subaccount generically (i.e. as applied to all utilities), or just in the specific circumstances of the Acquired Utilities.

(a) ***Generic Challenge.*** If Hydro One is taking the position that Account 1592, Subaccount CCA Changes cannot legally apply to any utility during IRM due to the "benefits follow costs" principle, then SEC submits that:

(i) The OEB should give notice to all parties - including utilities, customer groups, and others - who could be affected that this legal issue has been raised, and in the meantime this Motion should be held in abeyance; and.

(ii) Strict application of "benefits follow costs" to tax timing differences (as opposed to absolute tax savings) will result in less of the tax benefits of timing differences being retained by utilities during a formula ratemaking period, not more. The current OEB policy strikes a balance in that regard.

(b) ***Specific Circumstances.*** If Hydro One is taking the position by implication that, because of their specific rate plan (a freeze negotiated by them in a commercial transaction, followed by IRM), they are in different circumstances from other utilities with regard to CCA Changes, they have not provided any evidence or submissions supporting that. In fact, they are not in different circumstances:

(i) They have a formula rate plan, proposed by Hydro One and then established by the OEB, that assumes a set of tax rules will continue to be in place. The Board's policy is that, when that set of tax rules change during the formula rate period, the impact is recorded in a deferral account for later disposition, so that both utility and ratepayers are kept whole. Like all other utilities regulated by the OEB, Hydro One adds assets during its rate plan, and the tax changes affecting those new assets apply to them.

(ii) Like all other utilities regulated by the Board, increases in CCA levels during a formula rate period mean lower taxes for the shareholders during that rate period, and higher taxes included in rates upon rebasing and in the future. CCA is a fixed pool, so using more at the outset means there is less available later. Account 1592 seeks to rebalance that inequity where the tax rules change. In this respect, Hydro One is no different from any other utility.

(c) ***Benefits Follow Costs.*** Hydro One's fundamental argument is that they are buying new assets, which are costs borne by them and not the ratepayers, so any tax savings associated with those assets belong to the shareholders. In fact, the costs are not borne by Hydro One. They are financed by Hydro One

during the formula rate period, with part of the amortized cost and return covered by the depreciation and return already built into rates. Then, the remainder of the cost is included in rate base and recovered in rates, with return, over time. It is not correct to say that the costs are not paid by the ratepayers. All utility costs are ultimately paid by the ratepayers one way or the other.

(d) ***Inapplicable Legal Reference.*** The Divisional Court decision on which Hydro One relies is quite specifically about a cost that was outside of the regulated business, and tax benefits said to flow from it. The costs in this case are all entirely within the regulated business.

2 ACCOUNT 1576 AND USGAAP

2.1 *Introduction*

2.1.1 The Applicant takes the position that:

(a) Utilities transitioning to USGAAP were exempt from the application of Account 1576, and

(b) As a result, applying Account 1576 to Woodstock after 2015 is impermissible retroactive ratemaking.

2.1.2 Both of these assertions are wrong. Utilities transitioning to USGAAP were expressly and clearly not exempt from Account 1576, and retroactive ratemaking does not apply where the regulator seeks to return to customers a credit that arose only because of information in the hands of the utility that was not disclosed to the regulator.

2.2 *Hydro One Seeks to Subvert a Board Policy With a Technicality*

2.2.1 ***Purpose of Account.*** The starting point is the purpose for Account 1576.

2.2.2 Utilities were making changes in accounting rules during a period of formula ratemaking – either by Board order or voluntarily – that would have the effect of increasing or decreasing the PP&E component of rate base from the rate base that would have obtained under CGAAP. When utilities rebased, rate base would be higher than was expected when rates were previously set, solely because of a change in accounting. In the meantime, utilities would have higher net profits during the formula rate period because depreciation in rates exceeded depreciation for accounting purposes. Account 1576 was designed to correct for this.

2.2.3 While the event initiating this issue was the shift to IFRS (or MIFRS), that event also resulted in some utilities, including Hydro One, shifting to USGAAP.

2.2.4 Woodstock changed its accounting from CGAAP to MIFRS in 2012, with the result that depreciation was reduced and overhead capitalization rules were changed. The result was a net increase in closing PP&E rate base each year from 2012 onwards. By the end of 2015, PP&E rate base was more than $2 million higher than it would have been under CGAAP.

2.2.5 ***Did the Purpose End in 2015?*** What happened at the end of 2015, when Woodstock switched to USGAAP? Did the depreciation rates revert to the CGAAP levels? Did the overhead capitalization revert to CGAAP rules?

2.2.6 The answer to both questions is likely no, although Hydro One has apparently not disclosed this to the Board.

2.2.7 In fact, what almost certainly happened is that the depreciation rates continued at the 2012-2015 levels, and the overhead capitalization increased, thus further increasing PP&E rate base relative to the CGAAP baseline. This has continued to the present time, as the Decision correctly realized, and will continue until rebasing. Today it is likely (again, Hydro One has declined to provide evidence) that Woodstock PP&E rate base is at least $7 million higher under the combination of MIFRS and then USGAAP than under the CGAAP rules on which the rates have been based since 2012.

2.2.8 ***A Technicality.*** However, despite the fact that the purpose of the account has continued to the present time, Hydro One thinks it has found a technicality in the wording of a Board letter and accounting guidance that allows it to keep the double collection of depreciation and capitalized overheads from 2016-2022.

2.2.9 The technicality is a statement by the Board that the Account should continue "until their first cost of service application under modified IFRS"[2].

2.2.10 It is interesting that Hydro One is not claiming the actual technicality that arises on the wording. That would be that, since Woodstock will never rebase under MIFRS, it will never have any obligation to clear any amounts from Account 1576, whether accrued before or after 2016. Presumably that was a bridge too far even for Hydro One.

2.2.11 Instead, Hydro One appears to be claiming that the change to USGAAP should be a kind of "deemed" rebasing under MIFRS, at which point entries in the account would cease. No reference has been provided for this variation on the technicality.

2.2.12 What is most important, however, is that the OEB consider this Motion in the context of the true fact situation. In the period 2016-2022, customers will pay rates established under CGAAP, including its depreciation and capitalization rules, while Hydro One will account using depreciation and capitalization rules that reduce their costs, increase their profits, and increase PP&E rate base relative to CGAAP. Under Hydro One's technicality, in 2023 PP&E rate base will be millions of dollars higher than the CGAAP level.

2.2.13 Hydro One believes they are entitled to keep that difference.

2.3 ***Circumstances Surrounding US GAAP Approvals by the Board***

2.3.1 ***OEB Approval.*** The OEB approved the move from MIFRS to CGAAP by Woodstock

[2] OEB Accounting Procedures Handbook, FAQ July 2012 [Tab 3 of Applicant's Book of Authorities], Questions 1 and 2. (the "FAQs"). See also AIC, para. 12(b).

in EB-2014-0213, saying:

> *"The OEB accepts Hydro One's argument for the utilization of US GAAP for financial reporting and grants this request."*[3]
> *"THE OEB ORDERS THAT:…Hydro One is granted approval to use US GAAP for regulatory accounting purposes, in relation to Woodstock."*[4]

2.3.2 ***Representations of Hydro One.*** During the course of the proceeding, the parties sought information on the impact of USGAAP. The Application itself does not have any disclosure of that impact[5].

2.3.3 However, in response to Interrogatory #5 from OEB Staff, Hydro One said this:

> *"Based on Hydro One's current understanding of USGAAP standards, Hydro One believes using USGAAP for WHSI will not impose any additional cost on WHSI's customers."*[6]

2.3.4 Further, in response to Interrogatory #37 from SEC, Hydro One said this:

> *"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.[emphasis added]"*[7]

2.3.5 In the first of these two quotes, Hydro One appears to be saying that there are no negative consequences to ratepayers of USGAAP, i.e. that USGAAP and CGAAP are equivalent for matters that could impact rates. Consistent with that, in the second quote Hydro One appears to be saying that there will be no differences between USGAAP and CGAAP relating to PP&E rate base, and therefore no amounts to add to the account.

2.3.6 It now appears that Hydro One was saying "Because we are changing to USGAAP, we are entitled to keep the rate base windfall going forward that results from the differences between our actual accounting under USGAAP and the accounting under CGAAP that forms the basis of rates."

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[3] EB-2014-0213, Decision with Reasons, September 11, 2015 ("Woodstock Decision"), p. 20.
[4] Woodstock Decision, p. 22.
[5] EB-2014-0213, Ex. A/2/1, p. 19-20.
[6] EB-2014-0213, Ex. I/1/5.
[7] EB-2014-0213, Ex. I/2/37.

2.3.7 Nowhere in the record of EB-2014-2013 does Hydro One say, or imply "One impact of USGAAP is that ratepayers will cease to have the protection of Account 1576, even though differences between actual and (original) CGAAP rate base calculations will continue to accrue until rebasing".

2.3.8 As a result of Hydro One's representations, the OEB approved the use of USGAAP without any investigation into the impacts on ratepayers[8].

2.3.9 ***Continuation of Account 1576.*** It would be normal in an Application such as EB-2014-0213 for the Applicant to request any necessary changes to deferral and variance accounts, for example ending the use of Account 1576.

2.3.10 No such request was made. Instead, Hydro One sought the following:

> *"Hydro One is applying for approval to continue to track costs to the regulatory asset accounts currently approved by the OEB for WHSI and to seek disposition of their balances at a future date."*[9]

2.3.11 As a result, the Board, in ordering the use of USGAAP going forward, did so in the following context:

> *"THE OEB ORDERS THAT:…Hydro One is granted 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."*[10]

2.3.12 What Hydro One now seeks to do, it appears, is retroactively either amend that order, or at least re-interpret it, to remove the ratepayer protections provided for by Account 1576.

2.3.13 SEC submits that this is directly contrary to the rule against retroactive ratemaking.

2.3.14 ***Conclusion.*** SEC therefore submits that

(a) the approval by the OEB to move to USGAAP was based on representations to the Board by Hydro One that there would be no negative consequences to customers, and

(b) Hydro One neither requested nor obtained an order of the Board to cease

[8] It can be observed that the same statement can be made with respect to the records in EB-2013-0187/96/98 (Norfolk), and EB-2014-0244 (Haldimand).
[9] EB-2014-0213, Ex. A/1/1, p. 5.
[10] Woodstock Decision, p. 22.

making entries to Account 1576.

2.4 ***What Does the Board Policy Actually Say?***

2.4.1 ***Board Policy Document.*** The 2012 letter and accounting guidance cited by Hydro One are based on a Board Report. That Report[11], and its Addendum[12] that deal with this issue, were the result of an extensive process in which both Hydro One and SEC were actively involved. Interestingly, on the issues relating to Account 1576, it appears that both Hydro One and SEC were part of the consensus of parties supporting what was ultimately the OEB's policy[13].

2.4.2 SEC notes that the letter and accounting guidance Hydro One cites were actually responses to a change in the IFRS rules, and only intended to amend the Board's policy with respect to the timing of the change to IFRS or MIFRS. None of the aspects of the Board Report or the Addendum relevant to this proceeding were changed by the letter or the accounting guidance.

2.4.3 ***The Basic Policy With Respect to PP&E Changes***. The impacts of changing accounting rules during a formula-based rate period on PP&E and therefore rate base on rebasing were extensively discussed during this process. The OEB ultimately established a mechanism based on the principle that ratepayers should be treated as having the rate base on rebasing that would have arisen under the CGAAP standard on which their rates had last been based. This was based on fairness.

2.4.4 However, because the OEB did not want utilities to have to keep separate books forever, the OEB determined that the PP&E differential that arose at the time of rebasing because of a change in accounting standards would be refunded to (or, in rare cases, recovered from) the ratepayers, and the rebasing rate base used going forward would be based on the newly implemented accounting standard[14]. This would align regulatory accounting with financial accounting.

2.4.5 The OEB thus established a calculation method intended to quantify the difference between the PP&E rate base calculated using the original CGAAP basis, and the actual PP&E rate base calculated using the utility's changed accounting standards. This is described in the AIC at p. 7 (from the Accounting Guidance), but the more accurate description is from the Addendum:

(a) First, calculate the baseline PP&E rate base using the accounting standard

[11] EB-2008-0408, Report of the Board, July 28, 2009 (the "Board Report").
[12] EB-2008-0408, Implementing International Financial Reporting Standards in an Incentive Rate Mechanism Environment, June 13, 2011 (the "Addendum").
[13] Addendum, p. 11.
[14] Addendum, p. 11.

(CGAAP) on which rates were set:

"Utilities should maintain records using CGAAP of the amounts in the PP&E accounts that will be included in rate base, commencing at their last rebasing under CGAAP, and continuing until their first rebasing under MIFRS. This will produce a figure for the PP&E accounts that is consistent with their last rebasing."[15]

(b) Then, calculate the actual PP&E rate base using the accounting standards actually in place in the relevant years:

"Utilities should also calculate "adjusted rate base" values for the PP&E components of rate base using the accounting system applicable in each year between rebasing under CGAAP and the first rebasing under MIFRS."[16]

2.4.6 The difference between actual and baseline, plus return and other calculations, was therefore the increase or decrease in rate base at the time of rebasing resulting solely from a change in accounting standards.

2.4.7 ***Restricted to IFRS/MIFRS.*** Hydro One seeks to convince the OEB that, in establishing this structure, the OEB intended to restrict its application to IFRS or MIFRS conversions, and to exempt USGAAP conversions. The only basis for this claim is the various references to MIFRS in the letter and accounting guidance.

2.4.8 However, Hydro One did not have to guess at this. The Board expressly considered the possibility that some utilities would change to USGAAP, and in the Addendum addressed that specifically:

"Utilities that file and report under USGAAP (or another accounting standard) should, in general, read references to IFRS and MIFRS in the Board Report, amendments to it, and this Addendum to include USGAAP (or other alternate accounting standard).[emphasis added]"[17]

2.4.1 Interestingly, the OEB Staff Report and the Board's discussion of the issues includes the additional sentence "The deferral account authorized in Issue 2 may not be necessary for such utilities", which refers to Account 1576. However, that commentary, which is not included in the statement of Board policy in Appendix A, is not an exemption of USGAAP from Account 1576. Rather, it is an expression of the assumption by the working group, OEB Staff, and the Board that there were no

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[15] Addendum, p. 9. The quote is actually from the Board's description of the OEB Staff proposal, because the Board expressly adopted the OEB Staff proposal (supported by all parties) in its approval.
[16] Addendum, p. 9.
[17] Addendum, p. 34.

material differences between USGAAP and CGAAP that could impact PP&E rate base.

2.4.2 The only express statement with respect to USGAAP is the direction to read all references in the policy to IFRS/MIFRS as if references to USGAAP as well. The OEB Staff Recommendation is clear on this:

> *"If use of USGAAP occurs, all references to IFRS or modified IFRS in these recommendations and in the Board Report and amendments to it, including references to reconciliations, shall be read as including USGAAP. Staff note that this interpretation would mean that reconciliations between USGAAP and MIFRS are not required, but reconciliations between USGAAP and CGAAP are required where a reconciliation is required in the Board Report or suggested in the recommendations."*[18]

2.4.3 SEC notes that no exemption from Account 1576 was ever discussed by the Board or the parties in the proceeding, and no-one proposed that USGAAP be exempt from Account 1576. The only discussions related to whether, if there were no relevant differences between USGAAP and CGAAP, the entries in the account would therefore be nil.

2.4.4 Of course, if the entries in Woodstock's Account 1576 from 2016-2022 would actually be nil, because there is no difference between the actual PP&E rate base calculations during that period[19], and those that would arise under the original CGAAP baseline, then it clearly begs the question why Hydro One is pursuing this motion at all.

2.4.5 ***Conclusion***. SEC therefore submits that the conclusion sought by Hydro One – i.e. that utilities using USGAAP are completely exempt from the application of Account 1576, and those ratepayers a completely unprotected from rate base changes due to accounting standards – is not just absent from the OEB Policy. More clear than that, the Policy expressly states that, to the extent that the same issues arise under USGAAP, the Policy applies to utilities under USGAAP as well.

2.5 ***<u>Retroactive Ratemaking</u>***

2.5.1 ***Hydro One's Position.*** Hydro One claims that the OEB in the Decision retroactively changed the terms of Account 1576 to Hydro One's disadvantage, and that is impermissible retroactive ratemaking.

2.5.2 There are at least four reasons why this position is untenable:

[18] Addendum, p. 18.
[19] i.e. the depreciation and overhead capitalization rates would revert to original CGAAP levels effective January 1, 2016.

(a) ***No Retroactivity.*** The Decision applies Account 1576 exactly as it was originally intended, and as the Board Policy describes, so there is no retroactivity in any case.

(b) ***Failure to Disclose Material Facts.*** To the extent that there is any ambiguity in the scope of Account 1576 as it applies to Woodstock (which SEC believes is not the case), it arises only because Hydro One failed to disclose material facts to the Board in EB-2014-0213, and as a result the Board did not impose express and additional conditions on the use of USGAAP. The Applicant cannot rely on its own lack of disclosure to get a benefit at the expense of ratepayers.

(c) ***Rule Against Retroactivity is Not Symmetrical***. The rule is intended primarily to protect ratepayers against a reachback for higher rates. It is not applied in the same manner when there is a credit that should have accrued to ratepayers.

(d) ***Rate Base on Rebasing Remains to be Determined***. The eventual issue is the rate base borne by customers on rebasing, which is a prospective issue. If the rule against retroactivity did apply to Account 1576 (which SEC submits is not the case), then the Board is setting just and reasonable rates on rebasing would be obligated to establish rates based on the CGAAP rate base that underlies the intervening rates, and continue that indefinitely into the future, so that the ratepayers are fairly treated.

2.5.3 ***No Retroactivity.*** The terms of the policy are discussed in detail in Section 2.4 above.

2.5.4 ***Failure to Disclose Material Facts.*** The basis of the OEB's approval of USGAAP, and the representations by Hydro One in that proceeding, are discussed in detail in Section 2.3 above.

2.5.5 ***Rule Against Retroactivity is Not Symmetrical.*** It is settled law and regulatory policy that the rule against retroactivity does not protect utilities in the same way as it protects customers. This is primarily because of the issue of information asymmetry, i.e. the endemic issue in economic regulation that the regulated entity generally has control of all relevant information, and the regulator and customers are reliant on disclosure by the regulated entity in order to make just and reasonable rate decisions.

2.5.6 This issue has been discussed by the Board in a number of cases. In a somewhat analogous situation, an Enbridge case, the Board said the following with respect to the asymmetry of the rule and information asymmetry:

"An out-of-period adjustment can be justified if it ensures a utility does not

profit on account of its own errors.”[20]

2.5.7 In that case, Enbridge failed to give a $10 million credit to certain customers, and the rates had subsequently been made final. The OEB, citing a US case[21], held that the rule against retroactivity does not protect the utility in the same way as it protects the customers.

2.5.8 In a more general way, the Board, in denying a request to reach back and correct an undercollection of a pass-through account, had this to say about information asymmetry:

> *“The Board is not driven by a need for a symmetrical treatment of ratepayers and utilities in situations where correction of utility mistakes is required. The utility has control of its books and records and has the responsibility to ensure mistakes do not occur. For this reason the Board could find in favour of the ratepayer in certain situations and not find in favour of the utility if the utility was in the same situation.”* [22]

2.5.9 In this regard, the OEB in the same case referred to “The reasonable rate-payer confidence in the continuation of rates deemed final…”[23], a reference to the fact that the “knowledge” of rates referred to in the rule against retroactivity is actually the knowledge of customers, not the utility.

2.5.10 One of the most direct statements on retroactivity is in the Essex case, in which the OEB had to consider whether the rule against retroactivity prohibited refunds to customers after rates were made final. The Board said this:

> *“Does the rule against retroactive ratemaking prohibit the refund of money to customers because rates were declared final? RPP customers are innocent third parties. There is Board precedent for requiring a utility to repay money to customers if negligent or if the utility would profit on account of its own errors (EB-2009-0013 and EB-2014-0043). In other words, the Board is not driven by a need for symmetrical treatment of customers and utilities in final rate situations.”*[24]

2.5.11 SEC submits that, in this case, the Applicant did not disclose to the OEB that the change to USGAAP could result in a continued increase in PPE rate base over the

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[20] EB-2014-0043, Decision with Reasons, p. 2.
[21] *MCI Telecommunications v. Public Service Commission*, 840 P.2d 765 (Utah 1992). While the facts in that case do not apply here, the principle does.
[22] EB-2009-0113 Decision with Reasons, p. 8.
[23] Ibid, p. 5.
[24] EB-2014-0301, Partial Decision with Reasons, March 25, 2015, p. 7. SEC notes that, in the particular circumstances of the case, the refund was not ordered, for reasons unrelated to the matters in this proceeding.

CGAAP baseline on which rates were based. The utility should not be able to profit from that failure to disclose, for example by having a higher rate base on rebasing than would otherwise have been the case, and thereafter collecting that higher rate base from customers.

2.5.12 ***Remaining Issue***. The Applicant argues that the scope of Account 1576 is the issue to be addressed, and any changes to it would be retroactive. While SEC submits that it is not being changed, and that in any case the rule against retroactivity does not apply here, there still remains the underlying basis for Account 1576 in the first place.

2.5.13 Account 1576 was established to ensure that, on rebasing after a change in accounting standards, customers get rates that reflect the PP&E rate base on which their previous rates were set. If those rates were set based on CGAAP, then on rebasing PP&E rate base should not be higher or lower than CGAAP-based rate base. The goal was and is to keep the customers whole relative to the basis on which their rates were actually set.

2.5.14 The account 1576 mechanism achieved that indirectly rather than directly, in order to assist utilities by allowing their PP&E rate base for regulatory purposes to be the same as their PP&E rate base for accounting purposes. Instead of requiring utilities to continue to calculate PP&E rate base using CGAAP for the interim period, the OEB would make a one-time adjustment to cause CGAAP and actual PP&E rate base to align at the time of rebasing.

2.5.15 If indeed the rule against retroactivity would prevent the use of the OEB's preferred mechanism, account 1576, to correct this differential in this unique set of circumstances, then the OEB is still left with the initial problem for which account 1576 was originally created.

2.5.16 Unable to make a correction for past amounts collected, the Board would have one obvious alternative (the one rejected in EB-2008-0408), i.e. require Hydro One to continue to set rates for Woodstock as if the PP&E rate base did not include the impact any changes to accounting standards between 2012 and 2022. This would be a permanent differential between accounting PP&E and regulatory PP&E, which Hydro One be obligated to maintain indefinitely.

2.5.17 Alternatively, the OEB could, on rebasing, determine the difference between CGAAP PP&E and actual PP&E, allow Hydro One to retain the higher rate base for ratemaking purposes, and refund the difference to customers as a rate rider. In effect, the Board would allow in 2023 a bump in rate base to bring it equal to the Applicant's books, but then refund that bump to customers.

2.5.18 This is not retroactive in any way. It establishes the just and reasonable rate base amount in 2023 based on proper regulatory principles (which would require a CGAAP calculation). It then allows the Applicant to use the higher amount that they prefer, on

condition that the customers are made whole for the difference. This would all be current in 2023.

2.5.19 However, the result would be identical to the use of Account 1576.

2.5.20 ***Conclusion***. SEC submits that the argument based on the rule against retroactivity should be rejected by the OEB because:

(a) No retroactive change to Account 1576 was made in the Decision;

(b) The approvals by the Board of USGAAP proceeded on the basis of representations of Hydro One of no negative consequences to the customers, which appears to be incorrect;

(c) The rule against retroactive ratemaking is not symmetrical, and in this case would not allow Hydro One to profit from their own failure to disclose material facts to the Board; and

(d) Even if the rule against retroactivity did apply, the problem of the mismatch between accounting standards (CGAAP) on which rates were based, and actual accounting standards applied (MIFRS, then USGAAP), would still have to be addressed in 2023, with exactly the same result as the use of account 1576.

2.5.21 SEC notes that, with respect to retroactivity, what really appears to be happening is that Hydro One is seeking to amend the OEB's EB-2014-0213 Decision retroactively to add an order terminating the use of Account 1576 upon the change to USGAAP. As noted earlier, this would certainly be impermissible retroactive ratemaking.

2.6 ***<u>Conclusion</u>***

2.6.1 SEC submits that the Decision is correct, and should not be changed in any way:

(a) The principle upon which account 1576 was based is being achieved in the Decision, and no technicality in the wording of Board communications exists that can change the underlying requirement of fairness between customers and utility.

(b) The approvals to change to USGAAP were not made on the basis that the OEB was approving negative consequences to customers, and Hydro One should have asked for an express determination on that if it wished to gain a windfall benefit from the change to USGAAP.

(c) The Board Policy on which account 1576 is based expressly contemplates that it will apply to USGAAP as well as IFRS/MIFRS, so the Decision is applying

Account 1576 exactly as intended.

(d) The rule against retroactivity does not apply for several reasons, and even if it did it is not symmetrical in the way posited by Hydro One.

3 ACCOUNT 1592 AND BENEFITS FOLLOW COSTS

3.1 *Introduction*

3.1.1 The second component of the Motion is the proposition that the tax benefits associated with the Accelerated CCA program of CRA should not be tracked in account 1592 in accordance with established OEB Policy, but instead should be enjoyed by the shareholders of Hydro One to the exclusion of the customers.

3.1.2 SEC is unclear whether Hydro One is proposing

(a) That "benefits follow costs" prevents the OEB from allocating all or any part of the Accelerated CCA benefits to customers for all utilities receiving those benefits during a non-cost of service ratemaking year; or

(b) Hydro One's Acquired Utilities are somehow different from other utilities regulated by the OEB, such that during their period of non-cost of service ratemaking years they are entitled to a tax benefit in law that for other utilities is allocated to customers.

The Argument in Chief and Motion could be read as proposing either argument.

3.1.3 The following submissions therefore deal with these two potential interpretations of the Argument in Chief and the Motion separately.

3.2 *Generic Issue: The Application of 1592 to Accelerated CCA*

3.2.1 ***The Board's Policy.*** The OEB's approach to the Accelerated CCA program, and how it should be handled during a period in which a utility is not setting rates on a cost of service basis, is well described in a recent decision of the Board. In that case, Enbridge was in a deferred rebasing period following an amalgamation, and had an account called the Tax Variances Deferral Account (TVDA) that was essentially identical to Account 1592. The Board said:

"The OEB finds that 100% of the 2019 TVDA balance shall be disposed of as a credit, or refund, to ratepayers.

The OEB finds that the accelerated CCA at issue in this proceeding, is different from the tax changes considered in the 2008 Decision, which included federal corporate tax rates, federal CCA rates and Ontario capital tax rates. Although the 2008 Decision considered CCA rates changes, those CCA changes did not result in accelerated first-year claims for all eligible assets. The accelerated CCA is unique as it is temporary,

starting on November 20, 2018 and ending in 2027. In effect, the accelerated CCA program frontloads tax deductions for corporations to encourage near-term capital investment. It changes the timing of tax deductions, without changing total tax deductions, over the life of the asset.

Given the differences in the tax changes at issue in this proceeding, any precedent established in the 2008 Decision, which led to the long-standing practice of 50/50 sharing, requires further consideration to determine the appropriate ratemaking treatment for the accelerated CCA. The OEB does not consider that the 50/50 sharing, found appropriate in the 2008 Decision, applies to the evidence and circumstances in this proceeding.

During Enbridge Gas's IR term, current rates do not reflect the accelerated CCA tax deductions and the lower taxes paid by Enbridge Gas starting in the 2018 fiscal year. Current rates are set to recover tax calculations based on the prior CCA deduction schedule. The TVDA was created for the express purpose of capturing these types of tax changes. If 2021 was a rebasing year, the accelerated CCA impacts would flow through to reduce rates. There would be no 50/50 sharing. As indicated in the 2008 Decision, ratepayers should be no worse off in an IR term than in a cost of service year when rates are rebased.[emphasis added]"[25]

3.2.2 The principles outlined in this excerpt form the basis of the general use of Account 1592, applicable to all entities regulated by the OEB during their non-cost of service years. In the above case, it applied during a deferred rebasing period, as with the Hydro One Acquired Utilities. It has also been applied to utilities in Price Cap IR and Annual IR on numerous occasions.

3.2.3 ***Hydro One's Generic Position.*** Hydro One now appears to argue that, because the rates for its Acquired Utilities do not yet include additions to rate base arising during their non-cost of service period of rate-setting, those costs are not borne by the customers and so the customers also cannot as a matter of law have any benefit of any associated tax benefits, including the timing differences arising from this accelerated CCA program.

3.2.4 SEC disagrees with the premise, as discussed below.

3.2.5 However, we also note that, if this is indeed what Hydro One is arguing, then the same principle would apply to all utilities regulated by the Board. Since additions to rate base only technically happen during a cost of service proceeding, any utility not in a cost of service year would be able to retain any tax benefits, including timing differences, relating to capital spending[26]. Account 1592 exists to deal with tax

[25] EB-2020-0134, Decision with Reasons, May 6, 2021, p. 13-4.
[26] This would at least apply to utilities on Price Cap IR or Annual IR, and arguably also to those on Custom IR

differences during IRM. Under Hydro One's submission, all uses of Account 1592 based on capital assets acquired during formula-based rate periods would be prohibited for all regulated entities.

3.2.6 ***Procedural Steps to Ensure Fairness and Hearing from All Affected Parties.*** If that is what Hydro One is proposing, then SEC submits that all other regulated utilities, and all other stakeholders, including customers and others who have an interest in legal restrictions on the OEB's rates, have a direct interest in this Motion. In those circumstances, it is submitted that it is appropriate for the OEB to:

(a) Declare this Motion in abeyance, at least with respect to the second component, Account 1592;

(b) Convert this proceeding to a generic proceeding, and provide proper notice to all utilities, their customers and other stakeholders that could be affected by the OEB's decision herein;

(c) Upon completion of the notice period, issue a procedural order establishing steps for the provision of evidence, policy arguments, and/or legal arguments associated with whether "benefits follow costs" restricts the OEB's ability to protect ratepayers during a non-cost of service period in the manner implemented by Account 1592.

3.2.7 ***Timing Differences and Benefits Follow Costs.*** Board Policy does not apply benefits follow costs to tax timing differences. In Section 3.4 below, SEC looks at what would be the implications if tax timing differences did have to operate under the benefits follow costs principle. Our conclusion is that the OEB's current policy allocates far too much of the benefit of timing differences to utility shareholders, if benefits follow costs is to be applied correctly.

3.2.8 In a generic proceeding, SEC would take the position that, if benefits follow costs must in law be applied, OEB policy should change, and more of the tax timing differences should be allocated to customers.

3.3 *How is Situation of Acquired Utilities Different?*

3.3.1 ***Hydro One's Position.*** If Hydro One is not arguing that Account 1592 (and potentially some other DVA accounts) is outside of the jurisdiction of the OEB as being contrary to law, then it is necessary for Hydro One to show how the situation of the Acquired Utilities is different from other regulated entities, in a manner that attracts the application of "benefits follow costs".

(which is technically not cost of service, and in which there is no rate base adjustment) and even those implementing an ICM or ACM (which are not adjustments to rate base).

3.3.2 They have not done so.

3.3.3 The essence of the argument in the Argument in Chief is found in para. 37, which says, with respect to each of the three Acquired Utilities, that during the period after their acquisition their:

> *"… 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."*[27]

3.3.4 Because of this, says Hydro One,

> *"For any…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. <u>The addition of in-service amounts to rate base is not expected to occur until 2023</u>, 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.[emphasis added]"*[28]

3.3.5 Thus, the argument is that in-service additions do not get added to rate base until rebasing, and therefore current rates are not based on those in-service additions.

3.3.6 Hydro One goes on to say:

> *"[B]ecause the Acquired Utilities have not rebased, their rates are not based on any of the fixed asset additions that have been in- serviced 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."*[29]

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[27] AIC, p. 18.
[28] AIC, p. 19.
[29] AIC,p. 19-20. This is taken in the AIC from the Hydro One submissions in EB-2021-0033.

3.3.7 Or, to rephrase it, since new assets are not added to rate base until rebasing, they do not yet form the basis for rates, and so they are solely a shareholder cost at that time. No tax benefits arising during that period are allocable to customers. Account 1592 can never apply to tax benefits arising from assets added outside a cost of service year.

3.3.8 ***Are the Acquired Utilities Different?*** This appears to say, not that the Acquired Utilities are different from other regulated entities, but that they are exactly the same.

3.3.9 SEC has searched both the Notice of Motion and the Argument in Chief for any fact, circumstance or claim that is based on the Acquired Utilities being different from other utilities. There do not appear to be any.

3.3.10 Therefore, we can only conclude that Hydro One is arguing against the application of Account 1592 treatment for accelerated CCA for any regulated utility.

3.3.11 SEC notes that the Applicant has the onus to make their case. If, as appears to be true, they have not attempted to make a case that benefits follow costs should apply to the Acquired Utilities because they are different from other utilities, then necessarily they can only be making the (incorrect) case that Account 1592 does not legally apply to any entities regulated by the OEB for assets added during non-cost of service years.[30]

3.4 ***<u>Benefits Follow Costs Principle as Applicable to Tax Timing Differences</u>***

3.4.1 ***The Precedent.*** The Applicant cites *Hydro One v. OEB*[31] for the proposition that the benefits follow costs rule applies to tax benefits arising out of costs not borne by the customers in rates. With respect, this case is not in any way applicable to the current proceeding.

3.4.2 In that case, the issue was whether a one-time tax benefit (a fair market value bump) that accrued to Hydro One because it had incurred a cost (an exit tax in Ontario) that was <u>wholly outside of the regulatory framework</u> should be shared with customers. That is, the shareholders through the company incurred a cost that could not be recovered from customers, directly or indirectly, and was considered to be a non-regulatory cost, i.e not a cost of the regulated business[32].

3.4.3 In this case, all of the relevant costs of in-service additions are part of the regulated business, costs that will be recovered from customers according to the regulatory rules in place. These are not costs outside of the regulatory framework. They are costs wholly within the regulatory framework.

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[30] This is not something, it is submitted, that can be added in Reply Submissions.

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

[32] The analogy is the charitable donations, also not a cost of the regulated business.

3.4.4 Unless they can show that the in-service additions on which the accelerated CCA is based are outside of the regulated business, Hydro One cannot rely on the tax case cited. To do that, they would have to make the unique argument that, until a cost is added to rate base during rebasing, it is actually outside of the regulatory framework and unrelated to the regulated business. It only becomes a cost related to the regulated business when the utility elects to include it in rate base on rebasing.

3.4.5 Such a creative argument would have significant implications. Just as one example, Hydro One releases audited financial statements to the public markets. At no time does it disclose that its substantial annual in-service additions during IRM are not yet part of the regulated business, and therefore recoverable from customers in rates, until a decision is made at the time of their next rebasing, and still dependent on future approval by the OEB[33].

3.4.6 In addition, assuming this new concept that everything is at shareholder risk and profit outside of cost of service years, the OEB should probably rethink things like Z factors and many DVAs that are driven by the assumption that non-cost of service years are still years in which regulated activities are occurring and costs relating to the regulated business are being spent.

3.4.7 Based on the above, it is does appear to SEC that Hydro One can rely on the case cited. It is not applicable to the current situation without a fundamental change in how the period between rebasings is viewed by the OEB and those it regulates.

3.4.8 ***Tax Timing Differences.*** As noted in the Enbridge decision cited earlier, tax timing differences are a zero sum game. In the end, the CCA deductions available for a $100 asset are $100, which is the same as the depreciation deductions that will be claimed on the same asset. The only difference is the pattern of deductions.

3.4.9 Depreciation deductions for utility assets are typically straight line over the useful life of the asset. For that $100 asset, if it has a twenty year life it has a $5 per year deduction that is included in rates. After three years, $15 has been deducted for accounting purposes, and $85 remains to be collected over the next 17 years.

3.4.10 By contrast, normally CCA uses a declining balance method, and for most assets this is not tied to useful life. A typical twenty year asset might have a 15% CCA rate, meaning that the deduction in the first year is $15[34], but in the second year is $12.75 (15% of the remaining 85% of undepreciated value), and in year three $10.84. In the end, the total is still $100, but CCA deductions are higher in the early years, and lower

[33] Nor does any other regulated utility, as far as we are aware.
[34] For simplicity the half year rule for CCA and for depreciation is being ignored here.

in the later years. After three years in this example, CCA deductions of $38.59 have been taken, with $61.41 left to be deducted in the future.

3.4.11 The accelerated CCA program then exacerbated this difference. Just to give a hypothetical, under that program that $100 asset, if qualified, would have a 45% CCA rate, meaning that CCA in year one would be $45, and in year two would be $24.75, and in year three would be $13.61, for a total of $83.36 of tax deductions over three years, leaving $16.64 left to be deducted in future years.

3.4.12 In this hypothetical example, therefore, after three years in IRM this $100 asset would have had $15 of depreciation claimed, with $85 left to recover from customers after rebasing. Under normal CCA, after three years $38.59 of CCA would have been claimed, with $61.41 left to be claimed after rebasing to reduce customer rates. Under accelerated CCA, after three years $83.36 of CCA would have been claimed, with $16.64 left to be claimed after rebasing to reduce customer rates.

3.4.13 The actual numbers don't really matter here. What is important is the pattern, and the material mismatch.

3.4.14 OEB policy, which sets cost of service rates on the basis of the actual taxes payable methodology, already allocates the tax benefit associated with normal CCA to shareholders during non-cost of service years. This policy is largely an artifact of a time in the past when almost all rates were set annually based on cost of service. It was intended at the time to ensure that the ratepayers get the full benefit of tax timing differences immediately that they are available, each year, using cost of service.

3.4.15 As the OEB has shifted more and more to formula-based ratemaking, the actual taxes payable methodology has not been changed, with the result that utilities during formula ratemaking years enjoy tax deductions in excess of the depreciation they are charging in rates. For any growing utility, this is an ongoing benefit to the utility shareholders at the expense of the ratepayers.

3.4.16 While this is rarely discussed, the apparent justification for this is that rate formulae are based on a comprehensive view of the normal annual increases in utility costs. Therefore, at least in theory the IRM formula already captures some or all of the impact of the differential between CCA tax deductions and depreciation rates[35].

3.4.17 Into that situation then comes the accelerated CCA. There is no argument that past data on which formula-based rates are set includes the impacts of accelerated CCA, and therefore the Board has correctly identified that this is an extra benefit that accrues to utilities that are on formula-based rates, at the expense of customers. Account 1592,

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[35] Technically, given the methodology used by the OEB to set I-x, it probably does not capture normal tax timing differences.

Subaccount CCA Changes is the way to fix that. This is well described in the Enbridge decision quote provided earlier.

3.4.18 ***Benefits Follow Costs – Who Bears the Cost?*** The Hydro One argument appears to be that, during a formula-based ratemaking period, it is the shareholders that are bearing the cost of capital assets. It is only on rebasing that any costs are borne by customers in rates.

3.4.19 That is wrong on two counts.

3.4.20 First, capital costs are never borne by shareholders at all. Capital costs are, under rate of return regulation, financed by shareholders. For that financing activity, they are paid a rate of return that covers their cost of debt, their return on equity, and the tax on their ROE (calculated as if they were not also receiving tax timing differences from the normal CCA pattern). Where capital costs are incurred during a formula-based rate period, most of those capital costs will ultimately be included in rates on rebasing, and so will quite obviously be borne by customers.

3.4.21 Second, during a formula-based rate period the cost of existing assets in rates is declining, due to reduced depreciation on fully depreciated assets, and due to declining rate base of existing assets and thus declining cost of capital on those assets, and due to the availability of depreciation to finance assets. These factors combine to make funds available to the utility for new assets, which will then attract tax timing differences due to the CCA on those assets. For a growing utility, this does not cover the entire cost of new assets, but does cover most of it. If the utility also has a rate formula that increases rates (for example I-x), that provides further funds to invest in new capital assets.

3.4.22 The cost of capital assets added during a non-cost of service year is therefore borne all (or almost all) by customers in rates, either through the effects of the rate plan itself, or on rebasing when the remainder of the assets are added to rate base.

3.4.23 ***Benefits Follow Costs – Applied.*** The result of this analysis is that, if benefits follow costs is actually applied to tax timing differences, more will be allocated to customers in rate reductions, and less will be enjoyed by utility shareholders.

3.4.24 To go back to the above example, a $100 twenty year asset is acquired three years before rebasing. At the time of rebasing, $85 is still to be paid in rates through the depreciation component of rate base. In addition, some portion of the $15 not included in rate base on rebasing was actually covered by the rate plan. Even if you assume that only $10 of the cost was covered by existing depreciation and by declining rate base and by the rate formula (a very low assumption), the result is that customers bear 95% of the cost in rates.

3.4.25 It therefore stands to reason (applying benefits follow costs) that the customers should benefit from 95% of the tax deductions associated with the asset. However, as we saw from the example (even before applying the accelerated CCA) the customers only end up with 61.41% of the tax deductions under the actual taxes payable methodology, having lost the early CCA in the first three years (which benefitted the shareholders).

3.4.26 Therefore, if benefits follow costs actually must in law apply to tax timing differences, then the rates of the ratepayers on rebasing have to be reduced so that they recover 95% of the tax savings associated with those timing differences, not 61.41%. At least the first 33.59% of the tax savings (95% less 61.41%) would have to reduce rates in the rebasing year (since those timing benefits have already accrued), and the remainder would be captured by continued use of the actual taxes payable methodology (perhaps adjusted in favour of the customers during the next IRM period).

3.4.27 The accelerated CCA program would then increase this re-allocation. In the example, the ratepayers are entitled to 95% of the tax savings, because they are bearing 95% of the costs, but they only end up with 16.64% of the tax savings under the Hydro One theory (i.e. without Account 1592). Therefore, to apply benefits follow costs 78.36% of the tax timing benefits (not just the accelerated CCA, but all of the timing differences) would have to be used to reduce rates in the year of rebasing.

3.4.28 SEC notes that the effect of Account 1592 is that, in this example, customers bear 95% of the costs of new capital assets in their rates, but receive only 61.41% of the tax benefits, the same as if there was no accelerated CCA. Under a true benefits follow costs rule, customers would have to receive 95% of the tax benefits.

3.4.29 SEC therefore submits that, if benefits follow costs is applied to tax timing differences, as alleged by Hydro One to be a legal requirement binding on the Board, then the necessary result is that Hydro One and its shareholders receive a lower percentage of the tax benefits, and the customer receive a greater percentage of the tax benefits.

3.5 ***<u>Conclusion</u>***

3.5.1 SEC therefore submits that:

(a) If the Applicant is alleging that benefits follow costs legally prevents the OEB from applying Account 1592, Subaccount CCA Changes to capital assets of a utility acquired outside of a cost of service year:

(i) The OEB should convert this into a generic proceeding so that all parties that have a material interest in the outcome can receive notice and be heard, and

(ii) In that proceeding, the result will be, if the benefits follow costs rule

applies, the allocation of benefits from tax timing differences to customers will increase, and the allocation to utility shareholders, including Hydro One, will decrease.

(b) If the Applicant is alleging that the Acquired Utilities are somehow different from other utilities,

(i) No submissions or evidence have been provided in that regard, so there is no case for parties to answer; and

(ii) In any case, the reasoning of the OEB in EB-2020-0134, the Enbridge case, is a complete and conclusive response to any claim by Hydro One.

4 OTHER MATTERS

4.1 *Costs*

4.1.1 The School Energy Coalition hereby requests that the Board order payment of our reasonably incurred costs in connection with our participation in this proceeding. It is submitted that the School Energy Coalition has participated responsibly in all aspects of the process, in a manner designed to assist the Board as efficiently as possible.

All of which is respectfully submitted.

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