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BY EMAIL AND RESS

February 22, 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 – Reply Submission**

In accordance with Procedural Order No. 1, please find enclosed Hydro One Networks Inc.'s Reply Submission 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 submission 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*.

### **REPLY SUBMISSION**

#### **A. INTRODUCTION**

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* (the “Motion”). 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 for the 2016 to 2022 period, and (b) Account 1592 - PILs and Tax Variances, Sub-account CCA Changes for all three of the Acquired Utilities.

3. Further to Procedural Order No. 1,<sup>1</sup> Hydro One filed its Argument in Chief on the Motion on January 31, 2022. On February 14, 2022, Hydro One received submissions from OEB staff and the School Energy Coalition (SEC) with respect to the Motion. The following is Hydro One's reply to the OEB staff and SEC submissions.

## **B. OVERVIEW**

4. With respect to Account 1576 (CGAAP Accounting Changes) for the former Woodstock Hydro, the OEB erred in the Decision by interpreting the scope of Account 1576 as applying to the former Woodstock Hydro, which at all relevant times (as it relates to this motion) used United States Generally Accepted Accounting Principles (USGAAP) 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.
5. OEB staff and SEC in their submissions try to argue that Account 1576 was always intended to capture impacts resulting from any capitalization and depreciation policy changes regardless of accounting standards, not just those resulting from a change from Canadian Generally Accepted Accounting Principles (CGAAP) to International Financial Reporting Standards (IFRS),<sup>2</sup> and that all parties were always aware of this. By reason of that awareness or knowledge, OEB staff and SEC argue, there has been no impermissible retroactive ratemaking. However, their submissions rely upon out-of-context references to a policy document issued over a year prior to Account 1576 being established and which concerned a different account, Account 1575, which is not relevant to this proceeding. OEB staff and SEC have not pointed to anything that indicates Account 1576 applied to the former Woodstock Hydro upon that utility's adoption of USGAAP. Account 1576 was established by the OEB specifically in response to the announcement

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<sup>1</sup> OEB, Notice of Hearing, Procedural Order No. 1 and Decision on Request for a Partial Stay, January 12, 2022.

<sup>2</sup> IFRS and Modified IFRS (MIFRS) are used interchangeably in these submissions unless otherwise specified.

by the Canadian Accounting Standards Board of a deferral option for transitioning to IFRS. Account 1576 did not apply, and there was no reason for it to apply, to distributors using USGAAP because such distributors were unaffected by the deferral option.

6. In the Decision, the OEB also incorrectly assumed there are relevant financial differences for 2016-2022 to be recorded in Account 1576 in respect of the former Woodstock Hydro. Hydro One has confirmed there are no such differences to be recorded, and it has explained in these submissions why it is necessary to vary the Decision notwithstanding that the balances would be nil or immaterial if they were required to be provided.
7. With respect to Account 1592 - PILs and Tax Variances (Sub-account CCA Changes) for the Acquired Utilities, Hydro One has decided not to pursue its motion other than in respect of the method that it was directed to use for calculating balances from 2018 to 2022. The method that the OEB directed it to use for this purpose is in error because it is not consistent with the approved terms of Account 1592 (Sub-account CCA Changes) and, consequently, captures impacts other than those resulting from the introduction of accelerated CCA. Notably, the correct method for calculating balances would result in a higher amount being credited to ratepayers as compared to the method directed by the OEB in the Decision.

## **C. REPLY SUBMISSIONS RELATING TO ACCOUNT 1576**

### ***1. Background***

8. In the 2022 Rate Application, with respect to Account 1576 (CGAAP Accounting Changes) 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 USGAAP.<sup>3</sup>
9. In its submissions in the 2022 Rate Application, Hydro One explained that the purpose of Account 1576 is to record the financial differences arising as a result of accounting policy

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<sup>3</sup> EB-2021-0033, 2022 Rate Application, August 27, 2021, pp. 36-37, 39-40. See also Hydro One's response to OEB Staff #19(c) and Footnote 29 of the Decision regarding OEB staff's updated calculation of the balance.

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 USGAAP for accounting and regulatory purposes in 2015 and was no longer applying MIFRS accounting policies, there was no need to continue recording entries in Account 1576 because Account 1576 was no longer relevant to its circumstances.<sup>4</sup>

10. In OEB staff's submissions in the 2022 Rate Application, it argued that Account 1576 transactions should not cease in 2015 but instead should continue until the former Woodstock Hydro has rebased. OEB staff argued that Account 1576 was intended to capture the property, plant and equipment (PP&E) impact for capitalization and depreciation policy changes from those embedded in rates at a distributor's last rebasing, and made during the incentive-rate setting term, regardless of which accounting standard the distributor is using or changing to. OEB staff commented that annual transactions in the account from 2013 to 2015 for the former Woodstock Hydro were approximately \$500,000 (credit in favour of ratepayers). Therefore, OEB staff estimated that for 2016 to 2022 Hydro One should also have entries of a similar amount, totaling at least \$3,500,000 in favour of ratepayers.<sup>5</sup>
11. In the Decision, the OEB accepted the submissions of OEB staff without explanation, stating:

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 . . . 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.<sup>6</sup>

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<sup>4</sup> EB-2021-0033, Hydro One Reply Submission, December 3, 2021, pp. 14-15.

<sup>5</sup> EB-2021-0033, OEB Staff Submission, November 19, 2021, pp. 12-13.

<sup>6</sup> EB-2021-0033, Decision and Order, December 16, 2021, p. 15.

12. Implicit in the Decision findings on Account 1576 is the OEB's expectation that the amounts to be quantified and recorded in the account for 2016 to 2022, and returned to ratepayers, would be consistent with the amounts estimated by OEB staff. This aspect is discussed further in section 4, below.

2. *Hydro One's Argument in Chief*

13. Hydro One explained in its Argument in Chief that Account 1576 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, specifically for distributors transitioning from Legacy Canadian Generally Accepted Accounting Principles (CGAAP) to Modified International Financial Reporting Standards (MIFRS).<sup>7</sup>

14. With respect to the OEB's findings on Account 1576 for the former Woodstock Hydro, Hydro One in its Argument in Chief provided a detailed description of the parameters for the account based largely on the OEB's July 17, 2012 letter and July 2012 Accounting Procedures Handbook (APH) FAQs, which together established and defined the basis of the account. All of this demonstrated, in Hydro One's view, that the purpose and scope of the account is and always has been in relation only to distributors transitioning from CGAAP to MIFRS. On that basis, Hydro One argued that the OEB erred by:

- a. interpreting the scope of Account 1576 as applying to the former Woodstock Hydro which at all relevant times (as it relates to this motion) used and was approved by the OEB to use USGAAP 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.

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<sup>7</sup> Hydro One, Argument in Chief, p. 2.

3. ***Retroactive Ratemaking***

(a) **The Rule Against Retroactive Ratemaking**

15. Hydro One is generally in agreement with OEB staff's submissions as to what the rule against retroactive ratemaking stands for and the key factor to be considered in determining whether there has been impermissible retroactive ratemaking. However, Hydro One and OEB staff disagree over the application of that rule, particularly regarding the knowledge or awareness of the relevant parties about the types of amounts that would be subject to after the fact adjustment as a result of the account being established. The focus of SEC's submissions on the rule against retroactive ratemaking concerns the issue of symmetry, which for the reasons set out below is not relevant in this proceeding.
16. Regarding the substance of the rule, in *Union Gas Limited v. Ontario Energy Board*, 2015 ONCA 453 ("Union Gas"), the Ontario Court of Appeal stated, at para 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.
17. In *Atco Gas and Pipelines Ltd v Alberta (Utilities Commission)*, 2014 ABCA 28, the Alberta Court of Appeal explained that there are two fundamental policy concerns behind retroactive ratemaking. With regard to consumers, retroactive ratemaking distributes the cost of utility service by asking today's customers to pay for expenses incurred by yesterday's customers. With regard to the utility, retroactive ratemaking is unfair because a utility relies on certain rates to make business decisions and, to change them after the fact could cause unexpected results for the utility.<sup>8</sup>

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<sup>8</sup> *Atco Gas and Pipelines Ltd v Alberta (Utilities Commission)*, 2014 ABCA 28, para 51 ("ATCO 2014").

18. The courts have found that the critical factor for determining whether a regulator is engaging in retroactive ratemaking is the parties' knowledge.<sup>9</sup> As the Alberta Court of Appeal explains, 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".<sup>10</sup> In *ATCO 2014*, the court found that "the relevant question . . . is whether the utility knew from the actions or words of the regulator that the rates were subject to change".<sup>11</sup> In Hydro One's view, this is also the relevant question in the current proceeding.
19. While deferral and variance accounts are generally considered exceptions to the rule against retroactive ratemaking, this is because the establishment of such an account signals, and puts the relevant parties on notice, that the amounts a utility is required to record therein are encumbered, i.e. that the amounts to be accumulated in the account are subject to further disposition by the regulator.<sup>12</sup> However, where a regulator retroactively expands the scope of an established deferral or variance account and applies that expanded scope to determine the amounts that in its view ought to have been recorded in the account from the time it was first established, it cannot be said that there was any notice or knowledge of the parties that the amounts made subject to the incremental scope of the account on a retroactive basis were so encumbered.
20. SEC argues that the rule against retroactive ratemaking is not symmetrical, suggesting it is settled law that the rule should be applied where it is to the benefit of customers but not where it is to the benefit of the utility.<sup>13</sup> The decisions SEC relies upon to support this argument all concern the treatment of amounts arising from the correction of errors made by utilities. This is not the circumstance at issue in the current proceeding. Hydro One

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<sup>9</sup> *ATCO 2014*, para 53 and 56. See also *Union Gas Limited v. Ontario Energy Board*, 2015 ONCA 453, para 91.

<sup>10</sup> *Calgary (City) v. Alberta (Energy and Utilities Board)*, 2010 ABCA 132, para 57.

<sup>11</sup> *ATCO 2014*, para 62.

<sup>12</sup> *Union Gas Limited v. Ontario Energy Board*, 2015 ONCA 453, para 90.

<sup>13</sup> SEC Submission, pp. 15-16.



has not made and is not seeking to correct any errors. As such, SEC's submissions regarding the asymmetrical nature of the rule against retroactive ratemaking are irrelevant. Specifically, SEC refers to three decisions:

- a. In an Enbridge Gas proceeding, the OEB considered the utility's proposal to provide a refund to customers of an amount that was not previously credited to customers due to an error made by the utility. The OEB allowed the refund to ensure the utility did not profit from its own error.<sup>14</sup>
  - b. In a North Bay Hydro proceeding, the OEB considered the utility's request to retrospectively change the balance of a deferral account in favour of the utility after the utility discovered, subsequent to the account being cleared on a final basis, that it made an error in the account entries. The OEB denied the request.<sup>15</sup>
  - c. In an Essex Powerlines proceeding, the OEB considered the treatment of several accounting errors made by the utility in its Group 1 variance account balances, some of which had been disposed of on a final basis. The OEB denied the requested adjustments, which would have re-allocated amounts between different classes of customers, on the basis that the rates were declared final over a year earlier and customers did not know those rates were subject to adjustment.<sup>16</sup>
21. The decisions cited by SEC in support of its view that the rule against retroactive ratemaking should be applied asymmetrically involve circumstances of utility errors and negligence. These are not relevant to Hydro One's motion with respect to Account 1576. As such, there is no basis for asymmetrical application of the rule against retroactive ratemaking in the current proceeding.
22. SEC also argues that what Hydro One is really doing in this motion is seeking to amend the OEB's decision in EB-2014-0213 retroactively to include an order terminating the use

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<sup>14</sup> EB-2014-0043, Decision and Order, Enbridge Gas Distribution Inc., April 10, 2014.

<sup>15</sup> EB-2009-0113, Decision and Order, North Bay Hydro Distribution Limited, September 8, 2009.

<sup>16</sup> EB-2014-0301/EB-2014-0072, Partial Decision and Procedural Order No. 3, Essex Powerlines Corporation, March 25, 2015.

of Account 1576 upon the change to USGAAP.<sup>17</sup> In a similar vein, SEC repeatedly characterizes Hydro One's position as being that utilities which are using USGAAP, such as the former Woodstock Hydro, are "exempt" from the application of Account 1576.<sup>18</sup> Both of these suggestions are wrong and are a mischaracterization of the issues in this proceeding. Hydro One has never asked for or asserted that there is or should be any exemption. In fact, no variation of the word "exempt" appears anywhere in Hydro One's Notice of Motion or Argument in Chief. An exemption from a requirement means that the requirement applies in the first instance, and that there is relief provided from that requirement. It has been and continues to be Hydro One's position that the scope of Account 1576 is specific to distributors transitioning from CGAAP to MIFRS. As such, the account applied to the former Woodstock Hydro in 2015 but, by the terms under which it was established, the account no longer applied once it adopted USGAAP (2016-2022 period). As such, there was never any need for an order terminating the use of Account 1576 upon the change to USGAAP because, by the established parameters for the account, it stopped being applicable at that time. Moreover, since the account has never applied to utilities using USGAAP, there has never been any need for an exemption from Account 1576 for utilities on USGAAP.

**(b) Knowledge of the Parties and the Purpose of Account 1576**

23. OEB staff and SEC, in their submissions, disagree that the OEB's findings on Account 1576 result in retroactive ratemaking. In their view, Account 1576 was always intended to capture impacts resulting from any capitalization and depreciation policy changes regardless of accounting standards, not just those resulting from a change from CGAAP to IFRS, and all parties were always aware of this. By having that awareness or knowledge that rates were subject to change through a future adjustment to reflect the impacts resulting from any capitalization and depreciation policy changes regardless of

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<sup>17</sup> SEC Submission, p. 18.

<sup>18</sup> See SEC Submission, pp. 8, 13-14

accounting standards, OEB staff and SEC argue that there has been no impermissible retroactive ratemaking.<sup>19</sup>

24. The submissions from OEB staff and SEC on this issue are fundamentally incorrect. As discussed in the paragraphs below, their submissions rely almost exclusively on a particular OEB addendum report. They assert that the addendum report provides clear evidence that all parties knew or ought to have known that Account 1576 was always intended to capture impacts resulting from any capitalization and depreciation policy changes regardless of accounting standards, not just those resulting from a change from CGAAP to IFRS. As set out below, OEB staff and SEC ignore key aspects from the addendum report, resulting in their interpretations of the report being incorrect. More significantly, their reliance on the addendum report is not appropriate. While there is discussion in that report of an account, and ultimately authorization for the creation of an account, the account that was the subject of the report they rely on was not Account 1576. Rather, the addendum report concerns Account 1575, which is entirely distinct from the account at issue in this motion. Consequently, the submissions from OEB staff and SEC on the knowledge of the parties and the purpose of Account 1576 are largely irrelevant. Furthermore, there is nothing in the OEB staff or SEC submissions that otherwise challenges Hydro One's interpretation of the correct scope of Account 1576, and the awareness of what amounts are subject to the OEB's further determination based on the correct scope of that account.
25. OEB staff's submissions on retroactive ratemaking start with a curious statement, which suggests that OEB staff may have mischaracterized the issue of retroactive ratemaking in the context of the proceeding. Staff comments that "in its submission to the OEB on Account 1576 prior to the Decision, Hydro One did not specifically argue that recording or clearing balances for the time period after 2015 would constitute retroactive ratemaking".<sup>20</sup> The statement is curious because the issue of retroactive ratemaking did not arise until the Decision was issued. Prior to the Decision being issued, Account 1576

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<sup>19</sup> See OEB Staff Submission, pp. 3-6; SEC Submission, pp. 12-14.

<sup>20</sup> OEB Staff Submission, p. 2.

did not apply to USGAAP. By issuing the Decision with a direction for Hydro One to record amounts in the account notwithstanding that at all relevant times (as it relates to this motion) it was on USGAAP, the OEB effectively redefined the scope of the account and applied that new scope to periods going back to 2016, thereby engaging in retroactive ratemaking. It is not clear why staff thought it was significant that Hydro One did not raise the issue of retroactive ratemaking prior to the Decision.

26. Other than the curious statement noted above, the focus of staff's submission on retroactive ratemaking is its argument that Account 1576 was always intended to capture impacts resulting from any capitalization and depreciation policy changes regardless of the accounting standards the policies are based on, therefore including CGAAP to USGAAP policies.<sup>21</sup> While staff acknowledge that "much of the text in the account and related documents refers to a transition from CGAAP policies to IFRS policies", staff nevertheless asserts that the OEB was "clear that the same approach should apply to USGAAP policies where appropriate". SEC asserts generally the same points as staff regarding the purpose of Account 1576.<sup>22</sup>
27. In support of this assertion, staff explains its understanding of the context under which Account 1576 was created. The basis for staff's understanding is the OEB's June 13, 2011 *Addendum to Report of the Board: Implementing International Financial Reporting Standards in an Incentive Rate Mechanism Environment* (EB-2008-0408). Staff argues that, "although Account 1576 was not formally established until several months after the issuance of the (Addendum) Report . . . the account and its rationale are directly discussed in the (Addendum) Report and it was established as expressly contemplated in the (Addendum) Report."<sup>23</sup>
28. OEB staff then describes the policy context for the Addendum Report and states that "the (Addendum) Report largely discusses this issue in the context of the change from CGAAP to IFRS for the simple reason that this was the accounting standard change that

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<sup>21</sup> OEB Staff Submission, pp. 3-4.

<sup>22</sup> SEC Submission, pp. 8-9.

<sup>23</sup> OEB Staff Submission, p. 4.

most distributors were undergoing at the time. However, the same principle applies for any changes in accounting policies or accounting standards (for example, from CGAAP to USGAAP). This was made clear by the OEB in the (Addendum) Report”. OEB staff then provides an excerpt from page 11 of the Addendum Report where the OEB says it will approve the proposed PP&E deferral account. Regarding that excerpt, OEB states:

This passage references the principle based rationale that led to the establishment of the account, **and does not specify that the account applies only to changes from CGAAP to IFRS**. The account is intended to capture impacts resulting from changes to accounting policies between rebasings.

Even more importantly, at page 20 the Report specifically notes that: “[u]tilities 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).” **This represents a clear indication by the OEB that the guidance provided in the Report (which includes the rationale for the subsequent creation of Account 1576) is meant to encompass changes not just resulting from CGAAP to IFRS, but also CGAAP to USGAAP. Hydro One therefore had knowledge as early as 2012 that Account 1576 could be used to record financial differences arising (from) a transition from CGAAP to USGAAP.**<sup>24</sup>

The submissions from OEB staff are flawed in three fundamental respects, as follows.

29. The **first** problematic aspect is staff’s assertion that the passage it quotes from p. 11 of the Addendum Report “does not specify that the account applies only to changes from CGAAP to IFRS”. While that is technically correct, it is perhaps the *only* paragraph from that section of the Addendum Report that does *not* expressly refer to IFRS or MIFRS. Moreover, it appears that staff may have misled the OEB in its submission because the paragraph *immediately following* the one quoted by staff, which staff did not mention in its submission, states:

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<sup>24</sup> OEB Staff Submission, pp. 5-6 (emphasis added).

The Board therefore authorizes a generic deferral account to capture PP&E differences **arising only as a result of the accounting policy changes caused by the transition from CGAAP to MIFRS**. It is for use by utilities to record PP&E differences arising **during the period since their last rebasing under CGAAP up to their first rebasing under MIFRS**, including utilities using IRM rate-setting methodology.<sup>25</sup>

30. The **second** problematic aspect of staff's submission is its assertion that the note on p. 20 of the Addendum Report, which says that references to IFRS and MIFRS should generally be read to include USGAAP, "represents a clear indication by the OEB that the guidance provided in the Report is meant to encompass changes not just resulting from CGAAP to IFRS, but also CGAAP to USGAAP". What is not obvious from staff's submission is that this note was included in a separate section of the Addendum Report from that which authorized the deferral account. The section containing the note was instead concerned with the broader question of whether the OEB should permit rate applications and RRR reporting using USGAAP. After concluding that it would permit rate applications and RRR reporting using USGAAP, the OEB included the referenced note based on a prior staff recommendation. However, whereas staff had recommended the inclusion of a note stating that utilities filing under USGAAP "shall" read references to IFRS and MIFRS to include USGAAP<sup>26</sup>, the OEB in the Addendum Report did not accept staff's recommendation and only provided that such utilities "should, in general" read those references to include USGAAP.
31. More significantly, the OEB added a statement after the note, which had not been part of staff's proposed note, saying that "the deferral account authorized in Issue 2 may not be necessary for such utilities".<sup>27</sup> By "such utilities", the OEB meant utilities on USGAAP. This statement was in reference to the generic deferral account authorized in the earlier part of the Addendum Report to capture PP&E differences arising as a result of the accounting policy changes caused by the transition from CGAAP to MIFRS. The OEB clearly recognized that the account it authorized may not be applicable to utilities using

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<sup>25</sup> Addendum Report, p. 11 (emphasis added).

<sup>26</sup> Addendum Report, p. 18.

<sup>27</sup> Addendum Report, p. 20.

USGAAP. While staff acknowledge this additional language in footnote 6 of their submission, given the full context, their assertion - that the note represents a “clear indication” by the OEB that the guidance provided in the Addendum Report is meant to encompass changes resulting from CGAAP to USGAAP - is severely strained. This context includes the placement of the note within the Addendum Report, the OEB’s revisions to the statement proposed by staff, and the OEB’s qualification of the note by recognizing that the deferral account may not be needed for utilities on USGAAP.

32. Regarding the same statement from the Addendum Report, about the account not being necessary for utilities using USGAAP, SEC comments that this does not amount to an “exemption” of USGAAP from Account 1576, but rather expresses the assumption at the time that there would be no material differences between USGAAP and CGAAP that could impact PP&E rate base.<sup>28</sup> As discussed in paragraph 22, SEC’s preoccupation with whether or not there is an exemption is incorrect and irrelevant. However, it is interesting to note SEC’s acknowledgement that there has always been an understanding that there are no material differences between USGAAP and CGAAP that could impact PP&E rate base.
33. The **third**, and most significant problem with staff’s submissions on retroactive ratemaking, is its assertion that, based on the Addendum Report, Hydro One “had knowledge as early as 2012 that Account 1576 could be used to record financial differences arising (from) a transition from CGAAP to USGAAP”. SEC effectively asserts the same argument in its submissions.<sup>29</sup> To understand why this assertion is flawed requires an understanding of the historical policy context and timeline of events associated with the Addendum Report and the creation of Account 1576. While this history is lengthy and involves numerous elements, it is necessary to demonstrate that the account authorized by and discussed in the Addendum Report was not Account 1576. Rather, it was an account that became known as Account 1575. Account 1575 was a deferral account that was the result of the OEB’s consultation process on IFRS transition

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<sup>28</sup> SEC Submission, pp. 13-14.

<sup>29</sup> See SEC Submissions, section 2.4, pp. 12-14.

and is entirely distinct from Account 1576, which is a variance account established by the OEB approximately 13 months after the Addendum Report to address a specific circumstance relating only to distributors transitioning from CGAAP to MIFRS. This historical context is as follows:

- a. On December 23, 2008, the OEB initiated a consultation process to examine issues associated with the transition to IFRS (EB-2008-0408). The first phase of the process was focused on formulating policy principles. The second phase was focused on amendments to regulatory instruments.
- b. On July 28, 2009, the OEB issued *Report of the Board: Implementing International Financial Reporting Standards in an Incentive Rate Mechanism Environment* (EB-2008-0408). This Report did not discuss the creation of any regulatory accounts relevant to the issues at hand.
- c. On March 31, 2011, OEB staff issued, for comment by stakeholders, *Staff Discussion Paper: Transition to IFRS – Implementation in an IRM Environment* (EB-2008-0408). The Staff Discussion Paper included (at Issue #2) a consideration of whether any differences between costs recorded in the balance sheet accounts and costs built into rates that: (a) arise in the time period between rebasing in CGAAP and the first rebasing under MIFRS, and (b) are driven by changes in accounting for capital or operating costs, prompted by the adoption of MIFRS, should be recovered from or refunded to ratepayers. Staff proposed that “differences relating only to the Property, Plant and Equipment components of rate base, including the rate base related intangible assets (referred to collectively hereafter as “PP&E”), when properly calculated, should be recoverable from, or refundable to, ratepayers. Staff recommends that the Board approve a deferral account to capture this difference associated with these PP&E items. The proposed PP&E deferral account is to cover differences arising only as a result of the accounting policy changes caused by the transition from CGAAP to MIFRS.”



It is not to capture performance differences during the IRM period”.<sup>30</sup> The rationale provided for staff’s recommendation provide further confirmation that the purpose of the account, from the time it was recommended, was specific to utilities transitioning from CGAAP to IFRS.

- d. On June 13, 2011, the OEB issued *Addendum to Report of the Board: Implementing International Financial Reporting Standards in an Incentive Rate Mechanism Environment* (EB-2008-0408). This is the Addendum Report discussed above, which OEB staff and SEC rely on significantly in their submissions. The Addendum Report presents the OEB’s policy determinations based on consideration of staff’s recommendations, materials from working groups and comments received. On Issue #2, as discussed above, the OEB authorized “a generic deferral account to capture PP&E differences arising only as a result of the accounting policy changes caused by the transition from CGAAP to MIFRS”.<sup>31</sup> The parameters for the account are set out in Appendix A of the Addendum Report, which reiterates the nature of the account as being in relation specifically to utilities transitioning from CGAAP to MIFRS.
- e. On June 21, 2011, the OEB concluded the consultation process EB-2008-0408.
- f. On December 21, 2011, the OEB issued a draft revised Accounting Procedures Handbook (APH) for comment, along with a *Summary of Account Changes in the Uniform System of Accounts* (EB-2011-0428). The Summary of Account Changes states that accounts have been added, deleted or revised for several reasons, including new accounts approved by the Board in decisions, orders, policy papers, reports, guidelines and APH-FAQs, as well as new accounts arising from IFRS accounting requirements. The draft APH and Summary of Account Changes do not include any references to Account 1576. However, they do reference a new “Account 1575, IFRS-CGAAP Transitional PP&E Amounts”.

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<sup>30</sup> Staff Discussion Paper, p. 6 (emphasis added).

<sup>31</sup> Addendum Report, p. 11 (emphasis added).

This account is listed under the heading for New Board-Approved accounts arising from IFRS requirements, effective on January 1, 2012.

- g. On March 28, 2012, the OEB released the final revised APH (EB-2011-0428). In its cover letter, the OEB states that the revisions were largely undertaken to reflect the adoption of IFRS by the majority of distributors and the OEB's policy on transition to IFRS. The final APH includes the new Account 1575, but not Account 1576. It is clear that the new Account 1575 is the account that was authorized by the OEB under Issue #2 in the Addendum Report and further described in Appendix A to the Addendum Report because the account description in the APH is aligned with that set out in Appendix A to the Addendum Report.<sup>32</sup>
- h. In March 2012, the Canadian Accounting Standards Board announced that it will allow rate regulated entities a one-year deferral option for transitioning to IFRS in 2012.
- i. On April 30, 2012, the OEB issued a letter to distributors to provide direction regarding the impact of the decision by the Canadian Accounting Standards Board to defer the mandatory changeover to IFRS to January 1, 2013. The letter does not reference the IFRS consultation process EB-2008-0408, or any documents from that process.
- j. On July 17, 2012, the OEB issued a letter to distributors setting out its further 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 as a result of the one-year deferral option for IFRS changeover. The letter does not reference the IFRS consultation process EB-2008-0408, or any documents from that process. The OEB noted that it was responding to the numerous inquiries it received from distributors seeking regulatory accounting direction in relation to changing their depreciation rates and

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<sup>32</sup> See APH, Article 220, pp. 23 and 33; and Article 510, pp. 10-13 and 19.

capitalization policies while still under CGAAP in 2012 due to the one-year IFRS transition deferral. The letter states that the OEB will permit electricity distributors electing to remain on CGAAP in 2012 to implement regulatory accounting changes for depreciation expense and capitalization policies effective on January 1, 2012. The letter further states that the OEB is creating and authorizing a new variance account for distributors to record the financial differences arising from these accounting changes. More particularly, the letter states that the OEB “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 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”.<sup>33</sup>

- k. On July 17, 2012, concurrent with the above letter, the OEB issued the July 2012 APH Frequently Asked Questions. Under Question 2, and Appendix A of the FAQs, the OEB provides the approved description for Account 1576. In addition to the fact that the account established by the Addendum Report was authorized as a deferral account and the account established by the July 17, 2012 letter was authorized as a variance account, a comparison of the descriptions for Accounts 1575 and 1576 indicate significant and substantive differences. While Account 1575 was established to record differences generally arising from accounting policy changes caused by the transition from previous CGAAP to MIFRS, Account 1576 was established specifically to record financial differences arising from accounting changes to depreciation expense and capitalization policies

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<sup>33</sup> The timing and scope of Account 1576 also helps address the question posed by SEC at footnote 1 of its submissions. SEC did not understand why the same issue that arises for the former Woodstock Hydro does not also arise for the former Norfolk Power and Haldimand County Hydro. The former Norfolk Power rebased under MIFRS in EB-2011-0272 and received approval for rates effective May 1, 2012. The former Haldimand County Hydro rebased under regulatory accounting changes related to IFRS in EB-2013-0134 and received approval for rates effective May 1, 2014. Account 1576 did not apply to these two utilities once they rebased.

permitted by the OEB under CGAAP in 2012 or as mandated by the OEB in 2013. The distinction between the accounts is articulated in Note B to the description of Account 1576, in Appendix A of the APH FAQ. Note B states:

Adjustments for the IFRS transitional accounting changes remain the function of Account 1575 **that may arise from the time when the distributor adopts IFRS and rebases under modified IFRS. Deferral Account 1575 and variance Account 1576 cannot be used interchangeably and the distributor must follow the required accounting treatment applicable under each account.** The accounting changes applicable to Account 1576 are not applicable to Account 1575 in relation to “changeover date” accounting on the distributor’s adoption of IFRS.

1. On June 25, 2013, the OEB issued a letter regarding accounting policy changes for both Account 1575 and Account 1576. The letter refers to the fact that Account 1576 was established by means of the July 17, 2012 letter and clearly distinguishes between the two accounts, noting that “Account 1576 was intended only as a short term measure to address the interim deferral of IFRS in 2012 with the expectation of a changeover to IFRS in 2013. In addition, MIFRS was expected to be the accounting basis used and approved for 2013 CoS applications and thus the use of Account 1575 would have applied rather than Account 1576”.
  
34. Based on the foregoing, the submissions from OEB staff and SEC on the question of the purpose of Account 1576 and whether parties had knowledge that Account 1576 was intended to be used to record financial differences arising from a transition from CGAAP to USGAAP are clearly wrong. Account 1576 was established by the OEB in response to the announced deferral option for transitioning to IFRS. The account did not apply, and there was no reason for the account to apply, to distributors using USGAAP because such distributors would have been unaffected by the deferral option. The historical policy context and timeline of events, as well as the substance of the relevant documents as set

out above, lays bare the emptiness of SEC's hyperbolic assertion that Hydro One is trying to exploit a mere "technicality" in the OEB's accounting guidance for its own gain.<sup>34</sup>

35. Furthermore, neither OEB staff nor SEC have pointed to anything in the OEB's July 17, 2012 letter or its July 2012 APH FAQs that could reasonably have provided any parties with notice or knowledge that Account 1576 was ever intended to be used other than for utilities transitioning from CGAAP to MIFRS. Without such knowledge, neither Hydro One nor any other party has had any basis to believe that, to the extent there were to arise any financial differences from changes to depreciation expense and capitalization policies as a result of transitioning to USGAAP, such amounts would be encumbered by virtue of Account 1576.
36. The OEB's findings in the Decision had the effect of expanding the scope of Account 1576 and applying that expanded scope retroactively to the period 2016 to 2022. No party had knowledge until the Decision was issued that any amounts arising from that expanded scope were ever encumbered. Therefore, it is Hydro One's submission that this aspect of the Decision constitutes impermissible retroactive ratemaking and should be varied.

#### **4. *Relevant Financial Differences and Need for Decision to be Varied***

37. In its Argument in Chief, Hydro One explained that 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, implied that there are relevant financial differences for that period to be recorded and returned. Hydro One further explained that this assumption is incorrect, that there are no such differences, and the Decision was wrong to assume there would be any such differences to record for that period.<sup>35</sup>
38. OEB staff commented that, while Hydro One indicated that the switch to USGAAP resulted in no material changes to depreciation rates for the former Woodstock Hydro,

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<sup>34</sup> SEC Submission, p. 9.

<sup>35</sup> Hydro One, Argument in Chief, p. 15.

Hydro One has not confirmed that it has not changed its capitalization policies and, to the extent the capitalization policies have changed on account of the switch to USGAAP those impacts should be recorded in Account 1576.<sup>36</sup> In fact, Hydro One stated multiple times in its Argument in Chief that there are no financial differences for the period 2016 to 2022 to be recorded in the account, and that there would be no material financial differences for that period even if the scope of Account 1576 required amounts to be recorded in relation to differences between CGAAP and USGAAP.<sup>37</sup> The former Woodstock Hydro implemented MIFRS depreciation expense and capitalization policies effective January 1, 2012 and subsequently adopted USGAAP after October 31, 2015. There are no policy related differences for PP&E accounting between CGAAP and USGAAP. The accounting policies pertaining to capitalization and calculations of depreciation expense are consistent. In fact, in instances where CGAAP was used previously and contained limited accounting guidance or relevant account guidance, the common industry practice was to refer to USGAAP.

39. OEB staff and SEC both question why, if there are no material balances to record in Account 1576, would Hydro One not simply file those balances as directed instead of filing a motion to review and vary.<sup>38</sup> The reasons are twofold. **First**, because the account is not applicable in respect of those years, there is no obligation on Hydro One to report balances even if nil, and it would be improper for Hydro One to do so. **Second**, Hydro One was concerned that even if it did report nil balances that this would not have been accepted because the Decision strongly implied that the OEB expected there to a material balance in the account for the 2016 to 2022 period, as discussed below.
40. Hydro One indicated during the hearing that there are no differences in PP&E, for 2016 and beyond, during which time the former Woodstock Hydro was approved to use USGAAP.<sup>39</sup> Despite this, OEB staff in its submissions in the 2022 Rate Application argued that Account 1576 transactions should not have ceased in 2015 but instead should

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<sup>36</sup> OEB Staff Submission, p. 6.

<sup>37</sup> Hydro One, Argument in Chief, p. 15.

<sup>38</sup> OEB Staff Submission, p. 7; SEC Submission, p. 14.

<sup>39</sup> EB-2021-0033, Hydro One, Response to Interrogatory Staff 19(c), November 5, 2021.

have continued until the former Woodstock Hydro is rebased. OEB staff commented that annual transactions in the account from 2013 to 2015 for the former Woodstock Hydro were approximately \$500,000 (credit in favour of ratepayers). On that basis, OEB staff estimated that for 2016 to 2022 Hydro One should also have entries of a similar amount, totaling at least \$3,500,000 in favour of ratepayers.<sup>40</sup> This suggested that OEB staff was of the view that Hydro One was required to continue recording differences between CGAAP and MIFRS throughout the 2016 to 2022 period notwithstanding that the former Woodstock Hydro had adopted USGAAP and was no longer using MIFRS policies during that timeframe.

41. The Decision did not direct Hydro One to record differences between CGAAP and USGAAP, even if nil or immaterial. Rather, the Decision simply indicated that the OEB agreed with OEB staff that Hydro One should *continue* to record transactions in Account 1576 to the end of 2022. Given that Account 1576 is intended to capture differences between CGAAP and IFRS, Hydro One interpreted this direction to mean that the OEB was directing Hydro One to continue tracking differences relative to MIFRS, as was implied by the OEB staff submissions and its estimate of a \$3,500,000 credit balance in favour of ratepayers. Further supporting this interpretation was the direction to dispose of that balance as part of the 2023 rebasing application. This demonstrated the OEB's expectation that there would in fact be a balance to dispose of. It is for these reasons that Hydro One considered it appropriate to request a variance to the Decision notwithstanding its determination that the balance in Account 1576 for the relevant period would be nil or immaterial.

## **D. REPLY SUBMISSIONS RELATING TO ACCOUNT 1592**

### ***1. Hydro One's Argument in Chief***

42. In its Argument-in-Chief, with respect to the OEB's findings on Account 1592 (Sub-account CCA Changes) for the three Acquired Utilities, Hydro One argued that the OEB erred in its findings by:

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<sup>40</sup> EB-2021-0033, OEB Staff Submission, November 19, 2021, pp. 12-13.

- 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”;
  - 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.
43. Hydro One therefore requested that the OEB substitute its findings on Account 1592 with a finding, 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.

**2. *Rate Base Additions and Benefits Follow Costs***

44. Hydro One has reviewed the OEB decisions for other utilities in respect of Account 1592, as cited in OEB staff’s submissions. While Hydro One does not necessarily agree with the full context of those submissions, it has decided not to pursue either of the first two elements of its motion in respect of Account 1592, as listed in paragraph 42, above. Regarding the third element of its motion in respect of Account 1592, in relation to the method for calculating balances for 2018 to 2022, Hydro One’s submissions are set out below.

**3. *Method for Calculating Balances for 2018 to 2022***

45. In the 2022 Rate Application, Hydro One recorded no balances in each of the Acquired Utilities’ Account 1592 (Sub-account CCA Changes) on the basis of its view that there were no revenue requirement impacts from the change in CCA rules because there had been no rate base additions for the Acquired Utilities from 2018 onward. In the Decision,



the OEB agreed with OEB staff's submission that there should be balances for each of the Acquired Utilities. The Decision then directs Hydro One to calculate balances to the end of 2022 using a specific methodology that had been proposed by OEB staff. Hydro One takes issue with the methodology that the OEB has directed it to use for this purpose.

46. As explained in Hydro One's Argument in Chief, the methodology recommended by OEB staff and directed by the OEB in the Decision is not consistent with the terms under which Account 1592 was established. The methodology required by the Decision is 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.<sup>41</sup>

47. Hydro One's submission, as set out in its Argument in Chief, is that given the purpose of Account 1592 (Sub-account CCA Changes) is specifically to track the revenue requirement impact of the change in CCA rules which introduced Accelerated CCA under the AIP, it is not appropriate to calculate the relevant amounts using actuals. This is because the use of actuals has the effect of capturing more variables than just the tax impact arising from the introduction of Accelerated CCA. 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 assets that are in service but which have not been added to rate base. As Account 1592 (Sub-account CCA Changes) was not intended to capture impacts other than those resulting from the introduction of Accelerated CCA, and the use of actuals ignores whether the assets are included in rate base, Hydro One argued that the method of calculation required by the Decision is incorrect and inappropriate.<sup>42</sup>

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<sup>41</sup> EB-2021-0033, Decision and Order, December 16, 2021, p. 13 (emphasis added).

<sup>42</sup> Hydro One, Argument in Chief, pp. 25-26.

48. OEB staff, in its submissions, responds by arguing that the method of calculation required by the Decision is “one of the appropriate methods” for calculating the balances in the sub-account.<sup>43</sup> More particularly, OEB staff explains that the OEB has previously approved balances for disposition using either of two methods – an “Approved Additions Method” and an “Actual Additions Method”. On the basis that both methods have previously been approved, and because the Decision directed Hydro One to use one of these methods, namely the Actual Additions Method, OEB staff argues that the OEB should not vary this aspect of the Decision. SEC makes no submissions with respect to the Account 1592 calculation methodology.
49. Regarding the Approved Additions Method, OEB staff explains that this approach focuses on the impact of the CCA rule change to existing rates by determining the rates that a utility would have received had it reflected the Accelerated CCA rules instead of the prior CCA rules in the test year of its last rebasing application. Regarding the Actual Additions Method, OEB staff explains that this approach focuses on the impact of the CCA rule change to future rates by recognizing the future costs to ratepayers and returns the actual benefit a utility realized from Accelerated CCA.<sup>44</sup>
50. Notwithstanding that the OEB may have approved the use of the Actual Additions Method for other utilities in other proceedings, it is Hydro One’s submission that only the Approved Additions Method is properly aligned with and therefore in accordance with the parameters established by the OEB for Account 1592 (Sub-account CCA Changes). The sub-account was established by the OEB through a letter issued July 25, 2019. In the letter, the OEB explains that, pursuant to the Accounting Procedures Handbook, distributors are required to record the impact of any differences that result from a change to the tax rates or rules that are assumed in the OEB Tax Model that is used to determine the tax amount that underpins existing rates. The impacts of any such differences that are not reflected in existing rates are to be recorded in Account 1592 (Sub-account CCA Changes). For increased transparency, the OEB established the sub-account for CCA

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<sup>43</sup> OEB Staff Submission, p. 12.

<sup>44</sup> OEB Staff Submission, p. 13.

Changes specifically for the purposes of recording the full revenue requirement impact of any changes in CCA rules that are not reflected in base rates.<sup>45</sup>

51. It is Hydro One's submission that the parameters established by the OEB for Account 1592, and the CCA Changes sub-account more particularly, are clearly and expressly focused on the impact of the CCA rule change to *existing* rates. This is evident from the fact that the amounts to be recorded in the sub-account are to reflect the impact of any differences that result from a change to the tax rules that are assumed in the tax model used to determine the tax amount underpinning existing rates. In addition, the OEB's reference in the letter to the need to record the full revenue requirement impact of any changes in CCA rules that are not reflected in "base rates" further demonstrates the intended focus as being on the impacts relative to existing rates. This clear focus on impacts relative to existing rates is wholly consistent with the Approved Additions Method. In contrast, the focus of the Actual Additions Method on the impact of the CCA rule change to future rates, by recognizing future costs to ratepayers (including, as noted above, costs driven by variables other than the CCA rule change), is not aligned with the parameters established by the OEB for the CCA Changes sub-account.
52. It is Hydro One's view that the Actual Additions Method is not in accordance with the OEB's requirements for Account 1592 (Sub-account CCA Changes) and the direction in the Decision for Hydro One to use that method is therefore incorrect.
53. Hydro One also notes that the Actual Additions Method directed by the Decision is inconsistent with the manner in which Hydro One calculates its other Account 1592 balances for its Transmission and Distribution businesses.
54. Moreover, Hydro One has determined that the total amount to be recorded in Account 1592 (Sub-account CCA Changes) using the Approved Additions Method would actually be higher than the total amount resulting from the method it was directed to use in the Decision. Specifically, the Actual Additions Method directed by the OEB would result in

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<sup>45</sup> 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.

a balance of approximately \$1.2 million to be returned to ratepayers, whereas the Approved Additions Method that Hydro One submits is in accordance with the requirements for the sub-account would result in a balance of approximately \$1.6 million to be returned to ratepayers. Hydro One therefore requests that the OEB vary the Decision so as to not prescribe the Actual Additions Method. This will enable Hydro One to use the Approved Additions Method, consistent with its existing practice and the established parameters for the sub-account.

**E. CONCLUSION**

55. 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 (as it relates to this motion) used USGAAP 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 submissions from OEB staff and SEC relied upon an historical policy document that concerned Account 1575, which is not the account that is the subject of this proceeding. Moreover, neither submission pointed to anything that indicates Account 1576 applied to the former Woodstock Hydro upon that utility's adoption of USGAAP.
56. 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. Hydro One has confirmed that there are no such differences to be recorded, and explained why it is necessary to vary the Decision notwithstanding that the balances would be nil or immaterial if they were required to be provided.
57. While Hydro One is not pursuing parts of its motion in respect of Account 1592, it continues to assert that 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. The correct method results in a higher amount being credited to ratepayers as compared to the method directed by the OEB.

58. The reviewing panel should therefore grant the motion and correct the errors by providing the requested relief.

All of which is respectfully submitted this 22<sup>ND</sup> day of February, 2022.

**HYDRO ONE NETWORKS INC.**

By its Counsel, Torys LLP



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Jonathan Myers