



DECISION AND ORDER

EB-2022-0071

HYDRO ONE NETWORKS INC.

Motion to review and vary aspects of the EB-2021-0033 Decision and Order relating to Account 1576 and Account 1592

BEFORE: Allison Duff
Presiding Commissioner

Michael Janigan
Commissioner

Pankaj Sardana
Commissioner

April 7, 2022



TABLE OF CONTENTS

1	OVERVIEW	2
2	CONTEXT AND PROCESS	3
3	DECISION	4
3.1	ACCOUNT 1576	4
3.2	ACCOUNT 1592, SUB-ACCOUNT CCA CHANGES	7
4	ORDER	11

1 OVERVIEW

The Ontario Energy Board (OEB) is deciding a Motion to Review and Vary (Motion) filed by Hydro One Networks Inc. (Hydro One). The Motion is for an order varying two discrete aspects of the OEB's Decision and Order (2022 Decision) that approved 2022 distribution rates for Hydro One's 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).¹

The two aspects of the Motion are the OEB's findings in relation to:

- i) Account 1576 - CGAAP Accounting Changes for the former Woodstock Hydro for the 2016 to 2022 period
- ii) Account 1592 - PILs and Tax Variance, Sub-account CCA Changes for all three of the Acquired Utilities

For the reasons set out in Section 3, the OEB grants Hydro One's Motion with respect to Account 1576 based on the original panel failing to provide adequate reasons for not accepting Hydro One's evidence in the 2022 Decision. Accordingly, Hydro One is not required to file any additional information with respect to Account 1576.

The OEB has determined that Hydro One's Motion with respect to Account 1592 fails. The OEB requires Hydro One to calculate balances in the 1592 sub-account by using the Actual Additions Method and file the balances in this proceeding, then dispose of the balances in Hydro One Networks Inc.'s 2023 Custom IR proceeding EB-2021-0110.

¹ EB-2021-0033

2 CONTEXT AND PROCESS

On December 16, 2021, the OEB issued its 2022 Decision on Hydro One's rate application approving Hydro One's 2022 distribution rates for the Acquired Utilities. On January 7, 2022, Hydro One filed a Motion to review and vary the 2022 Decision pursuant to Rule 42 of the OEB's Rules of Practice and Procedure.

Included in Hydro One's Notice of Motion was a partial stay request. As the 2022 Decision directed Hydro One to file a draft rate order on January 13, 2022, an OEB decision on the partial stay, specific to Account 1576 and Account 1592, was urgently requested.

On January 12, 2022, the OEB issued Notice of Hearing, Procedural Order No. 1 and a Decision on Request for a Partial Stay (PO #1). In PO #1, the OEB stated that it was unable to conclude that the test for a partial stay had been met. However, as a matter of efficiency in setting rates for 2022, the OEB relieved Hydro One of the requirement to file updated balances for Account 1576 and Account 1592 with its draft rate order.

PO #1 also approved all the intervenors in Hydro One's 2022 IRM, the 2013-2014 rates proceedings for the Acquired Utilities, the 2018-2022 Hydro One rebasing proceeding, and the current Hydro One 2023-2027 rebasing proceeding as intervenors in this Motion.² PO #1 set out a schedule for written submissions and stated that the OEB would not be seeking preliminary submissions on the "threshold" issue described in Rule 43 of the OEB's Rules of Practice and Procedure.

Hydro One filed an Argument in Chief following the issuance of PO #1. OEB staff and the School Energy Coalition (SEC) then filed written submissions, and Hydro One filed a reply submission.

² EB-2021-0033, EB-2013-0187, EB-2014-0244, EB-2014-0213, EB-2017-0049 and EB-2021-0110

3 DECISION

3.1 Account 1576

Background

Account 1576 - Accounting Changes under CGAAP is a regulatory account that records the financial differences arising as a result of changes to accounting depreciation or capitalization policies. In Hydro One's 2022 rate application for the Acquired Utilities, Hydro One brought forth the balance in the former Woodstock Hydro's Account 1576 for disposition. Hydro One ceased recording transactions in the account in 2015, coinciding with the year prior to the former Woodstock Hydro's transition to US Generally Accepted Accounting Principles (US GAAP).

In the 2022 Decision, the OEB found that Hydro One should continue recording transactions in the former Woodstock Hydro's Account 1576 to the end of 2022, which coincides with the rebasing for the former Woodstock Hydro. The 2022 Decision directed Hydro One to quantify the Account 1576 balance for 2016 to the end of 2022 in the draft rate order process and dispose of this remaining balance specifically to legacy Woodstock Hydro customers as part of Hydro One's 2023 rebasing application.

Hydro One's Motion requested that this finding be overturned and be substituted with a finding that Hydro One does not need to record transactions in Account 1576 for the period from 2016 to the end of 2022, and therefore revoking the direction to quantify the balance over this period and to dispose of such balance in Hydro One's 2023 rebasing application.

Positions of the Parties

In its Argument in Chief, Hydro One argued that the OEB erred in its Account 1576 finding in two aspects. First, Hydro One argued that the OEB erred by interpreting the scope of Account 1576 as applying to the former Woodstock Hydro which at all relevant times used and was approved by the OEB to use US GAAP as its accounting standard (and not CGAAP or IFRS, to which Hydro One argued Account 1576 applies), and thereby amending and expanding the scope of Account 1576 and retrospectively applying that new scope to prior periods. Hydro One argued that this was contrary to the rule against retroactive ratemaking. Hydro One noted that the former Woodstock Hydro rebased in 2011 under Canadian Generally Accepted Accounting Principles (CGAAP),

transitioned to Modified International Financial Reporting Standards (MIFRS) in 2012, and then adopted US GAAP effective October 31, 2015, upon the close of Hydro One's acquisition of the former Woodstock Hydro. Hydro One argued that the purpose and scope of Account 1576 has been specific to distributors transitioning from CGAAP to MIFRS and, as a result, is not applicable to distributors that use US GAAP, especially during the period in question. Hydro One further indicated that the Account 1576 finding in the 2022 Decision amended the scope of Account 1576 from that which was previously approved by the OEB and required it to be applied retroactively.

The second aspect in which Hydro One argued that the OEB erred in its findings is that the OEB incorrectly assumed, contrary to the evidence, that there are relevant financial differences for 2016 to 2022 to be recorded in Account 1576. Hydro One stated that even if the scope of the Account 1576 required amounts to be recorded in the account in relation to differences between CGAAP and US GAAP, the result would be nil entries for each year on account of there being no material differences in property, plant and equipment (PP&E) between CGAAP and US GAAP.

In its submission, OEB staff referenced the OEB's June 13, 2011 *Addendum to Report of the Board: Implementing International Financial Reporting Standards in an Incentive Rate Mechanism Environment* (Addendum Report). OEB staff stated that the Addendum Report represents a clear indication by the OEB that the guidance provided in the Addendum 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. OEB staff argued that Hydro One therefore had knowledge as early as 2012 that Account 1576 could be used to record financial differences arising for a transition from CGAAP to USGAAP. OEB staff also noted that Hydro One has said that the switch to US GAAP has resulted in no material changes to depreciation rates for the former Woodstock Hydro. However, Hydro One did not appear to confirm that it has not changed its capitalization policies; and to the extent that capitalization policies have changed, these impacts should be recorded in Account 1576. OEB staff stated that to the extent there actually are no material balances to record in Account 1576 for the former Woodstock Hydro for the years 2016 to 2022, Hydro One could simply file those balances as directed by the OEB in the 2022 Decision.

SEC submitted that the purpose of Account 1576 was to ensure that if the accounting principles and rules built into rates were changed, and as a result at the next rebasing, rate base was higher or lower than it otherwise would have been, the rate base

differential would be recovered from, or refunded to customers. SEC stated that the 2022 Decision implements this purpose. SEC also noted that Hydro One did not reference the Addendum Report which established the PP&E deferral account, set out the principles on which it is based, and also stated that all aspects of the policy document will apply to utilities that shift to US GAAP. SEC submitted that there is no retroactivity. In addition, SEC questioned why Hydro One was pursuing this Motion if the entries in the former Woodstock Hydro's Account 1576 from 2016 to 2022 were nil. SEC further noted as an alternative to the usage of Account 1576, at Hydro One's rebasing, the OEB could 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 its reply submission, Hydro One argued that OEB staff and SEC's submissions relied upon out-of-context references in an Addendum Report issued over a year prior to Account 1576 being established and which concerned a different account, Account 1575 - IFRS-CGAAP Transitional PP&E Amounts, which is not relevant to this proceeding. Furthermore, Hydro One submitted that neither OEB staff nor SEC have pointed to anything in the OEB's July 17, 2012 letter that established Account 1576 or related guidance in the July 2012 Accounting Procedures Handbook Frequently Asked Questions 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. Hydro One also reiterated that there were no material differences for 2016 to 2022 even if the scope of Account 1576 required amounts to be recorded in relation to differences between CGAAP and USGAAP. Hydro One noted that it did not file the nil balances as directed by the OEB instead of filing this Motion for two reasons. The first being that as the account is not applicable for 2016 to 2022, there is no obligation on Hydro One to report balances even if nil, and it would be improper for Hydro One to do so. The second being that Hydro One was concerned that even if it did report nil balances, this would not have been accepted because the 2022 Decision strongly implied that the OEB expected there to be a material balance in the account for the 2016 to 2022 period.

Findings

The Motion respecting Account 1576 is granted on the basis that the 2022 Decision failed to provide adequate reasons for not accepting Hydro One's evidence to support its directive for Account 1576. The OEB incorrectly understood that there were relevant financial differences to be recorded from 2016 to 2022.

In this proceeding, Hydro One reiterated that there were no material differences for 2016 to 2022 between CGAAP and USGAAP. As a result, the OEB does not find it necessary to determine the appropriate treatment of non-existent amounts by requiring Hydro One to record nil entries as that would amount to an exercise without practical application.

3.2 Account 1592, Sub-account CCA Changes

Background

Account 1592 - PILs and Tax Variances, Sub-account CCA Changes is a regulatory account that records the impact of any differences that result from changes to the capital cost allowance (CCA) rules that were used to determine the tax amount that underpins rates. In Hydro One's 2022 rate application for the Acquired Utilities, Hydro One stated that there were no balances in the 1592 sub-account for each of the Acquired Utilities.

In the 2022 Decision, the OEB stated that there should be 1592 sub-account balances for each of the Acquired Utilities irrespective of whether rates were frozen for five years. The Accelerated Investment Incentive Program changed the CCA rules such that, absent recording these balances in Account 1592, for each year from 2018 until base rates are reset Hydro One would realize a windfall gain, as it would be claiming CCA under accelerated rules. The OEB directed Hydro One to calculate balances, including a forecast to the end of 2022, in the 1592 sub-account. The OEB stated that 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.

The Motion initially asked that this provision of the 2022 Decision be vacated and a finding substituted for each of the Acquired Utilities that provided that there are no balances in the sub-account, thereby revoking the direction to calculate balances for the 2018 to 2022 period. Hydro One subsequently revised its Motion request by agreeing to provide entries to the 1592 sub account based on the "Approved Additions Method".

Positions of the Parties

In its Argument in Chief, Hydro One argued that the OEB erred in its 1592 sub-account finding by:

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- i) 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”
 - ii) 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
 - iii) 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

In Hydro One’s reply submission, Hydro One indicated that it was no longer pursuing the first two elements of the Motion, relating to the 1592 sub-account, noted above. It is still pursuing the Motion with respect to the method that it was directed to use for calculating balances in the 1592 sub-account for the 2018 to 2022 period. The issue that is still before the OEB on this Motion, therefore, is not whether amounts should be recorded in the 1592 sub-account, but the methodology for calculating those amounts.

With regard to the calculation of the balances in the 1592 sub-account, in its Argument in Chief, Hydro One noted that Account 1592 is used to record the impact of differences that result from legislative or regulatory changes to tax rates or rules that are assumed in the tax model that is used to determine the tax amount that underpins rates. Hydro One submitted that basing the calculation of the 1592 sub-account balance on actual additions as specified in the 2022 Decision is not appropriate because this would have the effect of capturing more variables than just the tax impact arising from the tax rule change. Specifically, using actual additions would result in the calculations also capturing tax variances arising from differences in fixed asset additions between the assets that are in rate base and which underpin rates, and assets that are in-service, but have not been added to rate base and therefore, do not underpin rates.

OEB staff submitted that the methodology of calculating the 1592 sub-account, as specified in the 2022 Decision, is one of the appropriate methods of calculating the balance in the sub-account. For 1592 sub-account balances that have been disposed to date, OEB staff submitted that the balances have been calculated using either an approved capital additions amount embedded in the distributors’ last rebasing rate applications (Approved Additions Method) or an actual capital additions amount (Actual Additions Method). OEB staff explained that the Approved Additions Method determines

rates (based on the approved forecasted additions) that a utility should have charged, had the utility reflected the accelerated CCA rules instead of the prior CCA rules in the test year of its last rebasing application. On the other hand, OEB staff submitted that the Actual Additions Method recognizes the future costs to ratepayers (in the form of lower CCA deductions available at rebasing) and returning the actual benefit a utility realized from accelerated CCA through the 1592 sub-account. OEB staff further noted that the Actual Additions Method is akin to the mechanism for Account 1576. SEC's submission on the 1592 sub-account did not discuss the methodology to calculate the 1592 sub-account balance.

In Hydro One's reply submission, Hydro One argued that the parameters established by the OEB for Account 1592, and the 1592 sub-account, are clearly and expressly focused on the impact of the CCA rule change to existing rates, which would be consistent with the Approved Additions Method. Hydro One further argued that the Actual Additions Method would not be aligned with the parameters established by the OEB for the sub-account. Hydro One stated that the Approved Additions Method would result in a \$1.6 million to be returned to ratepayers; higher than the \$1.2 million to be returned to ratepayers if the Actual Additions Method was used.

Findings

The Motion is denied. The OEB finds that the 2022 Decision was consistent with terms approved for Account 1592 entries³ and prior OEB decisions in other proceedings⁴. The OEB directs Hydro One to provide 1592 sub-account entries based on the Actual Additions Method.

The OEB disagrees with Hydro One and OEB staff's submission that there is a precedent for an Approved Additions Method for Account 1592 entries that would apply to Hydro One during the 2018-2022 period. OEB staff's submission cited only the Waterloo North Hydro Inc. EB-2020-0059 proceeding as the basis for the Approved Additions Method. The OEB does not find this cost of service proceeding, with approved additions for one test year, is an authoritative precedent for Hydro One's 2022 rates proceeding.

³ Article 220 pp.38-39 of the Accounting Procedures Handbook, effective January 1, 2012

⁴ Enbridge Gas Inc. (EB-2020-0134), Canadian Niagara Power Inc. (EB-2021-0011), Brantford Power (EB-2021-0009), Burlington Hydro Inc. (EB-2020-0007)

Hydro One applied to set rates for the legacy service areas for the Acquired Utilities. The last cost of service proceeding for the former Woodstock Hydro, for example, was 2011. The entries in question for Account 1592 relate to 2018-2022. The OEB cannot find “approved additions” beyond 2012 that exist for Woodstock Hydro, on which to base 2018-2022 entries.

In contrast, as a utility’s actual capital additions are known and its corporate taxes are paid, the basis for recording annual entries to Account 1592 are evident and applicable beyond a utility’s test year. Consequently, the OEB finds that Hydro One must calculate the balances in the 1592 sub-account from 2018-2022 by using the Actual Additions Method as per the 2022 Decision.

4 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Hydro One's motion to review and vary the OEB's Decision and Order in the EB-2022-0033 proceeding is granted with respect to Account 1576, and denied with respect to Account 1592.
2. Hydro One Networks Inc. shall file with the OEB and forward to intervenors the updated Account 1592, Sub-account CCA Changes sub-account balances with supporting calculations for each of the Acquired Utilities, no later than **April 21, 2022**. The balance in the sub-accounts will be disposed in Hydro One Networks Inc.'s 2023 Custom IR proceeding EB-2021-0110.
3. Should intervenor(s) and/or OEB staff wish to comment on the sub-accounts' balances, they must do so by filing a submission with the OEB and copying Hydro One Networks Inc. no later than **April 28, 2022**.
4. If Hydro One Networks Inc. wishes to reply to any submissions received, it must do so no later than **May 5, 2022**.
5. Intervenor(s) shall file with the OEB and forward to Hydro One Networks Inc. its cost claims no later than **May 12, 2022**.
6. Hydro One Networks Inc. shall file with the OEB and forward to intervenor(s) any objections to the claimed costs of intervenor(s) by **May 19, 2022**.
7. Intervenor(s) shall file with the OEB and forward Hydro One Networks Inc. any responses to any objections to their respective cost claims by **May 26, 2022**.
8. Hydro One Networks Inc. shall pay the OEB's costs of and incidental to, this motion immediately upon receipt of the OEB's invoice.

Parties are responsible for ensuring that any documents they file with the OEB, such as applicant and intervenor evidence, interrogatories and responses to interrogatories or any other type of document, **do not include personal information** (as that phrase is defined in the *Freedom of Information and Protection of Privacy Act*), unless filed in accordance with rule 9A of the OEB's [Rules of Practice and Procedure](#).

Please quote file number, **EB-2022-0071** for all materials filed and submit them in searchable/unrestricted PDF format with a digital signature through the [OEB's online filing portal](#).

- Filings should clearly state the sender's name, postal address, telephone number and e-mail address
- Please use the document naming conventions and document submission standards outlined in the [Regulatory Electronic Submission System \(RESS\) Document Guidelines](#) found at the [Filing Systems page](#) on the OEB's website
- Parties are encouraged to use RESS. Those who have not yet [set up an account](#), or require assistance using the online filing portal can contact registrar@oeb.ca for assistance
- Cost claims are filed through the OEB's online filing portal. Please visit the [File documents online page](#) of the OEB's website for more information. All participants shall download a copy of their submitted cost claim and serve it on all required parties as per the [Practice Direction on Cost Awards](#).

All communications should be directed to the attention of the Registrar at the address below and be received no later than 4:45 p.m. on the required date.

Email: registrar@oeb.ca

Tel: 1-888-632-6273 (Toll free)

Fax: 416-440-7656

DATED at Toronto April 7, 2022

ONTARIO ENERGY BOARD

Nancy Marconi
Registrar