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File No. 022603/000008

May 31, 2023

BY RESS and EMAIL
registrar@oeb.ca

Ms. Nancy Marconi
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, Ontario M4P 1E4

Dear Ms. Marconi:

**Re: Synergy North Corporation (Synergy North) Application for the Disposal of
Accounts 1588 and 1589
OEB File Number EB-2023-0106**

We write on behalf of Synergy North. Please find attached the Reply Submissions of Synergy North Corporation pursuant to the Notice of Hearing and Procedural Order No. 1 dated March 29, 2023.

If you require anything further, please contact the undersigned.

Yours truly,

BORDEN LADNER GERVAIS LLP

A handwritten signature in black ink, appearing to read 'Colm Boyle', is written over a horizontal line.

Colm Boyle

CM/JV

EB-2023-0106

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

AND IN THE MATTER OF an Application by Synergy North Corporation to the Ontario Energy Board for an Order or Orders approving or fixing just and reasonable distribution rates and other service charges to be effective May 1, 2023.

REPLY SUBMISSIONS

OF

SYNERGY NORTH CORPORATION

May 31, 2023

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REPLY SUBMISSIONS

May 31, 2023

A. INTRODUCTION

1. Synergy North Corporation (“**Synergy North**”) makes these written reply submissions in response to the Ontario Energy Board Staff (“**OEB Staff**”) submissions dated May 17, 2023 (the “**OEB Staff Submissions**”) and Vulnerable Energy Consumers Coalition (“**VECC**”) submissions dated May 16, 2023 in respect of an Application filed by Synergy North on March 13, 2023 with the Ontario Energy Board (“**OEB**”) under Section 78 of the *Ontario Energy Board Act, 1998*, as amended, (“**OEB Act**”) seeking an Order or Orders approving or fixing just and reasonable distribution rates and other service charges to be effective May 1, 2023 (the “**Application**”). The Board assigned file number EB-2023-0106 to the Application.
2. The Application relates to Synergy North’s request to approve the disposal of the balances of the following Group 1 Deferral and Variance Accounts for both Thunder Bay and Kenora rate zones that were (at the request of OEB Staff) withdrawn from Synergy North’s 2023 IRM Application (OEB File No. EB-2022-0063):
 - a. Account 1588 – RSVA Power
 - b. Account 1589 – RSVA Global Adjustment
3. The result of Synergy North’s request would represent a net payment to customers in the amount of \$414,668 in the Thunder Bay rate zone and \$40,762 in the Kenora rate zone to be returned through rate riders over a 10-month period with an effective date based on receipt of the OEB’s final decision and rate order in respect of the Application.¹
4. Subject to one proposed modification to the treatment of the accounting error, OEB staff supports Synergy North’s request for the disposal of the 2021 balances in Account 1588 and Account 1589 in both rate zones.² OEB staff argues that the OEB should modify Synergy

¹ 2023 Electricity Distribution Rate Application – Disposal of Accounts 1588 & 1589, EB-2023-0106, March 13, 2023.

² OEB Staff Submissions at p.1.

North's request such that the proposed retroactive 1588 account adjustments for the Thunder Bay rate zone of \$442,963 in 2020 and \$236,071 in 2019, as well as any associated interest, should be denied. OEB Staff's proposal would result in a net refund to customers in the Thunder Bay rate zone in the amount of \$1,107,775 and in the Kenora rate zone in the amount of \$40,762 (collectively, the "**OEB Staff Proposal**").³

5. VECC supports the Synergy North Proposal (as defined in the background section), primarily for the following reasons:⁴
 - a. The error was not a repeated error. The intent of the correction is to keep everyone whole, and to ensure ratepayers are charged what they should have been charged. VECC argues the error should be corrected to ensure proper payment is remitted to the IESO.
 - b. The value of the errors were not material enough to be detected by the OEB's Reasonability Test (+/-1%) in the 2022 IRM.
 - c. Synergy North provided an explanation of how it plans to address its IESO market settlement practices going forward.
 - d. Synergy North has developed a verification and signoff within the monthly IESO settlement procedures to detect any variances between the price protected revenue and cost of power billed to price protected customers, and the amounts posted to the settlement GL accounts. The verification process in the monthly IESO settlement has been in place and has not indicated further discrepancies.
 - e. A denial of Synergy North's retroactive request would impact both the cash flow and the regulatory return on equity ("**ROE**") of Synergy North.
 - f. VECC takes no issue with Synergy North's rate rider proposal.
6. Synergy North agrees with VECC that the Synergy North Proposal is appropriate in the circumstances. However, Synergy North disagrees with VECC that it failed to follow

³ *Ibid.*

⁴ VECC Submissions at p.5-7.

guidance provided by the OEB,⁵ for the reasons that follow.

7. Synergy North does not agree with the OEB Staff Proposal. Synergy North submits that the OEB Staff Proposal results in an asymmetrical disposition that:
 - a. fails to recognize that intergenerational inequity is inherent in any ratemaking;
 - b. not necessary to address the OEB Staff's concerns regarding intergenerational inequity resulting from deferred rate recovery since there has been limited customer growth or turnover during this period, thus nearly all customer are the same;
 - c. will result in undue financial hardship to Synergy North, specifically Synergy North will be in breach of debt covenants and 735 basis points below its regulated ROE of 8.85%;
 - d. fails to recognize that Account 1588 met the OEB prescribed Reasonability Test;
 - e. inconsistent with the OEB's letter dated October 31, 2019 titled *Adjustments to Correct for Errors in Electricity Distributor "Pass Through" Variance Accounts After Disposition*;
 - f. completely unprecedented (based on a review of prior decisions of the OEB dealing with similar accounting errors);
 - g. inconsistent with the OEB's obligation to establish both just and reasonable rates under Subsection 78(2) of the OEB Act; and
 - h. inconsistent with the maintenance of a financially viable electricity industry and the fair return standard.
8. Synergy North further submits that the OEB Staff Proposal is difficult to reconcile with the position taken by VECC in this proceeding. A low-income ratepayer group within Synergy North's service territory agrees that the OEB should accept the Synergy North Proposal so that ratepayers are charged what they should have been charged. VECC submits the error

⁵ VECC Submissions at p.4.

should be corrected to ensure proper payment is remitted to the IESO.⁶

9. Synergy North will address each of these submissions in-turn below. Aside from Section K in this Reply, Synergy North's submissions will focus on Account 1588 given that the OEB only takes issue with the proposed retroactive 1588 account adjustments for the Thunder Bay rate zone in 2019 and 2020 in this Application.
10. If and only if the OEB approves all other aspects of the Synergy North Proposal (as defined in the Background section below), Synergy North is willing to forego the debit interest amount of approximately \$14,073 that may have been claimed if allowed the receivable balance of \$679,034, from January 2022 to April 2023, in Account 1588.

B. BACKGROUND

11. Effective January 1, 2019, Thunder Bay Hydro Electricity Distribution Inc. and Kenora Hydro Electric Corporation Ltd. amalgamated to continue as one corporation under the name "Synergy North Corporation"⁷ Synergy North would maintain two separate rate zones, the Thunder Bay and Kenora rate zones, until the rebasing for 2024 rates based on the 5-year deferral period. Synergy North would continue to track costs to the regulatory asset accounts currently approved by the OEB for each of Thunder Bay Hydro and Kenora Hydro, and to seek disposition of their balances at a future date.⁸
12. On November 11, 2022, Synergy North submitted its 2023 IRM Application (EB-2022-0063), where it requested to dispose of the balances in its Group 1 Deferral and Variance Accounts, as of December 31, 2021 for both Thunder Bay and Kenora Rate Zones including Accounts 1588 and 1589.⁹
13. In preparing responses to OEB Staff Questions of December 13, 2022, on Application EB-2022-0063, Synergy North discovered an error in billing codes, which had resulted in an underpayment to the IESO and excess credits accumulating in Account 1588 for both Zones.

⁶ VECC Submissions at p.5.

⁷ Synergy North 2023 IRM Application dated November 11, 2022 in EB-2022-0063 at p.4.

⁸ OEB Decision and Order EB-2018-0124 and EB-2018-0233, at p.1 and 7.

⁹ Synergy North 2023 IRM Application dated November 11, 2022 in EB-2022-0063 at p.13.

Synergy North voluntarily notified the OEB of the error.¹⁰

14. On January 25, 2023, the OEB requested Synergy North to consider withdrawing the disposition of accounts 1588 and 1589 for both zones or request for the disposition of Group 1 DVAs on an interim basis, given the material impact of the proposed retroactive adjustments.¹¹ Synergy North understands that OEB Staff was concerned that the requested adjustments could not be made under delegated powers.
15. On February 15, 2023, Synergy North filed a letter stating that balances in Accounts 1588 and 1589 would be removed from the Group 1 RSVA disposal request in the 2023 IRM Application and disposal of these accounts would be requested in a stand-alone application.¹²
16. On March 3, 2023, Synergy North filed the subject Application which includes a request to correct certain errors in and subsequently dispose of Accounts 1588 and 1589 for the Thunder Bay and Kenora rate zones.¹³
17. The facts related to the errors below are more fully explained in the applications and responses to OEB Staff Interrogatories in EB-2022-0063 and EB-2023-0106.

A. Account 1588 Error

18. Synergy North customers in the Price Protected General Service Over 50 kW customer class transitioned from non-interval meters to interval (real time) meters. Billing components within customer accounts differ between non-interval and real time meters. Additional components for real time metering were added to accounts during the transition to real time meters, which included the additions of “RTP” (real time pricing) and “RTN” (real time pricing offset) components. The original “NSLS” (HOEP) and “NSOS” (HOEP offset) on the non-interval meter components were not removed when the real time meters were

¹⁰ 2023 Electricity Distribution Rate Application – Disposal of Accounts 1588 & 1589, EB-2023-0106, March 13, 2023, p.6.

¹¹ OEB Staff Follow-up Questions, EB-2022-0063, Follow-up Question-3.

¹² 2023 Electricity Distribution Rate Application – Disposal of Accounts 1588 & 1589, EB-2023-0106, March 13, 2023, p.3.

¹³ *Ibid.*

implemented.¹⁴

19. Prior to the addition of the real time components, when an account billed with a non-interval meter, the accounts had the correct components. The price protected accounts with real time meters consequently had two (one from RTN and one from NSOS) debits being recorded to the IESO settlement general ledger account. Customer bills were correctly calculated. This duplication of components did not impact the total amounts charged on any bill to any customer class.¹⁵
20. This difference has resulted in underpayments to the IESO, and an overstated credit in Account 1588. This error has previously been undetected due to its immaterial impact on Account 1588, however as more of the Over 50 kW accounts have been transitioned to Real Time meters, the impact on Account 1588 has been increasing.¹⁶
21. Synergy North identified the exact coding error that resulted in the application of RTP, RTN as well as the original NSLS and NSOS, for GS >50kW customers that transitioned from non-interval meters to interval (real-time) meters. Synergy North corrected for this coding error, and is proposing discrete retroactive adjustments to account 1588 balances in 2019 and 2020 in the Thunder Bay rate zone in accordance with the OEB's October 31, 2019 letter and Synergy North's materiality threshold (the "**Synergy North Proposal**").¹⁷

C. INTERGENERATIONAL INEQUITY IS INHERENT IN ANY RATEMAKING

22. OEB Staff argues that permitting the retroactive adjustment sought by Synergy North would be at the expense of Synergy North's current customers. In OEB Staff's view, some of Synergy North's current customers are not responsible for the 2019 and 2020 balances in which the error pertained to, and these customers should not be held accountable for Synergy North's error.¹⁸
23. Synergy North does not agree with OEB Staff. This argument misconstrues the ratemaking

¹⁴ *Ibid*, p.6.

¹⁵ *Ibid*, p.6.

¹⁶ *Ibid*, p.6 and 7.

¹⁷ Responses to OEB Staff Follow-Up Questions, EB-2022-0063, Follow-up Question-3(b)

¹⁸ OEB Staff Submissions at p.6.

principle of minimizing intergenerational inequity.

24. First, there has been very little turn-over of Synergy North's customers between 2019 and 2023. The vast majority of customers are identical, specifically:¹⁹
- a. in the residential class, 85% of customers in 2023 are the exact customers as were there in 2019, and 87% of customers in 2023 are the exact same customers as were there in 2020;
 - b. in the general service less than 50 kW class, 91% of customers in 2023 are the exact customers as were there in 2019, and 93% of customers in 2023 are the exact same customers as were there in 2020;
 - c. in the general service 50 to 999 kW class, 93% of customers in 2023 are the exact customers as were there in 2019, and 94% of customers in 2023 are the exact same customers as were there in 2020; and
 - d. in the general service 1000 kW or greater class, 100% of customers in 2023 are the exact customers as were there in 2019, and 100% of customers in 2023 are the exact same customers as were there in 2020.
25. Second, the OEB Guidance Letter, as defined below, permits retroactive adjustment after disposition, which necessarily results in intergenerational inequity regardless of whether the adjustment is a debit or credit. For example, intergenerational inequity occurs in the cases cited by OEB Staff where the refund was in favour of ratepayers.²⁰ In these cases there was a windfall to current customers at the expense of historical customers who paid the higher rates.
26. Third, and as noted by VECC, the intent of the correction is to keep everyone whole, and to ensure ratepayers are charged what they should have been charged. This is the right thing to do.

¹⁹ Comparison of customer account numbers in the Customer Information System by class in the applicable year.

²⁰ OEB Staff Submissions at p.6.

D. UNDUE FINANCIAL HARDSHIP WILL RESULT FROM THE OEB STAFF PROPOSAL

27. OEB Staff’s argument recognized the pass through nature of Account 1588 and potential of financial hardship for Synergy North, but nevertheless justified the OEB Staff Proposal on the basis that (a) this is the result of Synergy North’s own error which persisted for many years; and (b) such a result is a one-time impact which will not impair its ability to earn a reasonable rate of return in future years. Fluctuations in ROE can happen year to year.²¹
28. Synergy North does not agree with OEB Staff. The OEB Staff Proposal has the potential to imperil the financial viability of Synergy North. As discussed below, Synergy North will be in breach of debt covenants and will be 735 basis points below its regulated ROE of 8.85%. One of the objectives of the OEB in the *Ontario Energy Board Act, 1998* is to “facilitate the maintenance of a financially viable electricity industry”.²²
29. Account 1588 is a “commodity pass-through account” and there is absolutely no financial incentive for Synergy North to make errors of this nature.²³ Account 1588 is only to be used monthly to record the net difference between: i) the energy amount charged to customers, including accruals; and ii) the energy charge to a distributor using the settlement invoice received from the IESO, host distributor or embedded generator, including accruals.²⁴
30. In this context, pursuant to Section 11.3.1 of Chapter 1 of the IESO Market Rules, upon the discovery of “any information previously undisclosed or provided by it to any person pursuant to the market rules was, at the time at which it was disclosed or provided, or becomes untrue, incorrect, incomplete, misleading or deceptive” Synergy North “shall immediately rectify the situation and disclose or provide the true, correct, complete, not misleading or not deceptive information to the person to whom the original or currently untrue, incorrect, incomplete, misleading or deceptive information had been disclosed or provided.”

²¹ OEB Staff Submissions at p.7.

²² *Ontario Energy Board Act, 1998*, SO 1998, c 15, Sch B, s.1(1)(2).

²³ OEB Accounting Procedures Handbook – Guidance, Accounting Guidance Update Related to Commodity Pass-Through Accounts 1588 & 1589, May 23, 2023; OEB Staff Submissions at p.6.

²⁴ Accounting Procedures Handbook For Electricity Distributors, January 1, 2012, p. 37.

31. Simply put: If Synergy North identifies an error in its commodity accounts it must immediately notify the IESO of the error. The IESO's process is to then investigate and correct for any such errors in the next settlement invoice following its investigation. If the IESO corrects for an error in a commodity account, a utility will not be kept whole unless the OEB allows a utility to correct for that same error in rates. Depending on the nature and magnitude of the error, this could financially bankrupt a utility.
32. Synergy North did not, at any time, financially benefit from any of these errors. There is no need to impose such a disproportionate financial penalty to deter Synergy North from making errors in the future. Synergy North, much like the OEB, has an inherent interest in ensuring that all of the work it does is correct and free of errors.
33. The OEB Staff Proposal has the potential to imperil the financial viability of Synergy North. One of the lenders to Synergy North requires that its debt service coverage ratio be >1.2:1. The OEB Staff Proposal will drop the debt service ratio to 0.9:1 and Synergy North would be in breach of this debt covenant.
34. Additionally, and using 2022 as a proxy for 2023, the estimated impact of an additional expense of \$679,034 would see Synergy North's return on equity ("**ROE**") reduce to 1.50%. This is a remarkable 735 basis points below Synergy North's regulated rate of 8.85%.²⁵ This is **more than double** the OEB's stipulated off-ramp of 300 basis points.
35. Like any institution that is composed of human staff, errors will occasionally occur, despite best efforts to prevent them. The common law of restitution (discussed further below) has arisen in large part because of this universal truth. Moreover, the error was within the OEB's permissible tolerances under the Reasonability Test for Account 1588 (discussed further below).
36. The OEB Staff Proposal is unreasonable, disproportionate, and punitive. It should be rejected by the OEB.
37. In this context, Synergy North has proposed that the OEB should approve the proposed debit

²⁵ EB-2023-0106, Responses to Staff Interrogatories, May 8, 2023, OEB Staff-1(b)

and principal adjustments as part of this Application to collect from customers amounts that were previously overpaid. Subject to paragraph 10, the OEB should also approve Synergy North's recovery of the interest that would accrue in 2022 and to April 30, 2023. Synergy North has not, does not, nor is it proposing to, benefit financially from these corrections.

E. ACCOUNT 1588 MET THE OEB PRESCRIBED REASONABILITY TEST

38. In the OEB's "Instructions for Completing GA Analysis Workform – 2023 Rates" ("**Workform Instructions**") distributors are instructed that annual Account 1588 variances greater than +/- 1% of the Cost of Power purchased for that year must be explained. This is known as the "Reasonability Test":

Typically, large balances are not expected for Account 1588, as it should only hold the variance between commodity costs based on actual line losses and commodity revenues calculated based on approved line losses. The Account 1588 Reasonability Test included in the Workform compares the annual Account 1588 variance to the Cost of Power purchased in that respective year. Any annual Account 1588 variance greater than +/- 1% of that year's cost of power purchased must be explained.

39. The reason the billing error went undetected in 2019 and 2020 in the Thunder Bay rate zone was that the variance in Account 1588 was 0.7% of the Power Purchased, which is within the +/-1.0% threshold set out in the OEB's Workform Instructions.²⁶
40. Notwithstanding the Workform Instructions, OEB Staff asserts that Synergy North should have sufficient internal controls to ensure the accuracy of Account 1588 balance, the reasonability test for Account 1588 provides a generic check for the reasonableness of the balance. Meeting the reasonability test itself does not indicate that the balance in the account is accurate.
41. Synergy North does not agree. OEB Staff is suggesting that the only acceptable variance in Account 1588 is 0%. OEB Staff does not suggest what threshold variance would be acceptable in the circumstances if meeting the reasonability test itself does not indicate that

²⁶ EB-2023-0106, Response to Interrogatories, OEB Staff-1(a)

the balance in the account is accurate. This is not reasonable or practicable.

42. Contrary to OEB Staff's submissions, the very nature of the Reasonability Test is to ascertain the accuracy of Account 1588, which is acceptable within a variance tolerance of +/-1.0% annually. Synergy North complied with this requirement in the OEB's Workform Instructions as the billing error was within the OEB's tolerances. It is inherently unfair for OEB Staff to apply a more stringent standard after the fact.

F. THE OEB STAFF PROPOSAL IS INCONSISTENT WITH THE OEB GUIDANCE LETTER

43. On October 31, 2019, the OEB issued a letter to interested parties titled *Adjustments to Correct for Errors in Electricity Distributor "Pass-Through" Variance Accounts After Disposition* (the "**OEB Guidance Letter**").²⁷
44. In the OEB Guidance Letter, the OEB indicates that it will determine on a case-by-case basis whether to make restorative adjustment based on the particular circumstances of each case, including factors such as:
- Whether the error was within the control of the distributor;
 - The frequency with which the distributor has made the same error;
 - Failure to follow guidance provided by the OEB; and
 - The degree to which other distributors are making similar errors.²⁸
45. OEB staff submits that Synergy North should have had controls in place to uncover this error far earlier - and on its own. The error initially amounted to less than \$100k before 2019, increased to approximately \$200k in 2019, further escalated to \$400k in 2020, and currently stands at \$800k in 2021. OEB Staff asserts this error was only uncovered because of an OEB staff question that was posed to Synergy North in the 2023 IRM proceeding regarding the high percentage (%) variance observed in Account 1588 for the Thunder Bay rate zone.²⁹

²⁷ <https://www.oeb.ca/sites/default/files/ltr-Retro-Ratemaking-Guidance-20191031.pdf>.

²⁸ *Ibid.* at p.2.

²⁹ OEB Staff Submissions at p.7.

46. Synergy North does not agree with the OEB’s submission.
47. In the present case, Synergy North found the error itself, self-reported the error, and acknowledged the error was within its control.³⁰ However, this is the first and only time Synergy North has made this or any similar error as it relates to its Group 1 DVAs.
48. As noted in the interrogatory responses, the error in Account 1588 grew faster over time as more of the over 50 kW accounts were transitioned to real time meters. Prior to 2020, the Kenora rate zone did not have Price Protected Over 50 kW class customers with real time metering.³¹ Indeed, the amounts in Account 1588 only exceeded Synergy North’s materiality threshold in the Thunder Bay Rate zone in 2019 and in the Kenora rate zone in 2021, as shown in the table below. This contributed to the duration of the error.

Table 1: Account 1588 Error by Year³²

YEAR	KENORA	THUNDER BAY
2021	\$ 136,784	\$ 864,240
2020	\$ 31,084	\$ 442,963
2019	\$ 0	\$ 236,071
2018	\$ 0	\$ 70,446
2017	\$ 0	\$ 33,575
2016	\$ 0	\$ 25,710

49. Synergy North disagrees with OEB Staff’s suggestion that any additional controls would have uncovered this error “far earlier”. Indeed, OEB Staff’s question was only prompted by

³⁰ EB-2023-0106, Response to Interrogatories, OEB Staff-1(a)

³¹ EB-2022-0063, Response to Interrogatories, OEB Staff-8(a)

³² 2023 Electricity Distribution Rate Application – Disposal of Accounts 1588 & 1589, EB-2023-0106, March 13, 2023, p.6.

Synergy North's exceedance of the Reasonability Test in the Thunder Bay rate zone in 2022.³³

50. Other distributors have made similar inadvertent errors with these pass-through commodity accounts. For example, as was acknowledged in OEB Staff's Submissions in another similar proceeding with Grandbridge Energy,³⁴ Elexicon Energy Inc. made a similar error and its proposed corrections were approved by the OEB (Partial Decision and Order issued December 8, 2022 in EB-2022-0024). Enova Power Corp. also encountered issues with its pass-through commodity accounts in EB-2022-0067.

51. Indeed, the prevalence of similar accounting errors in commodity pass-through accounts ultimately led the OEB to issue the OEB Guidance Letter.

52. The OEB Guidance Letter goes on to say:

*"Consistent with the OEB's past practice, an asymmetrical approach to the correction of the error may be appropriate. For example, if a distributor repeats an error, and if correcting the error is solely to the benefit of the distributor, the OEB may not approve part or all of the correction and of any associated carrying charges."*³⁵

53. As further detailed in Section G of these submissions, OEB Staff submissions fail to point to a single prior OEB decision to indicate how their proposed asymmetrical disposition is consistent with the OEB's past practice. This is because it is not. It is entirely unprecedented and punitive.

54. In addition, the OEB Staff Proposal is not consistent with the illustrative example included in the OEB Guidance Letter, where the OEB indicates an asymmetrical disposition may be appropriate. The facts in this case are that this is not a repeated error by Synergy North. In addition, Synergy North's proposed corrections are not solely to the benefit of the distributor. Rather, Synergy North's proposed corrections are pass-through in nature and

³³ Synergy North 2023 IRM Application dated November 11, 2022 in EB-2022-0063 at p.20; EB-2022-0063, Response to Interrogatories, OEB Staff-8.

³⁴ EB-2022-0305, Application for the Disposal of certain Deferral and Variance Accounts, OEB Staff Submission, at p.7.

³⁵ <https://www.oeb.ca/sites/default/files/ltr-Retro-Ratemaking-Guidance-20191031.pdf>. at p.2.

reconciles what ought to have been paid by customers to the IESO.³⁶

G. THE OEB STAFF PROPOSAL IS UNPRECEDENTED BASED ON A REVIEW OF PRIOR DECISIONS OF THE OEB DEALING WITH SIMILAR ACCOUNTING ERRORS

55. What OEB Staff fails to acknowledge is that the OEB has never once approved an asymmetric disposition of accounts previously disposed of on a final basis to account for errors to a utility's detriment **in the absence of express consent from the utility.**
56. This makes sense. Synergy North has a legitimate reliance interest in the finality of prior OEB Decisions and Orders. To undermine this reliance interest would undermine the maintenance of a financially viable electricity industry as a whole.
57. In EB-2009-0113, the OEB strictly applied the “no retroactive ratemaking” principle. The OEB did not apply the “no retroactive ratemaking” in an asymmetric way – to some accounts and not to others. North Bay Hydro's reliance interest in the finality of prior OEB Decisions and Orders was not threatened by this Decision.
58. In EB-2014-0043, Enbridge **proposed** to refund \$10.1 million and the OEB did permit a retroactive adjustment to Enbridge's QRAM orders that were previously declared as final in EB-2012-0352. The principle that arose from this decision is that “[a]n out of period adjustment can be justified if it ensures that a utility does not profit on account of its own errors”.³⁷ Enbridge's reliance interest on the finality of the OEB's prior Decision and Order was not threatened, because Enbridge consented to the refund (Enbridge proposed it).
59. In EB-2014-0072/EB-2014-0301, Essex Powerlines did not consent to an “asymmetric disposition” and based on this the OEB refused to retroactively adjust final approved amounts and instead applied the “no retroactive ratemaking” principle strictly to all accounts. Once again, Essex Powerlines' reliance interest in the finality of prior OEB Decisions and Orders was not threatened.

³⁶ EB-2022-0063, Response to Interrogatories, OEB Staff-8(a)

³⁷ Decision and Order dated April 10, 2014 in EB-2014-0043 at pg. 2. See also *MCI Telecommunications v. Public Service Commission*, 840 P. 2d 765 (Utah 1992).

60. In EB-2016-0090, the OEB also permitted a retroactive adjustment to Accounts 1588 and 1589 in respect of Lakeland's Perry Sound service area arising from an after-the-fact discovery of accounting errors. Specifically, the OEB allowed for a violation of the principle of "no retroactive ratemaking" allowing Lakeland to refund \$65,112.46 to customers that overpaid "because the adjustment is in favor of customers **and Lakeland Power consented.**"³⁸ Lakeland's reliance interest in the finality of prior OEB Decisions and Orders was not threatened, because Lakeland consented to the adjustment.
61. In EB-2017-0056, Kitchener-Wilmot Hydro Inc. did not consent to an asymmetric disposition and similar to the Essex Powerlines case the OEB refused to retroactively correct final approved amounts as between Accounts 1588 and 1589 for errors that occurred related to 2013. In that case, the OEB further clarified³⁹ that:

"Although the OEB's powers to set just and reasonable rates are broad, the rule against rate retroactivity is not discretionary (other than with respect to certain exceptions that the OEB does not find apply in this circumstance). As noted in a recent decision of the Ontario Court of Appeal: "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."

The Supreme Court of Canada has stated that retroactive rate making "is to remedy the imposition of rates approved in the past and found in the final analysis to be excessive" and "the power to review its own previous final decision on the fairness and reasonableness of rates would threaten the stability of the regulated entity's financial situation". The tariff approved by the OEB under which the accounts containing the errors were disposed was final and both the utility and the customers should be able to rely on the finality of rates.

³⁸ Decision and Order dated December 8, 2016 in EB-2016-0090 at p.10.

³⁹ Decision and Order dated March 1, 2018 in EB-2017-0056 at p.11-12.

Kitchener-Wilmot Hydro did and does have control of its books and is expected to maintain accurate accounts. They did not in this instance. However, there was no willful misconduct by the Kitchener-Wilmot Hydro, nor has it been enriched by the error. The OEB's audit did not uncover systemic problems with Kitchener-Wilmot Hydro's processes for the RSVA Accounts 1588 and 1589."

62. Similarly, there was no willful misconduct by Synergy North, nor has it been enriched by the error. Nor has OEB Staff suggested there are any systemic problems with Synergy North's processes for Accounts 1588 and 1589.
63. Synergy North does not consent to an asymmetric disposition of Accounts 1588 as proposed in the OEB Staff Submissions.

H. THE OEB STAFF PROPOSAL IS PUNITIVE AND DISPROPORTIONATE IN MAGNITUDE TO ALL PRIOR ADMINISTRATIVE MONETARY PENALTIES ISSUED BY THE OEB

64. The OEB Staff Proposal argues that retroactive adjustments have been approved in previous cases using the asymmetrical approach when they were in favor of ratepayers. OEB Staff cites the decisions and orders in Enova Power's 2023 IRM and Hydro Hawkesbury's IRM to support this proposition in respect of Accounts 1588 and 1589. OEB Staff notes that the coding error in this application only impacted Account 1588 and had no impact on Account 1589.
65. Synergy North disagrees with OEB Staff. As discussed above, none of the cases cited by OEB Staff support the proposition that retroactive adjustments under the OEB Guidance Letter are to be asymmetrical in favour of customers.⁴⁰
66. The drafting of the OEB Guidance Letter appears to suggest that asymmetrical treatment of corrections is an exception, rather than the default rule, and is subject to OEB discretion when considering all the circumstances.⁴¹

⁴⁰ OEB Staff Submissions at p.6 and footnote 23.

⁴¹ OEB Guidance Letter at p.2.

Consistent with the OEB's past practice, an asymmetrical approach to the correction of the error may be appropriate. For example, if a distributor repeats an error, and if correcting the error is solely to the benefit of the distributor, the OEB may not approve part or all of the correction and of any associated carrying charges.

67. None of the circumstances enumerated in the quote above from the OEB Guidance Letter exist here. The result of the OEB Staff Proposal would be the imposition of a financial penalty of \$679,034, which amount is material to Synergy North⁴² and risks undermining the ongoing financial viability of Synergy North and may violate the fair return standard.
68. A \$679,034 penalty is also entirely disproportional to the innocent errors that occurred.
69. By way of comparison, the OEB does have the jurisdiction under Section 112.5 of the OEB Act to impose administrative penalties for violations of enforceable provisions under the OEB Act. These are not mere accounting errors. These are violations of statutory provisions that are so important, the legislative assembly of Ontario deemed them to be “enforceable provisions” with a potential penalty of \$1,000,000 per day.
70. Synergy North has reviewed the administrative penalties imposed by the OEB under Section 112.5 over the past ten years (i.e., going back to January 2013).⁴³ In those ten years, the OEB has imposed administrative penalties ranging from a low of \$1,000 to as high as \$450,000.

⁴² Synergy North's proxy of 2017 distribution revenue requirement was \$25.8 million. Materiality at 0.5% = \$129,000 per EB-2022-0063, Response to Interrogatories, OEB Staff-8(a)

⁴³ This includes EB-2023-0069, EB-2022-0226, EB-2022-0292, EB-2019-0197, EB-2023-0064, EB-2023-0082, EB-2023-0063, EB-2022-0255, EB-2022-0287, EB-2021-0193, EB-2020-0127, EB-2020-0166, EB-2021-0328, EB-2020-0289, EB-2023-0107, EB-2022-0271, EB-2022-0256, EB-2022-0206, EB-2022-0105, EB-2022-0078, EB-2020-0282, EB-2022-0259, EB-2022-0278, EB-2019-0189, EB-2019-0129, EB-2019-0113, EB-2021-0139, EB-2021-0066, EB-2020-0086, EB-2022-0293, EB-2022-0252, EB-2022-0182, EB-2020-0217, EB-2020-0097, EB-2019-0107, EB-2017-0017, EB-2021-0102, EB-2021-0094, EB-2020-0157, EB-2021-0103, EB-2019-0199, EB-2022-0143, EB-2022-0153, EB-2020-0205, EB-2022-0205, EB-2021-0198, EB-2020-0304, EB-2020-0170, EB-2021-0104, EB-2020-0303, EB-2020-0193, EB-2020-0141, EB-2020-0098, EB-2021-0116, EB-2019-0090, EB-2022-0008, EB-2020-0216, EB-2020-0244, EB-2021-0204, EB-2023-0089, EB-2019-0256, EB-2022-0299, EB-2022-0106, EB-2019-0262, EB-2019-0177, EB-2017-0007, EB-2022-0188, EB-2017-0088, EB-2017-0005, EB-2016-0282, EB-2016-0200, EB-2016-0180, EB-2014-0259, EB-2013-0394, EB-2013-0392/EB-2014-0393, and EB-2012-0443. Full decisions for the enforcement proceedings can be found at <https://www.oeb.ca/industry/rules-codes-and-requirements/enforcement-proceedings>.

71. In 2016, a penalty of \$75,000 was imposed on SNC Lavlin for operating a generation facility without a generation license for a period ranging over 10 years in contravention of Section 57 of the OEB Act.⁴⁴ Synergy North has done nothing nearly as egregious as operating its distribution business without an OEB license over a ten-year period. Yet the OEB Staff proposes a penalty which is more than 9 times what the OEB fined SNC Lavalin.
72. In 2018, the OEB imposed a large penalty of \$155,000 on Planet Energy,⁴⁵ because its training and testing regarding the salespersons hired by its marketing contractor were seriously deficient; certain salespersons provided false, misleading or incomplete information to consumers, and failed to conduct contract verification; and Planet Energy itself incorrectly told a consumer that a contract cancellation penalty was required. These acts were in breach of the *Energy Consumer Protection Act, 2010* and associated codes and regulations.
73. Synergy North's *bona fide* accounting mistake is in no way comparable to providing false or misleading information to consumers. Moreover, unlike Planet Energy which benefited financially from the contracts that consumers entered into without the full protections they were due, Synergy North did not derive any financial benefit from the error. However, the OEB Staff Proposal results in a penalty which is 4.4 times the Planet Energy fine.
74. This highest penalty ever imposed by the OEB over this ten year period was the \$450,000 fine imposed on Just Energy on April 4, 2014 in an enforcement proceeding⁴⁶ where: (i) **in 132 cases**, Just Energy breached section 22(2) of the *Energy Consumer Protection Act, 2010* by failing to apply the correct cancellation fee for consumers as prescribed under section 23(1) of Ontario Regulation 389/10; and (ii) **in 2,060 cases** Just Energy misled consumers about their cancellation rights in breach of sections 10, 5(1)(i), (xi) and (14) of the *Energy Consumer Protection Act* and Part B, section 1.1 of the Code of Conduct for Marketers and/or the Electricity Retailer Code of Conduct.

⁴⁴ SNC-Lavalin Operations & Maintenance Inc. Assurance of Voluntary Compliance dated October 14, 2016.
<https://www.rds.oeb.ca/CMWebDrawer/Record/547171/File/document>.

⁴⁵ Decision and Order dated September 20, 2018 in EB-2017-0007.

⁴⁶ Just Energy Ontario L.P. Assurance of Voluntary Compliance dated April 3, 2014.

https://www.oeb.ca/oeb/_Documents/Compliance/Just%20Energy_AssuranceVoluntaryCompliance_20140403.pdf.

75. Just Energy admitted to breaching enforceable provisions in a total of 2,192 different cases, and yet received a penalty that is less than the amount OEB Staff has proposed to penalize Synergy North in the OEB Staff Proposal despite the fact that Synergy North identified, voluntarily reported and is now simply attempting to fix this error.
76. For the absence of doubt, the OEB Staff Submissions do not allege, and Synergy North has not violated any enforceable provision of the OEB Act. Yet the OEB Staff appears to believe the OEB may impose a penalty pursuant to its “just and reasonable” rate setting methodology which is neither just nor reasonable.

I. THE OEB STAFF PROPOSAL IS INCONSISTENT WITH THE OEB’S OBLIGATION TO ESTABLISH BOTH JUST AND REASONABLE RATES

*"The fundamental and animating general principle of the law of restitution is the principle against unjust enrichment."*⁴⁷

77. The modern principle of unjust enrichment states that "A person who has been unjustly enriched at the expense of another is required to make restitution to the other."⁴⁸

*"The "restitution interest" involving a combination of unjust impoverishment with unjust gain, presents the strongest case for relief. If, following Aristotle, we regard the purpose of justice as the maintenance of an equilibrium of goods among members of society, the restitution interest presents twice as strong a claim to judicial intervention as the reliance interest, since if A not only causes B to lose one unit but appropriates that unit to himself, the resulting discrepancy between A and B is not one unit but two."*⁴⁹

78. The underlying moral premise is a familiar one: one ought not to reap what one has not sown. The doctrine of unjust enrichment is premised on the rationale that it is unjust to receive a windfall benefit at another’s expense.
79. In the present Application, due to an inadvertent and *bona fide* mistake, customers received

⁴⁷ Maddaugh and McCamus, The Law of Restitution, 2022 Thomson Reuters Canada Limited, at Chapter 3, Section 3:1.

⁴⁸ American Law Institute, Restatement of the Law Third, Restitution and Unjust Enrichment (2023 Thomson Reuters US), S. 1.

⁴⁹ Fuller and Perdue, The Reliance Interest in Contract Damages, 1936-37, 46 Yale L.J. 52 at p.56.

a windfall benefit between 2019 and 2021 that they were not entitled to.

80. In the words of Fuller and Perdue, the resulting discrepancy between the customers that benefited unjustly and those who paid more than what they received is not one unit, but two.
81. In this context, the OEB is tasked with setting rates that are not only reasonable, but are also just.
82. One defense to a claim of unjust enrichment is promissory estoppel (also referred to as the “reliance interest”). Under the doctrine of promissory estoppel, the parties’ dealings must have been on a shared assumption of fact or law, and a party must have conducted itself in reliance on such shared assumption resulting in a detrimental way (the party seeking to establish estoppel must have changed his or her course of conduct by acting or abstaining from acting in reliance upon the assumption, thereby altering his or her legal position, and should the other party subsequently be allowed to abandon the assumption, detriment will be suffered by the estoppel raiser because of the change in his or her assumed position). Finally, it must be “unjust” and “unfair” to permit a party to resile from the mutual assumption.⁵⁰
83. The OEB’s typical policy against retroactive ratemaking can be understood as a particular formulation of the doctrine of promissory estoppel that is applicable in the context of “just and reasonable” rate setting. The rule against retroactive ratemaking is intended to protect the reliance interest.
84. All rate regulated utilities, including Synergy North, are entitled to rely on the finality of Decisions and Orders issued by the OEB to be able to operate their business. Rate regulated distributors cannot charge rates except through Orders of the OEB.⁵¹ These utilities then expend monies on the operations and maintenance of the local distribution system, relying on the finality of these Decisions and Orders. Because of this reliance interest, any departure from the principle of “no retroactive ratemaking” would risk undermining this reliance interest and consequently the maintenance of a financially viable electricity industry.

⁵⁰ Ryan v. Moore, [2005] 2 S.C.R. 53, 2005 SCC 38.

⁵¹ *Ontario Energy Board Act, 1998* at Subsection 78(2).

85. Despite this, Synergy North submits that the OEB should depart from its typical policy of no retroactive ratemaking in this Application, to collect over-credited amounts to Account 1588, for four reasons:
- First, failing to do so will result in the unjust enrichment of Synergy North customers at the expense of the IESO or Synergy North shareholders.
 - Second, failing to do so will not promote the education of consumers with regards to the true costs of electricity, and will not promote electricity conservation and demand management in a manner consistent with the policies of the Government of Ontario.
 - Third, it could perpetuate a systemic imbalance that could make utilities financially responsible for innocent and *bona fide* errors in respect of large “flow through costs” that are significantly greater in magnitude than a utility’s internal financial capabilities, which in turn has the potential of bankrupting utilities and undermining the maintenance of a financially viable electricity industry as a whole.⁵²
 - Fourth, Synergy North has not, does not, nor is it proposing to, benefit financially from the errors or the proposed corrections.
86. Synergy North will also address the asymmetric approach proposed by the OEB Staff Submissions, which shifts the financial harm arising from the unjust enrichment of Synergy North customers to Synergy North’s shareholders. This is simply not appropriate.
87. Rather, this results in an unjust penalty of \$679,034 being imposed on Synergy North that would: (i) perpetuate the unjust enrichment of Synergy North customers; (ii) amount to an unjust and disproportionate penalty being imposed on Synergy North for making *bona fide* accounting errors (which Synergy North voluntarily disclosed, and has actively attempted to remedy); and (iii) could undermine the financial viability of Synergy North as the financial markets recognize the OEB making distributors financially responsible for innocent and *bona fide* errors in respect of large flow through costs.
88. Synergy North recognizes that the OEB applies a policy of “no retroactive ratemaking” to DVA balances that are disposed of on a final basis, subject to some exceptions.

⁵² *Ontario Energy Board Act, 1998*, SO 1998, c 15, Sch B, s.1(1)(2).

89. The OEB Staff Submission notes that Synergy North’s accounting error pertains to balances that were approved on a final basis,⁵³ and that the proposed adjustments to Account 1588 are retroactive in nature.⁵⁴
90. But, what OEB Staff fail to clearly explain is that “no retroactive ratemaking” is not a legal requirement. This can be seen in *Bell Canada v. Canada (Canadian Radio Television and Communications)*.⁵⁵ Bell Canada failed in its attempt to argue that the CRTC was prohibited by law from retroactively adjusting rates.⁵⁶ With regards to the OEB, the Ontario Court of Appeal has ruled that “[s]lavish adherence to the use of interim rates and deferral accounts should not prohibit adjustments in a proper case”⁵⁷ and “[t]he critical factor for determining whether a regulator is engaging in retroactive ratemaking is the parties’ knowledge that the rates were subject to change.”⁵⁸
91. Synergy North’s request for a limited exception to the general rule of “no retroactive ratemaking” should not be mistaken for something it is not. Synergy North is only proposing an exception if Synergy North will not be harmed financially from the remedy ultimately approved by the OEB.
92. In general, the OEB’s policy on “no retroactive ratemaking” has been tempered over time by the introduction of the principles of unjust enrichment. In instances where the utility in question would profit as a result of errors, both the CRTC and the OEB have proven willing to correct those errors to ensure the utility does not profit unjustly from an error that the utility itself made.
93. As one example, the OEB did permit a retroactive adjustment to Enbridge’s QRAM orders

⁵³ OEB Staff Submissions at p.5.

⁵⁴ *Ibid.*

⁵⁵ [1989] 1 S.C.R. 1722.

⁵⁶ This Application is clearly distinguished from the Bell Canada case in three material respects. First, unlike Bell Canada, Synergy North did not in any way profit as a result of the errors. The CRTC’s rationale for allowing retroactive ratemaking was to prevent Bell Canada from profiting as a result of the errors. The same rationale does not apply to Synergy North. Synergy North will not profit as a result of the errors. Second, the Bell Canada case dealt with the CRTC and not the OEB. Third, the Bell Canada case did not involve any deferral and variance accounts.

⁵⁷ The Ontario Court of Appeal Decision in *Union Gas Ltd. V. Ontario (Energy Board)*, 2015 ONCA 453, citing favourably the Alberta Court of Appeal at para 91.

⁵⁸ *Ibid.*

that were previously declared as final in EB-2012-0352. The principle that arose from this decision is that “[a]n out of period adjustment can be justified if it ensures that a utility does not profit on account of its own errors”.⁵⁹

94. This Application is clearly distinguishable from this line of cases, however. Synergy North has not, will not, and is not proposing to profit from its error. Synergy North has not been unjustly enriched as a result of the error.
95. Rather, Synergy North’s proposal to record correcting entries in Account 1588 is entirely consistent with the OEB Guidance Letter. The OEB Guidance Letter contemplates retroactive rate making for commodity accounts to correct for errors of this nature.

J. THE OEB STAFF PROPOSAL IS INCONSISTENT WITH THE MAINTENANCE OF A FINANCIALLY VIABLE ELECTRICITY INDUSTRY AND THE FAIR RETURN STANDARD

96. The OEB’s discretion is framed by another relevant, and legally binding, requirement, however. In setting “just and reasonable rates” the OEB’s discretion is limited by the fair return standard.
97. In the December 11, 2009 *Report of the Board on the Cost of Capital for Ontario’s Regulated Utilities* (the “**2009 Report**”), the OEB consulted a range of stakeholders and reviewed the case law (as it was at that time) relating to the Fair Return Standard (“**FRS**”) to establish the Board’s approach to cost of capital, and more particularly the deemed rate of return on equity (“**ROE**”) that is permitted in rates to meet the FRS. In the 2009 Report, the OEB confirmed that:

“The Board is of the view that the FRS frames the discretion of a regulator, by setting out three requirements that must be satisfied by the cost of capital determinations of the tribunal. **Meeting the standard is not optional; it is a legal requirement.**”⁶⁰

98. The requirement that approved rates must produce a fair return was described by the

⁵⁹ Decision and Order dated April 10, 2014 in EB-2014-0043 at p.2. See also *MCI Telecommunications v. Public Service Commission*, 840 P. 2d 765 (Utah 1992).

⁶⁰ 2009 Report at p.18.

Supreme Court of Canada as an **absolute obligation**.⁶¹ The OEB summarizes the three legal requirements to ensure a fair return on capital in the 2009 Report by citing the National Energy Board's RH-2-2004 Phase II Decisions:

"A fair or reasonable return on capital should:

- be comparable to the return available from the application of invested capital to other enterprises of like risk (the comparable investment standard);*
- enable the financial integrity of the regulated enterprise to be maintained (the financial integrity standard); and*
- permit incremental capital to be attracted to the enterprise on reasonable terms and conditions (the capital attraction standard)."*⁶²

99. How would inadvertent and *bona fide* errors, similar in form and substance to the errors that were voluntarily reported by Synergy North, be treated for "other enterprises of like risk"?
100. The answer can be found in the law of restitution. It is well established law that one who has paid money under a mistake of fact may recover the money paid in a restitutionary claim provided (i) the mistake is honest (it arises from a genuine *bona fide* belief that certain facts exist which really do not exist); (ii) the mistake caused the payment; (iii) the payor did not intend the payee to have the money at all events; and (iv) there has been no change in position (i.e. no promissory estoppel).⁶³
101. On the basis of the law of restitution, private Canadian companies including unregulated utilities and major banks, will not generally suffer from a lower return on capital as a result of *bona fide* mistakes. Rather, these enterprises can obtain court orders allowing for the recovery of moneys paid or received arising from *bona fide* mistakes.⁶⁴
102. The OEB has recognized that the electricity commodity is a large cash item that distributors are expected to manage on a monthly basis. Synergy North takes its responsibility in this

⁶¹ *British Columbia Electric Railway Co. Ltd. v. Public Utilities Commission of British Columbia et al* [1960] S.C.R. 837, at p.848.

⁶² National Energy Board. RH-2-2004, Phase II Reasons for Decision, TransCanada PipeLines Limited Cost of Capital. April 2005. p.18.

⁶³ Maddaugh and McCamus, *The Law of Restitution*, 2022 Thomson Reuters Canada Limited, at Chapter 10 "Money paid under a mistake of fact".

⁶⁴ See as one example, *BMP Global Distribution Inc. v. Bank of Nova Scotia*, 2009 SCC 15.

regard very seriously.

103. By contrast, the asymmetric disposition recommended in the OEB Staff Proposal would have the effect of making a distributor financially responsible for inadvertent errors in wholesale commodity accounts whose balances are often many orders of magnitude greater than a distributor's revenue requirement, which will serve to undermine the financial viability of the electricity industry and the fair return standard. This will also send a signal to distributors to over-collect to guard against the substantial downside risk of operating Account 1588.
104. Indeed, Synergy North's ROE will reduce to 1.50% if the OEB Staff's Proposal is accepted. This is a remarkable 735 basis points below Synergy North's regulated rate of 8.85%.⁶⁵ This is **more than double** the OEB's stipulated off-ramp of 300 basis points, despite meeting the OEB's Reasonability Test. Such an outcome is inconsistent with the maintenance of a financially viable electricity industry and the fair return standard.

K. IESO MATTERS

105. Lastly, OEB Staff raised an issue with Synergy North's approach to resolving the billing errors by: (a) waiting to make the adjustments to Account 1588 until a decision in this Application; and (b) not seeking settlements with the IESO for the 2016 to 2018 adjustments for the Thunder Bay rate zone, as well as the 2020 adjustment for the Kenora rate zone as those amounts are immaterial. OEB staff submits that Synergy North should contact the IESO to correct all prior period settlements, to the extent it has not already done so.⁶⁶
106. Synergy North has already contacted the IESO to discuss the correction of the amounts outstanding to the IESO that resulted from the accounting error in Account 1588. It was important to Synergy North to ensure that all adjustments were correct and survived scrutiny through the discovery process. In any event, this is not an issue that needs to be determined by the OEB and is outside the scope of the Application.

⁶⁵ EB-2023-0106, Responses to Staff Interrogatories, May 8, 2023, OEB Staff-1(b)

⁶⁶ OEB Staff Submissions at p.1.

L. CONCLUSIONS

107. Synergy North does not agree with the OEB Staff Proposal. Synergy North submits that the OEB Staff Proposal results in an asymmetrical disposition that:
- i. fails to recognize that intergenerational inequity is inherent in any ratemaking;
 - j. not necessary to address the OEB Staff's concerns regarding intergenerational inequity resulting from deferred rate recovery since there has been limited customer growth or turnover during this period, thus nearly all customer are the same;
 - k. will result in undue financial hardship to Synergy North, specifically Synergy North will be in breach of debt covenants and 735 basis points below its regulated ROE of 8.85%;
 - l. fails to recognize that Account 1588 met the OEB prescribed Reasonability Test;
 - m. inconsistent with the OEB's letter dated October 31, 2019 titled *Adjustments to Correct for Errors in Electricity Distributor "Pass Through" Variance Accounts After Disposition*;
 - n. completely unprecedented (based on a review of prior decisions of the OEB dealing with similar accounting errors);
 - o. inconsistent with the OEB's obligation to establish both just and reasonable rates under Subsection 78(2) of the OEB Act; and
 - p. inconsistent with the maintenance of a financially viable electricity industry and the fair return standard.
108. For the foregoing reasons, Synergy North requests that the OEB approve the disposal of the

balances of the Group 1 Deferral and Variance Accounts as proposed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 31st DAY OF MAY, 2023

BORDEN LADNER GERVAIS LLP

Per:



John A.D. Vellone