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2300 Yonge Street
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October 22, 2025
Our File: EB20250241

Attn: Ritchie Murray, Acting Registrar

Dear Mr. Murray:

Re: EB-2025-0241 – Milton Hydro Distribution Inc. Accounting Order – SEC Submission

We are counsel to the School Energy Coalition. Pursuant to the Notice and Procedural Order No. 1, these are SEC's submissions on Milton Hydro Distribution Inc.'s ("Milton Hydro") application for an accounting order to establish a new variance account to record the impacts of implementing a new allocation of common costs among Milton Hydro and its affiliates.

SEC submits that the requested relief should be denied. The Application does not fit within the OEB's Price Cap IR framework, which limits incremental funding during the term. Milton Hydro has identified no regulatory authority for a new variance account. Moreover, even if there was appropriate regulatory mechanism, it does not meet any of the OEB's criteria of establishment.

Background

The OEB approved a full Settlement Proposal as part of Milton Hydro's cost of service application for 2023 rates (EB-2022-0049). As part of that Settlement Proposal, Milton Hydro agreed to "undertake an independent third-party review of its methodology to allocate common costs among its affiliates and produce a report as part of its next rebasing application."¹ The purpose of the study was "to ensure that Milton Hydro's methodology to allocate costs between its affiliates is reasonable and complies with the relevant provisions of the OEB's *Affiliate Relationship Code for Electricity Distributors and Transmitters*."² The requirement to file the report with Milton Hydro's next rebasing application was also incorporated into the OEB's formal order.³

In response to this commitment, Milton Hydro retained Atrium Economics to update the allocation factors to reflect the company's current organizational and cost structure.⁴ In its 2024 report, Atrium found that, based on 2023 approved costs, a more appropriate allocation of shared service costs

¹ [Decision and Order \(EB-2022-0049\), October 13, 2022](#), Schedule A, Settlement Proposal, p.22

² [Decision and Order \(EB-2022-0049\), October 13, 2022](#), Schedule A, Settlement Proposal, p.22

³ [Decision and Order \(EB-2022-0049\), October 13, 2022](#), p.8

⁴ Interrogatory Response SEC-5c

would have resulted in an additional \$369,851⁵, being borne by Milton Hydro rather than its affiliates.⁶ Milton Hydro has implemented the revised cost allocation methodology between itself and its affiliates.⁷

Instead of filing the report with its next rebasing application, expected to be for 2029 rates, Milton Hydro has brought this Application for an Accounting Order to establish a variance account to capture the impacts of the updated shared service allocation methodology, to be recovered from customers beginning in 2025.

In the two full years since its rebasing application, Milton Hydro has earned well in excess of its approved ROE.⁸ It has refused to provide any information regarding the causes of the variances in its costs and revenues that resulted in this over-earning.⁹

No Basis For the Application

SEC submits that there is no regulatory basis for the proposed relief. Under Price Cap IR, a distributor's ability to seek incremental funding during its IR term, beyond what is included in base rates, is limited. The OEB's Filing Requirements for Incentive Rate-Setting Applications provide that a utility may seek incremental funding only through an Advanced or Incremental Capital Module (ACM/ICM) or a Z-Factor.¹⁰ There is no free-standing ability for a distributor to seek approval of a deferral or variance account outside of a rebasing application, unless it was agreed or ordered as part of a rebasing decision. The approved Settlement Proposal in Milton Hydro's 2023 application did not provide in any way that this type of variance account should be established during the IRM term.¹¹

If such a free-standing ability existed, it would render the ACM/ICM¹² and Z-Factor¹³ mechanisms meaningless. Those mechanisms have specific eligibility rules and evidentiary thresholds that are more restrictive than the standard criteria for the establishment of a deferral or variance account.

When asked what the regulatory basis for the application was, Milton Hydro acknowledged that it was not seeking an ACM/ICM or a Z-Factor, and that it would not qualify for either. It identified no other regulatory authority for the relief sought, relying only on the general definition of "deferral and variance account" in the glossary of the OEB's Rate Handbook.¹⁴

Where the OEB has approved variance accounts during a distributor's IR term, those accounts have been generic accounts applicable to all distributors, have been established to address specific

⁵ Application, p.3; Appendix 2, p.10

⁶ This includes allocation of shared services between Milton Hydro and its affiliates Milton Hydro Holding Inc. and Milton Energy & Generation Solutions Inc.

⁷ Application, p.4

⁸ Interrogatory Response CCC-1. Milton Hydro achieved an ROE of 10.66% (2023) and 10.96% (2024). Its approved ROE embedded in base rates is 8.66%.

⁹ Interrogatory Response SEC-4c

¹⁰ [Filing Requirements For Electricity Distribution Rate Applications - Chapter 3 - Incentive Rate-Setting Applications](#), p.20-21, 25-29

¹¹ [Decision and Order \(EB-2022-0049\), October 13, 2022](#), Schedule A, Settlement Proposal

¹² [Filing Requirements For Electricity Distribution Rate Applications - Chapter 3 - Incentive Rate-Setting Applications](#), p.25-29

¹³ [Filing Requirements For Electricity Distribution Rate Applications - Chapter 3 - Incentive Rate-Setting Applications](#), p.20-21

¹⁴ Interrogatory Response CCC-2c

calculation errors, or have been explicitly contemplated in a prior cost of service decision. In this case, Milton Hydro relies on the criteria in Chapter 2 of the Filing Requirements, which apply to cost of service applications¹⁵, not to stand-alone requests made during an IR term.

Milton Hydro's primary justification for the request is that, based on the updated cost allocation methodology, customers previously benefited, and that implementing the changes now creates a financial impact on the company. SEC submits that may be true, but it is not an appropriate basis for establishing a variance account.

First, distributors' costs and revenues will almost always diverge from what was approved in base rates during an IR term. This occurs as a result of forecast error, changes in operating conditions, or new costs that were not anticipated. The OEB has established specific regulatory mechanisms to address such circumstances, including the ability to undertake a full regulatory review where the impacts result in a variance of ± 300 basis points from the approved ROE.¹⁶ A general ability to seek a variance account to capture such differences is not one of those mechanisms.

Second, allowing such accounts would undermine the purpose of decoupling rates from revenues, and create a significant asymmetrical advantage for utilities. As in this case, where a distributor believes that cost-embedded rates are understated, it could seek a variance account, yet when costs are overstated, it could do nothing. Notably, Milton Hydro has not brought forward any request to refund customers or adjust base rates where approved costs have proven materially higher than actual. In fact, when SEC sought to examine the drivers of Milton Hydro's over-earning by requesting an explanation of all cost and revenue variances relative to approved amounts, the company responded that "[t]his question is outside scope of this application and not relevant."¹⁷ This selective approach highlights that the application is not about regulatory consistency or fairness, but about using the process to insulate shareholders.

Referenced OEB Decisions Do Not Assist Milton Hydro

Milton Hydro's reliance on the OEB's decisions in Halton Hills Hydro Inc.'s 2018 IRM application (EB-2017-0045) and Oakville Hydro's 2017 variance account application (EB-2017-0202) is entirely misplaced.

In *Halton Hills Hydro* (EB-2017-0045), the OEB approved a deferral account to capture understated depreciation expenses embedded in base rates during the IR term. The understatement was caused by a clear formula error in the Excel model used to calculate depreciation in Halton Hills Hydro's cost of service application.¹⁸ In granting the account, the OEB stated that while "establishment of new DVAs is not part of the Price Cap IR mechanism," it was "making an exception in this case... because of the material effect of the error on Halton Hills Hydro during the IRM term."¹⁹

The facts here are entirely different. Milton Hydro did not make a calculation or formula error. The additional costs it identifies result from a new cost allocation methodology involving expert judgment,

¹⁵ [Filing Requirements for Electricity Distribution Rate Applications - 2025 Edition for 2026 Rate Applications, Chapter 2, Cost of Service](#), p.68-69

¹⁶ [Filing Requirements For Electricity Distribution Rate Applications - Chapter 3 - Incentive Rate-Setting Applications](#), p.21

¹⁷ Interrogatory Response SEC-4c

¹⁸ EB-2017-0045, [Halton Hills Hydro Inc. Application for Deferral and Variance](#), p.1-2

¹⁹ [Decision and Rate Order \(EB-2017-0045\), April 26, 2019](#), p.19-20

not much different than that of the forecast and allocation choices made in any cost of service application. The magnitude of the impact is also far different. In EB-2017-0045, the annual impact of the error represented 3.32% of the company's revenue requirement and caused the utility to earn 2.3% below its deemed ROE²⁰, "perilously close to triggering a regulatory review."²¹ Milton Hydro's impact is only 1.61%, and it has earned well above its approved ROE since rebasing.²²

None of this is saved by Milton Hydro's proposed "guardrails," under which it would only seek recovery of the variance account balance if it does not achieve its deemed ROE over the rest of the term.²³ In Halton Hills, the issue was that the error itself was the material cause of the under-earning. In contrast, Milton Hydro's own evidence is that the ROE impact here is small (0.61%).²⁴

The Oakville Hydro decision (EB-2017-0202) is also distinguishable.²⁵ In that case, the OEB approved a variance account to capture the impact of implementing a shared services and corporate cost allocation study. The context, however, was fundamentally different. In Oakville Hydro's 2014 cost of service application, the parties explicitly agreed in a Settlement Proposal, approved by the OEB, that the third-party study would be undertaken and filed during the IRM term, and that the OEB would determine how to address its results.²⁶ By contrast, Milton Hydro's approved Settlement Proposal required it to file the study with its next rebasing application. Further, the OEB in Oakville Hydro noted that the amount recorded in the account represented a credit to ratepayers, not a charge, as is the case here.²⁷

Proposed Variance Account Does Not Meet Chapter 2 Criteria To Establish a New Variance Account

Even if the OEB were to consider the establishment of a new variance account under the Chapter 2 cost of service filing requirements, SEC submits that the application does not meet any of the three criteria: causation, materiality, or prudence.

Causation. To meet the requirement of causation, the expense must be clearly outside of the base upon which rates were derived.²⁸ Here, the incremental amounts arise solely from the adoption of a new common and shared services cost allocation methodology that was not used in the 2023 rebasing application. However, the underlying assets and common costs remain the same as those that formed the basis for rates. SEC submits that the intent of the causation criterion is not to test whether the amount of an expense differs from what was embedded in rates, but whether the nature of the expense and its specific drivers are new and unforeseen. That is not the case here.

Materiality. The OEB's materiality test requires more than simply exceeding the defined numerical threshold. The Applicant must also demonstrate that the cost has "a significant influence on the

²⁰ Annual Impact of Error (\$330.259) divided by 2016 approved base revenue requirement of (\$9,953,991) (See [Decision and Rate Order \(EB-2017-0045\), April 26, 2019](#), p.19 and p.23, ft 31)

²¹ [Decision and Rate Order \(EB-2017-0045\), April 26, 2019](#), p.18

²² Application, p.4

²³ Interrogatory Response Staff-9a

²⁴ Interrogatory Response Staff-5a

²⁵ [Decision and Order \(EB-2017-0202\), October 26, 2017](#)

²⁶ [Decision and Order \(EB-2017-0202\), October 26, 2017](#), p.2-3

²⁷ [Decision and Order \(EB-2017-0202\), October 26, 2017](#), p.5

²⁸ [Filing Requirements for Electricity Distribution Rate Applications - 2025 Edition for 2026 Rate Applications, Chapter 2, Cost of Service](#), p.68

operation of the distributor, otherwise they must be expensed or capitalized in the normal course and addressed through organizational productivity improvements.”²⁹ Milton Hydro has not met that requirement. It did not even mention, let alone provide any evidence, that the incremental costs have had any significant influence on its operations.³⁰ Given its level of over-earning, it could not credibly do so. The OEB-defined materiality threshold, which is calculated as a percentage of the approved revenue requirement, is not a proxy for “significant influence,” particularly for a fast-growing utility such as Milton Hydro, where annual revenue increases from load growth are substantial. This is best illustrated by Milton Hydro’s 2024 results, which show that the after-tax impact of the new allocation methodology would have reduced its achieved ROE by only 0.61%.³¹ That represents less than half of the 1.61% impact measured as a percentage of the 2023 revenue requirement.³² Given the company’s current over-earning position, it cannot credibly claim that the impact is significant, or that it cannot be offset through normal productivity improvements, which it may already be achieving.

Prudence. SEC also questions the prudence of Milton Hydro’s decision to implement the new methodology prior to its next rebasing application. Milton Hydro has provided no evidence that it was required to do so. The shared service agreements between Milton Hydro and its affiliates simply say pricing of services will be in accordance with the Affiliate Relationships Code (“ARC”).³³ Yet, when asked directly if previous cost allocation methodology was out of compliance with the ARC, Milton Hydro said it was not.³⁴ While it is understandable that its affiliates would wish to implement the new methodology immediately, it is not clear why Milton Hydro would do so, unless it anticipated seeking recovery from ratepayers, an opportunity that would not be available to its competitive affiliates.³⁵

If the OEB Approved the Proposed Variance Account

If the OEB determines that the proposed variance account is appropriate, there remain a number of issues with the proposal.

Specific Balance. SEC submits that the OEB should make no findings at this time on the appropriateness of the specific balance. There remain several questions regarding the methodology used by Milton Hydro and Atrium Economics that can be addressed as part of the company’s next cost of service application.

Effective Date. Milton Hydro proposes to record the full impact of the new methodology each year on December 31.³⁶ SEC submits this would constitute impermissible retroactive ratemaking, which Milton

²⁹ [Filing Requirements for Electricity Distribution Rate Applications - 2025 Edition for 2026 Rate Applications, Chapter 2, Cost of Service](#), p.68

³⁰ Application, p.9

³¹ Interrogatory Response Staff-5a

³² Application, p.4

³³ Interrogatory Response SEC-6b. Shared Service Agreement (Milton Hydro and Milton Hydro Holding Inc), pdf p.80, section 5; Shared Service Agreement (Milton Hydro and Milton Energy & Generation Solutions) pdf p.91, section 5

³⁴ Interrogatory Response SEC-3b

³⁵ This is likely correct, since there are no provisions under the OEB’s [Affiliate Relationship Code \(ARC\)](#) that restrict affiliates from subsidizing the regulated utility, only that the regulated utility cannot subsidize its affiliates. [The ARC](#) itself states that its purpose is to “preventing a utility from cross-subsidizing affiliate activities” (section 1.1). The transfer pricing provisions provide that a “utility shall charge no less” than the market price or fully allocated cost (sections 2.3.3.6, 2.3.4.2), and that a “utility shall pay no more than the market price” or fully allocated cost (sections 2.3.3.1, 2.3.4.3). The Atrium Economics report essentially finds that Milton Hydro, on balance, did not pay enough for services from its affiliates, or charged too much for services it provided. That outcome is permitted under the ARC.

³⁶ See Schedule B to Interrogatory Response (Draft Accounting Order (Updated))

Hydro itself says it is not seeking.³⁷ Recording the balance on December 31 effectively results in an effective date of January 1, 2025, as those costs are incurred for service provided throughout 2025. The Ontario Court of Appeal has said that the “[t]he critical factor for determining whether the regulator is engaging in retroactive ratemaking is the parties’ knowledge [that the rates were subject to change]”³⁸. On that basis, the *earliest* effective date would be the date of the Notice and Procedural Order No.1 issued on September 9, 2024.³⁹ With that said, SEC believes the more appropriate effective date would be the issuance of the OEB’s decision. The appropriate effective date may be implemented through a pro-rata reduction to the 2025 amount.

Summary

SEC submits the request accounting order should be denied. Milton Hydro has not shown a proper regulatory basis or met the OEB’s criteria for establishing a new variance account.

Yours very truly,
Shepherd Rubenstein P.C.

Mark Rubenstein

cc: Brian McKay, SEC (by email)
Applicant and intervenors (by email)

³⁷ Interrogatory Response Staff-7a

³⁸ [Union Gas Limited v. Ontario Energy Board, 2015 ONCA 453](#), para. 91

³⁹ Notice of Hearing and Procedural Order No. 1 (September 9, 2025)