

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B);

AND IN THE MATTER OF an application by Algoma Power Inc. ("API") for an order approving just and reasonable rates and other charges for electricity distribution to be effective January 1, 2014.

AND IN THE MATTER OF a Motion to Review and Vary by Algoma Power Inc. pursuant to the Ontario Energy Board's *Rules of Practice and Procedure* for a review by the Board's Decision and Order in proceeding EB-2013-0110.

NOTICE OF MOTION

API will make a motion to the Board on a date and at a time to be determined by the Board.

PROPOSED METHOD OF HEARING: API proposes that the Motion be heard orally.

THE MOTION IS FOR an Order or Orders of the Board:

- i. Extending the time for API to file this Notice of Motion;
- ii. reviewing and varying its March 6, 2014 Rate Order in the EB-2013-0110 proceeding (the "2014 Rate Order") such that the Board approved Rural or Remote Electricity Rate Protection ("RRRP") funding for the year commencing January 1, 2014 in the amount of \$12,130,404 be increased by \$251,203 to \$12,381,607; and
- iii. reviewing and varying the 2014 Rate Order such that the Board approved monthly RRRP funding payment of \$1,011,082 effective March 1, 2014 to December 31, 2014 by Hydro One to API be adjusted from to the monthly amount of \$1,033,995, effective June 1, 2014 to December 31, 2014. API has attached at Schedule "A" its calculation of its proposed monthly amount.

GROUND FOR THE MOTION: A SUBSTANTIAL IDENTIFIABLE ERROR THAT RAISES A QUESTION AS TO THE CORRECTNESS OF THE 2014 ORDER

1. The application of a threshold test was considered by the Board in its Decision on a Motion to Review the Natural Gas Electricity Interface Review Decision (the "NGEIR Review Decision"). The Board, in the NGEIR Review Decision, stated that the purpose of the threshold question is to determine whether the grounds put forward by the moving party raise a question as to the correctness of the order or the decision, and whether there is enough substance to the issues raised such that a review based on those issues could result in the Board varying, cancelling, or suspending the decision. Further, in the NGEIR Decision, the Board indicated that in order to meet the threshold question there must be an "identifiable error" in the decision for which review is sought and that "the review is not an opportunity for a party to reargue the case".
2. Although section 44.01(a) of the Board's *Rules of Practice and Procedure* (the "Rules of Practice and Procedure") provides examples of grounds for review, these examples do not represent an exhaustive list.
3. None of the examples listed in section 44.01 pertain to API's circumstance. Therefore, API relies on the Board's reasoning described in its NGEIR Review Decision, paraphrased by API as follows:
 - a. Does the 2014 Order contain an identifiable error?
 - b. Did the identifiable error raise a question as to the correctness of the 2014 Rate Order?
 - c. Is there enough substance to the issue raised such that a review based on that issue could result in the Board varying the 2014 Rate Order?

Each of these questions is addressed below.

i. Does the 2014 Order Contain an Identifiable Error?

4. In API's 2013 Incentive Rate Mechanism ("IRM") proceeding (EB-2012-0104), the disposition and recovery of costs related to Smart Meter deployment was approved by the Board. There were two components that were approved within the Application; the Net Deferred Revenue Requirement ("NDRR") and the Incremental Revenue Requirement ("IRR").
5. The NDRR total of \$1,752,033 approved was calculated as the difference between the historical revenue requirement of installed smart meters up to time of disposition, plus interest on the OM&A and the Smart Meter Funding Adders collected. API used actual and forecasted costs as an allocation methodology to calculate NDRR costs by rate class, and as a result, \$1,245,918 was allocated to Residential - R1 rate class and \$506,115 was allocated to Seasonal rate class customers.
6. The IRR total for 2013 of \$708,415 was calculated as the proxy for the incremental change in the distribution rates that would have occurred if the assets and operating expenses were incorporated into the rate base and the revenue requirement. The IRR amounts should be collected in each year between disposition period and the rebase year. API used actual and forecasted costs as an allocation methodology to calculate 2013 IRR costs by rate class, and as a result, \$502,406 was allocated to Residential - R1 rate class and \$206,009 was allocated to Seasonal rate class customers.
7. In the Board's Decision and Order dated March 28, 2013, the Board approved API's proposal to include smart meter costs applicable to its Residential – R1 customer class in its Residential – R1 revenue requirement for the purposes of calculating Rural or Remote Electricity Rate Protection ("RRRP") funding. In Board staff's April 11, 2013 response to API's draft rate order, Board staff clarified that the SMIRR is annualized amount that should be recovered in each of the remaining two years in API's IRM period. The Board accepted this position in its March 28, 2013 Decision and Order.
8. On April 15, 2013, API filed a re-calculation of the RRRP funding required for 2013. The RRRP funding was based on the methodology approved by the Board in EB-2011-0152, calculated as the difference between: i) the revenue requirement for the R-1 and R-2 customer rate classes adjusted by the price cap adjustment index; and ii) the revenues generated by the R-1 and R-2 rate

classes using the RRRP Adjustment. The total 2013 distribution base rate determination amount of \$15,734,607 calculated for the Residential – R1 class included \$622,959 for NDRR, which was exactly half of total of \$1,245,918 allocated to Residential – R1 class. Additionally, \$502,406 was included in the calculation relating to the 2013 allocated IRR amount. The re-calculated RRRP funding amount, which incorporated both of these NDRR and IRR amounts, was subsequently approved in the Board's Rate Order dated April 25, 2013.

9. In API's Draft Rate Order dated February 25, 2014, the total 2014 distribution base rate determination amount of \$15,687,933 calculated for the Residential – R1 class included \$622,959 for NDRR, which was exactly half of total of \$1,245,918 allocated to Residential – R1 class. The inclusion of \$622,959 for the Residential - R1 class was correct and is therefore not the subject of this Notice of Motion.
10. However, in regard to the 2014 IRR, API erroneously included \$251,203 in the IRR calculation. This amount was half of the amount API should have included for IRR, being \$502,406. The calculated RRRP funding amount, which incorporated both the correct \$622,959 NDRR amount and the incorrect \$251,203 IRR amount, was subsequently approved in the 2014 Rate Order. Therefore, based on the 2014 Rate Order, API's 2014 RRRP funding is deficient by \$251,203. API submits that this error is an identifiable error for the purpose of the Board's threshold test.

ii. Did the Identifiable Error Raise a Question as to the Correctness of the 2014 Rate Order?

11. API submits that there are two reasons why the identifiable error raises a question as to the correctness of the 2014 Rate Order.
12. The first reason is that the 2014 Rate Order is not compliant with Ontario Regulation 442/01 (the "RRRP Regulation"). The RRRP Regulation prescribes a methodology for determining API's RRRP funding:

(3.1) For each year, in respect of the rates for a distributor serving consumers described in paragraph 5 of section 2, the Board shall calculate the amount by which the distributor's forecasted revenue requirement for the year, as

approved by the Board, exceeds the distributor's forecasted consumer revenues for the year, as approved by the Board.

(3.2) For the purpose of subsection (3.1), the distributor's forecasted consumer revenues for a year shall be based on the rate classes and on the rates set out for those classes in the most recent rate order made by the Board and shall be adjusted in line with the average, as calculated by the Board, of any adjustment to rates approved by the Board for other distributors for the same rate year.

13. In its Decision on API's 2012 IRM (EB-2011-0152), the Board enhanced the legislated methodology for calculating RRRP funding for the R-1 and R-2 rate classes during IRM years by using the difference between: i) the revenue requirement for the R-1 and R-2 customer rate classes adjusted by the price cap adjustment index; and ii) the revenues generated by the R-1 and R-2 rate classes using the RRRP Adjustment. This methodology for establishing API's RRRP funding during IRM years (the "IRM Methodology") is consistent with the legislated methodology set out in the RRRP Regulation.
14. As a result of the IRR error, API's 2014 RRRP funding will be less than that derived by IRM Methodology and therefore, by extension, contravenes the methodology set out in the RRRP Regulation. This situation is different from an accounting error that affects rates set by the Board pursuant to section 78 of the *Ontario Energy Board Act, 1998*. Whereas the Board has discretion to determine whether rates are just and reasonable pursuant to section 78, the Board's discretion in regard to establishing API's RRRP funding is restricted to the methodology set out in the RRRP Regulation. For this reason, API submits that the IRR error raises a question as to the correctness of the 2014 Rate Order.
15. The second reason why the IRR error raises a question as to the correctness of the 2014 Rate Order is that the Board in its 2013 IRM Rate Order in EB-2012-0104 (the "2013 Rate Order") accepted that the \$502,406 IRR amount is an annualized amount that should be recovered in each of the remaining two years in API's IRM period (i.e. in 2013 and 2014). Therefore, the 2014 Rate Order in relying on the incorrect IRR amount of \$251,203 contravenes the 2013 Rate Order.

iii. *Is there enough substance to the issue raised such that a review based on that issue could result in the Board varying the 2014 Rate Order?*

16. API submits that there is enough substance to the issue raised that could result in the Board varying the 2014 Rate Order for the following reasons:

- a. the 2014 RRRP funding deficiency of \$251,203 is material to API;
- b. varying the 2014 Rate Order as proposed by API will bring it into compliance with the RRRP Regulation; and
- c. varying API's 2014 RRRP funding will have no impact on API's customers' distribution rates.

EXTENSION OF TIME:

17. The 2014 Order was issued on March 6, 2014. The deadline for filing a motion to review in accordance with the Board *Rules of Practice and Procedure* was March 26, 2014 (20 days after the 2014 Order was issued).

18. The \$251,203 error was discovered subsequent to the issuance of the 2014 Rate Order while confirming with Hydro One the monthly RRRP amounts to be received during the months of March to December 2014. During API's review, it was noted that instead of reducing the monthly payments to \$1,030,727 during the interim months of January and February 2014 as per the 2013 Rate Order, Hydro One had continued with payments of \$1,074,657 for January and February 2014.¹ Therefore, while performing a re-calculation of the amounts to be received between March and December 2014, the rate design module was referred to, and it was at that point, that this identifiable error was discovered.

19. Given that this Notice of Motion is only 13 days late, and given that API commenced preparation of this Notice of Motion immediately upon making the discovery, API submits that its request for an extension of time to file this Notice of Motion is reasonable.

¹ API's calculation of its proposed monthly RRRP funding amount of \$1,033,995 from June 1, 2014 to December 31, 2014 at Schedule "A" accounts for Hydro One's over-funding in January and February of 2014, such that the total 2014 funding will be \$12,381,607 as requested.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- i. the records of EB-2013-0110 and EB-2012-0104; and
- ii. such further evidence as counsel for API may submit and the Board may allow.

All of which is respectfully submitted.

April 8, 2014

A handwritten signature in black ink, appearing to read 'Andrew Taylor', written over a horizontal line.

Algoma Power Inc.

By its Counsel: Andrew Taylor