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November 11, 2014

VIA EMAIL TO: boardsec@ontarioenergyboard.ca

ONTARIO ENERGY BOARD
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2300 Young Street, 27th Floor
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FILE NO. EB-2014-0055

Attention: Ms. K. Walli
Board Secretary

Dear Ms. Walli:

RE: 2015 ELECTRICITY DISTRIBUTION RATE APPLICATION FOR ALGOMA POWER INC. ("API')
Argument in Chief
Files No. EB-2014-0055
Our File No. 12524-7

In keeping with the Board's instructions provided at the oral hearing of the above-noted matter on October 20, 2014, please find accompanying this letter Algoma Coalition's submissions.

Board Staff, API and the other intervenors have been copied on this filing.

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Enclosures

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EB-2014-0055

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. for an order approving just and reasonable rates and other charges for electricity distribution to be effective January 1, 2015.

Algoma Coalition
Submission (Unsettled Issues)
November 11, 2014

These are the submissions of Algoma Coalition with respect to the following unsettled issues in this proceeding:

1. Is the applicant's proposal to recover the RRRP funding variance from the 2002 to 2007 period appropriate?
2. Are the proposed revenue-to-cost ratios appropriate?
3. Are the proposed fixed/variable splits appropriate?

Each of these issues is addressed below.

1) RRRP FUNDING VARIANCE

Algoma Coalition agrees with the submission of Board Staff with respect to the RRRP funding variance. The following paragraphs represent additional points in support of Board Staff's submission on this issue.

In Algoma Coalition's view, to the extent API was under-compensated by the RRRP subsided administered by Hydro One (per O Reg 442/01) for the period 2002-2007, it also over-collected from its customers throughout this same period. As pointed out by Mr. Aiken during his cross-examination, API prorated not only the monthly fixed charge to its customers, but also the credit of 28.50 they were giving back.[1] Using the example from the rates that came out of the RP-2003-0149 rate order, Mr. Aiken pointed out that in prorating the amount charged to a residential customer per month API would divide that monthly charge by 30 (on the basis of a 30 day billing period).[2] The result of this calculation, as explained by Mr. Aiken is that, for the same reason that API over-refunded customers, it also over-collected from customer on the monthly fixed charge.[3] By dividing the monthly fixed charge by 30 the 30 day billing period, API was effectively collecting more from its customers than what they were allowed to by the rate schedule.[4] It is submitted that what API should have been doing was taking that monthly fixed charge, multiplying that by 12 and dividing by 365 to come up with the appropriate customer charge per day.

Notwithstanding the foregoing, in the event it is determined that API was under-compensated during the period of 2002-2007 Algoma Coalition agrees with Board Staff's submission that allowing API to recover such under-compensation at this late date would amount to impermissible retroactive ratemaking. Further to the jurisprudence referenced

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[1] Transcript of Oral Hearing, page 52 lines 1-9.
[2] Transcript of Oral Hearing, page 54 lines 10-15.
[3] Transcript of Oral Hearing, page 54 lines 17-19.
[4] Transcript of Oral Hearing, page 54 lines 24-27.

by Board Staff in respect of this issue, Algoma Coalition requests consideration of the following statement by McKinnon J of the Ontario Superior Court of Justice (Divisional Court) in *Union Gas Ltd. v Ontario (Energy Board)*:[5]

> Union submits that there is a presumption that an administrative body such as the Ontario Energy Board may not exercise its authority retrospectively or retroactively, unless expressly authorized by legislation. *The classic explanation of this general presumption against retrospective operation being given to a statute is found in Young v. Adams, [1898] A.C. 469 (New South Wales P.C.) where Lord Watson said at page 476: "It manifestly shocks one's sense of justice that an act legal at the time of doing should be made unlawful by some new enactment."* (emphasis added)

In *Union Gas Ltd Re*,[6] the Board recognized that per the Supreme Court of Canada's decision in *Northwestern Utilities Ltd* that retroactive ratemaking is to be avoided. The Board acknowledged as have Board Staff in their submissions that there are situations where the Board does not have all the facts at hand to render a decision and will thus declare the rates interim. Having done so, the Board went to state:[7]

> The principle behind the prohibition on retroactive rate making is that rates are presumed to be final, and just and reasonable until altered. Parties are entitled to assume they are final unless there is a clear exception.
>
> There are exceptions such as the case of interim rates…

Here there was no exception. As Board Staff explained in their submission, the rates between 2002 and 2007 were *final*, and no further order could be implemented to adjust those rates without violating the generally accepted prohibition against retroactive ratemaking.

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[5] *Union Gas Ltd v Ontario (Energy Board)*, 2013 ONSC 7048, 2013 CarswellOnt 17969 at para 40.
[6] *Union Gas Ltd Re*, 2007 CarswellOnt 2614 at Appendix A.
[7] *Ibid.*

Moreover, it is noteworthy that API is not seeking to recover their alleged under-compensation from rate-payers but from Hydro One. Given that Hydro One is not a party to this proceeding and is not able to make representations on its own behalf on this issue, it is respectfully submitted that the present rate application is the incorrect forum for such a determination to be made. It is trite law that an organization that is not a party to a proceeding cannot be bound by an order resulting therefrom.

2) REVENUE TO COST RATIOS

Algoma Coalition agrees with the position taken by API; that it be granted the ability to maintain status quo R/C ratios for the Test Year it is requesting. Algoma Coalition submits that the attributes of both the configuration of API's distribution system and the operation of the distribution system render API in a unique position unlike most, if not all, Ontario distributors.

API's uniqueness was recognized by the Board in its decision in respect of API's 2014 rates.[8] Algoma takes no position as to Board Staff's submission that API's witness mischaracterized the Board's findings, but does disagree with Board Staff regarding the relationship of that decision to the R/C ratio discussion. The reason for this disagreement is that, although the Board made clear its intention in that decision not to set a precedent with respect to the applicability of the PEG model, it did explicitly agree "that Algoma is a unique distributor".[9] It was on the basis of that uniqueness that the Board chose to assign the middle stretch factor of 0.3. It is submitted that it was only this aspect of the decision that the Board did not intend to act as precedent, not whether API's unique circumstances should be taken into consideration in future proceedings, where appropriate.

Much like API itself, its customers are unique. They represent a vast expanse of geography in a region that has always struggled economically. Maintaining status quo rates will enable API's customers to see a rate increase, but they would be seeing this

[8] Decision and Order, EB-2013-0110, February 20, 2014.
[9] *Ibid* at 7.

because their share of the revenue requirement would be increasing at status quo R/C ratios. The Test Year API is requesting would not allow it to gradually move to towards the appropriate R/C ratio thereby lessening the upfront impact felt by its customers, but also allow it to gain valuable insight from the intervenor community. As Mr. Bradbury pointed out during cross-examination, there is a great deal of expertise amongst the intervenors and their involvement in the establishing the appropriate R/C would lend a needed level of credence to the process.[10]

In particular Algoma Coalition's members are in an excellent position to assist in determining how costs should be allocated. Given their distribution throughout Northern Ontario, they are uniquely situated to appreciate the regional attributes of this area and can, therefore, provide invaluable input into the process for establishing the appropriate R/C ratios. Algoma Coalition thus requests the Board orders API to specifically include Algoma Coalition in consultations to develop the model going forward.

In summary it is respectfully submitted that:

- API's LDC is unsustainable without RRRP funding as it is unable to recover sufficient revenues at reasonable rates to cover its costs;
- API requires RRRP funding to make its business model work;
- API applies RRRP funding to its customers in a unique manner;
- Per the above-noted decision in the stretch factor does not work when applied to API's unique circumstances; and
- If the same processes were applied by API as other LDC's the customers would see large variances in their rates from year to year with very little change in the service that is provided. This result is extremely concerning as API's customers could not be said to be receiving fair and reasonable rates in such circumstances;

[10] Transcript of Oral Hearing, page 93 lines 18-24 and page 94 lines 1-15.

Therefore, allowing API time to develop a cost allocation and rate design rationale that is specific to its unique customer base, while still holding it accountable, is a well-reasoned approach to arriving at a rate methodology that works for API as a unique LDC.

3) FIXED/VARIABLE SPLITS

Algoma Coalition adopts the same position as outlined above with respect to the R/C ratios and requests the Board consider the unique attributes of API as a distributor in Northern Ontario in making its determination with respect to fixed variable splits and appreciate that the intent of the parties to the settlement of EB-2009-0278 was, generally speaking, to limit increases to fixed monthly services charges and/or to fix those where possible.

4) CONCLUSION

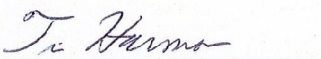
Algoma Coalition submits that its participation in this proceeding has been focused and responsible. Accordingly, Algoma Coalition requests an award of costs in the amount of 100% of its reasonably-incurred fess and disbursements.

All of which is respectfully submitted.

Dated: November 11, 2014

ALGOMA COALITION

PER:



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