

November 4, 2015

BY EMAIL: boardsec@ontarioenergyboard.ca

Ms. Kirsten Walli, Board Secretary
Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
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Dear Ms. Walli,

Re: Algoma Power Inc. EB-2015-0051

We are writing in regard to the letter filed by Algoma Power Inc. ("API") on November 3, 2015 in the above-referenced proceeding.

It is improper for API to object to Algoma Coalition's (the "Coalition") eligibility for an award of costs at this late date. In its letter, API submits that the Board correctly applied section 3.05(i) of *the Practice Direction on Cost Awards* in Procedural Order # 1. API had ample opportunity to make such objection at the appropriate time earlier in this proceeding. By failing to so object, API waived its right to do so and should not now be permitted to retroactively correct its error. This trite legal principle was articulated by J. Wilson J. in *Reford v McDonald*¹:

The well established practice is, that where the counsel in a cause allows to pass something, which, if objected to at the proper time, might have been fatal, he shall not afterwards be heard to object, and should be held as having assented to waive the objection.

The Coalition was rightly caught off-guard by the Board's decision to deny it eligibility for costs. As set out more particularly in its Notice of Motion, the Coalition has always been granted such eligibility and,

¹ (1864), 14 UCCP 150, 1864 CarswellOnt 107 at para 1.

given its limited financial resources, relies on cost awards as a prerequisite for its participation in Board proceedings.

Simply put, having been denied eligibility for costs, the Coalition could not afford to prepare interrogatories concurrent with its Notice of Motion or otherwise. This is why the extensions are required.

The Coalition submits that it will not be financially able to proceed as an intervenor in this or future Board proceedings unless the Board grants its Motion and varies its decision on costs in Procedural Order # 1.

Yours very truly,
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