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March 7, 2019

RESS & COURIER

Ontario Energy Board
P.O. Box 2319
27th Floor, 2300 Yonge Street
Toronto, ON M4P 1E4

Attention: Ms. K. Walli, Board Secretary

Dear Ms. Walli:

Re: Dubreuil Lumber Inc. and Algoma Power Inc. - Application for Leave to Sell Distribution System & Related Matters (EB-2018-0271) – Applicant Reply Submission

We are legal counsel to Algoma Power Inc. (API), which together with Dubreuil Lumber Inc. (DLI) is the applicant in the above-referenced proceeding. On February 6, 2019 the Ontario Energy Board (the "Board") issued Procedural Order #2 in connection with the proceeding, which provided for written submissions. On February 21, 2019 the applicant received submissions from Board Staff. Enclosed, please find the applicant's reply submission, a copy of which has been filed electronically on the Board's Regulatory Electronic Submission System.

Yours truly,

Jonathan Myers

cc: Mr. Ken Buchanan, DLI
Mr. Greg Beharriell, API
Mr. Craig David, API
Mr. Charles Keizer, Torys LLP

ONTARIO ENERGY BOARD

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

AND IN THE MATTER OF an application by Dubreuil Lumber Inc. ("DLI") for an Order, pursuant to subsection 86(1)(a) of the Act, granting leave to sell its electricity distribution system in the Township of Dubreuilville, substantially in its entirety, to Algoma Power Inc. ("API");

AND IN THE MATTER OF an application by API for Orders, pursuant to subsection 78(2) of the Act, approving the disposition of the balance in its Interim Distribution Licence Deferral Account established in EB-2017-0153, authorizing the establishment of a new deferral account to record transaction and integration costs incurred in connection with the transaction, determining that the acquired DLI customers shall be classified under its existing rate classes and billed its existing approved rates, and endorsing API's proposed approach to the future allocation of costs attributable to the DLI service area;

AND IN THE MATTER OF applications by DLI and API for Orders, pursuant to subsections 77(5) and 74(1)(b) of the Act, cancelling DLI's distribution licence (ED-2012-0074) and API's interim distribution licence (ED-2017-0153), and amending API's distribution licence (ED-2009-0072) to include the Township of Dubreuilville in its service territory.

APPLICANT REPLY SUBMISSION

DUBREUIL LUMBER INC. and ALGOMA POWER INC.

March 7, 2019

A. INTRODUCTION

Dubreuil Lumber Inc. ("DLI") and Algoma Power Inc. ("API") (together the "Applicants") applied to the Ontario Energy Board (the "OEB") on September 24, 2018 for approvals in connection with API's planned purchase of DLI's electricity distribution system in the Township of Dubreuilville (the "Township") and the incorporation of that system into API's existing regulated distribution business (the "Application"). In addition to seeking approval for this transaction, the Applicants have sought specific relief in relation to related aspects, such as cost recovery, rate treatment and licensing matters. These are the Applicants' reply submissions in respect of the Application.

B. OVERVIEW

The Application arises from a set of circumstances that, on account of the nature and condition of the DLI system, the existing approach to rates charged to DLI customers and the circumstances under which API is proposing to acquire the system, is unique. DLI currently owns, and until April 4, 2017 operated, the electricity distribution system in the Township, which serves approximately 350 customers.[1] Since April 4, 2017, the DLI distribution system has been operated by API pursuant to an interim distribution licence that was issued under sections 59(1) and (2) of the *Ontario Energy Board Act, 1998* (the "OEB Act"). API is a licensed distributor that owns and operates an electricity distribution system serving approximately 11,500 customers in the Algoma District of Ontario, north and east of the City of Sault Ste. Marie.[2]

As described in Exh C-2-1, the OEB ordered API to become the interim operator for DLI's system after it received letters from DLI stating that it would not be able to continue providing distribution service beyond April 27, 2017 due to financial and staffing issues. In designating API as the interim licensee, the OEB noted that the DLI system is embedded within API's electricity distribution system, that API serves customers in the area near the Township, and that API had previously provided services to assist DLI and its predecessors in emergencies. In decisions extending the term of API's interim licence, the OEB expressed the view that it is in the public

[1] C-1-1, pp. 1.
[2] C-1-1, pp. 3.

interest to have a viable and committed owner and operator for the distribution system in the Township and required DLI to dispose of its ownership interest to a licensed electricity distributor. Since becoming the interim operator of the DLI system, API has undertaken a comprehensive assessment of the system's needs, addressed a number of urgent infrastructure-related and operational deficiencies, and regularly reported its progress and plans to the OEB.[3] API has also tracked the costs it has incurred with respect to the DLI system in a deferral account in accordance with the OEB's order appointing it as the interim operator.[4]

Based on the recognition (1) that no licensed distributor other than API was identified as having a potential interest in acquiring the DLI system, (2) that as the host distributor and interim operator of the DLI system, and as the most geographically proximate licensed distributor, API is well positioned to provide a long-term solution and effective, ongoing distribution service within the DLI service area, and (3) that the OEB sees it as being in the public interest to have a viable and committed owner and operator for the DLI system, DLI has sought leave to sell its distribution system, substantially in its entirety, to API (the "Proposed Transaction") pursuant to subsection 86(1)(a) of the OEB Act. API understands that it is the first holder of an interim distribution licence under section 59 of the OEB Act to file an application with the OEB for approval to acquire the distribution system for which it has been appointed as an interim operator.

In connection with the Proposed Transaction and having regard to the unique context described above, the Application also includes the following requests for relief:

- DLI has requested the cancellation of its electricity distribution licence (ED-2012-0074) pursuant to subsection 77(5) of the OEB Act;
- API has requested the cancellation of its interim electricity distribution licence (ED-2017-0153) pursuant to subsection 77(5) of the OEB Act;

[3] Exh. C-2-1, pp. 4-8.
[4] Exh. F-3-1, p. 1.

- API has requested amendments to its electricity distribution licence (ED-2009-0072) pursuant to subsection 74(1)(b) of the OEB Act by adding the Township to the description of the service area in which it is authorized to distribute and sell electricity, and by adding a condition to provide API with certain limited relief from regulatory liability for circumstances arising from its acquisition of the DLI system;

- API has requested partial disposition, and recovery from the acquired DLI customers by rate rider, of the balance recorded in its Interim Distribution Licence Deferral Account, established in EB-2017-0153, pursuant to section 78(2) of the OEB Act;

- API has requested authorization, pursuant to section 78(2) of the OEB Act, to establish a new deferral account to record transaction and integration costs incurred in connection with the Proposed Transaction for future recovery from all API customers;

- API has requested approval to classify the acquired DLI customers in accordance with API's existing rate classes upon closing of the Proposed Transaction, and to bill those customers on the basis of API's approved Tariff of Rates and Charges[5] thereafter; and

- API has requested that the OEB endorse its proposed approach of allocating, at the time of API's next rebasing, costs attributable to the DLI service area, primarily to API's R1 and R2 rate classes, which are eligible for Rural or Remote Electricity Rate Protection.

No persons requested intervenor status or filed comments on the Application. As such, OEB staff is the only party that has filed submissions. In its submissions, OEB staff acknowledges the unique circumstances underlying the Application, agrees that it is not a typical MAADs application, and accepts that the evidence supports the unique treatment of the Application.[6] With the exception of its minor concerns with respect to the issues of liability protection and cost allocation, OEB staff appears to be generally supportive of or to take no issue with all other elements of the Application.

[5] For clarity, API's approved Tariff of Rates and Charges would require an amendment to add the aforementioned rate rider related to disposition of the Interim Distribution Licence Deferral Account.

[6] OEB Staff Submission, p. 9.

Accordingly, while the following submissions will touch upon all aspects of the Application, the focus here is on the two discrete areas where OEB staff has raised concerns, as well as on clarifying certain aspects which OEB staff appears to have misunderstood from the evidence.

C. LEAVE TO SELL DLI DISTRIBUTION SYSTEM TO API

As described in Exh. D-1-1, the Applicants entered into an Asset Purchase Agreement on August 27, 2018 (the "APA"), which contemplates the sale to API of DLI's distribution system substantially in its entirety. Under the APA, closing of the Proposed Transaction is conditional on the parties obtaining all required approvals, including a decision from the OEB authorizing the transaction, amending API's licence and addressing all other requested relief in a manner acceptable to API. As indicated in response to Board Staff IR 13, API would consider the OEB's authorization to be acceptable for purposes of the APA if in the discretion of its Board of Directors the decision adequately addresses the identified risks to API's existing customers, its shareholders and the DLI customers that are to be acquired.

In Exh. E-1-1, the Applicants set out their rationale for applying the 'no harm' test in a non-standard manner due to the unique circumstances underpinning the Application. In particular, the Applicants proposed that, since DLI was likely to fail in meeting its obligations as an electricity distributor, the focus for the OEB in considering its statutory objectives under the no harm test should be on reliability and quality of service, as well as financial viability. The typical focus on impacts with respect to price in a MAAD review would be inappropriate due to the need for significant investment in the system and the fact that DLI's historical pricing has not supported the ongoing safe, reliable or efficient operation of the system. The Applicants discuss the impacts of the Proposed Transaction relative to the OEB's statutory objectives in Exh. E-2-1.

At pp. 9-10 of its submissions, OEB staff states that "the OEB can decide to not apply or to deviate from the (MAADs) policy if it determines that the circumstances warrant different treatment. OEB staff submits that the evidence filed highlights the unique circumstances of the proposed transaction and supports different treatment of the Application." Staff goes on to suggest that the no harm test can be applied in the normal course in respect of reliability, quality of service and

financial viability, but that impacts on price, economic efficiency and cost effectiveness should be determined in a manner that is specific to the Application. Based on the evidence filed, OEB staff submitted that it is satisfied the Proposed Transaction will not adversely affect customers with respect to reliability or quality of service, and that the nominal purchase price will not adversely impact API's financial viability.[7] In addition, staff submitted that the Proposed Transaction will be cost effective and efficient overall.[8] Staff has taken no issue with respect to the impacts of the transaction on price and supports API's plan to rebase in 2020.[9]

As no party has objected to or raised any material concerns relating to the request for leave to sell DLI's distribution system to API, the Applicants submit that the relief sought under s. 86(1)(a) of the OEB Act should therefore be granted.

D. LICENSING REQUESTS

As noted, the Application includes three licensing-related requests:

- Cancellation of DLI's distribution licence;[10]
- Cancellation of API's interim distribution licence in respect of the DLI system;[11] and
- Amendments to API's electricity distribution licence to:
    - add the Township to the description of the service area in which it is authorized to distribute and sell electricity, and
    - add a condition to provide API with certain limited relief from regulatory liability for circumstances arising from its acquisition of the DLI system.[12]

[7] OEB Staff Submission, pp. 10, 14 and 15.
[8] OEB Staff Submission, p. 12.
[9] OEB Staff Submission, p. 29.
[10] Exh. G-1-1.
[11] Exh. G-2-1.
[12] Exh. G-2-2.

With the exception of the request to add a condition to API's distribution licence to provide limited liability relief, none of these requests have given rise to any issues or concerns during the proceeding or in OEB staff's submissions, and as such should be approved.

1. Request for Limited Liability Protection

As explained in Exh. G-2-2, and as further discussed in response to Board Staff IR 12, API currently enjoys some protection from liability in its capacity as the interim operator of the DLI system. This is because section 59 of the OEB Act provides that a person who is required as a condition of an interim licence to take possession and control of the business of a distributor is not liable for anything that results from taking possession and control of the business or otherwise exercising or performing the person's powers and duties under the OEB Act, under the interim licence or under any order of the OEB, unless liability arises from the person's negligence or willful misconduct. This liability protection is currently reflected in section 9 of API's interim distribution licence.

However, as the interim licence would be cancelled and the DLI system owned and operated by API under API's main distribution licence upon closing of the Proposed Transaction, API would no longer have the benefit of this liability protection. While the public interest would be supported by arriving at a long-term solution for the ownership and operation of the DLI system, the loss of liability protection upon implementing the proposed long term solution creates a disincentive for API to complete the transaction.[13] To mitigate this risk, API has proposed that the OEB provide it with continued relief from regulatory liability in connection with the DLI system, which relief would be limited in both scope and duration. In particular, API has requested a condition providing that:

> The Board will refrain from enforcing regulatory requirements that are within its control insofar as such requirements relate to circumstances or defects inherited by the Licensee through its acquisition of the distribution system formerly owned by

[13] See response to Board Staff IR 13, where the Applicants note that one of the considerations for API's Board of Directors in determining whether the OEB's decision on this application is acceptable for purposes of the APA will be the OEB's findings in respect of this request for limited relief from liability in connection with the acquisition.

> Dubreuil Lumber Inc. (as set out in former Electricity Distributor Licence ED-2012-0074 and Interim Electricity Distributor Licence ED-2017-0153) provided, however, that upon becoming aware of any such circumstance or defect relating to the acquired DLI system API shall take reasonable steps to address those circumstances or defects within a reasonable period.[14]

In response to Board Staff IR 12, the Applicants clarified their intention that the relief would apply only in relation to the DLI service area and only until all deficiencies and potential compliance issues with the DLI system are fully addressed. The Applicants also noted their expectation that the requested liability relief would be from the OEB issuing compliance orders, orders suspending or revoking API's licence, orders requiring payment of administrative penalties and alleging that API or any of its officers or directors have committed offences under Part IX of the OEB Act. API also suggested that, if needed, an appropriate expiry date for the requested liability relief would be December 31, 2024, coinciding with the end of API's next 5-year planning cycle and rate-setting term so as to provide an opportunity to make investments in the DLI system based on priorities included in the capital plan as part of its next DSP.

Although the Applicants have not previously clarified where in the licence the above-noted condition should be inserted, it is the Applicants' view that the most appropriate place would be as a new section 5.3. Alternatively, it could be included as a form of exemption listed in Schedule 3 of the licence. In addition, the Applicants are amenable to having the condition expire December 31, 2024, recognizing that if API has reasonable grounds for extending this date that it would not be precluded from applying to the OEB for such an extension in future.

In its submissions, OEB staff appears to support the general principle underlying API's request when it states that "allowing API a specified period in which to achieve compliance is reasonable".[15] Although staff acknowledges the form of liability relief that is currently provided in the interim licence in accordance with section 59(3.1) of the OEB Act, staff proposes an alternative approach to providing API with the liability relief that has been requested upon consolidation. OEB staff noted that the relief provided in the interim licence reflects that DLI has

[14] Exh. G-2-2, p. 2.

[15] Board Staff Submission, p. 16.

continued to be the licensed owner of the system and thereby has remained responsible for meeting all licence requirements, but that upon transferring ownership to API there would be no other party that would be liable for compliance with the OEB's codes or licence conditions.[16] Staff also explained that there may be compliance matters relating to the DLI system that are unrelated to maintenance or operation of the DLI system assets, so the OEB should not be precluded from investigating and requiring resolution of those matters. On this basis, OEB staff recommended that API's electricity distribution licence (ED-2009-0072) be amended by adding the following as a new Schedule 4:

> The Licensee shall achieve compliance with those sections of the Codes set out in Section 5 of the Licence that pertain to the maintenance and operation of those assets in service in the former Dubreuil Lumber Inc. service area (as set out in former Electricity Distributor Licence ED-2012-0074 and Interim Electricity Distributor Licence ED-2017-0153) as of the date of the completion of the transfer of those assets from Dubreuil Lumber Inc. to the Licensee, by no later than December 31, 2024.

Although the Applicants acknowledge the distinction made by staff between the current circumstances (where despite API's liability protection in the interim licence the OEB can still look to DLI as the licensed owner for compliance matters) and the post-consolidation circumstances (where there is no other party that the OEB could turn to for compliance matters), in the Applicants' view this distinction does not support approving OEB staff's proposed approach over the Applicants' proposal. Moreover, the Applicants have several concerns about what staff's proposed language achieves and whether it is workable, as follows.

OEB staff's main reason for proposing the alternative language appears to be that the OEB needs to be able to investigate and require the resolution of compliance matters that could arise in respect of the DLI system and customers of the DLI system, which matters are not related to the maintenance or operation of the DLI system assets.[17] As staff has not provided any examples of the types of compliance matters they are thinking of, it is difficult to understand this concern.

[16] Board Staff Submission, p. 17.

[17] OEB Staff Submission, p. 17.

However, in the Applicants' view, the approach proposed in the Application would not preclude the OEB from investigating and achieving resolution of such matters for two key reasons.

First, the Applicants are seeking relief in respect of regulatory requirements only insofar as such requirements relate to circumstances or defects inherited by the Licensee through its acquisition of the distribution system. To the extent that compliance matters arise other than from inherited circumstances or defects relating to the DLI system or its operation, the OEB would not be precluded from investigating or requiring resolution of such matters.

Second, the Applicants' proposed licence condition would have the OEB refrain from *enforcement* of regulatory requirements that are within its control. This is not to say that the OEB would be unable to apply its *compliance* processes. The distinction between the OEB's compliance and enforcement processes is clear.[18] As part of its compliance process, the OEB could gather information, clarify issues, review and assess information and seek resolution of compliance matters through informal resolutions, assurances of voluntary compliance, or recommendations for policy review. Alternatively, the compliance process could result in a recommendation for enforcement. Enforcement includes the OEB's processes which could ultimately result in the issuance of a compliance order, an order for suspension or revocation of licence, an order for an administrative penalty or allegations that officers or directors have committed an offence. The Applicants are not asking for a condition requiring the OEB to refrain from applying its compliance processes. Rather, the condition as proposed would only require the OEB to refrain from applying its enforcement processes. Moreover, this would only continue for a limited period in relation to a limited scope of activities so as to effectively extend the relief from regulatory liability, which API currently enjoys as an interim operator, to cover the first several years post-consolidation, thereby enabling API time to bring the DLI system and its operation into compliance without inheriting the compliance risks associated with the system being acquired.

As noted, the Applicants also have several concerns with OEB staff's proposed language, in terms of what it achieves and whether it is workable.

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[18] See https://www.oeb.ca/industry/rules-codes-and-requirements/compliance-and-enforcement-processes

First, staff's language is proposed as a new Schedule 4 to the amended API licence. In the Applicants' view, without also including a reference to a new Schedule 4 somewhere in the body of the licence, the mere inclusion of an additional schedule would create uncertainty as to if and how the schedule is to be applied and how it relates to the rest of the licence. All other schedules in the licence are expressly referenced within the terms of the licence, such as s. 3.1(a) which references the service area described in Schedule 1 and s. 5.1 which references the exemptions granted from codes in Schedule 3. Without knowing how the suggested Schedule 4 would be referenced in the licence, it is difficult to assess its potential impact.

Second, OEB staff's proposed language would require API to "achieve compliance with those sections of the Codes set out in Section 5 of the Licence that pertain to the maintenance and operation of those assets in service in the former DLI service area". In the Applicants' view, this requirement is not precise and will create uncertainty for API and for the OEB because it is not clear as to which sections of the four different Codes listed in section 5 of the licence pertain to the maintenance and operation of assets in the former DLI service area. It is therefore unclear as to how API or the OEB would be able to determine whether API is compliant with this condition.

Third, rather than providing API with the temporary relief from regulatory liability that it has requested, OEB staff has proposed an approach that appears to impose a new and uncertain obligation on API. In particular, section 5 of the licence already requires API to "at all times comply with (the Codes listed therein), except where the Licensee has been specifically exempted from such compliance by the Board. Any exemptions granted to the Licensee are set out in Schedule 3 of this Licence." If the licence were to also include, as OEB staff has proposed, in a new Schedule 4 or otherwise, a requirement that API must achieve compliance with those sections of the Codes set out in Section 5 of the Licence that pertain to the maintenance and operation of those assets in service in the former DLI service area, it would not be clear as to whether this means that API is therefore implicitly exempt from having to comply with section 5 insofar as the Codes apply to the maintenance and operation of in-service assets in the former DLI service area until December 31, 2024. Without that clarity, to avoid breaching its licence API would have to comply with both section 5 and the new proposed condition. The only way for API to do this

would be for it to comply with *all* sections of *all* of the Codes pertaining to *all* aspects of the DLI system *immediately* upon acquiring the DLI system, which is precisely the circumstance API is seeking to mitigate through its proposal.

Based on the foregoing, the Applicants submit that the alternative approach that has been suggested by OEB staff would be unworkable and unhelpful for mitigating the risks that are intended to be addressed by API's proposed approach to obtaining temporary relief from regulatory liability. In the Applicnts' view, the approach proposed in the Application, as further articulated in response to Board Staff IR 12 and in the above submissions, is reasonable, workable and not overly broad. Moreover, the proposed relief from regulatory liability would mitigate a key risk for API's existing customers and shareholders, and would thereby support its ability to complete the Proposed Transaction. On this basis, the Applicants request that the Board approve the proposed approach to protection from regulatory liability.

E. RATE REQUESTS

As noted, the Application includes four rate-related requests on behalf of API, which are for:

- partial disposition, and recovery from the acquired DLI customers by rate rider, of the balance recorded in its Interim Distribution Licence Deferral Account (established in EB-2017-0153);
- authorization to establish a new deferral account to record transaction and integration costs incurred in connection with the Proposed Transaction for future recovery from all API customers;
- approval to classify the acquired DLI customers in accordance with API's existing rate classes upon closing of the Proposed Transaction, and to bill those customers on the basis of API's approved Tariff of Rates and Charges effective immediately thereafter; and

- endorsement of API's proposed approach of allocating, at the time of API's next rebasing, costs attributable to the DLI service area primarily to API's R1 and R2 rate classes, which are eligible for Rural or Remote Electricity Rate Protection.

With the exception of the request for endorsement of API's proposed approach to cost allocation for its next rebasing application, OEB staff in its submissions has expressed support for, or has taken no issue with, the Applicants' rate-related requests. As such, it is the Applicants' submission that these rate-related requests should be approved.

As a preliminary rate-related matter, the Applicants submit that it is appropriate for the OEB to consider the above-noted rate requests as part of this consolidation proceeding. As noted in Exh F-1-1, the OEB's January 19, 2016 *Handbook to Electricity Distributor and Transmitter Consolidations* (the "Handbook") provides guidance with respect to rate-making considerations associated with consolidation applications. The Handbook states that rate-setting following a consolidation is typically not addressed in the application for approval of the consolidation. However, at p. 11 the Handbook also states that if a specific rate proposal is an integral aspect of the consolidation, then it would be appropriate for the OEB to consider such proposal as part of the application for approval of the consolidation. As demonstrated during this proceeding, the specific rate-related proposals set out in the Application are essential elements of the proposed consolidation. In its submissions, OEB staff references the *Wellandport* decision as a precedent for considering rates and MAADs applications together. OEB staff then submitted that "the request to consider both API's acquisition of DLI's distribution system and API's rate request is reasonable in light of the circumstances and when considered in light of (the *Wellandport* decision).[19]

1. Partial Disposition of Interim Distribution Licence Deferral Account

In Exh F-3-1, the Applicants explain that as part of the Interim Licence Order appointing API as the interim operator of the DLI system, API was directed to record revenues collected from

[19] OEB Staff Submission, p. 22.

customers within the DLI service area, as well as the costs of operating and maintaining the DLI system, in a deferral account, referred to as the Interim Distribution Licence Deferral Account. Actual and forecasted balances for the account are presented in the table on p. 2 of Exh F-3-1. The Applicants have requested partial disposition of this account, on an interim basis. In particular, upon closing the Proposed Transaction, API has proposed to recover the following costs through a monthly fixed rate rider applicable to all acquired DLI customers:

- 50% of the 2017 total of OM&A, Cost of Power and Billed Revenue
- 100% of the 2018-2019 total of OM&A, Cost of Power and Billed Revenue
- Amortization expense and return on capital for the 2017-2019 period
- Tax impacts associated with the above costs
- The net impact of the simple interest calculated on cumulative OM&A and amortization expense offset by the simple interest calculated on revenues from the resulting rate rider

One-time costs, as well as 50% of the 2017 total of OM&A, Cost of Power and Billed Revenue amounts (each as identified in the table on p. 2 of Exh F-3-1), would be excluded from the rate rider and would instead be transferred to the proposed new Transaction and Integration Costs Deferral Account (described below) for review and disposition as part of API's next cost of service rebasing application. The resulting rate rider, over the requested 6-year disposition period, as described on p. 4 of Exh F-3-1, is calculated to be $11.16 per customer per month, which results in reasonable bill impacts for all customers and aligns the expiry of the rate rider (December 31, 2024) with the end of API's next Incentive Rate Mechanism (IRM) period. API has therefore requested approval for this partial disposition on an interim basis, approval of the calculated rate rider of $11.16 per customer per month for all of the acquired DLI customers, and approval to continue to record actual costs and revenues in the Interim Distribution Licence Deferral Account until December 31, 2019, after which API would request final disposition as part of its 2021 IRM application (to be filed in 2020 using 2019 audited balances).

OEB staff, at p. 31 of its submissions, takes the view that API's proposals in respect of the Interim Distribution Licence Deferral Account, including the partial disposition of the balance in the account on an interim basis through the proposed rate rider, are reasonable and consistent with OEB policies and with the April 4, 2017 order establishing the account. OEB staff also notes that the proposed approach may mitigate bill impacts faced by DLI customers now and at the time of

API's next rebasing application. As there are no issues or concerns that have been raised, the Applicants submit that their proposals with respect to this account and its disposition should therefore be approved.

2. Authorization to Establish Transaction and Integration Costs Deferral Account

As discussed in Exh F-1-1, the OEB's policy of allowing consolidating distributors to defer rebasing for up to 10 years is intended to allow consolidating distributors the opportunity to offset their transaction costs with savings achieved during the deferred rebasing period. However, for the Proposed Transaction, there are no efficiencies to be gained during a deferred rebasing period because investments in the system will be required to bring it up to standards and into compliance with regulatory requirements. API would be acquiring the assets of a system that was not financially viable as a stand-alone distribution business, where the business was likely to fail to meet its obligations to serve customers, and which does not include employees, fleet, operating facilities, inventory or any type of IT infrastructure or business systems.

Given that API will have no opportunity to recovery its transaction and integration costs through efficiencies during a deferred rebasing period, API has instead proposed to establish a new Transaction and Integration Costs Deferral Account. As described in Exh F-3-2, API has requested an effective date for the account of April 4, 2017 to coincide with the date it was made interim operator so as to enable API to capture all of its transaction and integration costs in the account and enable future recovery of such amounts. The transaction and integration costs to be recorded in this account are distinct from the amounts API has been permitted to record in the Interim Distribution Licence Deferral Account. Notably, API indicated as early as in its April 26, 2017 notice of transition that it was engaged in commercial discussions with DLI, which were prompted by the OEB's expressed preference for a long-term solution for the DLI system. The actual and forecast amounts to be recorded in the proposed account are set out in the table on p. 2 of Exh F-3-2, and were updated in response to Board Staff IR 5. API intends to seek approval to dispose of the account by including the total balance as a one-time cost in its next rebasing application so that 20% of the balance, including accumulated interest, would be recovered in each year over the 5-year rate/IRM period. A draft accounting order was filed in Appendix 'A' to Exh F-3-2.

OEB staff, at p. 31 of its submissions, takes the view that API's proposed Transaction and Integration Costs Deferral Account, and the proposed approach to recording amounts in it, are reasonable and consistent with OEB policies. As no issues or concerns have been raised with this proposal, the Applicants submit that the proposed account should therefore be approved.

3. Approval to Classify and Bill DLI Customers Under API Tariff Upon Consolidation

As discussed in Exh F-1-1, DLI has historically distributed electricity for a price that is no greater than that required to recover all reasonable costs, and has never had its distribution rates approved by the OEB. Moreover, the rates resulting from DLI's rate calculation methodology have been insufficient to recover the costs associated with providing safe and reliable service to DLI customers over the long-term. In addition, as DLI's customers would upon consolidation become API customers, they would therefore become eligible for rate protection under the Rural or Remote Rate Protection (RRRP) plan pursuant to O. Reg. 445/07 and O. Reg. 442/01, and the acquired residential customers would also become eligible for further rate relief under the Distribution Rate Protection (DRP) program pursuant to O. Reg. 198/17.

Therefore, recognizing the absence of historical OEB-approved rates, the need to recover the costs associated with providing adequate service to customers in the DLI service area, and that DLI customers would become eligible under RRRP/DRP upon consolidation, API has proposed that it would classify the acquired DLI customers in accordance with its existing API rate classes and charge the acquired customers in accordance with API's OEB-approved tariff of rates and charges effective immediately upon closing of the Proposed Transaction.

More particularly, as described in Exh F-2-1, API has proposed that all Residential customers would be migrated to API's R1(i) rate class (i.e. traditional residential customers), and that all Commercial customers would be initially migrated to its R1(ii) rate class (i.e. customers that are treated as residential under O. Reg. 445/07, with a demand less than 50 kW and billed on an energy basis). API suspects that a small number of Commercial customers in the Township may have monthly peak demands that are consistently greater than 50 kW. However, API does not have an accurate record of historical demand on which to support their migration to API's R2 rate class.

Therefore, as part of the meter replacement efforts that are currently underway, API will collect the necessary peak demand data to determine which, if any, customers should be migrated to the R2 rate class at a later date. The timing of any such migrations will consider the need for customer education and notice. In API's submission, this proposed approach to rates for the acquired DLI customers, and the resulting bill impacts (set out in Exh F-2-1, pp. 2-4) are reasonable in the unique circumstances underpinning the Application and should therefore be approved.

At p. 26 of its submissions, OEB staff states that, with the exception of the requested endorsement of API's cost allocation methodology for the next rebasing application (discussed in the section below), it takes no issue with the Applicants' proposed approach with respect to assignment of DLI's Residential and all Commercial customers to API's existing rate classes, and their eligibility under RRRP. In addition, at p. 27 of its submissions OEB staff states that although the request to change rates for DLI customers at the time of the transaction is not standard, OEB staff agrees that the unique circumstances of the Proposed Transaction warrant unique consideration and that the proposal to charge API's current approved rates to DLI customers upon completion of the Proposed Transaction is reasonable and appropriate.

Notwithstanding OEB staff's general support for the Applicants' proposed approach to rate setting for DLI customers upon consolidation, there are certain aspects of staff's submissions that require clarification. In particular, on p. 26 of its submissions, after considering API's proposed rate treatment for DLI's approximately 353 residential and commercial customers, OEB staff states that it "takes no issue with the assignment of DLI's Residential and Commercial customers to API's R1 and R2 classes, and eligibility under RRRP." The reference to API's R1 and R2 classes suggests a degree of misunderstanding on the part of OEB staff, as follows.

OEB staff incorrectly states, at footnote 55 on p. 25 of its submission, that API's residential customers are classified as R1 and that its Small Commercial (General Service < 50 kW) customers are classified as R2. Staff then correctly summarizes API's proposal to classify all Commercial customers as General Service < 50 kW until such time as sufficient accurate metering data is

available to reclassify customers with demand > 50 kW as General Service > 50 kW.[20] However, due to staff's incorrect understanding of the alignment between the traditional General Service classifications and API's R1 and R2 rate classes, OEB staff incorrectly concludes that, once larger Commercial customers transition to the General Service > 50 kW class, they would no longer qualify for RRRP treatment and could therefore experience potential bill impacts.

It is important to recognize that all of API's commercial and industrial customers, regardless of demand, are required by O. Reg. 445/07 to be treated as though they are residential-rate class customers for the purpose of RRRP eligibility. These customers are classified as either R1(ii) (customers with average demand < 50 kW that are billed based on energy), or R2 (customers with average demand > 50 kW that are billed based on demand), as shown in the table below. As such, while there would be future bill impacts for DLI customers arising from reclassification between energy billing and demand billing at the 50 kW threshold, these impacts would not be the result of changes in RRRP eligibility. Rather, such reclassifications based on periodic reviews of demand are required by Section 2.5 of the Distribution System Code (DSC). As such, any bill impacts to customers that in future transition to the R2 customer class would not be a consequence of the Proposed Transaction but, rather, would be a consequence of existing requirements under the DSC.

Rate Class [Description]	**Applicable Rate-Setting Policies**			
	RRRP Adjustment Factor (O. Reg. 442/01)	**COS - Cost Allocation / IRM - Price Cap IR Adjustment Factor**	**Distribution Rate Protection (O. Reg. 198/17)**	**Residential Rate Design Transition (EB-2012-0410)**
R1(i) [Traditional Residential]	X		X	X
R1(ii) [Deemed Residential (O. Reg. 445/07) - Demand < 50 kW]	X			
R2 [Deemed Residential (O. Reg. 445/07) - Demand > 50 kW]	X			
Seasonal [Occupancy < 8 months/year]		X		X
Street Lighting		X		
microFIT				

[20] References to General Service < 50 kW and General Service > 50 kW rate classes in this reply submission are used for consistency with OEB staff's submission. At Exh. F-2-1, p.1, API describes its classification proposal with reference to the rate classes (R1(i), R1(ii) and R2) shown on its OEB-approved Tariff of Rates and Charges.

4. Endorsement of Approach to Allocating Costs in Next API Rebasing Application

In Exh E-2-1, at pp. 5-6, the Application explains that API's Seasonal and Street Lighting customer classes are not eligible for RRRP. Therefore, API has proposed that, at the time of its next rebasing application, any costs that can be specifically attributed to the DLI service area would be allocated primarily to API's R1 and R2 rate classes in the OEB's cost allocation model, based on the fact that, to the best of API's knowledge, all 353 existing customers of DLI are residential and commercial customers (i.e. none of the existing customers are seasonal or street lighting).[21] API's intention is that this approach to cost allocation would ensure the Proposed Transaction does not adversely impact any of API's existing customers. Therefore, to guide a future panel of the OEB in considering the cost allocation model, API has asked the OEB to endorse this approach as part of its decision in the present Application. API's request for such endorsement is further discussed in response to Board Staff IR 1. There, API acknowledges that a decision of a panel in one proceeding cannot bind a panel in a future proceeding. However, API comments that the first panel can express general support for a plan or methodology, state its expectations as to a future circumstance, or provide guidance to a future panel in connection with matters expected to arise in a future proceeding. The first panel may also explain how its findings have been informed by any expectations it may have with respect to a future proceeding. This, API explained, is the nature of its request.

Although OEB staff, at pp. 32-35 of its submissions, discusses API's request for endorsement of its cost allocation methodology at length, it appears that ultimately OEB staff does not have any significant concerns with API's proposal. This is because, at p. 35, OEB staff states that it "agrees that API's proposed approach appears to be reasonable as a starting point. OEB staff does not have any concerns if the OEB was to state this position as a way of providing a limited endorsement in an effort to provide API with some comfort that what it is proposing is directionally acceptable. However, this support would not bind a future panel reviewing the outcomes of the updated cost

[21] In addition to allocating these costs to its R1 and R2 rate classes, API clarified in response to OEB Staff IR 1(b)(ii), that it would be open to allocating a small portion of such costs to the Street Lighting rate class in recognition that there are street lights in the DLI service area (which are currently unbilled), and that API would begin receiving revenue from a newly created Street Light account for the Township.

allocation study, nor would it bind OEB staff or prevent staff from taking a different position, as part of API's next cost [of] service application."

Notwithstanding OEB staff's general support for the requested endorsement of API's cost allocation methodology, at least as a means of confirming for API that its proposal is directionally appropriate, it appears that OEB staff has misunderstood certain aspects of how the cost allocation methodology would work. These aspects are discussed and clarified as follows.

At p. 32 of its submissions, OEB staff suggests that "API's arguments are focused on the fact that Street Lighting and Seasonal customers are not subject to RRRP, and that the addition of allocated costs for such customers in the Township could result in upward pressure on the rates for API's existing customers in those classes" [emphasis added]. OEB staff then submits, at p. 33 of its submission, "that API's concerns with respect to the Seasonal customer class are therefore hypothetical at this point as there are no Seasonal customers in the DLI service area. Therefore, there are no costs of serving the Seasonal customers in the DLI service area that would be allocated to API's existing customers in this class."

API respectfully submits that OEB staff has misinterpreted both API's proposal and the mechanics of the methodology for allocating costs associated with the DLI service area. In particular, by referencing the "addition of allocated costs for such customers in the Township", OEB staff seems to assume that, as a first step, any costs associated with the DLI service area would be allocated on the basis of DLI's existing customers only (i.e. a stand-alone cost allocation study for DLI) and, as a second step, that the resulting allocated DLI costs by rate class would be added to the results of a separate cost allocation study involving API's existing service area. This is not a correct understanding of the proposed approach to allocating costs associated with the DLI system.

In response to OEB Staff IR 1(b)(ii), the Applicants noted that they initially considered such an approach (along with non-harmonized rates), but rejected it for several reasons. First, since all residential and commercial customers of DLI would become eligible for RRRP upon becoming API customers, there would be no difference in the applicable residential or commercial rates despite having a separate cost allocation study. Second, as correctly noted by OEB staff, API is

not aware of there being any Seasonal customers in DLI's service area. Therefore, no costs would be allocated to this rate class through a stand-alone DLI cost allocation study. Finally, for the sole purpose of determining a just and reasonable DLI-specific Street Lighting rate that would apply to the single Street Lighting account in Dubreuilville, API would have to undertake a complete cost allocation exercise for the DLI service area, including a consideration of how to appropriately allocate portions of API's overall administrative and general costs to the DLI service area. API therefore reiterates that requiring a stand-alone cost allocation study for the DLI service area would add significant and unnecessary costs and administrative complexity for questionable benefits. Further, certain inputs to the OEB's cost allocation model, such as weighting factors and load profiles, would have to be estimated based on little to no historical data, which would cause concerns with the validity of such an exercise.

API also recognizes that the traditional approach to a harmonized cost allocation study would result in the additional costs associated with the DLI service area being allocated to all of API's existing rate classes, based on customer counts, weighting factors and load profiles. This would inevitably result in a portion of the additional costs being allocated to API's Seasonal and Street Lighting rate classes. API has therefore proposed an approach to cost allocation that achieves the same goal as stand-alone cost allocation studies (i.e. no harm to API's existing customers), without the additional complexities described above.

The proposed approach is simple – any costs that are added to API's revenue requirement at the time of its 2020 rebasing, which are a direct result of the interim operation and acquisition of DLI's distribution system, would be directly allocated primarily to API's R1 and R2 rate classes. These direct allocations can easily be accommodated in the OEB's existing cost allocation model, in which Tab I9 allows for direct allocation of all or a portion of the costs in any USoA Account to one or more specific rate classes. Such adjustments would be transparent and would be easily reconciled with the total additions to API's revenue requirement that are associated with the interim operation of and acquisition of DLI's distribution system.

OEB staff also characterizes API's request as requiring a 'blanket endorsement' of its approach to its next cost allocation study and raises issues with respect to cost allocation aspects of API's prior

cost of service application as reasons that the OEB does not need to approve this request. API has only requested that the current panel endorse the planned approach for allocating the specific costs arising from the Proposed Transaction. In API's view, this does not amount to a "blanket endorsement" of the approach to the entirety of API's next cost allocation study, as appears to be suggested by OEB staff. Further, API has never disputed the requirement for a new cost allocation study at the time of its next cost of service application, and acknowledges that the results of such cost allocation study may result in changes to cost allocation, rate design, and bill impacts for its Seasonal and Street Lighting classes.

The issue for the OEB panel in this Application is that while API's existing Seasonal and Street Lighting customers may experience bill impacts as a result of API's next cost allocation study, in order to satisfy the "no harm" test in the current proceeding such future impacts cannot occur as a result of the Proposed Transaction. API's planned approach for allocating costs arising from the Proposed Transaction allows these costs to be integrated with API's revenue requirement in a manner that ensures there will be no harm to API's existing customers. The planned approach to cost allocation for which API is requesting the current panel's endorsement does not in any way affect or pre-judge any other aspect of API's next cost allocation study, such as the issues related to the appropriate revenue-to-cost ratios and rate design for API's Seasonal and Street Lighting Rate classes, which were raised by OEB staff at pp. 33-34 of their submission.

API therefore requests, consistent with its response to OEB Staff IR 1(a),

> that the panel in the current proceeding express its general support for API's planned approach to cost allocation and guide the future panel by indicating that the current panel's expectation, in finding the Proposed Transaction meets the 'no harm' test, is that API's future rates will be based on an allocation of the costs attributable to the DLI service area primarily to its R1 and R2 customer classes so as to mitigate potential rate impacts to existing Seasonal and Street Lighting customers.

F. CONCLUSION

Based on the foregoing, the Applicants submit that the Application, including (i) the requests by DLI for leave to sell its distribution system to API and to cancel its distribution licence, and (ii)

the requests by API to cancel its interim licence, to amend its main licence, to partially recover through a rate rider the balance of its Interim Distribution Licence Deferral Account, to establish a new Transaction and Integration Costs Deferral Account, to classify and bill acquired DLI customers under its existing tariff of rates and charges, and for endorsement of its proposed approach to allocating costs attributable to the DLI service area, should be granted. Approval of the Application would be in the public interest as it would provide a long-term solution to the current interim arrangements, and ensure there is a viable and committed owner and operator for the distribution system in the Township. It would also enable DLI to discharge its obligation to dispose of its ownership interest in the system to a licensed electricity distributor. Moreover, the Applicants have demonstrated that they are able to achieve these objectives in a manner that causes no harm by effectively mitigating potential impacts to both the acquired DLI customers and API's existing customers.

All of which is respectfully submitted this 7th day of March, 2019.

ALGOMA POWER INC. on its own behalf and on behalf of DUBREUIL LUMBER INC.

By its counsel, Torys LLP

Jonathan Myers