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Our File No.: 297778
Date: August 25, 2023

VIA EMAIL AND FILED BY RESS

Nancy Marconi
Registrar
Ontario Energy Board
2300 Yonge Street, Suite 2700
Toronto, ON M4P 1E4

Dear Ms. Marconi,

**Re: Entegrus Powerlines Inc. ("Entegrus"), EB-2022-0178
Argument of the Intervenor, Formet Industries ("Formet")**

Please find enclosed the Written Submissions of the Intervenor, Formet Industries, delivered pursuant to Procedural Order No. 6.

Yours truly,



Adam D.H. Chisholm
McMillan LLP

Enclosure

Entegrus Powerlines Inc.

Application to Amend Schedule 1 of an Electricity Distributor Licence

Ontario Energy Board (OEB)

File Number: EB-2022-0178

WRITTEN SUBMISSIONS OF THE INTERVENOR, FORMET INDUSTRIES

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1. **Introduction**

1. The intervenor Formet Industries (the “**Customer**”) requests that this Service Area Amendment (“**SAA**”) application seeking an amendment of Entegrus Powerlines Inc.’s (“**Entegrus**” or the “**Applicant**”) service area to include Customer be dismissed.
2. These written submissions focus on the interests of the Customer with respect to this Application.¹
3. This is an unusual SAA in that the Applicant is not asking to serve the Customer with a goal of benefitting the Customer, but so that the Applicant may use the Customer’s resources for other purposes to the Customer’s detriment.
4. From the Customer’s perspective, there are at least four key deficiencies in the application.
5. First, granting the application requires the Board to void and nullify long-standing contractual agreements between both the Applicant and Hydro One Networks Inc. (“**Hydro One**”), and Hydro One and the Customer. It requires the Board to overlook the Applicant’s participation in those commercial relationships and payments received by the Applicant over many years. Ignoring these facts prevents the proper determination of the impact of the relief sought in this Application and is contrary to past guidance from the Board about SAA impacts on existing customers.
6. Second, the Application depends on finding that a particular contract, the Letter Agreement between the Applicant and Hydro One, is “frustrated”. This argument is bound to fail given that the Applicant continued to perform the contract after it alleges that it was frustrated and that the Applicant relies on its own conduct to avoid the contract.

¹ These submissions are filed on a public basis and are intended to exclude confidential information previously filed by the Applicant and the intervenors.

7. Third, granting this application would have a detrimental impact on the Customer in terms of rates, rate certainty and reliability. Reliability is of primary importance to the Customer and it was bargained for in the form of dedicated electrical distribution from the time that the Plant was constructed in the St. Thomas region. The Applicant has refused to make commitments about reliability when squarely sought by the Customer in this proceeding.
8. Fourth, granting the relief sought would not be economically efficient. The Applicant has not been transparent about electricity needs in the St. Thomas area. As described below, the Applicant is not seeking economic efficiency, but a shifting of new costs to the Customer. The centrepiece of this unusual SAA Application is the request to use already paid-for resources dedicated to the Customer for others, ultimately so that: (i) new customers may avoid paying costs related to their own electricity transmission and reliability, and instead (ii) the Customer will be required to incur those costs to recapture the reliability levels transferred from the Customer to Entegrus' other customers. This cost-shifting approach does not constitute economic efficiency and should be rejected by the Board.
9. The power arrangements related to the Customer's facilities today are the same as they have always been. These arrangements align with commitments made to the Customer about available resources at time that the Plant was constructed and have, overall, afforded the Customer the reliability that it requires to maintain its significant industrial enterprise.

2. **Facts**

(a) **The Competition for The Customer's Industrial Plant**

10. In December 1995, Magna International Inc. ("**Magna**") announced that it intended to build a plant ("**Plant**") using a new hydroforming technique to supply frames as part of automotive manufacturing. Magna's use of hydroforming implements involves the use of high-pressure water to bend and form metal.
11. Sites under consideration included Ohio, Indiana and Iowa, as well as Windsor, Tillsonburg and St. Thomas in Ontario. There was "intense competition" from municipalities for the Plant, including the 700-800 associated local jobs that would come with it.²
12. A public report indicated that the Windsor-Essex County Development Commission was asked to provide data about the availability of industrial land, power rates and taxes. The same news article highlighted that Magna was interested in the availability of serviced land, rail and shipping access and the "opportunity for cut-rate power contracts for large new consumers".³
13. Magna ultimately selected the St. Thomas region for construction of the new hydroforming Plant through its affiliate Cosma International Inc. ("**Cosma**", now known as Formet Industries) in 1996.⁴

(b) **The Customer's Initial Agreements**

14. As early as 1996, discussions between Ontario Hydro and the Customer included consideration as to whether the Customer would receive dedicated feeders.

² Evidence of the Intervenor, Formet Industries, Affidavit of John Gustin affirmed on April 17, 2023 ("**Gustin Affidavit**"), Exhibit "A".

³ Evidence of the Intervenor, Formet Industries, Gustin Affidavit, Exhibit "A".

⁴ Evidence of the Intervenor, Formet Industries, Gustin Affidavit at para 9.

15. The relationship between Ontario Hydro and the Customer originated with a memorandum of understanding between the parties. While the Customer has been unable to locate the signed memorandum of understanding, it has found correspondence about the negotiations which occurred in 1996 and a reference to "dedicated feeders that will serve the plant".⁵
16. On August 27, 1997, the Customer and Ontario Hydro entered into an "Agreement for Power". The Agreement for Power reflects the electricity arrangements initially contemplated for the Plant.⁶
17. The Agreement for Power provides, pursuant to Section 4.2 and Schedule B-1, that the Customer is entitled to the full 38 MW of power on a firm basis 24/7. Pursuant to Section 3.1, such power was to be delivered via the two 27.6 kV "dedicated" feeder lines.⁷
18. The Agreement for Power also sets out the contracted/negotiated price for such power and delivery in Schedule B-4. In exchange, the Customer was obligated to draw its power exclusively from Ontario Hydro and those two dedicated feeders, failing which the Customer would have to pay an exit fee of up to \$475,000 (\$47,500 for each of the 10 years) to reimburse Ontario Hydro in part for its cost to install the feeders.⁸
19. The Agreement for Power acknowledges at Section 2.4 that the electricity market is likely to be restructured by legislative act, and says that upon such restructuring, the parties must revise or terminate the Agreement for Power, or the legislation may in fact release the Customer from its exclusivity obligations entirely in which case, the Customer would have to pay an exit fee to reimburse Ontario Hydro in part for its cost to install the feeders.⁹

⁵ Evidence of the Intervenor, Formet Industries, Gustin Affidavit, Exhibit "C".

⁶ Evidence of the Intervenor, Formet Industries, Gustin Affidavit, Exhibit "E", Agreement for Power between Ontario Hydro and Cosma dated August 27, 1997 ("**Agreement of Power**").

⁷ Evidence of the Intervenor, Formet Industries, Gustin Affidavit, Exhibit "E", Agreement for Power.

⁸ Evidence of the Intervenor, Formet Industries, Gustin Affidavit, Exhibit "E", Agreement for Power, ss 2.2, 2.4(b)(1).

⁹ Evidence of the Intervenor, Formet Industries, Gustin Affidavit, Exhibit "E", Agreement for Power, s 2.4(b)(1).

20. Although the market was restructured in 2002 and the Customer was technically released from its exclusivity obligation, the Customer nonetheless continued after 2002 to draw its power exclusively from Hydro One, via the two dedicated feeders. There is no record of the Agreement for Power being renegotiated. The Customer was therefore not obligated to pay the exit fee and has no record of any payment of the exit fee.¹⁰
21. Within a few weeks of entering into the Agreement for Power, the Customer and Ontario Hydro also entered into a separate agreement specifically regarding construction of the two 27.6 kV feeders from the Ontario Hydro Edgware Transformer Station to the Cosma Plant. The Power Facilities Agreement was made as of October 15, 1997.¹¹
22. The preambles to the Power Facilities Agreement reflect the factual matrix of events at the time of opening of the Plant. The Power Facilities Agreement states:
- (a) Cosma has advised OH that it:
 - (i) will be constructing, owning and operating an automotive parts manufacturing plant ("the Plant") to be located at 1 Cosma Court, St. Thomas, Ontario ("the Property") and for the purposes of this Agreement, the Property shall be deemed to include lands to be purchased from St. Thomas Economic Development Corporation in the east half of Lot 10, Concession 9; and
 - (ii) would like to have the Plant's power requirements served by OH and not the local municipal utility;
 - (b) In order to meet the power requirements of the Plant as projected by Cosma, it is necessary to construct two 27.6 kV feeders from the existing OH Edgware Transformer Station to the Plant ("the Feeders");
 - (c) In order to obtain the consent of the local municipal utility to provide power to the Plant, OH has had to undertake certain obligations to the said local municipal utility for a term ending no earlier than December 31, 2007;
 - (d) Based on Cosma's projections of load and the terms of this Agreement, OH is agreeing by these presents to build certain facilities to serve Cosma in exchange for the commitment of Cosma to purchase all of the Plant's power requirements (the "Power")

¹⁰ Evidence of the Intervenor, Formet Industries, Gustin Affidavit at para 17.

¹¹ Evidence of the Intervenor, Formet Industries, Gustin Affidavit, Exhibit "F", Power Facilities Agreement between Cosma and Ontario Hydro dated October 15, 1997 ("**Power Facilities Agreement**"), s 1.3.

from OH at firm power time of use rates, which commitment is set out in a power contract (the "Power Contract"), which shall be mutually agreed and is intended to be executed by the parties contemporaneously herewith [...]¹²

23. Recital (a)(ii) of the Power Facilities Agreement confirms that it was a critical requirement for construction of the Plant for the Customer to be serviced by Ontario Hydro.

24. Recital (b) of the Power Facilities Agreement shows that the two 27.6 kV feeders were constructed to meet the power requirements for the Plant. These feeders, M7 and M8, are the same feeders that the Applicant says should now be used for purposes unrelated to the Customer.

(c) **The Letter Agreement Between Ontario Hydro and Entegrus**

25. The Power Facilities Agreement refers¹³ to a 1997 Letter Agreement between Ontario Hydro (now Hydro One) and St. Thomas PUC (now Entegrus).¹⁴ This is the Letter Agreement that Entegrus now alleges is frustrated.

26. The City of St Thomas was involved negotiating the Letter Agreement through its subsidiary, St Thomas Economic Development Corporation (which sold the lands to the Customer), and through its department, St Thomas PUC. St. Thomas PUC entered into the Letter Agreement agreeing that the Customer would be an Ontario Hydro customer, The Letter Agreement also provided that the feeders would be made available to Ontario Hydro for supply to the Customer and, eventually, be available for purchase by Ontario Hydro.

27. The Letter Agreement provides for significant payments from Hydro One to Entegrus (which at the time was wholly owned and controlled by the City of St. Thomas) between 1997 and 2017.¹⁵ Entegrus does not deny that its predecessors received payments under the Letter Agreement and

¹² Evidence of the Intervenor, Formet Industries, Gustin Affidavit, Exhibit "F", Power Facilities Agreement, Recitals (a) to (d).

¹³ Evidence of the Intervenor, Formet Industries, Gustin Affidavit, Exhibit "F", Power Facilities Agreement, Recital (c).

¹⁴ Application for SAA dated October 17, 2022 ("**Entegrus SAA Application**"), attachment 3, Letter Agreement executed between St. Thomas PUC and Ontario Hydro dated November 10, 1997 ("**Letter Agreement**").

¹⁵ Evidence of the Intervenor, Formet Industries, Gustin Affidavit, Exhibit "F", Power Facilities Agreement.

its amendment.¹⁶ As described below, the Customer estimates these payments to be more than \$1,400,000.

(d) **The Entirety of the Contractual Arrangements**

28. Ultimately,
- a. the Customer agreed to pay Ontario Hydro for two dedicated feeders;
 - b. Ontario Hydro agreed to pay Entegrus under the Letter Agreement;
 - c. Entegrus agreed to let the Customer be an Ontario Hydro customer;
 - d. Ontario Hydro agreed to build the dedicated feeders for the Customer; and
 - e. Entegrus agreed to build the dedicated feeders for Ontario Hydro and then transfer them to Ontario Hydro after 20 years.
29. All of this was agreed to around the time that Magna decided to locate the Plant in St. Thomas. It was all tied together.¹⁷
30. The Customer paid Hydro One for the construction and maintenance of the two dedicated feeders. The Customer paid \$1,225,000 plus monthly operating costs, as follows:
- a. \$475,000 for the portion off of the Customer's lands (which amount was satisfied by purchasing all of the Customer's power needs exclusively from Hydro One over the 10 year period from 1997-2007, as stipulated in Section 2.4(b)(2)(ii) of the Agreement for Power); plus

¹⁶ Entegrus Interrogatory Responses dated June 22, 2023 ("**Entegrus Interrogatory Responses**"), Response to Hydro One Interrogatory HONI-15(a).

¹⁷ Evidence of the Intervenor, Formet Industries, Gustin Affidavit at para 9.

- b. \$750,000 for the 10-year old Formet Lands Feeder Equipment in 2007 (the amortized value of the original \$2,000,000 cost); plus
 - c. monthly operating costs as a pass-through.
31. Hydro One has in turn paid Entegrus for the construction and maintenance of the two dedicated feeders. Hydro One has paid approximately \$1,403,051.35, as follows:
- a. \$739,699.75 for the first 10 years (paid at a rate of \$5,827.93 per month from Sept 1997 to Dec 2007, per the Letter Agreement); plus
 - b. \$663,351.60 for the next 10 years (paid at a rate of \$5,527.93 per month from Dec 2007 to Dec 2017, per Section 5.2 of the Application).
32. M7 and M8 are the dedicated feeders that were purpose-built exclusively for the Customer. The Customer has paid in full at the contracted amount, and Entegrus has been paid in full at the contracted amount.
- (e) **The Formet Feeders Were Intended to Provide Redundancy Since Constructed**
33. Faced with the Applicant's challenge to the dedicated nature of both feeders in this Application, the Customer sought confirmation of the dedicated supply of electricity from Hydro One. This resulted in the Capacity Allocation Commitment made by Hydro One earlier this year.
34. In its Argument in Chief, Entegrus repeatedly mischaracterizes the Capacity Allocation Commitment. Entegrus describes the Capacity Allocation Commitment as a "new commitment" and that it is intended to make redundant capacity "permanent".¹⁸ More than twenty-five years after the Applicant became involved in the construction of dedicated feeders for the Customer, it

¹⁸ Entegrus SAA Argument in Chief dated August 4, 2023 ("**Entegrus Argument in Chief**") at paras 35-36.

complains that the Capacity Allocation Commitment does not provide for cost recovery mechanisms for such service.¹⁹

35. The purpose of the Capacity Allocation Commitment is stated in the Customer's uncontroverted response to interrogatories:

The Capacity Allocation Commitment was to provide written confirmation of Formet's updated peak load forecast, which Formet asserted and Hydro One agreed should not be based on the depressed load levels during the COVID period, but instead be based on Formet's forecast of activity levels going forward.

The Capacity Allocation Commitment was entered into against the background of the redundancy arrangements originally between Formet and Ontario Hydro in writing 25 years ago that were grandfathered when transferred to Hydro One pursuant to Part X of *Electricity Act, 1998*, and continue to bind Hydro One today.

In terms of what changed, this Application was brought to challenge a long-standing arrangement between Formet and Hydro One. The Capacity Allocation Commitment reflects that, 25 years later, Hydro One continues to be bound as Ontario Hydro's successor. Formet considered the Capacity Allocation Commitment to be necessary in light of this Application which seeks to undermine Hydro One and Formet's long-standing agreement.²⁰

36. The fact that the Capacity Allocation Commitment is a confirmation of existing arrangements is reflected in the fact that it is not expected to impact the Customer's bill.²¹

37. The evidence before the Board confirms that the Customer has had dedicated and redundant electricity supply for more than twenty-five years, and such an arrangement was part of the initial agreements discussed above. The Customer sought and received a Capacity Allocation Commitment from Hydro One in light of this Application to confirm long-standing, existing arrangements.

¹⁹ Entegrus Argument in Chief at para 113.

²⁰ Formet Industries Response to Interrogatories dated June 22, 2023 ("**Formet Interrogatories Responses**"), Response to Entegrus Interrogatory #1(a).

²¹ Formet Interrogatories Responses, Response to Entegrus Interrogatory #1(i).

38. Entegrus, not aligned with the business or interests of the Customer it purports to seek to serve, is critical of this arrangement and argues that the Customer should pay more for redundancy.²² But this new increase in cost will not occur unless the Board grants this application. Entegrus' expressed desire to have the Customer pay an additional amount for reliability it has had since the Plant was built is one reason why the Customer opposes the grant of this application. Argument about the transfer of cost and express burden being placed on the Customer is found below in section 3(b).

(f) **The Excess Capacity Claimed by Entegrus Does Not Exist**

39. Entegrus ignores evidence before the Board when talking about excess capacity in its Argument in Chief. Entegrus repeatedly asserts, in the face of evidence to the contrary, that there is excess capacity in the M7 and M8 feeders that could meet its needs. It urges the Board to find excess capacity only by exceeding the design capacity of the M7 and M8 feeders.
40. The Applicant argues in favour of routinely and continuously operating above the design capacity of the feeders to argue that there is "excess" capacity while at the same time uses being over design capacity as a basis for seeking relief.²³
41. The Customer's energy load consumption from the M7 and M8 feeders routinely peaks above the capacity of a single feeder and its load levels are above the design capacity of one of the M7/M8 feeders. Recent records reflect higher peak levels year-to-year, depending on the facility's operations. This variation reflects the from-time-to-time growth, which is expected to continue throughout the life of the operation of the facility.²⁴

²² Entegrus Interrogatory Responses, Response to 2-Formet-Entegrus, answered by Entegrus as "Formet-2".

²³ Entegrus SAA Application, Figure 5-2, p.15.

²⁴ Hydro One Networks Inc. Supplementary Evidence dated May 19, 2023 ("HONI Supplementary Evidence"), p 3.

42. Hydro One has advised the Customer that it should not be operating the feeders above their design capacity. As such, connection via only one of the feeders is insufficient to meet the needs of the Plant.²⁵
43. Hydro One's evidence is that exceeding the design capacity or operational rating under normal circumstances will reduce the ability to respond to contingencies and fully restore power to affected customers. It can result in degrading power quality or increased voltage issues. It will accelerate the degradation of equipment and could result in imminent failures that would lead to unplanned outages for the Customer.²⁶
44. The underlying premise of this Application, that there is unused "excess capacity", is therefore premised on harmful recommendations which have the potential to further damage the Customer's business and impact the reliability of the Customer and other Entegrus customers.

(g) The Importance of Reliability to Formet

45. In characterizing the feeders as "underutilized", Entegrus also ignores the importance of reliability and redundancy to the Plant.²⁷
46. Magna bargained for electricity capacity, reliability and redundancy when locating the Plant. The Customer agreed to terms that compensated Hydro One for the cost of constructing and operating both feeders. Hydro One in turn compensated Entegrus for the cost of constructing and operating both feeders.²⁸
47. In its Responses to Interrogatories and Argument in Chief, Entegrus seeks to recast the availability of this service by asking about standby charges and stating "providing redundant supply without cost recovery mechanisms leads to increased costs for other consumers".²⁹ But

²⁵ Evidence of the Intervenor, Formet Industries, Gustin Affidavit at paras 27 and 36.

²⁶ Hydro One Networks Inc. Intervenor Evidence dated April 17, 2023 ("**HONI Intervenor Evidence**"), p 16.

²⁷ Entegrus SAA Application, pp 11-12.

²⁸ Evidence of the Intervenor, Formet Industries, Gustin Affidavit at para 31.

²⁹ Entegrus Argument in Chief at para 113.

that entire argument overlooks the contractual history of the parties and the payments already made by the Customer to obtain dedicated and redundant service.

48. The 1997 Letter Agreement between the predecessors of Hydro One and Entegrus confirms that both Hydro One and Entegrus fully understood and agreed that the primary purpose of constructing the two redundant feeders and ensuring that both were exclusively dedicated to the Customer was to ensure reliability and to guarantee firm uninterrupted service, without any momentary power quality fluctuation if one of the feeders failed. The Letter Agreement contains contractual consequences if there were more than one outage of one minute per year. It states:

5. Reliability of service is of paramount importance to the Customer. The PUC agree that any loss of integrity to either of the Feeders or the extensions thereof located on Formet lands, will receive immediate attention by the PUC. If the Customer loses supply from the feeders, as extended, **for more than one minute** due to their integrity the PUC will pay to OH for each such episode an amount equal to the monthly rental and maintenance fee in effect at the time, which amount is not a penalty but represents a genuine pre-estimate of damages.

6. Delivery of reliable energy to the Customer is the responsibility of OH. Should the integrity of the Feeders, as extended, from St. Thomas Edgeware TS to the switching facility within Formet lands not meet the performance expectation of OH (not to exceed one outage of more than one minute in a calendar year to the Customer), the PUC will transfer their ownership and maintenance of the Feeders, as extended, and land rights to OH at their book value and all entitlement to monthly rental and maintenance fees will cease. The PUC would not be held responsible for outages caused by a major natural disaster (e.g. tornado and major ice storm). OH will have the sole discretion in determining the timing of this transfer. **[emphasis added]**

49. Electricity reliability is a fundamental concern for an industrial operator with a plant larger than 1,000,000 square feet. The consequences of electricity outages are significant. An outage for even one minute causes problems on the production line as technology is rebooted and re-synched. An outage for one hour will result in lost production and six-figure loss of profit. An

outage of an entire day will affect the supply chain and cause delays in the manufacture of automobiles.³⁰

(h) The Applicant's Concerns About Confusion are Immaterial

50. The Applicant suggests that the Board should grant this application due to "confusion". From the Customer's perspective, there is absolutely no issue about "confusion" that is material to this Application.
51. The four examples of "potential confusion and additional co-ordination" described in the Application are *de minimus* and, in some instances, do not involve confusion at all.³¹
52. The "public" are neither confused nor interested in which utility serves the Customer's Plant. The only example of "confusion" cited by Entegrus was one instance where Hydro One itself wrongly identified a CIA lead. Hydro One is not the "public".
53. In any event, if Entegrus were to transfer the assets to Hydro One as contractually agreed in 1997, as requested by Hydro One in 2017, and as initially approved and then later reversed by Entegrus, that would put an absolute end to any confusion or coordination. Hydro One would be the exclusive owner and operator of the feeders, and the Customer would be Hydro One's exclusive customer using such equipment. Entegrus would be completely eliminated from any involvement with the feeders or with the Customer.
54. All of the examples of confusion and unnecessary coordination cited by Entegrus in its application arose in 2022. These would have been avoided had Entegrus transferred the feeders to Hydro One in 2017 in compliance with its contractual obligations.

(i) Market Opening and the LTLT Direction did not Impact the Contracts

³⁰ Evidence of the Intervenor, Formet Industries, Gustin Affidavit, Exhibit "K".

³¹ Entegrus SAA Application, pp 22-23.

55. The Applicant has raised market opening and the Board's direction regarding Long Term Load Transfers as negating its contractual obligations.
56. Formet agrees with the evidence of Hydro One that this matter does not actually involve a Long Term Load Transfer.³² The Customer relies on and adopts the evidence of Hydro One on this point, but otherwise defers to the Board to the extent that this is a jurisdictional issue between two distributors.
57. The Customer will, however, address the facts concerning the purported elimination of LTLTs and the status of the Letter Agreement. The evidence is that the parties continued to perform their contractual obligations after the events referred to by the Applicant.
58. A letter from Hydro One dated March 20, 2003, after market opening, indicates that the Power Facilities Agreement was transferred from Ontario Hydro to Hydro One.³³
59. Whatever effect market opening had with respect to the Agreement for Power, the Power Facilities Agreement was still in force and being acted upon in 2007. After 10 years, the Customer's feeders, the Switching Facility and the Transformers on the Plant were all sold by Hydro One to the Customer for \$750,000.³⁴
60. Entegrus also continued to receive payments from Hydro One pursuant to the Letter Agreement after both Market Open and the Board's 2015 LTLT Directive/Section 6.5.3 of the Distribution System Code. As stated in the Applicant's Argument in Chief, "There is no dispute that Hydro One served the Customer and paid" for the use of the M7 and M8 Feeders until 2017.³⁵

³² HONI Intervenor Evidence, pp 6-9; Hydro One Networks Inc. Supplementary Evidence filed May 19, 2023, pp 1-2.

³³ Evidence of the Intervenor, Formet Industries, Gustin Affidavit, Exhibit "G".

³⁴ Evidence of the Intervenor, Formet Industries, Gustin Affidavit, Exhibit "H".

³⁵ Entegrus Argument in Chief at para 17.

61. Entegrus also sent Hydro One two invoices in June 2021 regarding transfer of the M7 and M8 feeders. It now says that release of those invoices was inadvertent.³⁶

(j) **No Formet Project Undermines the Cosma Court Plant's Electricity Requirements**

62. Entegrus raises speculative and irrelevant considerations about the Customer's operations that do not favour granting the Application.

63. Entegrus refers to the Customer's operations in a neighbouring facility and suggests, without basis, that "there may be existing space constraints [...] that preclude them from increasing any further electrical usage on the underutilized M7/M8 feeders".³⁷

64. The neighbouring facility is a 30,000 sq foot facility which is separate from the operations of the Plant at 1 Cosma Court. The electricity use at the Plant has no relation, either in engineering or in law, to the electricity use at the neighbouring facility. The fact that it happens to be nearby is irrelevant and does not logically lead to the proposed inference that space constraints preclude the Customer from increasing usage at the Plant.³⁸ If anything, the Customer's refusal to further burden the M7 and M8 feeders reflects the Customer's view of the importance of the feeders remaining dedicated to the Plant.

65. Entegrus also refers to the Customer's recent initiation of a Connection Impact Assessment (CIA) process to install load displacement generation on the M7 and M8 feeders.

66. This CIA relates to a confidential project being explored by the Customer which is not currently in effect and has remaining condition precedents. In any event, if such project were to proceed, the Customer would only have access to such generation on very limited occasions (5 hours/year).

³⁶ Entegrus Argument in Chief at para 28.

³⁷ Entegrus SAA Application, p 23.

³⁸ Evidence of the Intervenor, Formet Industries, Gustin Affidavit at para 47.

67. A decision should not be made to deprive the Customer of reliability today on the basis of possible future third-party generation that has not yet commenced, would not be available to the Customer in the way Entegrus suggests, and about which Entegrus has absolutely no understanding.³⁹

68. Entegrus also refers to a study to assess a battery storage project. This project is not moving forward.⁴⁰

(k) The Applicant's Future Needs are Unspecific

69. Part of the premise of this Application is that there is an electricity need in the St. Thomas region. Those needs, however, are unclear.

70. The evidence filed in this Application does not substantiate what the Applicant or its customers' needs are.

71. Entegrus argues that the M7 and M8 feeders are put to better use benefiting the larger St. Thomas community due to recent population growth. Yet Entegrus' statistics relied upon in support of this argument are cherry-picked over a period that is not an accurate predictor of population growth.⁴¹

72. There are a range of possible customer needs in the Applicant's existing service territory:

- a. No need at all – Given that there is no evidence of any outages or other distribution issues to date, it is entirely possible that the resources available to the Applicant are sufficient to satisfy its distribution needs;

³⁹ Evidence of the Intervenor, Formet Industries, Gustin Affidavit.

⁴⁰ Evidence of the Intervenor, Formet Industries, Gustin Affidavit at para 49.

⁴¹ For example, Entegrus refers to an annual growth rate of the St. Thomas area of 3.86% between 2017 and 2021. These population estimates are unreliable given that they concern a short period of time including once-in-a-century pandemic. See Entegrus SAA Application, pp 14-15 and Figure 5-2.

- b. A need under 5 MVA – In this scenario, the offer of 5 MVA of distribution made by Hydro One would have been sufficient to avoid the need for this application and/or only certain of the Applicant’s alternative scenarios are required;
 - c. A need in some amount above 5 MVA – In this scenario, it is merely possible that access to the M7/M8 feeders will satisfy the Applicant’s needs. The Board would require more information than it has to understand precisely what the distribution need is, and which customers and ratepayers will be contribute to both the M7/M8 feeders and other electricity distribution needs.
73. The Applicant’s statements like “It is a growing area”⁴² can be contrasted to the specific evidence put forward about the Customer’s load levels and the consequences of harm to its reliability.
74. Where the Board does have details about St. Thomas distribution requirements, they are insufficient to determine the impact of the order required. For example, in the course of responding to interrogatories, the Applicant identified that it has another customer that wishes to access MVA.⁴³ This demand was not described in the application and it is unclear where this request fits in the application or how it could be alternatively met.
75. Hydro One’s evidence mirrors this concern. It refers to Entegrus’ figures as a “distortion” of how the feeders could assist the Applicant. Hydro One asserts that the additional max design capacity that could be received from the Feeders would not address Entegrus’ forecast load growth and would still require further investments.⁴⁴
76. On the whole, although the Applicant argues that less expense arises from the order sought, the Board lacks real information about current and potential needs, and it is not at all clear that the

⁴² Entegrus Argument in Chief at para 41.

⁴³ Entegrus Interrogatory Responses, Response to Interrogatory 3-Formet-Entegrus-7, answered by Entegrus as “Formet-3”. The specific requested amount can be found in Entegrus’ confidential response to Formet-3.

⁴⁴ HONI Intervenor Evidence, p 17.

Customer's deprivation of bargained-for service solutions will adequately resolve whatever outstanding need exists.

(l) **The Status of Other Feeders Should Not Impose Cost on Formet**

77. Although not referred to in its Application, Entegrus has since focused on the availability of other resources such as the M11/M12 feeders at Edgeware Transformer Station and other interactions with Hydro One as relevant to this SAA application.⁴⁵ Based on these arguments, it appears that other resources may be available to assist the Applicant with its needs other than the Customer's dedicated feeders.
78. At the time that this unusual SAA application was brought, the Applicant seems to have lacked a complete understanding of the options available to meet its purported needs, even with respect to the Edgeware Transformer Station. The Applicant admits that it did not know whether other capacity at the Edgeware Transformer Station was available to Entegrus at the time its application was brought.⁴⁶
79. The Customer has not had any involvement in Hydro One and the Applicant's negotiations regarding other available resources to serve the St. Thomas community. Nonetheless, the Customer favours the use of any solution that avoids depriving the Customer of its bargained-for reliability and the shifting of unwarranted costs to the Customer.

(m) **Costs to the Customer that May Reasonably Be Anticipated if this Application is Granted**

80. Based on the Applicant's response to interrogatories and its Argument in Chief, it appears that the Customer will incur the following impacts should this Application be granted:
- a. A loss of its existing relationship with Hydro One;

⁴⁵ Entegrus Interrogatory Responses, Response to Interrogatory OEB Staff-4; Entegrus Argument in Chief at paras 43-51.

⁴⁶ Entegrus Argument in Chief at para 48.

- b. A loss of its bargained-for reliability arising from dedicated and redundant electric service;
- c. An increase in rates;⁴⁷
- d. A loss in predictability of its electricity bill;⁴⁸
- e. Increased risk to stability of electrical supply from the M7 and M8 feeders;⁴⁹
- f. Ambiguity about its participation in future “load planning discussions”;⁵⁰
- g. Costs related to the Customer’s own “backup solution”;⁵¹ and
- h. Assessment of standby charges or other equivalent fees in support of redundant supply.

3. The Legal Framework

(a) Preliminary Issue: The Letter Agreement has not been Frustrated

81. From the Customer’s perspective, the Letter Agreement is an important document because it reflects the Applicant’s involvement in an arrangement whereby the M7 and M8 are “dedicated feeders” servicing the Customer.

82. Entegrus now alleges that the Letter Agreement is “frustrated”. It does so because:

- a. If Entegrus transferred the feeders to Hydro One as contemplated in the Letter Agreement it could not argue that this is a “Long Term Load Transfer”; and

⁴⁷ This is a fair inference given the Applicant’s submission to the Board that the Customer receives a “sub-transmission rate”. See Entegrus Argument in Chief at para 119.

⁴⁸ The Applicant refers in its argument to changes in the rates paid by the Customer in the course of Entegrus’ 2026 rebase: Entegrus Argument in Chief at para 121.

⁴⁹ The Applicant has stated that the Customer will be switched to alternate feed(s) in the event that the M7 or M8 feeders experience an issue given that some of the capacity of these feeders would be made available to other customers of St. Thomas See Entegrus Argument in Chief at para 116.

⁵⁰ Entegrus Argument in Chief at para 54.

⁵¹ Entegrus Argument in Chief at para 115.

b. Entegrus is seeking to usurp feeders “dedicated” to the Customer for other purposes.

83. Entegrus’ frustration argument does not align with the legal concept of frustration.

84. Entegrus’ misunderstanding of the concept of frustration is evident by its Response to Interrogatory HONI-6(a):

In legal terms, the contract has been frustrated and can, *or should*, no longer be performed. Accordingly, Entegrus considers the terms of the 1997 Letter and Addendum null and void. [*emphasis added*]⁵²

85. A contract is frustrated when it can no longer be performed. A contract is not frustrated simply because one party does not want to perform it or does not think it should be performed.

86. The Letter Agreement remained in effect and was performed by the parties until, after receiving more than a million dollars, the Applicant refused to transfer ownership of the feeders to Hydro One.

87. The fact that the Letter Agreement was actually performed as contemplated after June 21, 2017 is irrefutable evidence that it was not frustrated by the OEB’s 2015 DSC amendments (EB-2015-0006), which were issued on December 21, 2015 and set a deadline of June 21, 2017 for implementation.

88. If the Letter Agreement had been frustrated by the DSC amendments, by definition **after June 21, 2017 any such performance would have been radically different from the performance originally contemplated**. Yet Entegrus and Hydro One both continued to perform all of their obligations exactly as undertaken under the Letter Agreement until at least December 2017 (when Entegrus first resisted complying with Hydro One’s exercise of its purchase option), and

⁵² Entegrus Interrogatory Responses, Response to Interrogatory HONI-6(a).

continued to comply with and perform all of their other obligations under the Letter Agreement (unrelated to the purchase option).

89. The fact that the Letter Agreement was performed as contemplated beyond the dates that the DSC amendments were issued and took effect is proof that they *could* be performed as contemplated after the DSC amendments and that no supervening event radically changed the obligations of the parties.
90. Even now, the Letter Agreement **can** still be performed:
- Hydro One can pay the remaining book value to Entegrus.
 - Entegrus can seek Board approval, or the Board pursuant to its own motion under s. 19(4) can determine whether to grant s. 86 approval.⁵³
 - The Board can grant s. 86 approval, whether pursuant to an application or on its own motion.
 - Entegrus can perform the contract by transferring the feeders to Hydro One.
91. Entegrus has made clear that it does not want to do these things, and it does not believe it should have to do these things. That is not frustration.
92. A party cannot self-induce frustration. The Alberta King's Bench decision relied upon by Entegrus as setting out the law of frustration⁵⁴ says:

Self-induced frustration does not terminate a contract, so that, for example, a party who fails to take proper steps to apply for an export licence cannot rely on the failure to obtain the licence as a frustrating event, and supervening impossibility that would have been avoided if the

⁵³ *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15 [*Ontario Energy Board Act*], sub-s 19(4): "The Board of its own motion may, and if so directed by the Minister under section 28 or otherwise shall, determine any matter that under this Act or the regulations it may upon an application determine and in so doing the Board has and may exercise the same powers as upon an application."

⁵⁴ Entegrus cites *Petrogas Processing Ltd. v Westcoast Transmission Co.*, 1988 CanLII 3462 (AB KB). See Entegrus Interrogatory Responses, Response to Interrogatory HONI-7(a).

party invoking it had not previously broken the contract will not ground a plea of frustration.

93. The Supreme Court of Canada has more recently addressed the law of contract frustration. It held that frustration of a contract requires “a radical change in the obligation” arising from a “supervening event”.⁵⁵
94. The Board can be assured that there was no radical change in the obligation or supervening event which frustrated the Letter Agreement because Entegrus itself continued to perform the contract
95. The Applicant relies on the direction to eliminate LTLTs made in 2015 as an intervening event that frustrated the Letter Agreement. Yet the Applicant continued to receive payments from Hydro One through to the end of 2017 and as recently as 2021 issued invoices related to the Letter Agreement.
96. Entegrus seeks to create self-induced frustration and the Board should not give effect to Entegrus’ arguments that revolve around frustration or its ownership of the M7 and M8 feeders.

(b) **Preliminary Issue: This Application is About Cost Allocation, Not LTLT**

97. This Application is an unusual SAA application. One of the reasons that the application is unusual is that the Applicant focuses on the argument that it will eliminate a Long Term Load Transfer when it is really about something simpler. The Applicant wishes to obtain use of the Customer’s dedicated feeders so that it does not have to spend resources on new customers.
98. The fact that this Application does not truly concern Long Term Load Transfers is borne out by one of the Applicant’s “Alternative Proposals”. The alternative proposal articulated in paragraph 125(a) of the Applicant’s Argument in Chief would maintain Entegrus as owner of the M7 and M8

⁵⁵ *Naylor Group Inc v. Ellis-Don Construction Ltd*, 2001 SCC 58 at paras 55-56.

feeders and Hydro One as service provider to the Customer. The purported Long Term Loan Transfer would remain.

99. The only difference between this alternative proposal and the existing scenario is that the dedicated feeders would cease to be dedicated, and Entegrus would “provide restricted allocation of feeder capacity to Hydro One, which would continue to serve the Customer”.
100. This alternative proposal is fatal to the Applicant’s argument that relief should be granted on the basis that it avoids Long Term Load Transfers.
101. When applying the general framework for this unusual SAA Application, it is important that the Board view this Application for what it is – an attempt to reduce Entegrus’ costs of new distribution at the expense of the Customer. Entegrus is clear about its desire to avoid costs of construction of new facilities. As discussed in section 2(m), however, the Customer will bear significant (as yet unquantified) costs if this Application is granted. As discussed below in section 3(f), economic efficiency is about more than shifting of costs.
102. In any event, the Board’s LTLT Direction does not mandate the outcome of this SAA Application. The Board has the right to consider, and is considering, the unusual circumstances brought forward in this SAA application to determine what relief is appropriate, if any.

(c) **The General Framework for SAA Applications**

103. An SAA is an amendment to Schedule 1 of a distributor’s licence, which is the part of the licence that defines the distributor’s service area. Section 74(1) of the *Ontario Energy Board Act, 1998*⁵⁶ allows the Board to amend a distributor’s licence if it considers the amendment to be “in the public

⁵⁶ *Ontario Energy Board Act*, s 74(1).

interest, having regard to the objectives of the Board and the purposes of the *Electricity Act, 1998*.⁵⁷

104. Principles previously considered in SAA Applications have included, among other things, economic efficiency,⁵⁸ customer preference,⁵⁹ quality of service⁶⁰ and reliability.⁶¹

(d) **The Customer's Preference is Maintenance of the Existing Relationship**

105. Customer preference is an important, but not overriding consideration when assessing the merits of an SAA.⁶² In this case, the Customer's preference is intertwined with issues of impacts on quality of service and reliability.

106. Entegrus has brought this unusual SAA application not for the purpose of providing better service to the Customer, but to pillage assets that the Customer has already indirectly paid for.

107. Although the evidence about rates from Entegrus and Hydro One varies, the Customer does not understand the following to not be disputed:

- a. In the absence of the use of the M7 and M8 feeders, the Customer may be put to indeterminate expense to arrange for its current service level;
- b. The redundant supply of electricity providing necessary reliability to the Customer, previously bargained for by Magna and relied upon by the Customer for twenty-five years, will be eliminated if this application is granted;
- c. With a number of contingencies, Entegrus may or may not grant unspecified rate mitigation to the Customer until the planned Entegrus 2026 Cost of Service review;

⁵⁷ Ontario Energy Board Decision and Order dated February 9, 2023, EB-2022-0234.

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² *Ibid.*

- d. The rate class that the Customer would be part of with Entegrus as of the 2026 Cost of Service Review has not been settled;
 - e. Entegrus argues that the Customer is paying “Sub-Transmission” charges and should be paying standby charges for use of the feeders that have been paid for;⁶³ and
 - f. Arrangements vis-à-vis the Customer will be “subject to future policy change”.⁶⁴
108. It is obvious from the foregoing that granting the SAA will impact the Customer’s costs and reliability.
109. The Customer has filed evidence about the immediate and downstream manufacturing impacts resulting from electricity outages. As a result, the Customer expects that unrecoverable costs will also increase indirectly due to the harm to service reliability.
110. The Customer’s preference is strongly against the granting of this application given the obvious and significant financial, reliability and service impacts on the Customer’s business.
111. The issue of transfer of customers to physical distributors over geographic distributors is best left for argument between Entegrus and Hydro One. However, the Customer’s preference is to remain a customer of Hydro One and have Hydro One own the asset. This preference has not changed since it was originally negotiated and agreed to by all three parties as part of the 1997 transactions.⁶⁵

(e) Quality of Service and Reliability Will be Negatively Impacted

⁶³ Entegrus Interrogatory Responses, Entegrus Interrogatory Responses, Response to 2-Formet-Entegrus, answered by Entegrus as “Formet-2” and 4-Formet-Entegrus-7, answered by Entegrus as “Formet-4”.

⁶⁴ Entegrus Interrogatory Responses, Response to 2-Formet-Entegrus, answered by Entegrus as “Formet-2”.

⁶⁵ Evidence of the Intervenor, Formet Industries, Gustin Affidavit.

112. The Customer has no material complaints about the service or reliability that it has received from Hydro One regarding the Plant. The Customer has only suffered one significant outage while being serviced by Hydro One.
113. There is evidence that the Customer's quality of service and reliability will be injured if this application is granted.
114. Entegrus admits that access to a single feeder impacts reliability when compared to multiple feeders.⁶⁶ Given that Entegrus seeks relief that may restrict the Customer to one feeder, the grant of this application will result in less reliability for the Customer.
115. Entegrus states that it could "conceptually" offer the same service to the Customer, but also says that it cannot guarantee an uninterrupted supply of electricity at all times.⁶⁷
116. Entegrus has offered (and modified during this proceeding) a proposed solution involving reclosers and tie-ins. The Customer has technical and practical concerns with this solution.
117. As a technical matter, Hydro One's evidence is that the installation of reclosers will not protect the Customer from power disturbances and would expose the Customer to faults within the Entegrus distribution system and increase the likelihood of experiencing more momentary disturbances which may lead to customer outages.⁶⁸
118. As a practical matter, the Customer is concerned that it will not receive the benefits of reclosers and tie-ins as suggested by the Applicant. Reclosers merely provide the Applicant with a choice regarding how it will supply electricity. This entire unusual SAA application is about shifting burden onto the Customer. The Customer has no confidence that it will receive electricity should there be an interruption to, or shortage of, electrical supply. Assurances sought in that regard have been

⁶⁶ Entegrus Interrogatory Responses, Response to Interrogatory Formet-6, p 31.

⁶⁷ Entegrus Interrogatory Responses, Response to Interrogatory Formet-5, p 29. This stance is notably different than the existing agreements between the parties which provide for consequences for electricity outages.

⁶⁸ HONI Intervenor Evidence, p 14.

rebuffed by the Applicant and the Customer will have no indemnification or recovery for the millions of dollars in losses it will incur from outages. This deficiency in service is not an acceptable risk for the Customer, its staff or its contractual counterparties.

(f) **Economic Efficiency is not Shifting of Cost**

119. The Applicant has received almost double the cost of the feeders through monthly payments from Hydro One and acknowledges that “Entegrus customers have not paid costs for the M7/M8 feeders”.⁶⁹ Notwithstanding, the Applicant argues that it should receive the use of the feeders going forward and receive additional payments from the Customer and others. On its face, this is not economic efficiency.

120. The Board has spoken about the importance of considering impacts on customers in the amendment area:

Service Area amendments should not result in the Board-mandated transfer of customers from one distributor to another. Such transfers should be the subject of bilateral arrangements between distributors, wherein all of the issues engaged by such transfers can be addressed. Such issues involve appropriate compensation for any assets stranded as a result of the arrangement. In this way, the interests of the customers of the surrendering distributor can be reasonably protected. An applicant should file evidence to demonstrate all the effects on customers in the amendment area.⁷⁰

121. The solution urged here by the Applicant does not “reasonably protect” the interests of the Customer, but expressly seeks to burden it.

122. This is not economically efficient. It is economic harm.

123. The Customer acknowledges the interdependence of the electricity system and that every customer’s interest must cede to system requirements where there is a conflict. That general

⁶⁹ Entegrus Interrogatory Responses, Response to Interrogatory OEB Staff-10.

⁷⁰ Ontario Energy Board Decision with Reasons, numbered RP-2003-0044 dated February 27, 2004 (“**RP-2003-0044**”) at para 267.

principle, however, does not mean that assets that have been paid for by one entity should be expropriated for others.

124. The Board's decision in RP-2003-0044 does not state that all assets must be redistributed to the broadest customer base. Indeed, the Board stated that:

Each participant has a right to expect that others engaged in the same system meet their respective costs, without subsidization or penalty. That is as true for new customers as it is for others.⁷¹

125. Entegrus complains about incurring "equivalent replacement costs" if it has to develop other feeder lines.⁷² If additional feeders are indeed necessary, it is economically efficient for the users of those lines to pay for them. That would be the very definition of those customers paying their respective costs without subsidization.

126. Instead, Entegrus acknowledges that it is seeking access to the dedicated feeders so that other customers, who did not pay for them, can have their needs met. One example relates to the St. Thomas customer from whom Entegrus recently received a request for capacity.⁷³ Principles of economic efficiency would see this customer pay towards the assets used to service it rather than have it receive the use of assets paid for by the Customer.

127. The Board's guidance is that existing customers ought not be prejudiced by new connections:

[T]he Board expects that the offer made to a potential connection customer will recognize the actual costs involved in completing the project, both the contribution in aid of construction, and any rate offering made. Both aspects of the connection transaction must reflect the true costs of connection and the provision of ongoing service to the connecting customer. **Existing customers of the connecting utility ought not to be subsidizing any connection, nor should their interests be prejudiced in any other manner.**⁷⁴ [emphasis added]

⁷¹ RP-2003-0044 at para 230.

⁷² Entegrus Interrogatory Responses, Response to Interrogatory OEB Staff-10.

⁷³ Entegrus Interrogatory Responses, Response to Interrogatory 3-Formet-Entegrus-7, answered by Entegrus as "Formet-3". The specific requested amount can be found in Entegrus' confidential response to Formet-3.

⁷⁴ RP-2003-0044 at para 291.

128. By asking the Board to order that the Customer's dedicated feeders be used to subsidize a connection with the new unnamed St. Thomas customer and others, the Applicant is expressly asking that the Customer be switched from one distributor to another, that it subsidize other customer connections and that its interest in reliability be prejudiced, all in conflict with the Board's decision in RP-2003-0044.
129. The Customer acknowledges that the Board retains the authority to transfer customers where it would serve the public interest. However, the Customer respectfully submits that the public interest is not served where safety, reliability and economic efficiency are not met.

(g) **Entegrus' Insufficient Evidence Regarding Economic Efficiency**

130. Entegrus was to provide sufficient information to the Board so that it can evaluate economic (cost) efficiency and engineering (technical) efficiency arising from this Application. This required Entegrus to indicate the long-term impacts of the application on reliability in the area to be served and on the ability of the system to meet growth potential in the area.⁷⁵
131. As this is a disputed SAA application, Entegrus was also required to disclose additional information about reliability of infrastructure, cost-efficient expansion and cost-efficient improvement of the area that is the subject of the SAA application and adjacent regions.⁷⁶
132. Despite these requirements, the Board lacks cogent evidence about the distribution needs of the St. Thomas area. Entegrus says that this application should be granted based on very general information about how the feeders may be used for other customers.

⁷⁵ Ontario Energy Board Staff Draft Proposal, Filing Requirements for SAA Applications, To be included as Chapter 7 of the Filing Requirements for Transmission and Distribution Applications, numbered EB-2006-0327, dated December 20, 2006, s 7.2.

⁷⁶ *Ibid*, s 7.2.1, (f),(g) and (h).

133. This poor quality of evidence regarding current and future needs permits the Applicant to argue that it requires the use of the M7 and M8 feeders for its service territory without being precise. This ambiguity is captured in statements such as:

Required incremental capacity can be obtained in whole or in part from the excess capacity on the M7 and M8 Feeders. This is a much less expensive proposition than obtaining net new capacity.

What is the required capacity? Will it be met in whole or in part? Much less expensive to whom (as certainly not for the Customer)?

134. In light of this unreliable information, the Customer delivered evidence and interrogatories to determine how neighbouring load requirements would impact Entegrus' needs. The only useful information provided by Entegrus in response was an acknowledgement that the new Volkswagen plant is expected to result in new area distribution requirements because of adjacent industry. Entegrus also disclosed that one existing unnamed customer requires a certain MVA.⁷⁷ Entegrus has not provided information about commitments made to this customer with respect to the additional MVA.
135. The Board is only left wondering what arrangements have been made with these other industrial customers and the extent to which they have been, or will be assured of guaranteed or dedicated electricity supply, load redundancy (with or without standby charges) or other incentives that could be relevant to the Board's consideration of this application. Squarely put, the Board cannot be assured that Entegrus is not seeking to usurp the reliability and redundancy that it contractually committed to attract Magna as an incentive to now attract new industry.

4. **Remedy Sought**

136. The Customer asks that this application be dismissed.

⁷⁷ Entegrus Interrogatory Responses, Response to Interrogatory 3-Formet-Entegrus-7, answered by Entegrus as "Formet-3". The specific requested amount can be found in Entegrus' confidential response to Formet-3.

137. In the alternative, the only scenario proposed by Entegrus that the Customer could support is the scenario presented in section 5.5.1 of the application. This scenario involves the sale of the M7 and M8 feeder lines by Entegrus to Hydro One. Entegrus would then upgrade its system in whatever fashion it deems appropriate. This remedy would maintain the reliability of the Plant for the foreseeable future. It is the scenario that all 3 parties bargained and contracted for in 1997.
138. Entegrus complains that it would have to spend \$1.7M in this scenario. It is no coincidence that this figure is similar to (i) the \$1.225M that Magna already paid to Hydro One (in 1997-2007 dollars) and (ii) the \$1.403M (in 1997-2017 dollars) that Hydro One already paid to Entegrus for the dedicated feeders that Entegrus now wants to take away. With the Customer and Hydro One having already paid about the equivalent of about \$1.7M (in 2023 dollars) to build these lines, Entegrus now wants to expropriate them for their own use, leaving the Customer and Hydro One to spend another \$1.7M if they want to recreate the dedicated feeds that they currently have.
139. The scenario presented in section 5.5.2 of the Application involves an allocation of 5 MW from the feeders for other uses. As discussed above, such an allocation would hinder the reliability of the Plant by eliminating available redundancy of electricity without a demonstrable benefit to the St. Thomas region. This proposal has never been canvassed with the Customer, and would be contrary to the original terms of the transaction on which Magna relied in siting its plant at St. Thomas and in agreeing to buy power exclusively from Hydro One over the last 20+ years at a price which included \$1.225M towards the capital and maintenance costs of the feeders.
140. The Customer also has concerns regarding the section 5.5.2 scenario due to the Customer's practical inability to ascertain load transmission levels and ensure that Entegrus' consumption is capped at 5 MW.
141. The scenario presented in section 5.5.3 of the Application involves an allocation of feeder capacity to Entegrus which is currently available to the Customer's Plant with an *undetermined* allocation

back to Hydro One. The Customer opposes this on the basis that the scope of the allocation is unclear, thereby eliminating the existing reliability of electricity supply to the Plant.

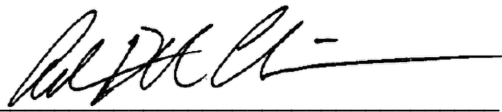
142. The scenario presented in section 5.5.4 of the Application involves Entegrus' installation of a tap in order to take power from M7 and M8 to serve other customers, while engaging in load planning discussions to maintain reliability. The conduct of "discussions" with the Customer does not provide adequate assurances that its reliability will be maintained. Attempts to reach an agreement in this matter at Board-ordered mediation have already failed. The Customer urges the Board to reject any solution that creates uncertainty and the possibility of future disputes as a result of its order.
143. The Customer respectfully requests that any order made by the Board include consideration of the unique commercial circumstances leading to the location of the Plant, the original commercial negotiations and contracts regarding the Plant and the significance of maintaining reliability in an industrial context where the loss of dedicated, redundant supply will lead to significant commercial harm.
144. The Customer views the issue of leave for approval of the transfer of the feeders from Entegrus to Hydro One pursuant to section 86(1)(b) as best resolved as between the Board, Entegrus and Hydro One, subject to the Customer's interests above. It can be resolved on the basis of an application by Entegrus or the Board's own motion. In any event, the order should not reach a finding that the Customer's interests are negatively impacted by "frustration".
145. Talk of the public interest as part of any order made must invoke the perspective of industrial electricity consumers in Ontario. In light of recent announcements touting Ontario as an attractive destination for manufacturers in the electric vehicle sector, including Volkswagen's potential \$7 billion plant in St. Thomas, Stellantis/LG's potential \$5 billion plant in Windsor, and the most recent \$700 million plant being sought for Windsor, it is more important than ever that investors be able to have faith that the electricity supply arrangements they are able to negotiate, and which are central

to their decision to locate in Ontario, will be respected and upheld by the utilities, the municipalities, the Province and the provincial energy regulator.

146. If it appeared to potential electric vehicle and battery manufacturers that the Board is able and willing to “frustrate” and overturn the intensely negotiated electricity supply arrangements that are so critical to their operations, whether by way of Board directive or through an SAA proceeding, it would send an unwelcome message that they cannot and should not rely on the specific electricity supply facilities and services that they contractually secured, and it could have a significant chilling effect on the prospects of Volkswagen, Stellantis, LG and others actually deciding to locate in Ontario, now and into the future.
147. The Board’s decision in this matter could therefore have significant impact on Ontario’s economic policy and fortunes for decades to come.
148. If the Board does grant an order approving this application in any form, the Customer asks that the order reflect the following two principles:
 1. The reservation of sufficient capacity to satisfy the needs of the Plant by ensuring redundant supply of the Customer’s anticipated peak load; and
 2. The Board order that, through rate mitigation or otherwise, the Customer’s rates payable to Entegrus and/or Hydro One for delivery of electricity in any future period, on an indefinite basis, result in delivery costs payable by the Customer for such period which do not exceed the delivery costs that the Customer would have paid to Hydro One for the same period and for the same load profile under Hydro One’s Sub-Transmission (ST) Rate Class (or equivalent Hydro One rate class if ST is cancelled or replaced) had the application not been granted, all as required by Section 6.5.4 of the DSC.

149. The challenges in enforcing these principles if the SAA application were to be granted – the required policing of Entegrus' load consumption or pricing offered to the Customer – provide good reason to dismiss this application outright.
150. Lastly, the Customer respectfully reminds the Board that it held in Procedural Order No. 2 that Formet Industries is eligible to apply for an award of costs under the Board's *Practice Direction on Costs Awards*. The Customer respectfully requests that the Board include a date by which the Customer may file its application for costs following the issuance of its order in this application.

All of which is respectfully submitted this 25th day of August, 2023.

Per 

Mike Richmond and Adam Chisholm
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Counsel to the Intervenor, Formet Industries