



BY EMAIL and RESS

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2300 Yonge Street
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March 8, 2024
Our File: EB20230039

Attn: Nancy Marconi, Registrar

Dear Ms. Marconi:

Re: EB-2023-0039 – NT Power 2024 IRM and ICM – SEC Submissions

We are counsel to the School Energy Coalition (“SEC”). Pursuant to Procedural Order No. 1, these are SEC’s submissions on the request by Newmarket-Tay Power Distribution (“NT Power”), a) to correct errors in balances in two Retail Settlement Variance Accounts (“RSVA”) that were previously approved and cleared on a final basis by the OEB, and b) approval of an Incremental Capital Module (“ICM”).

Retroactive Adjustments to RSVA 1588 and 1589

NT Power seeks to recover \$768,874 from customers related to an accounting error it made with respect to its previously disposed of 2020 balances of RSVA Accounts 1588 and 1589. Those balances were previously approved and disposed of on a final basis as part of NT Power’s 2022 IRM application.

While the application and interrogatory responses discuss in detail the accounting error, as SEC understands it, NT Power recorded an accrued credit amount of \$768,874 to Accounts 1588 and 1589, which it had expected to be realized in 2021. However, that amount had been included in a separate entry as part of a 2020 IESO invoice.¹ NT Power did not realize the issue until it prepared its 2023 IRM application, which was a year after it had cleared the previous balances on a final basis.²

The OEB’s policy regarding error correction on pass-through accounts cleared on a final basis is that it will “determine on a case-by-case basis whether to make a retroactive adjustment based on the particular circumstances of each case.”³ SEC recognizes that the error was unintentional, but it was

¹ Application, p.17-19

² Application, p.17-19

³ [OEB Letter: Re: Adjustments to Correct for Errors in Electricity Distributor “Pass-Through” Variance Accounts After Disposition \(October 31, 2019\)](#), p.2

entirely within the control of the company. An error that it should have caught not just at the time, but long before it sought final disposition.

The OEB's policy allows for retroactive adjustments, which is a departure from a fundamental tenet of ratemaking, the principle against retroactive ratemaking. As the Board has previously stated, "the principles of certainty and finality are a necessary component of effective rate regulation."⁴ Consumers make consumption decisions based on the price of electricity at any given time. The bill impacts to collect the proposed adjustment, especially for GS>50 customers, are significant.⁵ Recovery of past amounts, as NT Power seeks here, raise intergenerational equity concerns.

SEC submits that NT Power should bear at least some of the cost of their error in recognition of the cost to customers because of its error. It is the utility that has control over its own books and should be held responsible for its own errors. The OEB recently stated in the context of denying full recovery to GrandBridge Energy with respect to a similar retroactive adjustment to a Group 1 pass-through account, that the "cost to shareholders is in recognition of the responsibility the utility bears to ensure its customers are not unduly penalized for management errors."⁶ A similar partial disallowance was made by the OEB in application for a retroactive adjustment by Synergy North.⁷ The basis for the disallowance was that it would be unfair to require customers, who were not the same as those who had received the credit in error, to be required to pay it back after the amount had been disposed on a final basis.⁸ A similar logic is applicable to the NT Power request.

SEC submits a 50% reduction of the principal amount should be ordered and reflects an appropriate balance of the harm caused by the retroactive adjustment to customers, and the financial impact of a disallowance to a utility of NT Power's size.

Further, as the OEB has previously done⁹, and as referenced as an option in the OEB's letter on retroactive adjustment¹⁰, it should deny the request to recover any of the \$67,584 in interest related to the principal adjustment.¹¹ To do so would fairly prevent a "utility from earning interest on its own error."¹²

Incremental Capital Module

NT Power seeks approval for an ICM with respect to its Yonge Street Road Widening Project (the "Project"), which is forecasted to cost, after capital contributions, \$9,521,582.¹³ The Project is non-

⁴ [Decision and Rate Order \(EB-2013-0119\), March 13, 2014](#), p.8; [Decision and Order \(EB-2013-0022\), April 25, 2013](#), p.10

⁵ Interrogatory Response SEC-1(c)

⁶ [Decision and Order \(EB-2022-0305\), June 15, 2023](#), p.8

⁷ [Decision and Order \(EB-2023-0106\), July 6, 2023](#), p.12

⁸ [Decision and Order \(EB-2023-0106\), July 6, 2023](#), p.12-13

⁹ [Decision and Order \(EB-2022-0305\), June 15, 2023](#), p.8

¹⁰ [OEB Letter: Re: Adjustments to Correct for Errors in Electricity Distributor "Pass-Through" Variance Accounts After Disposition \(October 31, 2019\)](#), p.2

¹¹ Interrogatory Response SEC-1(a)

¹² [Decision and Order \(EB-2022-0305\), June 15, 2023](#), p.8; Also see [Decision and Order \(EB-2023-0106\), July 6, 2023](#), p.13

¹³ Application, p.36

discretionary as it involves the relocation of distribution assets as requested by the relevant road authority (York Region) pursuant to the *Public Service Work on Highway Act*.¹⁴

SEC does not dispute the Project's need for prudence. However, SEC does have an issue with respect to materiality criteria, specifically NT Power's proposal to modify existing ICM policy regarding the materiality threshold calculation.

NT Power proposes to use the geometric mean of inflation values from its last rebasing application as the inflation factor in its ICM materiality threshold formula, rather than the OEB's approved inflation factor (i.e. IPI) of 4.8%, as required by OEB policy.¹⁵ It has proposed this deviation from OEB policy on the basis that the use of the most recent OEB-approved inflation factor has a material impact on the threshold value and does not accurately reflect what it can fund from base rates.¹⁶

A similar proposal was recently made by Alectra, which, like NT Power, had not rebased in a long time, as part of their application for a 2024 ICM. The OEB, in its decision, rejected the request. In denying Alectra's proposal to use the geometric mean for the inflation factor, the OEB noted that the "inflation factor is but one parameter in a complex formula" and that it was "not prepared to alter a single parameter in isolation."¹⁷ SEC agrees with the OEB's findings, and this was the position it took in that proceeding.

Notwithstanding those findings, the OEB did provide what it recognizes as an "exceptional remedy in these specific circumstances" and removed the required materiality threshold entirely.¹⁸ In doing so it specifically said that the deviation from OEB policy in that case was "not precedential in nature and is furtherance of the statutory objective of the OEB to protect the interests of consumers with respect to prices and the adequacy, reliability, and quality of electricity service."¹⁹

In Alectra, the OEB found exceptional circumstance since the application of the 2024 OEB Inflation Factor resulted in a materiality threshold that would have eliminated all ICM funding.²⁰ For NT Power, this is not the case. It would still be eligible to recover \$8,075,256 of the total forecast project costs of \$9,421,582, resulting in a revenue requirement of 13% or \$101,835 less than it seeks.²¹ This clearly does not rise to the level that would require any adjustment to the ICM policy.

SEC submits the OEB should deny NT Power's proposal to modify the materiality threshold calculation and require it to use the OEB-approved 4.8% inflation factor.

¹⁴ Application, p.37-39

¹⁵ [OEB Letter Re: 2024 Inflation Parameters, June 29, 2023](#)

¹⁶ Application, p.35

¹⁷ [Decision and Order \(EB-2023-0004\), February 13, 2024](#), p.10

¹⁸ [Decision and Order \(EB-2023-0004\), February 13, 2024](#), p.11

¹⁹ [Decision and Order \(EB-2023-0004\), February 13, 2024](#), p.11

²⁰ [Decision and Order \(EB-2023-0004\), February 13, 2024](#), p.10

²¹ Interrogatory Response Staff-2, Table 2.4



Shepherd Rubenstein

Yours very truly,
Shepherd Rubenstein P.C.

Mark Rubenstein

cc: Brian McKay, SEC (by email)
Applicant and intervenors (by email)