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BY EMAIL

October 23, 2024

Ms. Nancy Marconi
Registrar
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4
Registrar@oeb.ca

Dear Ms. Marconi:

**Re: Ontario Energy Board (OEB) Staff Submission
Algoma Power Inc.
2025 Cost of Service Application
OEB File Number: EB-2024-0007**

Please find attached OEB staff's submission on the disposition of the commodity accounts 1588 and 1589 and Issue 6.2 in the above referenced proceeding, pursuant to the direction provided in the Procedural Order No. 2 dated September 27, 2024.

Yours truly,

Birgit Armstrong
Senior Advisor – Electricity Distribution Rates

Encl.

cc: All parties in EB-2024-0007



ONTARIO ENERGY BOARD

OEB Staff Submission on Issue 6.2

Algoma Power Inc.

Cost of Service Application

EB-2024-0007

October 23, 2024

Introduction

Algoma Power Inc. (Algoma Power) filed a distribution rate application with the Ontario Energy Board (OEB) on June 3, 2024, under section 78 of the *Ontario Energy Board Act, 1998*, seeking approval for changes to its electricity distribution rates to be effective January 1, 2025.

On August 2, 2024, the OEB issued a decision on the Issues List. As part of this decision, the OEB excluded the disposition of the commodity variance accounts 1588 and 1589 and Algoma Power's request to require the IESO to settle past Class A submission (Issue 6.2), from the set of issues eligible for settlement. The OEB noted that it would hear these issues by way of written hearing after the settlement conference.

This is OEB staff's submission on Issue 6.2, including the disposition of the commodity accounts 1588 and 1589 and Algoma Power's request for an order requiring the IESO to settle past Class A amounts beyond the two-year limitation period.

For the reasons that follow, OEB staff submits that the requested order should be granted but only in part. Algoma Power should be allowed to recover only 50% of the amount of its error in respect of May 2021, which is calculated as approximately \$173,131.¹ Algoma Power (and not its customers) should be required to absorb the impact of the remaining 50% in respect of May 2021, and for the entire (much smaller) amounts in respect of the other months in 2021 and 2022 where it made errors and for which Algoma Power has already proposed to absorb.

¹ May Class A consumption error of 3,445,387 kWh multiplied by May 2021 GA rate of 0.1005 multiplied by 50%. The IESO is to confirm the exact amount with Algoma Power.

Background

Accounts 1588 and 1589 were last disposed of in Algoma Power's 2022 IRM application² for the 2020 balances. In its 2023³ and 2024⁴ IRM applications, Algoma Power withdrew the request for the disposition of Accounts 1588 and 1589. No explanation of drivers for high variances in both accounts could be provided at the time due to the utility's ongoing investigation. In its 2024 IRM proceeding, Algoma Power stated that it had engaged a third-party consulting firm (a consulting firm affiliated with Milton Hydro) in October 2023 to assist with the investigation.⁵

In the current proceeding, Algoma Power stated that the consulting firm has completed a two-stage investigation. Algoma Power attached the reports for both stages in Exhibit 9.⁶ The first stage of the engagement was conducted to review the reasonability of out-of-period Principal Adjustments and the General Ledgers (GLs) in Accounts 1588 and 1589. The Stage 1 report was issued on December 21, 2023. The second stage was conducted to review the microFit/Fit commodity pass-through transactions, RPP settlement claims calculations, commodity payments to the Independent Electricity System Operator (IESO), and supporting information relating to the 2021 and 2022 settlement claims related to the commodity pass-through account balances. The Stage 2 report was issued on March 18, 2024.

The Stage 2 report updated the list of principal adjustments identified in the first stage of the engagement. The principal adjustments are reflected in Algoma Power's 2025 GA Analysis Workform and the DVA Continuity Schedule filed as part of the current proceeding. The adjusted account balances of these two accounts for 2021 and 2022 meet the OEB's threshold tests for Account 1588 and Account 1589.

Table 12 in the Stage 2 report reviewed the Class A consumptions in all months of 2021 and 2022 and identified a total of eight months where Algoma Power had made errors in reporting its Class A consumption as part of its monthly reporting to the IESO. Out of the eight months, Algoma Power requests the resubmission of two months' Class A consumption errors (May 2021 and January 2022).

Accordingly, Algoma Power made credit adjustments in Accounts 1588 and 1589, based on the quantification provided in the Stage 2 report: a credit adjustment/recovery of \$339,087 is estimated for May 2021 Class A consumption error and a credit adjustment/recovery of \$19,117 is estimated for January 2022. Algoma Power does not request corrections for the other six months due to their insignificant impact, which

² EB-2021-0006

³ EB-2022-0014

⁴ EB-2023-0005

⁵ Interrogatory Responses, 9-Staff-71 a)

⁶ Exhibit 9, Appendix 9-C: Stage One Engagement Report, Appendix 9-D: Stage Two Engagement Report

amount to a total estimated overpayment of \$19,744⁷ to the IESO. In its response to an OEB staff interrogatory, Algoma Power stated that “it is open to not resubmitting the January 2022 Class A value and instead completing a further RPP settlements recalculation on the basis that Class B calculated rate for settlements calculation purposes will be slightly higher”.⁸

Algoma Power also stated that upon receiving the Stage 2 report in March 2024, which identified the Class A consumption error, it contacted the IESO requesting resubmission of the Class A load information for May 2021 and January 2022. However, the IESO informed Algoma Power that the re-submission of Class A load information would not be accepted as the two months in question were outside the two-year limitation period.⁹

Two-Year Limitation Period

In 2021 a two-year limitation period for certain IESO settlements was added to the *Electricity Act, 1998*. This provision – section 36.1.1 – was proclaimed into force on January 1, 2022. The limitation period only applies to settlements that have been prescribed by regulation.

On July 1, 2023, a Limitation Periods Regulation (O. Reg. 153/23) was made under the *Electricity Act, 1998*. This specifies the types of settlements that are captured by the two-year limitation period. The list includes settlements in respect of the Global Adjustment (but not in respect of the RPP).¹⁰

Section 36.1.1 provides the OEB with the ability to require the resettlement of matters falling outside the two-year limitation period. In particular, subsection (7) says:

(7) Despite subsection (1), the IESO shall not be restricted from making or receiving any payment or adjustment of any amount to or from a market participant, a consumer, an entity or a person in respect of an entitlement or a specified charge to which that subsection applies where such payment or adjustment results from,

(a) any form of compliance or enforcement activity, determination, ruling or decision arising under the market rules, including the issuance of any financial penalty or other sanction under the market rules or the making or adjusting of amounts paid or payable under the market rules or that are

⁷ \$19,744 is calculated as the total impact of the GA over/under charge from the Class A errors in January 2021 of \$1652 overcharge, February 2022 of 8,284 overcharge, June 2022 of \$15,329 overcharge, September 2022 of \$545 undercharge, November 2022 of \$1,174 overcharge, and December 2022 of \$6,150 undercharge. These figures are taken from Table 12 and Table 13 of the Stage 2 report.

⁸ 9-Staff-71 d).

⁹ 9-Staff-71 a)

¹⁰ At the same time, a two-year limitation period was added to the Global Adjustment Regulation (O. Reg. 429/04). It provides that in the event of a conflict with a limitation period under section 36.1.1 of the *Electricity Act, 1998*, the longer limitation period prevails.

based on a payment or entitlement mentioned in subsection (1);

(b) a decision, an order or a direction of the Board in respect of a variance account;

(c) any form of compliance or enforcement activity, determination, direction, decision or order of the Board or an assurance of voluntary compliance given to the Board under section 112.7 of the Ontario Energy Board Act, 1998;

(d) a decision or an order of a court arising from a matter mentioned in clause (b) or (c);

(e) an award, an order, a decision, a ruling or a determination provided by a court, the Board, a tribunal or an arbitrator that relates to a compliance or enforcement activity undertaken by the IESO, including any agreement providing for the resolution of a matter entered into in the context of such proceedings; or

(f) with respect to any matters that are not referred to in clauses (b), (c), (d) and (e), an award, an order, a decision, a ruling or a determination provided by the Board, a court, a tribunal other than the Board or an arbitrator, where the proceedings were initiated in the manner provided for in the regulations, and before the limitation period provided for in the regulations, if any. [Emphasis added.]

In this application, Algoma Power asks the OEB to make an order under paragraph 36.1.1(7)(b) requiring the IESO to reimburse it for the GA overpayment for May 2021 and January 2022. In response to a staff interrogatory, Algoma provided a draft order to be directed to the IESO.¹¹

Algoma Power's Proposal for the Class A Error and Account 1588 and 1589 Balances

In its response to interrogatories, Algoma Power has provided the settlement true-ups for the Class A consumption errors for May 2021 and January 2022 and confirmed that the true-up adjustments have been reflected in Accounts 1588 and 1589's balances requested for disposition. The true-up adjustments were made on the assumption that the OEB will order the IESO to correct the Class A consumption errors.¹²

¹¹ 9-Staff-71 b).

¹² 9-Staff-71 c) and e)

Table 1: Algoma Power Reported Principal Adjustment Reflecting the Proposed Settlement True-Ups

| Principal Adjustments Reported in GA Analysis Workform | 1588 | 1589 | Settlement True-Ups Subject to the Two-year Limitation |
|--|------------------|------------------|--|
| CT 148 Recalculated Settlement True-up for 2021 (May 2021) | (251,633) | (87,454) | (339,087) |
| CT 148 Recalculated Settlement True-up for 2022 (January 2022) | 271 | (19,388) | (19,117) |
| Total | (251,362) | (106,842) | (358,204) |

Algoma Power states that the credit amount of \$251,262 represents the receivable from the IESO related to the RPP portion of the Class A consumption error and has reduced account 1588's balance as at December 2022 in this proceeding. The credit amount of \$106,842 represents the receivable from the IESO related to the Non-RPP portion of the Class A consumption error and has reduced the Account 1589 balance in this proceeding. Both adjustment entries have been recorded on the assumption that the OEB will order the resubmission of two month's true-ups for the Class A consumption error and that the IESO would make a payment of \$358,204 to Algoma Power.

Algoma Power proposes the resubmission of Class A consumptions for May 2021 and January 2022 to keep Algoma Power and its customers whole, given the material impact. The consumption data submitted for Class A for a particular period have a direct impact on the basis of the Class B consumption that are to be billed for that same period, and the Class B amounts billed are used directly in the RPP settlements calculation process.¹³

Algoma Power states that this proposal requires the OEB to issue an order for the IESO to make an exception to the regulation.

Specifically, Algoma Power requests OEB to issue an order requiring the IESO to:

- a) accept the proposed adjustments to Algoma Power's Class A values for both May 2021 and January 2022 as set out in this application in furtherance of the final disposition of Algoma Power's 1588 and 1589 variance accounts, and
- b) make payments to Algoma Power in accordance with those adjustments so that Algoma Power may dispose of those variance accounts on a final basis.

¹³ Interrogatory Responses, 9-Staff-71 a)

Algoma Power does not request the other six months' Class A consumption errors in 2021 and 2022 which are detailed in the table below:

Table 2: Summary of Class A Consumption Error in 2021 and 2022¹⁴

| Month | Class A Consumption Error (kWh) | Estimated Adjustment Amount \$ | |
|---|---------------------------------|--------------------------------|----------|
| January 2021 | (19,912) | \$ (1,652) | |
| May 2021 | (3,445,387) | \$ (339,087) | A |
| January 2022 | (437,136) | \$ (19,117) | A |
| February 2022 | (157,919) | \$ (8,284) | |
| June 2022 | (194,829) | \$ (15,329) | |
| September 2022 | 16,803 | \$ 545 | |
| November 2022 | (16,803) | \$ (1,174) | |
| December 2022 | 179,466 | \$ 6,150 | |
| Total | (4,075,717) | (377,948) | |
| Less: | | | |
| Request Class A refiling (Sum of May 2021 and Jan 2022) | (3,882,523) | \$ (358,204) | Sum of A |
| Forgone Class A filings | (193,194) | \$ (19,744) | |

*(Compiled from Table 12 and Table 13 of Stage 2 report)

Algoma Power further requests that this OEB order be issued in conjunction with its request for disposition of the 2021 and 2022 account balances in Accounts 1588 and 1589 on a final basis.

In its response to interrogatories, Algoma Power has confirmed that the internal review of the 2023 activity in these two accounts has not been completed. Therefore, Algoma Power requests a deferral of the request for disposition of the 2023 balances to its next rate proceeding.¹⁵

OEB staff notes that the consultant's Stage 2 Report includes one mistake in its

¹⁴ Compiled from Table 12 and Table 13 of Stage 2 report

¹⁵ Interrogatory Responses, 9-Staff-71 h)

calculation regarding the quantification of the Class A consumption error in May 2021:

Table 3: Errors in the Quantification of the Class A Consumption Correction

| | Class A - Original reporting | Class A – Correct | Variance (kWh) | GA rate (\$/kWh) | Variance \$ |
|---|---|------------------------------|---------------------------|-----------------------------|--------------------|
| Algoma Power - May 2021 | 4,496,299 | 7,941,686 | 3,445,387 | -0.09842 | (\$339,087) |
| May 2021 - OEB Staff Calculation | 4,496,299 | 7,941,686 | 3,445,387 | -0.1005 | (\$346,261) |
| | | | | | (\$7,174) |

As noted in table above, the quantification for the May 2021 Class A consumption error is calculated incorrectly by \$7,174 because the GA rate used to calculate the dollar impact of May 2021 Class A error was the Class B GA first estimate rate posted by the IESO, instead of the actual GA rate for May 2021 which is 0.1005 \$/kWh. OEB staff reviewed all other months' GA rates and did not note any other discrepancies. This mistake would not change the overcharge amount significantly.

Furthermore, the Stage 2 Report indicates a number of systemic issues and suggests that Algoma Power address these issues in a rate proceeding. These issues include:

- a systemic issue relating to utilizing the correct Class A customer kWh consumption volumes
- issues relating to alignment of microFit/Fit data used with calendar month to which it relates for CT 142 RPP Settlements
- Ensure correct data gathered and utilized for embedded generation kWh volumes reported to the IESO

Algoma Power did not address these systemic issues in the current proceeding.

OEB Staff Submission

Submission on the Class A Resubmissions to the IESO

This is the first application where a utility has asked the OEB to make an order requiring the IESO to resettle an amount outside the new two-year limitation period.

Neither section 36.1.1 nor the Limitation Periods Regulation set out any criteria for the OEB to apply in considering whether to require an out-of-period payment from or to the IESO. On its face, the OEB's discretion is broad.

In this submission, OEB staff outlines some principles to help guide the exercise of that discretion.

In OEB staff's view, a useful starting point is the OEB's policy on adjustments to correct pass-through variances that have already been cleared by a final order of the OEB, as articulated in the OEB's [October 31, 2019 letter](#). That letter sets out an approach to dealing with requests to make retroactive adjustments in the event an error is discovered after final clearance of the pass-through account balance. The "problem" the letter addresses is when to make exceptions to the general rule against retroactive rate-making. That problem is, OEB staff submits, analogous to the problem of when to make exceptions to the limitation period.

The letter says:

*Where an accounting or other error is discovered after the balance in one of the above-listed variance accounts has been cleared by a final order of the OEB, the OEB will determine on a **case-by-case basis** whether to make a retroactive adjustment based on the particular circumstances of each case, including factors such as:*

- ***whether the error was within the control of the distributor***
- ***the frequency with which the distributor has made the same error***
- ***failure to follow guidance provided by the OEB***
- ***the degree to which other distributors are making similar errors***

*Consistent with the OEB's past practice, an **asymmetrical approach** to the correction of the error may be appropriate. For example, if a distributor repeats an error, and if correcting the error is solely to the benefit of the distributor, the OEB may not approve part or all of the correction and of any associated carrying charges. [Emphasis added; footnote omitted.]*

OEB staff submits that a case-by-case approach is appropriate for considering requests for the resettlement of amounts falling outside the two-year limitation period. The

reasons for – and implications of – missing the two-year deadline may be varied; inflexible rules may work counter to the objective of setting just and reasonable rates.

Applying the four principles listed in the 2019 letter to the matter at hand, OEB staff submits that they generally weigh against granting Algoma Power's requested relief:

1. Algoma Power was in control of the reporting errors. Each month, electricity distributors are required to report Class A customer kWh consumption volumes to the IESO. OEB staff is of the view that this is a straightforward exercise. Algoma Power did not provide the reasons for its Class A consumption errors in 2021 and 2022.
2. The Stage 2 Report states that "it appears that there may potentially be a systemic issue relating to utilizing the correct Class A customer kWh consumption volumes".¹⁶
3. There is no specific OEB guidance regarding the reporting of settlement Class A consumption reporting; however, in OEB staff's view, none is required – again, this should be a straightforward matter of reporting actual consumption values.
4. It would appear that reporting errors of this type are uncommon but not unprecedented. In London Hydro's 2024 IRM proceeding, the OEB did approve London Hydro's requested retroactive accounting adjustments in the pass-through variance accounts after London Hydro resubmitted the Class A volumes and embedded generation volumes corrections with the IESO. London Hydro revised the submissions related to the embedded generation and Class A consumption from 2015 to 2022 with the IESO and received the related credits for the relevant commodity DVAs, prior to filing its 2024 IRM application.¹⁷ The limitation period was not at issue in that case since the resubmissions with the IESO in that case occurred before the effective date of the Regulation.

An assessment of these four factors does not support Algoma Power's request for an exception to the limitation period.

In addition to the principles articulated in the 2019 letter (which clearly were not meant to be an exhaustive list), OEB staff submits that one other factor may be relevant in the current case and others like it.

What is the magnitude of the proposed adjustment and its financial impact on the distributor? As a result of its error, Algoma Power was overcharged for Class B GA charges on its IESO invoices, leaving it out-of-pocket for approximately \$358,204. That is not an insignificant amount for a small utility. Moreover, Algoma Power's cash balance has significantly decreased from \$1,894k as at 2022 year end to \$122k as at 2023 year end.¹⁸ On the other hand, it represents only 0.7% of the deemed equity

¹⁶ Stage 2 Engagement Report, page 14.

¹⁷ EB-2023-0037, Decision and Order, April 23, 2024, pages 8-11

¹⁸ Exhibit 1, Attachment 1-G, 2023 Audited Financial Statements.

approved in its last rebasing application.¹⁹ Algoma Power's 2021 and 2022 achieved ROEs were 9.38% and 10.53% respectively, which exceeded the deemed ROE of 8.52%. OEB staff submits that if the amount of \$358,204 were to be denied Algoma Power would still be in an over-earn position relative to the deemed ROE. So, while the \$358,204 could be viewed as a substantial amount, the denial of recovery would not affect Algoma Power's ability to earn a fair return. OEB staff estimates that if the OEB approved OEB staff's recommendation to deny 50% of the request, Algoma Power would write off an amount equal to approximately 3% of its net income for 2023, not including the additional, smaller amounts it has already proposed to write off. Algoma Power may wish to confirm this in its reply submission.

Ultimately distributors are responsible for administering their commodity pass-through accounts, including the accuracy of the information they report to the IESO, and bear the risk of any errors they make. That concept is what underpins the 2019 letter. While the *Electricity Act, 1998* provides the OEB with some discretion to grant exceptions to the limitation period, exceptions should in OEB staff's view be exceptional and should only be granted where fairness demands them. Setting the bar too low for granting exceptions would risk undermining the purposes of the statutory limitation period, which includes the need for finality in settlements.

That said, the financial impact to Algoma Power of having to absorb the entire amount would not be insignificant. On balance, OEB staff supports a middle ground approach in this case. Algoma Power has already indicated that it is prepared to forgo the amounts related to the months other than May 2021, which is the month where the largest error occurred. In other words, it is willing to absorb \$38,861 (comprised of \$19,117 for January 2022 plus the other small amounts totaling \$19,744 for six other months that were not claimed in this application). That leaves \$346,261, the May 2021 amount as corrected for the calculation error discussed above. OEB staff submits that the IESO should be required to repay half of that amount to Algoma Power from its May 2021 Class A consumption error, that is, \$173,131.

This midway approach is in OEB staff's view consistent with the spirit of the 2019 letter. It recognizes that distributors are responsible for ensuring commodity settlements but that in some cases bearing the entire financial consequence of an error (from which the distributor did not benefit) may be unfair.

Submission on Algoma's Request for the Final Disposition of DVA Balances

In this proceeding, Algoma Power requested the final disposition of Account 1588 and 1589 balances as at 2022 year end, in conjunction with its proposal for an order requiring resettlement with the IESO.

In responding to an OEB staff interrogatory, Algoma Power provided an alternative proposal, stating that if the OEB does not allow for the exception of the Class A

consumption error, it would adjust the settlement for Account 1588 for a debit amount of \$282,080 and record a debit adjustment of \$76,126 in Account 1589 so Algoma Power is held whole. OEB staff is not sure how these numbers are derived. OEB staff notes that the RPP settlements are not subject to the two-year limitation period. However, in this case, Algoma should not ask the IESO to pay for the other half of the May 2021 Class A consumption error. Algoma Power's non-RPP customers should not be responsible for an error made which was in the control of the utility.

OEB staff is of the view that Algoma Power should not be allowed to pass on any of the cost of its Class A consumption errors to its customers. In other words, the amounts that Algoma Power does not recover from the IESO should not be charged to Algoma Power customers.

Algoma Power should make credit entries to reduce the overcharged GA costs that are currently sitting in Accounts 1588 and 1589. Although Algoma Power would, under OEB staff's suggested approach, recover 50% of its May 2021 Class A consumption error which is \$173,131, it should record 100% of the error for a credit amount of \$346,261 in Accounts 1588 and 1589 (prorated based on RPP and Non-RPP consumptions in the month). In addition, Algoma Power should make additional credit entries in Account 1588 and Account 1589 (prorated based on RPP and Non-RPP consumptions in the month) for all other months in 2021 and 2022 that it had forgone the resubmissions to the IESO (noted above as approximately \$38,000).

OEB staff submits that Algoma Power's 2021 and 2022 balances for Accounts 1588 and 1589 can be disposed on a final basis in this proceeding, subject to the recommendations set out by OEB staff in this submission. If the OEB agrees with OEB staff's suggested approach, it could direct Algoma Power to provide an updated DVA continuity schedule for the OEB to confirm implementation details before issuing a final rate order.

~All of which is respectfully submitted~