



BY EMAIL and RESS

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2300 Yonge Street
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October 22, 2024
Our File: EB20240007

Attn: Nancy Marconi, Registrar

Dear Ms. Marconi:

Re: EB-2024-0007 – Algoma Power Inc. – SEC Submission

We are counsel to the School Energy Coalition ("SEC"). Pursuant to the Decision on Issues List and Procedural Order No. 2, this is SEC's submission regarding the request by Algoma Power Inc. ("Algoma Power") for the disposition of the balances in Retail Settlement Variance Accounts ("RSVA") 1588 and 1589, including the request for an order under section 36.1.1 of the *Electricity Act*, requiring the Independent Electricity System Operator ("IESO") to settle past Class A submissions.

Algoma Power has asked the Ontario Energy Board ("OEB") to approve its request to refile the consumption data submitted to the IESO for two months, resulting in revised balances for RSVA 1588 and 1589 in 2021 and 2022, and to order the IESO to pay Algoma Power the amount of \$358,204.¹ Doing so would require the OEB to essentially waive the limitation period set by regulation for making changes to submissions to the IESO under section 36.1.1(7)(b) of the *Electricity Act*.

SEC submits that the OEB should not approve Algoma Power's request, at this time, as it has not provided a rationale for why the general two-year limitations period should not apply, and why in the current circumstance, the application of the prohibition on the adjustment is unjust.

Furthermore, the OEB should explicitly reject Algoma Power's position that, if the OEB does not grant its request, it will seek to collect the amounts from its customers.² Algoma Power should bear the costs of its errors, which should not be passed on to its customers.

Limitation Provisions

The OEB has the authority to order the IESO to pay amounts to Algoma Power, notwithstanding the general limitation provisions under the *Electricity Act* and O. Reg. 153/23, which came into effect on

¹ Exhibit 9, p.21; Interrogatory Response 9-Staff-71b

² Interrogatory Response 9-Staff-71g

July 1, 2023.³

The intent of the general two-year limitation provision is to restrict when the IESO can make or receive a payment, or make any adjustment to amounts previously paid. It ensures the finality of the settlement process. This protects, both the specific customer (or market participant) at issue, as well as all Ontario customers, from whom the IESO ultimately recovers its costs. As the Minister responsible for the underlying legislative amendments said in the legislature, the proposed limitation provision is intended to “provide greater financial certainty, improve customer experiences, and reduce the administrative burden on market participants, larger consumers, and the IESO.”⁴

This is the first time the OEB has been asked to interpret these new provisions. SEC submits that when an applicant requests the OEB to make an order under section 36.1.1(7)(b) of the *Electricity Act*, it must be required to demonstrate a specific and cogent rationale for why it would be unjust, in the circumstances, for the two-year general limitation period to apply. It is not sufficient to simply claim that the applicant is owed the money if it had provided the correct information. If that were the case, the provision and its intended benefits of certainty and finality would be meaningless.

The same principle would apply equally if the situation were reversed, and the IESO was seeking an order from the OEB to require Algoma Power to pay additional amounts, notwithstanding the general limitation period.

Algoma Power Has Provided No Rationale For Why The OEB Should Make Such an Order

SEC submits that, to date, Algoma Power has provided no rationale for why the OEB should issue an order effectively waiving the limitation period.

In reviewing this request, it is important to consider Algoma Power’s history with disposing of the balances in RSVA 1588 and 1589, as well as the OEB’s record of providing guidance and training on the issue.

On February 21, 2019, the OEB issued the Accounting Procedures Handbook Update: Guidance Related to Commodity Pass-Through RSVA 1588 & 1589 (“Accounting Guidance”), which standardized the accounting processes used by distributors related to the Regulated Price Plan (“RPP”) wholesale settlements.⁵ The aim was to improve the accuracy of the balances in RSVA 1588 and 1589 and facilitate the disposition of accurate commodity pass-through variance account balances.⁶ The OEB required distributors to implement the standardized procedures by August 31, 2019, retroactive to January 2019.⁷ The OEB also provided training on the guidance for distributors.

Algoma Power received approval for the final disposition of the 2017 and 2018 balances for RSVA 1588 and 1589, as part of the full settlement of 2020 distribution rates. While Algoma Power believed it had processes in place to ensure that non-RPP Global Adjustment values were recorded in the

³ *Electricity Act*, section 36.1.1(7)(b)

⁴ [Hansard, Legislative Assembly of Ontario, October 26, 2021](#), p.396

⁵ [Accounting Procedures Handbook Update – Accounting Guidance Related to Commodity Pass-Through Accounts 1588 & 1589](#) (February 21, 2019)

⁶ [OEB Letter, Re: Accounting Guidance related to Accounts 1588 RSVA Power, and 1589 RSVA Global Adjustment](#) (February 21, 2019)

⁷ [Accounting Procedures Handbook Update – Accounting Guidance Related to Commodity Pass-Through Accounts 1588 & 1589](#) (February 21, 2019)

correct income statement accounts and variance accounts, it continued to review the Accounting Guidance.⁸

The OEB provided details on its approach to retroactive adjustments to pass-through variance accounts in a 2019 letter to all distributors.⁹ Although the letter referred specifically to adjustments to balances that had been cleared by a final order of the OEB, the principles expressed in that letter still apply. Namely, it is the responsibility of distributors to ensure that their account balances are accurately reported when seeking disposition from the OEB. Should an error occur, an asymmetrical approach to correcting the error may be appropriate.

In its application for 2021 distribution rates, Algoma Power requested the disposition of the 2019 balances in RSVA 1588 and 1589, again noting that it was still in the process of implementing the Accounting Guidance.¹⁰ Additionally, Algoma Power identified adjustments to the 2018 and 2019 closing balances for RSVA 1588 and 1589, as a result of following the Accounting Guidance. However, the OEB did not approve these adjustments, as the balances had already been approved for disposition on a final basis.¹¹

In its application for 2022 distribution rates, Algoma Power received approval for the disposition of the 2020 balances for RSVA 1588 and 1589.¹² In its application for 2023 distribution rates, Algoma Power requested the disposition of the 2021 balances in RSVA 1588 and 1589; however, the variances exceeded the OEB's 1% threshold, and Algoma Power was unable to provide an explanation for the driver(s) of those variances. As a result, Algoma Power withdrew its request to dispose of the balances in RSVA 1588 and 1589, until it concluded its investigation of the variances.¹³

Upon completion of an extensive review, it was determined that the Class A customer kWh volumes initially reported by Algoma Power to the IESO for May 2021 required an increase of 3,445,387 kWh, and an increase of 437,136 kWh was required for January 2022. As a result of this incorrect information being reported to the IESO, Algoma Power overpaid \$358,204 for Class B customers to the IESO.¹⁴ Since the invoices for these payments were issued more than two years ago, the limitation period applies.

Algoma Power has indicated that, if the OEB does not approve its request, it proposes to recover the amount from its customers. It suggests doing this by resubmitting the RPP portion of the error and settling with the IESO, then recovering the non-RPP portion of the Class B adjustment from non-RPP customers by booking a \$76,126 adjustment in Account 1589.¹⁵

SEC agrees that distributors are responsible for the accuracy of the information they report to the IESO and the timeliness of correcting errors. As demonstrated by the chronology above, Algoma

⁸ [Decision and Order \(EB-2019-0019\), October 17, 2019](#)

⁹ [OEB letter, Re: Adjustments to Correct for Errors in Electricity Distributor "Pass-Through" Variance Accounts After Disposition](#) (October 31, 2019)

¹⁰ [Decision and Rate Order \(EB-2020-0003\), December 10, 2020](#), p.10,

¹¹ EB-2019-0019, Exhibit 9, p. 5

¹² [Decision and Rate Order \(EB-2021-0006\), December 9, 2021](#), p. 9,

¹³ [Decision and Rate Order \(EB-2022-0014\), December 8, 2022](#), p. 9,

¹⁴ Exhibit 9, p.21

¹⁵ Interrogatory Response 9-Staff-71g; SEC also notes that the adjustment Algoma Power is proposing to make is below its materiality threshold of \$175,000, and therefore should not be allowed on that basis alone. (See Exhibit 1, p. 54)

Power has been aware of issues with its settlement process since the Accounting Guidance was issued. Algoma Power has had sufficient time to review and correct the entries. In addition, the OEB has provided extensive guidance to assist distributors.¹⁶

Section 36.1.1 of the *Electricity Act* and O. Reg. 153/23 were established for a reason: to ensure the timely filing of information by distributors to the IESO so that the settlement process could be completed accurately, ensuring that the correct customers pay. At this time, Algoma Power has provided insufficient information to justify the OEB directing the IESO to ignore the limitation period and allow a change, and it has provided no rationale for why it would be unjust to apply the limitation provisions, or why it is facing a unique circumstance. If it does provide the necessary justification, then the OEB can consider making the requested order.

Regardless of the OEB's decision on Algoma Power's request to refile its consumption data with the IESO, SEC submits that the OEB should explicitly reject Algoma Power's position that it should be made whole and that its customers should pay for its error.¹⁷ The OEB needs to reemphasize that distributors are responsible for the accuracy and timeliness of the information they file, and that if there are errors, the distributor is responsible for absorbing any associated costs.

Summary

SEC submits that the OEB should not approve Algoma Power's request, at this time, as it has not provided any rationale for why the general two-year limitation period should not apply or why, in this circumstance, the prohibition on the adjustment is unjust. The OEB should explicitly also reject Algoma Power's position that if its request is denied, it can seek to collect the amounts from its customers.

Yours very truly,
Shepherd Rubenstein P.C.

Mark Rubenstein

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

¹⁶ See for example: [Filing Requirements for Electricity Distribution Rate Applications, Chapter 3 Incentive Rate-Setting Applications \(June 18, 2024\)](#), p. 12

¹⁷ Interrogatory Response 9-Staff-71g