



Ontario | Commission  
Energy | de l'énergie  
Board | de l'Ontario

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# FINAL DECISION AND ORDER

## EB-2024-0007

## ALGOMA POWER INC.

**Application for electricity distribution rates and other charges beginning January 1, 2025**

**BEFORE:**     **Allison Duff**  
                  Presiding Commissioner

**Fred Cass**  
                  Commissioner

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**January 9, 2025**

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## 1 OVERVIEW

On November 11, 2024, the Ontario Energy Board (OEB) approved a settlement proposal on all issues in respect of the rebasing application by Algoma Power Inc. (Algoma Power) except one which was excluded from settlement. The OEB also approved base distribution rates effective January 1, 2025 and interim Group 1 rate riders on December 12, 2024.

This decision addresses the unsettled issue 6.2 which includes a request by Algoma Power to require the Independent Electricity System Operator (IESO) to resettle prior period Class A consumption adjustments for May 2021 and January 2022 as well as the disposition of the commodity Accounts 1588 and 1589.

The OEB approves the disposition on a final basis of Algoma Power's proposed revised Group 1 account balances for 2021 and 2022. The approved final disposition of these accounts includes the balances of Accounts 1588 and 1589 as at December 31, 2022 and, together with interest to December 31, 2024, results in a credit to customers of Algoma Power in the amount of \$225,538<sup>1</sup>. The OEB denies Algoma Power's request to order the IESO to correct a prior settlement error as an exception to the two-year limitation period established in section 36.1.1 of the *Electricity Act, 1998*.

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<sup>1</sup> [API Corrections to Submission on Issue 6.2](#), 2025 DVA Continuity Schedule, November 29, 2024

## 2 PROCESS

On August 2, 2024, the OEB issued a decision on the Issues List as part of Algoma Power's 2025 cost of service proceeding. This decision excluded the disposition of the commodity variance accounts (Accounts 1588 and 1589), as well as Algoma Power's request to require the IESO to settle past Class A submissions (Issue 6.2), from the set of issues eligible for settlement. The OEB noted that it would hear this issue by way of written hearing after the settlement conference. The IESO, the School Energy Coalition (SEC), the Vulnerable Energy Consumers of Canada (VECC) and OEB staff filed submissions on Issue 6.2, to which Algoma Power replied on November 5, 2024.

On November 19, 2024, the OEB issued a partial decision approving the settlement proposal on all issues other than Issue 6.2. Algoma Power filed a draft rate order on November 26, 2024, which excluded the balances of the commodity accounts from the other Group 1 deferral and variance account (DVA) balances. The OEB issued a Rate Order on December 12, 2024 approving base distribution rates in accordance with the approved settlement proposal and interim Group 1 DVA rate riders.

### 3 DECISION ON ISSUE 6.2

Issue 6.2 in the issues list is:

Is the proposal for the disposition of balances in Accounts 1588 and 1589, including the request for an order as per Section 36.1.1 of the *Electricity Act, 1998* requiring the IESO to settle past Class A submissions, appropriate?

In the current proceeding, Algoma Power proposes the final disposition of the 2021 and 2022 year-end balance for Accounts 1588 and 1589 which affect the Global Adjustment (GA) as managed by the IESO. Algoma Power has requested the disposition of these two accounts over a period of one year. Algoma Power changed other proposals during the proceeding, ultimately requesting that the OEB issue an order to the IESO to accept proposed adjustments related to May 2021 and to make payments to Algoma Power in accordance with those adjustments. In reply submissions, Algoma Power clarified its position, indicating that the disposition of the accounts could be approved by the OEB regardless of the OEB's decision on the settlement adjustment with the IESO.

The balances in Accounts 1588 and 1589 were last disposed as of December 31, 2020 in Algoma Power's 2022 IRM application. In its 2023 and 2024 IRM applications, Algoma Power withdrew the request for the disposition of Accounts 1588 and 1589. High variances in both accounts were evident yet, due to the utility's ongoing investigation, no explanation could be provided to the OEB at that time. In its 2024 IRM proceeding, Algoma Power stated that it had engaged a third-party consulting firm in October 2023 to conduct a comprehensive review of the accounts and settlements.

In the current 2025 rebasing proceeding, Algoma Power proposed disposition of the 2021 and 2022 balances in Accounts 1588 and 1589 based on the consultant's two-stage investigation report completed in March 2024 (Stage 2 report). The Stage 2 report identified a total of eight months in 2021 and 2022 where Algoma Power made errors in reporting its Class A consumption as part of its monthly reporting to the IESO. These reporting errors resulted in overpayments from Algoma Power to the IESO for the respective periods. In reply submission, Algoma Power offered to absorb the cost of seven months of errors amounting to \$38,861, requesting that only the largest settlement error in May 2021 of \$346,261 be resettled by the IESO.

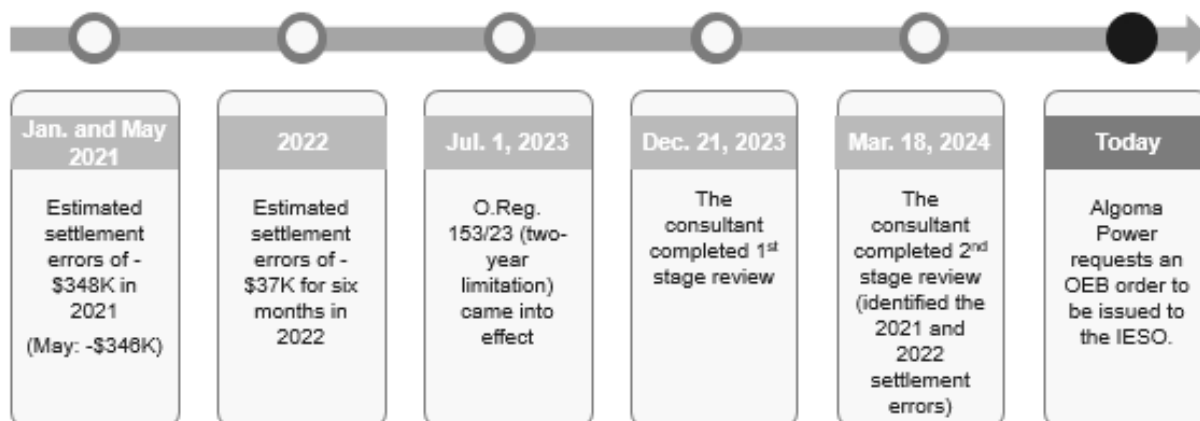
Section 36.1.1 of the Act, which sets out a two-year limitation period for certain IESO settlements, was proclaimed into force on January 1, 2022. The limitation period only applies to settlements that have been prescribed by regulation.

On July 1, 2023, a Limitation Periods Regulation (O. Reg. 153/23) was made under the Act. The regulation specifies the types of settlements that are subject to the two-year limitation period. The regulation provides that the limitation period applies to settlements in respect of the GA (but not in respect of the RPP).

Under subsection (7) of section 36.1.1 of the Act, the OEB may require the resettlement of matters falling outside the two-year limitation period. More specifically, subsection 36.1.1(7) provides for an exception from the limitation period for a payment or adjustment that results from a decision or order of the OEB in respect of a variance account.<sup>2</sup>

As the reporting errors occurred more than two years ago, Algoma Power asked the OEB to order the IESO to pay Algoma Power the amounts in question. In response to an interrogatory from OEB staff, Algoma Power provided a draft of the order it seeks.<sup>3</sup> Figure 1 below shows the timeline of the identified settlement errors and when these errors were identified by the consultant.

**Figure 1: Timeline of the Settlement Errors**



SEC submitted that the OEB should not approve Algoma Power’s request, because Algoma Power has not provided any rationale for bypassing the two-year limitation period or demonstrated that the prohibition on the adjustment is unjust. SEC stated that the limitation period was established to ensure the timely filing of information by distributors to the IESO so that the settlement process could be completed accurately,

<sup>2</sup> Paragraph 36.1.1(7)(b) of the *Electricity Act, 1998*.

<sup>3</sup> Responses to Interrogatories, 9-Staff-71 b)

ensuring that the correct customers pay. Allowing adjustments outside the limitation period without sufficient rationale undermines the principles of rate certainty and finality.

Additionally, SEC submitted that the OEB should also reject Algoma Power's position that it could seek recovery from its customers if its request is denied.

VECC similarly opposed Algoma Power's request. VECC noted the requested adjustment is outside of the limitation period and Algoma Power has not provided sufficient rationale for waiving the two-year limitation. VECC submitted Algoma Power has an obligation to settle accurately with the IESO and should have done so in a timely manner and not waited for the OEB to provide directions.

VECC further submitted that the OEB should deny Algoma Power's request to be held whole by its customers, stating there is no cost-causality relationship between the current customers and Algoma Power's settlement errors that incurred in 2020 and 2021.

The IESO submitted that, recognizing that each submission for an adjustment is unique, the OEB should consider and apply, as applicable in the circumstances, common-law principles of discoverability regarding the potential disapplication or extension of the limitation period in this case. The IESO took no position on the underlying accounting substance of Issue 6.2, submitting that it relies upon the OEB in this respect.

The IESO further submitted that if the OEB approves the order requested by Algoma Power, the transactions would be processed as a financial (liquidated) payment(s) to Algoma Power in the next current period rather than as a re-settlement of prior periods. Additionally, to ensure that the IESO-administered markets remain balanced, every market participant and ratepayer in Ontario would be subject to a proportionate allocation of the payment amount.

The IESO requested that, should the OEB approve the out-of-period adjustments, the OEB order to the IESO should include the following:

- a) Detail the liquidated dollar amount required to be processed in respect of the given period(s);
- b) Direct the IESO to apply for that payment in the next period.

The IESO indicated that a draft the the new section 36.1.1 was published on December 2, 2021, a stakeholder engagement took place on April 19, 2023 regarding O. Reg. 153/23 and market participants (including API) were made aware of the forthcoming

two-year limitation period that was formally established by O. Reg. 153/23 on July 1, 2023<sup>4</sup>.

In its submission, OEB staff stated that this is the first rates application where a utility has asked the OEB to make an order requiring the IESO to correct a settlement error since the Limitation Periods Regulation came into effect. OEB staff submitted that a case-by-case approach is appropriate for the OEB to consider such requests.

OEB staff proposed a principled approach based on the [OEB's October 31, 2019 letter](#) (2019 letter) related to retroactive adjustments in the event an error is discovered after final clearance of the pass-through account balance. The four factors to consider were:

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

OEB staff submitted that an assessment of the four factors does not support Algoma Power's request for an exception to the limitation period.

Further, OEB staff stated the magnitude of the proposed adjustment and its financial impact on the distributor should be considered.

OEB staff submitted that Algoma Power's 2021 and 2022 balances for Accounts 1588 and 1589 should be disposed of on a final basis in this proceeding. 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. This concept is what underpins the 2019 letter. Although an assessment of the four principles listed in the 2019 letter does not support Algoma Power's request for an exemption from the limitation period, the financial impact to Algoma Power of having to absorb the entire amount could be significant. On balance, OEB staff supported a middle-ground approach in this case.

Specifically, OEB staff submitted that the IESO should be required to repay half of the amount to Algoma Power from its May 2021 Class A consumption error, which is \$173,131. OEB staff submitted that this midway approach is consistent with the spirit of the 2019 letter, recognizing that distributors are responsible for ensuring commodity

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<sup>4</sup> IESO submission, p.6



settlements but that in some cases bearing the entire financial consequence of an error (from which the distributor did not benefit) may be unfair.

Additionally, OEB staff submitted that Algoma Power should not be allowed to pass on any of the Class A consumption errors to its customers. The amounts that Algoma Power does not recover from the IESO should not be charged to Algoma Power's customers.

In its reply submission,<sup>5</sup> Algoma Power stated that the updated balances for Accounts 1588 and 1589 reflect an appropriate reconciliation for its customers. Algoma Power proposed final disposition of the updated balances because its customers would receive the full benefit of all identified variances through the disposition.

Algoma Power also updated its proposal, offering to absorb the other settlement errors of approximately \$87,000 to fund the disposition, except the May 2021 error of \$346,261.<sup>6</sup> As at December 31, 2024, the accrued interest cost of the incorrect IESO settlement is \$48,000.

Algoma Power indicated that it would be unreasonable for it to experience a loss or penalty in the circumstances leading to the timing of the requested adjustment. Algoma Power submitted that based on its good faith efforts, the unique timing of the limitation period, and the risk of a financial windfall to the IESO, the OEB should make an order under paragraph 36.1.1(7)(b) of the Act requiring the IESO to accept the resubmission of the Class A consumption errors and refund the overpayment of \$346,261 for May 2021.

Algoma Power noted that it did not take issue with the IESO's proposed methodology in processing the out-of-period adjustment from an accounting perspective.

## Findings

The OEB approves the disposition on a final basis of the proposed revised balances of Accounts 1588 and 1589 as at December 31, 2022, with accrued interest.

The remaining issue for the OEB to decide in this proceeding is "who should pay for" the settlement error in May 2021 of \$346,261? There are two options: either Algoma Power's shareholders should pay or every market participant and ratepayer in Ontario if the OEB approves the settlement correction through the IESO.

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<sup>5</sup> Reply Submission, November 5, 2024

<sup>6</sup> [API Corrections to Submission on Issue 6.2](#), November 29, 2024

The OEB finds that Algoma Power's shareholders should pay. The OEB finds that the amount of time for Algoma Power to propose correcting entries was unreasonable in the circumstances.

- It took Algoma Power almost 3 years to address the May 2021 error.
- The OEB finds that Management had the ability to prioritize and complete the investigative work before July 1, 2023, the effective date of O.Reg. 153/53, yet it did not do so.
- The OEB finds that Management also had the funds to accelerate and intensify the investigative work. Algoma's actual return on equity was 9.36% in 2021 when the error was made, exceeding the OEB's approved return on equity.

The OEB does not agree that every market participant and ratepayer in Ontario should pay for the refund, which would be the effect of Algoma Power's proposal. The IESO explained that, to ensure that the IESO-administered markets remain balanced, any transaction relating to GA (be it an adjustment or a financial payment) processed in favour of one market participant, will be recovered from the remaining market participants and ratepayers in the next current period.

The OEB finds it unfair for every market participant and ratepayer to pay, who were not involved in the error, when balanced against Algoma Power's involvement. Algoma Power made the error in 2021 and took three years to investigate.

OEB staff submitted that the OEB should consider the financial impact to Algoma Power's shareholders, if the proposal is not approved. The OEB estimates that the 2025 refund<sup>7</sup> is less than 1.2% of Algoma Power's approved 2025 base revenue requirement. The OEB finds that Algoma Power paying this amount is not an undue burden in 2025.

OEB staff referenced the four factors the OEB identified in the 2019 letter when considering retroactive adjustments for errors discovered after final clearance of a Group 1 pass-through account. While the four factors were established for another purpose, the OEB finds that the factors are valid considerations in this proceeding. The OEB agrees with OEB staff's submission that an exemption to the limitation period is not supported, based on an assessment of the four factors.

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<sup>7</sup> \$346,261 May 2021 error, \$48,000 accrued interest, \$35,768,551 2025 base revenue requirement

However, the OEB does not agree with OEB staff's suggestion of a "middle ground approach" to share the cost. In reaching this conclusion, the OEB has relied upon the four factors in the 2019 letter, the evidence regarding the sequence of events and the conclusion that payment of \$346,261 is not an undue burden on Algoma Power.

It would be inappropriate for the OEB to grant exceptions, without regard for the meaning and effect of the limitation period. The OEB finds that Algoma Power has failed to establish exceptional circumstances for the OEB to conclude that an exception to the limitation period should be granted.

## 4 IMPLEMENTATION

The OEB approves the disposition of the proposed revised Group 1 account balances for 2021 and 2022 on a final basis. The proposed revised Group 1 account balances as of December 31, 2023 (which includes the Accounts 1588 and 1589 balances as of December 31, 2022), amount to a credit of \$225,538,<sup>8</sup> with interest projected to December 31, 2024. Algoma Power shall file a draft rate order with revised GA rate riders effective January 1, 2025. The rate riders shall be in effect for 12 months in 2025. The draft rate order shall be supported by an updated DVA continuity schedule, 2025 bill impact calculation and a revised draft tariff of rates and charges. There is one Class B customer that transitioned to a Class A customer after 2021. The GA rate riders and the portion of the GA balance to be allocated to this one transition customer shall be effective January 1, 2025 on a final basis.

SEC and VECC are eligible to apply for cost awards in this proceeding. The OEB has made provision in this Decision and Order for SEC and VECC to file their cost claims.

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<sup>8</sup> [API Corrections to Submission on Issue 6.2](#), 2025 DVA Continuity Schedule, November 29, 2024

## 5 ORDER

### THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Algoma Power Inc. shall file with the OEB and forward to intervenors a draft Rate Order with a proposed Tariff of Rates and Charges attached that reflects the OEB's findings in this Decision and Order, no later than January 13, 2025. Algoma Power Inc. shall also include customer rate impacts and detailed information in support of the calculation of final rates in the draft Rate Order.
2. Intervenors and OEB staff shall file any comments on the draft Rate Order with the OEB, and forward to Algoma Power Inc., no later than January 15, 2025.
3. Algoma Power Inc. shall file with the OEB and forward to intervenors, responses to any comments on its draft Rate Order no later than January 17, 2025.

### COST AWARDS

The OEB will issue a separate decision on cost awards once the following steps are completed:

1. SEC and VECC shall submit to the OEB and copy Algoma Power Inc. their cost claims no later than January 16, 2025.
2. Algoma Power Inc. may file with the OEB and forward to SEC and VECC any objections to the claimed costs by January 27, 2025.
3. SEC and VECC may file with the OEB and forward to Algoma Power Inc. any responses to any objections for cost claims by February 3, 2025.
4. Algoma Power Inc. shall pay the OEB's costs of and incidental to this proceeding upon receipt of the OEB's invoice.

Parties are responsible for ensuring that any documents they file with the OEB, such as applicant and intervenor evidence, interrogatories and responses to interrogatories or any other type of document, **do not include personal information** (as that phrase is defined in the *Freedom of Information and Protection of Privacy Act*), unless filed in accordance with rule 9A of the OEB's [Rules of Practice and Procedure](#).

Please quote file number, **EB-2024-0007** for all materials filed and submit them in searchable/unrestricted PDF format with a digital signature through the [OEB's online filing portal](#).

- Filings should clearly state the sender's name, postal address, telephone number and e-mail address.
- Please use the document naming conventions and document submission standards outlined in the [Regulatory Electronic Submission System \(RESS\) Document Guidelines](#) found at the [File documents online page](#) on the OEB's website.
- Parties are encouraged to use RESS. Those who have not yet [set up an account](#), or require assistance using the online filing portal can contact [registrar@oeb.ca](mailto:registrar@oeb.ca) for assistance.
- Cost claims are filed through the OEB's online filing portal. Please visit the [File documents online page](#) of the OEB's website for more information. All participants shall download a copy of their submitted cost claim and serve it on all required parties as per the [Practice Direction on Cost Awards](#).

All communications should be directed to the attention of the Registrar and be received by end of business, 4:45 p.m., on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Birgit Armstrong at [birgit.armstrong@oeb.ca](mailto:birgit.armstrong@oeb.ca) and OEB Counsel, Ian Richler at [ian.richler@oeb.ca](mailto:ian.richler@oeb.ca).

**DATED** at Toronto January 9, 2025

**ONTARIO ENERGY BOARD**

Nancy Marconi  
Registrar