



EB-2017-0024

Alectra Utilities Corporation

**Application for electricity distribution rates and other
charges effective January 1, 2018.**

**DECISION ON APPEAL ON INTERVENOR STATUS AND UPDATE ON
ELIGIBILITY FOR COST CLAIMS
October 13, 2017**

This is a Decision on two appeals of Procedural Order No. 1 of the Ontario Energy Board (OEB) related to requests for intervenor status and costs in the rate application for Alectra Utilities Corporation (Alectra). Alectra filed an application with the OEB on July 7, 2017 under section 78 of the *Ontario Energy Board Act, 1998, S.O. 1998, c. 15, (Schedule B)* (OEB Act) and under the OEB's Filing Requirements for Incentive Regulation Rate Applications seeking approval for changes to its electricity distribution rates to be effective January 1, 2018.

The OEB issued a Notice of Hearing (Notice) on August 18, 2017. The following organizations applied for intervenor status and eligibility for cost awards:

- Association of Major Power Consumers in Ontario (AMPCO)
- Building Owners and Managers Association of Greater Toronto (BOMA)
- Capredoni Enterprises Ltd. (CEL)
- The City of Hamilton
- Consumers Council of Canada, (CCC)
- School Energy Coalition (SEC)
- Vulnerable Energy Consumers Coalition (VECC)

The Power Workers' Union (PWU) applied for intervenor status but did not seek eligibility for a cost award.

On August 29, 2017, Alectra filed its response to the intervention requests. Alectra objected to CEL's request noting that while CEL had requested intervenor status based on being a representative/advocate for other small business owners in the Greater Niagara Chamber of Commerce and Ontario Chamber of Commerce, it had not provided any evidence that Mr. Capredoni [or CEL] had been authorized or appointed by either group (or by their members) for the purpose of intervening in this proceeding. Alectra also submitted that CEL had failed to demonstrate it held a "substantial interest" in the proceeding as required under Rule 22.02 of the OEB's Rules of Practice and Procedure and that absent any specific issues CEL's interests were likely adequately represented by the other intervenors. Alectra did not make a submission with respect to PWU's request for intervenor status.

Procedural Order No. 1 was issued September 8, 2017, (as corrected and re-issued September 15, 2017), in which the Registrar denied intervenor status for both CEL and PWU. The Registrar's authority to decide intervenor status and cost eligibility is under Section 6 of the OEB Act, as the Registrar, an employee of the OEB, has been delegated the powers and duties of the OEB to do so.

For CEL, the Registrar denied intervenor status because it was unclear in the letter of intervention whether CEL or Mr. Capredoni has been formally appointed to represent or advocate on behalf of the Greater Niagara Chamber of Commerce and Ontario Chamber of Commerce. The intervention letter also did not state whether CEL is a customer of Alectra with a substantial interest in the outcome of the proceeding.

For PWU, the Registrar's decision to deny intervenor status was based on the letter of intervention filed by PWU that provided only a broad statement of interest in the proceeding related to long-term investments in assets, reliability, and safety of the employees it represents. The Registrar noted that this current application has a limited scope not focused on the broad issues that PWU wished to pursue.

On September 15, 2017, Mr. Capredoni filed a letter with the OEB requesting that the Registrar's decision to deny intervenor status for CEL be reviewed and amended. The OEB is treating this letter as an appeal to the OEB under Section 7(1) of the OEB Act of the Registrar's Decision on intervenor status. The letter reiterated that Mr. Capredoni is seeking intervenor status on behalf of his small business and as an advocate for other small business owners in Ontario. Mr. Capredoni noted that any rate increase for Alectra would have a direct impact on small businesses and/or entrepreneurs that are part of the Greater Niagara Chamber of Commerce and/or the Ontario Chamber of Commerce. He further stated that CEL is in the process of acquiring formal status as the advocate for the Chambers, and is also requesting permission from individual members to advocate on their behalf.

On September 18, 2017, PWU filed a Notice of Appeal of the Registrar's decision denying it intervenor status. PWU stated that it has a legitimate and significant interest in the proceeding and it has been granted intervenor status in numerous other proceedings on the basis of essentially identical intervention letters. PWU also noted that it has not requested an award of costs for participating in the proceeding.

Findings

The OEB has considered Mr. Capredoni's letter and has treated it as an appeal of the Registrar's Decision. The OEB denies this appeal. The Registrar's Decision to deny intervenor status to CEL is confirmed.

Mr. Capredoni states that CEL is still in the process of acquiring formal status to advocate for the Chambers of Commerce or individual members of a Chamber. There is no indication that any formal status to represent other businesses has been established. The OEB's Rules of Practice and Procedure 22.02 states that "The person applying for intervenor status must satisfy the Board that he or she has a substantial interest" in a proceeding. While CEL may get approval from Chambers of Commerce to represent them in future proceedings, this is not the case at this time. Furthermore, no information has been filed confirming that CEL pays general service rates as a customer of Alectra.

Mr. Capredoni may re-apply for late intervenor status on behalf of CEL if CEL's representation status changes or CEL's status as a general service class customer of Alectra is confirmed, and the OEB will consider the request.

The OEB has considered PWU's Notice of Appeal and grants the requested relief. PWU is therefore approved as an intervenor without cost awards on the basis of the new information provided in its appeal.

The Registrar's decision was reasonable based on the information provided in the intervention request. The OEB understands that PWU may have been granted intervenor status in the past based on similar information. However, this general level of information provided by PWU is no longer acceptable. A person requesting intervenor status must provide details on how he or she has a direct interest in a particular proceeding. This is especially important in this proceeding because it is an application in the middle of multi-year rate-setting frameworks previously approved by the OEB for Horizon, Hydro One Brampton Networks, PowerStream and Enersource and therefore has many elements that are mechanistic in nature.

Given the OEB's finding that the decision of the Registrar was reasonable, PWU is approved as an intervenor in this proceeding but must accept the record as they find it. The procedural steps and dates in Procedural Order No. 1 remain unchanged.

Cost Eligibility

In the Notice, the OEB stated that it intends to consider cost awards in this proceeding that are in accordance with the Practice Direction on Cost Awards and only in relation to issues related to the incremental funding proposals for each of the Brampton, Enersource and PowerStream Rate Zones.

Given the nature of the interrogatories filed, the OEB finds it necessary to clarify the scope of matters eligible for cost awards for cost-eligible intervenors in the proceeding. This scope is as follows:

- Earnings sharing for the Horizon rate zone (RZ)
- Incremental capital module rate riders for the PowerStream, Enersource and Hydro One Brampton RZs
- The distribution system plan for the Enersource RZ
- New deferral accounts requested for the PowerStream and Enersource RZs for the incremental capital expenditures for the following projects:
 - Metrolinx Crossings Remediation Project
 - GO Rail Network Electrification Project

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Martin Davies at martin.davies@oeb.ca and OEB Counsel, Ljuba Djurdjevic at Ljuba.Djurdjevic@oeb.ca and Lawren Murray at Lawren.Murray@oeb.ca.

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DATED at Toronto, **October 13, 2017**

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary