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September 18, 2017

File No.: 94172

VIA COURIER and RESS FILING

Ms. Kristi Sebalj
Registrar
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto, Ontario M4P 1E4

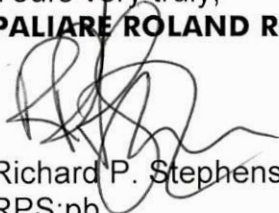
Dear Ms. Sebalj,

Re: OPG Application – EB-2017-0024 – Alectra Utilities Corporation

Attached hereto please find a Notice of Appeal filed by the PWU in respect of this matter. We were unable to find a specific form for the notice, so we trust that is satisfactory to the Board.

Yours very truly,

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP


Richard P. Stephenson
RPS:pb

Attach.

Doc 2281507 v1

Alectra Utilities Corporation
Application for electricity distribution rates effective
January 1, 2018

NOTICE OF APPEAL

(Appeal of Procedural Order No. 1 dated September 8, 2017)

Nature of the Appeal

1. The Power Workers' Union ("PWU") appeals to the Board from Procedural Order No. 1 ("PO #1") made by delegation by the Registrar on September 8, 2017, in which the PWU was denied intervenor status in this proceeding.
2. The appeal is made pursuant to s. 7 of the *Ontario Energy Board Act, 1998* (the "Act") and Rule 17 of the OEB's *Rules of Practice and Procedure* (the "Rules").

The Grounds for the Appeal

3. On August 30, 2017 for PWU filed a letter with the Board seeking intervenor status in EB-2017-0024. It is the first rate application filed by Alectra Utilities Corporation as an amalgamated utility.
4. The PWU is a trade union. It represents the employees of many of the entities regulated by the OEB. Over the past 23 years it has intervened in dozens of OEB proceedings in both the electricity and natural gas sectors, including numerous rate hearings, rulemaking proceedings and policy consultations. Prior to the current proceeding, the PWU has never been denied intervenor status in any OEB proceeding.
5. On September 8, 2017 the Registrar issued PO #1. In it, the PWU's was denied intervenor status. The Registrar provided the following reasons:

PWU's request for intervenor status is denied. PWU's notice of intervention provides only a broad statement of interest related to long term investments in assets, reliability, and safety of the employees it represents and does not explain how its members have a substantial interest in the outcome of the proceeding. The broad issues that PWU wishes to pursue are not the focus of the current application which is limited in scope. The OEB also notes that the PWU did not participate in any of the earlier rebasing applications of the predecessor utilities where the base-year expenditures were reviewed in detail.

6. On September 12, 2017 counsel for the PWU wrote to the Registrar asking that the Board amend PO #1 to accept the PWU as an intervenor. The PWU wrote, *inter alia*, that:

... while the Board notes that the PWU did not seek intervenor status in the rebasing applications of Alectra's predecessor utilities, the Board does not acknowledge that the PWU applied for and was granted intervenor status in the MAADs proceeding wherein the Board approved the amalgamation of the predecessor utilities and the formation of Alectra (EB-2016-0025). The PWU was an active intervenor throughout that proceeding.

In addition, the Board may not be aware that until 2017 the PWU was not the bargaining agent for three of the four predecessor utilities of Alectra (i.e., Horizon, Enersource, and Hydro One Brampton). After the formation of Alectra in 2017, the employees of Alectra voted to select the PWU as the bargaining agent for the amalgamated utility. By order of the Ontario Labour Relations Board, the PWU became the bargaining agent for employees of Alectra in June, 2017.

As the Board may know, the PWU is the bargaining agent for the employees of numerous utilities across Ontario. Because the PWU funds the cost of its interventions from its own resources, the PWU focuses those resources on applications which affect its largest bargaining units. As a result of the amalgamation which formed Alectra, it is now one of Ontario's largest distributors, and a substantial employer of PWU represented workers.

In Procedural Order No. 1, the Board notes that the PWU's intervention letter contains only a "broad statement of interest". It is correct that the intervention letter contains generic language. However, this is the same generic intervention letter that the PWU has used in literally dozens and dozens of prior OEB interventions of all types. The PWU has never previously been denied intervention status in any OEB proceeding. Moreover, the OEB has never previously suggested that the language of the PWU's intervention letters was being inadequate in any respect. Nor has the Board indicated to long standing, regular intervenors such as the PWU that its standard for the consideration of intervention requests has been revised in some fashion.

The interests of PWU represented employees of Alectra are engaged and will be affected by this proceeding. This is a rate hearing. It is in the interest of PWU represented members to ensure that the appropriate balance is struck between the utility have sufficient revenues to ensure that it can undertake the work necessary to maintain and sustain its infrastructure and provide appropriate levels of service and reliability to its customers, and doing so at a cost which is reasonable to its

customers. In the context of the present case this includes ensuring that the rate adjustment mechanisms for the various rate zones are applied appropriately, and that the ICM mechanisms applied for will provide adequate funding for necessary capital work for the utility.

The PWU has played significant roles in the proceedings which led to the development of each generation of the Board's IRM mechanisms. Moreover, it has made significant and responsible contributions to the Board's examination of the relationship between the sustainment of aging infrastructure and service quality and reliability. Since Alectra may not be returning to the Board on a rebasing application for as many as 10 years, the PWU seeks, through its intervention, to ensure that all relevant perspectives are addressed in the proceeding.

The PWU has always conducted its interventions in a responsible and efficient manner, mindful of and consistent with the public interest. If permitted to intervene in this matter, the PWU will again meet this standard.

7. On September 15, 2017 the Registrar wrote to counsel for the PWU responding to the PWU's letter of September 12, 2017. The correspondence states that:

The PWU's letter further asks whether a formal notice of motion is required to request that the OEB "amend" (which the OEB interprets as a request to review and vary) the decision in Procedural Order No. 1 denying the PWU's request for intervenor status. Should the PWU continue to wish to seek a review of the decision in Procedural Order No. 1, the letter of September 12 may be treated as a notice of motion to vary the OEB's decision; however, the PWU may choose to file a formal motion initiating the review process and should advise the OEB accordingly.

The present letter does not constitute a review of Procedural Order No. 1, nor does it initiate such a review. It is intended only to correct the misstatement in Procedural Order No. 1 that the PWU was seeking cost eligibility in the proceeding.

8. As a consequence the PWU files this Notice of Appeal. Because PO #1 was issued by the Registrar pursuant to delegated authority from Board, the process to challenge that decision is an appeal to the Board pursuant to s. 7 of the *Act* rather than an a motion to review and vary pursuant to the *Rules*. Section 7 of the *Act* provides that:

Appeal from delegated function

7 (1) A person directly affected by an order made by an employee of the Board pursuant to section 6 may, within 15 days after receiving notice of the order, appeal the order to the Board. 2003, c. 3, s. 13.

Exception

(2) Subsection (1) does not apply to,

(a) a person who did not make submissions to the employee after being given notice of the opportunity to do so; or

(b) a person who did not give notice requiring the Board to hold a hearing under section 112.2, in the case of an order made by the employee under section 112.3, 112.4 or 112.5. 2003, c. 3, s. 13.

Parties

(3) The parties to the appeal are:

1. The appellant.

2. The applicant, if the order is made in a proceeding commenced by an application.

3. The employee who made the order.

4. Any other person added as a party by the Board. 2003, c. 3, s. 13.

Powers of Board

(4) The Board may confirm, vary or cancel the order. 2003, c. 3, s. 13.

Stay

(5) An appeal under this section does not stay the order of the employee, unless the Board orders otherwise. 2003, c. 3, s. 13.

9. The Registrar erred in PO #1by:

(a) Failing to recognize the legitimate and significant interest of the PWU in the EB-2017-0024 proceeding;

(b) Failing to consider the significance of the fact that:

(i) This is the first rate hearing for Alectra as an amalgamated utility;

(ii) The PWU was not previously the bargaining agent for the employees of three of the four predecessor utilities. As a result, the PWU was not the bargaining agent for the majority of the employees of the processor utilities at the time of those utilities' last "rebasing" application;

- (iii) Since July 2017 the PWU is now the bargaining agent for all represented employees of the amalgamated utility;
 - (iv) The PWU was accepted as an intervenor and actively participated as such in EB-2016-0025 which considered and approved the terms on which the Alectra amalgamation was permitted to proceed;
 - (v) The application in question is not wholly "formulaic" - the applicant is seeking approvals for specific programs which will affect the utility's assets, service quality and reliability and revenue requirement. PWU represented employees construct, operate, service and maintain these assets. They will be affected by the Board's disposition of the matter;
 - (vi) The amalgamated utility is not scheduled to return to the Board on a rebasing application for the next ten years;
 - (vii) The PWU did not seek costs in the proceeding. Its participation will not result in additional costs being borne by the utility or its customers; and
- (c) Relying upon the generic language of the PWU's intervention letter as a basis to deny the PWU status without considering the fact that the PWU had been granted intervenor status by the OEB on numerous occasions on the basis of essentially identical intervention letters. At no time was the PWU advised that the Board's standard for intervention was being revised

and/or that the form of its standard intervention letter was in any respect inadequate. The PWU had a reasonable expectation that its intervention letter met all applicable Board standards.

Relief Requested

10. The PWU seeks the following relief:

- (a) An order granting the PWU intervenor status in EB-2017-0024; and
- (b) Such further and other relief as counsel may advise and the Board permit.

September 18, 2017

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