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July 26, 2019

VIA RESS AND COURIER

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319, 27th Floor
2300 Yonge Street
Toronto ON M4P 1E4

Dear Ms. Walli:

**Re: Alectra Utilities Corporation (Alectra) Distribution Rates Application (the Application)
Board File No. EB-2019-0018**

We are counsel to the Distributed Resource Coalition (**DRC**) in the above-referenced Application. We are in receipt of Ms. Butany-DeSouza's letter objecting to DRC's request for intervenor status and cost eligibility in the Proceeding (the **Requested Customer Exclusion**) and the Board's Procedural Order No. 1. The following sets out DRC's response to the Requested Customer Exclusion and DRC's position on the Board's threshold question related to the potential motion to review and vary.

Requested Customer Exclusion.

DRC submits that Alectra's Requested Customer Exclusion should be denied as it is contrary to each and all of: (i) the Board's *Rules of Practice and Procedure* (the **Rules**); (ii) the common law duty of fairness, which affords monopoly utility customers the right to be heard on matters that directly affect them; (iii) the Board's statutory objectives set out in the *Ontario Energy Board Act* (the **Act**), as amended up to and including Bill 87, the *Fixing the Hydro Mess Act, 2019*; (iv) the recommendations of the Board's *Advisory Committee on Innovation – Report to the Chair of the Ontario Energy Board*, dated November, 2018 (the **Board Advisory Report**); and (v) the Board's *Practice Direction on Cost Awards*, revised April 24, 2014 (the **Practice Direction**).

(i) **DRC intervention supported by the Rules.**

DRC members for this proceeding include the Electric Vehicle Society (**EVS**) and Plug 'n Drive (**PnD**). EVS represents over 1,000 end-use, largely residential, individual electric vehicle (**EV**) electricity customers, which all pay membership fees to have their needs and preferences related to EVs and related distributed energy resources (**DERs**) represented on matters that directly substantially impact them. EVS has 12 local chapters of electricity rate paying customers, with three of those customer chapters in the Alectra service territory (Golden Horseshoe Chapter, York Region Chapter, and Barrie-Orillia Chapter). The total number of EVS electricity rate paying customers in the Alectra chapters is estimated to exceed one-third of the total EVS membership. EVS is governed to ensure that individual rate payers are informed, consulted and can independently raise their needs and preferences on matters of direct and substantial interest with the leaders of their local EVS chapters, and all such needs and preferences are communicated to and through the President of EVS. In this manner, the public interest in electrified transportation matters is reflected — and not assumed or supposed.

PnD is the authoritative convener of current and future EV customers and acts to provide access to facts and information to electricity and EV customers on electricity and electric mobility issues and choices. PnD works with each and all of electricity/EV customers, vehicle manufacturers, governments, and utilities to ensure that all are afforded best available information in order to make fact-based plans and choices. DRC has also been an active, Board-approved intervenor in the recent Toronto Hydro custom incentive rate proceeding (EB-2018-0165), providing the Board with expert evidence on the impact of electrified mobility on the matters at issue in order to inform its decision-making and set just and reasonable rates for a five-year time period.

Alectra's own evidence in this Application indicates that electrified mobility is "***truly the way of the future***."¹ Of the 34,357 EV electricity customers in Canada in Q3 2018,² approximately one-third, or 10,000, of those customers are in Alectra's service territory;³ and that number has been increasing 60% year over year for each of the past five years.⁴ Fleetcarma reports that the growth in EV adoption in Ontario has actually annually increased between 140% to 200%.⁵ And Ontario Ministry of Transportation data indicates that more than 10,000 EV electricity customers are known to be in the Alectra service territory.⁶

Alectra's own evidence to support the proposed M factor that is now before the Board also expressly refers to: the "*exponential growth in EV adoption*" and looks to that EV growth to potentially reduce peak load (and customer costs) to provide "*balance between EV and building loads*" through its ongoing "*Drive-Workplace*" initiative. If DRC is excluded from participation, substantial portions of the Alectra evidence will be untested by the customer group(s) directly affected by them (including, without limitation, the evidence on the requested M-factor,⁷ the

¹Alectra Utilities, "Electric Vehicles & Charging Stations", available online at: <https://www.powerstream.ca/innovation/electric-vehicles-and-charging-stations.html>.

² Exhibit 04, Tab 01, Sched. 1, Appendix A02 at figure A02-10.

³ Exhibit 04, Tab 01, Sched. 1, Appendix A16 at p. 6.

⁴ *Ibid.*

⁵ FleetCarma, "Electric Vehicles Sales Update Q2 2018, Canada" (August 10, 2018), available online at:

<https://www.fleetcarma.com/electric-vehicles-sales-update-q2-2018-canada/>;

FleetCarma, "Electric Vehicles Sales Update Q2 2018, Canada" (August 10, 2018), available online at:

<https://www.fleetcarma.com/electric-vehicles-sales-update-q2-2018-canada/>.

⁶ Email correspondence from Ontario Ministry of Transportation dated July 10, 2019.

⁷ Exhibit 03, Tab 01, Sched. 04.

integrated distribution system plan and any supporting load assumptions,⁸ asset management,⁹ customer engagement,¹⁰ smart meter efficiencies, DER integration through the proposed DER Control Platform and the Smart DER Platform,¹¹ grid modernization, the system capability assessment for renewable energy generation and grid modernization, electrification of transportation infrastructure, customer connections,¹² EV charger upgrades,¹³ fleet renewal,¹⁴ and related capital and operational expenditures). This evidence is of substantial and direct interest and impact to the DRC members.¹⁵ Alectra also relies on this evidence broadly to support grid modernization efforts related to the penetration of DERs, information and control technologies,¹⁶ and to “prepar[e] the grid for electrification of transportation infrastructure”.¹⁷ In fact, facilitating distribution efficiency and lowering customer costs through DERs, including EVs, and distributed generation is both encouraged, and may be the subject of specific productivity and reliability measures.¹⁸

In summary on this point, Alectra is proposing grid modernization approaches, capital expenditures (including customer connections, stations capacity, DER integration, and fleet renewal investments) that all have a direct and substantial impact on the electric mobility, electricity consumers represented by DRC. It is difficult to imagine how the Board can legitimately review the substantial Alectra transportation electrification evidence, while actively excluding electrified transportation, electricity customers.

The inclusion of DRC as an intervenor in the proceeding is therefore strongly supported by Rule 22.02, which would result in the Board granting intervenor status to DRC as it has a substantial interest, and will participate actively and responsibly, in the proceeding.¹⁹

(ii) The common law duty of fairness requires inclusion of DRC.

Alectra is proposing the significant above-mentioned grid modernization approaches, DER programs, and capital expenditures each of which will directly and substantially impact the connections, rates, charging, charging infrastructure, penetration, efficiency, and reactive capability of DRC customers in the Alectra service territory. These interests and impacts are unique to DRC members and likely to differ from certain views of very traditional customer groups, which are neither versed in electrified mobility, electricity distribution issues nor focused on immediate grid modernization investments that are likely to lower longer term costs and avoid stranded costs for all customers. Further, in the absence of DRC, there is no other intervenor group that directly or otherwise represents the currently available grid efficiencies and realities of “prosumers” that may reduce overall system costs and enhance system reliability.

The common law duty of fairness and the supporting rules of natural justice expressly afford entities that are directly impacted by the Board’s decision on these matters with the right to be

⁸ Exhibit 04, Tab 01, Sched. 1 at ss. 5.2.1 and 5.3.4, 5.4.1, 5.4.2, and 5.4.3.

⁹ Exhibit 04, Tab 01, Sched. 1 at ss. 5.2.1.4, 5.3.1, 5.3.2, and 5.3.3.

¹⁰ Exhibit 04, Tab 01, Sched. 1 at ss. 5.2.1.5 and 5.2.2.

¹¹ Exhibit 04, Tab 01, Sched. 1, Appendix 16; Exhibit 04, Tab 01, Sched. 1 at s. 5.4.3 starting at p. 426.

¹² Exhibit 04, Tab 01, Sched. 1, Appendix A02 at p.16 and figure A02-10 (sales data).

¹³ Exhibit 04, Tab 01, Sched. 1, Appendix A02.

¹⁴ Exhibit 04, Tab 01, Sched. 1, Appendix 19 at pp. 1-25.

¹⁵ Exhibit 04, Tab 01, Sched. 1 at s. 5.3.4. and p. 327.

¹⁶ Exhibit 04, Tab 01, Sched. 1 at s. 5.3.4. at p. 320.

¹⁷ Exhibit 04, Tab 01, Sched. 1 at s. 5.3.4. at p. 332.

¹⁸ Tierney, Susan F. (Analysis Group, Inc.), “The Value of ‘DER’ to ‘D’: The Role of Distributed Energy Resources in Supporting Local Electric Distribution System Reliability”, March, 30, 2016, available online at: <https://goo.gl/kYF8K6>.

¹⁹ Ontario Energy Board *Rules of Practice and Procedure* (last revised October 28, 2016), rule 22.02.

heard on such matters (*audi alterem partem*).²⁰ DRC submits that the Requested Customer Exclusion of DRC is therefore a breach of the procedural fairness owed to its members.

(iii) The Requested Customer Exclusion violates Board's statutory mandate.

Section 1(1) of the Act expressly requires that:

1 (1) The Board, in carrying out its responsibilities under this or any other Act in relation to electricity, shall be guided by the following objectives:

1. To **inform consumers and protect their interests with respect to prices and the adequacy, reliability and quality of electricity service.** [yet to be proclaimed]
2. To **promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry.**
3. To **promote electricity conservation and demand management in a manner consistent with the policies of the Government of Ontario, including having regard to the consumer's economic circumstances.**
4. To **facilitate the implementation of a smart grid in Ontario.**
5. To promote the use and generation of electricity from renewable energy sources in a manner consistent with the policies of the Government of Ontario, including the timely expansion or reinforcement of transmission systems and distribution systems to accommodate the connection of renewable energy generation facilities.

[emphasis added]

DRC respectfully submits that the Requested Customer Exclusion would violate each and all of paragraphs 1(1)(1) through 1(1)(4), inclusive, of the Board's objectives and render the decision *ultra vires* the Board's statutorily mandated jurisdiction codified in both subsection 1(1) objectives and section 29 and subsection 78(2) electricity rate setting obligations under the Act. Further, if the Board were to exclude these distributed energy customer interests, it runs the risk of seriously impeding rather than facilitating the implementation of a smart grid in Ontario and facilitating stranded costs in lieu of efficiencies in the distribution of electricity.

(iv) The Requested Customer Exclusion is at odds with the Board Advisory Report.

DRC further submits that the Requested Customer Exclusion is also at odds with the express recommendations regarding DERs set out in the Board Advisory Report. Recommendation 1 urges a level playing field for DERs.²¹ Recommendation 2 is focused on removing disincentives for new efficiency measures.²² Recommendation 3 encourages enhanced customer choice.²³

²⁰ Sara Blake, *Administrative Law in Canada*, 6th ed (LexisNexis, 2017) at 28; see generally *Corp. of the Canadian Civil Liberties Association v Ontario (Civilian Commission on Police Services)*, [2006] OJ No 4699 (ONCA), leave to appeal refused [2007] SCCA No 40; *Alberta Wilderness Association v Alberta (Environmental Appeal Board)*, [2013] AJ No 72; *Pembina Institute v Alberta (Environment and Sustainable Resources Development, Director)*, [2013] AJ No 1047.

²¹ Advisory Committee on Innovation, *Report to the Chair of the Ontario Energy Board* (November, 2018), pp. 5-8, available online at: <https://www.oeb.ca/sites/default/files/Report-of-the-Advisory-Committee-on-Innovation-20181122.pdf>.

²² *Ibid*, pp. 9-13.

²³ *Ibid*, pp. 14-17.

DRC's intervention is consistent with and facilitates each and all of these recommendations that are also likely to result in greater efficiency and customer choice around energy.

(v) DRC cost eligibility is supported by the Practice Direction.

DRC's membership includes Alectra customers that are EV owners who will be directly affected by the outcome of the proceeding, as outlined above. Sections 3.03(a), 3.03(b), and 3.07 of the Practice Direction strongly support DRC's cost award eligibility in the proceeding.

The Board has found DRC to be cost award eligible in a similar proceeding, and DERs to be relevant in other distribution proceedings. Specifically, the Board found DRC to be cost eligible in EB-2018-0165 and the DRC is also active in the Board's ongoing Utility Remuneration and Responding to DERs policy consultations (EB-2018-0287 / EB-2018-0288). DERs and related non-wires reliability solutions were also the subject of significant evidence in Hydro One Networks Inc.'s most recent distribution rates application (EB-2017-0049) and the Board explicitly encouraged the continued deployment of DERs in its Decision and Order in that proceeding.

Alectra does not appear to challenge DRC's submission in its Notice of Intervention dated July 3, 2019, that it should be afforded cost award eligibility in accordance with section 3.03(a) of the Practice Direction. As discussed in detail above, DRC primarily represents the direct interests of consumers in relation to electricity distribution services that are provided by Alectra and regulated by the Board.

DRC also appears to be the only prospective intervenor in the Proceeding that represents the DERs and EV policy perspective that is relevant to the Board's customer protection, efficiency, and innovation mandates as they relate to the rates and costs proposed in the Application. DRC should therefore be afforded cost eligibility in accordance with section 3.03(b) of the Practice Direction.

Alectra argued in the Requested Customer Exclusion that "while DRC states that it represents organizations that have a policy interest in electricity conservation and demand management, [Alectra] notes that as a result of recent legislative changes introduced in Bill 87, LDCs such as [Alectra] will play a significantly reduced role with respect to such initiatives."

DRC notes that, irrespective of any changes to the role of LDCs, electricity conservation and demand management remain squarely within the Board's mandate, pursuant to paragraph 1(1)(3) of the Act. DRC further notes that Alectra makes no submission on DRC's references to implementation of a smart grid in Ontario and promotion of the use of electricity from renewable energy sources, each of which support DRC's submission that it is eligible to seek an award of costs in accordance with s. 3.03(b) of the Practice Direction.

Alectra's rate proposals raise unique rate issues and impacts affecting both distribution system benefits and rate mitigation for EV and other DER customers. DRC submits, in the further alternative, that these impacts and the rapid integration of potentially beneficial DERs, including EVs, constitute special circumstances that warrant DRC's cost eligibility pursuant to section 3.07 of the Practice Direction.

Motion to Review and Vary.

DRC takes no position on whether the changes proposed by Alectra in the Application warrant a motion to review and vary. However, DRC does support Alectra's contention that circumstances and the electricity sector have changed sufficiently, in part due to the electrification of transportation and advent of transactive energy, that the new Application and approach may be warranted and well within the public interest.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'L' followed by a long, sweeping horizontal stroke that ends in a small arrowhead pointing to the right.

Lisa (Elisabeth) DeMarco

- c. Indy J. Butany-DeSouza, Alectra Utilities Corporation
 Charles Keizer, Torsys LLP
 Cara Clairman, Plug'n Drive
 Wilf Steimle, Electric Vehicle Society
 Intervenors in EB-2019-0018