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July 29, 2019

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Our File No. 192964

**VIA RESS, EMAIL AND COURIER**

Ontario Energy Board  
2300 Yonge Street  
27th Floor  
Toronto, Ontario  
M4P 1E4

Attention: Kirsten Walli,  
Board Secretary

Dear Ms. Walli:

**Re: EB-2019-0018: Alectra Utilities, 2020 Electricity Distribution Rates Application**

Please find enclosed herewith BOMA's Written Submissions on Preliminary Questions regarding Capitalization Policy.

Yours truly,

**FOGLER, RUBINOFF LLP**

Thomas Brett

TB/dd

Encls.

cc: All Parties (*via email*)

**ONTARIO ENERGY BOARD**

**Alectra Utilities Corporation**

**Application for electricity distribution rates and other  
charges effective January 1, 2020**

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**Written Submissions on Preliminary Questions Regarding Capitalization Policy  
of Building Owners and Managers Association, Greater Toronto ("BOMA")**

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**July 29, 2019**

**Tom Brett**  
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**Counsel for BOMA**

**Written Submissions of BOMA on Preliminary Questions Regarding Capitalization Policy**

In Procedural Order No. 1, the Board asked for submissions on two preliminary questions:

*"Does Alectra Utilities' request to reverse the outcome of the OEB's decision to create the capitalization related deferral accounts for the Enersource, Brampton and Horizon rate zones, constitute a motion to vary pursuant to Rule 40.02 of the OEB Rules?"*

*"If Alectra Utilities' request constitutes a motion to vary, has the threshold test been met such that the request should be reviewed on the merits?"*

**The First Question**

BOMA believes that the Board's preliminary view that Alectra's request to reverse the outcome of the Board's Decision in EB-2017-0024 to create the three capitalization-related deferral accounts constitutes a motion to vary pursuant to section 40.02 of the OEB Rules is correct.

In its Decision and Partial Accounting Order dated December 20, 2017 in EB-2017-0024, the Board ordered that:

- "1. Alectra Utilities shall establish the following accounts to record the changes to the revenue requirement, as defined in this Decision, resulting from the change in Alectra Utilities' capitalization policy:
  - Account 1508, Sub-Account Impact of Post-merger Capitalization Policy Changes ERZ
  - Account 1508, Sub-Account Impact of Post-merger Capitalization Policy Changes BRZ
  - Account 1508, Sub-Account Impact of Post-merger Capitalization Policy Changes HRZ*
- 2. The accounts are effective February 1, 2017 and will remain open until the OEB orders otherwise.*
- 3. Interest will be recorded on balances in the accounts at the OEB prescribed interest rate for deferral and variance accounts in separate sub accounts of these accounts for each rate zone."*

The Decision to create the deferral accounts had to be made before December 31, 2017, in order to ensure that the impacts of the changes in capitalization policy which the Board made effective on February 1, 2017 were captured for the remaining eleven months of 2017, as well as in subsequent years. The Board found, in that case, that the deferral accounts will record the difference between the revenue requirement calculated using the pre-merger capitalization policy, and the revenue requirement calculated under the new capitalization policy.

The remainder of the Board's EB-2017-0024 Decision was issued on April 6, 2018. In that part of the Decision, the Board decided that:

*"Alectra Utilities is required to continue to accumulate amounts in its deferral accounts for the change in capitalization policy for the Brampton, Enersource and PowerStream RZs, and file a proposal for disposition of balances for 2019 rates" (p2)*

In the current proceeding, Alectra has requested that:

*"...the OEB should reconsider its capitalization decision in EB-2017-0024 and no longer require the use of deferral accounts or the future disposition of recorded balances." (Exhibit 2, Tab 1, Schedule 5, p2).*

Alectra's proposal is, on its face, a request that the Board rehear and vary its Decision in EB-2017-0024 to open the three accounts and accumulate balances in those accounts on an ongoing basis. In other words, it is a motion to vary the Board's Decision.

Alectra's submission, filed by its counsel on July 19, 2019, is that the Board's Decision and Partial Accounting Order of December 20, 2017 is an interim order and, therefore, a motion to vary is not required. This submission is not correct. Alectra is conflating and confusing an interim order with a partial order. They are different things. The Board issued a partial order, in other words an order relating to one issue in the EB-2017-0024 proceeding, because, as noted above, it had to create the three deferral accounts before December 31, 2017, in order to capture

the 2017 impacts of the capitalization policy change for the eleven months of 2017 without engaging a retroactive rate-making. The Board's Decision on the remainder of the issues of EB-2017-0024 was issued on April 6, 2018, and included further elaboration on the deferral account issue. In that Decision, the Board indicated that debits and credits to the three deferral accounts should continue in 2018, except for the Horizon account in which deferral account entries should commence on January 1, 2020 (EB-2017-0024, April 6, 2018, p81).

### The Second Question

If the Board decides that this part of Alectra's evidence is a motion to vary the Board's Decision in EB-2017-0024, BOMA is of the view that Alectra has not met the threshold test set out in the Board's Rules.

There are no errors in fact in the Board's previous Decision or changes in circumstances or new material that is now available, that was not available when the Board made its EB-2017-0024 Decision. Nor did Alectra meet the other required criteria in section 42.

In the EB-2017-0024 April 6, 2018 Decision, the Board discussed many of the arguments put forward by Alectra to support its argument in that case to eliminate the deferral accounts without making any dispositions.

For example, the Board found that the fact that there was no cash impact from the application of the new capitalization policy did not mean that the new policy did not have important rate impacts. In its capitalization evidence in this case, Alectra reiterated the same argument. The Board also noted in its EB-2017-0024 Decision that Alectra made no submissions with respect to how capitalization policy should be dealt with in its evidence on the merger application, although Alectra would have surely been aware of the impacts of such a change, given its knowledge of

the existing PowerStream capitalization policy and the impact of moving the other three utilities, who were parties to the merger, to the PowerStream regime. BOMA believes that that was the appropriate time to clarify the impact of the capitalization policy and for Alectra to have made the required regulatory risk analysis, which it appears it did not do. In fact, the Board, in its April 6, 2018 EB-2017-0024 Decision, did discuss virtually all of the issues which Alectra has raised in the current proceeding, except perhaps for the fact that they object to the reduction of their revenue requirement going forward. But that, in itself, is not a valid reason to launch a review and variance of the earlier Decision.

**All of which is respectfully submitted.**