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July 29, 2019

VIA E-MAIL

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
Toronto, ON
M4P 1E4

Dear Ms. Walli:

**Re: EB-2019-0018 – Alectra Utilities Corporation (Alectra) 2020 Distribution Rates
Submissions with respect to Capitalization Policy**

As per Procedural Order No. 1 in the above noted proceeding these are the submissions of VECC with respect to the request to reverse the Board Decision EB-2017-0024 regarding the rate treatment of a single capitalization policy for Alectra.

The Board has posed two questions:

1. 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?
2. 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?

Rule 40.02 requires that "[A] person who was not a party to the proceeding must first obtain the leave of the Board by way of a motion before it may bring a motion under Rule 40.01.

In our submission it is clear that the Applicant is seeking a variance from the Board's Decision in EB-2017-0024. Alectra says as much in the evidence filed: "*First, Alectra Utilities requests that the OEB reverse the outcome of its previous decision to create the capitalization deferral accounts for each of the Brampton, Enersource and Horizon Utilities RZs*"¹.

¹ Alectra EB-2019-0018 Exhibit 2, Tab 1, Schedule 5, pg.2

The findings of the Board in EB-2017-0024 on this matter are substantive in their reasoning. The Board found that the change in capitalization policy could result in windfall gains to the Utility.

The OEB finds that it [the change in capitalization policy] is neither an efficiency gain nor a "benefit" of the merger that should accrue to shareholders, to be used to offset the costs of the merger transaction, as claimed by Alectra Utilities. Having found that mandatory accounting changes are distinct from efficiency gains that accrue to shareholders, the next question is whether there should be an adjustment to 2018 rates as a result of this mandated accounting change.²

The Board then goes on to discuss the establishment of deferral accounts to track the impact of the change in policy. The deferral accounts were not, as is suggested by Alectra, created as mechanism in which to review the decision at some future date.³ Rather they were established to ensure the cost consequences of the change are appropriately dealt with as is clearly stated in the Decision:⁴

For the remainder of the Custom IR term, the effect on earnings resulting from the change in the capitalization policy will be dealt with through the ESM. Once the Custom IR term ends, the Horizon Utilities RZ will move to Price Cap IR per the MAADs policy, and it will be treated consistently with the Brampton and Enersource RZs. Alectra Utilities shall retain the deferral account opened for Horizon Utilities RZ however, the first entries to the account shall begin January 1, 2020.

While it is open to the Applicant to argue the appropriate disposition of the accounts (for example by arguing for sharing of the balances as between shareholder and ratepayers) it is clear that the Board was not anticipating or inviting a re-visitation of the merits upon which the accounts were created or their duration over the deferred rebasing period. That is, it is clear that the Board had dealt with the issue in its entirety and was not seeking to have the matter reargued at a later point.

Having established the current proposal amounts to a variance of the Board's EB-2017-0024 Decision the Board's next question needs to be addressed – has the party met the threshold test. In our submission they have not.

The evidence filed in this proceeding is largely the same as that considered by the Board in EB-2017-0024. In the main that is summed in the evidence as the argument that *"the cash flow requirements do not change since the change in recognition of an operating and capital expense is "non-cash"*⁵. In fact the Board's Decision addressed this argument head on:⁶

Alectra Utilities stated that the change in the capitalization policy was a "non-cash event that had no impact, and will have no impact going forward, on the underlying cost of utility business." The OEB agrees. The change in capitalization policy does, however, change the type of costs (OM&A or capital) and the timing of cost recognition, which is relevant when setting electricity rates.

² Decision and Order EB-2017-0024 ALECTRA Utilities Corporation Revised: April 6, 2018, pg. 80

³ Alectra Submissions July 19, 2019, Pg. 2

⁴ EB-2017-0024, *Op. Cit.*, pg. 81

⁵ Alectra EB-2019-0018 Exhibit 2, Tab 1, Schedule 5, pg.2

⁶ *Ibid*, pg. 80

No error of law is identified, nor are any new facts proffered for the Board to consider. The only new information provided is with respect to the estimation of the net balances of the deferral accounts over the deferred rebasing period – now estimated at approximately \$39 million⁷. At the time of the EB-2017-0024 Decision the amount discussed was in range of \$53 million.⁸ That is the only new evidence is that the impacts are smaller than previously contemplated by the Board.

For these reasons we submit that the Applicant has not met the threshold requirements under the Board's Rules. In our submission the only issues to determine in this proceeding is the appropriateness of the balances in accounts and their disposition.

These are our respectful submissions

Yours truly,

Original/John Lawford

Counsel for VECC

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[All Parties](#)

⁷ Alectra EB-2019-0018 Exhibit 2, Tab 1, Schedule 5, pg.7

⁸ EB-2017-0024 *Op. Cit.*, pg. 78