

July 30, 2019

Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
P.O. Box 2319
Toronto, Ontario
M4P 1E4

Dear Ms. Walli:

Re: EB-2019-0018 – Alectra Utilities Corporation – 2020 Rates

We represent the Consumers Council of Canada (“Council”) in the above-referenced proceeding. Through its Application, Alectra Utilities Corporation (“Alectra”) is seeking, among other things, to have the Ontario Energy Board (“OEB”) reverse the outcome of its previous Decision regarding the capitalization policy of Alectra. Alectra has requested that the capitalization-related deferral accounts for the Enersource, Brampton and Horizon rate zones be closed without clearing their balances, or that the balances be disposed to Alectra. In its Procedural Order No. 1, dated July 9, 2019, the invited parties to file submissions on the following two questions with respect to this issue:

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 its merits?¹

The Council submits that Alectra’s request to reverse the outcome of the OEB’s Decision in EB-2017-0024 proceeding clearly constitutes a motion to vary under the OEB’s rules. If Alectra had chosen to file a motion it should have done so within 20 days of the release of the OEB Decision. It did not do that. Therefore the request to “reverse” the decision should be rejected.

Submissions:

In Alectra’s 2008 rate proceeding the OEB explicitly included an issue on the Issues List:

- What is the appropriate way to account for the change in capitalization policy resulting from the merger for Alectra Utilities and its predecessor companies?²

The OEB at that time also established deferral accounts for the Horizon, Enersource and Brampton rate zones to ensure that all options related to the move to a harmonized capitalization policy remain open and available for consideration³. The OEB, in that order indicated that the nature and any disposition of

¹ OEB Procedural Order No. 1, dated July 9, 2019 – EB-2019-0018

² EB-2017, Decision on Issues List and Interim Rates and Procedural Order no. 3, dated Nov. 17, 2017

³ Ibid

these accounts is not being determined at the time and that submissions would be heard as part of final argument.

In its Final Decision the OEB made the following findings with respect to the capitalization policy issues:

- The OEB finds that the change in capitalization policy is not a “benefit” accruing to shareholders as claimed by Alectra Utilities;
- In its MADDs Application, Alectra Utilities did not disclose to the OEB that applicable accounting standards mandated a capitalization change for three of the rate zones. The OEB issued its MADDs decision based on the evidence before it. The MADDs decision was silent as the issue was not raised. This Decision is the first opportunity to consider and opine on the appropriate regulatory treatment for a mandated accounting change resulting from the merger:
- Alectra Utilities stated that the change in the capitalization policy was a “non-cash event that had no impact on going forward, on the underlying cost of utility business.” The OEB agrees. The change in the 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;
- The OEB’s MADDs policy was established to incent consolidations by permitting utilities to keep efficiency gains to offset the costs of the transaction. The change in capitalization policy has no impact on underlying total costs and therefore on efficiency. It simply moves costs from OM&A to capital (for Enersource RZ and Horizon Utilities RZ) and vice versa (for Brampton RZ). The OEB finds that it is neither an efficiency gain, or 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 Utilities⁴.

The OEB’s Decision in that case was clear. In its Application for 2020 rates Alectra specifically asks that the OEB reverse that decision:

- In this Application, there are two aspects related to the change in capitalization policy for the OEB to determine. 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. This is on the basis that the change to the capitalization policy has no cash consequences and is an inappropriate change to Alectra Utilities’s revenue requirement during the rebasing period; as such, it is contrary to the OEB’s MADDs policy. Second, subject to the OEB’s determination of the first issue, Alectra Utilities requests that the OEB determine the basis for recording balances in the capitalization deferral account and the treatment of the ESM for the Horizon Utilities RZ, in light of the capitalization policy change.⁵

Asking the OEB to reverse its Decision is effectively a motion to review. According to the OEB’s Rules of Practice and Procedure a motion to review must be filed and served within 20 calendar days of the date of the order and decision.⁶ Alectra had every opportunity to do that and did not. Alectra has not explained why that rule should be an exception in this case. From the Council’s perspective it would be inappropriate to allow a motion to review to proceed at this time for a decision released on April 6, 2018

⁴ EB-2017-0024 – Decision dated April 6, 2018

⁵ Ex. 2/T1/S5/p. 2

⁶ OEB Rules of Practice and Procedure, s. 40.03

The Council strongly supports the OEB's original decision regarding the change in capitalization policy for Alectra. It is not about efficiency gains or some benefit that should accrue to the shareholders. It is about how the change in capitalization policy should be reflected in rates.

Yours truly,

Julie E. Girvan

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CC: All parties