

September 22, 2019

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

Dear Ms. Walli:

**Re: Alectra Utilities Corporation (“Alectra Utilities”)
Incentive Regulation Mechanism (“IRM”) Application for 2020 Electricity
Distribution Rates and Charges (OEB File No. EB-2019-0018)
– Response to MANA Letter re Intervenor Evidence**

We are legal counsel to Alectra Utilities in connection with the above-referenced application. This letter is in response to the September 20, 2019 letter that has been filed by MANA regarding the filing of intervenor evidence. In its letter, MANA advises the Board that it still wishes to file intervenor evidence and requests that the Board establish a process for doing so. Alectra Utilities has three areas of concern arising from MANA’s letter, namely the relevance, scope and timing for the evidence that is to be filed. Each of these is discussed below.

Relevance

Alectra Utilities is concerned that a substantial portion of MANA’s proposed evidence would not be relevant to the M-factor portion of the application. MANA’s September 20 letter includes the same list of potential issues to be addressed through evidence as was listed in its July 22 letter. MANA has made no attempt to refine its list of issues based on its review of Alectra Utilities’ interrogatory responses. In the Board’s July 25 letter to MANA, the Board required MANA to review Alectra Utilities’ responses to interrogatories on the M-factor and, if it still wishes to file evidence, to provide the Board with “a comprehensive description of the proposed evidence that it wishes to file” and an explanation of “the relevance of the evidence to the M-Factor in this proceeding and why the subject matters cannot be dealt with through written argument”.

Instead of providing a detailed description of what it plans to file, MANA has provided a non-exhaustive list of potential issues that it may choose to address with its evidence. Moreover, instead of explaining the relevance of its planned evidence specifically to the M-factor, MANA suggests that the relevance of its evidence to the M-factor can be inferred from the Board’s acknowledgement, in granting intervenor status. Apparently, MANA plans to speak to the impacts of the requested rates on customers, their operations, competitiveness and expansion opportunities. In fact, in Procedural Order No. 1, the Board only mentions these aspects as a summary of MANA’s submissions in its intervention request. In granting MANA intervenor

status, the Board simply says that it is “satisfied that MANA has a substantial interest in the proceeding” and that “as a customer of Alectra Utilities that may be affected by the outcome of the proceeding MANA represents its direct interests”.¹ Those aspects referenced by MANA in its submissions were for the Board to gauge MANA’s interest in the proceeding and not as a determination of the relevance of facts that would advance the Board’s consideration of and conclusion on Alectra Utilities DSP and M-Factor. Consequently, MANA has not adequately described the evidence it proposes to file, nor has it adequately explained the relevance of such evidence to the M-factor. Further, MANA has made no attempt to explain why the subject matter of its proposed evidence cannot be dealt with through written argument.

Scope

Alectra Utilities is concerned with the scope of the evidence that MANA proposes to file. MANA states that it expects to file “information within the knowledge and possession of MANA and other large Alectra customers similar to MANA with whom MANA has a commercial relationship”. MANA has not identified who the other large Alectra customers would be, nor has it described the nature of the commercial relationships between MANA and such other entities. More significantly, MANA applied for and was granted intervenor status as an individual customer that may be affected by the outcome of the proceeding. In fact, the Board notes in Procedural Order No. 1 that “MANA represents its direct interests”. MANA did not seek, nor was it granted, intervenor status in its capacity as a representative of a broader group of customers. As such, it would not be appropriate for MANA to file evidence on behalf of a broader group of customers as it is proposing to do. To do so would effectively circumvent the Board’s process for determining intervenor status in respect of such other customers.

Timing

Alectra Utilities has significant concerns with MANA’s proposed timing for filing its evidence and the potential consequences for the long-established hearing schedule. Procedural Order No. 1 establishes the schedule for hearing the application. In respect of the M-factor portion of the application, the Board has established (and has since confirmed) that a Technical Conference will be held on October 7 and, if necessary, October 8; and that an oral hearing on the M-factor proposal will be held October 15, continuing if necessary on October 17 and 18. MANA has indicated that it has not started to prepare its evidence, and that it will not do so until the Board confirms that such evidence will be accepted. Moreover, MANA has indicated that it would only be able to file its evidence within 3 weeks of receiving such confirmation from the Board. This is not acceptable to Alectra Utilities.

Even if the Board immediately concludes that MANA is permitted to file evidence, that evidence, based on MANA’s timeline, would be filed just before or at the outset of the hearing. Given that the Board may deliberate on MANA’s request, clearly the evidence would not be received until after the start of the hearing. This would provide no opportunity for review or discovery on any such intervenor evidence that may be filed, nor would this enable efficient planning of the oral hearing as the need to cross-examine the affiants would not be known. To date, Alectra Utilities has met all dates required of it in the proceeding. It would be unfair to not have an opportunity to review any evidence filed and clearly unfair for the hearing to be delayed for MANA’s request – especially, since MANA has been planning the filing of evidence for some time.

¹ Procedural Order No. 1, p. 2.

Alectra Utilities proposes that, if the Board is inclined to accept evidence from MANA, whether as proposed or as the Board otherwise specifies, such evidence must be filed by no later than September 30, with interrogatories on such intervenor evidence to be filed by October 3 and MANA responses to interrogatories to be filed by no later than 4:45 pm on October 7.

Yours truly,

(Signed on Original)

Jonathan Myers

cc: Indy Butany-DeSouza, Alectra Utilities
C. Keizer, Torys LLP
All Parties