EB-2019-0018

ONTARIO ENERGY BOARD

IN THE MATTER OF an application made by Alectra Utilities Inc. pursuant to the *Ontario Energy Board Act, 1998* for an order or orders setting just and reasonable rates for the distribution of electricity commencing January 1, 2020;

NOTICE OF MOTION

The School Energy Coalition ("SEC") will make a motion to the Ontario Energy Board ("the Board") at its offices at 2300 Yonge Street, Toronto, on Tuesday, October 15, 2019 at 9:30 AM, or at such other date and time as may be determined by the Board.

PROPOSED METHOD OF HEARING

SEC proposes that the motion be dealt with orally at the commencement of the oral hearing in this matter.

THE MOTION IS FOR:

1. An order of the Board requiring the Applicant and its witnesses to give full and complete answers to the following questions asked at the Technical Conference:

    a. ***Utility Financial Plan [Tr.1:32-33].*** The Board of Directors of the Applicant assumed in its Financial Plan that the OEB would provide significantly less rate funding for its capital plan than was requested in the ICM applications, and the results in the 2018 and 2019 Alectra Decisions provided significantly more rate funding than was in the Financial Plan. The Applicant has refused to provide that Financial Plan.

    b. ***Impact of the M-Factor [Tr.1:60-61].*** Quantification of the difference in rate recovery between the proposed M-factor and the amount of rate recovery reasonably expected from ICM applications for the same years consistent with the Board's decisions in EB-2017-0024 (the "2018 Alectra Decision") and EB-2018-0016 (the "2019 Alectra Decision").

c. ***Identification of ICM Projects [Tr.1:82-83].*** Identification in the list of 194 M-factor projects found in Interrogatory Response Staff-4 those projects that the Applicant asserts would qualify for ICM treatment under the Board's ICM policy as articulated in the 2018 and 2019 Alectra Decisions.

d. ***ROE Forecast [Tr.1:64-66].*** The Applicant's current forecast of its expected actual return on equity in each of the years to which the M-factor is intended to apply.

e. ***Aggregated Reliability Data [Tr.1:96-97].*** Aggregated SAIDI and SAIFI data for the period 2010-2013 for the Applicant's predecessor companies, extending the tables in Interrogatory Response Staff-69.

f. ***Rate Base Continuity [Tr.2:145-147].*** A continuity schedule showing the impact on rate base of the proposed capital plan set out in the DSP, as funded by the M-factor.

2. Such further and other relief as SEC may request and the Board may grant.

THE GROUNDS FOR THE MOTION ARE:

1. The Applicant has refused to answer the six questions. The transcript excerpts are attached to this Notice of Motion.

2. The questions are relevant to the M-factor proposal of the Applicant.

3. Delivery of the responses to the questions at the outset of the hearing, or early in the hearing, will allow parties to test the responses through cross-examination, as would have been the case had the questions been answered during the Technical Conference.

FACTUAL BACKGROUND

4. The Applicant has proposed, in place of the Board's normal Incremental Capital Module, a new rate component called an M-Factor, which the Applicant says provides it with full funding of its Distribution System Plan over the period 2020-2024[1].

5. Parties are expected to challenge the M-Factor proposal under four main headings:

    a) It is inconsistent with Board policies;

    b) The Applicant already has sufficient funding in rates to build and maintain its distribution system and does not require additional funds;

    c) The effect of the M-Factor approach is that the Applicant is spending the ratepayer merger benefits that would otherwise be expected to arise and be credit to the ratepayers at the end of the deferred rebasing period; and

    d) The DSP represents excessive capital spending relative to the real needs of the Applicant.

6. The first and fourth questions that the Applicant refused to answer (a and d in the list above) relate to the second category of M-factor challenge: does the Applicant need the money? High levels of expected ROE are only one component of this category of challenges, but it is an important one[2]. In addition, the Applicant's Financial Plan, approved by its Board of Directors, which assumes much lower levels of extra funding than the OEB actually approved in the 2018 and 2019 Alectra Decisions[3], will help the OEB understand whether the Applicant's Board of Directors thinks it needs all of the extra M-factor money.

[1] Tr.2:113.
[2] SEC notes that the response to JT2.1 may provide similar information to this question, although from a forecast three years ago. Depending on the response to JT2.1, it is possible that the Board will have sufficient information without receiving a more current forecast.
[3] CCC-1, Attach. 1, p. 4.

7. The second and third questions (b and c above) relate to the first category of M-factor challenge: inconsistency with policy. The questions ask the Applicant to specify and quantify the extent to which the Applicant is seeking additional rate increases, over and above those consistent with current Board policy. They in essence ask the questions "How much more do you want?" and "What projects do you want funded that do not otherwise qualify for ICM treatment?"

8. The fifth question (e above) relates to the fourth category of M-factor challenge: does the DSP represent a reasonable level of capital spending? The Applicant has alleged that deteriorating reliability is a driver for spending increases in the DSP[4], but relies on a five year trend[5], and refuses to provide aggregated SAIDI and SAIFI information for prior years to assess whether that trend is a real trend, or normal volatility.

9. The sixth question (f above) relates to the third category of M-factor challenge: spending the ratepayer benefits from the merger so the customers never get them. The Applicant has a capital spending plan for the period 2020-2024, but refuses to tell the Board and the parties what the impact would be on rate base over that period. Rapid increases in rate base during the deferred rebasing period have the potential to cause a rate increase on rebasing, despite the merger synergies. Spending the ratepayer benefit would be directly contrary to the principles underlying the Board's MAADs policy.

10. The oral hearing in this proceeding is scheduled for October 15, 17 and 18. Delivery of responses to the six questions on October 15 or 16 creates an opportunity for the parties to test those responses through cross-examination of the Applicant's witnesses, provides the Board with better information, and avoids any delay in the proceeding.

THE FOLLOWING DOCUMENTARY MATERIAL AND EVIDENCE WILL BE RELIED UPON AT THE HEARING OF THE MOTION:

1. The Record in EB-2019-0018.
2. The 2018 and 2019 Alectra Decisions.

[4] Presentation Day Transcript, p. 13, and many other places in the record.
[5] Essentially a three year trend. See Tr.1:96.

3. Such further and other material as counsel may advise and the Board may permit.

October 9, 2019

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AND TO: **Intervenors of record**

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VOLUME: **Technical Conference**

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control. That is management using its judgment in terms of what it thinks it needs and what it thinks it is going to get.

MR. SHEPHERD: I was sort of going in a different direction, because it sounds like what you're saying is that your board of directors approved a financial plan that was imprudent.

Wouldn't that be imprudent, to under invest to that level?

MR. BASILIO: No. Again, we go through Board proceedings, Mr. Shepherd -- I think I spoke about this earlier -- where we bring forward investments for funding. The Board renders its decision. Intervenors file submissions.

Ultimately, we are provided with an envelope or approved projects, and then we will go back and reprioritize those and try to, the best we can, to align those things to, you know, the funding available in rates.

But it puts pressure on, which is one of the reasons we are back here with a five-year DSP. And I think, you know, I think again, as we articulated in presentation day, there is a real urgency to get on with things and get the appropriate level of funding to carry on with them.

MR. SHEPHERD: So can we please have that financial plan that your board of directors approved?

MR. KEIZER: No. It is not relevant. It relates to a previous application. It has nothing to do with the current application.

MR. SHEPHERD: The essence of the application here, Mr. Keizer, is that you didn't give us enough the last two times, and as a result, our reliability is declining.

If the board of directors in fact disagreed and approved a plan that even had less capital spending, that's relevant to this Board.

They didn’t actually get less than they needed. They got more than they expected.

MR. KEIZER: No, we continue with the objection. It is not relevant.

MR. SHEPHERD: All right. I am now in CCC attachment 2, May 2nd, and the ICM -- you have listed the ICM impact here for your board.

For each of those years, 2020-2022, can you tell me the dollar figure of your forecast ROE? I am only asking you the question because I am pretty sure I have seen it in the evidence somewhere -- it is like 18 percent or something -- but I couldn't find it last night.

[Witness panel confers]

MS. BUTANY-DESOUZA: If Teresa was able to capture laughter on the transcript I would be laughing at your percentage statement, though I am not going to repeat it.

I can tell you that we don't forecast ROE out 2021, 2022. I would, though, point out to you and to this Board that in Exhibit 2, tab 1, schedule 3, page 15, we've identified that our achieved ROE for -- regulatory ROE for 2018 was 7.66 percent, which is well below our deemed ROE.

So your number is interesting, but my accurate number would have been based on its review of the totality of evidence, which included a merger business plan.

I certainly can't speak for the Board, though.

MR. SHEPHERD: Okay. So I would like you to go to SEC 43.

MS. BUTANY-DESOUZA: We have it.

MR. SHEPHERD: So we had this discussion back and forth about whether M-factor and ICM are essentially the same. And basically, as I understood it, the M-factor is the same as the ICM for MAADs situations, as you understand it, except that it is on an envelope basis for five years, right?

MS. BUTANY-DESOUZA: Right. Assuming that it is as set out in the MAADs policy and the MAADs handbook, which is for normal and expected capital.

MR. SHEPHERD: Okay. So what I would like to ask is -- you've said that they're identical based on that interpretation. You know what the Board's interpretation was in 2018 and 2019.

Can you, please, calculate your M-factor claim if the 2018 and 2019 ICM rules are applied to your M-factor?

MR. KEIZER: I don't think that's the proposal that Alectra has before it, and it's not applying on the basis of what the 2018 and 2019 would be. Nor should it be interpreting as to how the Board would receive it, if it was applied for on that basis.

MR. SHEPHERD: I just want to know how much more money you're asking for.

MR. BASILIO: I think we've provided the basis on which we're, you know, we're making the comparison between M-factor and ICM and it's under the assumptions that Ms. Butany just articulated, which are consistent with the policy she referenced.

So I don't know -- I am not sure what more we can offer there, frankly. You're asking for a completely different basis of comparison for a different method of filing. That is not what is before the Board today.

MR. SHEPHERD: Yes.

MR. BASILIO: And we provided an interrogatory comparisons.

MR. SHEPHERD: What I am asking for is how much more money are you asking for than you would otherwise get under the ICM as currently interpreted by the Board.

If you are not willing to tell the Board that, that's fine. I am just -- I had to ask the question.

MR. KEIZER: I understand, and the answer is we don't know because it would be to the Board to interpret it and to apply its own rules. It is not a formulaic thing. So as a result, we don't have that number.

MR. SHEPHERD: Well, see, the Board said in its procedural order that it is a formulaic thing.

MR. KEIZER: Certainly the IRM is, but not the ICM, not as they applied it in the 2018-19 decision.

MR. SHEPHERD: Okay. So in SEC 45, on the second page you say -- and you say this lots of places -- that Alectra Utilities requires the funding available through the Mbut that is, you know, that's the policy and that was our expectation.

It was an acknowledged expectation in the Board's decision on our MAADs application, and so I think, you know, I think we're filing here on a basis that is entirely consistent with our MAADs decision that, you know, I think is entirely consistent largely with Board policy, save some of the nuances between M-factor and ICM that we have articulated.

So it is required, in my view it is required, and, you know, I don't really have anything else to say about the nature of that statement.

MR. SHEPHERD: So I am going to ask you to file your most recent forecast of your regulatory earnings for the period 2020 to 2024 to show that regulatory earnings, including all synergies and including all transition costs, what your shareholders will actually see --

MR. BASILIO: So we're not going to do that.

MR. SHEPHERD: Okay.

MR. BASILIO: Those synergies and savings are specifically excluded from that calculation, per the MAADs policy. Customers are not entitled to those savings unless they're generating excess earnings as defined, as ultimately resolved by the Board in our MAADs proceeding.

Those earnings, those transition costs, are not for the account of customers for that period. So the implication would be that somehow those savings should be financing the capital within that period of time outside of the boundaries that the Board established in its MAADs decision.

So it would be, frankly, egregious, relative to that decision, to provide that information. The context is completely outside of Board policy in that decision.

MR. SHEPHERD: I wasn't asking you to agree to use those earnings for capital spending. I was asking you not to make them secret.

MR. BASILIO: They're not secret. We've provided -- I believe we have provided in response to an interrogatory, G-Staff 15, what this -- I mean, Indy, please clarify what we responded to, but I think we provided this information.

And what I would offer is they're largely consistent with what we provided in the evidence filed for the MAADs application.

MR. SHEPHERD: Sorry, I --

MS. BUTANY-DESOUZA: Mr. Shepherd, we've provided our total net synergies actual and forecast in response to G-Staff 15.

MR. SHEPHERD: That's not what I asked for.

MS. BUTANY-DESOUZA: You asked that they not be kept a secret.

MR. SHEPHERD: No.

MS. BUTANY-DESOUZA: And I am telling you that they are not a secret and that they've been provided in Alectra Utilities' response to G-Staff 15.

MR. SHEPHERD: I asked you to provide your forecast financial results.

MS. BUTANY-DESOUZA: I believe --
MR. SHEPHERD: To see how much money you're making.
MS. BUTANY-DESOUZA: I believe Mr. Basilio has responded to that.
MR. SHEPHERD: All right. I want you to go then, if you could, please, to SEC 57.
So we asked you in SEC 57 to estimate the impact of your M-factor for GS over 50 kilowatt customer on average with a demand of 100 kilowatts. This is relatively roughly representative of a typical school.
So you have said, for example, in Table 1 that for a customer like this in the Horizon territory it would be in that five years $818.
Am I right that these M-factor rate riders would continue until 2028? Or 2027, I guess?
MS. BUTANY-DESOUZA: 'Til 2026.
MR. SHEPHERD: Okay. So there is another two more years, right?
MS. BUTANY-DESOUZA: Yes.
MR. SHEPHERD: Or three more years.
MS. BUTANY-DESOUZA: Two.
MR. SHEPHERD: So 2026?
MS. BUTANY-DESOUZA: Two years.
MR. SHEPHERD: Okay. Another two years. And you are also anticipating that you will continue the M-factor in 2025 and 2026 with additional spending, right?
MS. BUTANY-DESOUZA: So these riders, if approved, would continue until 2026, and at the end of this DSP term

MS. BUTANY-DESOUZA: That is not what the M-factor says.

What the M-factor projects -- what we're seeking in the M-factor is the ability, as Mr. Cananzi has indicated, to use our good judgment, evaluate the situation, certainly annually, perhaps more frequently. And as a result of that, some of these projects may be accelerated, meaning moved up in time, or pushed out over the five-year period.

The CIVA will true up at the end of that five-year period accordingly, related to this list of projects.

MR. SHEPHERD: Take a look at table 1...

MS. BUTANY-DESOUZA: Sorry, which -- oh, you're taking me back to Staff 4.

MR. SHEPHERD: So table 1 has DeWitt voltage conversion.

MS. BUTANY-DESOUZA: Correct.

MR. SHEPHERD: So let's say you decide -- let's say that is going to be in year four and you decide, wait a second, we have a different station on Barton Street that we have to convert. We didn't think we were going to have to do it until 2029, but now we have to do it today.

Then that's not interchangeable, right? That is just not funded.

MS. BUTANY-DESOUZA: That's correct. We've specified the list of projects in these five tables and -- oh, six -- in these five tables by rate zone, and then obviously table 6, multiple rate zones, and that is how we've set it up.

MR. SHEPHERD: Okay. So then let me ask you to go through this list -- and you can do it by undertaking, go through this list and find out, if this were a straight-forward ICM application, which ones would be in it under the rules as the Board has set out in 2018 and 2019.

MR. KEIZER: We're not prepared to do that.

MR. SHEPHERD: Because?

MR. KEIZER: Because that's not the application that is before the Board.

MR. SHEPHERD: And you don't think that it would be useful to the Board to have comparative information between its existing policy and your new proposal?

MR. KEIZER: Well, one, I don't think we should put ourselves in the position of the Board to make a decision as to what it believes will be in or out, based upon how it interpreted the ICM in the last two decisions, recognizing that those past panels don't necessarily bind this panel.

And I think that it wouldn't be reflective of what we would think the Board would do. And it would simply just be speculation on our part as to what the Board would do.

MR. SHEPHERD: So I will go at this a different way. If you look at page 2, about halfway down that first table, you'll see "facilities reno, John Street roof deck, $400,000."

I am assuming you would agree that that is not an ICM-qualified project?

[Witness panel confers]

MR. KEIZER: I think whether you take the projects individually or whether you go through all of the tables at and loss of supply, and I thought, well, no, that actually the trend there is not upwards. The trend is about flat.

And similarly in SAIFI, excluding major event days and loss of supply, that also appears to be relatively flat. Isn't that correct?

MR. WASIK: Do you have a reference of that graph that you mention --

MR. SHEPHERD: No. I am just looking at it. You haven't put that graph in, so that's why I asked, because I am looking at the line 121, 123, 109, 111, 133. That does not sound like a growing problem. That sounds like it goes up and down a little bit every year.

MR. WASIK: Well, I think, Mr. Shepherd, you can see that, you know, specifically looking at the SAIFI you're seeing 109, 111, 133, you're seeing that it is increasing from 2016 to 2018.

MR. SHEPHERD: But from 2014 to 2016 it went down.

MR. WASIK: Yes. So there are some reductions in 2014 and 2015, but the trend that we're seeing from, '16, '17, '18 is on the way up. In fact, you will note that 2018 was one of the highest years.

MR. SHEPHERD: Okay. So do you have the data for 2010 to 2013?

MR. WASIK: No. We were searching for that specific data, but as we mentioned in our previous responses, Alectra was only formed in 2017. And so to consolidate that particular data was not available within the data in the systems.

MR. SHEPHERD: Well, 2014-2016 you were also not together, but you still managed to do those ones.

MR. WASIK: That's correct. So we were able to extract data from those particular years, but not going further back from the existing systems.

MR. SHEPHERD: And why is that?

MR. WASIK: There's a level of retention of data that we had in our systems that we were able to extract and derive from, and it was very difficult to find the data prior to that.

MR. SHEPHERD: This is data that you report to the Board. So it's actually -- it's actually data that the Board has.

MR. WASIK: We're talking about aggregating the data for Alectra.

MR. SHEPHERD: Yes. So you have the PowerStream SAIDI, and in fact, I can look it up. And you have the Enersource SAIDI for 2010 to 2013. Why can't you put them together?

MR. WASIK: We can provide the predecessor utility information back, but from an aggregate standpoint to bring them all together under a consolidated amount, that would be very difficult for us to provide.

MR. SHEPHERD: Okay. Well, what's the formula you use to do that? Is it a weighted average?

MR. WASIK: No.

MR. SHEPHERD: What is it then?

MR. WASIK: We would add up the customer minutes.

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DATE:	**October 8, 2019**	

MR. BRETT: Thank you for the reference --
MR. SHEPHERD: Tom.
MR. BRETT: Yes.
MR. SHEPHERD: Can I just interrupt for a second?
MR. BRETT: Yes.
MR. SHEPHERD: Do we have a rate base continuity for the period '20 to '24 that shows the impact of your M-factor on rate base?
[Witness panel confers]
MR. SHEPHERD: Tom, they're in a sidebar.
MR. BRETT: Okay.
MS. BUTANY-DESOUZA: No, we don't have that.
MR. SHEPHERD: So can you undertake to provide that then, please?
MS. BUTANY-DESOUZA: No, we will not.
MR. SHEPHERD: And why not?
MS. BUTANY-DESOUZA: We simply can't in the time available to us. It's very --
MR. SHEPHERD: Did you not do a rate base continuity when you did your DSP?
MS. BUTANY-DESOUZA: No.
MR. SHEPHERD: So you didn't look at the impact on rates of your DSP?
MS. BUTANY-DESOUZA: We did look at the impact on rates of our DSP.
MR. SHEPHERD: How do you do that without a rate base continuity? Rates are mostly driven by rate base.
[Witness panel confers]

MS. BUTANY-DESOUZA: We've completed everything that needed to be filed, along with the Distribution System Plan, satisfied all of the Chapter 5 filing requirements.

We've also, as discussed in great detail, provided all of our M-factor-related calculations. That's all we have.

MR. SHEPHERD: So you can't tell the Board what the rate base will be in each of the next five years, or you won't?

MR. KEIZER: But they're not rebasing.

MR. SHEPHERD: I am just asking the question. You can't or you won't?

MS. BUTANY-DESOUZA: We're not rebasing.

MR. SHEPHERD: I asked a question, can you provide it? Or are you refusing to file it because you don't have the information? Or are you refusing to file it because you won't tell the Board?

[Witness panel confers]

MR. KEIZER: I think they're refusing to file it because they believe they do not need it for the purposes of the application.

MS. BUTANY-DESOUZA: That's correct.

MR. SHEPHERD: So you won't tell us even whether you have it?

MR. BASILIO: One of the complexities here, of course, Mr. Shepherd, is that we haven't done a lead lag study as part of this. The working-capital component is a very significant part of rate base.

MR. SHEPHERD: I would be happy to just have the PP&E,

thanks.

MR. KEIZER: So can you explain the relevance of the PP&E? Why you need it when we're not rebasing?

MR. SHEPHERD: Look, you can decide, do you want to refuse? That's great.

MR. KEIZER: I guess part of the refusing on the basis of relevance, because we haven't established the relevance of it.

MR. SHEPHERD: It is a legitimate question to ask for my motion, whether you have it.

MR. KEIZER: Or if it's relevant.

MR. SHEPHERD: Okay. So you are going to make me waste my time on a motion and then tell me you don't have it? Because the Board, you know --

MS. BUTANY-DESOUZA: We don't have it.

MR. KEIZER: Having it and providing it is two different things.

MR. SHEPHERD: All right. Thank you.

MR. BRETT: Sorry, I didn't get that last exchange. What were you going to do?

MS. BUTANY-DESOUZA: We are not going to do anything. We do not have it.

MR. BRETT: Okay. So the --

MR. SHEPHERD: Okay, thank you. Go on, Tom.

MR. BRETT: If you go back to my -- going back to that table -- or just going back to our conversation, we have the number in the DBRS study of two-billion-886-million.

And if I just take the 2015 figure for Guelph, I add