

ONTARIO ENERGY BOARD

IN THE MATTER OF the Ontario Energy Board Act, 1998, being
Schedule B to the Energy Competition Act, 1998, S.O. 1998, c.15;

AND IN THE MATTER OF an Application by Alectra Utilities
Corporation to the Ontario Energy Board for an Order or Orders
approving or fixing just and reasonable rates and other service
charges for the distribution of electricity as of January 1, 2020.

INTERVENOR SUBMISSION

**MAX AICHER (NORTH AMERICA) LTD.
and MAX AICHER (NORTH AMERICA) BLOOM MILL**

November 15, 2019

A. INTRODUCTION

Max Aicher (North America) Ltd. and Max Aicher (North America) Bloom Mill (collectively, “MANA”) were granted intervenor status in this application on the basis that they have a substantial interest in this proceeding and that their direct interests may be affected by the outcome.

These submissions focus on three areas related to Alectra Utilities Corporation’s (“Alectra”) request for incremental capital funding which it has named the “M-factor”.

First, these submissions address an error and ambiguity in Alectra’s application which played a predominant role in MANA’s decision to intervene at first instance. This ambiguity resulted in possible rate recovery from Large Use customers in MANA’s position by a multiple of over 100x over other rate classes, which would not have been just and reasonable or consistent with principles of good rate setting.

1 Second, these submissions address Alectra's repeated assertion that the M-factor warrants
2 approval because of customer preferences and expectations. The methodology applied by Alectra
3 in reaching its conclusions about customer preferences and expectations is fundamentally flawed
4 and should be rejected in its entirety. The Board should not accept such flawed conclusions
5 regarding customer preferences and expectations as a justification for the new and unprecedented
6 M-factor charge.

7 Third, Alectra seeks approval of the M-factor in circumstances that are not unique. In the
8 absence of any reasonable distinction between Alectra and other utilities, the approval of the M-
9 factor would dangerously open the door for future applications for similar rate riders. This would
10 be harmful to the interests of consumers.

11 MANA's interests are not reflected in the order sought by Alectra. Alectra admits that it is unable
12 to estimate how many or what proportion of its customer consultations involve entities that are
13 Emission-Intensive Trade-Exposed electricity customers (such as those eligible for the Output
14 Based Pricing System under the federal Greenhouse Gas Pollution Pricing Act).¹ Alectra does
15 not speak for the customer preferences or expectations of entities like MANA when it speaks of
16 expectations or preferences of *all* customers.

17 Overall, Alectra has designed a process to support its rate application, not a process to determine
18 the preferences or expectations of customers. It is entitled to do so. But the Board should not
19 approve the application on the basis that all customers support it. The Board should, instead,
20 dismiss Alectra's application for the M-factor.

¹ Alectra Response to 35-MANA-102.

B. THE MISSTATED RATE RIDERS CONTAINED IN ALECTRA’S NATIVE DOCUMENTS IN ITS APPLICATION RATE SHOULD NOT BE APPROVED

MANA’s initial focus in their review of Alectra’s application was on the proposed monthly rates and charges arising from the M-factor for Large Use customers in the former Horizon Utilities rate zone.

In conducting their review, MANA considered the native version of Exhibit 5, Attachment 12 filed as part of Alectra’s application.² Exhibit 5, Attachment 12, Tab 22, RATES, contains the following basis for Alectra’s rate recovery from Large Use customers in the former Horizon rate zone:

Alectra – Horizon rate zone Rates MONTHLY RATES AND CHARGES – DELIVERY COMPONENT						
Description	Effective until	Type	Customers	Billing Determinant	2019	2020
Rate Rider for Disposition of Capacity Based Recovery Account (2018) - effective until April 30, 2019 Applicable Only for Class B Customers	April 30, 2019	Rate Rider	Class B	\$/kW	(0.02611)	
Rate Rider for Disposition of Lost Revenue Adjustment Mechanism Variance Account (LRAMVA) (2018) - effective until April 30, 2019	April 30, 2019	Rate Rider		\$/kW	0.2338	
Rate Rider for Disposition of Global Adjustment Account (2018) - effective until April 30, 2019 Applicable only for Non-RPP Customers	April 30, 2019	Rate Rider	non-RPP	\$/kWh	(0.0029)	
Rate Rider for Disposition of Deferral/Variance Accounts (2018) - effective until April 30, 2019	April 30, 2019	Rate Rider		\$/kW	0.1418	
Rate Rider for Disposition of Deferral/Variance Accounts (2018) - effective until April 30, 2019 Applicable only for Non-Wholesale Market Participants	April 30, 2019	Rate Rider		\$/kW	(0.4569)	
Rate Rider for Disposition of Lost Revenue Adjustment Mechanism Variance Account (LRAMVA) (2019) - effective until December 31, 2019	December 31, 2019	Rate Rider		\$/kW	0.0205	
Rate Rider for Disposition of 2017 Earnings Sharing - effective until December 31, 2020	December 31, 2020	Rate Rider		\$		(197.51)
Rate Rider for Disposition of 2017 Earnings Sharing - effective until December 31, 2020	December 31, 2020	Rate Rider		\$/kW		(0.0117)
Rate Rider for Recovery of M-factor Capital (2020) - in effect until the effective date of the next cost of service based rate order	next COS	Rate Rider		\$		201.03
Rate Rider for Recovery of M-factor Capital (2020) - in effect until the effective date of the next cost of service based rate order	next COS	Rate Rider		\$/kWh		0.0119

² Excel file Alectra_APPL_Ex 5_Attach 12 IRM Model HRZ_20190528.

1 As such, the rate rider to be charged to MANA was \$0.0119/kWh (and notably, not
2 \$0.0119/kW).

3 MANA uses approximately 1,500,000 kWh per month at just one of its facilities. As a result,
4 Alectra's application proposed a rate rider for recovery of M-factor capital of approximately
5 \$214,200 per year, and more than \$1 million over the proposed five-year term.

6 Notably, other rate classes (such as General Service 50 - 4,999 KW and Large Use with
7 Dedicated Assets) also proposed amounts payable measured in \$/kWh. Furthermore, the
8 attachments concerning other rate zones, such as Exhibit 5, Attachment 13, also proposed that
9 the Large Use rate rider would be levied on the basis of \$/kWh. Admittedly, other portions of
10 the application are inconsistent with the contents of the native documents.³

11 Due to the possible economic ramifications to MANA of this issue, MANA inquired by way of
12 written interrogatory as follows:⁴

13 **[35-MANA-100]**

14 Based on the data set out in this Schedule, what would be the financial
15 impact of the rates requested by Alectra to a Large User in the Horizon
16 Utilities RZ with the following monthly consumption statistics:

Adjusted Usage	1,500,000 kWh
Peak kW7-7	4,850
Demand kW	4,850
Demand kVA	5,000

³ For example, Exhibit 5, Attachment 3, purported to charge a rate rider of \$0.0119/kW and not \$0.0119/kWh.

⁴ 35-MANA-100.

Demand kVA7-7	5,000
Power Factor	0.965

Alectra provided the following response:⁵

Based on existing 2019 rates and using the M-Factor rate riders as filed in Attachment 3 of Alectra Utilities' evidence, the estimated annual total bill and associated dollar and percentage impacts for a customer in the Large Use with Dedicated Assets service class with demand of 4,850 kW are provided in Table 1, below. As Alectra Utilities' rates are not harmonized across the rate zones, the alternative bill impact scenario identified in 35-MANA-100 will result in the same impacts presented in Table 1, below.

Table 1 – M-Factor Bill Impacts

Year	Annual Bill Total	Increase (\$)	Increase (%)
2019	\$2,805,051.12		
2020	\$2,805,881.53	\$830.41	0.03%
2021	\$2,806,470.58	\$589.05	0.02%
2022	\$2,807,161.80	\$691.22	0.02%
2023	\$2,807,700.81	\$539.01	0.02%
2024	\$2,808,535.97	\$835.16	0.03%

Alectra's response was non-responsive in that it referred to the Large Use with Dedicated Assets service class, and not the Large Use service class which was specifically referenced in MANA's written interrogatory. By inference, however, the answer clarified Alectra's position, and provided evidence to the Board, that the M-factor will be charged on the basis of kW and not kWh.

After receiving answers to written interrogatories, MANA was comfortable that Alectra's application materials contained material errors and that Alectra was in fact not seeking recovery of a rate rider of \$0.0119/kWh for the Large Use rate class. Instead, it is apparent that Alectra is seeking recovery of a rate rider based on kW. Tables A-3 and B-3 to Alectra's Argument-in-

⁵ Alectra Response to 35-MANA-100.

Chief confirm that the M-factor rate rider for Large Use customers in the former Horizon Utilities rate zone will be measured in \$/kW.

As noted above, the implication to this difference for MANA is significant: a 5-year bill impact of about \$1 million (if measured in kWh), versus a 5-year bill impact of about \$10,000 (when measured in kW). Further, a rate rider requiring the payment of \$0.0119/kWh as proposed in the native rate application materials would have meant significant differential rate treatment of MANA and other Large Use customers as compared to other customer classes. Other rate riders measured in kWh found in other rate zones and other rate classes would have had similar differential rate treatments. Such differential treatment would not have aligned cost incurrence and cost recovery, or recognized any legitimate difference in distribution demand and distribution customer-related costs. They would not be just and reasonable. There are reasonable grounds on which the Board would have rejected such differential rate treatment, particularly in this application whereby Alectra is inventing new rate structures not previously contemplated.

Alectra Utilities seeks that “elements relating to the M-factor part of the proceeding should be approved as filed, and as updated and further articulated by the Applicant during the proceeding”.⁶ The Board should be vigilant in its review of the basis for proposed rate riders and in granting its final rate order, if any, to ensure that the calculations used in the General Service 50 - 4,999 KW, Large Use and Large Use with Dedicated Assets service levels reflect the proper measurements on a \$/kW basis, and should expressly clarify that the erroneous reference to \$/kWh is not approved as filed. The Board should further ensure that the rate riders approved in

⁶ Argument-in-Chief Alectra Utilities Corporation (“Alectra AIC”), p. 2, l. 8-10.

each of the former rate zones at issue do not involve an improperly differential rate structure based on erroneous unit measurements that do not apparently reflect Alectra's intentions.

C. ALECTRA'S METHODOLOGY FOR ASSESSING CUSTOMER PREFERENCES DOES NOT SUPPORT THE M-FACTOR

The very first paragraph of Alectra's application invokes customer preferences and expectations as a justification for the M-factor. Tellingly, the overview section of Alectra's Argument-in-Chief neglects mention of either.

Nonetheless, Alectra continues to invoke customer expectations as a basis for the granting of the M-factor.⁷ The only⁸ basis for Alectra's assertions about the priorities and preferences of all Alectra customers is a "Customer Engagement" performed by Innovative Research Group ("Innovative").⁹ Innovative's Customer Engagement contains fatal flaws in reaching conclusions about the preferences and expectations of Alectra's customers. Some of its shortcomings include:

- The Innovative Customer Engagement is not acceptable opinion evidence;
- The conclusions in the Innovative Customer Engagement cannot be properly tested; and
- The way in which the Innovative Customer Engagement was conducted improperly suggested appropriate answers to customers.

Ultimately, the Innovative Customer Engagement is unreliable, not valid and should not form the basis for approval of Alectra's application.

⁷ Alectra AIC, p. 4, l. 8-11; p. 10, ll. 23-26; p. 12, l. 18; p. 14, ll. 2 - 23; p. 20, ll. 11, 23; p. 26, ll. 20-21, 24-25; p. 29, ll. 1-2.

⁸ Alectra Response to 5-MANA-10.

⁹ Alectra Utilities Corporation Application, Exhibit 4, Appendix C02.

C.1 The Innovative Customer Engagement does Not Meet any Acceptable Standard for Opinion Evidence

The Innovative Customer Engagement should not be accepted as opinion evidence by the Board.

The Innovative Customer Engagement acknowledges that it is opinion evidence. It states in the overview that “This overview has been prepared by Innovative Research Group Inc (“INNOVATIVE”) for Alectra Utilities. The conclusions drawn, and opinions expressed are those of the authors.”¹⁰ Yet the Innovative Customer Engagement fails to meet appropriate standards for opinion evidence.

The Board may hear that different standards apply to opinion evidence before the courts and administrative tribunals. MANA do not dispute the important ability or flexibility of the Board to accept evidence without meeting the evidentiary standards that would apply in a court proceeding. Nonetheless, the guidance from the courts discussed below demonstrates why the Innovative Customer Engagement should not be relied upon by the Board.

1. The hallmarks of expert independence are not met. The Innovative Customer Engagement does not meet the hallmarks of proper opinion evidence. Like expert witnesses in any other field, a survey expert is expected to be objective in testimony, and mindful of its role as an advisor to the court.¹¹ The Innovative Customer Engagement does not highlight which individuals performed the work, acknowledge any overriding obligation to the Board or purport to be objective in any way.

¹⁰ Alectra Utilities Corporation Application, Exhibit 4, Appendix C02, PDF p. 494.

¹¹ Ruth M. Corbin, L.A. Kelly Gill & R. Scott Jolliffe, *Trial by Survey: Survey Evidence & The Law*, (Scarborough: Carswell Thompson Professional Publishing, 2000) at 148.

2. The financial basis for the retainer of Innovative is unclear. Although Alectra has provided copies of some documents related to Innovative's retainer, it has refused to disclose the financial basis for the retainer. Alectra's own evidence is that Alectra (and its predecessors) have conducted previous engagements with Innovative.¹² In these circumstances, the Board cannot be satisfied that Innovative took an unbiased approach in its methodology, particularly in light of the suggestive questioning addressed in detail below.

3. Customers were incentivized to respond to the engagement. Customers were offered financial incentives to participate in the Innovative Customer Engagement. Customers were invited to enter a draw to win one of ten \$500 prepaid credit cards for participating in the consultation.¹³ This incentive was offered directly after, and on the same page as consumers are advised that the work is being done to assist Alectra. The way that this incentive is framed may have biased certain customers' responses to the Innovative Customer Engagement.

C.2 It is Impossible to Test the Data Underlying the Innovative Customer Engagement

Alectra has refused to provide the data underlying the Innovative Customer Engagement. The appropriate standard for disclosure of data related to surveys has been described as follows:

¹² Alectra Response to 37-MANA-1.

¹³ Alectra Response to 14-MANA-38; Alectra Utilities Corporation Application, Exhibit 4, Appendix C02, PDF p. 529.

1 It is a tradition of rigorous science that full disclosure be made of all
 2 methodology and raw data, in order that another scientist have an
 3 opportunity to fully consider whether he/she would have come to
 4 the same conclusions. Results should be verifiable. It is thus
 5 appropriate, if survey research is to maintain standards of scientific
 6 expert evidence, that experts be expected to submit all relevant
 7 materials, including interviewer instructions, coding guidelines, and
 8 raw data.¹⁴

9 The Innovative Customer Engagement has not been performed in a way that permits any
 10 consideration of its conclusions. Alectra states that “no written instruction” was provided to
 11 Innovative.¹⁵ Alectra has refused to provide the raw data underlying the Innovative Customer
 12 Engagement because of purported privacy concerns.¹⁶ Focus group data that led to the survey
 13 was destroyed under the premise of “participant confidentiality”.¹⁷ Under these circumstances,
 14 the Innovative Customer Engagement cannot be said to meet the standards normally applied to
 15 survey research and should not be accepted by the Board.

16 **C.3 The Innovative Customer Engagement is Suggestive**

17 The background leading to solicitation of customer responses - Innovative’s role and the absence
 18 of the ability to test the survey evidence - is worsened by the actual contents of the Innovative
 19 Customer Engagement. Answers are suggested to the customers who responded.

20 Alectra acknowledges that the information provided to customers to assist them in understanding
 21 capital investment areas were contained in the Innovative Customer Engagement itself.¹⁸

22 Customers were provided with preambles to questions that describe Alectra’s views on an issue

¹⁴ Ruth M. Corbin, L.A. Kelly Gill & R. Scott Jolliffe, *Trial by Survey: Survey Evidence & The Law*, (Scarborough: Carswell Thompson Professional Publishing, 2000) at 32.

¹⁵ Alectra Response to 14-MANA-39.

¹⁶ Alectra Response to 14-MANA-34.

¹⁷ Alectra Response to 29-MANA-86.

¹⁸ Alectra Response to 12-MANA-28.

prior to being asked to provide an answer. These preambles are the first way in which answers are suggested to customers.

For example, when talking about underground asset renewal, Alectra provided customers with a “Case Study” about failing cables without discussing the non-failing population. The consultation then advised customers that “it became clear that replacing XLPE underground cable requires an accelerated investment plan.”¹⁹

After these preambles, some of which can only be described as biased toward the answers that Alectra sought to receive, customers were provided with closed-ended options as to how to respond to questions. These answer options are also suggestive. The most prevalent and obvious example of this is the consistent reference to activities which Alectra wishes to undertake as falling within a “Recommended Pace” or “Recommended Approach”. One example is:

Q Which of the following options would you prefer?

Option	Transformers replaced	Expected Outcome
Accelerated Pace <i>Additional \$X.XX per month annually (\$Y.YY more per bill by 2024)</i>	4,750 by 2024	<ul style="list-style-type: none"> Replace transformers currently assessed to be in poor or very poor condition. Replace all the transformers in unsafe legacy configurations or are consistently overloaded. Replace all transformers that will decline to poor and very poor condition over the next five years
Recommended Pace <i>Within current rates</i>	2,750 by 2024	<ul style="list-style-type: none"> Replace transformers currently assessed to be in poor or very poor condition. Replace all the transformers in unsafe legacy configurations that are consistently overloaded
Slower Pace <i>Decrease of \$X.XX per month annually (\$Y.YY less per bill by 2024)</i>	1,850 by 2024	<ul style="list-style-type: none"> Replace only transformers currently assessed to be in poor or very poor condition

¹⁹ Alectra Utilities Corporation Application, Exhibit 4, Appendix C02, PDF p. 546.

²⁰ Alectra Utilities Corporation Application, Exhibit 4, Appendix C02, PDF p. 549.

Customers are not told whose “recommendation” is being made or why. The consultation refers to the views of “Planners”²¹, but it is not clear who the “Planners” are. It is thus not surprising that a majority of respondents select a “Recommended” pace and approach over one that is “Accelerated” or “Slower”.

During the oral hearing,²² one of Alectra’s witnesses said that:

And when we presented it to the customers, we said we can do it at this rate. We can slow it down. We can speed it up. What would you like us -- how would you like us to proceed?

Unfortunately, that is not how the questions that were asked of customers were actually framed.

Characterizations such as a “Recommended” pace or approach were wholly unnecessary. If the Innovative Customer Engagement really intended to solicit the preferences and expectations of customers, these approaches could have been labeled generically and without suggestion of a recommended response. Without that, Alectra’s view that the answers indicate a “strong preference for the company to invest in system renewal”²³ or that customers wanted Alectra to “invest more than the current level of spend”²⁴ cannot be accepted.

The Supreme Court of Canada has upheld a decision to give a survey no weight when it includes questions suggestive of the answers that a party wants to hear.²⁵ In this case, the Innovative Customer Engagement should be rejected for the same reason.

²¹ Alectra Utilities Corporation Application, Exhibit 4, Appendix C02, PDF p. 537.

²² Oral Hearing Transcript, Vol. 3, October 18, 2019, p. 201, ll. 11-14.

²³ Exhibit 4, Tab 1, Schedule 1, p. 24 of 438, PDF page 44.

²⁴ Presentation Day Transcript, August 7, 2019, p. 21, ll. 17-18.

²⁵ *Mattel Inc. v. 3894207 Canada Inc.*, 2004 FC 361, aff’d 2005 FCA 13, aff’d 2006 SCC 22.

1 There is good reason to doubt that the suggested answers do not truly reflect the views of
2 Alectra's customers. The responses elicited from Alectra customers are inconsistent with
3 Alectra's own documents delivered in response to interrogatories. As recently as 2015, 93% of
4 respondents stated that Horizon Utilities provides consistent reliable energy.²⁶ In that same
5 study, Horizon Utilities performed poorly regarding the cost of electricity when compared to
6 other utilities. Almost one-half of respondents identified lower rates as one of the one or two
7 most important things that Horizon Utilities could do to improve service.²⁷

8 Even within the Innovative Customer Engagement, customers provided responses inconsistent
9 with the conclusions that Innovative has drawn. When asked open-ended questions without a
10 "recommendation" about customer needs, customers responded that Alectra should lower rates
11 or do nothing.²⁸ When, after that, customers were asked what outcome they prioritized, most
12 surveyed customers indicated that "price" was their top concern.

13 Alectra meanwhile states that "declining reliability was one of the most pressing issues for our
14 customers".²⁹ Respectfully, this "pressing issue" took a backseat to costs or even inaction in the
15 responses from customers. The only way this view could be reached is by ignoring the freedom
16 of expression of customers in favour of suggested, closed-ended answers.

²⁶ Alectra Response to MANA-37 ATTACH 1 - Horizon UtilityPULSE Survey Report.

²⁷ Alectra Response to MANA-37 ATTACH 1 - Horizon UtilityPULSE Survey Report.

²⁸ Alectra Utilities Corporation Application, Exhibit 4, Appendix C01.

²⁹ Presentation Day Transcript, August 7, 2019, p. 21, ll. 5-7.

C.5 The Only Reasonable Remedy is to Reject the Innovative Customer Engagement

The Innovative Customer Engagement would be rejected or given no weight in any court proceeding. Although the Board has broader discretion to accept evidence than a court, there is no fairness reason why the Board should accept evidence so fundamentally flawed.

The Board has set out criteria to be applied when reviewing customer engagement. Two of the Board's considerations are:

- The forms of customer engagement used, their quality and effectiveness; and
- The quality of the utility's analysis of customer input.³⁰

The Board has acknowledged that where customer engagement is inadequate, the Board may conclude that a program or project is not adequately justified, in whole or in part, and this could result in a reduction to the requested revenue requirement.³¹

In seeking the M-factor, Alectra is seeking \$265 million in capital investments that it would not otherwise be executing over the next five years.³² The rigour applied to a customer engagement supporting such an expenditure should meet basic thresholds of reliability and validity.

MANA are not suggesting that the Board is unable to rely on customer consultations when reaching decisions. MANA are cognizant of the Board having retained Innovative in the past for

³⁰ The Board's *Handbook for Utility Rate Applications*, p. 12.

³¹ *Ibid.*

³² Alectra AIC, p. 34, l. 20.

customer consultation work.³³ Notwithstanding, the Board has before it in this application an intervenor who is respectfully requesting that the expectations and preferences of Alectra customers be properly considered.

There is unfortunately no way to quantify the impacts of the unscientific approach taken by Innovative. As noted above, Alectra and Innovative have either destroyed or failed to make available the source data related to the Innovative Customer Engagement. Others involved in this application are therefore unable to take positions about ways that the deficiencies in the Innovative Customer Engagement could be remedied.

The level of participation in the Innovative Customer Engagement does not correct the substantive problems that are found in its process. Alectra refers to the Innovative Customer Engagement as “the largest public consultation ever conducted in the Ontario electricity sector”.³⁴ This does not remedy the fact that the data was collected in an unscientific manner through inappropriate methodologies. In fact, it is illustrative of the potential harm that can be inflicted to the Board’s decision-making process from the use of faulty analytical processes.

Alectra has claimed throughout this proceeding that the DSP behind the M-Factor request “was developed to be responsive to the views of Alectra Utilities’ customers.”³⁵ In the absence of any valid and reliable evidence to support the notion that customers are asking for this rate increase, there is no other material basis to justify this departure from normal rate-making. Customers

³³ As cited in the Board’s Report to the Minister of Energy, *Consumers Come First: A Report of the Ontario Energy Board on the Effectiveness of Part II of the Energy Consumer Protection Act, 2010*, May 28, 2015.

³⁴ Alectra AIC, p.14, ll. 7-9.

³⁵ Alectra Response to 46-MANA-6.

should not be alleged to be the basis for Alectra seeking to spend capital at an accelerated pace beyond that necessary so as to earn a greater absolute return for Alectra's shareholders.

D. ALECTRA SEEKS ADDITIONAL FUNDING THROUGH THE M-FACTOR WITHOUT DEMONSTRATING ANY EXCEPTIONAL REASONS FOR SUCH A GRANT

Alectra's narrative in seeking the M-factor is that it is entitled to rate riders outside of the normal recoveries afforded by the Board. Alectra submits that it is in a unique situation of having identified and defined a capital funding gap relative to the amount of capital funded by base rates.³⁶

The evidence before the Board suggests that there is nothing exceptional about Alectra's circumstances meriting these additional charges. In fact, the evidence is that Alectra has either overemphasized its issues in support of showing this "capital funding gap" or is unaware as to whether they are similar to those faced by other utilities:

- Alectra expresses concerns about the impact of adverse weather on reliability, but has no information about such events in other jurisdictions.³⁷
- Alectra seeks to perform accelerated work on underground distribution assets, but does not possess usage information from other utilities on their underground cables.³⁸
- Alectra seeks to perform accelerated work on its population of wood four-circuit poles, but does not have access to information on the number of four-circuit poles found in the

³⁶ Alectra AIC, p. 6, ll. 22-25.

³⁷ Alectra Response to 4-MANA-7.

³⁸ Alectra Response to 6-MANA-15.

jurisdiction of other Ontario utilities.³⁹ Meanwhile, Alectra relies on pictures of falling wood poles in its application, despite such events happening only three times between 2017-2019.⁴⁰

- Alectra relies on what it says are customer expectations and preferences (described above), but purports to be unaware of how its assessment compares to past customer expectations or preferences.⁴¹

Alectra has made two additional admissions that are relevant. First, Alectra does not concede that the need for the M-factor has arisen after its amalgamation.⁴² As Alectra has stated, “[t]he fact that system renewal needs are increasing and have reached a critical juncture is not a surprise to Alectra Utilities and the electrical industry in North America.”⁴³ This means that the justifications relied upon by Alectra for seeking M-factor funding in this application could be used by any utility at any time.

Second, Alectra does not believe that rate certainty is a consideration for the Board with respect to ICM and rate rebasing deferrals.⁴⁴ Permitting Alectra to add to ratepayer burden impacts Alectra’s customers, such as MANA. While the test for rate setting is what the Board considers just and reasonable, the very first objective for the Board set out in its governing legislation is “to protect the interests of consumers with respect to prices”.⁴⁵ The protection of rate and price certainty is critical to MANA and other customers for the operation of their businesses. Adding a

³⁹ Alectra Response to 8-MANA-22.

⁴⁰ Alectra Response to 36-MANA-104.

⁴¹ Alectra Response to 37-MANA-2.

⁴² Alectra Responses to 45-MANA-1, 45-MANA-2, G-Staff-14.

⁴³ *Ibid.*

⁴⁴ Alectra Response to 44-MANA-1.

⁴⁵ *Ontario Energy Board Act, 1998*. S.O. 1998, c. 15, Sched. B, s. 1(1)1.

new source of funding applicable over the next five years does not achieve this. At a very minimum, the expectations and preferences of MANA and other customers should be rejected as a justification for the approval of M-factor rate riders.

All of which is respectfully submitted this 15th day of November, 2019.

MAX AICHER (NORTH AMERICA) LTD.
and MAX AICHER (NORTH AMERICA) BLOOM MILL
By its Counsel, McMillan LLP



Michael Richmond and Adam Chisholm