ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Sch.B, as amended;

AND IN THE MATTER OF an Application by Alectra Utilities Corporation for an order or orders approving rates for the period commencing January 1, 2020.

FINAL ARGUMENT
OF THE
SCHOOL ENERGY COALITION

November 15, 2019

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1 GENERAL COMMENTS

1.1 *Introduction*

1.1.1 On May 28, 2019 the Applicant Alectra Utilities Corporation ("Alectra" or the "Applicant") filed an Application for 2019 rates.

1.1.2 The Application proposes a formula-based increase in rates, certain adjustments to those rates (including an adjustment for changes in accounting policies), and a new "M Factor" to fund more than two hundred capital projects that the Applicant claims are necessary, but are in excess of the capital "funded" by existing or formula rates.

1.1.3 If approved in its current form[1], the Applicant's M Factor proposal would require the customers to pay extra, over and above IRM rate increases, for at least $265 million of capital spending, plus a potential amount of $114 million more through the Capital Investment Variance Account ("CIVA"), subject only to prudence review (if that), plus an unlimited additional amount through the Externally Driven Capital Variance Account ("EDCVA"). A decision by the Board to approve the M Factor would require each customer, on average, to pay for an additional $350-$400 of capital, plus WACC and PILs each year while that amount is being paid off. For the approximately 1,000 schools served by Alectra, the excess capital for which they would be responsible is expected to be more than $5 million.

1.1.4 Further, if the Board approves the M Factor in this proceeding, Alectra has advised that it expects to continue to spend at this high rate until about 2030, so the Board's decision to approve would imply, not just the $300-$500 million of excess capital in this Application, but at least that much again the next time around.

1.1.5 The case included extensive interrogatories from the parties. There was also a two-day technical conference and a three-day oral hearing, as well as a Presentation Day by the Applicant. There was no ADR. The proceeding was divided into three components. The first, for the normal IRM components of the Application, took place by written hearing. The second, relating to the change in capitalization policy, and the related ESM and CIVA issues, will be completed on November 21 and then will be in the hands of the Board for a decision. The third component relates to the proposed M Factor, which is the subject of these submissions.

1.1.6 The Applicant's M Factor Argument-in-Chief was filed on November 1, 2019. This is the Final Argument of the School Energy Coalition on the M Factor and related issues.

1.1.7 The Board will be aware that many of the customer groups who intervened in this proceeding have worked together extensively throughout the proceeding to avoid

[1] As revised (i.e. increased) in the Argument in Chief.

duplication, including sharing ideas, positions, and drafts. We have been assisted in preparing this Final Argument by that co-operation amongst parties.

1.1.8 SEC has organized this Final Argument into the four categories of M-Factor issues we raised in our motion, plus dealing with the ICM alternative, plus two additional areas.

1.2 ***Summary of Submissions***

1.2.1 The detailed submissions of the School Energy Coalition in this Final Argument can be summarized a follows.

1.2.2 ***Just and Reasonable Rates.*** The Applicant seeks to have the legal and policy rules and principles of cost of service applied to its rates even though it is, by choice, in a period in which its rates are set by IRM. Further, it argues that the Board is obligated as a matter of law to approve its excessive rate increases, or its rates will not be just and reasonable. This argument is wrong for many reasons, including:

(a) ***Not the Law.*** Alectra does not have an absolute right to recover in its rates all of its costs of service, and the law expressly allows the Board to decide that customers should NOT fund in rates costs that the Board believes the Applicant will or must incur, if it is not just and reasonable that the customers pay for them.

(b) ***Attack on IRM.*** The Applicant's "fair return" argument amounts to a direct legal attack on incentive regulation, in that it necessarily implies that rates that do not cover reasonably incurred costs are not just and reasonable. This is also not the law. In IRM, rates are by design decoupled from costs.

(c) ***Available to All Other Utilities.*** If the Applicant's very creative argument were accepted, the result would be that all utilities regulated by the Board could seek additional funds, each and every year if they want, to cover budget increases they feel they need. The Board could never tell an applicant that it should manage within the revenue provided by formula or existing rates.

(d) ***Rejects ICM/ACM Policies.*** The Applicant's proposal requires that the Board's policies with respect to incentive regulation, including its carefully nuanced ICM/ACM policies, would no longer be applicable, and the process the Board went through to develop those policies would be, in effect, rejected as insufficient[2].

[2] SEC does not necessarily always agree with those policies, or the MAADs policies, but accepts that they are the policies of the Board, and should be followed unless a particular applicant can show that they should be an exception to the policy. Alectra cannot claim that they should be an exception to the policies, because they refuse to discuss how they are different from other distributors, to whom those policies would otherwise apply.

(e) ***Modifies (Unfairly) the MAADs Policy.*** Similarly, the Applicant expects this Board panel to selectively reject the Board's policies with respect to MAADs, which allow deferred rebasing and ICM availability, but require the merging utilities to stay on Price Cap IR during that deferred rebasing period, and comply with the ICM rules. The Applicant would, in their new formulation of Board policy, have their rates set on a cost of service basis, but with certain costs being deemed to be spent even though they are not (i.e. about $420 million of merger benefits)[3].

1.2.3 ***The Distribution System Plan.*** The Applicant's DSP appears to require almost $1.5 billion of capital spending in the period 2020-2024, despite Alectra having a very high rate base relative to other distributors, and despite Alectra aggressively reducing its spending to operate and maintain its existing system. Whether you benchmark the Applicant's capital plan to other utilities (which shows that Alectra has spent more than other utilities in the past, and is proposing to continue to spend more in the future), or you just look at the details of what they want to spend, or you look at the assumptions they have made in forecasting costs, it is clear that their capital plan proposes much more capital spending than is prudent in the circumstances.

1.2.4 ***Spending the Customer Component of the Merger Benefits.*** The regulatory compact on mergers is that the merging parties get 100% of the merger benefits for a deferred rebasing period of up to ten years, and the customers get 100% of those merger benefits after that. The excessive capital spending being proposed by the Applicant would result in no merger benefits being available for the customers at the end of the deferred rebasing period. This is consistent with the history of Powerstream, the largest of Alectra's predecessors.

1.2.5 ***Alleged Reliability Concerns.*** The implied threat in the Application is that, if the Board refuses to give the Applicant the extra money they want, reliability will decline. This is wrong for at least two reasons:

(a) ***Outcomes.*** Under the RRFE, increases in rates (in real terms) have to be for improved customer outcomes. The RRFE doesn't contemplate that a utility can get more money to maintain the status quo. The self-serving and badly flawed "customer engagement" carried out for the Application doesn't change that fact. The RRFE doesn't contemplate that utilities should cajole their customers into "voting" for their rate increase on the basis of selective

[3] The Applicant claims that they misunderstood how the MAADs policy was going to apply to their merger, and that was exacerbated by the Board's decision in EB-2016-0025 (the "MAADs Decision"), so this Application is to get them back to what they reasonably expected at the time. This is not credible. There is no way the Applicant or anyone else could have interpreted the Board's MAADs Policy, or the interpretation of the MAADs Policy in the MAADs Decision, to be that merging utilities will get cost of service rates, but treating the merger savings as if they had been spent for the purposes of setting those rates in the first ten years.

communication of the facts. Customer engagement is not supposed to be marketing; it is supposed to be listening.

(b) ***Trend.*** The trend of badly worsening reliability that Alectra alleges is simply not there.

1.2.6 ***The ICM Alternative.*** The Board may wish to consider whether it should grant 2020 ICM relief as an alternative to the M Factor, despite the Applicant's refusal to answer ICM questions. SEC believes that this would be a very bad idea, potentially causing the Board to lose control of its own process.

1.2.7 ***Additional Issues*.** Two other issues arise related to the M Factor:

(a) ***CIVA.*** This account is not required. ICM already has a true-up.

(b) ***EDCVA.*** This account is appropriate, as long as the baseline budget of projects included in base rates is clear. However, it is not clear in this case, so the account cannot operate properly. The Applicant should apply next year for this account, with a detailed baseline analysis.

2 POLICY AND LEGAL ISSUES

2.1 *Introduction*

2.1.1 The Applicant argues that, as a matter of law and good policy, the Board should allow it to have a full pass-through of its proposed capital costs for the next five years[4]. If approved, this would amount to the biggest single change in ratemaking for distributors since IRM was first introduced decades ago.

2.1.2 The Applicant's argument appears to have three main components:

(a) Once Alectra demonstrates that its base rates don't cover the entire cost of its DSP, the Board is required by law to increase its rates to a level that does cover that cost.

(b) The Board in its 2018 and 2019 Alectra decisions[5] has misunderstood, misinterpreted, or misapplied the Board's policies on ICM/ACM and MAADs.

(c) Alectra is in a unique position relative to other distributors, and should have a unique capital funding policy designed for, and applied to, it.

2.1.3 We will deal with each of those components below.

2.2 *Just and Reasonable Rates/Fair Return Standard*

2.2.1 The Applicant in its Argument in Chief makes the following completely incorrect statement about the law[6]:

> *"If the DSP, which is to be executed for the benefit of Alectra Utilities' customers, were accepted by the OEB without also approving the incremental capital funding necessary to execute the investments contemplated by the DSP, this would result in Alectra Utilities' distribution rates falling short of the just and reasonable standard. It is, therefore, not open to the OEB to establish Alectra Utilities' rates on that basis."[emphasis added]*

2.2.2 In short: If we demonstrate that a cost is prudent, you must increase our rates to cover that cost.

2.2.3 ***Reliance on the OPG Case.*** In support of this creative proposition, the Applicant cites

[4] Tr.3:10, 53, and many other places.
[5] EB-2017-0024 and EB-2018-0016 respectively.
[6] AIC, p. 7.

the seminal case of *OEB v. OPG*, decided by the Supreme Court of Canada in 2015[7]. The OPG case was one in which the Board disallowed rate recovery for certain forecast remuneration costs totaling about $145 million. OPG argued that, since it could be reasonably expected to have to pay those costs, the Board had no choice but to include them in the amounts to be recovered from customers.

2.2.4 The Supreme Court of Canada rejected OPG's argument.

2.2.5 It should be noted that the OPG case dealt with a cost of service application by OPG, and the SCC considered it in that light. The SCC made no comments on whether, in the context of IRM, a similar approach would apply, but even in a cost of service environment it rejected the utility's claim that it had a right to recover its costs.

2.2.6 Indeed, what the SCC in fact concluded in that case, and a key part of the *ratio decidendi* of that case, is that the Board can disallow costs even when the result would be that the Applicant will not earn a fair return in the near term. This part of the *ratio* is described by Mr. Justice Rothstein as follows[8]:

> *"The Board's disallowance may have adversely impacted OPG's ability to earn its cost of capital in the short run. Nevertheless, the disallowance was intended "to send a clear signal that OPG must take responsibility for improving its performance" (Board Decision, at p. 86). Such a signal may, in the short run, provide the necessary impetus for OPG to bring its compensation costs in line with what, in the Board's opinion, consumers should justly expect to pay for an efficiently provided service. Sending such a signal is consistent with the Board's market proxy role and its objectives under s. 1 of the Ontario Energy Board Act, 1998."*

2.2.7 That is, the Fair Return Standard is not immutable. Perhaps the single most important takeaway from the OPG case is that "just and reasonable rates" require balancing of the interests of the shareholders and the customers. For example, the SCC said[9]:

> *"Where appropriate, to the extent that the utility was unable to reduce its costs, the total burden of such costs may be moderated or shared as between the utility's shareholders and the consumers."*

2.2.8 If there was any doubt, Mr. Justice Rothstein specifically contrasted the Ontario legislation with other jurisdictions in which regulators do have to allow utilities to recover particular costs in rates[10]:

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[7] *Ontario (Energy Board) v. Ontario Power Generation Inc., 2015 SCC 44, [2015] 2 S.C.R. 147*. Cited throughout this Final Argument as "the OPG case".
[8] The OPG case, para. 120.
[9] The OPG case, para. 112.
[10] The OPG case, para. 105.

> *"This conclusion regarding the Board's ability to select its methodology rests on the particulars of the statutory scheme under which the Board operates. There exist other statutory schemes in which regulators are expressly required to compensate utilities for certain costs prudently incurred: see British Columbia Electric Railway Co. Under such a framework, the regulator's methodological discretion may be more constrained."*

2.2.9 Central to the Court's conclusion is the understanding that the Board's statutory mandate is to set "just and reasonable rates". While principles such as the Fair Return Standard are very important, in the end the job revolves around just and reasonable. This all stems from the Court's general description of the Board's role, as follows[11]:

> *"[T]he Board must ensure that it regulates with an eye to balancing both consumer interests and the efficiency and financial viability of the electricity industry. The Board's role has also been described as that of a "market proxy"… In this sense, the Board's role is to emulate as best as possible the forces to which a utility would be subject in a competitive landscape.." [emphasis added]*

In considering whether rates are just and reasonable, dollar for dollar recovery of a utility's costs is not, even in a cost of service rate-setting exercise, the only consideration. The Board's role and responsibility is significantly broader than that.

2.2.10 Therefore, the first conclusion this Board can draw from the OPG case in the Alectra context is that, directly contrary to the Applicant's submissions, ***the Board is NOT obligated as a matter of law to provide a cost pass-through for capital spending, and it would not be so obligated even if this were a cost of service proceeding, which it is not***. Prior to the OPG case, it could perhaps have been argued that, when rates are being set based on cost of service, they must cover all prudent forecast costs in order to comply with the Fair Return Standard. The impact of the OPG case is that, even in COS, that can no longer be argued. The law recognizes that the Board can take other considerations into account.

2.2.11 The Applicant focuses on quoting various parts of the Court's majority reasons that discuss the connection between just and reasonable rates and cost recovery/fair return. Those statements, which are of course *obiter dicta*, are still good descriptions of the general legal requirements for setting rates on the basis of cost of service.

2.2.12 The current Application is, of course, not a cost of service application. As noted below, this is an IRM application, in which rates are decoupled from costs. The Applicant has not provided any quotes, from the OPG case or anywhere else, to

[11] The OPG case, para. 11.

support a legal principle that cost recovery is a legal obligation during IRM. They have not, because they cannot.

2.2.13 Quoting the principles of cost of service ratemaking in an IRM application demonstrates the weakness of the Applicant's legal argument. In order for their quoted legal principles to apply, this would have to be a cost of service application. As noted below, they have that option, but it would have particular consequences. They chose not to take it, and they cannot now quote the Supreme Court of Canada to support the application of cost of service principles to a completely different context. Those principles simply do not apply.

2.2.14 ***Application of Fair Return Standard to IRM.*** It is at least possible that the Applicant will argue the Fair Return Standard does apply during IRM. Clearly there is no legal precedent that says that, but Alectra may argue that it is good policy to apply that same standard to IRM.

2.2.15 It is not, in fact, good policy. Alectra's argument that just and reasonable rates require it to get recovery of its capital spending in this situation is nothing less than a direct attack on IRM.

2.2.16 The essence of incentive regulation, as applied by the Board for many years, is that rates are set on a cost of service basis, and then allowed to diverge from costs as rates for subsequent years are set by formula. This decoupling is intended to mimic the competitive markets, in which companies are mainly price-takers on the revenue side but can control their costs. Thus, under this paradigm cost control is the main way utilities can maximize their profits. The Board is, as the SCC confirms, a market proxy.

2.2.17 There are some exceptions to this, but they are very limited. ICM, for example, has limits both as to overall materiality, individual project materiality, and the nature of the capital work being done. It is intended to be a limited exception to the decoupling of costs and rates, not a capital cost pass-through. Similarly, Z factor adders are another limited exception.

2.2.18 What Alectra is arguing is that, by filing their DSP as required by the Board, they are no longer on IRM with respect to capital spending. Now, under their Fair Return argument, they are entitled to move from IRM to COS for capital.

2.2.19 This would, in SEC's submission, be a step backward for the Board's ratemaking policies. The Board will recall that, years ago, it did try Partial PBR. It didn't work. Limiting PBR to OM&A incents utilities to spend more on capital and less on OM&A. Other jurisdictions have learned the same lesson, although often later than the Board, which was an early adopter of comprehensive IRM.

2.2.20 SEC therefore submits that the Board should reject Alectra's attack on IRM, and refuse its creative proposal to apply the Fair Return Standard to rates set based on IRM.

2.2.21 ***Implications for Other Utilities***. Throughout this proceeding, Alectra has not wanted to talk about other utilities, but the Board certainly has to consider the implications of the M Factor for other utilities.

2.2.22 When you pare it down to its basics, the Applicant's pitch in this proceeding is that it has brought forward evidence of costs in excess of those funded in rates, and the Board should provide a rate increase to fund those excess costs. The fact that Alectra is in a deferred rebasing, or the fact that it is a large and complicated distributor, and the many other aspects unique to Alectra, do not affect this basic concept: If we can prove higher costs (at any time), we should get higher rates[12].

2.2.23 The most obvious result is that distributors would no longer have to be concerned with the ICM requirements[13]. Any time they want, they can include their capital budget with their IRM application, and seek additional funding for the amount "not funded in base rates".

2.2.24 But then, there is no logical reason why that should be limited to capital costs. Utilities regularly experience OM&A cost pressures that are unexpected, or are greater than those funded by the price cap index. IRM expects them to manage those pressures. Under this new Alectra paradigm, why shouldn't they be allowed to their operating budget in their annual IRM filing as well, if it would mean more money?

2.2.25 A further implication is that Custom IR no longer makes any sense. Why forecast costs five years in advance, and agree to productivity and stretch limitations, when you can simply come to the Board for rates to fund next year's budget? You can, in fact, do that every year, i.e. move to a full annual cost of service ratemaking approach.

2.2.26 Alectra says that the M Factor proposal is tailored to meet its unique needs. In emphasizing that point again and again, it is trying to avoid the necessary conclusion that the M Factor involves applying cost of service principles in an IRM environment. If the Board approves the M Factor, then it will be hard pressed to refuse other utilities when they ask for the application of the same cost of service principles during IRM.

2.2.27 The Board sets rates in a principled way. It doesn't set different rates for Alectra just because they are Alectra. Once it sets Alectra's rates in this proceeding, the principles that flow out of its decision will be available to other utilities. There is no way out of that box.

[12] Much the same as was once the case when the distributors were municipal departments.
[13] We note that Alectra doesn't even deny the likelihood of this result: Tr.3:9.

2.2.28 Therefore, SEC submits that the Board should not approve the M Factor, or any variation on the M Factor, because that would undermine the Board's ability, using IRM, to apply regulatory discipline to all of the utilities it regulates.

2.2.29 ***Conclusion.*** Even if this were a cost of service proceeding, the Fair Return Standard would not require the Board to order rate funding of the entire Alectra DSP. However, in any case, it is IRM, not COS, and the Fair Return Standard does not apply. Further, cost of service principles such as the Fair Return Standard should not apply in an IRM application, because:

(a) It would directly undermine the basis of IRM, which is to decouple costs from rates in order to more directly mimic market forces.

(b) Application of the same principle would allow other utilities regulated by the Board to seek additional rate funding whenever they go over budget, removing the cost control discipline that IRM tries to encourage.

2.3 ***The ICM/ACM Policy and the MAADs Policy***

2.3.1 ***What is the Board's ICM Policy[14]?*** Alectra would like to read into the ICM policy a type of capital pass-through such that every dollar of the Alectra DSP is reflected annually in rates[15]. The Board has, in fact, never suggested that ICM is a capital pass-through, or anything like that.

2.3.2 The ICM policy is an exception to the IRM structure. Under 4th Generation IRM, all utility costs, capital and operating, are funded by a Price Cap formula. The Board expects most utilities to operate their systems safely and reliably within that revenue envelope. Most utilities do that.

2.3.3 On the capital side, the Board recognizes two exceptions.

2.3.4 First, there are utilities that expect to have sustained periods of high capital spending, and can justify that spending. For those utilities, the Board offers Custom IR, which allows higher capital spending, but with the expectation of balancing benefits for customers such as lower OM&A, higher productivity, reliability or customer service improvements, etc.

2.3.5 Second, there are utilities that have discrete and material projects that arise during their IRM period, and are outside of their typical annual capital programs. For those

[14] Throughout this discussion, we have referred to the "ICM Policy" as a shorthand to include the full ICM/ACM policy as described by the Board in its various policy documents on incremental capital during IRM.
[15] AIC, p. 24.

utilities, the Board will order that the customers provide incremental capital funding on a project by project basis, i.e. ICM, if the overall capital budget of the utility for the year exceeds an overall materiality threshold based on depreciation.

2.3.6 Most Ontario electricity distributors spend more on capital each year than their ICM threshold, but do not seek or obtain ICM treatment. They are expected to live within the Price Cap formula, and they are able to do so[16]. ICM is a limited exception to the expectation that distributors live within the Price Cap formula, and most distributors treat it as exactly that.

2.3.7 ***Does the MAADs Policy Change That?*** Alectra has argued[17] that there is a different ICM policy for companies that are in a deferred rebasing period. This is not a credible argument. Nowhere does the Board say anything like that, and all statements by the Board relating to MAADs make clear that consolidating entities look to the ICM policy to see how it works for them.

2.3.8 The Board is aware that OEB Staff and others will be providing more detailed analysis of this point, so we will not duplicate their submissions.

2.3.9 ***What Does the M Factor Do to the ICM Policy?*** The M Factor is fundamentally different from the ICM policy. While the M Factor purports to use the ICM threshold as a materiality test (with some changes), it rejects all of the criteria and controls established by the Board to keep the ICM a focused and limited exception. The two key areas of difference are:

(a) The M Factor operates from the basic principle that the entire cost of the utility's DSP should be recovered in rates, year by year, and expressly rejects the exceptional nature of ICM. Put more simply, the M Factor is a cost of service concept, while ICM is an IRM concept.

(b) The M Factor rejects the idea that a utility has any responsibility to manage its costs within the envelope provided by the Price Cap formula.

2.3.10 As noted earlier, implementation of an M Factor, or anything like an M Factor, would be the death of ICM, and perhaps the death of IRM as well.

2.3.11 ***What is the Board's MAADs Policy?*** SEC discusses the regulatory compact

[16] According to the 2018 Yearbook, for example, the average capital additions in 2018 were 242.2% of depreciation. This compares to an average ICM threshold for the industry of about 145% of depreciation. Put another way, it appears that only 11 distributors on IRM spent at or below their ICM threshold. Alectra, which spent 253.5% of depreciation in 2018, just slightly above the industry average (about $14.5 million), was not one of them. In fact, Alectra's 2018 ICM funding was twice the amount by which Alectra exceeded the industry average. It is clear that other distributors can manage within the Price Cap formula.

[17] TrT.1:35 and Tr.3:133.

associated with the Board's MAADs Policy in Section 4 of this Final Argument, and we will not repeat it here.

2.4 *How Do the Policies Interact?*

2.4.1 ***Policies are Non-Binding.*** What Alectra is proposing is that the Board make a significant alteration to the funding of capital during IRM, but that it maintain its MAADs policy, and the benefits in that policy to the utility, unchanged. Alectra makes a point, in its Final Argument, of saying that "it is important to note that the OEB is not bound by any of its policies"[18], but then proposing to restrict that principle to the ICM policy.

2.4.2 That is not quite how it works.

2.4.3 It is true that the Board cannot treat any policy as binding, and that applies to the ICM policy. It also, however, applies to the MAADs Policy. If the Board wants to embark on a review of its capital funding policy in MAADs situations, i.e. replacing or rejecting the ICM policy, then it must, at the same time, review the principles in the MAADs Policy that allow consolidating entities to keep hundreds of millions of dollars of merger synergies.

2.4.4 In this case, the Applicant admits[19] that, as of the end of 2019, they have received the benefit of enough synergies to cover 100% of their transaction and transition costs. Everything starting January 1, 2020 is gravy. The total appears to be more than $400 million[20]. Under the MAADs Policy, they get to keep that, and share none of it with the customers. On the other hand, under that same policy they must live within the Price Cap IR formula, except for the limited funding available through the ICM policy.

2.4.5 Now, Alectra asks for $60.9 million of incremental rate dollars over the period 2020-2024[21], and likely a further $60 million in 2025 and 2026[22], for a total of $120 million of additional rate recovery under the M Factor.

2.4.6 It would be completely reasonable for the Board to say that, while it is willing to moderate the ICM policy as it applies to deferred rebasing periods, it should also moderate the MAADs policy as it applies to retention of merger synergies. In this case, the fair balance may be that the debit rate riders for $120 million of cumulative

[18] AIC, p. 7.
[19] Tr.2:113.
[20] G-Staff-15.
[21] Tr.3:14, and elsewhere. Table 6 at Ex.2, Tab 1,Schedule 3, p. 16 is misleading, as it is not in fact cumulative. Whether this was accidental is a matter of conjecture. Schedule A of the AIC appears to be equally misleading, and in a similar way.
[22] $27.2 million in 2025, and then $32.6 million in 2026. These figures exclude the ICM rate riders for 2018 and 2019.

M Factor money should be offset by credit rate riders for $120 million of the cumulative synergies in 2020-2026, so that they benefit the customers rather than the shareholders. The shareholders would be left with only $280 million of net benefits from the merger, but that still may be enough in the context of a DSP fully funded by the customers through additional rates. The customers would still get no net benefits until rebasing, of course, as their “share” of the benefits for 2020-2026 would be spent to fund the DSP.

2.4.7 Of course, the Board may not want to offset the extra capital with an equal amount of merger benefits on a revenue requirement basis, because that leaves the customers on the hook after rebasing for those additional capital costs. It may determine that the offset should be on a capital cost basis, so that $265 million of the $400 million of net synergies is applied to the capital cost of the incremental assets. Or, it may want to determine some other split.

2.4.8 If the Board considers rejecting the ICM Policy in favour of the M Factor, then SEC submits that the parties should be given the opportunity to make submissions on alterations to the MAADs policy for Alectra as well. SEC, for our part, certainly will have some suggestions.

2.4.9 The point of this analysis is to identify that the Board cannot, in fairness, reconsider the ICM policy during deferred rebasing in isolation. If the Board decides to adjust any aspect of the ratepayer/shareholder balance during deferred rebasing, it should consider that in the context of all aspects of that ratepayer/shareholder balance. That is the Board’s mandate under the OEB Act.

2.4.10 ***Custom IR.*** Of course, the Board does not need to reinvent the wheel. It remains open to the Applicant to seek to exit deferred rebasing, and file a Custom IR application that would fund all of its prudent capital spending[23]. The Board has in fact designed Custom IR to meet the needs of distributors that have sustained high capital spending plans. Alectra would qualify.

2.4.11 SEC encourages Alectra to take that option. The result will be perhaps $500 million or more of additional capital spending, but conversely the customers will during that same period receive all of the merger synergies.

2.5 ***SEC Recommendation***

2.5.1 SEC submits that the Board should:

[23] Which Alectra has very clearly decided NOT to do, perhaps for obvious reasons: Tr.2:52.

(a) Expressly reject the proposal of the Applicant that as a matter of law rates can only be just and reasonable if all utility costs are funded in rates.

(b) Expressly reject the application of the Fair Return Standard to ratesetting during IRM.

(c) Affirm the interpretation of the ICM policy set out in the 2018 and 2019 Alectra decisions (and many other places).

(d) Confirm that the M Factor, or any similar capital cost pass-through mechanism, is fundamentally inconsistent with the Board's policies with respect to both IRM and capital funding during IRM.

(e) If any modification to the ICM policy is considered, consider that modification on the context of modifications to the MAADs policy that also deal with the balance in interests between customers and shareholders (including the opportunity for all parties to make further submissions in this regard).

(f) Invite the Applicant, if they are seriously concerned with funding their DSP, to seek the Board's permission to exit deferred rebasing and apply for rates on a Custom IR basis.

3 THE DSP AND "NEED" ISSUES

3.1 *Background*

3.1.1 SEC anticipates that other parties will review the DSP in detail. Our submissions will focus, not on the item by item analysis of the spending plan[24], but on a top-down approach to the reasonableness of the plan, and the credibility of the claim that the Applicant "needs" additional capital funding.

3.1.2 What SEC concludes is that Alectra

(a) already appears to have more capital deployed than other Ontario distributors,

(b) is proposing to add capital in the future at a more rapid rate than other LDCs, and

(c) in parallel appears to be significantly reducing its annual spending commitment to the operation and maintenance of its existing distribution infrastructure

3.1.3 SEC also concludes that

(a) the significant changes in the amount of additional funding the Applicant says it "needs",

(b) the apparent failure of the Applicant to know what is even included in the DSP.

(c) the use of different inflation assumptions that drive substantial differences in spending forecasts, and

(d) the approval by the Applicant's Board of Directors of a substantially lower capital plan,

all raise serious questions about the credibility of the Applicant's claims**.** When the amount of the "need" jumps around by $80 million here, and $110 million there, and $130 million somewhere else, it is not reasonable for the Applicant to expect this Board to accept its request for more money as having a proper evidentiary foundation.

[24] SEC does note that the Applicant regularly quotes their two so-called experts, Vanry and Kinectrics, but has not presented them to the Board to have their evidence accepted by the Board as expert evidence (likely in the face of challenges by other parties), and has not offered those "experts" up for cross-examination.

3.2 ***Objective Spending Comparisons***

3.2.1 Alectra is a surprisingly high capital distributor, and that tendency to spend a lot on capital appears to originate in the Powerstream component of the utility. Further, not only does the Applicant spend much more on capital than other LDCs, but it also spends much less on Operations and Maintenance, i.e. the annual costs to keep their infrastructure in the best condition, operating as efficiently as possible.

3.2.2 ***Existing Capital Assets***. In 2018, Alectra's Net PP&E per customer was $3,500[25], which is 55% higher than the industry average of $2,252[26]. In fact, only six LDCs in Ontario had higher Net PP&E per customer than Alectra, and three of those were the heavily rural ones you would expect to be very high.

3.2.3 While this differential between Alectra and the industry is not new, the pattern over the last several years is instructive. In 2013, the Net PP&E per customer for the Alectra predecessors was $2,447, and the average for the industry was $1,839. Thus, Alectra was 33.1% higher than the industry average. This was largely because of Powerstream, which had a Net PP&E per customer in 2013 of $2,833, i.e. 54.1% above the industry average. The other Alectra predecessors were a lot closer to the average.

3.2.4 By 2016, the year before the Alectra merger, the Alectra Net PP&E per customer had increased by 20.1% to $2,938, while the industry average had increased by 18.9% to $2,186. At that point, Alectra was 34.4% above the industry average, marginally more than three years earlier. Once again, the reason appears to be Powerstream, which increased its Net PP&E per customer from 2013 to 2016 by 24.9% to $3,538, i.e. 61.8% above the industry average.

3.2.5 The trajectory changed once Alectra was formed. From 2016 to 2018, the industry average Net PP&E per customer increased by only 3.0% to $2,252. Alectra, on the other hand, increased its Net PP&E per customer by 19.1% over those two years, to $3,500.

3.2.6 These may sound like small numbers, but they are not. If Alectra was at the industry average, its Net PP&E in 2018 would be $1.237 billion lower. If Alectra had just increased at the industry average from 2016 to 2018 (only the last two years – the Alectra years), its Net PP&E would be $470 million lower. On less than $3.5 billion of Net PP&E, these impacts are very significant.

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[25] This does not include Guelph, but adding Guelph has very little impact (<$100) because of the small number of customers relative to the Alectra total. We note that, in the answer to SEC(f), the Applicant lists its Net PP&E as $2,860, while the Yearbook actually lists it as $3,469 (+$145 for Guelph). We have used the Yearbook figures throughout, because they are directly comparable to the figures for the rest of the industry, and the recent COS results, and the Alectra predecessors.

[26] All of these figures are from the Electricity Yearbooks for the respective years.

3.2.7 ***Proposed Increases***. The Alectra DSP, already starting from a very high PP&E level, proposes to increase Net PP&E from 2019 to 2024 by 4.05% per year CAGR. However, that is a little misleading, since that includes $83 million of capital merger synergies that Alectra inadvertently netted out of the DSP forecast. When that is added back in, the increase would actually have been 4.54% per year CAGR.

3.2.8 This can be compared to the increases in Net PP&E that the Board has been allowing to other distributors in recent cases. In the last three years, just four distributors with substantial PP&E (over $80 million) have had their rates set on a cost of service basis by the Board. Those four are EnWin, Kitchener, Energy+ and PUC Distribution. While their results varied, their average CAGR since their earliest prior actual (4 years) averaged 3.26%.

3.2.9 What this demonstrates is that, if Alectra just kept its increases in its Net PP&E down to the average of these four recent examples, PP&E in 2024 would be $3.357 billion. Instead, they say they have to spend enough to bring it to $3.570 billion, then reduce that by $83 million for merger synergies. Thus, they are proposing add $213 million more than this recent benchmark, and even netting out the merger synergies, they will still be $130 million above that benchmark.

3.2.10 This is particularly important because Alectra starts with so much more Net PP&E per customer than the others. The average PP&E per customer in 2018 for those four LDCs is $2,532. For Alectra it is $3,500, which is 38.2% higher. A utility that already has more assets in the ground per customer, on a dollar basis, either a) has newer assets (and thus higher cost per unit), b) more assets because they have spent earlier than their peers, or c) lax cost control[27]. In each of those cases, the result should be that capital spending going forward should be lower, not higher, than the other LDCs.

3.2.11 ***Underspending on O&M***. It is possible that the reason for the high capital spending by Alectra, past and proposed, is a preference for building new rather than maintaining the existing system. Again, this looks to have its source in Powerstream.

3.2.12 In 2018, Alectra reported Operations and Maintenance spending of $90.06 per customer, and Administrative spending of $147.54 per customer, for a total of $237.60. This compares to the industry average of $150.89 for O&M, and $165.36 for G&A, for a total of $316.24. What is noticeable is, first, that Alectra is well below the industry average in total, but most of that difference is in O&M. Despite the expected economies of scale in G&A as a result of the merger, most of the difference between

[27] In theory, a very large difference in customer mix, or density, could cause such a big difference in Net PP&E per customer, as could a large difference in high voltage assets. None of those factors appears to be the case when Alectra is compared to these four specific LDCs.

Alectra and the industry, at least in 2018, is in their operating and maintenance spending. Alectra spends 38% of OM&A operating and maintaining their distribution infrastructure, while the industry generally spends 48% in those direct, on-the-ground expenses.

3.2.13 It turns out this is not new, but there is a clear trend. In 2013, the total OM&A for the Alectra predecessors was $234.56 per customer, so it only increased 1.3% from 2013 to 2018. This is because it actually increased 8.9% from 2013 to 2016, and then declined by 7.0% from 2016 to 2018 when the merger impacts started to occur. This is much as you might expect.

3.2.14 Notable is the fact that, for the industry as a whole, OM&A per customer actually declined from $324.86 in 2013 to $316.24 in 2018, i.e. about 2.7%. From 2013 to 2016 it declined 2.3% (while the Alectra predecessors were increasing by 8.9%), and then it continued to decline from 2016 to 2018. Despite the so-called merger savings, Alectra has in fact lagged the industry in OM&A per customer since 2013.

3.2.15 The Alectra OM&A figures are more interesting when they are split into O&M and G&A. Since 2013, Alectra's G&A expenses have gone up 9.0% ($135.36 per customer to $147.54 per customer), while its O&M expenses have declined by 9.2% ($99.20 per customer to $90.06 per customer). O&M as a percentage of total operating costs declined from 42.3% in 2013 to 37.9% in 2018.

3.2.16 The main impact appears to be after the merger. From 2013 to 2016, Alectra increased its O&M per customer from $99.20 to $105.18. While this is a relatively small increase, and much less than the increase in G&A, it is still an increase. After the merger, however, things change. In two years, O&M per customers drops from $105.18 to $90.06, a decline of 14.4%. G&A, where most of the merger synergies were supposed to arise, only dropped 1.8% in that same time.

3.2.17 As with the high capital on the other side of the equation, Powerstream appears to be at the root of this. Even in 2013, Powerstream was only spending $86.70 per customer on O&M, about 37.0% of total operating costs. By 2016, that O&M spend had dropped to 34.3% of total operating costs. It appears that this same approach has continued into the Alectra years.

3.2.18 ***Synthesis***. There is no direct evidence that Alectra is systematically underspending on operating and maintaining its current system, and unduly emphasizing increases in capital spending. This could only be assessed in a full cost of service review, for example if Alectra had filed on a Custom IR basis instead of the proposed M Factor.

3.2.19 However, the data and trends are pretty clear, and they raise a concern that, while Alectra already has higher Net PP&E than the rest of the industry, it does not appear to be focusing very strongly on operating and maintaining that capital. Instead, it has come back to the Board and complained that it needs even more money for capital spending.

3.2.20 SEC therefore submits that:

(a) ***High Existing Rate Base.*** The Applicant's DSP does not explain why, given its already high rate base, further high levels of capital spending are still required, and that for another ten years.

(b) ***No Benchmarking, or Poor Results.*** The Applicant has made no attempt to benchmark its capital plan against the spending of other LDCs, and even the most rudimentary benchmarking shows that the Applicant's spending proposals are materially higher than other comparable distributors.

(c) ***O&M Spending Too Low.*** It is inherent in deferred rebasing that reductions in operating costs benefit the shareholders dollar for dollar immediately, while reductions in capital spending have smaller benefits to the shareholders (reduced depreciation and interest costs), and mainly benefit the customers on rebasing through a lower rate base. The Applicant's aggressive reductions in spending to operate and maintain its existing system, and its high increases in capital spending, follow the pattern of this asymmetrical benefit allocation. If the Applicant wants more money for capital, SEC believes that it must demonstrate that it is doing everything it can to maintain its existing capital so that new capital spending is minimized. No evidence has been filed to demonstrate that. The evidence that is available suggests the opposite.

(d) ***Idem.*** The Applicant expresses concern that reliability is declining, or may decline in the future. If you reduce your commitment to operating and maintaining your system by 14.4% over two years, it would not be surprising if reliability took a hit.

3.3 ***The Changing Threshold***

3.3.1 ***What is the "Unfunded Capital"?*** The Application says that the amount of capital spending over the next five years funded in rates is $1,182.2 million. Unfunded capital spending was therefore $265 million.

3.3.2 During the hearing, the Applicant first advised the Board that it had found errors in the billing determinants used in its calculation of the threshold, and as a result the threshold had to change. The errors would reduce the growth factor significantly, with the result that the amount funded in rates would be $1,058.4[28]. This would leave

[28] J3.1, p. 2. In the hearing [Tr2:3], Alectra witnesses said that the new threshold was $1,165 million. That appears to be in error.

unfunded capital, according to their DSP, at $389 million.

3.3.3 The Applicant at the same time made a proposal to increase the inflation factor assumed in the threshold calculation from 1.5% to 1.66%, resulting in the threshold moving back up to $1,086.1 million[29]. This changed the unfunded capital once more, leaving it at $370 million, which is the amount referred to in the Argument-in-Chief[30]. The increase in the inflation assumption, to use the average of the last five years, appears to have been a defensive move, since OEB Staff had done a sensitivity at 1.74%.

3.3.4 The 2020 IPI is actually 2.0%[31]. If that inflation rate is inserted into the ICM model, the threshold moves back up to $1,145.3 million, and the "unfunded capital" is reduced to $302 million[32].

3.3.5 Is the "unfunded capital" spending $265 million, or $389, or $302, or even $223 (see below)? The numbers are all over the map, driven by the extreme sensitivity of the ICM model to the inflation factor assumed.

3.3.6 ***To What Extent Does the Unfunded Capital Matter to Alectra?*** The more interesting aspect of this variability, though, is Alectra's reaction.

3.3.7 The Board will recall that Alectra had committed to changing the inflation assumption in the threshold calculation to the current 2020 Board-approved ICI, when that was known[33]. Then, in the hearing, Alectra said for the first time that "having given it further thought", Alectra was no longer willing to do that, but wanted to use a three or five year inflation average.

3.3.8 However, despite the changing inflation assumptions, the Applicant was adamant that the amount of M Factor funding it was requesting would not change, nor would the CIVA, which allowed $9.3 million of additional funding, change[34]. In effect, while Alectra was claiming that there was an additional $105 million of its capital plan that was not funded in base rates, Alectra would absorb the difference and not ask for any more money from the customers.

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[29] J3.1, Table 1.
[30] AIC, p. 5.
[31] Board letter, October 31, 2019.
[32] As we note later in these submissions, the DSP assumes inflation of 2.15%, and no productivity/stretch factor. When the threshold is calculated in a consistent manner with the DSP assumptions, the threshold is $1,224.2 million, and the unfunded capital would be reduced to $223 million. This is all assuming that the new growth factors are correct. Since they were only introduced at the last minute, they have not been subjected to any form of discovery or review.
[33] Tr.T1:139.
[34] Tr.2:3-4; Tr.3:4-5.

3.3.9 Apparently Alectra thought they could manage fine within base rates even if they had $105 million of incremental capital spending not funded by those rates.

3.3.10 Then, in the Argument in Chief, Alectra changed their minds again. For the first time, Alectra proposed that they be allowed to include that additional $105 million of capital spending in the CIVA, separate from the M Factor spending variances.

3.3.11 This is the only time SEC has ever seen a utility ask for more than $100 million of extra rate funding for the first time in their Argument in Chief. Needless to say, this proposal has not been tested in any way, and it is not even really clear what the details of the proposal actually are. What is clear is that Alectra sees no downside in asking for an additional $105 million after the evidentiary phase of the hearing is over[35].

3.3.12 Aside from the shocking nature of the latest request, SEC notes that Alectra seems to be willing to change what they ask for, and what they say they need, by very substantial amounts, virtually on the fly. This, coupled with the apparent oversight in "giving" $79 million in capital merger synergies to the customers, and coupled with the fact that the Board of Directors thought it prudent to approve only half of the capital plan, and coupled with the fact that the inflation assumptions in the DSP and in the "funded in rates" calculation produce a difference in capital spending of $164 million, demonstrates that the Applicant's claims of dire need are simply not credible.

3.3.13 ***Conclusion.*** To put it bluntly, if you really "need" $370 million, you can't give up $105 million of it. The Applicant's cavalier approach to what it really needs makes clear that it doesn't really need that additional rate funding at all. If it did, it would certainly know the number it "needs" within a few tens of millions of dollars.

3.3.14 ***The Additional CIVA Money.*** Of course, it almost goes without saying that, if the Board determines to approve any M Factor, it is inappropriate to provide any relief for this additional $105 million, whether in the CIVA or otherwise. It is a proposal made after evidence was complete, and therefore by definition is not supported by any properly tested evidence before this Board.

3.4 ***<u>Merger Capital Benefits</u>***

3.4.1 ***What is the Need?*** The Financial Plan so reluctantly filed by the Applicant shows $79 million in merger capital synergies for the period 2020-2024[36]. This is down from $96 million in the previous year's Financial Plan, presumably because of the high amount of capital synergies actually realized in 2018.

[35] Presumably on the principle "If you don't ask, you don't get."
[36] K2.4, p. 15. We have used 2019-2023 as a proxy for 2020-2024, because the Financial Plan does not include 2024. The actual number is not particularly important.

3.4.2 When asked how the synergies were reflected in the DSP, the Applicant's CFO appeared to be taken aback[37]. That is, he did not say this was done on purpose. He did not say Alectra was being magnanimous. What he said was "Regrettably, I have to think about that for a minute". Anyone who was in the hearing room realized that, until that question was asked, Mr. Basilio was not aware that they had inadvertently given up tens of millions of dollars of capital merger synergies to which they believed they were entitled.

3.4.3 What is apparent is that the Applicant made an error that understated their "need" by $105 million due to an incorrect growth factor, and the Applicant made another error in not reflecting $79 million of merger synergies in their DSP, again understating their "need".

3.4.4 SEC submits that, if Alectra really "needs" this additional funding, then it would have noticed when there were hundreds of millions of dollars of errors in the calculations. This is not sloppiness. This is evidence that Alectra does not actually need this additional funding.

3.4.5 ***An Additional Inference.*** The capital merger synergies go initially to the shareholders during the deferred rebasing period, but then benefit the customers on rebasing. Whatever rate base is reduced by these savings (likely about $60 million at the time of rebasing) reduces rates for customers going forward.

3.4.6 By effectively "giving" these savings to the customers now, Alectra is admitting that the customers will never benefit from these synergies. As noted earlier, the DSP proposes spending (even with the synergies netted out) that is more than other LDCs, and is on top of high levels of in-service capital already in place. That can only be true if a) Alectra's capital spending is more out of control than even their DSP shows, or b) the capital merger synergies don't really exist, or c) the actual spending will be $79 million less than the DSP states, so the customers are being "given" nothing. One of these must be true. All are bad.

3.5 ***Approval by the Applicant's Board of Directors***

3.5.1 The Board of Directors of the Applicant did not approve a capital plan of $1,456.1 million, as is being sought in this Application. The Board of Directors approved a capital plan that is much lower. The amount appears to be $1,274.4 million[38].

[37] Tr.3:57-9.

[38] K2.5, p. 69. The total core capital for 2019 to 2023 is $1,383.3 million, less the reduction for the "ICM Recovery Assumption" of $137.1 million, netting $1,246.2. To adjust this to 2020-2024, we removed the $253 million from 2019, and added in the $309.4 from 2024 [G-Staff-4(c)], and then deducted the 50% ICM recovery assumption, $28.2 million, the same as the previous years. Nothing turns on this number. Whatever way it is calculated, it is clear that the Board of Directors has approved a capital plan that is somewhere around $150-175 million lower than what Alectra is telling the Board it needs.

3.5.2 There was some confusion about this, as Mr. Basilio appeared to change his evidence during cross. The initial question on this approval is seen in the following exchange:

> *"MR. SHEPHERD: So what you're asking for approval for is the higher amount, even though you're not going to be funded for $137 million of it?*
> *MR. BASILIO: So we're not asking for -- just to clarify, we're not asking for funding of the total DSP. We're asking for funding for the difference between -- and I don't have the number -- whatever we would have thought would have been funded by the DSP, and we would have been asking for funding for the ICM component, I guess. We're not asking for funding for the total DSP.*
> *MR. SHEPHERD: Sorry, we are at cross-purposes here again.*
> *I'm asking -- for you to spend money on capital in the billion-dollar range your board of directors has to say, yes, you can, right?*
> *MR. BASILIO: The Board approves the budget; that's correct.*
> *MR. SHEPHERD: And so the board approved a capital budget for this five-year period that is $137.1 million higher than you expect to have funded in the same plan. Right?*
> *MR. BASILIO: No. The board of directors would have approved the net capital expenditure number.*
> *MR. SHEPHERD: Okay. That's the question I asked you, and that is why I -- that's why --*
> *MR. BASILIO: Well, I didn't understand your question, Mr. Shepherd.*
> *MR. SHEPHERD: So they only approved, and right now you only have approval to spend the net capital expenditures from your board, right?*
> *MR. BASILIO: That's right."[emphasis added]*

3.5.3 This is the figure we have calculated to be, over 2020-2024, $1,274.4 million[39].

3.5.4 Then, just a few minutes later, having said the Board of Directors approves the capital budget, Mr. Basilio said that they only approved 2019, and nothing has been approved for 2020 or beyond. Indeed, he made the point of saying that the Board of Directors was asked to approve the 2020 capital budget, and refused to do so[40].

3.5.5 Mr. Cananzi shed some light on the last point, as follows:

> *"MR. SHEPHERD: I was just going to ask. Do you have some more insight, Mr. Cananzi?*

[39] Of course, the Board of Directors only approved up to 2023, but we are trying to assist the Board by making this more of an apples to apples comparison.
[40] Tr.3:31-34. The change in Mr. Basilio's evidence appears to also be inconsistent with what he said in the Technical Conference: TrT.1:31. The same quote can be found in K1.1, p.17.

> *[Witness panel confers]*
> *MR. CANANZI: There was some concerns over year-over-year degradation of plan.*
> *MR. SHEPHERD: And that is because your net income was going down, the board is saying hang on, let's not approve a big jump in 2020 just yet. Let's see what happens.*
> *MR. CANANZI: Yes."*

3.5.6 Neither Mr. Basilio or Mr. Cananzi would admit that, if this Board does not approve the full $1,456 million, the Alectra Board of Directors would require management to reduce their capital spending. Basically, they said that the willingness to spend the difference "could be within a range of zero to a hundred" percent of that difference, meaning Alectra could spend $1,456 million, $1,086 million, or anywhere in between[41].

3.5.7 This is hardly surprising. Mr. Cananzi readily admits that over the last five years Alectra and its predecessors have generally spent more on capital than the amounts "funded" in base rates[42].

3.5.8 ***Why Does This Matter?*** There are two reasons why the level of approval from the Alectra Board of Directors matters.

3.5.9 First, the Board of Directors is recognizing that the amount of the capital budget is not a bright line. By taking the position "let's see what happens", i.e. see what is funded by the OEB, the Board of Directors is acknowledging that how much they "need" to spend, and are willing to spend, is based, at least in part, on how much money they have from revenues. This is much like companies in the competitive markets, who establish their capital budgets based in part on what the market is going to deliver in revenues to fund those investments.

3.5.10 By implication, then, the capital budget is a variable number. There is no "We must spend at least this much, or the world will come to an end". For competitive companies, the revenue line is an external variable that will influence the spending line (capital or operating). The same appears to be true for the Alectra Board of Directors, except that this Board is the market proxy.

3.5.11 The Alectra Board of Directors is saying, pretty clearly, we'll decide what we "need" to spend in capital based in part on how much we "have available" to spend.

3.5.12 Second, this Board's determination of how much extra rate funding is provided by the customers does not set a cap on how much capital spending Alectra will actually

[41] Tr.3:36.
[42] Tr.3:37.

undertake.

3.5.13 Alectra doesn't "need" the full M Factor in order to implement a prudent capital plan. As it has regularly done in past years (directly or through its predecessors), Alectra will likely spend more than the ICM threshold amount. In the past, when it has done that, it has still maintained healthy financial results, and its shareholders remain happy. The Alectra Board of Directors recognizes, as it has in past years, that it does not need to cap capital spending at the ICM threshold in order to have good financial results.

3.5.14 Thus, the Applicant's claim of "need" fails on two counts, based on this Financial Plan evidence. The Applicant doesn't actually "need" to spend this additional $265 million (or $370 million, or even $453 million, or whatever the number may be) on capital in order to run its business in a safe and reliable manner. And, Alectra does not "need" full incremental funding from customers in order to spend whatever it does spend on capital. It will be fine with less.

3.5.15 What this analysis appears to expose is the underlying "fairness" argument Alectra is making: "We think we should be incurring these costs, and it is unfair that the customers don't cover those costs, dollar for dollar, in rates."[43]

3.5.16 With respect, the Applicant appears to have missed the point. ***Alectra is not in a period of cost of service ratemaking. It is in Price Cap IRM, which it selected voluntarily. Rates are decoupled from costs.*** That's the whole point of IRM.

3.5.17 The Alectra Board of Directors appears to get this quite well. They will decide how much the company "needs" to invest in capital when they see the revenues they have available, and then will exercise judgment in setting the capital spending level. They may invest more or less, but in any case they will invest the amount they think is required to operate their business safely, reliably, and profitably.

3.6 *Impact of Inflation Assumptions*

3.6.1 ***The Problem.*** The Alectra DSP assumes that inflation of capital costs is 2.15% on average over the five years[44]. The formula used in calculating the "final" ICM threshold (as proposed by Alectra today) assumes inflation of 1.66%, less a stretch factor of 0.30%, for a net of 1.36%.

3.6.2 Alectra does not appear to have provided the Board with the level of capital spending it would expect given its DSP if the inflation assumption were the same as the ICM

[43] We note in passing that the reference in the AIC, p.12, to the "benefits follow costs" principle appears to be an inadvertent error. "Benefits follow costs" has nothing whatsoever to do with the issues in this proceeding. It is completely unrelated.

[44] Tr.3:116. The Financial Plan assumes 2.5% in 2020, and 2.1% in the next three years: K2.4, p. 14 and Tr.3:67.

threshold assumption, but it is possible to estimate it. Based on SEC's analysis, if the inflation assumption in the DSP was 1.36% (1.66% ICI less stretch), the total capital spending from 2020-2024 would by $1,292.0 million[45].

3.6.3 This would reduce the "unfunded" capital to $206 million, based on the threshold calculated by the Applicant using this assumption of $1,086 million[46].

3.6.4 ***The Implication.*** The Applicant's argument is that it must spend $370 million more on capital than the ICM threshold says is funded in base rates.

3.6.5 It turns out that is misleading. Even if you accept their basic premise that an extra amount of capital spending is required, and their second premise that customers must pay for it, in fact ***only $206 million of their extra spending is actually extra***. The remaining $164 million of apparently extra spending arises solely because the DSP assumes that costs increase at 2.15%, and the ICM threshold calculation (as proposed by Alectra) assumes that costs increase by 1.36%.

3.7 ***SEC Recommendation***

3.7.1 SEC therefore submits that the Applicant's evidence has not established that spending almost $1.5 billion in capital expenditures over the next five years is prudent and reasonable. The evidence, instead, demonstrates fairly clearly that the Applicant can operate its system safely and reliably within the Price Cap framework, with perhaps a few ICM projects funded separately through proper ICM applications consistent with Board policy.

3.7.2 Further, the evidence clearly shows that the Applicant does not "need" $370 million (or any of the other numbers thrown about) of additional M Factor and CIVA funding to operate its system safely, reliably, and profitably. Even if some of the excess capital spending is a good idea, during IRM there is sufficient flexibility that Alectra can manage within the IRM envelope (and any applicable ICM), and its own Board of Directors appears to agree.

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[45] There are many ways to estimate this, but the simplest is to compare the ICM threshold using 2.15% and 1.36%, since this is an easy to calculate difference and uses comprehensive inputs, and then apply the same percentage difference to reduce the DSP figure of $1,456 million.

[46] It is also possible to do this by recalculating the threshold using 2.15%, which produces an unfunded amount of $223 million, as noted earlier. Nothing turns on this calculation. The point is that the mismatch between the DSP inflation assumption and the threshold inflation assumption produces a very material increase in the "unfunded" amount. Whether that increase is the so-called unfunded capital is $164 million ($370-$206), or $147 million ($370-$223), really is irrelevant. The difference is a large one, driven solely by a difference in inflation assumptions.

4 SPENDING THE MERGER BENEFITS

4.1 *Introduction*

4.1.1 The basic regulatory compact underlying the MAADs Policy is that mergers generate net benefits, mostly in terms of lower costs (economies of scale and other efficiencies). To encourage distributors to consolidate, the shareholders are allowed to keep 100% of those benefits for up to ten years, in part to cover the costs of consolidation, and in part as an inducement to enter into these transactions. Then, at the end of that initial period, 100% of the merger benefits go to the customers[47] through a rebasing application.

4.1.2 Of course, the risk for the customers would be that the utility spends too much during the initial period, so that there are no merger benefits left for the customers at the end of the day. The primary way the MAADs Policy controls this is to require the consolidating distributors to remain on Price Cap IR until that rebasing. In order to spend excessively, the utility would have to spend the shareholder benefits, since the revenue line has a cap.

4.1.3 The M Factor proposal would fundamentally alter that regulatory compact. It proposes that high capital spending during the deferred rebasing period come, not from the shareholder benefits, but as a flow-through from the customers. This allows the utility to spend the future customer benefits at no cost to the shareholders.

4.1.4 That is precisely what Alectra is proposing to do here, and in two ways.

(a) First, Alectra is spending the capital merger synergies directly by higher than normal capital spending levels. Instead of capital going down, as it should if there are synergies, it goes up.

(b) Second, Alectra is creating a higher rate base, which will convert into a higher revenue requirement and therefore rates at the time of rebasing. To the extent that there are operating synergies, they are offset by higher rate base to remove any rate benefit.

4.2 *Fast Forward to 2027*

4.2.1 While Alectra will not provide any forecasts or estimates of rate levels in 2027[48], it is possible to estimate those levels based on the information currently available.

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[47] Whether that is a fair balance could be a matter of some debate, but there is no dispute that this is the paradigm on which the MAADs Policy is based.
[48] Tr.2:160, Tr.3:93, and elsewhere.

4.2.2 Rate Base is expected to increase at 4.05% per year from 2019 to 2027 (and beyond), even assuming that all of the capital synergies are built into that number. Rate base has, for the Alectra predecessors, generally averaged about 55% of revenue requirement.

4.2.3 Assuming OM&A increases at inflation for the next several years[49], and growth continues at the current modest level of 1% per year, that would result in OM&A increasing at 3.15% per year, covering 45% of revenue requirement.

4.2.4 The combination of the two is 3.65% average annual increase. When the growth of 1% is deducted, that leaves a CAGR of cost per customer of 2.65% per year. This is substantially in excess of forecast inflation, and substantially in excess of forecast Price Cap IR. Put another way, average rates can be expected to be more than 23% above current rates in 2027.

4.2.5 Alectra will say that this 23% increase is much lower than what rates would have been, but for the merger. Given that Alectra expects annual synergies by the end of the deferred rebasing period of $60 million per year[50], that would mean that the counterfactual – what would have happened without the merger – is rates increasing at about 34% over those nine years from 2019 to 2027, a compound annual growth rate of 3.35%.

4.2.6 This back of the envelope approach is, of course, not evidence, nor is it in any way rigorous. The Board would have benefited, we believe, from evidence from the Applicant that shows that there will be merger benefits for the customers at the end of the deferred rebasing period, even with their massive capital spending plans. If Alectra believes that our rough 2.65% forecast is wrong, or our no-merger 3.35% forecast is wrong, they should have, instead, have provided the Board with evidence that the M Factor is not significantly eroding the customer benefits from the merger[51].

4.3 ***Past History of Alectra Companies***

4.3.1 In oral evidence, Mr. Basilio claimed that one of the reasons the Board can trust Alectra to deliver merger savings is its past history of doing so[52]. We tested that by looking at the tariff sheets for Aurora, Markham, Richmond Hill and Vaughan, the Powerstream predecessors, for 2006 for a high school with 250 kW of monthly load.

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[49] Assuming 2.15%, as Alectra does for its DSP purposes.
[50] Tr.2:90.
[51] In this regard, SEC believes that it would have been useful to put these forecasts – or whatever Alectra things they really should be – to the customers during customer engagement. A forecast of annual rate increases of 2.65% per year for the next nine years, well above inflation, would, we think, have required the research firm to include as one of the possible responses to the question "Is this acceptable to you?" a box for "ROFL".
[52] Tr.1:85; Tr.2:65,107,156.

4.3.2 The results are as follows[53]:

School - 250 kW				
Predecessor	***2006***	***2019***	***Increase***	***CAGR***
Aurora	$10,074	$14,748	46.4%	3.0%
Markham	$8,099	$14,748	82.1%	4.7%
Richmond Hill	$13,179	$14,748	11.9%	0.9%
Vaughan	$12,025	$14,748	22.6%	1.6%

4.3.3 To put this in context, on average distributors across the province would charge this customer $12,862 per year, so the Alectra PRZ level is 14.7% above average.

4.3.4 To ensure that this was not just something specific to GS>50 customers, we did the same exercise with residential customers at 750 kwh, and got the following results:

Residential - 750 kWh				
Predecessor	***2006***	***2019***	***Increase***	***CAGR***
Aurora	$277	$343	23.8%	1.7%
Markham	$246	$343	39.2%	2.6%
Richmond Hill	$232	$343	47.8%	3.1%
Vaughan	$242	$343	42.0%	2.7%

4.3.5 The average across the province in 2019 is $357 for a customer with these characteristics, meaning that Alectra PRZ is lower by 3.9%.

4.3.6 These rates of increase may indeed be lower than comparable utilities, or they may not. What they certainly show, however, is that on average this Alectra predecessor couldn't even keep their rate increases below inflation with substantial productivity improvements due to mergers. Further, the utility with the most merger activity (other than Hydro One) does not appear to have rates consistently lower than its peers.

4.3.7 SEC wants to be clear that it is not saying consolidations produce no synergies or savings. They often do. What we are saying is that those synergies and savings only benefit the customers to the extent that the Board diligently controls the spending of the consolidating entities in the period after their transactions.

4.4 ***<u>SEC Recommendation</u>***

4.4.1 If utilities like Alectra are allowed to increase their spending to offset in whole or in

[53] Figures are from the 2006 Board-approved tariffs for the four Powerstream predecessors, and the 2019 Board-approve PRZ tariff.

part the merger benefits, the customers will not see those benefits. That is one of the effects of the proposed M Factor, and another reason why the Board should reject the Applicant's proposal.

5 RELIABILITY ISSUES

5.1 *Introduction*

5.1.1 The Applicant argues[54] that providing extra rate dollars to pay for its aggressive DSP is necessary to avoid declining reliability.

5.1.2 There are two questions raised by this claim:

(a) Is this assumption of impending doom reasonable?

(b) Is the conclusion that avoiding declining reliability implies a rate increase is reasonable and appropriate?

As we set out below, our answer to both questions is no.

5.2 *Is Reliability Declining Significantly?*

5.2.1 SEC is aware that other parties will be reviewing the reliability evidence in some depth. Therefore, we will limit our submissions on reliability to three general observations:

(a) ***One Year Impact.*** The apparent trend of declining reliability shown in the graphs filed by the Applicant[55] is mostly driven by one year, 2018. One year is not a trend.

(b) ***Alectra Compares Favourably with other LDCs.*** The average reliability statistics in Ontario are materially worse than those of Alectra. In 2018, the worst year for Alectra, its adjusted SAIFI was 1.37 and the industry average was 1.48. By way of example, Alectra was in the middle of the pack, along with London, Waterloo North, Oshawa, Sudbury, Veridian and North Bay. In the same year, Alectra's adjusted SAIDI was 1.08 and the industry average was 2.59. Alectra had better SAIDI than all of those six SAIFI comparators except London and Waterloo North[56].

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[54] Tr.3:129, and many other places.
[55] Ex.4/1/1, p. 108, 110.
[56] All data from the 2018 Electricity Yearbook. Interestingly, if you do the same comparison to the industry using the 2017 data, Alectra is still slightly better on SAIFI, but the same as the average on SAIDI. However, the reason appears to be that the 2017 Yearbook averages exclude Hydro One Networks, which would significantly reduce the industry average. If Hydro One were included, Alectra would in 2017 be in roughly the same position relative to the industry as in 2018.

(c) ***Operating vs. Capital Costs.*** As noted elsewhere in these submissions[57], Alectra has relatively higher PP&E than other distributors, but much lower operations and maintenance costs. It is not clear on the evidence before the Board that the solution to any modest decline in reliability is to replace more assets. The solution may well be to make a stronger commitment to annual operations and maintenance efforts.

5.2.2 For these reasons, and for the detailed reasons provided by others in their submissions, SEC submits that the assumption of significant reliability decline is not supported by the evidence, and the further assumption that more capital spending is the solution is equally suspect.

5.3 ***Responsibility of the Customers***

5.3.1 Even if there were evidence that reliability is declining (which there is not), the question is whether the customers should be asked to pay more to stop that decline. SEC believes, consistent with the RRFE, that if Alectra wants to raise the prices of its services, it has to demonstrate to its customers that it will provide increased value consistent with those higher prices. It is fundamentally inconsistent with the RRFE that prices should increase (other than inflation less productivity) to maintain the status quo.

5.3.2 We note that this is consistent with the competitive markets. If the quality of a product declines, the price generally has to decline as well, because customers will usually not pay the same and get less value. On the other side, if a company wants to raise prices, it must demonstrate that it is providing a better product, and the improvements have a value to customers at least as much as the increase in price.

5.3.3 The RRFE, implementing the Board's market proxy role[58], uses the same paradigm. If a utility wants more money, it has to add value for the customers.

5.3.4 In this case, the surprising pitch from Alectra is: "We want more money from customers, and we are offering nothing in return."

5.4 ***SEC Recommendation***

5.4.1 SEC therefore submits that the Applicant's reliability-based justification for its M Factor is wrong, both in fact and as a matter of regulatory law and policy.

[57] Section 3.2.
[58] Recently affirmed by the Supreme Court of Canada in the OPG case.

6 ICM AS AN ALTERNATIVE TO M FACTOR

6.1 *Introduction*

6.1.1 In the Argument in Chief, the Applicant says, in effect, that even though they refused to justify any of the M Factor projects based on the ICM criteria[59], and refused to answer any questions about ICM qualification of their projects[60], the Board is still legally obligated to provide some form of incremental capital funding. The quote is:

> *"Accordingly, the central question for the OEB is whether it should permit Alectra Utilities to use a variation of or enhancement to the ICM, in the form of the proposed M-factor, in order to fund and enable execution of the identified incremental capital needs that benefit Alectra Utilities' customers and which are in the public interest, or some other method of just and reasonable rate recovery to provide for that benefit. Simply rejecting the request without providing any incremental capital funding would, in Alectra Utilities' submission, not be consistent with the requirement to establish rates in accordance with the just and reasonable standard."[emphasis added]*

6.1.2 This is, of course, not at all the law. As we have discussed earlier, the Board is not bound to provide cost of service rate relief to a distributor under IRM.

6.1.3 Still, this Application does raise the question of whether it can somehow be converted into a one year ICM application. There are two steps to that analysis. First, can it be done at all, i.e. is it possible to provide an ICM approval on the evidence filed? Second, even if it can be done, is it a good idea from a regulatory policy point of view?

6.1.4 SEC will answer no to both questions, below.

6.2 *Can It Be Done?*

6.2.1 The Applicant has provided a list of 203 M Factor projects, but has refused to speak about ICM qualification for any of them[61]. When pressed to provide that information in SEC's Motion, Alectra argued vigorously and successful against doing so, saying that they were not applying for an ICM[62].

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59 SEC 43 and TrT.1:60.
60 TrT.1:83, 85.
61 Tr.2:61, and elsewhere.
62 Tr.1:20-23. See also Tr.2:58.

6.2.2 Now, however, they want to have their cake and eat it too. By implication, their argument is that, if the Board does not approve the M Factor, the Board still has to go through the projects and see if they qualify for ICM treatment.

6.2.3 Aside from the fact that this is not reasonable (see below), it is also not possible. The Applicant has not met the filing requirements for ICM applications[63], and has refused to do so when asked. Therefore, the evidence they have provided is insufficient to allow the Board to approve any projects for ICM purposes. Several of the components of the filing requirements for ICM have not been dealt with at all.

6.2.4 Thus, even if the Board were inclined to go into the business cases and assess whether a project might qualify for ICM treatment, the Board would have to make assumptions about the aspects of ICM treatment that are not yet included in the evidence.

6.2.5 Further, for the components of ICM qualification that are included in the evidence in whole or in part, that evidence is not a valid basis on which the Board can make an ICM decision. The reason is because that evidence was not subject to discovery or cross-examination by the other parties. Where an applicant refuses to submit to discovery and cross-examination on any evidence, the rules of natural justice are breached, and that evidence cannot form the basis of a successful claim by that applicant.

6.2.6 Therefore, SEC concludes that it is not legally or practically possible for the Board to grant any ICM relief to Alectra based on the record in this proceeding.

6.3 ***Protecting the Board's Processes***

6.3.1 Even if it were possible to reach a conclusion on ICM treatment of particular projects, the more critical question is whether the Board should do that.

6.3.2 The effect of turning this into an ICM application is to say to the Applicant that it is OK to throw 203 projects up against the wall, and see which ones stick[64].

6.3.3 If the Board does that in this case, why would any utility file an ICM application with just the projects they think should qualify? Their assessment may exclude some projects that the Board could approve. The better strategy is to make an ICM application for the 20 or 30 or 50 projects that might qualify (no matter how ridiculous the stretch), and tell the Board they are obligated to figure it out.

[63] Filing Requirements for Transmission and Distribution Applications, July 2018, Section 3.3.2.1.
[64] See Tr.1:28.

6.3.4 This would not be limited to ICM applications. The same would be true of cost of service, whether regular rebasing or Custom IR. Include everything you can think of, including even things that clearly should not be approved, and leave it up to the Board to sort out what they will approve.

6.3.5 The Board is pretty focused on protecting its own processes. It establishes detailed filing requirements for each component of each type of application, and has OEB Staff review applications in advance of the hearing process to ensure that the information required in the filing requirements has been included. Then the Board carefully tests that evidence, and tries to scope the proceeding so that it is focused on the utility's proposal, and doesn't meander all over the place.

6.3.6 The Argument in Chief appears to propose that, if the Board doesn't give the Applicant what they want, then it has to embark on an unstructured inquiry, without the necessary evidence, to determine alternatives to the Applicant's proposal. Those alternatives apparently have to include those that the Applicant expressly excluded in their Application and their evidence.

6.3.7 This is not a reasonable approach, and is certainly not mandated as a matter of law. The Board is not required to engage in this inquiry.

6.3.8 The appropriate response, assuming the M Factor is denied, is to deny the incremental capital relief, and tell the Applicant that, in their 2021 application, they should apply for ICM funding and provide appropriate supporting evidence for qualified projects. The result would be that Alectra would lose the minimal revenue requirement impact of the 2020 projects, but would still be able to apply for most of its projects in the next five years that could, in fact, qualify for ICM treatment.

6.4 ***SEC Recommendation***

6.4.1 The Board should not provide ICM funding as an alternative to the M Factor. There is insufficient evidence to do that in any case but, more important, it would change the paradigm for utility applications. From that point on, the responsibility of utilities to file applications with proper evidence would be seriously undermined.

7 ADDITIONAL ISSUES

7.1 *Introduction*

7.1.1 The Applicant is seeking two variance accounts connected with the M Factor and the DSP: the CIVA and the EDCVA. Neither should be approved as filed. However, the EDCVA could be approved with better evidence, and without the M Factor.

7.1.2 The Board should therefore deny the CIVA, and, if the M Factor is not approved, invite the Applicant to re-apply for the EDCVA next year with better evidence.

7.2 *Capital Investment Variance Account*

7.2.1 ***Original Proposal.*** This account was originally proposed as a symmetrical variance account around the M Factor spending. If the five year spending on the listed M Factor projects ends up being lower, the difference would go to the CIVA, and be refunded to customers on rebasing. If the spending on those projects ended up being higher, then the difference, up to $9.3 million, would be charged to the CIVA, and recovered from customers[65].

7.2.2 The apparent justification for the upside variance is that it would bring the total M Factor spending up to the maximum difference between the DSP total spend and the ICM threshold. It is not clear why Alectra didn't simply add more projects to the M Factor project list.

7.2.3 There are two reasons why the CIVA should not be approved as originally proposed.

7.2.4 First, there is no reason for a CIVA unless there is an M Factor. Funding through an ICM is subject to a standard true-up approach authorized by the Board. Therefore, consistent with SEC recommendation that the M Factor should not be approved, the CIVA would not be required.

7.2.5 Second, it is not good practice to pre-authorize cost overruns, and if there is an expectation that there would be a prudence review of the cost overruns, it seems excessive to review 203 projects for up to $9.3 million of net overruns that have a revenue requirement impact during the five year period of no more than a couple of million dollars.

7.2.6 ***Revised Proposal.*** In the Argument in Chief, the Applicant has changed the

[65] The Applicant admits that the result of this is that cost overruns on some projects are offset against savings on other projects; it is an envelope approach, in which poor cost performance is first offset by good cost performance: Tr.1:85.

proposal, seeking permission to add the $105 million of new "unfunded" capital spending to the CIVA as they spend it. It does not appear that this is intended to be an increase in the cap from $9.3 million to $114.3 million. The $105 million is for projects that, throughout the proceeding, have been treated as part of the base capital budget. We do not have a list of these projects.

7.2.7 Instead, the proposal appears to be that if the Applicant spends more than the new ICM threshold, plus the M Factor total, that excess, whatever it is, can be charged to the CIVA as a separate sub-account. If that spending is consistent with the DSP[66], then presumably the Applicant will argue that it must be prudent (since this Board "approved" the DSP), and they can recover it from customers as of right.

7.2.8 It is hard to know where to start with this new proposal. Just adding a request such as this in the Argument in Chief is breathtaking. Worse, though, it appears that this is intended to be an approval much like the M Factor being requested, but with two differences. First, there is no list of projects for the Board to look at. Second, there is no variance account or true-up. In effect, it is simply a blank cheque for $105 million of additional and unknown capital spending.

7.2.9 SEC therefore submits that there is no tenable argument that this newly-revised CIVA should be approved by the Board. It appears to be nothing more than a request that the Board can deny easily, so that Alectra has a better chance of getting approval of something they really do want.

7.3 ***Externally Driven Capital Variance Account***

7.3.1 This account is intended to allow the Applicant to recover the revenue requirement impact of capital spending that is not in the DSP, and is driven by requirements from government bodies, particularly transit and road projects.

7.3.2 ***With the M Factor.*** If the Board approves an M Factor, SEC submits that there are no circumstances in which this account is defensible.

7.3.3 Normally, if there are unexpected third party demands, a distributor will adjust its capital spending on other projects to make room for the additional capital. If the project is particularly significant, it may be the subject of an ICM application.

7.3.4 In a rare case, where the utility is sticking within a controlled capital budget, and so has limited room to adjust, and where it faces substantial demands, for example because of multi-year transit projects, it makes some sense to have a variance account to capture those projects as and when they arise.

[66] AIC, p. 23, 32.

7.3.5 That is not the case here. Although it is undoubtedly true that Alectra is going to face a number of transit and road projects over the next five years, it also is proposing a very high capital spend funded by customers. In those circumstances, Alectra should be responding to unexpected third party demands first by cutting back on capital spending in other areas. With a EDCVA, they have no responsibility to do that. Instead, they can simply pile on more costs to be paid by customers[67].

7.3.6 This is a particular concern since the proposed capital budget is so high without the EDCVA amounts. Part of the Board's obligation in this case is to look at the total spend, and assess whether it is reasonable to ask the customers to pay for this much spending. If the Board were to conclude – contrary to SEC's recommendations – that the M Factor is acceptable (although right at the limit of reasonable spending), then by definition the EDCVA spending would be excessive, even if each project is necessary and reasonable.

7.3.7 SEC therefore submits that, if the M Factor is approved in any form, no EDCVA is justified. More costs are not reasonable in that situation.

7.3.8 ***Without an M Factor.*** If there is no M Factor, SEC submits that an EDCVA is an efficient way of dealing with transit and road demands for a distributor in the Applicant's situation. The structure of the account should be that qualifying projects in excess of the baseline that is included in the DSP should be eligible for entries in the account, subject to later prudence review.

7.3.9 The problem here is that there is no clear baseline in the evidence. The Board has a list of 884 projects included in the DSP[68], but SEC has been unable to determine which of those are part of the EDCVA baseline, and which are not.

7.3.10 That does not mean that the EDCVA should be dead. It just means that it should not be approved by the Board this year. The Applicant should be encouraged to make the proposal again in its 2021 application, together with detailed evidence of the baseline included in the base capital budget, and the potential for additional road and transit demands.

[67] Tr.2:132.
[68] J2.4, Attach. 1.

8 OTHER MATTERS

8.1 *Costs*

8.1.1 The School Energy Coalition hereby requests that the Board order payment of our reasonably incurred costs in connection with our participation in this proceeding. It is submitted that the School Energy Coalition has participated responsibly in all aspects of the process, in a manner designed to assist the Board as efficiently as possible.

All of which is respectfully submitted.

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Jay Shepherd
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