

DECISION AND ORDER ON COST AWARDS

EB-2019-0018

ALECTRA UTILITIES CORPORATION

**Application for rates and other charges to be effective January 1,
2020**

BEFORE: Emad Elsayed
Presiding Member

Lynne Anderson
Member

Michael Janigan
Member

March 24, 2020

INTRODUCTION AND SUMMARY

This is a decision of the Ontario Energy Board (OEB) on cost claims filed with respect to an Alectra Utilities Corporation (Alectra Utilities) proceeding.

Alectra Utilities filed an incentive rate-setting mechanism (IRM) application with the OEB on May 28, 2019 under section 78 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Schedule B, and sought approval for changes to its electricity distribution rates to be effective January 1, 2020. The application also includes a proposal for additional capital funding (M-Factor) and a request to reverse the outcome of a prior OEB decision on capitalization policy.

The OEB granted Association of Major Power Consumers in Ontario (AMPCO), Building Owners and Managers Association (BOMA), Consumers Council of Canada (CCC), Distributed Resource Coalition (DRC), Energy Probe Research Foundation (Energy Probe), Max Aicher (North America) Ltd. and Max Aicher (North America) Bloom Mill (collectively, MANA), School Energy Coalition (SEC) and Vulnerable Energy Consumers Coalition (VECC) intervenor status and found each of these parties eligible to apply for an award of costs pursuant to the OEB's *Practice Direction on Cost Awards* (Practice Direction).

On January 30, 2020, the OEB issued its Partial Decision and Order in which it set out the process for intervenors to file their cost claims; for Alectra Utilities to object to the claims; and for intervenors to respond to any objections raised by Alectra Utilities.

AMPCO, BOMA, DRC, Energy Probe, MANA, SEC and VECC each filed cost claims by the February 13, 2020 deadline specified in the Partial Decision and Order. CCC's cost claim was filed on February 17, 2020. CCC's cost claim is accepted by the OEB notwithstanding the late filing. On February 20, 2020, Alectra Utilities filed a letter stating that it had concerns with MANA's costs under the "Argument" category. Alectra Utilities stated that MANA claimed 62.50 hours under this category, which included the costs of two legal counsels and one articling student/paralegal. Alectra Utilities further stated that the average number of hours claimed for Argument by all other intervenors, excluding SEC, was 35.65 hours. MANA's claim was 26.85 hours, or approximately 33%, greater than the average. Alectra Utilities noted that while Energy Probe and DRC costs claimed under the Argument category included the costs for two consultants and/or legal counsel, the total costs claimed in this category were within the average claimed by all intervenors.

On February 26, 2020, MANA responded to Alectra Utilities' comments and stated that its claim was the second lowest total amount of costs. MANA's cost claim was 33% lower than the average cost claim, and MANA stated that its low cost claim was accomplished primarily through two strategic decisions, both of which MANA submitted are good policy. First, MANA stated that it limited its participation to where it was reasonably necessary. Second, MANA stated that it used less expensive counsel and avoided using its most senior counsel for every step of its application. MANA suggested that if its most senior counsel had done all the work, fewer hours could have been incurred, but MANA's total costs would have been higher. MANA argued that should the OEB give weight to Alectra Utilities' argument about "average costs" as opposed to referring to costs actually incurred and claimed, the OEB should increase MANA's total cost award by \$16,135.81, to achieve the average cost claim of \$49,166.44.

Findings

The OEB has reviewed the claims filed to ensure that they are compliant with the Practice Direction. The cost claims as filed are reasonable and will be allowed with the adjustments made as described below.

For BOMA's claim, BOMA will only be allowed reimbursement for a coach class economy train fare. BOMA's claimed train fare expense (which was business class in one direction) was not in accordance with the Ontario Government's Travel, Meal and Hospitality Expenses Directive.¹ The OEB will reduce BOMA's claim by \$58.76 (the difference between business class fare and an equivalent economy fare), which has been calculated based on similar scheduling circumstances.²

Although Procedural Order #1 stated that cost awards will be available only in relation to Alectra Utilities' M-Factor and Capitalization Policy elements, the OEB will allow SEC's claim of 3.1 hours for the IRM portion. SEC's submission in this area was helpful to the panel. On the other hand, the OEB will deny Energy Probe's claim of 3 hours in the IRM area, as Energy Probe did not make a submission on the IRM part of the application and did not explain the reason for it in its cost claim. The OEB has applied the weighted average hourly rate of \$327.51 and has reduced Energy Probe's cost claim by \$1,046.40 including taxes.

¹ MBC Travel, Meal and Hospitality Expenses Directive, January 1, 2017, page 17/41.

² Per BOMA's cost claim, the round trip costs \$150.30 (pre-tax). Business class was for travelling from London to Toronto Union Station at a cost of \$117 and Escape class was from Toronto back to London at a cost of \$33.30. The difference between business fare and economy fare for the London to Toronto portion would be $\$117 - \$65 = \$52$ pre-tax, and $\$52 * 1.13 = \58.76 after tax.

The OEB finds that MANA's claimed hours for Argument are excessive. Excluding SEC, who took the lead in some of the key issues in this proceeding, MANA's claimed hours for Argument are 75% higher than the average of the rest of the intervenors. However, MANA's submission was more limited in scope than some of the other submissions in that it did not address the capitalization policy or the adequacy of the proposed capital plan. As a result, the OEB does not find MANA's contribution and assistance to the panel to be commensurate with the magnitude of its claim. The OEB is not persuaded by MANA's response that the high effort of composing its Argument was counter-balanced by its non-attendance at the technical conference and the oral hearing. The OEB will disallow 26.85 hours (\$8,270) from MANA's cost claim. This represents the amount by which MANA's claim for Argument exceeds the average of the other intervenors (excluding SEC) in that category. The claim of MANA also requires a minor correction due to HST claimed on parking.³

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, Alectra Utilities Corporation shall immediately pay the following amounts to the intervenors for their costs:

• Association of Major Power Consumers in Ontario	\$53,511.15
• Building Owners and Managers Association	\$50,870.97
• Consumers Council of Canada	\$40,459.65
• Distributed Resource Coalition	\$21,885.03
• Energy Probe Research Foundation	\$66,272.25
• Max Aicher (North America) Ltd. and Max Aicher (North America) Bloom Mill	\$24,760.43
• School Energy Coalition	\$91,472.37
• Vulnerable Energy Consumers Coalition	\$34,724.27

³ Disbursements reduced by \$0.20 (\$0.18 + HST) due to additional HST claimed on parking on Aug 7/19. The parking charge was already inclusive of HST.

DATED at Toronto March 24, 2020

ONTARIO ENERGY BOARD

Original signed by

Christine E. Long
Registrar and Board Secretary