

Alectra Utilities Corporation

**Application for electricity distribution rates and other
charges effective January 1, 2021**

**DECISION ON CONFIDENTIALITY AND
PROCEDURAL ORDER NO. 2
November 6, 2020**

Alectra Utilities Corporation (Alectra Utilities) filed an incentive rate-setting mechanism (IRM) application with the Ontario Energy Board (OEB) on August 17, 2020 under section 78 of the *Ontario Energy Board Act, 1998* seeking approval for changes to its electricity distribution rates, to be effective January 1, 2021.

In Procedural Order No. 1, dated September 25, 2020, the OEB set dates for intervenors and OEB staff to file written interrogatories and for Alectra Utilities to file written interrogatory responses.

Confidentiality

Alectra Utilities filed its interrogatory responses on October 27, 2020. By a letter filed on October 27, 2020 and pursuant to the OEB's *Rules of Practice and Procedure* and the OEB's *Practice Direction on Confidential Filings*, Alectra Utilities requested confidential treatment for certain portions of two documents filed as attachments to the interrogatory response to CCC-2:

1. CCC-2, Attachment 2, Alectra Utilities, Report to the Audit, Finance and Risk Management Committee, dated May 20, 2020 (portions of pages 2-5)
2. CCC-2, Attachment 3, Alectra Utilities, Report to the Audit, Finance and Risk Management Committee, dated August 19, 2020 (portions of pages 1-6) (the Proposed Permanent Redactions)

Alectra Utilities submitted that the Proposed Permanent Redactions at issue in this proceeding have no value in determining its proposed distribution rates for the 2021 rate year. As an example, Alectra Utilities noted that the Proposed Permanent Redactions include information related to the COVID-19 pandemic and steps that it has taken to

understand and mitigate the impacts, and information related to various OEB policy and consultation initiatives. Alectra Utilities submitted that none of the Proposed Permanent Redactions contain publicly available information and requested that the Proposed Permanent Redactions remain redacted on a permanent basis and not be disclosed to any party to this proceeding, including persons from whom the OEB has accepted a Declaration and Undertaking (D&U).

In a letter filed on November 3, 2020, the School Energy Coalition (SEC), an intervenor to this proceeding, objected to Alectra Utilities' request for the Proposed Permanent Redactions to remain confidential even to persons from whom the OEB has accepted a D&U. SEC submitted that there should be a clear reason for when information is kept confidential even to parties that have signed a D&U, such as when the information contains personal information or financial results of affiliates that have no business relationship with the regulated utility. SEC further submitted that Alectra Utilities' request, by only providing the Proposed Permanent Redactions to the OEB but not intervenors, is seeking an exception to the *audi alteram partem* rule, which requires the OEB to hear both sides. In SEC's view, the COVID-19 pandemic is a key issue in this proceeding because the impact of the pandemic on Alectra Utilities capital plans, and Alectra Utilities' strategies to mitigate the impact (i.e. the redacted information), is highly relevant to whether the proposed incremental capital module projects represent incremental spending. SEC therefore requested the OEB to order the two redacted documents to be provided in unredacted form to any party to the proceeding that has signed a D&U.

Alectra Utilities filed a letter on November 5, 2020 in response to SEC's letter. In its letter, Alectra Utilities submitted that SEC made an incorrect assertion with regard to the *audi alteram partem* rule and also that SEC has failed to explain, as required by section 5.1.7b of the OEB's *Practice Direction on Confidential Filings*, "why access to the nonconfidential version or description of the document (as applicable) is insufficient to enable the party to present its case." Alectra Utilities noted that it did not redact all parts of the two documents, and that the texts surrounding the Proposed Permanent Redactions along with its description of the Proposed Permanent Redactions provide sufficient context for SEC or any other intervenor to make submissions. Alectra Utilities further submitted that the Proposed Permanent Redactions are in any case unrelated to the current proceeding and are fully responsive to interrogatory CCC-2, which requested "copies of all materials [...] related to this application." [Emphasis added] Alectra Utilities explained that the general impacts of the COVID-19 pandemic, as well as the steps the utility has taken to understand and mitigate any such impacts, are not at issue in the present application, which is solely concerned with Alectra Utilities' 2021 electricity distribution rates and its requests for incremental capital module funding.

Alectra Utilities further submitted that disclosure of the Proposed Permanent Redactions to intervenors that sign a D&U would prejudice the utility as the information contains “Alectra Utilities’ internal analysis, plans, strategic communications (including with third parties) and potential positions regarding regulatory issues that are currently before or expected to come before the OEB.” For these reasons, Alectra Utilities requested the OEB permit the Proposed Permanent Redactions to remain redacted on a permanent basis and not be made available to any party in the proceeding, including those that have signed a D&U.

Findings

Alectra Utilities filed two reports of its Audit, Finance and Risk Management Committee which contain some information that is relevant to this proceeding and is responsive to interrogatory CCC-2. However, these reports also contain information that Alectra Utilities states is not relevant to this application. It is that “non relevant” information for which Alectra Utilities seeks permanent redactions.

The OEB has reviewed the Proposed Permanent Redactions and, based on this review, will not order disclosure of the information. The OEB declines to order disclosure on the basis that the information contained in the Proposed Permanent Redactions is irrelevant to the disposition of the issues of this application, and not simply because it may be sensitive and that disclosure may be injurious to Alectra Utilities' interests.

While the OEB understands the potential interest of intervening parties to verify that finding with their own scrutiny, the OEB believes that a balancing of interests favour non-disclosure of the information contained in the Proposed Permanent Redactions in this proceeding. The objective of transparency does not argue for the unnecessary disclosure of the irrelevant and confidential. The OEB therefore grants confidential treatment in the form of a permanent redaction from the record of this proceeding the identified portions of Attachments 2 and 3 to CCC-2. The OEB’s decision does not apply to future proceedings where the disclosure of the redacted information may be relevant to the determination of issues in that proceeding.

Schedule for Written Submissions

The OEB has reviewed the evidence filed in this proceeding and has decided to proceed by way of a written hearing. The OEB is setting a schedule for the filing of written submissions by the parties. It is necessary to make provision for the following matters related to this proceeding. Further procedural orders may be issued by the OEB.

IT IS THEREFORE ORDERED THAT:

1. Intervenor and OEB staff shall file any written submissions, in relation to Alectra Utilities' IRM application, with the OEB and served on all other parties by **November 18, 2020**.
2. Alectra Utilities shall file its written reply submissions, in relation to its IRM application, with the OEB and serve them on all parties by **December 2, 2020**.

All materials filed with the OEB must quote the file number, **EB-2020-0002**, and be submitted in a searchable/unrestricted PDF format with a digital signature through the OEB's web portal at <https://pes.ontarioenergyboard.ca/eservice>. Filings must clearly state the sender's name, postal address, telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the [Regulatory Electronic Submission System \(RESS\) Document Guidelines](#) found at www.oeb.ca/industry. We encourage the use of RESS; however, parties who have not yet [set up an account](#), may email their documents to registrar@oeb.ca.

All communications should be directed to the attention of the Registrar at the address below and be received no later than 4:45 p.m. on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Jerry Wang at jerry.wang@oeb.ca and OEB Counsel, Lawren Murray at lawren.murray@oeb.ca.

Email: registrar@oeb.ca
Tel: 1-888-632-6273 (Toll free)
Fax: 416-440-7656

DATED at Toronto, **November 6, 2020**

ONTARIO ENERGY BOARD

Original signed by

Christine E. Long
Registrar