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By EMAIL and RESS

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Our File: EB20220013

Ontario Energy Board
2300 Yonge Street
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Attn: Nancy Marconi, Registrar

Dear Ms. Marconi:

Re: EB-2022-0013 – Alectra Utilities Corporation – ICM Application

We are counsel to the School Energy Coalition ("SEC"). Pursuant to Procedural Order #1, these are SEC's submissions on the Application.

Summary of Submission

Alectra Utilities Corporation ("Alectra") filed an application (the "Application") requesting the OEB's approval of ICM funding of $25.4 million in 2023 and $26.9 million in 2024, a total incremental investment of $52.3 million.[1]

Alectra identifies in the Application 52 projects that it argues require urgent treatment. Alectra claims that its base funding can only support 24 projects, and it is seeking an ICM rate rider for the other 28 projects, both small and large, in Enersource Rate Zone ("ERZ") and PowerStream Rate Zone ("PRZ").

SEC submits that the OEB should deny Alectra's request, for the following reasons:

- The Application is essentially a re-casting of the ill-fated M-factor proposal that the OEB rejected in EB-2019-0018. The Applicant continues to be telling the OEB that its capital budget is insufficient to cover its normal annual capital programs. The fact that this Application is for multiple years, despite the OEB's previous guidance to deal with ICMs annually except in exceptional circumstances, is telling in this respect.

- The Applicant deliberately selected a ten year deferred rebasing period, yet continues its attempts to rebase, selectively and on a running basis, so that it can "have its cake and eat it too".

[1] Ex. 1-1-4 p.7

- There is no evidence that the Applicant has reprioritized its capital spending to ensure that their cable replacement needs can be addressed within their capital envelope. In fact, General Plant continues to grow. A more reasonable approach would have meant that the cable program could be accomplished within the ICM threshold amount.

- When the M-factor was not approved, the Applicant reduced their capital spending on cable replacements and similar items, and now is claiming a backlog because they didn't follow their own Distribution System Plan. Utilities should not be permitted to blame the OEB for their own failure to do necessary work to maintain their system, saying that the cause was the OEB not giving them requested rate increases. This is simply a collateral attack on the OEB's decision not to approve those increases, and should be rejected.

An M-Factor By Another Name

In EB-2019-0018, Alectra proposed a unique structure in which it would get the normal rate increases available to those in an IRM year, plus the additional revenues from its substantial growth levels, plus a further increase each year based on its capital plan. It made no attempt to justify the proposed spending as ICM-eligible, but instead said in a surprisingly straightforward way that the OEB's capital funding policies are inappropriate and should not be applied.

The OEB, in a strongly-worded Decision, characterized the request as follows[2]:

> *"In Alectra Utilities' view, limitations associated with the ICM, and the way the OEB has applied the ICM in past proceedings, have made the ICM mechanism insufficient to address its incremental capital needs and the funding gap it has identified. Particularly, Alectra Utilities felt that the ICM does not provide the flexibility or rate certainty to fund its five-year DSP, and stated that the ICM causes unnecessary regulatory burden."*

The OEB then rejected the proposal, saying that it was inconsistent with the OEB's ratemaking policies, and an exception for Alectra was not justified. Its blunt rejection included the following[3]:

> *"The OEB agrees with the various parties that Alectra Utilities is misguided in its interpretation of the existing OEB policy concerning the ICM funding criteria applicable to consolidated utilities. The OEB rejects Alectra Utilities' submission that these criteria are somehow different for consolidated utilities than for all others – a conclusion arising from the expectation of funding for all "normal and expected capital investments.""*

The OEB's comments in that case included consideration of the impact of approval on other distributors, and concluded that if they approved the M-Factor, too many other distributors would seek incremental capital funding totally outside of the principles inherent in the ICM exception to the IRM rules.

As the OEB can see in the current Application, Alectra continues to operate from the premise that IRM doesn't give them enough funding for their normal annual capital programs (such as cable replacement and injection). That was the whole basis for the M-Factor request. This new Application is, SEC submits, nothing more than a cosmetic recasting of that premise to make it look like it is more project-driven and less envelope-driven.

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[2] EB-2019-0018, Partial Decision with Reasons, p. 8.
[3] At p. 22.

In this regard, SEC notes that Alectra continues to press the "unnecessary regulatory burden" complaint through seeking a multi-year ICM approval. In this they are relying on an OEB comment about multi-year ICM applications in EB-2019-0018, suggesting they could be considered[4]. What they fail to note is that the only time the OEB has approved a multi-year ICM[5] was for the Bremner Tx Station by Toronto Hydro, which was a project that would take several years to complete. The OEB in that case was clear that it was an exceptional case, and ICM applications should normally be for a single year.

Alectra does not point out, however, that there was another ICM-like application for multiple years: the M-Factor. That application was rejected.

Of course multi-year ICMs are appropriate, where the circumstances warrant it. The OEB has never suggested that a utility should make such an application simply because they don't want to make the extra effort to file two annual applications for the separate projects in each of the two years.

The Natural Consequences of a Ten Year Rebasing Deferral Period

In EB-2019-0018 the OEB also commented on the choice by Alectra to defer rebasing after their merger for ten years. The OEB said the following[6]:

> *"For a long deferral period, the increased risk of potential need for more capital spending than originally expected is to be balanced against the opportunity to earn increased shareholder returns through the retention of savings from synergies arising from the merger until rebasing."*

The OEB also said[7]:

> *"Alectra Utilities' M-Factor proposal seeks to realize the benefits of what amounts to be a Custom IR application proposing to fund most of its capital budget, without having to rebase and forego the merger savings from its post-consolidation 10-year deferred rebasing, and without all of the required elements of a Custom IR application."*

In short, the OEB has emphasized that the choice of a lengthy rebasing deferral has both opportunities, and risks. Alectra in the M-Factor application, and now again in this multi-year ICM Application, is seeking to keep the opportunities and benefits, but shift the risks and costs to the ratepayers[8].

Projects

Alectra has the burden to demonstrate to the OEB that the proposed ICM projects are needed as an urgent matter, so that the additional capital funding is justified. As Alectra quoted in the Application,

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[4] At p. 28.
[5] EB-2012-0014.
[6] AB-2019-0018, p. 24.
[7] At p. 23.
[8] In this regard, it is interesting to note that the Intervenors, in the MAADs proceeding EB-2016-0025, argued against the ten year deferred rebasing on the basis that it provided too large a shareholder benefit in this case. Alectra's predecessors argued strenuously that they were entitled to take ten years, and that there were risks as well as opportunities. The OEB agreed with Alectra on this. See EB-2016-0025, Decision with Reasons, p. 18. At this time, though, Alectra is ignoring those substantial benefits, and looking for more money from ratepayers for routine spending during the very period in which Alectra shareholders wanted to have the savings, and were willing to take the risks.

> *"In addition to the existing ICM requirements, electricity distributors in years six to ten of their deferral period must demonstrate the following:*
>
> *An urgent need for such additional funding that is based on new information that has arisen since the utility's most recent rebasing application related to the management of risk associated with asset condition, reliability and quality of service and public safety."*[9]

In the Application, Alectra has argued that the asset conditions in certain service areas have deteriorated to a point that it is urgent to address them, and Alectra requests additional ICM funding because its current rate is insufficient. For example, when asked by OEB Staff why have cables deteriorated faster than expected, Alectra responded that it has insufficient funds to maintain its distribution system.[10]

However, Alectra's capital spending choices show different priorities. Instead of prioritizing investment in distribution system maintenance in past and future years, Alectra plans to increase its investment in the general plant category of its capital budget.

The most significant investment undertaking in this category is IT investment. As Alectra stated in the Application, from 2022 to 2024, Alectra plans to invest in customer integration applications, business optimization systems, and investment portfolio software systems.[11] These investments are not emergency investments that are required to cure IT and cybersecurity deficiencies; they are upgrades. Although Alectra argues that immediate distribution system reliability issues exist, it nonetheless chooses to prioritize IT systems upgrades in the next two years. Without discrediting the importance of IT upgrades in the long run, this choice by Alectra shows that at least some of the ICM projects in this Application are not urgently needed, or at least not as much as the IT projects.

Alectra's own evidence on cable conditions suggests this is true.

Among the 28 ICM projects proposed in this Application, at least one of the replacement projects probably can be completed through injection treatment, and at least 5 of the injection projects can be deferred to the future.

Project 152375: Cable Replacement – Hammond Drive Area in Aurora (A09) is a proposed cable replacement project costing $1.3 in 2024 to replace 2.2KM of cable in the Town of Aurora.[12] Based on Figure 46 of the Application, much of the proposed cable replacement is in fair condition, and the proposed replacement segment does not include any very poor segments.[13]

Furthermore, this project may qualify for injection treatment instead of replacement. The average age of cables under this project is 32[14], lower than the technical limit for injection treatment, which is 34 years according to Alectra[15]. The injection option is much cheaper: the cost of injection treatment is only one-sixth of the cost for outright replacement.[16] As such, the budget for this project may be reduced to 0.22 million, which would be well below the project-specific threshold.

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[9] Exhibit 2-1-1 p.1-2
[10] IRR 1-Staff-9
[11] Ex. 3-1-1, p. 8-9
[12] Ex. 3-1-4, p. 30-31
[13] Ibid
[14] Ibid
[15] IRR 1-Staff-10 (a)
[16] Ex. 1-1-4, p. 4

In addition, the cable conditions underlying at least 5 injection projects are not very poor conditions. In fact, much of the cables proposed to be treated with injection in the following projects are in fair condition according to the Application.[17]

Project 151456	Cable Injection Project – Sovereign Court Area in Vaughan (V50)	$1.6M in 2024
Project 151461	Cable Injection - Jacob Keffer Parkway Area in Vaughan (V17)	$1.6M in 2023
Project 151517	Cable Injection: 8th 9 Line & Highway 11 Area in Bradford	$1.3M in 2024
Project 151520	Cable Injection – Willow Farm Lane of Aurora (A09)	$1.1M in 2023
Project 152386	Cable Injection: Kersey Crescent Area in Richmond Hill (R23)	$1.5M in 2023

SEC is not the only party noting the lack of urgency in some of the injection projects. OEB Staff asked for the reason that some of the cables are being injected even when they are in fair condition.[18] In response to this interrogatory Alectra has not justified the urgency to treat the cables in fair condition. Instead, Alectra states that "cables that are in 'fair' condition are being included in some projects where it is opportunistic to include them as part of the larger scope of replacement work."[19]

An ICM application is not the appropriate platform to request additional funding for opportunistic projects. Urgency is required for ICM proposals.

Capital Budget and Maximum ICM Eligibility

Alectra's maximum ICM eligibility is its capital budget for each respective forecast year, less the materiality threshold.[20] Alectra has filed its 2023 and 2024 capital budget details broken down by categories for ERZ and PRZ in the Application.[21]

SEC is aware that discussions with respect to the reasonableness of the forecast and proposed increases in capital budget are better suited for cost-of-service application. However, Alectra's capital budgets in 2023 and 2024 are important in this ICM application because it is the amount by which that capital budget exceeds the ICM threshold that establishes initial ICM eligibility of the expenditures.

In the past two ICM applications from Alectra, it has overestimated its capital budget for ICM years. In response to an interrogatory[22], Alectra has provided the total budget forecast for each year from 2017 to 2021 from each of its ICM proceedings since amalgamation in 2016. Comparing its then forecast capital budget for years from 2018 to 2021 against the actual capital spending in those years reveals that Alectra has over forecasted their capital budget in all of those years.[23]

The tables below summarize Alectra's capital budget forecast provided in the EB-2017-0024 and EB-2018-0016 ICM applications and compares them to the actual capital spending recorded in Table 5 and Table 12 in the present Application.[24]

[17] Ex. 3-1-4, p. 35-39.
[18] IRR 1-Staff-10 (a)
[19] IRR 1-staff-10(a)
[20] Ex. 2-1-1, p.7
[21] Ex. 2-1-1, p.7, 14
[22] IRR 2.0-VECC-6 (a)
[23] With the exception of 2018 in EB-2018-0016 when the year 2018 is not an ICM year in that application.
[24] The numbers in the two following tables were extracted from Tables 1, 2, 4, and 5 from IRR 2.0-VECC-6 (a) and Tables 5 and 12 from the Application.

PRZ				
	2018	2019	2020	2021
EB-2017-0024 forecast	$109.8	$104.2	$110.2	n/a
EB-2018-0016 forecast	$93.0	$102.1	$101.8	$107.1
Actuals	$100.5	$95.0	$99.7	$95.4

ERZ				
	2018	2019	2020	2021
EB-2017-0024 forecast	$72.7	$76.9	$77.5	$73.2
EB-2018-0016 forecast	$55.5	$74.3	$69.3	$69.4
Actuals	$59.4	$49.8	$52.3	$55.2

As shown above, Alectra's historical capital budgets were usually higher than the actual spending level. In certain years, the over estimation exceeded $25 million. The only time that Alectra underestimated its capital spending is in EB-2018-0016, when Alectra under forecasted its capital spending for the year of 2018. Coincidentally, no ICM funding was requested in that year in that application, but when 2018 was a year from which Alectra sought ICM funding, Alectra overestimated its 2018 capital budget in EB-2017-0024.

SEC notes that the capital budget included in the present Application also has signs of over estimation. Specifically, the general plant category forecast for years from 2022 to 2024 shows that Alectra plans to ramp up the spending in that category for those years, having the effect of expanding the maximum eligible ICM amount for 2023 and 2024.

For both PRZ and ERZ, SEC has calculated the average actual investment in the general plant category from 2017 to 2021 and compared that average number to the average of the forecast years (2022 to 2024). For PRZ, the average actual capital investment in general plant from 2017 to 2020 is $8.98 million while the average amount for the forecast years is $15.36 million, which represents a 71% increase in this category. For ERZ, average actual capital investment in general plant from 2017 to 2020 is $6.54 million while the average amount for the forecasted years is $11.17 million, which represents a 71% increase as well. These calculations are based on Table 5 (PRZ) and Table 12 (ERZ) from the Application, which are reproduced below.

Table 5 – Capital Expenditures by Category PowerStream RZ ($MM)

Category	Actual 2017	Actual 2018	Actual 2019	Actual 2020	Actual 2021	Forecast 2022	Budget 2023	Budget 2024
System Access	$36.7	$42.0	$37.7	$28.8	$28.1	$30.3	$26.5	$25.8
System Service	$29.9	$12.0	$9.8	$11.7	$9.1	$9.7	$11.9	$10.5
System Renewal	$39.4	$38.1	$39.6	$48.0	$47.4	$48.9	$65.5	$68.0
General Plant	$6.6	$8.4	$7.9	$11.2	$10.8	$15.3	$16.1	$14.7
Total	**$112.6**	**$100.5**	**$95.0**	**$99.7**	**$95.4**	**$104.2**	**$120.0**	**$119.0**

Table 12 – Capital Expenditures by Category Enersource RZ ($MM)

Category	Actual 2017	Actual 2018	Actual 2019	Actual 2020	Actual 2021	Forecast 2022	Budget 2023	Budget 2024
System Access	$6.6	$9.1	$7.5	$8.0	$11.9	$11.3	$14.5	$15.4
System Service	$4.3	$2.6	$1.4	$3.5	$7.2	$2.7	$6.8	$2.2
System Renewal	$43.9	$41.6	$35.2	$32.6	$28.2	$23.6	$32.3	$32.3
General Plant	$4.8	$6.1	$5.7	$8.2	$7.9	$11.1	$11.7	$10.7
Total	**$59.6**	**$59.4**	**$49.8**	**$52.3**	**$55.2**	**$48.7**	**$65.3**	**$60.6**

The basis on which Alectra established the present ICM application and its previous M-factor proposal is that it lacks capital funding to address emergencies caused by worsening asset conditions. However, none of these supposed emergencies can be addressed by investments in the general plant category.

If Alectra cannot ramp up its spending level at least in the general plant category as forecast, then it should not qualify for the level of ICM spending that it is claiming for 2023 and 2024. As such, Alectra's maximum ICM eligibility should at least be reduced by an amount equal to the difference between the average level of actual spending and the average of its forecast spending, which is $6.38 million per year for PRZ and $4.63 million per year for ERZ. Combining both rate zones, the new maximum ICM eligibility for 2023 would be $24.34 million, and for 2024 would be $16.75 million.

SEC provided the table below based on Table 6[25] in the Application to show the SEC-proposed maximum ICM eligibility for PRZ and Table 14 from 2-1-1 p.15 for ERZ.

PRZ Maximum Eligible Incremental Capital	2023	2024
Proposed by Alectra in Table 6	$22,131,192	$19,869,553
Maximum eligibility after $6.38 MM reduction	$15,751,192	$13,489,553

ERZ Maximum Eligible Incremental Capital	2023	2024
Proposed by Alectra in Table 14	$13,218,402	$7,886,792
Maximum eligibility after $4.63 MM reduction	$8,588,402	$3,256,792

Maximum Eligible Incremental Capital	2023	2024
PRZ	$15,751,192	$13,489,553
ERZ	$8,588,402	$3,256,792
TOTAL	$24,339,594	$16,746,345

Underspending Relative to DSP

In its report to its Audit, Finance and Risk Committee of the Board of Directors[26], Alectra management described the underground renewal situation as follows:

> *"Underground system renewal investments in AUC's 2022-2026 CIP were reduced from the renewal investment levels identified in the DSP for AUC to balance capital investment levels to funding available through distribution rates and incremental funding provided by eligible ICM projects. As a result, AUC will prioritize available funding to address only the most deteriorated underground cable, maximize the opportunity to refurbish deteriorating cable with injection technology, and increase monitoring of failures to manage the risk of increasing cable failures that could lead to prolonged*

[25] Exhibit 2-1-1 p.7
[26] SEC-1, Attach 1, p. 87. The material is undated, but appears to be in early 2022.

> *outages for customers. The planned 2022 CIP investment includes $270.2MM in underground equipment which includes cable replacement, cable injection and switchgear renewal." [emphasis added]*

This demonstrates that Alectra management, in reporting to its Board of Directors, tied its failure to invest sufficiently (as set out in its DSP) in cable replacement and injection directly to the OEB's refusal of the M-Factor application. The Application continues the same theme of blaming the OEB for management's failure to invest appropriately.

What this report to their Board of Directors, and the Application, both fail to explain is why the "deteriorating" cable was not important enough to fix in the years planned, while many other investments were treated as of greater importance.

Why was this not prioritized?

The Applicant filed a consolidated DSP with the OEB in EB-2019-0018, and sought funding for the full capital plan under the M-Factor concept. The Applicant argued that the OEB was, in effect, obligated to fund the DSP because[27]:

> *"Should the OEB deny Alectra Utilities' request for incremental funding, Alectra Utilities contended it would be left with only two choices: <u>forego unfunded capital investments in the DSP by deferring the projects</u>, or proceed with the projects without incremental funding, thereby reducing its shareholders' rate of return. Alectra Utilities argued that both options are unacceptable because <u>the former would result in foregoing necessary investments in its distribution system and adversely impact customers</u>, and the latter would deprive the utility of the opportunity to earn a fair return, contrary to the just and reasonable standard." [emphasis added]*

Faced with this choice, the Applicant opted to "forego necessary investments in its distribution system", and now wants the OEB to, in effect, right this past wrong by providing the money for those investments now.

The OEB's response was pointed[28]:

> *"According to the MAADs policy, shareholders are allowed to keep the net savings from a merger for a set time period <u>during which the utility is expected to manage its costs (capital and operating) out of existing rates</u>, subject to annual inflationary increases and incremental capital funding available under ICM/ACM. <u>It would not be just and reasonable that ratepayers should pay for an accelerated capital program as proposed by Alectra Utilities in this case</u>, particularly when rates have not been adjusted for cost savings related to the merger." [emphasis added]*

Instead of managing its costs, Alectra chose to reduce capital spending it admits was necessary, in order to prefer the interests of its shareholders over the interests of its customers, and then come to the OEB in this Application saying they need more money. What Alectra did not choose to do was reduce discretionary capital spending in the same period in order to ensure that necessary work was done.

The onus was on Alectra in this proceeding to demonstrate that, despite appropriate prioritization of its capital spending in past years, and in the test years, it still has urgent spending needs that fit

[27] EB-2019-0018 Partial Decision with Reasons, p. 11.
[28] At p. 24.

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within the ICM requirements. There is, in fact, no credible evidence on the record showing a proper justification for deferring urgent underground renewal instead of reducing other categories of spending.

Conclusions

Based on the foregoing, SEC submits that the ICM request of the Applicant should be rejected. Alectra is expected to manage its system within its available revenues during the deferred rebasing period, and should not continue to seek ways of shifting the downside risk of spending needs to customers, while retaining the merger savings for the full ten years originally selected by the Applicant.

All of which is respectfully submitted.

Yours very truly,
Shepherd Rubenstein Professional Corporation

Jay Shepherd

cc: Brian McKay, SEC (by email)
Interested Parties (by email)