



**BY EMAIL and RESS**

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October 18, 2023  
Our File: EB20230004

**Attn: Nancy Marconi, Registrar**

Dear Ms. Marconi:

**Re: EB-2023-0004 – Alectra Utilities Corporation 2024 ICM – SEC Submissions**

We are counsel to the School Energy Coalition (“SEC”). Pursuant to Procedural Order No. 1, these are SEC’s submissions on the application by Alectra Utilities Corporation (“Alectra”) requesting the Ontario Energy Board’s (“OEB”) approval for Incremental Capital Module (“ICM”) funding of \$25.2M, for its Powerstream Rate Zone (“PRZ”) and Enersource Rate Zone (“ERZ”).

SEC submits that Alectra does not qualify for ICM funding in 2024, as the materiality threshold when properly calculated, is greater than Alectra’s forecast 2024 capital budget for each rate zone, and therefore the planned projects should be completed using base funding. The OEB should reject Alectra’s proposal to use the geometric mean of the OEB’s previously approved inflator factors as the inflation measure in the ICM materiality threshold calculation, as it is inconsistent with OEB policy.

If the OEB decides that Alectra is eligible for ICM funding, it should not approve any for the ERZ as existing rates are sufficient for the proposed capital work, plus the one new additional project which was not included in the 2023 application request. The PRZ requested \$17.3M, which should also be reduced by \$3.5M to reflect capital work that is actually required to be done in 2024.

**Background**

This Application follows Alectra’s 2023 ICM/Advance Capital Module (“ACM”) Application (“2023 Application”), in which it requested approval of ICM funding of \$25.4 million in 2023 and \$26.9 million in 2024, for underground cable upgrade projects. In its decision, the OEB approved funding of \$18.1M for 2023 projects only (“2023 Decision”).<sup>1</sup> As the requested 2024 projects in this application are the

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<sup>1</sup> [Decision and Order \(EB-2022-0013\), November 17, 2022](#)

same, or very similar<sup>2</sup>, to those requested for 2024 in the 2023 Application, several of the criteria for approval<sup>3</sup> for the requested 2024 ICM have essentially already been determined.

In this Application, Alectra identified sixteen cable upgrade projects, which it argues require urgent treatment. Alectra claims that its base funding can only support eight projects in ERZ and 11 projects in PRZ<sup>4</sup>, and it is seeking ICM rate riders for the other sixteen projects, five in ERZ and 11 in PRZ.

To calculate the materiality threshold to determine eligible ICM funding, Alectra is proposing to depart from OEB policy with the use of the geometric mean for the inflation for those years since the last rebasing for each RZ (2013 for ERZ and 2017 for PRZ), rather than using the most recently available Input Price Index (“IPI”). As a result of its proposed materiality threshold calculation, it seeks ICM funding of \$17.3M for the PRZ and \$7.9M for the ERZ.

### **Materiality**

**Materiality Threshold.** Alectra proposes to use as the inflation factor in its ICM materiality threshold formula, a rate zone specific geometric mean of inflation values from the last rebasing application (2.17% for ERZ and 2.4% for PRZ), as opposed to the OEB’s approved inflation factor (i.e. IPI) of 4.8%, as required by OEB policy.<sup>5</sup> It has proposed this deviation from OEB policy on the basis that as the ICM formula is cumulative, the use of the most recent OEB approved inflation factor has a material impact on the threshold value, and does not accurately reflect what it can fund from base rates.<sup>6</sup>

Based on Alectra’s proposed use of the geometric mean instead of the most recent IPI, the materiality threshold and maximum eligible incremental capital amounts as shown below, would allow the company to be eligible for ICM funding. If Alectra applied OEB policy, it would not be eligible for any ICM funding as its forecast 2024 capital spending is lower than the maximum eligible incremental capital for both RZs that can be funded from base rates.

#### **Maximum Eligible Incremental Capital**

	<b>ERZ</b>		<b>PRZ</b>	
	Alectra Approach – IPI (2.17%)	OEB Policy – (IPI 4.8%) <sup>7</sup>	Alectra Approach – IPI (2.24%)	OEB Policy - (IPI 4.8%) <sup>8</sup>
Materiality Threshold (A)	\$39,599,322	\$67,665,866	\$90,514,914	\$130,502,043
Capital Budget (B)	\$56,233,618	\$56,233,618	\$117,556,163	\$117,556,163
Maximum Eligible Incremental Capital (B-A)	\$16,634,297	(\$11,432,248)	\$27,041,249	(\$12,945,880)
ICM Capital	\$7,865,203	\$0	\$17,273,508	\$0

<sup>2</sup> There are minor changes to the budget for some projects.

<sup>3</sup> The criteria for approval of an ICM during the last five years of a deferral period following an amalgamation are specified in the [Report of the Board - New Policy Options for the Funding of Capital Investments: The Advanced Capital Module \(EB-2014-0219\), September 18, 2014](#); [Report of the Board -New Policy Options for the Funding of Capital Investments: Supplemental Report \(EB-2014-0219\), January 22, 2016](#); [OEB Letter: Incremental Capital Modules During Extended Deferred Rebasing Periods, February 10, 2022](#)

<sup>4</sup> 3-SEC-12, Table 2

<sup>5</sup> [OEB Letter Re: 2024 Inflation Parameters, June 29, 2023](#)

<sup>6</sup> 1-Staff-1b

<sup>7</sup> 1-Staff-1d

<sup>8</sup> 1-Staff-1d

SEC submits that the most recent OEB inflation factor should be used, in accordance with OEB policy. The OEB is clear that for calculation of the materiality threshold, distributors “should use the IPI from its most recent Price Cap IR application as a placeholder for the initial application filing. This information is updated if new information becomes available during the proceeding.”<sup>9</sup>

In its submission for the 2023 Application, when OEB Staff suggested the possible use of the geometric mean of IPIs since each rate zone’s last rebasing application<sup>10</sup>, Alectra rejected the idea on the basis that the current ICM proceeding is not an appropriate forum for the OEB to consider such generic policy matters or potential changes to ICM filing requirements for general application across the sector.<sup>11</sup> The OEB agreed, stating that “it “will not change the inflationary input to the ICM calculations as outlined by OEB staff” and that “OEB staff’s suggestion could be considered as part of a review of the OEB’s ICM policy”.<sup>12</sup>

In reversing its position, Alectra argues that this change in position is because the OEB has not proceeded with a generic review and the increase in variability from the most recent IPI to the geometric mean.<sup>13</sup> Alectra was right in the 2023 Application; an ICM proceeding is not the appropriate forum to make specific generic adjustments to the ICM methodology, especially in isolation. A generic policy review is the appropriate place to do so; one the OEB has recently said it expects to undertake as part of its 2025-2026 fiscal year.<sup>14</sup>

The Price Cap Index adjustment in the ICM materiality threshold calculation is not the only simplification in the ICM model, and not the only way that it assumes long term stability as opposed to short term volatility. If changes are going to be ordered to the model to increase eligible ICM capital, it is likely also appropriate to review whether there are other changes to the model that should be considered, particularly if they would decrease eligible ICM capital or would also be driven by changing economic circumstances.

SEC submits that a change such as the one proposed by Alectra, with respect to what value of inflation to use in the materiality threshold calculation, should only be done as part of a wider consultation on ICMs. There are several simplifications in the ICM model, e.g., the use of a standard stretch factor of 0.3% and allowing a change in only one of the parameters could have unintended consequences, and should not be done without a complete review of the policy.

Alectra did not ask to use the geometric mean, nor any other alternative inflation parameter, in previous ICM applications, stating that “the OEB-approved inflation factor values did not exhibit material differences relative to the geometric mean over the 2013 to 2021 period.”<sup>15</sup> Had it done so, the results

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<sup>9</sup> [Report of the Board -New Policy Options for the Funding of Capital Investments: Supplemental Report \(EB-2014-0219\), January 22, 2016](#), p.23; Ex.2-1-1, p.4-5

<sup>10</sup> EB-2022-0013, [OEB Staff Submission, August 23, 2022](#), p.4

<sup>11</sup> EB-2022-0013, [Alectra Reply Submission](#), September 15, 2022, p.11

<sup>12</sup> [Decision and Order \(EB-2022-0013\), November 17, 2022](#), p.9

<sup>13</sup> 2-SEC-3 (1-Staff-2)

<sup>14</sup> SEC notes that in the [material provided in advance of the OEB's October 12, 2023 Policy Day](#), review of the Capital Modules is shown for 2025-2026 on the Prioritization Plan (See pdf p.12).

<sup>15</sup> 1-Staff-2

of the previous ICM requests would have been different. For example, Alectra correctly noted that had the Geometric Mean been used for PowerStream in 2019, the “maximum eligible incremental capital would have been higher than what was calculated at that time.”<sup>16</sup> This was based on an IPI of 1.5% versus 1.34% for the Geometric Mean. SEC notes that for the same year the Geometric Mean for ERZ for 2014-2018 would have been 1.67% and the maximum eligible incremental capital would have been lower.

It is unfair to adjust the ICM materiality threshold calculation now, when at this point, if the same geometric mean approach had been used in other years, it may have resulted in different levels of eligible capital being approved.

SEC submits that the materiality threshold calculated in the ICM Module, which sets the amount of available ICM capital for each RZ, should use the most recently available IPI or inflation factor and not the geometric mean of the inflation for those years since the last rebasing, as proposed by Alectra. When the most recent inflation for 2024 is used, there is no available room for increment capital for either the ERZ or the PRZ and the work can entirely be funded from base rates.

**Project-Specific Materiality Threshold.** In the 2023 Decision, the OEB found that the “project-specific materiality” criterion is not applicable to Alectra Utilities’ funding request, as a result of the February 2022 OEB letter which expands circumstances where funding is available for on-going capital projects.<sup>17</sup> Similar to the 2023 Decision, SEC accepts that Alectra’s underground cable upgrade projects are not required to meet the project-specific materiality threshold.

**Significant Influence on Operations.** In the 2023 Decision, the OEB found that the 2023 ICM and the proposed 2024 ACM requests each had a significant influence on operations and on the reliability of distribution service in the ERZ and the PRZ.<sup>18</sup>

## **Need**

**Means Test.** Under the Means Test, if a distributor’s regulated return, as shown in its most recent calculation exceeds 300 basis points above the deemed return on equity (“ROE”) embedded in the distributor’s rates, the funding for any incremental capital project will not be allowed.

The 2022 ROE for Alectra was calculated to be 6.70%,<sup>19</sup> 225 basis points below a calculated deemed ROE for Alectra Utilities of 8.95%, therefore the Means Test is met. SEC notes that Alectra states that its expected 2024 ROE is 7.62%, if the cable renewal projects are completed without ICM funding compared to 7.64% if ICM funding is approved<sup>20</sup>; not a material impact.

**Discrete Project.** In the 2023 Decision, the OEB found that the discrete project criterion was not applicable to Alectra’s request.<sup>21</sup> SEC accepts that this similarly applies to the Application.

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<sup>16</sup> 2-SEC-2

<sup>17</sup> [Decision and Order \(EB-2022-0013\), November 17, 2022](#), p.10

<sup>18</sup> [Decision and Order \(EB-2022-0013\), November 17, 2022](#), p.11

<sup>19</sup> 1-VECC-3, Table 1

<sup>20</sup> 1-Staff-6

<sup>21</sup> [Decision and Order \(EB-2022-0013\), November 17, 2022](#), p.12

**Beyond Expected Base Rate Funding.** The OEB established, as part of the 2023 Decision, a normal level of capital expenditures based on the annual expenditures for each rate zone for cable replacement and cable injection work in the six-year period prior to the ICM request.<sup>22</sup> Alectra has updated the average cable renewal spending/forecasts for 2017-2024 to be \$14.2M for the ERZ and \$15.1M for the PRZ.<sup>23</sup> Alectra’s 2024 budget for base funding for cable renewal is \$13.06M for the ERZ and \$15.68M for the PRZ.<sup>24</sup> As shown below, based on Alectra’s base funding and ICM proposal, \$6.76M for ERZ and \$17.88M for PRZ of cable upgrade work would be unfunded.

**Base Funding**

\$M	ERZ	PRZ
Average Base Funding (A)	\$14.20	\$15.10
2024 Budget (B)	\$13.06	\$15.68
ICM Request (C)	\$7.90	\$17.30
Total Planned B+C (D)	\$20.96	\$32.98
Unfunded by Base Funding A-D	\$6.76	\$17.88

**Prudence**

In the 2023 Decision, the OEB found the 2023 cable programs in the ERZ and the PRZ to be prudent, finding that “[t]he cable projects selected for remediation represent prudent investment in capital for cable injection and cable replacement based upon the current condition of the cable assets in both RZs.”<sup>25</sup>

**PowerStream RZ.** The OEB did not accept SEC’s argument that some projects could be deferred based on the cables being classified as fair, stating that it had found that the current asset condition requires urgent cable replacement and cable injection to ensure reliability and quality of service. SEC does not dispute this finding, however, submits that this urgent designation applies to some of the direct buried cables, not necessarily all of them. The evidence in this proceeding is clear that the projects in fair condition are not required to be undertaken in 2024.

As Alectra illustrates,<sup>26</sup> 79% (100% - 21% deteriorated cables) of underground cables are not considered deteriorated. Alectra’s 2022 Asset Condition Assessment provides the following definition of fair, “[a]sset is functional but showing signs of deterioration”.<sup>27</sup> SEC submits that the OEB should not approve the renewal of cables in the fair condition as they are still functional and do not require immediate replacement.

For example, with respect to project 151913 planned for the PRZ, for which the cable condition is fair<sup>28</sup>, Alectra states “...it is estimated that failures will escalate starting with 1 failure per year in 2027, and up to 2 failures per year by 2030”<sup>29</sup>, clearly indicating that this project could be deferred for multiple years.

<sup>22</sup> [Decision and Order \(EB-2022-0013\), November 17, 2022](#), p.14

<sup>23</sup> 1-Staff-4 Attachment 1

<sup>24</sup> 3-SEC-12

<sup>25</sup> [Decision and Order \(EB-2022-0013\), November 17, 2022](#), p.16

<sup>26</sup> Ex.3-1-2, Figure 1

<sup>27</sup> AMPCO-10, Attachment 2, p.16

<sup>28</sup> 3-SEC-12, Table 1

<sup>29</sup> Ex. 3-1-4, p.23

Alectra has provided the following listing for those cable projects planned for the PRZ ICM; two of which are for cables considered to be ‘fair’.

**ICM Projects for PRZ**

<b>Project #</b>		<b>Condition</b>	<b>\$M</b>
151329	Cable Replacement Project - (M21) - Raymerville Dr, Markham	Very Poor	1.60
151361	Cable Injection Project - (M21) - Cairns Drive area of Markham	Very Poor	1.70
151367	Cable Injection Project - (V26) - McNaughton Road area of Vaughan	Fair/Very Poor	1.70
151456	Cable Injection Project - (V50) - Sovereign Court area of Vaughan	Poor	1.30
151459	Cable Injection Project - (V24) - Creditstone Rd area of Vaughan	Poor	2.20
151517	Cable Injection Project - (BR5) - 8th Line and Highway 11, Bradford	Fair/Poor	1.00
151913	Cable Replacement Project - (M44) - Cochrane Dr (North) - Scolberg (South), Markham	Fair	2.10
151935	Cable Replacement Project - (M15) - Larkin Ave area of Markham	Poor	1.90
152373	Cable Replacement Project - (V26) - St. Joan of Arc area of Vaughan	Very Poor	1.90
152375	Cable Replacement Project - (A09) - Hammond Dr area of Aurora	Fair	1.40
152387	Cable Injection Project – (V51) Bainbridge Ave	Fair/Poor	0.60

SEC submits that the OEB should not approve those cable projects for which the condition of the cable is fair, namely 151913 (\$2.1M) and 152375 (\$1.4M). SEC agrees that the remaining nine projects for the PRZ meet the requirements for ICM approval, given what the OEB approved in the 2023 Application. SEC notes that the projects proposed for the PRZ under base funding are all for very poor and poor cables.<sup>30</sup>

**Enersource RZ.** Alectra has proposed five cable projects for the ICM for the ERZ as shown below, four of which were in the 2023 Application, to be completed in 2023.<sup>31</sup> In the 2023 Decision, the OEB approved \$1.9M for ERZ, a reduction of \$6.8M, on the basis that “Alectra Utilities was able to fund an average of \$14.6 million for its cable program in the Enersource RZ through existing distribution base rates from 2017 to 2022 and is expected to do so in 2023.”<sup>32</sup> Despite reducing the amount approved for the ERZ ICM, the OEB stated that “with \$14.6 million funded through base rates and \$1.9M in ICM funding, a total of \$16.5M should be available to fund the total capital program in Enersource’s RZ as forecast in 2023.”<sup>33</sup>

<sup>30</sup> 3-SEC-12, Table 2

<sup>31</sup> Ex.1-4, p.1. Project 151903 was not included in the 2023 Application.

<sup>32</sup> [Decision and Order \(EB-2022-0013\), November 17, 2022](#), p.2

<sup>33</sup> [Decision and Order \(EB-2022-0013\), November 17, 2022](#), p.15

### ICM Projects for ERZ

Project #		Condition	\$M
151403	Cable Replacement – Montevideo & Battleford Area (46)	Very Poor	1.60
151407	Cable Replacement – Glen Erin & Burnhamthorpe (25)	Very Poor	2.40
151431	Cable Injection – Glen Erin Dr. & Bell Harbour Dr (39)	Fair	1.30
151435	Cable Injection – Derry Road & Ninth Line (56)	Fair	1.50
151903	Cable Replacement – South Millway Area (25)	Very Poor	1.10

SEC submits, that Alectra had the funding and should have completed the four 2023 projects in 2023, as per the OEB’s approval, and therefore they are not eligible for additional 2024 ICM funding for the same projects. Only project 151903 is potentially eligible for funding, however as shown above, the \$14.2M of base funding for the ERZ is sufficient to fund the proposed \$13.06M of base funded projects plus \$1.1M for the ICM.

**History of Good Utility Practice.** In the 2023 Decision, the OEB found that overall, Alectra meets the ICM funding criterion of demonstrating a history of good utility practice in capital planning, capital program management and asset maintenance, however it also stated that Alectra’s capital planning and execution could be improved going forward. This was based on Alectra’s prioritization of general plant capital expenditures, in particular the prioritization of its customer experience ahead of its cable renewal program.<sup>34</sup>

Alectra stated that it had “re-prioritized investments for 2023 based on the OEB’s decision and reduced the investment in General Plant by \$6.2MM primarily by re-prioritizing and deferring Information Technology investments.” However, Alectra has chosen to redirect this funding to distribution automation instead of cable renewal.<sup>35</sup>

SEC submits, that while Alectra has made some movement in response to the OEB’s comments in the 2023 Application, it continues to spend more on Information Technology and less on Underground Asset Renewal than was planned in its 2020 to 2024 Distribution System Plan<sup>36</sup>, to the detriment of its cable replacement program and reliability. This is another reason that Alectra does not need the incremental funding that it has requested.

### 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 based on the OEB’s ICM policy and model, there is sufficient base funding available to support the cable renewal program.

Should the Board accept Alectra’s proposal to fund the ICM request, then only \$13.8M would be an acceptable amount for PRZ and nothing for ERZ.

Yours very truly,

<sup>34</sup> [Decision and Order \(EB-2022-0013\), November 17, 2022](#), p.21

<sup>35</sup> 1-Staff-9h

<sup>36</sup> AMPCO-13



**Shepherd Rubenstein P.C.**

Mark Rubenstein

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