

Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4
Attn: Ms. C. Long
Registrar and Board Secretary

June 11, 2020

Dear Ms. Long

Re: **EB-2020-0133**

The EDA represents local hydro utilities, the part of our electricity system that is closest to customers. Local hydro utilities are on the front lines of power, and we know that the most important conversations about energy happen around the kitchen table, not the boardroom table. Customers understand the power of local hydro, and they value the relationship of trust they have built with their local hydro utilities, relying on them to deliver safe, more reliable, and more affordable electricity.

As set out in the Ontario Energy Board's (OEB) May 19 letter, we are writing to provide our written comments on the draft Issues List prepared by OEB staff and note that the purpose of the Issues List will be to scope the OEB's subsequent proceedings dealing with the recently authorized COVID-19 Deferral Account (CDA). Our comments are being provided in an effort to support the OEB as it prepares to adjudicate applications for relief through rates of the financial impacts of the pandemic and as it provides appropriate regulatory certainty on a timely basis.

Our members know that their customers need safe and reliable service on an ongoing basis and security of supply, whether under business-as-usual conditions or under the once-in-a-century conditions of the COVID-19 pandemic. Our members have taken responsible and appropriate steps to fulfill customers' needs and expectations by adapting existing processes, techniques and practices and innovating others. Identifying and implementing these changes have resulted in LDCs incurring costs that are unusual and, in many cases, unanticipated.

Customers are able to confidently continue to enjoy safe, reliable service because their LDC will continue to be a financially viable going concern. This is because the management team at each LDC is directly engaged in managing the financial viability of the LDC and because the OEB, under the legislative objectives of the OEB Act, is required to maintain a financially viable electricity industry. The OEB's legislative objectives apply whether it is business-as-usual conditions or COVID-19 pandemic conditions; whether the threats to financial viability are immediately apparent or reveal themselves in future periods; whether the OEB's regulatory instruments are suitable or new instruments need to be developed.

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On this last point, we are concerned that the authorized CDA may not be a suitable regulatory device for an LDC experiencing liquidity, or worse, solvency issues and seeks a mechanism capable of addressing these situations. We point out that responsible regulation makes the appropriate regulatory instrument available and at the appropriate time.

These comments reflect that ‘just and reasonable rates’:

- recover ongoing costs
- provide the opportunity to earn the allowed rate of return
- are free from undue cross subsidization

The remainder of our comments are organized as follows:

- using the five headings provided in OEB staff’s draft Issues List
- Unaddressed Issues
- Project Management
- Next Steps

Topic by Topic comments

Topic: Advanced Policy Direction

We support the OEB’s proposal to provide advanced policy direction.

We note that, in providing this topic heading, the OEB is explicitly recognizing that the pandemic and the province’s State of Emergency are unusual and atypical circumstances – that LDCs are not operating under business-as-usual conditions. To be clear: it is helpful to itemize the costs incurred under these once-in-a-century conditions that will be eligible for inclusion in the CDA, and it is not realistic to expect that the list will be either definitive or comprehensive. We appreciate that such a list enhances certainty and clarity (e.g., recoverability of amount, timing, risk of contrary regulatory decision) and understand that the list will not constrain the nature of costs eligible for inclusion.

Policy direction on the baseline cost data that will be used when quantifying the amount to be disposed of through rates, to assess materiality and possibly for other purposes will benefit all applicants, intervenors and OEB staff. Among the key questions to be clarified are:

- whether the amounts authorized through the most recent rebasing will be used,
- whether the LDC’s most recent financial data will be used,
- whether the OEB will adjust historic cost data for inflation, growth or other factors.

We propose that LDCs record the gross amount of cost incurred or avoided as well as the gross amount of revenue foregone to assist the OEB in disposing of eligible amounts through rates, rate adders or rate riders that are free of undue cross subsidization. We look forward to learning the OEB’s position on the appropriate level of granularity of both baseline cost data and the entries to be recorded in the CDA, and of the rationale for the desired level of granularity.

Under the unique circumstances of the pandemic LDCs can be expected to need flexibility to be able to rely on suitable alternative accounting policies. We propose that the OEB clarify how the LDC can treat costs or forgone revenues that do not readily align with the existing sub-accounts; for example, if the LDC's customer provides Contributions in Aid of Construction in installments and the customer fails financially as a result of the pandemic, or, if the LDC alters its capital program and consequently incurs increased levels of expenses simply because the costs are no longer eligible for capitalization.

The draft Issues List could provide advanced policy guidance on when disposition through interim rates could be applied for, or whether a portion of the recorded balance could be disposed of through an IRM application. LDCs will apply for the appropriate orders and support their application with prefiled evidence. Any guidance provided by the regulator on filing guidelines that is geared to achieving consistency and comparability that is suitable under business-as-usual conditions may not be suitable under the circumstances of a pandemic, hence filing 'requirements' should permit flexibility.

We have identified a range of other recovery and timing issues that it suggests the OEB should address including:

- How should the OEB treat material impacts to consumers?
 - Will the OEB require rate impact mitigation? And why?
 - How should coincident increases to rates, new rate riders and rate adders that all recover COVID related amounts from customers be managed for amount, rate shock, bill shock and timing?
- How should the LDC allocate group 1 Deferral/Variance Account (D/VA) balances if a customer class expires, collapses, or experiences a change to the charge parameters that are traditionally relied on to allocate responsibility?
- How should LDCs allocate cost responsibility for stranded assets, stranded costs, stranded debt?
- Should the OEB authorize partial disposition of the balance recorded in the account? If so, under what conditions is an Interim Order appropriate? a Final Order appropriate?

The OEB raises the question of whether the balance recorded in the account should be audited. We acknowledge that the OEB's longstanding policy is to process applications for the disposition of D/VA balances subsequent to the completion of an external audit. We wish to understand the benefit of having the balances recorded in the CDA audited, the appropriateness of applying a business-as-usual practice to an account that pertains to costs incurred as a result of a once-in-a-century event, and whether there may be unintended consequences of delaying disposition until an audit is completed.

We have reviewed these draft issues statements for gaps. We note that any policy direction should be accompanied by a clearly articulated objective or outcome. Based on past experience, it is clear that OEB policy formation is resource intensive and that LDCs will benefit from an expedited process geared to providing regulatory certainty. There are obvious benefits of advance regulatory policy that is provided in a timely manner. It will be important for the OEB to address the steps that an LDC should take if the policy direction isn't appropriate or isn't suitable for that LDC's unique circumstances. Finally, having observed that OEB policy development is resource intensive, it will be helpful for the OEB to prepare for applications being filed in advance of policy direction or guidance being made available.

We also suggest that the OEB consider declaring the CDA a regulatory asset and providing clarity of the costs eligible to be recorded in the CDA so that LDCs are able to disclose them on their financial statements. We note that doing so can contribute to certainty.

Topic: Principles

We recognize that the principles underpinning just and reasonable rates are enduring and will continue to apply. We seek to learn how the OEB will balance the competing objectives of providing consumer protection while maintaining a financially viable industry. We agree that the balances recorded in the CDA should relate to the pandemic so that they satisfy the causality criteria. We also recognize that the CDA will record one-time costs and/or forgone revenues caused by the pandemic, changes to ongoing costs attributable to the pandemic and new costs incurred for the first time because of the pandemic.

Topic: Accounting Matters

We propose that OEB provide additional clarity of what is eligible to be recorded and in which sub-account, and whether an additional sub-account is appropriate.

We do not support the OEB engaging in an investigation of the generic issues of convergence of accounting methodology, entries, quantification or other related matters. Such issues are more appropriately examined under business-as-usual conditions, and after the OEB has provided regulatory certainty of its treatment of costs incurred during the pandemic and provided regulatory certainty so that LDCs can continue to be financially viable going concerns that can continue to serve their customers safely and reliably. Among the matters that should be addressed in any future initiative focused on convergence of regulatory accounting policy will be the needs of the user(s) of the accounting data and accounting information.

Similarly, we do not support benchmarking the costs incurred by LDCs in Ontario, either among/ between Ontario LDCs or LDCs in other Canadian provinces. The pandemic is a once-in-a-century event and each LDC is appropriately engaged in and focused on serving its customers. The impacts of the pandemic vary within a community, vary from one community in Ontario to the next, and, vary between/among the provinces. Correspondingly, the impacts vary within an LDC, and, among and between LDCs (e.g., for composition of customer base). Comparisons between and among Ontario LDCs can be expected to be challenging. Given the once-in-a-century nature of the event, there may not be sufficient data available to support benchmarking. For similar reasons, comparisons between Ontario and other jurisdictions may not yield appropriate comparisons. In addition, each jurisdiction is providing relief mechanisms suitable to their individual circumstances.

If the OEB intends to pursue benchmarking, we wish to understand both the anticipated benefit or outcome of the initiative and the supporting cost-benefit analysis. We are aware of the effort that parties made (e.g., to acquire data and render it comparable, develop a policy on outlying data, develop a benchmarking methodology, develop the actions to take based on the results of the benchmarking methodology, develop a verification regime) and the stakeholdering that the OEB provided.

We acknowledge that the costs that are not included in the CDA will remain on the LDC's financial statement and seek clarification on how the OEB will use that financial information. We note that the OEB's long standing practice is to use the data reported on the LDC's financial statements:

- to quantify stretch factors
- to assign trend direction on Scorecards
- when administering the features of the IRM (i.e., Z Factors, Incremental Capital Modules, Advanced Capital Modules, the Deadband)
- when deciding which LDCs should be required to rebase early or whether to grant an LDC's request for an extension to filing their next rate rebasing application.

Topic: **Costs and Materiality**

Applicants need to be able to seek relief through rates that is framed by appropriately enabling policies, guidance or filing guidelines. LDCs need to be able to record entries that reflect their experiences. There is little past experience to guide LDCs as they continue to provide safe, reliable service and continuity of supply to their customers under the unique circumstances of a pandemic. By parity of reasoning, there is little to guide them with respect to the costs incurred. The alternative to scoping or identifying what is eligible for inclusion is to describe the criteria that will be applied during the review and scrutiny of the balances to be disposed of through rates (e.g., whether it will include consideration of the use of a range of resources, cost sharing, availability of revenue offsets, the LDC's approach to change management).

Materiality should be assessed based on the circumstances, and there isn't a clear standard of either the quantum or level (e.g., sub-account, account, account grouping, the LDC) at which it should be applied. Materiality for a going concern is different from materiality for an entity experiencing financial stress. Materiality for an LDC that experiences the loss of 1 of the 2 members of its Large User class or experiences significant and enduring demand destruction is different from materiality for an LDC whose Large User class has 10 or more members or experiences demand destruction that is short term or mitigatable. Materiality for an LDC that serves more than one rate zone could be examined at the rate zone level and at the utility level, depending on whether the impact to the rate payer or to the financial viability of the LDC is at issue.

It will be helpful for the OEB to indicate how it will consider the different costs recorded in the account. For example, will the OEB consider customer related or caused costs (e.g., Bad Debt expense) differently from how it considers process adaptation costs (e.g., for field workers to be able to achieve social distancing, to enable working from home, to provide deep cleaning)?

The State of Emergency has resulted in economic impacts for customers that manifest as Loss of Load(s), Loss of Customer(s) to the LDC. We thank the OEB for acknowledging this issue in its draft Issues List and we look forward to participating in the resolution of the issue, ideally in the upcoming phase of this initiative.

LDCs are familiar with the prudence standard and note that its correct application is in the context of what was known or able to be known at the time that the decision was made. They have acquired experience as the pandemic continues with respect to cost incurrence. We point out that the test for

prudence must be applied dynamically as what was prudent spending in week 2 of the pandemic may not be prudent in week 12, and vice versa.

Issue: Recovery Mechanism and Timing

Our members will seek timely disposition of applications for disposition of the recorded balance through rates so that they can continue to be going concerns that are financially viable.

The disposition through rates of the eligible balances engages the issue of whether cross subsidization is due or undue. The OEB can continue to test for cross subsidization by analyzing cost causality and whether the beneficiary pays. The OEB's cost allocation methodology and its authorized Cost Allocation model are expected to be capable of analyzing for cross subsidies within a customer class, across 2 or more customer classes, within or across 2 or more rate zones.

Cost sharing between customers and shareholders needs to be analyzed carefully and with foresight.

Unaddressed Issues

The OEB's ongoing provision of economic regulation includes several routine matters such as resolving consumer complaints, assessing RRR data (e.g., achieved Service Quality levels, financial performance), and dealing with LDCs' requests to defer filing rate rebasing applications. All LDCs seek to understand how the OEB will prioritize these matters under pandemic conditions. LDCs have an ongoing need to understand the regulator's expectations whether generally (e.g., the OEB's position on compliance, whether the features of the IRM will be suspended or continue to apply, the regulatory treatment of stranded debt) or specifically (e.g., the regulatory treatment of a Contribution in Aid of Construction that was being provided in installments if the proponent(s) fail financially before all installments are remitted).

The OEB has been silent on the adjudicative process it intends to apply when processing applications for the disposition of the recorded costs through rates, applications that maintain an LDC's financial viability or other orders. We encourage the OEB to be transparent about the advantages and disadvantages of the available processing approaches (e.g., case by case processing; through a structured generic hearing that precedes processing specific applications; adapting the process that was used in the Regulatory Assets proceeding, Smart Meters proceeding or other proceedings that engage policy issues comparable to those engaged in this initiative).

There is an issue of how the OEB will process numerous, potential applications for disposition of the account balances, whether on an interim or final basis.

Project Management

Our members appreciate OEB staff's sense of urgency and that they wish to conclude this initiative in 6 months or less. Participation in this initiative will benefit from an awareness of the proposed overall plan

- from issuance of the May 19 letter to final action - and of the project's deliverables. With an awareness of the plan, we will understand which activities are on the 'critical' path, which activities require greater consideration and Council engagement and have insight into the consequences of delay or acceleration.

Next Steps

There is a range of possible "Next Steps". We are encouraged that the OEB has recently amended its process and is providing for a reply process. Fair processes are essential if the OEB is to be able to appropriately balance all stakeholders' interests. While this initiative progresses, LDCs seek clarity on the Board's ability to process applications, in particular whether past processing timelines can be achieved or if applicants should plan to file earlier than usual or if applications can be 'fast tracked'. They also seek to learn and understand whether the OEB will repurpose other business-as-usual tools and approaches, or if it will be open to novel approaches.

We seek to understand the portion of the OEB's June 4, 2020 letter that suggests that the OEB may make the balances recorded in LDCs' CDAs publicly available. LDCs point out that this was not addressed in the OEB's original correspondence. If the OEB intends to publicize LDCs' costs incurred as a result of the pandemic, these costs be consolidated or provided in a form suitable for the intended purpose. LDCs note that the balances recorded will become public when LDCs file applications seeking disposition through rates.

In conclusion, we thank the OEB for providing the draft Issues List and this opportunity to comment on it. Our members look forward to continuing to engage with the OEB in this initiative and as the OEB commences to process applications seeking the disposition through rates of the balances recorded in the CDA. If you have any questions on this submission please do not hesitate to contact Kathi Farmer, the EDA's Senior Regulatory Affairs Advisor, at kfarmer@eda-on.ca or at 416.659.1546.

Sincerely

Original Signed by

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Vice President, Policy, Government and Corporate Affairs