



PUBLIC INTEREST ADVOCACY CENTRE
LE CENTRE POUR LA DÉFENSE DE L'INTÉRÊT PUBLIC

June 11, 2020

VIA E-MAIL

Christine E. Long
Registrar and Board Secretary
Ontario Energy Board
2300 Yonge Street
Toronto, ON
M4P 1E4

8 pages

Dear Ms. Long:

**Re: EB-2020-0133 Consultation on the Deferral Account – Impacts Arising
from the COVID-19 Emergency
Written Comments of Vulnerable Energy Consumers Coalition (VECC)**

As per Ontario Energy Board letter dated June 4, 2020, we have attached the Written Comments of the Vulnerable Energy Consumers Coalition (VECC) with respect to the above-noted proceeding.

Yours truly,

Original signed

John Lawford
Counsel for VECC

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**PUBLIC INTEREST ADVOCACY CENTRE
LE CENTRE POUR LA DÉFENSE DE L'INTÉRÊT PUBLIC**

**Consultation on the Deferral Account
Impacts Arising from the COVID-19 Emergency
EB-2020-0133**

**Submission
Of the
Vulnerable Energy Consumers Coalition
(VECC)**

JUNE 11, 2020

Vulnerable Energy Consumers Coalition

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BACKGROUND

On May 14, 2020 the Board issued a letter commencing a consultation on a deferral account relating to impacts arising from the COVID-19 emergency (the COVID Account) for both the electricity and natural gas sectors (natural gas distributors, electricity licensed generators, transmitters and distributors).

“COVID-19” accounts were established by way of letter on March 25, 2020 for natural gas and electricity distributors and extended to Ontario Power Generation (OPG) and all rate regulated electricity transmitters on April 29, 2020. The letters explain that the intention of the account is to capture incremental costs arising as a result of pandemic including, but not limited to, incremental billing costs associated with the emergency Time-of-Use (TOU) pricing. Sub-accounts are also allowed for the recording of “lost revenues” associated with “*any actions taken to provide relief to customers.*”¹ The account attracts carrying charges at the OEB’s prescribed rate.

The Board’s May 14th letter included a substantive “Draft Issues List”, delineated into four sections: (A) Advanced Policy Direction; (B) General Principles; (C) Accounting Matters; (D) Nature of Costs and Materiality; and (E) Recovery Mechanism and Timing.

STAKEHOLDER CONFERENCE

At the Stakeholder Conference held remotely on May 28, 2020 VECC expressed a number of concerns with the premise of the Draft Issues List. In part because various parts of the Draft List conflate the substantive policy issues of what is “recoverable from ratepayers” with issues of the mechanics of what and how to record pandemic impacted activities. For example, section D11 lists a number of questions as to the criteria for recoverability of “lost load” but very little to the issue of what variance in load the utility is to record in the account for this activity and whether such variances will be tracked separately by rate class. It also asks the substantive policy question: “*To what extent should loss load be recoverable in the Account.*”

In a letter issued subsequent to the Stakeholder Conference² the Board provided a preliminary response to some of the concerns raised by the parties including adding the opportunity for parties to respond to comments of stakeholders on the Draft List. The Board also said that it would post reports showing account balances of electricity distributors, explaining “*The intent*

¹ March 25, 2020, page 2

² June 4, 2020

of providing any initial data that may be available leading up to the July stakeholder forum, is to allow stakeholders the opportunity to understand the magnitude of the impacts”³.

VECC supports both of these positive steps which will help in the development of a fair and reasonable policy with respect the pandemic’s impacts.

The Board also included this direction:

To assist the OEB to understand and assess what actions, if any, are required in the near term, the OEB confirms that it is requesting both substantive and scoping comments only related to one issue, Issue #1a, which is described below:

Should the OEB provide advanced policy direction in the near term (for example at the time of establishing the Final Issues list), to provide greater certainty with respect to the recoverability of amounts tracked in the Account, such as by confirming the recoverability of any incremental bad debt expense?

Specifically, regarding Issue #1a, the OEB requests that stakeholders articulate the following in their written comments, with reasons:

- 1. Any proposed changes to the wording of Issue #1a.*
- 2. Whether there is a need to provide advanced policy direction in the near term, to provide greater certainty with respect to the recoverability of amounts tracked in the Account to address immediate needs. Utilities should provide specific details of the necessity for advanced policy direction such as, for example, the need for recognition of the Account as a regulatory asset on the financial statements, or the need to support borrowing from lenders.*
- 3. If so, what advanced policy direction should the OEB provide, and when?*

This direction we frankly find perplexing because the “substantive” issues related to COVID-19 occur, as we noted above, throughout the proposed Draft Issues List. It suggests the Board (or its Staff) are wed to both the structure and underlying inherent concepts articulated in the Draft List.

The structure of the Draft List, we submit, is inherently incorrect. Not only because, as we noted above, because it conflates form with substance but more critically because it assumes the basic question is “*how do utilities recover the impacts of the pandemic.*” Rather the Board should begin by asking “*do utilities need more resources to cope with the pandemic*”?

³ Ibid, the Board also explained similar efforts would be made with respect to natural gas utilities and OPG.

STRUCTURE OF THE ISSUE

The Draft Issues List approaches the pandemic issue in the same manner in might a Z-Factor, or change in the Board's assessment cost. The underlying premise is that the item is to be recovered from ratepayers because it is a legitimate and expense which rates have not anticipated. An extraordinary event, say a doubling of the corporate tax, occurs and the utility seeks to ameliorate the costs because they are unforeseen and beyond the control of management.

To the extent the pandemic is an external event foisted upon a utility legitimate expenses certainly will arise and likely beyond the control of management (largely) to control. But this does not make the costs incurred in the pandemic "the same" as those of an unforeseen tax change.

The external event in this case affects everybody – customers as well and service providers. It is (one hopes) a "once in a lifetime event" which is having severe impacts on all parts of the economy. The entire structure and form of Draft Issues List is premised on remediating only the utility impacts (both costs and lost revenues) due to this event. It does not view the Board as having an obligation to remedy commercial and residential ratepayers who have equally been adversely affected. This is incorrect and we think counter the Board's role as a regulator of a monopoly.

The Board's duty is to set "just and reasonable rates." It should not be in the role of ensuring utilities avoid the impacts of the pandemic that all other sectors of the economy must face. Regulation should not provide a shield to avoid what faces the rest of society. For example, it is true that utilities have been forced to maintain service to customers who are in arrears causing an increase in bad debt. In the same way many businesses have been legislated to close down completely causing a loss of revenue. For some this will be catastrophic. We ask - should the Board force business made near bankrupt through government pandemic dictum pay to ensure the shareholders of a utility are paid a dividend?

It is not clear to us why unregulated business should be made absorb their legislated pandemic costs while utilities, shielded by the coercive nature of a regulated monopoly, be are allowed to be made good on their losses.

It is also not clear to us why Utilities who have earning sharing in their rate plans should be provided any relieve before earnings fall below a symmetrical bottom threshold (e.g. 150 basis points below). In fact, given the severity of events and the likelihood of major losses for many businesses it is not clear why the Board would provide relief to any utility which is not facing financial distress which threatens their ability to operate. In today's environment many businesses would be more than happy to cover their operating costs let alone continue to be

able to make important investments. Today the case does not exist for relief for utilities who are able to operate safely under existing rates. VECC represents consumers who are inherently vulnerable. But the pandemic has hit hard the jobs in retail and service industries and has been especially damaging to the lowest income part of Ontario. VECC will strenuously object to having these ratepayers contribute to increasing already positive earnings of utilities during this crisis.

In this vein we have set out below what are the salient issues.

Issue 1: What are the criteria of financial viability -ability to serve?

If one adopts our vantage point the issues list becomes quite different in both form and substance. The substantive policy issue to be determined is “what is financial viability”. That is what is required for the utility to operate in a safe and sustainable manner during the pandemic. For example, the Board might use liquidity and cash flow metrics to determine whether there is a need to provide relief. Alternatively, or in addition, it might seek to ensure sufficient debt servicing can be undertaken or that some minimum rate of return is achievable. To this latter point we might remind the Board that for many years utilities like Thunder Bay Hydro operated successfully with rates that were set on rates of returns substantively below that allowed by the Board.

Issue 2: What types of costs and revenues are recoverable?

If a utility does apply for relief under the policy directives of the Board established under Issue 1 the next step is to determine if the utility “deserves” relief. That is, the Board must determine if the financial distress (under whatever test or tests it settles on) is the result of the pandemic. To do this the Board must understand what, if any, of the financial need results from poor management, imprudent investments (including the inability to control operating costs). In setting the amount of relief the Board should also be interested in determining what actions the utility has taken to mitigate financial assistance. For example, the Board should be interested whether a utility seeking relief is also paying dividends to its shareholder. The Board should also understand whether the utility is continuing with its planned investments or whether it is deferring investments in order to maintain its rates of return.

The purpose of the COVID accounts should be track those costs and lost revenues directly attributable to the pandemic. In order to maintain parity with the non-regulated business this must be a limited list and could include:

- Load/Revenue variances. While it would be legitimate for utilities to track lost revenues associated with any actions taken to provide relief to customers. It is not clear to us that overall variances in residential and commercial load should be tracked.

- Bad debt costs.
- Billing costs
- Off-site labour related costs including cleaning and PP&E costs

Issue 3: Account period, materiality and disposition

All costs should be as of March 25, 2020 when the Board established the account. However, as we envision the process accounts are established not simply for the purpose of disposition but rather to understand whether the financial relief being sought is substantiated by actual understanding actual pandemic related costs.

This approach is fundamentally at odds with for example, A1.b of the Draft Issues List. **Utilities should not be entitled to interim or any other disposition unless they can demonstrate financial distress, particularly when the customers they will be seeking recovery from are also suffering financially from the pandemic. The pool of relief from which they can then draw should be established by the balances in the COVID-19 accounts.**

As such after passing of the pandemic crisis (on times established as things progress) these accounts would, if no application for relief had been filed, be closed and pass into history without recovery.

Issue 4: Financial Costs

Among the Draft Issues is: *"Should extra finance costs incurred (e.g. interest expense) related to incremental debt be allowed to be recorded in the Account, including any debt that may be incurred to finance "pass-through" cost amounts?"*

While we are uncertain as to what the latter part of this issue is attempting to capture, we would point out that finance costs are likely to be lower - not higher - due to expansive monetary policy currently being undertaken worldwide in response to the pandemic.

In that regard and as we have noted in other proceedings the prescribed interest rates for Board established deferral and variances accounts was established in early March 2020 and largely before the impact of the pandemic had been reflected in their calculation. Since that time interest have dropped precipitously. The weighted average yield of the Bank of Canada's Bankers' Acceptance Purchase Facility has declined 117 basis points from 1.57% at March 25 to the most recent 0.40% as of May 27. Given the dramatic change in interest rates and the outstanding question of whether COVID-19 related costs should attract any carrying we think the issue of carrying costs needs to be revisited.

Issue 5 – Benchmarking

The Draft Issues List asks the questions as to whether some form of benchmarking is warranted (C5). We think it unlikely given the nature of the crisis, the variance within the Province as to its severity and the different nature of businesses within utilities to think comparisons of much value. In any event, VECC proposes a fundamentally different approach to the use of the COVID account. Our submission is that a utility be considered for relief based on its specific financial requirements and that the accounts serve as the maximum pool of monies from which that relief may be made.

SUMMARY

VECC takes a fundamentally different approach to the issue of the impact on regulated utilities of the COVID-19 pandemic. A regulator is a proxy for competition. By necessity it is an imperfect proxy and in matters like setting rates of return the Board must grapple with this imperfection. In the same way it must address the impacts of the pandemic and its results will necessarily be imperfect. In our submission the Board must re-imagine the purpose of the deferral-variance accounts so that they are not “regulatory assets” with claims on customers but rather tracking accounts from which sums may be recovered should the utility demonstrate hardship of a sufficient nature. Even this, we submit, provides more than businesses without the luxury of monopoly protections.

These are our respectful submissions.