

ONTARIO ENERGY BOARD

**All Rate Regulated Electricity Distributors
All Rate Regulated Natural Gas Utilities
All Rate Regulated Electricity Transmitters
Ontario Power Generation Inc.**

**Consultation on the Deferral Account – Impacts Arising
from the COVID-19 Emergency**

Ontario Energy Board File Number: EB-2020-0133

**SUBMISSIONS OF
CANADIAN MANUFACTURERS & EXPORTERS (“CME”) ON THE
DRAFT ISSUES LIST AND ADVANCED POLICY DIRECTION**

June 11, 2020

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I. INTRODUCTION

1. These submissions are made on behalf of Canadian Manufacturers and Exporters (“**CME**”) with respect to the draft issues list and the advanced policy direction pursuant to the Ontario Energy Board’s (“**OEB**” or the “**Board**”) letter of May 14, 2020.

2. Between March 25 and April 29, 2020, the OEB ordered the establishment of a COVID-19 related account (the “**Account**”), as well as three sub-accounts to records amounts related to the COVID-19 public health emergency.¹ The Account applied to all rate-regulated entities. The three sub-accounts are as follows:

- (a) Billing and System Changes for Electricity Distributors as a Result of the Emergency Order Regarding Time-of-Use-Pricing;
- (b) Lost Revenues Arising from the COVID-19 Emergency for Electricity Distributors and Natural Gas Distributors; and
- (c) Other Incremental Costs for Electricity Distributors and Natural Gas Distributors.²

3. On May 14, 2020, the Board issued a notice of consultation, which set out a draft issues list. The draft issues list contains 17 issues, including a section regarding “Advanced Policy Directions” regarding OEB determinations that are to be made in advance of the full consultation taking place.³

4. Pursuant to the Board’s consultation schedule, a stakeholder conference was completed on May 28, 2020. On June 4, 2020, the Board issued a clarification regarding the scope of submissions on the draft issues list. The scope of comments on the draft issues list is limited to:

- (a) The scope of the draft issues list; and

¹ EB-2020-0133, Ontario Energy Board, Consultation on the Deferral Account – Impacts Arising from the COVID-19 Emergency, May 14, 2020.

² Ontario Energy Board, Accounting Order for the Establishment of Deferral Accounts to Record Impacts Arising from the COVID-19 Emergency, March 25, 2020.

³ EB-2020-0133, Ontario Energy Board, Consultation on the Deferral Account – Impacts Arising from the COVID-19 Emergency, May 14, 2020.

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- (b) Substantive comments regarding issue #1a, including whether advance policy direction is needed to provide greater certainty with respect to the recoverability of amounts tracked in the Account to address immediate needs.

5. Please find below CME's submissions with respect to the draft issues list and the advance policy direction.

II. GENERAL COMMENTS

6. CME's members include over 400 Ontario based companies that operate energy intensive businesses. Even prior to the COVID-19 crisis, energy costs for Class B rate payers were significantly higher in Ontario than they were in many other jurisdictions. This disparity in rates put significant cost pressure on Ontario's manufacturing sector, and has meant that even in less turbulent times, industry has at times struggled to stay competitive.

7. The onset of the COVID-19 crisis has not helped matters. In speaking with its members, CME has learned that 71% of Ontario manufacturers report that their output has fallen as the result of COVID-19, and two-thirds of them expect their output to remain below normal for the next 3-6 months. COVID-19 is therefore a significant disruptor to CME members' business. As a result, how the Board handles the Account, its operation, and the potential disposition of amounts recorded in the account are vital to the health and welfare of Ontario's manufacturing sector.

8. CME has had the benefit of reviewing the School Energy Coalition's ("SEC") submission. CME agrees with the position outlined by SEC that the Board should not start from the position that amounts recorded in the Account are recoverable. While CME has no doubt that the utilities have been severely impacted by COVID-19, that is no different from ratepayers, including CME's membership.

9. Accordingly, given that all of Ontario has been severely impacted, CME submits that COVID-19's impact, severe though it may be, is not, in and of itself, a reason why recovery of amounts from ratepayers should be guaranteed at the outset of this consultation. CME agrees

with SEC that the primary question before the Board is “if” the amounts are recoverable, and if so, on what basis. The primary question should not be answered in advance of the consultation.

III. THE DRAFT ISSUES LIST

10. CME has reviewed SEC’s submissions on the draft issues list and believes SEC’s suggested changes and additions are meritorious. In particular, CME would like add comments regarding the General Principles issues, as well as a proposed additional issue.

A. Comments Regarding Issues #2 and #3

11. With respect to issues for Group “B”, General Principles, issues #2 and #3, CME agrees with comments from the stakeholder conference that the general principles issue should not be limited to reviewing whether there are previous regulatory principles or analogous costs that should be considered by the Board.

12. CME agrees that previously identified regulatory principles and analogous costs may be useful signposts to guide the Board in determining how to deal with the Account. However, the COVID-19 emergency is significantly different from any other event or disruption yet experienced in this province.

13. Accordingly, CME believes that the issue should be framed more broadly, for instance, instead of Issues #2 and #3 as they are currently drafted, CME believes the following would be more appropriate:

What are the principles that the Board should consider in the use, operation, and disposition of the Account?

14. Formulating the issue more broadly will not only allow parties to explore previous guidance and policies from the OEB, but also different and creative approaches to the problem. This will allow more comprehensive stakeholder input, and, in CME’s view, will provide more value to the Board in determining the best way to operate and dispose of with the Account.

B. Proposed Additional Issue

15. As part of its May 14, 2020 letter, the OEB determined that it would need to provide further policy direction on rate mitigation and timing considerations. In CME's view, the current issues list does not adequately cover either topic.

16. CME agrees with SEC's proposal regarding an issue to deal with individual bill impacts and cumulative bill impacts. Specifically, SEC proposed the following issue:

What mitigation, if any, should be required to address the individual or cumulative impact of any recovery of the Account, and other COVID-19 related electricity or natural gas bill impacts?

17. This proposed additional issue is especially important given the systemic nature of the proposed recovery (distributors, transmitters and producers), as well as COVID-19's already significant impact on Ontario businesses.

18. In addition, CME proposes an additional issue that squarely addresses the timing of recovery of amounts. Specifically, CME proposes the following additional issue:

If amounts recorded in the Account are recoverable from ratepayers, over what time frame should they be recovered?

19. In CME's view, the additional issue will allow parties to directly provide their input on the timing of potential recovery, which was one of the categories the Board stated it would provide further policy guidance on, but which was not directly addressed by the current issues list.

IV. ADVANCED POLICY DIRECTION**A. The Board should Not Determine What Amounts are Recoverable from the Account as Part of the Issues List Submissions**

20. Currently, issue #1a on the Board's draft issues list reads as follows:

"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?"⁴

⁴ EB-2020-0133, Ontario Energy Board, Consultation on the Deferral Account – Impacts Arising from the COVID-19 Emergency, May 14, 2020, Draft Issues List, Issue #1a.

21. CME does not support the current formulation of issue #1a, and submits that the OEB should not provide certainty with respect to the recoverability of amounts tracked in the account prior to receiving the views of the all stakeholders as part of this consultation process. CME supports the Board providing utilities with limited advanced guidance, so long as that guidance does not predetermine the recoverability of amounts. This is discussed further in Section B below.

22. Providing certainty regarding recoverability of amounts tracked in the account prior to finalizing the issues list would undermine the purpose of the Board's consultation. Many of the issues on the draft issues list are about the recoverability of certain amounts. For example, consider issue 11:

To what extent should loss of load be recoverable in the Account?⁵

23. If the Board were to provide certainty about the recoverability of amounts such as lost load or other incremental identifiable costs prior to the full stakeholder consultation, stakeholder views would effectively be silenced on these issue, as the Board would have already made a determination in this regard.

24. Other issues on the issues list are also impacted by the advanced determination of recoverability of amounts at this stage in the consultation. For instance, several of the issues have to do with the process or criteria which must be met in order for amounts to be recoverable from ratepayers. For instance, issues 5 and 13 are stated as follows:

Should the OEB compare the amounts recorded in the Account to industry norms (e.g. benchmarking with other utilities in Ontario and Canada)?⁶

How should the OEB address prudence for the nature of the costs to be recorded in the Account and ultimately recovered?⁷

⁵ EB-2020-0133, Ontario Energy Board, Consultation on the Deferral Account – Impacts Arising from the COVID-19 Emergency, May 14, 2020, Issue 11.

⁶ EB-2020-0133, Ontario Energy Board, Consultation on the Deferral Account – Impacts Arising from the COVID-19 Emergency, May 14, 2020, Issue 5.

⁷ EB-2020-0133, Ontario Energy Board, Consultation on the Deferral Account – Impacts Arising from the COVID-19 Emergency, May 14, 2020, Issue 13.

25. Normally, the Board uses benchmarking as a means of measuring utility performance, and to provide insight into which utilities need further incentives or correction with respect to their operations. To the extent that the Board determines that certain amounts are definitely recoverable, CME submits that such benchmarking would become moot, thus undermining the purpose of stakeholder consultation on this issue.

26. Similarly, the prudence of certain costs is often used by the Board as an evidentiary requirement that needs to be met prior to the recovery of those amounts from ratepayers. If the Board were to provide certainty regarding recovery at this stage of the consultation, it would, in CME's view, negate the purpose of determining whether those costs were prudently incurred or not, as their recovery is assured even if imprudent.

27. While CME agrees that some amounts may not be amenable to benchmarking or are likely going to be prudent under the circumstances, these are precisely the issues upon which stakeholders are providing input through this consultation. Accordingly, the OEB should not determine recoverability of the amounts at this stage in the proceeding.

B. The Board Could Provide Certain Guidance to Utilities that Does Not Pre-Determine Recoverability of Amounts

28. CME appreciates that utilities, and indeed the Board have had to act quickly in the face of the COVID-19 emergency to create a framework for the recording, tracking and eventual disposition of amounts related to COVID-19's impact. As a result, some details may not have been fully considered or communicated.

29. Given that context, CME believes the OEB could provide further limited guidance to utility stakeholders, so long as that guidance does not predetermine the recoverability of the amounts recorded in the Account. This would provide additional needed guidance for utility stakeholders, while not undermining the purpose of the consultation – to determine whether the amounts recorded are recoverable from ratepayers, and if so, on what basis.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 11 day of June, 2020.



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