

June 12, 2020

Christine Long
Registrar and Board Secretary
Ontario Energy Board
2300 Yonge Street
P.O. Box 2319
Toronto, Ontario
M4P 1E4

Dear Ms. Long:

EB-2020-0133 – COVID-19 Deferral Accounts Consultation – Draft Issues List

Please find, attached, the submissions of the Consumers Council of Canada regarding the Ontario Energy Board Staff Draft Issues List for the above-referenced consultation process.

Please feel free to contact me if you have questions.

Yours truly,

Julie E. Girvan

Julie E. Girvan

CC: All parties

COMMENTS OF THE CONSUMERS COUNCIL OF CANADA

RE: CONSULTATION ON THE DEFERRAL ACCOUNT – IMPACTS ARISING FROM THE COVID-19 EMERGENCY

EB-2020-0133

In its Accounting Order dated March 25, 2020, the Ontario Energy Board (“OEB”) established an Account, with three sub-accounts for Ontario electricity local distribution utilities (“LDCs”) and natural gas LDCs to use to track any incremental costs and lost revenues related to the COVID-19 emergency. In its April 29, 2020, letter the OEB confirmed the applicability of two sub-accounts to electricity transmitters and Ontario Power Generation Inc.

The OEB stated that it will assess any claimed costs and/or lost revenues associated with any of the established sub-accounts at the time these sub-accounts are requested for disposition, subject to established materiality thresholds¹.

The OEB also indicated that the Account may also be used to record temporarily forgone distribution revenue associated with the postponement of the implementation of May 1, 2020 rates². On May 12, 2020, the OEB set out temporary reporting requirements to facilitate the OEB’s ongoing monitoring of the financial situation of electricity LDCs during the COVID-19 emergency.

On May 14, 2020 the OEB initiated a consultation process regarding the proposed Accounts.

On May 28, 2020, the OEB convened a preliminary stakeholder meeting to provide a form for discussion of the Draft Issues List. In addition, the OEB established a timeline for further comments on the list. On June 4, 2020, the OEB allowed for reply submissions to be filed on June 18, 2020. In addition, the OEB requested both substantive and scoping comments with respect to Issue 1 (a:

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 clarity with respect to the recoverability of amounts tracked in the Account, such as confirming the recoverability of any incremental bad debt expense?

The OEB asked specifically for comments on the following issues with respect to Issue 1(a):

1. Any proposed changes to the wording of Issue 1(a);

¹ OEB letter dated March 25, 2020

² OEB letters dated April 16, 2020 and April 17, 2020

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; and
3. If so, what advanced policy direction should the OEB provide, and when?

These are the comments of the Consumers Council of Canada (“Council”) regarding the Draft issues List.

General Comments:

The Council acknowledges that with COVID-19 we are going through unprecedented times. Recent events have imposed hardships on residents, businesses, industry, public institutions and all levels of government. The OEB has recognized that there may be impacts, as well, on the regulated entities in Ontario. On March 25, 2020 the OEB established the Accounts for these regulated entities “to track any incremental costs and lost revenues related to the COVID-19 pandemic.”³ To be clear, all that the OEB has done at this time is establish these tracking accounts. The OEB has not yet defined what costs and revenues should be tracked, nor has the OEB indicated whether the regulated entities should be given any form of relief related to increased costs and lost revenues arising from the COVID-19 pandemic.

The Council recognizes that at this time the OEB is only seeking input on the Draft Issues List. However, the Council is of the view that the OEB should make it abundantly clear that this process is not strictly about how the rate regulated entities record and recover the costs and lost revenues associated with the COVID-19 pandemic. **The OEB must also consider whether these entities will be given any relief at all and if so, on what basis.** The OEB may decide that only in cases of clear financial distress should some form of relief be granted.

Although some parties may see this as a process similar to the OEB’s consideration of Z-factors we are in currently in uncharted territories. The OEB may choose to consider these costs and revenues in the same manner as a Z-factor – which considers causation, materiality, prudence and management control. The OEB may also choose to consider these costs and lost revenues in a different manner and may apply different criteria. Unregulated entities and individuals have been impacted by this crisis. The Council is of the view that there is no reason why regulated entities should be somehow entirely insulated and, in effect, be kept whole.

³ OEB Letter dated March 25, 2020

The OEB has a number of objectives set out in the Ontario Energy Board Act, which it is mandated to pursue. These include the following, which are relevant to the OEB's consideration of the matters, which are the subject of this consultation:

- To protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service;
- To promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity to facilitate the maintenance of a financially viable electricity industry;
- To protect the interests of consumers with respect to prices and the reliability and quality of gas service;
- To facilitate the maintenance of a financially viable gas industry for the transmission, distribution and storage of gas⁴.

The OEB is also required to set just and reasonable rates. The Council submits that the OEB will ultimately be required to find a balance when considering how to assess the impacts of COVID-19. It is required to set just and reasonable rates, protect the interests of customers and facilitate the maintenance of financially viable electricity and as industry.

The Council acknowledges that many of the regulated entities in Ontario are no doubt undertaking initiatives that are helping their customers out in these trying times. That is commendable. Having said that the OEB has to strike an appropriate balance between protecting customers, setting just and reasonable rates and maintaining the financial viability of the entities it regulates.

Issue I (a):

As noted above, the OEB is seeking input on Issue 1(a). The OEB is specifically seeking input on 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.

The Council does not support the idea that the OEB set out, at this point, advanced policy direction. This would undermine the whole purpose of the consultation, which the Council believes is to determine whether relief is to be granted, and on what basis. For the OEB at this point to determine that incremental bad debt expense is recoverable, for example, would be inappropriate. Each circumstance has to be evaluated on its own merits. If an LDC has incremental bad debt expense related to COVID-19, but is over-earning above its allowed return, why should that

⁴ OEB Act, 1998, Part 1, November 1, 2019

LDC be allowed to recover that incremental bad debt expense from its customers? Many customers are doing what they can to pay their bills and it may be inappropriate for those customers to also cover the bad debt expense of those that either choose not to pay their bills or are unable to pay their bills.

The Council also cautions the OEB with respect to deeming the balances tracked in these accounts as “regulatory assets”. It is the Council’s understanding that accounting standards require that to record a regulatory asset means that it is recoverable. For the OEB to deem the balances in these accounts as regulatory assets would again be prejudging their recoverability.

The Council urges the OEB to reject any proposals for it to predetermine any of the issues that are the subject of this consultation.

Other Issues:

Allowing regulated entities to track costs and revenues specifically related to the COVID-19 pandemic, and then potentially allowing them to recover some or all of those costs and/or lost revenues will be challenging for the OEB. The Council does not intend to wordsmith the issues proposed by OEB Staff, but will raise some points that will hopefully assist the OEB in its final determination of the Issues List. From the Council’s perspective none of the Issues should restrict the ability of some to argue at the end of the day that the incremental costs and revenues related to COVID-19 are not recoverable.

General Principles (B):

The Council is of the view that the first and foremost question for the OEB is to determine the principles that should guide its consideration of these issues. Issue B.2 simply refers to a consideration of regulatory principles identified in previous consultations. The Council proposes that the issue be more specific to this consultation:

- **What principle or principles should guide the OEB in its determination of what costs and or revenues should be tracked in the Accounts, and what is ultimately recoverable, if at all?**

The principles for the OEB to consider in this case may differ from the principles that have guided previous OEB consultations.

Accounting Matters (C):

From the Council’s perspective the critical Issue for the OEB will be to establish a consistent way for the regulated entities to record costs and lost revenues. The OEB will need to determine the following:

- **How does the OEB determine what are to be considered “incremental” costs and revenues related to the COVID-19 pandemic?**

Nature of Costs and Materiality (D):

With respect to the nature of the costs and materiality the OEB must ultimately be clear as to what costs are truly related to the COVID-19 pandemic. The OEB must also establish what cost savings should be included as well. Cost savings could be related to deferred capital projects, reduced fleet costs, reduced interest rates, reduced financing costs etc. While the OEB must be explicitly clear as to what costs would qualify, it is equally important for the OEB to clear that all reductions in costs related to the COVID-19 pandemic must be identified and recorded. This appears to be covered off with Issue D(7). With respect to residential electricity load the losses may be minimal given the fact that most Ontario LDCs have moved to fully fixed distribution rates.

With respect to “loss of load” it will be incumbent on the regulated entities to demonstrate that the loss of load is specifically related to the COVID-19 pandemic.

Recovery Mechanism and Timing (E):

If the OEB determines that amounts in these accounts are recoverable, in whole or in part from customers the OEB should consider mitigation measures. Mitigation proposals should be included as an issue on the list. Impacts for customers may be significant if all of the components on the bill are increasing as a result of the COVID-19 pandemic. This will likely be the case. The OEB may want to consider a number of options for mitigation beyond what has been traditionally applied.

Additional Issues:

As set above, the Council is of the view that the scope of this consultation should not be limited to what costs are recoverable and on what basis. The OEB may decide that it will only grant relief in the case of clear financial distress. Accordingly, the Council supports adding in an issue:

- **How should the OEB determine a rate regulated entity’s financial viability?**

At the end of the day the OEB will have to determine for each rate regulated entity whether they should be granted relief. The Council believes that this should be considered on a case-by-case basis. For example, it would be unfair for the OEB to simply state that every utility be given 100% relief with respect to bad debt costs. Parties may argue that unless a utility can demonstrate its financial viability is threatened, it should not be permitted to recover any increases in bad debt expenses. Or they may argue that if the utility ROE is 300 basis points above the

allowed return, no recovery is allowed. In addition, unless a utility can demonstrate that it has taken steps to reduce costs to mitigate the impacts of COVID-19, parties may argue that the incremental costs are not recoverable. The Council is of the view that it will be important for the OEB to consider the amounts in the accounts and recoverability on a case-by-case basis.