



BY EMAIL and RESS

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Our File: EB20200133

Attn: Christine Long, Registrar & Board Secretary

Dear Ms. Long:

Re: EB-2020-0133 – COVID-19 Deferral Account Consultation – Issues List Reply Comments

We are counsel to the School Energy Coalition (“SEC”). These are SEC’s reply comments on the Board’s Draft Issues List.

General Comments

The comments on the Draft Issues List reveal the divide between utilities and their customer groups. Utilities appear to believe that the consultation is simply a matter of which costs can be recorded in the COVID-19 Deferral Account (“Account”), and how to dispose of the resulting balances. Customer groups, including SEC, recognize that the fundamental issue that must be answered before the Board can consider these subsidiary issues, is whether and, if so, on what basis, recovery of any balance in the accounts is appropriate? There should be no assumption in the issues list that recovery of any amount is appropriate.

Ontario is in the middle of a significant economic downturn caused by this once in a hundred-year pandemic. The Board will need to decide whether utilities, who are regulated and compensated as for-profit companies, will be treated differently from the businesses operating in competitive markets. Those businesses cannot simply pass on their increased costs and reduced revenue to customers through higher prices.

Further, even if utilities are to be treated differently, to what extent?

This consultation is not about how to incorporate the impacts of the COVID-19 pandemic into a cost of service or similar rebasing application for 2020. Rates have already been set for 2020 for each of the utilities in the province. The issue in this proceeding is whether the utilities should be able to recover amounts over and above those already approved, solely because of the COVID-19 pandemic.

The Board's creation of the Account did not, and could not, provide any substantive relief to the utilities. All it did was allow utilities to record amounts related to the impact of COVID-19, so that the Board has the legal ability to dispose of some or all of the balances at a future date. Without the Account, adjusting future rates to account for past costs/revenue would have been impermissible retroactive ratemaking. The Account kept the Board's options open, but was not a substantive determination of incremental recoveries of any kind. It is for this consultation to guide stakeholders and individual Board panels regarding what, if any, amounts in the Account are recoverable from ratepayers.

From a review of the comments, one issue the Board will need to consider both in preparing the Final Issues List, and in the substantive component of this consultation, is how prescriptive the Board will be in any policy document, versus what should expressly be deferred for consideration by a panel hearing a specific utility's application. Even within the same class of utilities (e.g. electricity distribution), the impact on each may be quite different based on their unique characteristics. In addition, for utilities on Custom IR, many have specific deferral and variance accounts, with unique terms, that will interact with the impact of COVID-19 costs, savings and revenues. The Board will need to determine if those interactions are best dealt with in this consultation, or when those utilities are before the Board to clear their specific accounts.

Advance Policy Direction

Neither individually, nor through an association/coalition, has any utility directly sought advance policy direction regarding recoverability of amounts in the Account, as set out in Issue 1(a). SEC's initial comments, and those of many others, noted that providing such direction would have been inappropriate, as this was the basis for the entire consultation.

The Electricity Distribution Association ("EDA") requested that the Board provide advance direction that the Account is to be regulatory asset for the purpose of recording it on utility balance sheets.¹ It provided no rationale why such direction is required in advance. SEC submits the Board should reject their request. As SEC explained in our initial comments, and is also referred to in the Ontario Energy Association/Coalition of Large Distributors+ ("OEA/CLD+") submission Appendix², to record a regulatory asset on a utility balance sheet requires a significant degree of certainty that the amounts will be recoverable. This would do indirectly what the Board should not do directly, i.e. provide the answer to the most important issue in the consultation before it has truly begun.

OEA/CLD+ requested that the Board complete the entire consultation by around the end of September, so that utilities will have the necessary certainty to record Account balances on their balance sheets in time for Q3 financial reporting.³ SEC understands that the Board wants to move relatively quickly with this consultation, and plans to complete it within 6 months. The Board should not rush any quicker to complete this very important and inherently complicated consultation any sooner. Doing so would prejudice stakeholders from effective participation and reduce the required time the Board will need to consider these complex issues and issue a final policy document. The COVID-19 pandemic is ongoing and will probably continue to evolve, so the Board is already trying to deal with a changing set of facts. More haste makes that challenge even larger.

¹ EDA Comments, p.4

² OEA/CLD+ Comments, Appendix A

³ OEA/CLD+ Comments, p.6

Further, a likely outcome of the Board's policy is that it will not lead to the required certainty regarding the Account balances to allow for them to be considered regulatory assets. This is not novel. Utilities have many deferral and variance accounts that are not considered regulatory assets.

It is telling that neither the EDA or OEA/CLD+ have explained why they require the Account balances to be considered a regulatory asset, either as a result of an advance policy direction, or in time for their Q3 reporting. No consequences of waiting for the Board to determine its policy have been provided. Wanting certainty is not a reason for the Board to rush through the consultation (OEA/CLD+) or undercut its central issue (EDA).

Several utilities are seeking advance direction clarifying what can be recorded in these Accounts, but none of them have provided any specific examples of what they believe may not be covered by the current directions.⁴ Any specific guidance the Board will provide at this point is only relevant for the purposes of interim reporting, since the consultation itself is tasked with providing greater definition to what is able to be recorded in the Account for possible disposition. SEC proposes on that basis it may be best for utilities to use the most expansive reasonable definition of incremental costs (and savings) related to the COVID-19 pandemic at this stage, so that the Board and other stakeholders understand the outer bounds of requests Utilities may be seeking.

Issue 2

OEA/CLD+ requests that the Board amend Issue 2 to remove references to the Pension and OPEB's and Transition to IFRS consultations, and replace them with references to the Smart Meter and Rate Recovery of Regulatory Assets consultations, which OEA/CLD+ believes are more akin to the current consultation.⁵

The Board should reject this proposal. The list of consultations was included in a footnote as "examples", and nothing says that they were meant to be exhaustive. OEA/CLD+ are free to argue that there are other consultations and other principles that should be applied.

Furthermore, without getting too much into the merits, SEC fundamentally disagrees with the OEA/CLD+ that the Smart Meter and Rate Recovery of Regulatory Assets consultations are more akin to the situation before the Board now. Both the Smart Meter and Rate Recovery of Regulatory Assets proceedings involved how to implement specific regulations that required, if certain conditions were met, recovery of costs. No such requirement exists with respect to the Account.

SEC agrees with Ontario Power Generation ("OPG") that a better approach would be to broaden the wording of the proposed issue, so as to not limit considerations to principles that were considered in past consultations.⁶ SEC has proposed wording to that effect that in its view addresses the fundamental question that the Board will need to answer: ***What are the principle(s) that should guide the Board in determining what are the appropriate amounts to be recorded in the accounts, and if, and on what basis, recovery of any balance in the accounts is appropriate?***⁷

⁴ EDA Comments, p.2; OPG Comments, p.2

⁵ OEA/CLD+ Comments, p.9

⁶ OPG Comments, p.3

⁷ SEC Comments, p. 3

Similar wording was also proposed by the Canadian Manufacturers and Exporters (“CME”) ⁸ and the Consumers Council of Canada (“CCC”).⁹

Issue 5

Most utility comments requested the Board remove Issue 5 entirely from the Draft Issues List. SEC disagrees. All of the concerns raised by the utilities, some of which SEC does agree with, go to the merits of the issue, and not the appropriateness of its inclusion on a Final Issues List. It is entirely relevant and appropriate for the Board to ask whether it should compare the amounts recorded in the Account by any given utility to industry norms, averages, or standards (Issue 5a), and if so, what reporting should be required to facilitate comparisons (Issue 5b)? Comparing costs incurred by utilities to those incurred by other utilities in similar circumstances is a key tool available to the Board to assess the prudence of expenditures.

Issue 16

OEA/CLD+ propose removing reference to the “broader Ontario business environment” from issue 16(b) which deals with cost sharing.¹⁰ While SEC is not necessarily wedded to the specific wording of the draft issue, we do believe it is entirely appropriate for the Board to consider, among other factors, the broader Ontario economic and business environment when deciding if, and how, to share incremental costs between the utility and customer. As SEC noted above, and at length in our initial comments, the Board must consider these issues in its role as a market proxy.

In support of the revision, the OEA/CLD+ state that what makes utilities different from the Ontario business environment is that they are responding to Government Orders or Directives that deem their service essential, such as “how the Utilities must manage customer disconnections and direction to implement both mandated and Distributor-initiated customer relief programs.”¹¹ If the only costs that are being considered for inclusion in the Account and recovery are those specific to implementing binding government directives and orders, then the distinction has relevance. But that is not clear from the submissions of other utilities, the Draft Issues List itself, and the sub-accounts created by the Board, which envision a broader set of costs that are potentially in issue, including lost revenue.

Additional Issues

SEC is generally supportive of the proposed modifications and additional issues put forward by other customer groups and will not repeat all of them, but we highlight a few:

- **London Property Management Association (“LPMA”): *What savings or cost reductions should be tracked and brought forward for disposition? What actions did the utilities take, or not take, in order to reduce costs related to, for example but not limited to, reductions in capital planning and expenditures, reductions in interest rates and reduced fleet costs driven by reduced vehicle use and lower gasoline prices?***¹² LPMA has proposed this additional issue that addresses more thoroughly the question of not just what cost savings should be tracked, but what action utilities should take proactively to reduce costs. SEC agrees with LPMA that an issue that squarely addresses the question of offsetting

⁸ CME Comments, p.3

⁹ CCC Comments, p.4

¹⁰ OEA/CLD+ Comments, p.11

¹¹ OEA/CLD+ Comments, p.11

¹² LPMA Comments+, p.12

savings, and discusses the onus that should be put on each utility to take actions to achieve them, is important. As SEC noted in its initial comments, the Board should direct the utilities to undertake operational mitigation measures. If utilities are expecting lower revenues this year and into the future from the economic impact of the pandemic, they should be expected to mitigate those losses by reducing costs. That is central to proper management of a utility in any economic downturn, no matter what the reason.

It is concerning that OEA/CLD+ take the view that they require certainty by way of completion of the consultation so that it can inform their business decisions, specifically, “choices with respect to capital and operations spending.”¹³ Utilities should be mitigating capital and operating costs right now to offset any increased pandemic related costs or reduced revenues. It should not be contingent on recovery from ratepayers of the balances in the Account. Cost management is an ongoing and positive responsibility.

- **LPMA: *What information will utilities be required to file with the Board and interested parties to enable those parties to determine which costs, savings and net revenue impacts are purely COVID-19 related and which are due to other factors?***¹⁴ In the Board’s letter announcing this consultation it noted that one objective was to develop “filing requirements, where appropriate, for the review and disposition of the Account”.¹⁵ On that basis, parties should be provided with an opportunity to provide submissions on what type of information should be required from utilities in their individual applications, to assist the Board in determining which impacts are the result of COVID-19.
- **CME: *If amounts recorded in the Account are recoverable from ratepayers, over what time frame should they be recovered?***¹⁶ Both CME and the Association of Major Power Consumers in Ontario (“AMPCO”)/Industrial Gas Users Association (“IGUA”¹⁷ propose versions of this issue. SEC agrees that an additional issue should be added to address, if there is to be any recovery, what considerations individual panels should take into account in deciding the disposition period.
- **Vulnerable Energy Consumers Coalition (“VECC”):** In the context of Issue 4, VECC noted that the Board should address the issue of carrying costs on the accumulating balances in the Account.¹⁸ SEC agrees with the suggestion that the issue of carrying costs should either be added to Issue 4 or made its own separate issue. We note that Board has recently deviated from the approved methodology to determine the Q3 prescribed interest rate, and has asked for comments related to the setting of the Q4 rate.¹⁹ The Board should consider the issue of any changes to the previously Board approved methodology, and the broader issue noted by VECC related to the appropriateness of carrying costs at all.
- **Nextbridge and Wataynikaneyap Power LP (“WPLP”):** Both utilities have raised the issue of the appropriate accounting for COVID-19 related cost impacts for these two utilities, who

¹³ OEA/CLD+ Comments, p.6

¹⁴ LPMA Comments, p.12

¹⁵ OEB Letter Re: Consultation on the Deferral Account – Impacts Arising from the COVID-19 Emergency (May 16, 2020), p.2

¹⁶ CME Comments, p.4

¹⁷ AMPCO/IGUA Comments, p.5

¹⁸ VECC Comments, p.6

¹⁹ OEB Letter Re: 2020 Q3 Prescribed Interest Rates (June 16, 2020)

are constructing their transmission systems and have no approved rates at this stage.²⁰ They question whether the cost impacts should be recorded in their existing CWIP accounts or in the Account. SEC agrees with them that this is an issue that needs to be addressed within the context of consultation, but as Nextbridge notes, it also raises a broader issue that impacts all utilities, i.e. how should changes (increases or decreases) to capital costs be treated? This issue may be subsumed within Draft Issue 7, but if not, should be added to the Final Issues List.

Data Availability

OEA/CLD+²¹ and EDA²² have raised issues with the Board's decision to provide stakeholders preliminary balances in the Accounts by utility. They are concerned that the different utilities will record data differently and, if anything, the data may understate the impact of the pandemic. OEA/CLD+ asks the Board to reconsider providing the June data to stakeholders.

As the Board noted in its June 4th letter, the purpose of providing the data in the lead up to the July stakeholder forum is to allow stakeholders to understand the magnitude of the impact.²³ SEC accepts that the information will be far from perfect, which should be expected considering the consultation itself includes issues regarding what to record in the Account. But this information is important in helping stakeholders, especially customer groups, provide informed submissions to the Board. It would be unfair to those who represent the interest of customers if they were to be the only ones who do not have access to utility information, at the same time as they are being asked to pay the balances. As is generally the case, the Board realizes that if it makes decisions, or develops policy, based on evidence that is not fairly available to all stakeholders, that calls into question the fairness of those decisions or policies. For this reason, it is the Board's consistent practice to ensure that all information is shared, using confidentiality protections and other techniques to ensure that any harms from full transparency are mitigated. It is only in the rarest of cases that the Board makes any determination affecting customers based on secret information not available to customers or their representatives.

OEA/CLD+ proposes that, instead of providing the June data to stakeholders, the Board "considers specific data requests of the Utilities as part of the consultation, or allow for the Utilities to raise the impacts they are experiencing, in order to seek greater clarity regarding the eligibility and methodology for recovery of the impacts."²⁴ SEC has no problem with an enhanced approach, if the information can be requested of utilities, and full responses provided and disseminated, before the July stakeholder forum. If that is not possible, then such an approach would have to be supplementary to the June 2020 Account balances, not a replacement for that disclosure.

All of which is respectfully submitted.

²⁰ EPCOR (South Bruce) made similar comments but while they are a new utility, they do have approved rates.

²¹ OEA/CLD+ Comments, p.13

²² EDA Comments, p.7

²³ OEB Letter Re: Consultation on the Deferral Account – Impacts Arising from the COVID-19 Emergency (June 4, 2020), p.3

²⁴ OEA/CLD+, p.13



Yours very truly,
Shepherd Rubenstein P.C.

A handwritten signature in black ink, appearing to read "Mark Rubenstein", with a large, sweeping flourish extending to the right.

Mark Rubenstein

cc: Wayne McNally, SEC (by email)
Stakeholders (by email)