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File 97491

January 25, 2021

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Christine E. Long,
Registrar
Ontario Energy Board
2300 Yonge Street
27th Floor
P.O. Box 2319
Toronto, ON M4P 1E4

Dear Ms. Long,

Re: Consultation on the Deferral Account – Impacts Arising from the COVID-19 Emergency (EB-2020-0133)

Attached please find the Submissions of the Power Workers' Union in connection with the above-noted proceedings. An electronic copy has been filed through the Board's RESS filing system.

Yours very truly,
PALIARE ROLAND ROSENBERG ROTHSTEIN LLP

Richard P. Stephenson
RPS:pb

Attach.

Doc 3629039 v1

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7. The PWU submits that OEB staff's identified rationales used to justify the recommended net-cost sharing model are not grounded in the OEB's well-established regulatory principles. For example, the need to "strike a balance between two potentially opposite positions expected to be taken by utilities and other stakeholders" is not a principled approach to justify the recovery of only 50% of incremental impacts.

8. Similarly, the proposition that regulated utilities should not be fully insulated from the pandemic's negative impacts so as to keep them competitive with businesses outside the industry is questionable in many respects:

a. First, utilities are regulated entities and, therefore, comparing them with businesses in other industries, many of which are not regulated, is not a like-to-like comparison;

b. Secondly, such comparison of impacts on the regulated utilities with impacts of the pandemic on other businesses would require reliable and sufficient data. More importantly, utilities are already expected to record amounts in the Account based on the long-standing regulatory concepts for deferral and variance accounts (DVAs) of causation, prudence and materiality;

c. Thirdly, OEB staff is recommending that the recovery of balances in the Account should be anchored to an ROE-based means test that is no greater than the lower end of the dead band of 300 bps from a utility's approved ROE; and

d. Finally, in addition to these requirements, Board staff is then proposing that only 50% of incremental impacts should be eligible for recovery. This could be punitive to some utilities, especially to those these incremental costs may be more significant than those arising from government or OEB orders intended to help customers affected by the pandemic.

9. The PWU therefore supports an approach that allows for cost recoveries at a rate of greater than 50% on a case-by-case basis, when utilities can justify that their financial viability would be compromised if their pandemic-related recoveries are limited to 50% of the incremental impacts.

10. With respect to the period of the Account and timing and process for disposition requests, OEB staff recommends that amounts should be recorded in the Account until the utility's subsequent rebasing application, assuming that the utility is able to support costs in future years (post-2020) as directly attributable to the pandemic.[5] The PWU is concerned that there may be utilities to whom waiting until their next rebasing application for disposition requests is not a viable option. That will be the case, for example, with merged utilities that have been directed by the OEB to wait for up to ten years before they could file rebasing application. In this respect, the PWU supports OEB staff's suggestion that a stand-alone application may be filed, if utilities are of the view that waiting for a cost-based application is not a viable option, in terms of cash flow or other concerns. The PWU also supports a possibility for interim disposition of a partial amount of the Account balance on a case-by-case basis, for example, when a utility is facing financial viability concerns.

All of which is submitted respectfully.

[5] Ibid., page 30