ONTARIO ENERGY ASSOCIATION ON BEHALF OF CLD+

CONSULTATION ON THE DEFERRAL ACCOUNT – IMPACTS ARISING FROM THE COVID-19 EMERGENCY: STAFF PROPOSAL EB-2020-0133

January 25, 2021

To shape our energy future for a stronger Ontario.

Ontario Energy Association

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SECTION 1: INTRODUCTION & RECOMMENDATIONS

On December 16, 2020 OEB Staff issued their preliminary proposal ("Staff Proposal") for the establishment of guidelines for the operation of the Deferral Account - Impacts Arising from the COVID-19 Emergency ("Account"). The Coalition of Large Distributors + ("CLD+")[1] submits these comments for the Ontario Energy Board's ("OEB" or "Board") consideration of this matter. The goal of the CLD+ is furthering the creation of clear but appropriately flexible guidelines relating to the Account, which recognizes both the unprecedented nature of the COVID-19 emergency and the need to remain consistent in the application of the OEB's existing mandate, principles and frameworks.

The CLD+ notes that the Staff Proposal includes many recommendations that could form positive elements of guidelines to prepare and assess amounts in the Account brought forth for recovery. Though the CLD+ has alternative recommendations for the OEB's consideration with respect to some elements of the Staff Proposal, subject to appropriate modifications and governance the CLD+ ultimately sees the Staff Proposal as a helpful step forward. Above all, the CLD+ believes the Board's guidelines on this matter should be grounded in established OEB practice, and should consider the ongoing and fluid nature of this global emergency.

It is the view of the CLD+ that the Board's guidelines in this consultation can and should rely on existing OEB principles and practice, with few to no material alterations to the fundamentals of energy regulation in Ontario. The statutes and objectives of the OEB, as well as the regulatory frameworks and precedents established by the Board itself, are tested and demonstrated in their effectiveness. The OEB's mandate to set just and reasonable rates, as well as the requirement for utilities to demonstrate the prudence of their decisions and actions, are broad and effective tools that have served the Board, utilities and ratepayers well. Similarly, the OEB's rate-making frameworks and practices, and the maintenance of each Board Panel's ability to remain unfettered in rendering a decision based on the evidence at hand, ensure fair and fact-based outcomes, specific to the circumstances of each case.

The CLD+ submits that these tools are more than sufficient to ensure appropriate recovery of amounts recorded in the Account, while maintaining just and reasonable rates and protecting the public interest. Guidelines from the Board should explicitly rely on these pre-existing tools and constructs, and should refrain from creating novel solutions that are not needed, or pre-judging future cases before evidence has been presented. As such, and as further discussed in this submission, the CLD+ strongly opposes the creation or endorsement of new and untested regulatory principles, such as the Staff Proposal's recommendation to assess costs in the Account on the basis of "necessity". Further, the CLD+ submits that the guidelines put forward by the OEB at this time should ensure future Board Panels are not fettered in their discretion to assess the case-specific facts in front of them. The guidelines provided today should be just that, guidelines to assist all parties in assessing future evidence with a common language and understanding. Such guidelines should not inadvertently lead to the pre-judgement of applications for which evidence is neither known nor tested.

[1] Hydro One Networks Inc., Alectra Utilities Corporation, Toronto Hydro Electric Systems Limited, Hydro Ottawa Limited, Elexicon Energy Inc., Enbridge Gas Inc.

Consistent with this view, the CLD+ submits that any guidelines provided by the Board in this consultation must recognize the ongoing and fluid nature of the COVID-19 pandemic. The Staff Proposal notes that "impacts observed in 2020 was the lens through which OEB staff focused its Staff Proposal."[2] The CLD+ urges recognition that the COVID-19 pandemic is far from over, and significant uncertainty remains with respect to the course of the virus, its full economic ramifications, and its ultimate impact on Ontario utilities. As of the time of this submission, the seven-day average of Ontario's daily new COVID-19 cases remains significantly high, and the Province has implemented its second State of Emergency and Stay-at-Home Order, while the impacts of new and evolving strains of COVID-19 remain unknown.

It is premature to declare that utilities will suffer little harm from the COVID-19 pandemic based on LEI research on the experience of utilities to date.[3] It is not clear when a broadly administered vaccination will alleviate the public health crisis facing Ontario, nor is it clear whether households and businesses have yet felt the full economic impacts of the first and second waves of the pandemic. Impacts on utilities can be expected to lag broader economic impacts. There are a wide variety of public and private support programs which may be deferring long-term impacts from this pandemic on utilities.[4] It is similarly premature to establish rigid tests and approaches today that are not sufficiently flexible to respond to future developments and the facts at hand when Account clearances are requested. The CLD+ recommends that the Board consider future uncertainty in determining both the timing of the disposition of the Account and the nature of its final determination in this consultation. With respect to timing, it is clear that the Account should not at this time be constrained to any specific years (e.g. 2020 and 2021).

With respect to the conclusion of this consultation, the CLD+ does not believe stringent determinations should be made in light of such uncertainty, and urges the OEB to avoid fettering the discretion of future Board Panels. The CLD+ submits that the OEB can have confidence that flexible guidelines in this consultation will position future Board Panels well to assess utility prudence and set just and reasonable rates based on the evidence of future applications relating to the Account.

CLD+'S UNDERSTANDING OF OEB STAFF'S "2 GROUP" APPROACH

It is the CLD+'s understanding that OEB Staff is proposing that COVID-related impacts tracked in the Account be categorized in to one of two groups based on the driver of the impact. Eligibility for recovery is then assessed separately on a per-group basis. In order to qualify for recovery, the overall balance in an individual group must meet the materiality threshold and the amount eligible for recovery is subject to the means test and cost sharing rate that is applicable for that particular group. The CLD+ encourages the

[2] Staff Proposal, page 2
[3] LEI, A Report on the OEB's Cost of Capital Parameters and the Impacts of COVID-19, December 15, 2020, page 10
[4] For example, there are a wide array of well-funded federal support programs under *Canada's Covid-19 Economic Response Plan*, and a variety of provincial programs, including programs to help residents with energy bills, and a program to pay the natural gas, electricity and property tax bills for impacted businesses.

OEB to include some numerical examples in its final guidance so that stakeholders have a common understanding of its function at the time of disposition.

For the purposes of this submission, the CLD+ uses the term "Group A" to refer to the items necessary to comply with government or OEB actions aimed at providing relief and certain incremental bad debt, as defined on page 19 of OEB staff's proposal. The term "Group B" refers to all other COVID impacts which are subject to means test and cost sharing rate outlined on page 3 of OEB staff's proposal.

RECOMMENDATIONS

1. Refrain from introducing new and untested regulatory principles, such as the principle of "necessity" in the Staff Proposal;
2. Utilize the OEB's existing mandate, principles and frameworks, which will allow for flexibility with respect to timing, and the consideration of utility-specific proposals and methodologies for cost recovery, where deemed appropriate by future Board Panels;
3. Utilities should have the flexibility to choose the timing of their disposition applications, consistent with OEB Staff's proposal. For clarity, utilities should be able to choose from either a standalone application, their next Rates application or their next Cost of Service filing for disposition of the Account;
4. Utilities' disposition applications should include audited financial statements to support their request for disposition of the Account;
5. Establishing Draft Guidelines for review should be one of the next steps in this consultation;
6. OEB Staff should leverage the ScottMadden, Inc. jurisdictional report attached as Appendix B to this submission to increase the scope of their cross-jurisdictional analysis; and
7. Similar to OEB Staff's proposal, and subject to changes proposed by the CLD+ within this submission, establish two groups of COVID-19 recoverable items:
    a. Group A: 100% recoverable up to an upper bound of recovery for Group A amounts, being set such that the utilities' Achieved ROE does not exceed 300 basis points above OEB-approved ROE, and are not subject to the CLD+ proposed Threshold Test
    b. Group B: Eligible for recovery of up to 50% of Group B balances subject to the applicant meeting the requirements of the CLD+ Proposed Threshold Test.
8. Amend the OEB Staff Proposal to:
    a. Include all incremental bad debt within Group A costs, subject to the 'greater of' methodology proposed by OEB Staff;
    b. Include the costs associated with utility-specific COVID-19 customer support programs within Group A costs; and,
    c. Modify the threshold test for recovery of Group B costs to have a threshold of 100 basis points below OEB-approved ROE, as opposed to 300 basis points below OEB-approved ROE as proposed by OEB Staff.

The remainder of this submission provides expansion, explanation and support for the CLD+ recommendations above, and is organized as follows:

1. Section 2: CLD+ Proposal for Modified Account Guidelines
    a. Areas of Support for Staff Proposal
    b. Criteria for Recording Amounts in the Account
    c. Measurement Criteria for Incremental Impacts
    d. Cost Sharing and Threshold Test for Group B
    e. Measurement of Achieved Savings is not a Necessity
    f. Draft Threshold Test for COVID-19 Deferral Account Cost and Lost Revenue Recovery
2. Section 3: Specific Responses to Elements of the Staff Proposal and LEI's Reports
    a. Ontario's Utilities have Supported Customers through the Pandemic
    b. The CLD+'s Review and Response to OEB Staff's Proposal
        i. The Principle of Necessity
        ii. Appropriately Preserving Financial Incentives and Incentives
        iii. Reasonably Expected Earnings Fluctuations
    c. The CLD+'s Response to Supporting Information from LEI Relied on by OEB Staff

SECTION 2: CLD+ PROPOSAL FOR MODIFIED ACCOUNT GUIDELINES

AREAS OF SUPPORT FOR STAFF PROPOSAL

The CLD+ supports OEB Staff's statements made during the January 14th webinar that they are strongly considering issuing draft guidelines in the spring of 2021, and that the final guidelines will be just that; guidelines to utilities to aid them in their disposition applications.

The CLD+ supports OEB Staff's proposal to create two groups of items eligible for recovery, as described above. Given the differences in the drivers of the items in each group, the CLD+ supports the differentiation in eligibility criteria. The CLD+ supports the proposed upper bound for recovery of Group A amounts being set such that a utility's Achieved ROE does not exceed 300 basis points above OEB-approved ROE, the use of a means test for Group B items to be deemed eligible for recovery, and Cost Allocation and Rate Design being proposed by the utility in their disposition application. The CLD+ proposal differs from Staff's proposal on the items assigned to the two groups, as well as the details of the threshold test for Group B items.

The CLD+ also supports OEB Staff's proposal that utilities should have the flexibility on the timing of when they file applications for disposition of the amounts in their Account, and supports that interim disposition of a partial amount of the Account should be considered on a case-by-case basis

FLEXIBILITY IN CRITERIA FOR RECORDING AMOUNTS IN THE ACCOUNT

The CLD+ submits the guidelines should state that the criteria provided for recording amounts in the Account are meant as guidelines, and should recognize that utilities require flexibility to record and measure amounts in the Account to accommodate their circumstance. The flexibility the CLD+ is proposing will account for potential variations between utilities. For example, some of the variations between utilities could be in customer mix, type of operations, and economic differences between utilities.

Although the CLD+'s primary position is flexibility, the CLD+'s proposal does support the OEB's final guidelines establishing eligibility criteria that can be used as guidelines for items identified as recoverable.

MEASUREMENT OF INCREMENTAL IMPACTS

The CLD+ supports OEB Staff's 'greater of' proposal for the determination of incremental costs[5]. Specifically, and as noted above, the CLD+ supports Staff's proposed criteria to determine the amounts of bad debt, recorded in Group A as follows:

> For Bad Debt, the amounts recorded in the Account should be calculated using a baseline comparison to the greater of:
> 1. The amount embedded in base rates (adjusted for inflationary increases less productivity)
> 2. The highest actual annual amount over the past five years (2015 to 2019)

CLD+ largely supports this approach, but suggests that the final guidance allow utilities to propose exceptions to the use of the highest actual annual amount over the last five years on a case-by-case basis. Such exceptions would be evaluated by a future OEB panel.

CLD+ PROPOSAL FOR GROUP A COSTS

The CLD+ proposes that the administrative and program costs associated with utility specific customer relief programs should also be included in the Group A recoverable items. These costs are directly related to the principle that utilities recover 100% of their costs incurred providing relief to customers; the same as the 100% recovery afforded to costs associated with government mandated actions to support customers. OEB Staff appeared to express openness to this approach at the stakeholder conference held January 14, 2021. The CLD+ notes that the OEB also indicated its expectation that utilities focus efforts on promoting solutions for customers that have arrears[6].

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[5] OEB Staff Proposal December 16, 2020, Section 5.2, Page 17

[6] OEB March 19, 2020 Decision and Order, pg. 2, "**During the COVID-19 pandemic** and in particular the ban on disconnection of low-volume consumers for non-payment**, the OEB also expects distributors to focus efforts on promoting solutions for customers that have arrears**, including greater flexibility in payment terms and in offering customers arrears payment agreements (APAs), such as waiving the provisions of section 2.7.8 of the DSC for customers who did not fulfil the requirements of a previous APA." [Emphasis added]

The CLD+ proposes that all incremental bad debt should be added to OEB Staff's proposed list of items eligible for 100% recovery ("Group A"). OEB Staff's proposal includes bad debt associated with the extension of the winter disconnection ban as a Group A recoverable cost. It is the CLD+'s position that all of the bad debt that is calculated by applying OEB Staff's 'greater of' calculation method results in an incremental amount of bad debt, which would include amounts resulting from the extension of the disconnection ban, government mandated customer relief actions, or any utility specific relief actions. Regardless of the initiator of the customer relief action (i.e. utility or government), the beneficiary of the action remains the same; customers.

The CLD+ submits that if the Board includes bad debt in Group B, as proposed by OEB staff, the OEB would be creating a financial disincentive for utilities to provide assistance to their customers at a time where they need it most.

As such, there should not be an attempt to distinguish between any of the various drivers for incremental bad debt, given the difficulty and the impracticality of utility systems being able to calculate the actions that originate bad debt. The CLD+ submits that by calculating incremental bad debt using the 'greater of' methodology OEB Staff have proposed, the non-incremental bad debt (i.e. the base amount of bad debt) represents the non-pandemic base amount that utilities are expected to be funding through rates.

The CLD+ notes that the outcome of OEB Staff's 'greater of' method will always err on the high side of the utilities' actual bad debt, acting as a further mitigation to the utility recovering more incremental bad debt than it should.

COST SHARING AND THRESHOLD TEST FOR GROUP B

The CLD+ notes the cost sharing proposal made by OEB Staff may be in conflict with the Fair Return Standard which, as the OEB has noted, is a legal requirement, and is not optional.[7] Presumably, only prudently incurred costs would be approved by the OEB to be shared 50/50 between utilities and ratepayers under OEB Staff's proposal, which appears to create a circumstance in which utilities may be denied the opportunity to recover operating costs which have been deemed prudent by the Board.

However, and as noted throughout this submission, the CLD+ utilities have taken all available steps to support their customers. In order to further assist customers, the CLD+ supports the inclusion of cost sharing in the OEB's final guidelines as it pertains to the recovery of costs or lost revenue that do not fall into Group A (i.e., Group B items that are not eligible for 100% recovery). While the potential for conflict with the Fair Return Standard exists, the CLD+ recognizes that the COVID-19 pandemic is quite literally a once-in-a-century occurrence, and extraordinary measures may be reasonably warranted for this exceptional circumstance.

Where a utility seeks recovery of costs or lost revenue for items in Group B, the CLD+ proposes the use of the greater of test described above, a means test that is 100 basis points below the utility's Board Approved ROE as the ceiling for recovery of amounts in

[7] Appendix A, page 9

Group B, and recovery of 50% of Group B balances for those utilities that do qualify for recovery. The following paragraph sets out the CLD+ cost sharing proposal:

> *"The applicant is eligible for recovery of amounts for items set out in Group B up to 100 basis points below the applicant's Board Approved ROE for that year ("Threshold"). Should the applicant's Achieved ROE fall below the Threshold (i.e. more than 100 basis points below the Approved ROE), the utility is eligible to recover 50% of the Group B balance up to Threshold. By way of example; If a utility has a Group B balance of $10 million, a Board Approved ROE set at 9%, and the utility's Achieved ROE is 7.5 % after including the recovery of Group A amounts (i.e. the costs that are deemed 100% recoverable), then the utility is eligible to recover up to $5 million of the Group B balance capped at restoring the achieved ROE to the Threshold of 100 basis points below Board Approved ROE."*

The CLD+ submits that setting its Group B Threshold at 100 basis points below OEB-approved ROE is appropriate and most closely represents a value established by an Earnings Sharing Mechanism ("ESM"). More so, as noted by the ScottMadden jurisdictional review[8], none of the 23 jurisdictions in the U.S. or Canada that have approved COVID-19 cost recovery has approved earnings-based eligibility criteria. The 300 basis points proposed by Staff should be rejected as too penal, and not connected close enough to the OEB established benchmarks for cost sharing.

The CLD+ submits that a Group B Threshold set at 100 basis points would more appropriately balance the OEB's statutory objectives. This Threshold is selected to align with ESMs which have been established for some utilities through full adjudication in front of OEB panels. These utilities[9] have cost sharing on over-earnings commencing with a deadband at or near 100 basis points. Establishing an under-earnings threshold of 100-basis point would result in similar treatment for cost-sharing. The CLD+'s choice of 100 basis points aligns more closely with a more principled approach to establishing a Threshold than OEB Staff's proposal.

The CLD+ notes that an applicant under the current regulatory review of a rate application is expected to provide sufficient evidence and justification to the OEB in support of its proposed recovery in rates. This test and regulatory process is sufficient to appropriately evaluate Group B amounts. For clarity, the CLD+ expects that an application for recovery of Group B amounts does not ensure recovery. Each application will be evaluated on its own merits by a Board Panel at the time of the application.

MEASUREMENT OF ACHIEVED SAVINGS IS NOT A NECESSITY

With respect to the measurement of achieved savings, the CLD+ submits that the final guidelines should not prescribe that evidence associated with savings be a condition of recovery. The guidelines should recognize that each utility applies tracking and recording

[8] Appendix B, Page 8,9,10
[9] Examples include Toronto Hydro, Enbridge Gas Inc. and Hydro One Networks Inc.

at different levels, and that the use of the CLD+'s proposed ROE Threshold test encompasses both costs and savings in its underlying calculation.

The CLD+ submits that its Threshold test, which is described below and based on a utility's Achieved Return on Equity ("ROE"), will capture both expenditures and savings. The CLD+ position is that the OEB review of both a utility's COVID-related expenditures and savings should be done at a level of granularity no greater than what it currently provided during a rebasing application.

Utilities vary in the level of detail they set out in their budgets and the detail they implement to track actuals in their financials. The CLD+ submits that there is limited value in conducting a review at any greater level of detail than the current review process for rebasing applications. Additionally, given some line items within a budget are cyclical or have seasonal variations, there is year-over-year variation in expenditure that will further add 'noise' should an attempt to probe at levels of greater detail be conducted. A threshold test that is based on evaluating the utilities Achieved ROE versus Board Approved ROE is sufficient for the Board to conduct its prudence review.

In summary, and to support OEB Staff's development of their draft guidelines, the CLD+ provides the following summary of its modified proposal.

SUMMARY OF CLD+ PROPOSAL

The CLD+ is supportive of the "2 Group" approach proposed by OEB staff, as modified below.

GROUP A CATEGORY OF RECOVERABLE COSTS OR LOST REVENUES:

Proposed Treatment for Recovery of Group A Category: 100% recoverable up to an upper bound of recovery for Group A amounts, being set such that the utilities' Achieved ROE does not exceed 300 basis points above OEB-approved ROE, and are not subject to the CLD+ proposed Threshold Test.

Group A Eligible Costs or Lost Revenues:

i. Bad debt expenses: The amounts that are determined to be incremental per OEB staff's proposed "greater-of" test. These amounts would include all incremental bad debt whether directly attributable to the extension of the winter disconnection ban, or other factors.
ii. Utility specific customer relief program expenses: The administrative and program costs incurred by utilities to implement initiatives that delivered relief to customers during the pandemic.
iii. Implementation costs of emergency time-of-use (TOU) rates and deferred global adjustment charges for electricity distributors.
iv. Implementation and administration costs of CEAP and CEAP-SB.
v. Increased LEAP EFA funding.
vi. Lost revenues from certain reduced/waived specific service charges.

GROUP B CATEGORY OF COSTS OR LOST REVENUES:

Proposed Treatment for Recovery of Group B Category: Eligible for recovery of up to 50% of Group B balances subject to the applicant meeting the requirements of the CLD+ Proposed Threshold Test.

Group B Eligible Costs or Lost Revenues:
All utility identified COVID-related impacts not included in Group A. These impacts may include, but are not limited to:

i. Revenue losses and gains from changes in load or production
ii. Support for remote work capabilities
iii. Costs for personal protective equipment, enhanced sanitation, and compliance with physical distancing and quarantining protocols
iv. Financing costs (and savings) from changes in cash flows (and borrowing rates)
v. Savings related to corporate events, travel, meals, and accommodation
vi. Costs (and savings) associated with the reprioritization of capital programs
vii. Costs (and savings) associated with the reprioritization of maintenance programs

THE THRESHOLD TEST FOR RECOVERY OF GROUP B ITEMS

The applicant is eligible for recovery of amounts for items set out in Group B up to 100 basis points below the applicant's Board Approved ROE for that year ("Threshold"). Should the applicant's Achieved ROE fall below the Threshold (i.e. more than 100 basis points below the Approved ROE), the utility is eligible to recover 50% of the Group B balance up to the Threshold. By way of example; If a utility has a Group B balance of $10 million, its utility's Board Approved ROE is set at 9%, and the utility's Achieved ROE is 7.5 % after including the recovery of Group A amounts (i.e. the costs that are deemed 100% recoverable), then the utility is eligible to recover up to $5 million of the Group B balance capped at restoring the achieved ROE to the Threshold of 100 basis points below Board Approved ROE.

SECTION 3: SPECIFIC RESPONSES TO ELEMENTS OF THE STAFF PROPOSAL AND LEI'S REPORTS

ONTARIO'S UTILITIES HAVE SUPPORTED CUSTOMERS THROUGH THE PANDEMIC

In the Staff Proposal, OEB Staff note:

> "Utilities in Ontario have responded admirably to the pandemic. They have operated continuously, as they provide an essential service in producing and delivering energy to residences and businesses. The approach outlined in the Staff Proposal is partly based on the fact that most utilities have been able to withstand any severe financial impacts, but is also a reflection of how well

utilities have been able to manage their affairs as they have transitioned (and continue to transition) to their new operating "normal"."[10]

The CLD+ appreciates OEB Staff's recognition of the unique role utilities have played in supporting customers through the COVID-19 pandemic. It is relevant within the context of this consultation to recognize the various ways in which utilities supported customers, as the costs ultimately recorded in the Account will directly or indirectly result from these actions.

Specifically, utilities supported customers in at least three broad ways:

1) **Essential Service Providers:** As noted by OEB Staff, the delivery of energy to Ontarians was a critical and essential service provided by the utilities throughout the pandemic. Operation during this period presented a challenge for utilities, requiring agility, ingenuity, and incremental costs to operate.

2) **Government Mandated Support:** Utilities were required to respond rapidly to multiple directives and direction from various governments and government agencies. As recognized by OEB Staff in their cost recovery proposals, the nimble but sustained actions taken by utilities incurred incremental costs.

3) **Additional Utility Support Programs:** Beyond government-mandated assistance, some utilities developed and implemented support measures of their own to the benefit of customers during the pandemic. Some examples include:

    i. Creation of a Pandemic Relief Fund
    ii. Suspended late payment charges
    iii. Returned security deposits where appropriate and suspended new security deposit requests
    iv. Extended Winter Relief program beyond mandatory requirements
    v. Offered payment deferrals and longer/more flexible instalment plans
    vi. Deferred implementation of rate changes

These efforts provide important context for the specific responses of the CLD+ to the OEB Staff Proposal and LEI, as the CLD+ does not believe the efforts outlined above and the positive outcomes utilities have achieved for customers during the pandemic are consistent with some of the statements and proposals made.

THE CLD+'S REVIEW AND RESPONSE TO OEB STAFF'S PROPOSAL

As noted, the CLD+ recognizes that the Staff Proposal provides a starting point for the final guidelines regarding the Account to be issued by the Board on conclusion of this consultation. OEB Staff note that the Staff Proposal is "intended to be a starting point for rules surrounding the Account, with justification, but is also intended to elicit stakeholder comments and perspectives." The CLD+ also agrees with OEB Staff that "[t]he COVID-19 pandemic has raised unprecedented challenges for energy regulation." The CLD+

[10] Staff Proposal, page 2

appreciates OEB Staff's efforts to produce a timely and functional approach to governance of the Account in such an uncertain environment.

In the spirit of OEB Staff's approach to this initial proposal for treatment of the Account, the CLD+ proposed modifications and refinements in the previous section of this submission for the OEB's consideration. These recommendations are grounded in the CLD+'s concerns regarding the proposed principle of "necessity", and the implications of the Staff Proposal on the OEB's balancing of outcomes for stakeholders.

THE PRINCIPLE OF NECESSITY

The Staff Proposal introduces the principle of "necessity" for stakeholder consideration. It is offered as an unprecedented approach to underpin the Board's guidelines regarding the Account and ultimate assessment of incremental costs and lost revenues recorded therein. OEB Staff describe the principle of necessity by stating, "Recovery of any balances recorded in the Account should be subject to evidence that the costs are not only reasonable, but also necessary to the maintenance of the utility's financial viability."

The CLD+ submits that the OEB should reject a new principle of necessity. OEB Staff have not demonstrated it is permitted within the legal framework within with the OEB operates, and for the reasons discussed below, the CLD+ respectively submits it likely violates that framework. The CLD+ further submits that such a change to the regulatory framework requires much more justification and analysis than has been produced. It is the perspective of the CLD+ that the OEB has all the flexibility it requires to arrive at a just and reasonable result that fulfills its statutory mandate, without adopting a principle of necessity. The CLD+ notes with concern that this principle appears to have been proposed for the exclusive purpose of setting a higher standard for recovery of costs, while too narrowly examining the implications for utility performance for customers and financial viability.

The OEA on behalf of the CLD+ commissioned Aird & Berlis to provide a report on Legal and Regulatory Principles ("Legal Review"), found in Appendix A of this submission, to aid this consultation as it proceeds to develop draft guidelines. The Legal Review finds that OEB staff's proposed principle of necessity is unnecessary. At best, it would clutter the regulatory rules; at worst, it would stand at odds with the law of the land. It is a concept that does not exist in the OEB Act or other relevant statutes or case law, and the implications of implementing it are highly uncertain and problematic. Even with the principle of necessity, the Legal Report concludes that the arguments in support of it are wanting and problematic; that they are not a sound basis to deny utilities the recovery that they seek for the COVID-19 impacts on costs and revenues.

As described in detail beginning on page 6 of the Legal Review, the OEB is mandated to set just and reasonable rates. There are well-established legal and regulatory tests that delineate what that entails. As part of that, the requirement for utilities to demonstrate prudence is well-established within the context of energy regulation in Ontario. If anything, the principle of necessity cited by LEI is more akin to the idea of prudence in Ontario: that necessary costs (i.e. prudent costs) ought to be recoverable through rates – or put otherwise, that rates reflect costs incurred out of the necessity to provide the regulated service. However, as the Legal Review makes clear, this alternative

interpretation was not explored by OEB Staff as part of the process of importing the concept for consideration in this consultation.

As also discussed in the Legal Review, the mandate of the OEB is bounded, with legal principles such as the Fair Return Standard creating guardrails for the OEB in setting policy, and for OEB Panels in adjudicating applications. The Ontario Court of Appeal has also confirmed that the OEB is required to balance a number of sometimes competing goals in carrying out its mandate, including protecting the interests of consumers with respect to prices and maintaining a financially viable industry.

When customers experience difficult economic circumstances – for example, during a significant economic recession – it does not follow that utilities become disentitled to recovery of prudently-incurred costs. In fact, the Supreme Court of Canada addressed this directly: "Where costs are determined to be prudent, the regulator must allow the utility the opportunity to recover them through rates. The impact of increased rates on consumers cannot be used as a basis to disallow recovery of such costs." A new principle of necessity cannot undo this legal conclusion.

These are the sorts of legal and regulatory framework factors that any new principle needs to consider before it can be adopted. When asked at the January 14, 2021 stakeholder conference what evidence underpinned the requirement for a necessity principle, or what analysis was put into the sufficiency of the OEB's existing authority, OEB Staff appeared to confirm that this had not been done. Regardless, no such analysis has yet been put forward for review and comment by stakeholders. Establishing new and untested regulatory principles is a complicated affair, which requires significant time, investigation and contemplation.

LEI summarized its regulatory principles discussion in graphical form. While the remainder of the report provides some incremental verbiage beyond what appears in the summary, it appears as if the LEI deliverable may be solely from the tally of a key word search rather than an analysis. Among the key words LEI found in its search of American regulatory proceedings related to COVID-19 was the word "necessary". As noted in the Legal Review, what that word means in the jurisdictions in which it is used was not addressed by LEI or OEB Staff.

The leap that OEB Staff is trying to make with the principle of necessity is illustrated in the Staff Proposal where it points to struggling unregulated businesses. "Sharing the pain" is OEB Staff's partial justification for the proposal to share some costs borne within the Account between utilities and ratepayers. OEB Staff state that "[i]n the competitive environment, many businesses have incurred, and continue to incur, losses attributable to the pandemic." OEB Staff also note "the OEB's responsibility to act as a proxy for competition." When asked about the concept of necessity at the stakeholder conference held January 14, 2021, OEB Staff answered with their belief that a "higher bar" should be set for costs recovered through the Account, in line with comments on this subject in the Staff Proposal.

That businesses are incurring hardship is of course true, and the CLD+ members continue to assist their residential and business customers during what is, for many, an unprecedented challenge. While CLD+ appreciates that OEB Staff are seeking means to protect

consumers during a challenging time, specific negative outcomes for some (but not all) businesses in a competitive environment is not of itself a justification to drive any specific outcome in a regulated environment. The experience of utilities as essential workplaces has been unique to utilities, with the rapid onset of the pandemic requiring agile implementation of multiple government mandates to protect consumers, as well as the design and implementation of utility-specific approaches to help customers manage through crisis as previously described.

The CLD+ submits that it is inappropriate to include a new principle of necessity that is narrowly and solely related to the financial viability of the utility in question. In evaluating utility activities and costs in response to a global emergency the purpose of a "necessity" principle should logically be to assess whether or not the actions of utilities were in fact necessary (i.e. prudent). Instead, the principle as introduced simply asks the question whether recovery of the costs in question is necessary in order to maintain the financial viability of the utility applying for recovery. This narrow application of necessity is immediately problematic, as it all but states that a utility may well have incurred costs in support of its customers that were fully and justifiably necessary, however, those costs will not be eligible for cost recovery unless the utility's financial viability is in jeopardy absent such cost recovery.

It is worth noting that it is entirely possible that at the time individual utilities are applying for cost recovery, the price impact on customers may not be the significant concern implied by OEB Staff. It may well be that the Ontario economy has recovered robustly, and customers are in a good position to pay for the costs incurred to serve them during the pandemic and help the province recover and rebound. It is also possible that in the context of individual applications, the incremental rate impacts may not be more than what the OEB would approve, on balance, in the normal course. By looking at the Account and the policy in these dark days, it can be difficult to see that brighter future, but it is important that OEB policy through this consultation not inhibit reasonable outcomes in a better future.

Meanwhile, the OEB's authority to balance specific price impacts on customers with the resulting impacts on utility performance for customers (e.g. safety, reliability, customer service) and the impact on utility financial viability, is well established. This authority can be exercised without any change to the legal or regulatory frameworks. In this situation, where no new regulatory principle is required for the OEB to carry out its mandate, a novel and rushed regulatory principle is especially unsound and very likely to be offside the framework without any incremental benefits for the OEB or stakeholders.

APPROPRIATELY PRESERVING FINANCIAL INCENTIVES

In support of their cost sharing proposal, OEB Staff state:

> **"The need to preserve the financial incentives to mitigate costs and maximize savings attributable to the pandemic, a principle consistent with incentive ratemaking"[11]**

[11] Ibid., page 3

The CLD+ submits that within the context of a global emergency, a narrow focus on cost management is not consistent with the public interest, as utilities should be incented to support their customers in a variety of ways; not simply by minimizing total costs across their customer base. The balance between helping customers and managing costs can only be fully assessed through review of the prudence of individual utilities based on the specific facts presented in evidence. The costs that will ultimately be recorded in the Account, subject to substantiating evidence submitted by applicants, must be demonstrated to have been incurred in support of customers; whether through financial relief to customers, or simply by maintaining essential service through a global emergency. While the CLD+ appreciates the desire to maintain incentives for financial management, such incentives should not be in conflict with emergency actions taken for the benefit of customers.

Further, the Staff Proposal's definition of necessity being strictly related to the financial viability of the utility in question is similarly conflicting to the above excerpt. Were the necessity principle introduced as proposed, financially sound utilities would have no opportunity to apply for recovery of costs prudently incurred on behalf of their customers during a global pandemic. Only those utilities whose financial viability was in question would have access to recovery of certain costs; utilities whose financial strain may or may not be the result of COVID-19 as opposed to other factors. As such, this element of the Staff Proposal threatens existing financial incentives for sound fiscal management, rather than preserves it.

REASONABLY EXPECTED EARNINGS FLUCTUATIONS

In their proposal, OEB Staff recommend that the recovery of the Account balance should require:

> **"A need to demonstrate that earnings are beyond the range of reasonably expected fluctuations for a regulated utility"[12]**

The CLD+ disagrees that guidelines surrounding the Account should be based on the concept of impacts on earnings straying below 300 basis points less than Board-approved ROE, which in part appears based on the above statement. "Reasonably expected" fluctuations in earnings are based on reasonably expected circumstances. The COVID-19 pandemic is the very definition of unprecedented, and certainly cannot be described as an outcome that could have been reasonably expected by utility management, nor is it an outcome that could have been reasonably expected when establishing ROE parameters.

OEB Staff acknowledge this reality in part, when stating that there are "some aspects of the Z-factor that should apply to this Account."[13] However, OEB Staff's discussion goes on merely to describe supposed differences between the pandemic and "other unforeseeable events".[14] In particular, OEB Staff suggest that because COVID-19 impacted customers as well as utilities, and because it is a long-term and ongoing situation, the Z-Factor principles

[12] Ibid., page 11
[13] Staff Proposal, page 12
[14] Ibid.

are not comparable.[15] Such arguments struggle to hold up to scrutiny given other Z-Factor events, such as the storms referenced by OEB Staff, can similarly impact customers through damages to their property and extended shut-downs from energy outages. More importantly, these submissions are not at all supported in the description of Z-Factors laid out in the *Report of the Board on 3rd Generation Incentive Regulation for Ontario's Electricity Distributors*. OEB Staff appear to suggest that the COVID-19 pandemic was so unique and unexpected, that the regulatory construct (Z-Factor) designed to capture the impact of unique and unexpected occurrences is not applicable. The CLD+ submits this argument of COVID-19 being "too unique" is simply not tenable.

For clarity, the CLD+ is not suggesting costs in the Account should be treated as a Z-Factor as traditionally handled through Board processes. In the CLD+'s view, OEB Staff's position regarding the supposed differences between the pandemic and other Z-Factor occurrences is not logical, and should not be used to underpin the Staff Proposal for a threshold test which, as described below and in Appendix B, is more punitive than any approach yet adopted in North America. More so, the Staff Proposal cannot suggest that the COVID-19 pandemic is too unique for Z-Factor treatment, while simultaneously suggesting that earnings fluctuations from the pandemic should be deemed within the realm of "reasonably expected".

THE CLD+'S RESPONSE TO SUPPORTING INFORMATION FROM LEI RELIED ON BY OEB STAFF

In preparation for, and to support the OEB in its determination of its final guidelines, the CLD+ commissioned ScottMadden, Inc. ("ScottMadden") to provide a comparative and expanded jurisdictional review to that of LEI, as prepared for OEB Staff.

The report from ScottMadden is provided as Appendix B of this submission. The CLD+ would like to draw the OEB and stakeholder's attention to the key findings in the ScottMadden report ("Report") which are summarized under Key Takeaways[16]. At a high-level, the CLD+ observes that the findings in the Report, which reviewed 60 jurisdictions, compared to 23 being reviewed by LEI, provides a broader and more current picture of the actions and decisions made by regulators with respect to recording and recovery of COVID-19 related amounts throughout the U.S. and Canada.

The CLD+ submits that the Report provides a different jurisdictional scan and regulatory context for this consultation as it proceeds toward setting final guidelines.

If the Board was guided by the Report's findings, the OEB's final guidelines would reject Staff's use of "necessity" as a justification for its guidance, not implement a cost sharing mechanism, would allow for utility-specific proceedings to adjudicate the disposition of the Account, and utilize the regulator's existing regulatory rates application review processes and frameworks to evaluate a utilities disposition application. The CLD+ submits that this is how regulators in the U.S. and Canada have treated COVID-19 related costs or lost revenues.

[15] Ibid.
[16] Appendix B, Page 8,9,10

None of the 23 regulatory jurisdictions across the U.S. or Canada that have authorized the deferral of COVID-related costs in generic proceedings for all utilities has considered necessity when reviewing requests for cost recovery, and as of the Report's completion, the six jurisdictions (California, Illinois, Georgia, Maine, Maryland, Texas) that have approved cost recovery of COVID-19 costs, have done so without a condition of cost sharing.

In fact, in many jurisdictions, regulators have utilized existing ratemaking mechanisms to set out how their regulated entities can recover COVID-19 costs. These ratemaking mechanisms are similar to what exists in Ontario: these include revenue decoupling, rate riders and earnings sharing mechanisms.

The CLD+ submits that based on its review of the Report, Board Staff is proposing that the OEB implement the most penal framework that would exist across the U.S. and Canada, and for this reason, the OEB should reject the current approach set out by OEB Staff. The Report shows that there is no regulator that has proposed or approved a means test such as the one proposed by OEB Staff; a test that sets out a ceiling for recovery that is 300 basis points below the utilities' Board Approved ROE with the addition of 50% cost sharing for amounts below the means test threshold.

SECTION 4: CONCLUSION

The CLD+ thanks the OEB for the opportunity to provide these submissions, its continued support to expedite the consultation process, and Board Staff for producing a draft proposal and setting expectations for the issuance of draft guidelines.

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APPENDIX A: AIRD & BERLIS REPORT ON LEGAL AND REGULATORY PRINCIPLES

AIRD BERLIS

ONTARIO ENERGY BOARD

EB-2020-0133
CONSULTATION ON THE DEFERRAL ACCOUNT – IMPACTS ARISING FROM THE COVID-19 EMERGENCY

REPORT ON LEGAL AND REGULATORY PRINCIPLES

January 25, 2021

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Overview

This report is prepared at the request of the Ontario Energy Association, on behalf of the CLD+, to aid the Ontario Energy Board ("OEB") in considering regulatory principles associated with the treatment of incremental costs and lost revenues resulting from the COVID-19 emergency. Ontario and the world are in the midst of an extraordinary pandemic that has touched utilities and their customers in significant ways. One of the issues that has emerged in this OEB policy consultation is whether a new principle, called the "principle of necessity", should be added to the OEB's existing legal and regulatory framework as the OEB considers appropriate treatment of impacts of the pandemic.

The purpose of this report is not to undertake a comprehensive review of all of the legal and regulatory considerations that might have some bearing on the OEB's consideration of impacts of the pandemic. Instead, this report is aimed at bringing attention to certain fundamentals of the existing legal and regulatory framework. And, in doing so, the report will focus particularly on the suggested principle of necessity, which is not an established regulatory principle in OEB proceedings.

We see no inadequacy in the existing Ontario legal and regulatory framework that calls for the OEB to adopt the suggested principle of necessity in order to address matters relating to the Account. The analysis that, in our view, should be expected or required before any such regulatory principle is adopted has not been provided for the OEB's consideration. And it has not been made clear how the suggested principle comports with the Ontario legal framework nor how it would operate within Ontario's overall legal and regulatory framework.

The Consultation

On March 25, 2020 the OEB issued an accounting order[1] in which it ordered the establishment of Account 1509 – Impacts Arising from the COVID-19 Emergency (the "Account"), for electricity distributors to track incremental costs and lost revenues related to the COVID-19 emergency. The OEB

[1] https://www.oeb.ca/sites/default/files/OEBLtr-Accounting-Order-COVID-19-Emergency-20200325.pdf

established similar sub-accounts for natural gas distributors, electricity transmitters, and Ontario Power Generation, Inc. ("OPG").[2]

The OEB initiated this consultation on May 14, 2020.[3] In doing so, the OEB reiterated, as stated in its earlier letters, that it will assess any claimed costs and/or lost revenues associated with the Account when disposition is sought. The consultation will assist the OEB in developing guidance related to the Account and filing requirements, where appropriate, for the review and disposition of the Account.[4]

On December 16, 2020, OEB staff released an OEB Staff Proposal (the "Staff Proposal")[5] to advance the development of regulatory rules for the Account.[6] Five reports from London Economics International LLC ("LEI") were released and posted on the same day as the Staff Proposal. One of these reports (the "LEI Jurisdictional Review"), addresses regulatory principles, policies and accounting treatments applied in other jurisdictions in response to COVID-19.[7] The Staff Proposal and the LEI Jurisdictional Review (and certain other reports) were discussed during an OEB webinar on January 14, 2021 (the "Webinar").

Staff Proposal and Webinar Presentation

On the subject of regulatory rules, OEB staff recommends that existing and well-established regulatory principles should guide the scope and operation of the Account, "including the recovery of any balance in the Account and on what basis".[8]

However, the Staff Proposal also suggests the possibility of a new principle of "necessity" for stakeholder consideration, which OEB staff described in this way:

[2] OEB letters of March 25, 2020 and April 29, 2020.
[3] OEB EB-2020-0133 letter of May 14, 2020.
[4] *Ibid*, page 2.
[5] OEB Staff Proposal, Consultation on the Deferral Account – Impacts Arising from the COVID-10 Emergency, EB-2020-0133, December 16, 2020.
[6] Staff Proposal, page 6.
[7] *A Report on Regulatory Principles, Policies and Accounting Treatments Applied in Other Jurisdictions in Response to COVID-19*, prepared for the OEB by LEI, December 15, 2020.
[8] Staff Proposal, page 11.

> Recovery of any balances recorded in the Account should be subject to evidence that the costs are not only reasonable, but also necessary to the maintenance of the utility's financial viability.[9]

"Necessity" is mentioned in the Staff Proposal as part of a Means Test.[10] The gist of OEB staff's Means Test is that 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 basis points from a utility's approved Return on Equity.[11] The Staff Proposal says that "the lower end of this dead band is an important indicator for putting the necessity principle into quantifiable terms".[12] These points were reiterated in the OEB Staff presentation during the Webinar.[13]

LEI Jurisdictional Review and Webinar Presentation

The OEB retained LEI to prepare various reports to aid it during this consultation, including the LEI Jurisdictional Review. The scope of the LEI Jurisdictional Review included discussion of "regulatory principles: identification of the regulatory principles and policies being used, or expected to be used, by other regulators in their handling and review of COVID-19".[14]

The LEI Jurisdictional Review does not refer to a principle of necessity framed in a manner that makes recovery of costs, or account balances, contingent on evidence that such recovery is necessary to the maintenance of a utility's financial viability. What the LEI Jurisdictional Review does is list and describe seven "principles and qualifiers" that LEI has drawn from its review of orders and legislation in the 23 jurisdictions.

According to the results of LEI's work, only one of the seven principles and qualifiers was relied on in more than half of the 23 jurisdictions. The one regulatory principle relied on in more than half of the jurisdictions is "reasonable/just and reasonable".[15] More specifically, the LEI Jurisdictional

[9] *Ibid*, page 11.
[10] *Ibid*, page 13.
[11] *Ibid*, page 23.
[12] *Ibid*, page 13.
[13] OEB Webinar – Summary of Staff Proposal ("Staff Presentation"), January 14, 2001, slides 11 and 14.
[14] LEI Jurisdictional Review, page 3.
[15] *Ibid*, Figure 8, page 22.

Review says that "just and reasonable" was mentioned in 61% of the deferral account orders reviewed.[16]

Two of the other six principles or qualifiers, namely, "incremental costs" and prudence, were noted in more than one-third but less than one-half of the 23 jurisdictions. The other four principles or qualifiers, namely, "appropriate", "extraordinary", "necessary" and "regulatory certainty", were noted in less than one-third of the 23 jurisdictions.[17]

A principle of necessity as framed by OEB staff is not referred to in the presentation put forward by LEI for the webinar ("LEI Presentation"). The principle or qualifier identified by LEI and referred to as "necessary" is not included in the regulatory principles set out in the summary of key takeaways from the LEI Presentation.[18]

In short, LEI noted the use of the word "necessary" in a relatively small number of the 23 jurisdictions. LEI did not provide an analysis of how that word operated within the broader legal and regulatory frameworks of the jurisdictions where the word was used, nor did LEI offer an analysis of how that word would or could operate in the Ontario legal and regulatory framework.

The Existing Ontario Legal and Regulatory Framework

The OEB of course is a creature of statute. Its existence and authority rest in its "home statute", the *Ontario Energy Board Act, 1998* (the "OEB Act"),[19] and other legislation.[20] The OEB's exercise of its authority is governed by this legislation. But the legal framework for the OEB's exercise of its authority is not limited only to this legislation. It also includes court jurisprudence that pertains to the OEB specifically and provides legally-binding direction to the OEB regarding the interpretation and application of the governing legislation. And it includes legislation[21] and jurisprudence that addresses administrative

[16] *Ibid*, page 23.
[17] *Ibid*, Figure 8 and pages 22-25.
[18] LEI Presentation, slide 29.
[19] SO 1998, C 15, Sch B.
[20] One example of such other legislation is the *Municipal Franchises Act*, RSO 1990, c M.55.
[21] *Statutory Powers Procedure Act*, RSO 1990, c S.22.

law matters and principles with general application to administrative tribunals including, but certainly not limited to, the OEB.

Within this framework that provides legally-binding direction to the OEB regarding the OEB's exercise of its powers, the OEB develops its regulatory framework. The regulatory framework provides predictability to regulated and licensed entities and other stakeholders. Through codes, guidelines, and other instruments, the OEB sets the parameters of regulation. While the Ontario legal framework always prevails, the OEB has a well-established regulatory framework that has been developed over decades of regulation.

Within the regulatory framework (and always subject to the legal framework), the OEB carries out its work of regulation: policy-making, adjudication, and other functions within its mandate. In that respect, and as discussed later, the OEB performs a balancing that includes adhering to the legal framework, taking account of the circumstances of particular proceedings and, without fettering its discretion, giving due regard to the regulatory framework,.

The legal and regulatory framework exists as a whole, but the various elements within it are not interchangeable. Legal and regulatory principles are fundamentally different. While the OEB is legally required to follow applicable legislation and legal principles, it would be an error of law for the OEB to consider itself bound to follow regulatory principles or policies.

If a new regulatory principle, such as OEB staff's principle of necessity, is to be introduced, the principle must comport with the legal framework; compliance with the legal framework is not a matter of discretion or policy. Beyond the legal framework, it is important to understand how a new principle will modify or affect the existing and well-established regulatory framework and to consider its implications, including whether its effect may be to encumber or clutter the OEB's decision-making. But an analysis of the suggested new principle of necessity in the context of the existing Ontario legal and regulatory framework was not performed by LEI – indeed, it does not appear to have been within the scope of LEI's work - and was not addressed by OEB staff.

Important Aspects of the Ontario Legal Framework

Just and Reasonable Rates

This consultation is examining the regulatory framework for addressing COVID-19 impacts on utilities and brings into play the OEB's exercise of its rate-setting powers. The legal standard that governs the OEB's rate-setting mandate is just and reasonable rates. The legal standard is established legislatively within the OEB Act.[22] The just and reasonable rates standard has also been addressed in the jurisprudence, including two decisions of the Supreme Court of Canada issued in 2015.

One of the two Supreme Court decisions (the "OPG Decision") arose from the OEB's appeal regarding labour compensation costs for OPG's nuclear operations.[23] In the OPG Decision, the majority of the Supreme Court referred to an earlier decision of the same Court indicating that "fair and reasonable" rates are those "which, under the circumstances, would be fair to the consumer on the one hand, and which, on the other hand, would secure to the company a fair return for the capital invested".[24]

The second of the Supreme Court decisions issued in 2015 ("ATCO") involved the ATCO gas and electric utilities in Alberta.[25] In ATCO, the Supreme Court said that in Canadian law "just and reasonable" rates or tariffs are those that are fair to both consumers and the utility. Under a cost of service model, the Court said, rates must allow the utility the opportunity to recover, over the long run, its operating and capital costs.[26]

ATCO recognized that there were differences between the Alberta legislation considered in that decision and the OEB Act. Among other things, the Supreme Court noted that the Alberta legislation contained specific references to prudence, while the OEB Act does not.[27] But the Court did not find any difference between the ordinary meaning of a "prudent" cost and a

[22] For example, ss. 36(2) and s. 78(3) of the OEB Act.
[23] *Ontario (Energy Board) v. Ontario Power Generation Inc.*, 2015 SCC 44 (CanLII), [2015] 3 SCR 147, at paragraphs 16-17.
[24] OPG Decision, paragraph 15, referring to *Northwestern Utilities Ltd. v. City of Edmonton*, 1929 CanLII 39 (SCC), [1929] S.C.R. 186, at pages 192-3.
[25] *ATCO Gas and Pipelines Ltd. v. Alberta (Utilities Commission)*, 2015 SCC 45 (CanLII), [2015] 3 SCR 219, paragraph 32.
[26] ATCO, *supra*, at paragraph 7.
[27] ATCO, paragraph 32.

cost that could be said to be reasonable, noting that it would not be imprudent to incur a reasonable cost, nor would it be prudent to incur an unreasonable cost.[28]

The Supreme Court said in ATCO that a regulated utility must have the opportunity to recover its operating and capital costs through rates and, indeed, it described this as "a key principle in Canadian regulatory law".[29] The Court went on to say that a regulator must determine whether a utility's costs warrant recovery on the basis of their reasonableness — or, under Alberta legislation their "prudence". Where costs are determined to be prudent, the regulator must allow the utility the opportunity to recover them through rates.[30]

In the course of this discussion of recovery of reasonable or prudent costs, the Supreme Court set out another important principle or proposition, namely, that *the impact of increased rates on consumers cannot be used as a basis to disallow recovery of such costs*.[31] Consumer interests, the Court said, are accounted for in rate regulation by "limiting a utility's recovery to what it reasonably or prudently costs to efficiently provide the utility service". In other words, the regulatory body ensures that consumers only pay for what is reasonably necessary.[32]

Required Balancing of Statutory Objectives

In addition to the just and reasonable rates standard, the OEB Act sets out objectives that apply when the OEB is carrying out its responsibilities under the OEB Act, or any other statute, in relation to gas or electricity. These objectives do not over-ride or take precedence over the just and reasonable

[28] ATCO, paragraph 35.
[29] ATCO, paragraph 61.
[30] *Ibid*.
[31] *Ibid*. (Emphasis added.) A footnote to this statement in paragraph 61 of the ATCO decision indicates that regulators may, however, take into account the impact of rates on consumers in deciding how a utility is to recover its costs. Sudden and significant increases in rates may, for example, justify a regulator in phasing in rate increases to avoid "rate shock", provided the utility is compensated for the economic impact of deferring recovery.
[32] *Ibid*. The sentence which says that "consumers only pay for what is reasonably necessary" begins with the phrase "In other words". Thus, the words about paying for what is "reasonably necessary" refer back to the previous sentence in which the Court spoke of recovery of "what it reasonably or prudently costs to efficiently provide the utility service".

standard; as expressly stated in sections 1 and 2 of the OEB Act, the objectives guide the OEB as it carries out its responsibilities.

While the statutory objectives in respect of electricity and gas are not identical, they share a number of key features. These key features that guide the exercise of the OEB's responsibilities in relation to both electricity and gas include protecting the interests of consumers with respect to prices and the reliability and quality of service, as well as facilitating the maintenance of a financially viable industry.

As alluded to in the Staff Proposal,[33] when the OEB exercises its jurisdiction to fix or approve just and reasonable rates, it must balance the statutory objectives. Among other things, this includes achieving a balance between the objectives of protecting the interests of consumers with respect to prices, preserving performance for customers by the regulated utilities (*e.g.*, reliability and quality of service), and maintaining a financially viable industry. The Ontario Court of Appeal has confirmed, with specific reference to the statutory objectives, that, in carrying out its mandate, the OEB is required to balance a number of "sometimes competing goals".[34]

A balancing of the statutory objectives involves consideration of how a particular policy or decision will affect fulfillment of the sometimes competing objectives. Rather than a broad reference to economic hardship in the circumstances of the pandemic, considerations include, for example, whether price impacts at the time they would occur are, on balance, appropriate for the sake of the preservation, improvement, or ameliorated decline of utility performance, or in view of potentially deleterious effects on the financial viability of utilities.

No Fettering of Discretion

As touched on above, the legal framework governing the OEB's exercise of its powers includes jurisprudence that addresses administrative law matters and principles with general application to administrative tribunals including, but not limited to, the OEB. One such principle of administrative law is often referred to as the no fettering of discretion doctrine. It has been summarized in the following manner:

[33] Staff Proposal, pages 10-11.
[34] *Natural Resource Gas Ltd. v. Ontario Energy Board*, 2006 CanLII 24440 (ON CA), paragraph 18.

> Discretion must be exercised on an individual basis. While decision makers may take into account guidelines, general policies and rules, or try to decide similar cases in a like manner, a decision maker cannot fetter its discretion in such way that it mechanically or blindly makes the determination without analyzing the particulars of the case and the relevant criteria. … The decision maker may not adopt inflexible policies, as the existence of discretion inherently means that there can be no rule dictating a specific result in each case, and the flexibility and judgment that are an integral part of discretion may be lost.[35]

Accordingly, when the OEB ultimately considers the appropriate regulatory treatment of COVID-19 impacts on specific utilities, irrespective of the regulatory framework, principles, or rules that the OEB may establish in this consultation, it will be the responsibility of the Commissioner(s) hearing each application to consider the facts of the particular case.

Fair Return Standard

The Fair Return Standard was discussed at some length by the OEB in its Report on the Cost of Capital for Ontario's Regulated Utilities (the "Cost of Capital Report").[36] In the Cost of Capital Report, the OEB said that meeting the Fair Return Standard is not optional; it is a legal requirement.[37] More specifically, the OEB said that the Fair Return Standard is a legal concept that has been articulated in three seminal court determinations. The OEB went on to quote passages from each of the three seminal court decisions, one of which was *Bluefield Waterworks & Improvement Co. v. Public Service Commission of West Virginia et. al.*[38]

The passage from the *Bluefield* decision quoted in the Cost of Capital Report indicates, among other things, that: "From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business."[39] This statement

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[35] Guy Régimbald, "Legal Limits on the Exercise of Discretion" (Paper delivered at the Canadian Institute's 16th Advanced Administrative Law & Practice, Ottawa, October 25, 2016); https://www.canadianinstitute.com/advanced-administrative-law-practice-347l17-ott/wp-content/uploads/sites/1701/2016/10/Regimbald_315PM_day1.pdf

[36] EB-2009-0084 *Report of the Board on the Cost of Capital for Ontario's Regulated Utilities*, December 11, 2009.

[37] Cost of Capital Report, page 18.

[38] 262 U.S. 679 (1923).

[39] Cost of Capital Report, page 17.

highlights an important aspect of the Fair Return Standard: in order for a regulated utility to earn a fair return, it must be allowed an opportunity to recover its operating expenses and the capital costs of the business. Regardless of the ROE approved for a particular utility, it will be denied a fair opportunity to earn that return if it is denied a fair opportunity to recover its operating expenses.

Thus, in the OPG Decision, the majority of the Supreme Court said that, if recovery of operating costs is not permitted, the utility will not earn its cost of capital, which represents the amount investors require by way of a return on their investment in order to justify an investment in the utility.[40] The majority went on to note that this of course does not mean that the OEB must accept every cost that is submitted by the utility, nor does it mean that the rate of return to equity investors is guaranteed; in the short run, return on equity may vary. But the majority observed that any disallowance of costs to which a utility has committed itself has an effect on equity investor returns and this effect must be carefully considered in light of the long-run necessity that utilities be able to attract investors and retain earnings in order to survive and operate efficiently and effectively, in accordance with the statutory objectives of the OEB.[41]

The OEB's Regulatory Framework in the Context of this Consultation

OEB staff recommends that the OEB's longstanding regulatory framework for deferral and variance accounts – testing eligibility on the basis of causation, prudence and materiality – should apply to the amounts recorded in the Account.[42] More particularly with respect to the prudence criterion, OEB staff "recommends that final amounts should be recorded in the Account when the utility can demonstrate that it has acted prudently to minimize those impacts and has fully exploited all available cost-reductions and savings, including those that have become available in light of the pandemic".[43]

[40] OPG Decision, paragraph 16.
[41] OPG Decision, paragraph 17.
[42] Staff Proposal, page 14.
[43] Staff Proposal, page 15.

Pursuant to the regulatory framework, causation, prudence and materiality are also eligibility criteria for Z-factors.[44] OEB staff believes there are some aspects of the Z-factor that should apply to the Account.[45] OEB staff is of the view, though, that one of the primary differences between a typical Z-factor event and the pandemic is the impact on customers. OEB staff says that the pandemic that is leading to incremental utility costs and lost revenues is simultaneously taking an economic toll on ratepayers.[46]

OEB staff has not explained why due weight cannot be given to these propositions and recommendations through reliance on the existing legal and regulatory framework. While the Staff Proposal puts forward OEB staff's principle of necessity, no analysis has been provided of how this principle comports with the legal framework or how it would operate within the overall legal and regulatory framework. This leaves the OEB without evidence or supporting analysis for a change to the existing regulatory framework.

But, in addition to binding legislative directions and legal principles from the legal framework, the OEB can take guidance from a full range of existing regulatory principles and tools as it considers relevant to the Account. The sources of legal direction or regulatory guidance include the statutory just and reasonable standard, the statutory objectives, existing legal principles and well-established regulatory principles. No inadequacy in these many sources of direction and guidance has been identified that calls for the OEB to adopt OEB staff's principle of necessity in order to address matters relating to the Account. Even within the Staff Proposal there are certain propositions that can stand apart from a new necessity principle, such as a recommendation that recovery of the Account balance requires a "need to demonstrate that earnings are beyond the range of reasonably expected fluctuations for a regulated utility".[47]

Considering Ratepayers in the Context of the Consultation

There is no doubt that COVID-19 has dramatically impacted a vast number of households, businesses and other customers (also referred to as

[44] As stated at footnote 19, page 12, of the Staff Proposal, the Z-factor eligibility criteria are set out in the Report of the Board on 3rd Generation Incentive Regulation for Ontario's Electricity Distributors, Appendix: Filing Guidelines, Table 8, page V, July 14, 2008.
[45] Staff Proposal, page 12.
[46] *Ibid*.
[47] Staff Proposal, page 11.

ratepayers) of regulated utilities. It does not follow, though, that, when customers experience difficult economic circumstances – for example, during a significant economic recession – utilities become disentitled to recovery of prudently-incurred costs. In fact, the Supreme Court of Canada addressed this directly when it said: "Where costs are determined to be prudent, the regulator must allow the utility to recover them through rates. The impact of increased rates on consumers cannot be used as a basis to deny recovery of such costs.[48] A new principle of necessity cannot alter the law as stated by the Supreme Court.

OEB staff suggests the addition of a principle of necessity to the existing regulatory framework because of the pandemic, which has brought hardship to Ontario and Ontarians. But the extraordinary circumstances of the pandemic could readily lead one to the opposite view.

As has happened throughout Ontario society, regulated utilities have needed to step up and manage through unforeseen events and to do so while working through changes to usual practices, such as those summarized in the OEB's letter of March 27, 2020.[49] The message of OEB staff's approach apparently is that, after regulated utilities have risen to the challenges of extraordinary, unanticipated events reaching the magnitude of a global pandemic, the financial impact on utilities may be assessed on the basis of a new principle applied so as to limit recovery of prudently-incurred costs. The Staff Proposal does not discuss alternative views, one of which is that, when regulated utilities have met the call to manage through the extraordinary circumstances of a pandemic, the application of a new, unexpected standard, such as OEB staff's principle of necessity, represents the wrong signal (or "incentive") for utilities and does not fairly balance the statutory objectives.

Legal and Regulatory Considerations for this Consultation

Implications of OEB Staff's Principle of Necessity

The effect of OEB staff's principle of necessity is that amounts meeting the criterion of prudence - so as to be recorded in the Account - are eligible for

[48] ATCO, paragraph 61.
[49] OEB letter of March 27, 2020: Guidance to Electricity and Natural Gas Distributors on Providing Relief to Customers During the COVID-19 Emergency.

recovery only if they are “necessary to the maintenance of the utility’s financial viability”. In other words, based on OEB staff’s new principle, recovery of prudently-incurred costs, and other amounts meeting the prudence criterion, would not be allowed unless non-recovery would put at risk or threaten the utility’s financial viability.

While the OEB’s creation of the Account gave no assurance that all lost revenues or incremental costs would be recovered, it is important to consider the implications of adding a new principle to the existing regulatory framework many months after the Account was established. Especially when an emergency situation arises, it is understandable that regulatory details will be sorted out over time, but OEB staff’s approach brings into consideration whether the introduction of the suggested new principle at this time is closer to a retroactive modification of the regulatory framework itself.

Moreover, the basis upon which OEB staff proposes to change the regulatory framework in this consultation brings into question not only the proper and fair process for making such a change but also the level of analysis that the OEB should expect or require to support the addition of a new principle to the existing regulatory framework. OEB staff’s formulation of a principle of necessity apparently sprang from LEI’s identification of “necessary” as a word used in a relatively small number of the 23 jurisdictions surveyed by LEI. No analysis was provided of the legal and regulatory framework in each of those jurisdictions or of the extent to which the use of the word “necessary” connects back to the particular legal and regulatory framework in each jurisdiction. Again, no analysis was provided of how OEB staff’s principle comports with the Ontario legal framework or of how it would operate within Ontario’s overall legal and regulatory framework.

Meeting The Fair Return Standard

As discussed above, a utility will be denied an opportunity to earn a return meeting the Fair Return Standard if it is denied a fair opportunity to recover its operating expenses. It is difficult to see how the Fair Return Standard is met if recovery of a utility’s prudently-incurred costs is denied except when denial of recovery would put at risk the utility’s financial viability - unless, in

this context, maintaining financial viability is considered to be essentially one and the same as meeting the Fair Return Standard.[50]

But the Staff Proposal does not treat maintaining financial viability and meeting the Fair Return Standard as one and the same thing. This is made clear by the comments in the Staff Proposal about a Means Test. OEB staff's view is that the lower end of a dead band of 300 basis points from approved ROE is an "important indicator for putting the necessity principle into quantifiable terms".[51] For these purposes, however, *approved ROE* can be taken to represent the determination of a fair return in accordance with the Fair Return Standard. OEB staff's principle of necessity means the denial of prudently-incurred costs up to the point of reaching the lower end of a band that is 300 basis points below the return that meets the Fair Return Standard.

Balancing the Statutory Objectives

OEB staff's principle of necessity singles out only one of the statutory objectives: financial viability. Even though sections 1 and 2 of the OEB Act do not use the words "necessary" or "necessity", OEB staff have proposed a principle that, in the context of recovery of amounts required to meet the prudence criterion, effectively attaches a necessity test to the financial viability objective.

The Staff Proposal does not address how this approach (*i.e.*, bringing a necessity focus to one of the statutory objectives) represents, or is consistent with, an appropriate balancing of the objectives set out in the legislation. For example, OEB Staff recommends "recognition of the fact that both customers and utilities are adversely impacted from the same events".[52] But surely the OEB's balancing of legislatively-stated objectives - protecting the interests of consumers with respect to prices and maintaining a financially viable industry - allows full scope for recognition of these impacts without introducing the suggested necessity principle.

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[50] Note that, in the Cost of Capital Report (at page 18), the OEB referred to three standards or requirements comprising the Fair Return Standard, one of which is "enable the financial integrity of the regulated enterprise to be maintained (the financial integrity standard)". Later (at page 19), the OEB said: "…all three standards or requirements (comparable investment, financial integrity and capital attraction) must be met and none ranks in priority to the others."
[51] Staff Proposal, page 13, Staff Presentation, slide 14.
[52] Staff Proposal, page 11.

In short, the Staff Proposal does not make clear how a necessity test can be attached to one of the statutory objectives without altering the OEB's balancing of the legislatively-stated objectives (which, again, do not use the words "necessary" or "necessity"). Of course, the OEB cannot adopt a new regulatory principle so as to amend or alter legislation. Assuming that the intent of the Staff Proposal is *not* to attempt an alteration of the statutory objectives, it is unclear why the OEB, in considering "maintenance of the utility's financial viability",[53] should do anything other than take account of the objectives as they are set out in the OEB Act.

Considering the Ontario Legal and Regulatory Framework

As discussed above, any new regulatory principle adopted in this consultation must come within the limits placed on the OEB by the legal framework, including legal direction from the Supreme Court of Canada regarding the recovery of prudently incurred costs. Before changing the regulatory framework, the OEB must consider the effect of such a change on its balancing of sometimes competing objectives, as they are written in the OEB Act. The OEB should reject a new principle unless a proper and fair process for making such a change to the existing regulatory framework has been followed and the OEB has before it evidence or analysis to justify the change. It is important to remain mindful that the regulatory framework plays a crucial role for all stakeholders and full consideration should be given to the implications of modifying it, whether in extraordinary circumstances or not, and even as a "one-off". In this consultation, we do not see the analysis or even the process that, in our estimation, should be expected or required before OEB staff's new regulatory principle is adopted, or even considered for adoption, by the OEB.

[53] The words in quotation marks are part of the "principle of necessity", as framed by OEB staff.

APPENDIX B: SCOTTMADDEN REGULATORY TREATMENT OF COVID-19 RELATED COSTS: RESEARCH OF U.S. AND CANADIAN REGULATORY JURISDICTIONS

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Regulatory Treatment of COVID-19 Related Costs

Research of U.S. and Canadian Regulatory Jurisdictions

January 23, 2021

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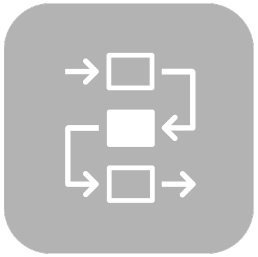

Background/Approach

Background

- The Ontario Energy Board (OEB) requested in its March 25, 2020 accounting order that electric and natural gas distributors record any incremental costs and lost revenues associated with the COVID-19 pandemic in a deferral account (Deferral Account)
- On May 14, 2020, the OEB launched a consultation on the Deferral Account (Docket No. EB-2020-0133)
  - The objective is to assist the OEB in the development of new accounting guidance related to the Deferral Account as well as filing requirements, where appropriate, for the review and disposition of the account
- To facilitate and focus stakeholder comments regarding any accounting guidance and/or filing requirements, on December 16, 2020 the OEB Staff released a proposal (Staff Proposal) to provide Staff's initial views regarding a potential framework for the operation of the Deferral Account
- To inform their proposal, the OEB Staff retained London Economics International, LLC (LEI) to develop a scan of regulatory principles, policies and accounting treatment applied in U.S. and Canadian jurisdictions in response to COVID-19 (the LEI Report)
  - LEI conducted a scan of all U.S. and Canadian jurisdictions; however, its findings are largely related to treatment of COVID-19 related costs and lost revenues in 23 jurisdictions that issued "jurisdiction-wide" decisions
    - "LEI chose to focus on these jurisdictions only, as the states/provinces that are authorizing deferral on a utility-specific basis have done so through different orders which prohibit aggregation at a state- or provincial-level" (LEI Report, p. 20)
- ScottMadden, Inc. (ScottMadden) was retained by the Ontario Energy Association (OEA) to prepare research on policies and ratemaking treatment related to COVID-19 costs in U.S. and Canadian regulatory jurisdictions; this research will be used to support OEA's response to the Staff Proposal
- To support ScottMadden's findings, the scope of research on COVID-19 cost recovery treatment:
  - Includes 51 U.S. jurisdictions (including Washington D.C.) and 9 Canadian jurisdictions
  - Includes regulatory policies and accounting treatment related to COVID-19 costs
  - Considers the full regulatory construct within each jurisdiction, such as alternative ratemaking mechanisms, that may also recover COVID-related costs

Background (Cont'd)

- COVID-19 costs are generally defined as incremental costs and/or lost revenues associated with the pandemic, including:
  - Direct Costs
    - Incremental operations and maintenance expense, such as for personal protective equipment (PPE), employee health screening, sanitation services, remote work accommodations, technology upgrades, temporary housing for essential workers and overtime pay
  - Bad Debt Expenses
    - Incremental bad debt or uncollectible expenses due to disconnection moratoriums and customers' inability to pay their bills
  - Savings / Offsets
    - Operations and maintenance expense savings due to decreased travel, reduced employee training, lower vehicle fuel costs, as well as utilization of government assistance programs, such as the U.S. CARES Act
  - Lost Revenues (due to Waived Fees)*
    - Foregone revenues due to suspension of late payment charges, disconnection / reconnection charges, and convenience fees, such as credit card payment fees
  - Lost Revenues (due to Lost Load or Decreased Sales)
    - Reduced revenues due to a decline in sales, especially among commercial and industrial customers related to lockdowns and business closures

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*LEI's report includes an additional category for "Lost Revenues due to Payment Arrangements" which was not evaluated by ScottMadden

Background (Cont'd)

- Regulatory Commissions, State Legislatures, and Provincial Governments across the U.S and Canada have addressed COVID-19 costs through various jurisdiction-wide and utility-specific proceedings. The range of outcomes in these proceedings includes:
  - Approval of cost recovery
    - Costs may be recovered through existing or special issue riders, securitization, or base rates
  - Approval of deferred accounting treatment and/or tracking of expenses, including:
    - Decisions on specific expenses
    - More general determinations, such as for "incremental" or "necessary" expenses
  - Postponed decisions
    - Generally due to insufficient information at the time
  - Denials of deferred accounting treatment or recovery
- However, within these same jurisdictions, existing alternative ratemaking mechanisms may also help recover COVID-19 costs:
  - Revenue decoupling mechanisms
    - Designed to true-up variances between actual revenues and target revenues. Thus, lower revenues associated with declining sales related to COVID-19 may be recovered through this mechanism
  - Bad debt trackers
    - Designed to true-up variances between actual bad debt expenses and target bad debt expenses. Thus, higher bad debt expenses associated with COVID-19 may be recovered through this mechanism
  - Earnings sharing mechanisms
    - Designed to reduce earnings volatility by sharing higher earnings with customers or recovering lower earnings from customers when the actual return on equity (ROE) deviates from the authorized ROE. Thus, higher costs and/or lower revenues related to COVID-19 may be recovered through this mechanism

Approach

- ScottMadden's approach to the assignment consisted of four phases:
  1. Reviewed the Staff Proposal and the LEI Report
  2. Reviewed 51 U.S. jurisdictions (included Washington D.C.) and 9 Canadian jurisdictions (Ontario was excluded)
  3. Reviewed regulatory filings and decisions related to COVID-19 costs to identify policies and accounting treatments, including:
     - Commission Orders
     - Utility compliance filings and reporting*
     - Other public-access materials
  4. Reviewed regulatory filings and decisions to examine the full regulatory constructs within certain jurisdictions, including:
     - Commission Orders
     - Utility compliance filings and reporting*
     - Other public-access materials
     - Industry research and analysis on alternative ratemaking mechanisms
       - Revenue decoupling mechanisms
       - Bad debt trackers
       - Earnings sharing mechanisms

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* In some cases, this information provided a better view on the expenses and lost revenues allowed to be deferred or tracked than Commission Orders

Key Takeaways

Key Takeaways

Regulators throughout the U.S. and Canada have recognized the impacts of COVID-19 on utilities, including higher expenses and lost revenues

- Most regulators have initiated proceedings to investigate these impacts and, in many cases, have approved deferred accounting treatment for incremental expenses and lost revenues. In addition, some regulators have examined the impacts in utility-specific proceedings, such as rate case filings
- In certain jurisdictions, regulators have utilized existing alternative ratemaking mechanisms to recover COVID-19 costs
- To date there have been no instances where cost recovery of COVID-related costs has been subject to being "necessary" to maintain a utility's financial viability

The scope of ScottMadden's findings was based on 60 jurisdictions, including those with (1) utility-specific authorizations, (2) pending authorizations and (3) no definitive actions to date

- In ScottMadden's view, utility-specific decisions can provide important guidance on regulatory policies and ratemaking treatment of COVID-19 costs

1. **ScottMadden's review included the full regulatory construct in each jurisdiction. The findings included specific policies and ratemaking treatment related to COVID-19 costs, as well as other regulatory mechanisms, such as revenue decoupling and trackers or riders, which may also recover costs and lost revenues related to COVID-19**
   - For example, the findings include jurisdictions that have bad debt riders that may be used to recover higher bad debt expenses related to COVID-19

Key Takeaways (Cont'd)

2. **ScottMadden's findings related to specific costs show very few cases where COVID-related cost recovery has been denied**

a.	COVID Direct Costs	52 percent of jurisdictions allow recovery, deferral or tracking
b.	Bad Debt Expenses	67 percent of jurisdictions allow recovery, deferral or tracking
c.	Savings / Offsets	47 percent of jurisdictions included cost offsets
d.	Lost Revenues due to Waived Fees	50 percent of jurisdictions allow recovery, deferral or tracking
e.	Lost Revenues due to Lost Load	18 percent of jurisdictions allow recovery, deferral or tracking
		62 percent (37) jurisdictions have not decided on the matter, of which 10 jurisdictions have a revenue decoupling mechanism approved for at least one utility

   - Most jurisdictions have allowed deferral or tracking of COVID-19 costs but have not yet reached a decision on the disposition/recovery of these costs

3. **In those jurisdictions that have approved cost recovery of COVID-related costs, no examples of cost-sharing or earnings tests were found as a condition of cost recovery**
   - Six jurisdictions (California, Illinois, Georgia, Maine, Maryland, Texas) have approved cost recovery of COVID-19 costs. None of the jurisdictions required an earnings test or cost sharing as a condition of cost recovery
   - The Michigan Public Service Commission mentions "shared sacrifice" in their discussion of COVID-related cost recovery, but no decision has been made on this issue (see Case No. U-20757, Order on July 23, 2020)
   - The Washington Public Service Commission considered a similar provision, but declined to adopt an earnings test as part of the approved guidance regarding deferred accounting of COVID-19 costs (see Docket U-200281, Order 01 on October 20, 2020)

Key Takeaways (Cont'd)

4. **In the 23 jurisdictions that have authorized the deferral of COVID-related costs in generic proceedings for all utilities, ScottMadden found no instances where "necessary" for recovery is applied in the context of maintaining a utility's financial viability**
   - For those jurisdictions with "reasonable and necessary" standards referenced in COVID-related orders/legislation, the context instead is similar to the context in which it is applied in that jurisdiction regarding the allowable costs to provide service to customers

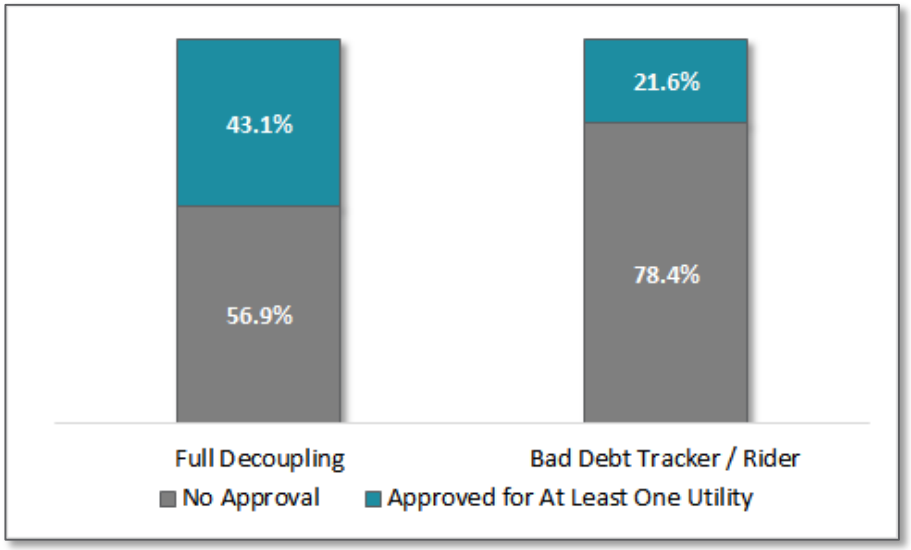
Findings

Finding #1: Findings Include the Full Regulatory Construct

ScottMadden's research was comprehensive

- ScottMadden's research included an examination of the full regulatory construct in each jurisdiction (i.e., specific COVID-19 policies as well as alternative ratemaking mechanisms, such as revenue decoupling and bad debt trackers)
  - The research found that 43.1% (22 of the 51 U.S. jurisdictions) have revenue decoupling for at least one utility in the jurisdiction
    - Revenue decoupling mechanisms may recover the impact of lower revenues and sales due to COVID-19
  - The research also found that 21.6% (11 of the 51 U.S. jurisdictions) have a bad debt tracker or rider for at least one utility in the jurisdiction
    - Bad debt trackers or riders may recover the impact of higher bad debt expense associated with moratoriums on disconnections
- Other alternative ratemaking mechanisms, such as earnings sharing mechanisms (ESM) and formula rate plans, may also help mitigate the impact of COVID-19 cost
  - For example, Vermont has a symmetrical ESM approved for Green Mountain Power that reduces the risk of under-earnings for the utility

Approval of Full Decoupling Mechanisms and Bad Debt Trackers in 51 U.S. Jurisdictions



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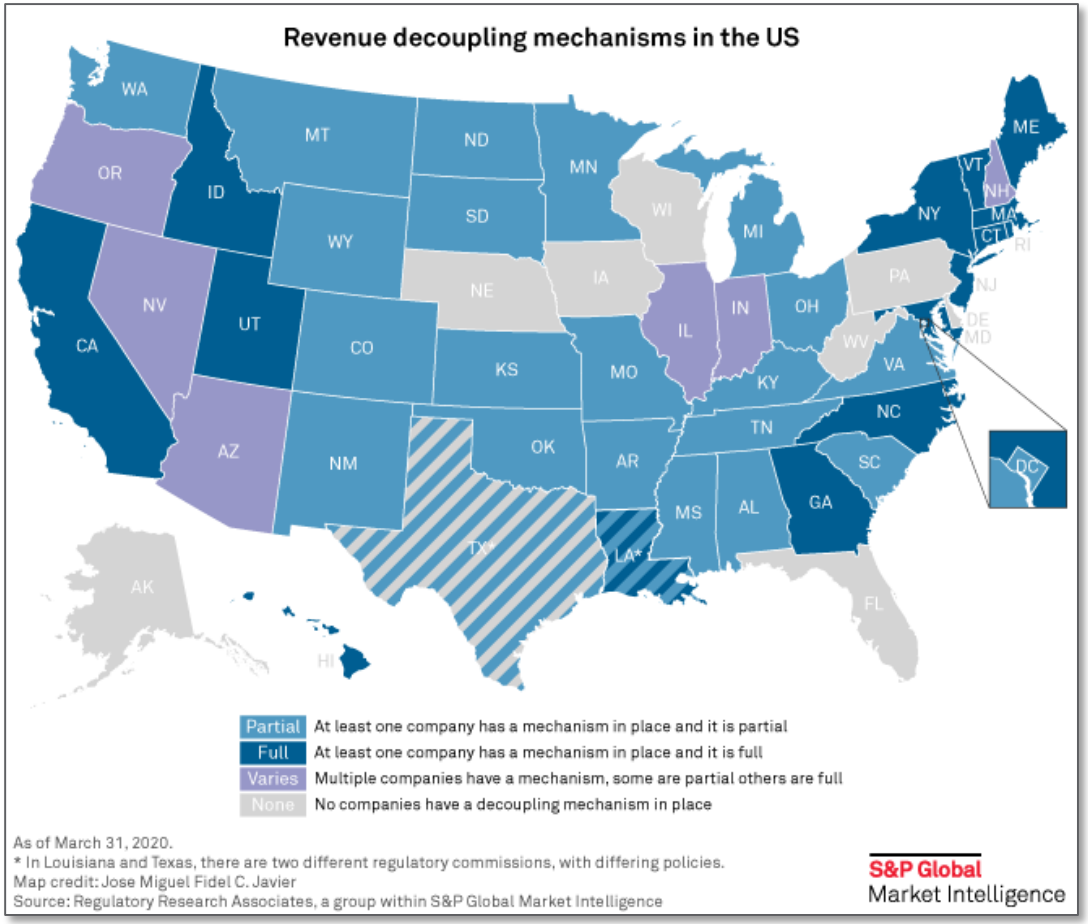
Finding #1: Findings Include the Full Regulatory Construct (Cont'd)

Revenue decoupling mechanisms may recover the impact of lower revenues and sales due to COVID-19

- For example, the Maine Public Service Commission recently approved changes to Central Maine Power Company's revenue-decoupling mechanism (RDM), merging the residential and commercial and industrial RDM classes into a single class. This change helped "resolve the Commission's equity concerns about the effects of the coronavirus pandemic" (see Docket No. 2020-00159, Order dated December 16, 2020)
- In its Order, the Commission explicitly rejected an option to "remove the pandemic-related effects from the RDM adjustment", instead relying on existing regulatory mechanisms to address COVID-19 impacts



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Finding #2: Findings Related to Specific Costs

ScottMadden's research findings included five expense / revenue categories:

A. Direct COVID-Related Expenses
B. Bad Debt Expenses
C. Consideration of Savings / Offsets
D. Lost Revenues due to Waived Fees
E. Lost Revenues due to Decreased Sales

For each expense / revenue category, ScottMadden identified the following range of Commission decisions:

Commission Decision / Regulatory Construct		Definition
Allowed to be Recovered		Commission has authorized recovery of expense / revenue category
Allowed to be Deferred or Tracked	**Tracker/Rider Approved for at Least 1 Utility**	Commission has authorized deferral or tracking of expense / revenue category. The jurisdiction also includes at least one utility with an alternative mechanism (e.g., trackers / riders, decoupling)
	No Tracker/Rider Approved	Commission has authorized deferral or tracking of expense / revenue category. The jurisdiction has no alternative mechanisms
No Decision on Issue	**Tracker/Rider Approved for at Least 1 Utility**	Commission has taken some action; however, not on this expense / revenue category. The jurisdiction includes at least one utility with an alternative mechanism
	No Tracker/Rider Approved	Commission has taken some action; however, not on this expense / revenue category. The jurisdiction has no alternative mechanisms
To Be Determined Later		Commission has recognized or discussed this expense / revenue category, but deferred judgement until more information is available
N/A - No Information		No information easily accessible / available
Denied		Commission has denied recovery of expense / revenue category

Finding #2: Findings Related to Specific Costs (Cont'd)

A. Direct COVID-Related Expenses

- ScottMadden found that 52% of jurisdictions have approved deferral or tracking of direct COVID-related expenses
- ScottMadden found two jurisdictions that have approved the recovery of direct COVID-19 costs:
  - The Maryland Commission previously authorized utilities to create a regulatory asset to record the incremental costs related to COVID-19 (see Order No. 89542); in Case No. 9645, the Commission approved Baltimore Gas and Electric Company's proposed amortization and inclusion in rates of this regulatory asset over a 5-year period (Case No. 9645, Order dated December 16, 2020)
  - The Illinois Commission approved a 'COVID-19 Special Purpose Rider' for water and gas utilities that allows recovery of COVID-19 related direct costs. (Docket No. 20-0309, Stipulation)
- Only one jurisdiction (Colorado) has denied recovery of direct COVID-19 costs; other jurisdictions have either ongoing proceedings or have made no decision on direct costs

ScottMadden Findings: Direct COVID-Related Expenses

Regulatory Treatment		All Jurisdictions
Allowed to be Recovered		2 (3%)
Allowed to be Deferred or Tracked	Tracker/Rider Approved for at Least 1 Utility	0 (%)
	No Tracker/Rider Approved	29 (48%)
No Decision on Issue	Tracker/Rider Approved for at Least 1 Utility	0 (%)
	No Tracker/Rider Approved	9 (15%)
To Be Determined Later		12 (20%)
N/A - No Information		7 (12%)
Denied		1 (2%)
Total Jurisdictions		**60 (100%)**
Jurisdictions with Allowance for Recovery, Deferral or Tracking		**31 (52%)**

Finding #2: Findings Related to Specific Costs (Cont'd)

B. Bad Debt Expenses

- ScottMadden found no jurisdictions that have denied recovery of incremental bad debt expenses to date
- 67% of jurisdictions have allowed either recovery, deferral or tracking of higher bad debt expenses
- ScottMadden found five jurisdictions that have approved the recovery of bad debt expenses
  - The California State Assembly authorized recovery of incremental under-collection amounts for 2020 through the issuance of bonds (Assembly Bill No. 913 Chapter 253)
  - The Maryland Commission approved recovery of bad debt expenses for Baltimore Gas & Electric (BGE) through a regulatory asset amortized over a five-year period beginning 2023 (Order No. 89678)
  - The Illinois Commission approved electric utilities with formula rate mechanisms can recover incremental bad debt via existing riders (Docket No. 20-0309, Stipulation)
  - The Texas Commission approved a rider mechanism for transmission and distribution utilities (TDUs) to collect funds utilized to reimburse TDUs and retail energy providers for unpaid bills from qualified residential customers (See Project No. 50664, Fourth Order)
  - The Georgia Commission approved issuance of credits to Marketers by Atlanta Gas Light (AGL) due to higher-than-normal bad debt expenses. The Commission authorized recovery for AGL of these credits through the Georgia Rate Adjustment Mechanism (Docket 42315, April 30 Order)

ScottMadden Findings: Bad Debt Expenses

Regulatory Treatment		All Jurisdictions
Allowed to be Recovered		5 (8%)
Allowed to be Deferred or Tracked	Tracker/Rider Approved for at Least 1 Utility	5 (8%)
	No Tracker/Rider Approved	30 (50%)
No Decision on Issue	Tracker/Rider Approved for at Least 1 Utility	1 (2%)
	No Tracker/Rider Approved	2 (3%)
To Be Determined Later		10 (17%)
N/A - No Information		7 (12%)
Denied		0 (%)
Total Jurisdictions		**60 (100%)**
Jurisdictions with Allowance for Recovery, Deferral or Tracking		**40 (67%)**

Finding #2: Findings Related to Specific Costs (Cont'd)

C. Consideration of Savings / Offsets

- ScottMadden found that 47% of jurisdictions allow or require tracking of cost savings to offset expenses
- Many jurisdictions have not yet reached a decision on this issue or have active proceedings ongoing
- ScottMadden found two jurisdictions that have approved this treatment of COVID-19 costs
  - The Maryland Commission in Order No. 89542, which authorized utilities to create a regulatory asset to record the incremental costs related to COVID-19, specifically stated that "(s)uch incremental costs shall also include any assistance or benefit received by the Utilities in connection with COVID-19, regardless of form, that would offset any COVID-19-related expenses." In Case No. 9645, Baltimore Gas and Electric Company proposed "the recovery of incremental COVID-19 costs, net of savings." This was approved by the Commission in its Order dated December 16, 2020
  - The Illinois Commission approved a 'COVID-19 Special Purpose Rider' for water and gas utilities that allows recovery of COVID-19 related direct costs, net of COVID-19 direct offsets (Docket No. 20-0309, Stipulation)

ScottMadden Findings: Consideration of Savings / Offsets

Regulatory Treatment		All Jurisdictions
Allowed to be Recovered		2 (3%)
Allowed to be Deferred or Tracked	Tracker/Rider Approved for at Least 1 Utility	0 (%)
	No Tracker/Rider Approved	26 (43%)
No Decision on Issue	Tracker/Rider Approved for at Least 1 Utility	0 (%)
	No Tracker/Rider Approved	13 (22%)
To Be Determined Later		11 (18%)
N/A - No Information		7 (12%)
Denied		1 (2%)
Total Jurisdictions		**60 (100%)**
Jurisdictions with Allowance for Recovery, Deferral or Tracking		**28 (47%)**

Finding #2: Findings Related to Specific Costs (Cont'd)

D. Lost Revenues due to Waived Fees

- Utilities have waived (voluntarily or via mandate) certain customer fees in most jurisdictions
- ScottMadden found that 50% of jurisdictions allow deferral or tracking of lost revenues due to waived fees
- ScottMadden found two jurisdictions that have approved the recovery of lost revenues due to waived fees
  - The Maryland Commission approved for BGE recovery of actual incremental COVID-19 costs (including lost revenues due to waived fees) through a regulatory asset (Order No. 89678)
  - The Illinois Commission approved a 'COVID-19 Special Purpose Rider' that allows recovery of foregone late fees and reconnection charges (Docket 20-0309, Stipulation)
- Only four commissions have denied recognition of lost revenues due to waived fees
  - The Kentucky and Florida Commissions found that lost revenues are not subject to deferred accounting (Kentucky) or inclusion in regulatory asset (Florida) [See Case No. 2020-00085, Dec. 30 Order (Kentucky); Order No. PSC-2020-0404-PAA-PU (Florida)]
  - The Colorado Commission Administrative Law Judge approved Settlement Agreement where utilities agreed to exclude lost revenues to be eligible for deferral, tracking, and recording as a regulatory asset (Proceeding 20V-0159EG, Decision R20-0597)
  - The Utah Commission concluded that exclusion of incremental late fees from the deferral account is "consistent with applicable law, reasonable, and in the public interest" (Docket No. 20-035-17, Sept. 15 Order)

ScottMadden Findings: Lost Revenues due to Waived Fees

Regulatory Treatment		All Jurisdictions
Allowed to be Recovered		2 (3%)
Allowed to be Deferred or Tracked	Tracker/Rider Approved for at Least 1 Utility	0 (%)
	No Tracker/Rider Approved	28 (47%)
No Decision on Issue	Tracker/Rider Approved for at Least 1 Utility	0 (%)
	No Tracker/Rider Approved	9 (15%)
To Be Determined Later		10 (17%)
N/A - No Information		7 (12%)
Denied		4 (7%)
Total Jurisdictions		**60 (100%)**
Jurisdictions with Allowance for Recovery, Deferral or Tracking		**30 (50%)**

Finding #2: Findings Related to Specific Costs (Cont'd)

E. Lost Revenues due to Decreased Sales

- ScottMadden found that 18% of jurisdictions allow deferral or tracking of Lost Revenue due to Decreased Sales
- ScottMadden found only one jurisdiction that has approved cost recovery of revenue shortfalls (California, through securitization)
- Five jurisdictions have denied consideration or excluded lost revenues due to decreased sales
  - The Florida Commission considered unanticipated demand shifts to be an inherent business risk
  - The Kentucky Commission took a narrow approach to deferrals, approving only incremental utility financing costs
  - The Indiana and Wisconsin Commissions have also denied deferral or tracking of lost revenues
    - It should be noted that in Indiana, gas utilities have revenue decoupling mechanisms in place
  - The Colorado Commission Administrative Law Judge approved a Settlement Agreement where utilities agreed to exclude lost revenues to be eligible for deferral, tracking, and recording as a regulatory asset (Proceeding 20V-0159EG, Decision R20-0597)
- Many jurisdictions have not yet addressed this issue or have on-going proceedings and thus have not reached a decision

ScottMadden Findings: Lost Revenues due to Decreased Sales

Regulatory Treatment		All Jurisdictions
Allowed to be Recovered		1 (2%)
Allowed to be Deferred or Tracked	Decoupling Approved for at Least 1 Utility	3 (5%)
	No Decoupling Approved	7 (12%)
No Decision on Issue	Decoupling Approved for at Least 1 Utility	10 (17%)
	No Decoupling Approved	16 (27%)
To Be Determined Later		11 (18%)
N/A - No Information		7 (12%)
Denied		5 (8%)
Total Jurisdictions		**60 (100%)**
Jurisdictions with Allowance for Recovery, Deferral or Tracking		**11 (18%)**

Finding #3: No Cost Sharing or Earnings Tests

ScottMadden found no examples of cost sharing or earnings tests for utilities having approved cost recovery of COVID-related expenses or lost revenues. ScottMadden found six jurisdictions where COVID-19 costs have been approved:

California

- The State Assembly authorized the recovery of lost revenue and incremental bad debt through the issuance of bonds
  - "It is the Intent of the Legislature to authorize the Public Utilities Commission to approve the securitization of revenue shortfalls associated with the economic effects of the COVID-19 pandemic" (Assembly Bill 913, Chapter 253 p. 2)
  - "the electrical corporation may file an application requesting the commission to issue a financing order to authorize the recovery of those just and reasonable costs and expenses" (Id., p. 2-3)
- The financing order can be authorized if either or both of the following criteria are met:
  1. "An incremental undercollection amount…as a percent of the forecasted amount of billed revenues for that year is at least 5 percent" (Id., p. 3)
  2. "An incremental undercollection amount equal to the residential and small business customer bad debt expense recorded for that year that exceeds the bad debt expense for that year that was adopted by the commission in the general rate case" (Id., pg. 3)

Illinois

- Commission approved electric utilities with formula rate mechanisms to recover incremental bad debt via existing riders
  - "Electric Formula Rate Utilities with an uncollectibles rider…should be permitted to switch from using net write-offs to using uncollectible accounts expense as set forth in FERC Account 904 for any uncollectible amounts accrued the 1st of the month of the Order through December 31, 2020, for collection through the uncollectible rider during the period June 2021 to May 31, 2022" (Docket No. 20-0309, Stipulation p. 14)
- Commission also approved a 'COVID-19 Special Purpose Rider' for water and gas utilities
  - "Each Water and Gas Utility may file tariffs pursuant to the special permission provisions of Section 9-201(a) of the Public Utilities Act, 220 ILCS 5/9-201(a), to implement, on less than forty-five (45) days' notice, a rider to recover its COVID-19 Related Costs (the COVID-19 Special Purpose Rider) subject to the Commission's reasonableness and prudency review" (Docket No. 20-0309, Stipulation p. 11)

Finding #3: No Cost Sharing or Earnings Tests (Cont'd)

Georgia

- The Commission approved issuance of credits to Marketers by Atlanta Gas Light (AGL) due to higher-than-normal bad debt expenses. The Commission authorized recovery for AGL of these credits through the Georgia Rate Adjustment Mechanism (GRAM), stating that:
  - "The Commission recognizes that an extension of the moratorium on SONPs [Shut Offs for Non-Payment] might contribute to higher-than-normal bad debt for the Marketers. Therefore, the Commission finds that it is reasonable to authorize AGL to issue credits to the Marketers for uncollected AGL base charges billed to Marketers during the moratorium…" (Docket No. 42315, 43115, April 30 Order p. 3)
  - "The Commission further finds that AGL can recover the lost revenue for the uncollected base charges through the revenue true-up ("RTU") process within the Georgia Rate Adjustment Mechanism ("GRAM")" (Id., p. 4)
- Georgia Rate Adjustment Mechanism (GRAM) adjusts rates based on quarterly and annual comprehensive regulatory reviews (for details, see: https://www.atlantagaslight.com/residential/pricing-and-rate-plans/gram.html)

Maine

- Commission revised Central Maine Power's revenue decoupling mechanism to mitigate lost C&I load revenue finding that:
  - "the effects of the pandemic will cause the RDM adjustment to act in an aberrational way, for the first time allowing a large and prolonged burden on C&I customers and a large reduction to residential customers" (Docket No. 2020-00159, Order p. 19)
  - Adding that "Based on our determinations that (a) the separation of the RDM classes into two servers no obvious purpose and (b) the inequities caused by the coronavirus pandemic can and should be mitigated, the Commission further simplifies CMP's RDM by ordering that its two RDM classes be combined into a single RDM class" (Id., p. 22)

Maryland

- Commission authorized regulatory asset recovery for Baltimore Gas and Electric Company as a part of multi-year rate plan
  - "the Commission grants authority to BGE to establish a regulatory asset for the recovery of actual incremental COVID-19 costs, net of savings and any financial benefits…over a five-year period beginning 2023. (Case No. 9645, Order No. 89678 p. 20)
  - The PUC approved BGE's methodology "to calculate the level of incremental pandemic-related write-offs by comparing the level of monthly write-offs at that point in time to the monthly uncollectible write-offs included in the historic test year from BGE's last rate case" (Id., p. 18)
  - The Commission also adopted Staff's proposal "that lost revenue (for late payment charges and service connections) and savings not be included in rate base and therefore not earn a return" (Id., p. 19)

Finding #3: No Cost Sharing or Earnings Tests (Cont'd)

Texas

- The Texas Commission approved the implementation of a rider by transmission and distribution utilities (TDUs) to "to facilitate funding (of) the COVID-19 Electricity Relief Program for customers within customer choice areas of the Electric Reliability Council of Texas (ERCOT)" (Project No. 50664, Fourth Order p. 8)
  - "The rider collects funds utilized to reimburse TDUs and REPs [retail energy providers] for unpaid bills from qualified residential customers experiencing unemployment due to the impacts of COVID-19" (Id., p. 8)

Finding #3: No Cost Sharing or Earnings Tests (Cont'd)

The only other jurisdictions where the notion of cost-sharing or "shared sacrifice" was proposed were Michigan and Washington State

- The Michigan Commission discussed the principle of "shared sacrifice" related to impact of COVID-19
  - The Commission states:
    - "While rate-regulated energy providers are lawfully entitled to recover reasonably and prudently incurred expenses related to the cost of service, this is also an opportunity for the utilities to share the economic burden that has been brought on by the pandemic and approach cost recovery with the spirit of shared sacrifice." (Case No. U-20757, July 23, 2020 Order)
  - The Michigan Commission has not ruled on this matter in the July 23rd Order
- The principle of "shared sacrifice" was also cited by intervenors in a Washington State proceeding. However, the Washington Commission declined to adopt any cost sharing or earnings test provisions (Docket U-200281)
  - In the proceeding, the Joint Advocates (Attorney General, Public Counsel, et al) requested three principles:
    1. Utilities should approach cost recovery with the spirit of shared sacrifice (citing the Michigan Commission language)
    2. Recovery of deferred COVID-19 costs in rates should be subject to an earnings test
    3. Utilities should zealously pursue and document cost savings
  - The Washington Commission rejected the Joint Advocates position and adopted guiding principles for cost recovery provisions in future proceedings

Finding #4: No Instances Where Financial Necessity was a Condition

In the 23 jurisdictions that have authorized the deferral of COVID-related costs in generic proceedings for all utilities, ScottMadden found no instances where "necessary" for recovery is applied in the context of maintaining a utility's financial viability. Instead, the reference to "necessary" is similar to the context in which it is applied in that jurisdiction regarding the allowable costs to provide service to customers

State	Orders/Legislation Related to Treatment of COVID-19 Costs	Relevant Procedural Rules	Costs recovered if needed to provide service	Costs recovered if needed to maintain financial viability
Arkansas	In future proceedings, the Commission will consider whether each Utility's request for recovery of these regulatory assets is ***reasonable and necessary***. The Commission will also consider in a future proceeding other issues, such as the appropriate period of recovery for the approved amount of regulatory assets, any amount of carrying costs thereon, any savings directly attributable to suspension of disconnects, and other related matters.	For the purpose of justifying the ***reasonableness*** of a proposed new rate schedule, a utility may utilize either a historical test period… or a forward-looking test period… upon which fair and reasonable rates shall be determined by the (APSC). However, the commission shall also permit adjustments to any test year so utilized to reflect the… changes in circumstances which may occur within twelve (12) months after the end of the test year where such changes are both ***reasonably known and measurable.*** (Arkansas Code § 23-4-406)	Yes	No
Hawaii	The Commission also stated that in future proceedings it would consider whether any Utility's request for recovery of these regulatory assets is ***reasonable and necessary***, as well as issues including the appropriate period of recovery for the approved amount of regulatory assets, any amount of carrying costs thereon, any savings directly attributable to suspension of disconnects, and other related matters.	The commission, upon notice to the public utility, may: (a)fter a hearing, by order… (r)egulate, fix, and change all such rates, fares, charges, classifications, schedules, rules, and practices so that the same shall be just and reasonable; (and) (d)o all things that are ***necessary*** and in the exercise of the commission's power and jurisdiction… are ***just and reasonable***… (to) provide a fair return on the property of the utility ***used and useful for public utility purposes***. (Hawaii Revised Statutes, § 269-16(b))	Yes	No

Finding #4: No Instances Where Financial Necessity was a Condition

State	Orders/Legislation Related to Treatment of COVID-19 Costs	Relevant Procedural Rules	Costs recovered if needed to provide service	Costs recovered if needed to maintain financial viability
Mississippi	It is now ordered that all affected utilities that are rate regulated by the Commission be allowed to defer to a regulatory asset account, all ***necessary and reasonable*** incremental costs or expenses to plan, prepare, stage, or react to protect and keep safe its employees and customers, and to reliably operate its utility system beginning with the date of the Governor's declared State of Emergency.	The allowable operating expenses of a utility for ratemaking purposes shall include all ***necessary, prudent and reasonable expenses incurred or to be incurred in the rendition of the utility's service.*** (Mississippi Public Utilities Rules, Rule 21.103.2)	Yes	No
Oklahoma	The Commission further finds that it will consider in future proceedings whether each utility's request for recovery of these regulatory assets is ***reasonable and necessary***, and that in said future proceedings, the Commission will also consider issues such as the incremental bad debt experienced over normal periods, appropriate period of recovery for any approved amount of regulatory assets, any amount of carrying costs thereon, and other related matters.	"Prudence review" means a comprehensive review that examines as fair, ***just, and reasonable***, a utility's practices, policies, and decisions ***regarding an investment or expense*** at the time the investment was made, or expense was incurred; including direct or indirect maximization of its positive impacts and mitigation of adverse impact upon its ratepayers, ***consideration of its ultimate used and useful nature***. (Title 165: Oklahoma Corporation Commission, Chapter 35. Electric Utility Rules 165:35-1-2)	Yes	No
Texas	In future proceedings, the Commission will consider whether each utility's request for recovery of these regulatory assets is ***reasonable and necessary***. The Commission will also consider in the future proceeding other issues, such as the appropriate period of recovery for the approved amount of regulatory assets, any amount of carrying costs thereon, and other related matters.	Only those expenses which are ***reasonable and necessary to provide service to the public*** shall be included in allowable expenses. (Texas Administrative Code, Title 16, Part 2, Subchapter J, Division 1, Rule §25.231 (b))	Yes	No

Finding #4: Case Study – Texas

- The State of Texas has adopted "reasonable and necessary" language regarding allowable operating expenses in determining the electric utility's cost of service
  - Sec. 36.051 of of the Texas Public Utility Regulatory Act (PURA) states that: "(i)n establishing an electric utility's rates, the regulatory authority shall establish the utility's overall revenues at an amount that will permit the utility a reasonable opportunity to earn a reasonable return on the utility's invested capital used and useful in providing service to the public in excess of the utility's ***reasonable and necessary*** operating expenses."
  - The Texas Administrative Code is a compilation of all state agency rules in Texas. The Public Utility Commission rules are under Texas Administrative Code, Title 16, Part 2. The Substantive Rules and Laws applicable to Electric Service Providers are included in Chapter 25
  - Rule §25.231 addresses Cost of Service, and part (b) Allowable expenses:

    "(b) Allowable expenses. Only those expenses which are ***reasonable and necessary to provide service to the public*** shall be included in allowable expenses.

    (1) Components of allowable expenses. Allowable expenses, to the extent they are ***reasonable and necessary***, and subject to this section, may include, but are not limited to the following general categories:

    (A) ***Operations and maintenance expense incurred in furnishing normal electric utility service and in maintaining electric utility plant used by and useful to the electric utility in providing such service to the public***."
- In only two cases, with respect to PURA, did we find a reference to "necessary" in terms of a utility's financial viability:
  - Section 36.054 states "(t)he inclusion of construction work in progress (CWIP) is an exceptional form of rate relief that the commission may grant only if the utility demonstrates that inclusion is ***necessary to the utility's financial integrity***."
    - In this case PURA is minimizing the regulatory lag in cost recovery for the utility (through the inclusion of CWIP in rate base), but is not denying cost recovery provided under existing regulatory mechanisms
  - Sec. 36.207 states "(a)ny (purchased power) mark-ups approved under Section 36.206 are an exceptional form of rate relief that the electric utility may recover from ratepayers only on a finding by the commission that the relief is ***necessary to maintain the utility's financial integrity***."
    - In this case, PURA is providing additional rate relief to the utility (by including a mark-up to purchased power costs), but is not denying cost recovery provided under existing regulatory mechanisms

Appendix

Research Notes

Summary of Commission Decisions

Commission Decision / Regulatory Construct		Direct Costs	Bad Debts	Savings / Offsets	Lost Revenue (Waived Fees)	Lost Revenue (Lost Load)
Allowed to be Recovered		2	5	2	2	1
Allowed to be Deferred or Tracked	Tracker/Rider Approved for at Least One Utility	0	5	0	0	3
	No Tracker/Rider Approved	29	30	26	28	7
No Decision on Issue	Tracker/Rider Approved for at Least One Utility	0	1	0	0	10
	No Tracker/Rider Approved	9	2	13	9	16
To Be Determined Later		12	10	11	10	11
N/A - No Information		7	7	7	7	7
Denied		1	0	1	4	5
Total Jurisdictions		**60**	**60**	**60**	**60**	**60**

Source: Alternative Rate Mechanisms S&P Global, Regulatory Research Associates as of Oct. 5, 2020

Research Notes (Cont'd)

	Allowance for Tracking / Deferral of Expenses					
State	Direct Costs	Bad Debts	Savings / Offsets	Lost Rev. (Waived Fees)	Lost Rev. (Lost Load)	Notes
Alabama	N/A	N/A	N/A	N/A	N/A	■ Commission has taken no definitive action on COVID-related utility costs
Alaska	Allowed Deferral or Tracking	Allowed Deferral or Tracking	No Decision on Issue	Allowed Deferral or Tracking	No Decision on Issue	■ Senate Bill 241 "A utility certified under AS 42.05 may record regulatory assets, to be recovered through future rates, for uncollectable residential utility bills and extraordinary expenses that result from the novel coronavirus disease (COVID-19)" (SB 241 p. 15) ■ Chugach Electric's April 17 Compliance filing (Docket I-20-001 p. 3) included incremental overtime pay, extra materials, lost late fee revenue, and uncollectible expense categories in a regulatory asset
Arizona	TBD Later	TBD Later	TBD Later	TBD Later	TBD Later	■ Arizona Corporation Commission rejected a state-wide accounting order in a May 19 open meeting (S&P Global, *Ariz. Regulators reject blanket order for utility COVID-19 cost tracking* May 21, 2020) ■ No decisions have been made in the jurisdiction yet ■ Southwest Gas has a full revenue decoupling mechanism
Arkansas	Allowed Deferral or Tracking	Allowed Deferral or Tracking	Allowed Deferral or Tracking	Allowed Deferral or Tracking	No Decision on Issue	■ "Commission authorizes each of these utilities to establish regulatory assets to record costs resulting from the suspension of disconnections" (Docket No. 20-012-A, Order No. 1 p. 3) ■ Commission adopted Staff's Quarterly Report Form which "includes the categories of (1) Uncollectible Accounts Expense…(2) Non-payment of Fees…(3) Direct Cash Expenses…and (4) Savings" (Order No. 3 p. 1)

"RDM" stands for Full Revenue Decoupling Mechanism
"URM" stands for Uncollectibles Recovery Mechanism

Source: Alternative Rate Mechanisms S&P Global, Regulatory Research Associates as of Oct. 5, 2020

Research Notes (Cont'd)

	Allowance for Tracking / Deferral of Expenses					
State	Direct Costs	Bad Debts	Savings / Offsets	Lost Rev. (Waived Fees)	Lost Rev. (Lost Load)	Notes
California	No Decision on Issue	Allowed Recovery	No Decision on Issue	Allowed Deferral or Tracking	Allowed Recovery	■ Commission instructed utilities to "suspend disconnection for nonpayment and associated fees, waive deposit and late fee requirements for residential customers" and "In order to allow for recovery of expenses reasonably incurred while complying with this Resolution, electric and gas utilities subject to this Resolution shall each establish a COVID-19 Pandemic Protections Memorandum Account (CPPMA), to book only those costs associated with protections ordered by this resolution" (Resolution M-4842, p. 5-6) ■ Assembly Bill No. 913 allows "an electrical corporation to file an application requesting the commission to issue a financing order to authorize the recovery of certain incremental undercollection amounts for calendar year 2020 through the issuance of bonds…An electrical corporation may file an application requesting the commission to issue a financing order to authorize the recovery of verified incremental undercollection amounts for calendar year 2020 through fixed recovery charges pursuant to this article, if an electrical corporation's annual true-up advice letter is accepted and either or both of the following incremental undercollection amounts are verified for calendar year 2020: (i) An incremental undercollection amount equal to the difference between the forecasted amount of billed revenues for that year, based on the authorized sales forecast, and the revenues actually billed by an electrical corporation with respect to all revenue balancing accounts, if the incremental amount as a percent of the forecasted amount of billed revenues for that year is at least 5 percent. (ii) An incremental undercollection amount equal to the residential and small business customer bad debt expense recorded for that year that exceeds the bad debt expense for that year that was adopted by the commission in the general rate case, if the incremental undercollection amount is otherwise eligible for recovery in rates." (AB No. 913, Ch. 253 p. 1-3) ■ All major state utilities have full revenue decoupling mechanism

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"RDM" stands for Full Revenue Decoupling Mechanism
"URM" stands for Uncollectibles Recovery Mechanism

Source: Alternative Rate Mechanisms S&P Global, Regulatory Research Associates as of Oct. 5, 2020

Research Notes (Cont'd)

	Allowance for Tracking / Deferral of Expenses					
State	Direct Costs	Bad Debts	Savings / Offsets	Lost Rev. (Waived Fees)	Lost Rev. (Lost Load)	Notes
Colorado	Denied	Allowed Deferral or Tracking	Denied	Denied	Denied	■ Commission Administrative Law Judge approved Settlement Agreement among all gas and electric utilities whereby "The parties agree that only incremental bad debt expenses experienced in comparison to normal periods are eligible for deferral, tracking, and recording as a regulatory asset" (Proceeding No. 20V-0159EG, Decision No. R20-0597 p. 5) ■ "The Agreement provides that no other capital costs, operation and maintenance (O&M) costs, or other savings resulting from the Utilities' response to the pandemic are eligible to track or defer for the period covered by the Agreement for any of the Petitioners." (Id., p. 6)
Connecticut	Allowed Deferral or Tracking	Allowed Deferral or Tracking	No Decision on Issue	Allowed Deferral or Tracking	Allowed Deferral or Tracking w/ RDM	■ "Order No. 7 - Public Service Utilities shall maintain a detailed record of costs incurred and revenues lost in accordance with Section II of this Interim Decision as a direct result of (1) implementing Order Nos. 1 – 4, and (2) the COVID-19 Payment Program as a described in Section I, and may establish a regulatory asset to track such costs" (Docket No. 20-03-15, April 29 Interim Decision p. 4) ■ United Illuminating December 15th Compliance Filing included incremental bad debt, working capital, actual vs. forecasted usage by customer class ■ Eversource's December 16th Compliance Filing included bad debt, actual vs. forecasted utility usage, as well as other costs such as lost revenue due to late payment fees and cost "to safely perform our public service" (Docket No. 20-03-15, Cover Letter and Attachment 3) ■ All 5 major utilities have full revenue decoupling mechanism
Delaware	Allowed Deferral or Tracking	Allowed Deferral or Tracking	Allowed Deferral or Tracking	Allowed Deferral or Tracking	No Decision on Issue	■ Commission said, "Utilities to create a regulatory asset to record the incremental costs relating to COVID-19" (Docket No. 20-0286, Order No. 9588 p. 2) ■ Delmarva October 30 Costs Report included bad debt expense, lost revenue – fees, direct cost (personal protective equipment, sanitization services, etc.), and offsets

"RDM" stands for Full Revenue Decoupling Mechanism
"URM" stands for Uncollectibles Recovery Mechanism

Source: Alternative Rate Mechanisms S&P Global, Regulatory Research Associates as of Oct. 5, 2020

Research Notes (Cont'd)

	Allowance for Tracking / Deferral of Expenses					
State	**Direct Costs**	**Bad Debts**	**Savings / Offsets**	**Lost Rev. (Waived Fees)**	**Lost Rev. (Lost Load)**	**Notes**
Hawaii	No Decision on Issue	No Decision on Issue	Allowed Deferral or Tracking	Allowed Deferral or Tracking	No Decision on Issue w/ RDM	■ "The Commission authorizes each of these utilities to establish regulatory assets to record costs resulting from the suspension of disconnections" (Non-Docketed, Order No. 37125 p. 5) ■ Commission adopted reporting requirements in Order No. 37506 including waived late fees and CARES Act funding (Docket 2020-0209 p. 13-14) ■ All utilities have full revenue decoupling mechanism
Idaho	Allowed Deferral or Tracking	Allowed Deferral or Tracking	Allowed Deferral or Tracking	Allowed Deferral or Tracking	TBD Later	■ "Commission finds it fair, just, and reasonable to permit all utilities that have applies – or those that submitted comments and requested authority - to book Emergency-related expenses to FERC Account 182.3" (Case GNR-U-20-03, Order No. 34718 p. 7) ■ Order approved inclusion of incremental bad debts, operations and maintenance (O&M) costs, waived late payment fees, and benefits from CARES Act NOL provision in regulatory asset, and separate tracking for reduced sales revenue from customers not included in "Fixed Cost Adjustment" mechanism (Id., p. 10) ■ 3 of 4 state utilities have full revenue decoupling mechanism
Illinois	Allowed Recovery	Allowed Recovery	Allowed Recovery	Allowed Recovery	No Decision on Issue w/ RDM	■ Commission approved Stipulation agreements separately for small and large utilities operating in the state (Docket No. 20-0309, June 18 Order) ■ For Electric Formula Rate Utilities, "COVID-19 Related Costs shall be composed of COVID-19 Direct Costs net of COVID-19 Direct Offsets…Electric Formula Rate Utilities may recover COVID-19 Related Costs as delivery services costs" (Id. p. 13) ■ Also, "Electric Formula Rate Utilities with an uncollectibles rider subject to 220 ILCS 5/16-111.8 that calculates uncollectible amounts using net write-offs should be permitted to switch from using net write-offs to using uncollectible accounts expense… accrued from the… (date) of the Order through December 31, 2020, for collection through the uncollectible rider during the period June 2021 to May 2022. (Id. p. 14) ■ [Continued on next page]

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"RDM" stands for Full Revenue Decoupling Mechanism
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Source: Alternative Rate Mechanisms S&P Global, Regulatory Research Associates as of Oct. 5, 2020

Research Notes (Cont'd)

	Allowance for Tracking / Deferral of Expenses					
State	Direct Costs	Bad Debts	Savings / Offsets	Lost Rev. (Waived Fees)	Lost Rev. (Lost Load)	Notes
Florida	Allowed Deferral or Tracking	Allowed Deferral or Tracking	Allowed Deferral or Tracking	Denied	Denied	■ Commission approved accounting orders for Gulf Power, Chesapeake Utilities (CPK), and Utilities Inc. ■ In CPK case, the Commission said, "we approve the recording of incremental bad debt expense associated with COVID-19, and safety-related costs that are limited to those expenses that are directly and solely attributable to the health and safety of the Companies' employees and its customers during the COVID-19 pandemic" (Order No. PSC-2020-0404-PAA-PU, Docket No. 20200194-PU p. 3) ■ Commission added that "On the other hand, lost revenue is not an appropriate category to be included within a regulatory asset" (Id., p. 3) ■ Lastly, Commission said "we direct the Companies to track any assistance or benefits they receive in connection with COVID-19, regardless of form or source, that would offset any COVID-19-related expenses." (Id., p. 3)
Georgia	Allowed Deferral or Tracking	Allowed Recovery	No Decision on Issue	No Decision on Issue	No Decision on Issue w/ RDM	■ Commission said, "Georgia Power shall be allowed to defer the incremental cost of bad debt resulting from the suspension of disconnections" (Docket No. 42516, April 7 Order p. 2) ■ Commission subsequently authorized deferral of "other incremental costs" including PPE/cleaning supplies, overtime pay, meal vouchers, printing/transportation services, cleaning services and temporary housing (Docket No. 42516, July 7 Order p. 2) ■ Commission also found "AGL [Atlanta Gas Light] can recover the lost revenue for the uncollected base charges through the revenue true-up…within the Georgia Rate Adjustment Mechanism" (Docket No. 42315, 43115, April 30 Order p. 4) ■ Georgia Rate Adjustment Mechanism (GRAM) adjusts rates up or down based on quarterly and annual comprehensive regulatory reviews: https://www.atlantagaslight.com/residential/pricing-and-rate-plans/gram.html ■ Liberty has full revenue decoupling mechanism

"RDM" stands for Full Revenue Decoupling Mechanism
"URM" stands for Uncollectibles Recovery Mechanism

Source: Alternative Rate Mechanisms S&P Global, Regulatory Research Associates as of Oct. 5, 2020

Research Notes (Cont'd)

	Allowance for Tracking / Deferral of Expenses					
State	Direct Costs	Bad Debts	Savings / Offsets	Lost Rev. (Waived Fees)	Lost Rev. (Lost Load)	Notes
Illinois	Allowed Recovery	Allowed Recovery	Allowed Recovery	Allowed Recovery	No Decision on Issue w/ RDM	■ For Water/Gas Utilities: "COVID-19 Related Costs shall be composed of (1) COVID-19 Direct Costs net of COVID-19 Direct Offsets; (2) COVID-19 Foregone Late Fees; (3) COVID-19 Foregone Reconnection Charges; and (4) COVID-19 Bill Payment Assistance Program Amounts" (Id., p. 9) ■ "Each Water and Gas Utility may file tariffs pursuant to the special permission provisions of Section 9-201(a) of the Public Utilities Act…to implement …a rider to recover its COVID-19 Related Costs (the COVID-19 Special Purpose Rider)" (Id. p. 11) ■ Ameren and Commonwealth Edison have full revenue decoupling mechanisms, Commonwealth Edison also has a uncollectibles recovery mechanism
Indiana	TBD Later	Allowed Deferral or Tracking	TBD Later	Allowed Deferral or Tracking	Denied	■ "Indiana utilities are authorized to use regulatory accounting for COVID-19 related impacts directly associated with any prohibition on utility disconnection, collection of certain utility fees (i.e., late fees, convenience fees, deposits, and reconnection fees), and the use of expanded payment arrangements, as well as COVID-19 related uncollectible and incremental bad debt expense" (Cause No. 45380, Phase 1 Order, p. 9-10) ■ Commission declined inclusion of O&M costs noting "we find this request is better addressed in Phase 2" and lost load revenue stating, "we fail to see how creation of a regulatory asset for lost revenues would be in the public interest under current circumstances absent a financial emergency to the utility that impacts its ability to provide safe and reliable service" (Id., p.8-9) ■ Gas utilities have full revenue decoupling mechanism or uncollectibles recovery mechanism

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Source: Alternative Rate Mechanisms S&P Global, Regulatory Research Associates as of Oct. 5, 2020

Research Notes (Cont'd)

State	Allowance for Tracking / Deferral of Expenses: Direct Costs	Bad Debts	Savings / Offsets	Lost Rev. (Waived Fees)	Lost Rev. (Lost Load)	Notes
Iowa	Allowed Deferral or Tracking	Allowed Deferral or Tracking	Allowed Deferral or Tracking	Allowed Deferral or Tracking	No Decision on Issue	■ "Rate-regulated utilities may utilize a regulatory asset account to track the increased expenses and other financial impacts, including revenue changes" (SPU 2020-0003, May 1 Order p. 6) ■ "The Board also considers it necessary to track any savings resulting from reduction or changes in service that result from the pandemic" (ARU-2020-0150, August 6 Order p. 7) ■ Interstate Power and Light's October compliance filing included (1) bad debt, (2) foregone fees, (3) overtime pay, and (4) non-labor expense
Kansas	Allowed Deferral or Tracking	Allowed Deferral or Tracking	Allowed Deferral or Tracking	Allowed Deferral or Tracking	Allowed Deferral or Tracking	■ "Gas Utilities may identify, track, document, accumulate, and defer in a regulatory asset extraordinary costs and lost revenue, plus carrying costs, associated with the COVID-19 pandemic" (Docket No. 20-GIMG-423-ACT, July 9 Order p. 6) ■ Commission approved an electric application stating that "Evergy may identify, track, document, accumulate, and defer in a regulatory asset extraordinary costs and lost revenue, plus carrying costs, associated with the COVID-19 pandemic" adding that the company must also "track and report any federal or state assistance they receive related to the COVID-19 pandemic." (Docket No. 20-EKME-454-ACT, July 9 Order p. 5) ■ Evergy (Electric) July compliance filing includes tracking for bad debt, direct costs, offsets, waived late fees, and lost load revenue by class
Kentucky	No Decision on Issue	TBD Later	No Decision on Issue	Denied	Denied	■ "Utilities were expressly permitted to apply and defer carrying charges to past-due amounts paid pursuant to a payment plan" but "revenue lost from reduced sales, forfeited late fees, or forfeited reconnection fees…are not subject to deferred accounting" (Case No. 2020-00085, Dec. 30 Order p. 2, 4) ■ In prior filing, Commission said "circumstances may necessitate changes in how utilities accrue or estimate bad debt expense, the Commission will defer passing judgment on those impacts on rates until a utility's next rate case" (Sept. 21 Order p. 12) ■ Columbia Gas (NiSource) has a uncollectibles recovery mechanism

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"URM" stands for Uncollectibles Recovery Mechanism

Source: Alternative Rate Mechanisms S&P Global, Regulatory Research Associates as of Oct. 5, 2020

Research Notes (Cont'd)

	Allowance for Tracking / Deferral of Expenses					
State	Direct Costs	Bad Debts	Savings / Offsets	Lost Rev. (Waived Fees)	Lost Rev. (Lost Load)	Notes
Louisiana	Allowed Deferral or Tracking	Allowed Deferral or Tracking	No Decision on Issue	Allowed Deferral or Tracking	No Decision on Issue w/ RDM	■ Utilities are "authorized to record, as a regulatory asset, expenses incurred from the suspension of disconnection and collection of late fees imposed by the Disconnection Orders. Additionally, all public utilities are entitled to formally petition the Commission to recover, at a later date, the direct costs incurred as a result of the effect of the Disconnection Orders, including but not necessarily limited to administrative costs" (Special Order 44-2020 p.3) ■ New Orleans City Council authorized Entergy to track "the unreimbursed portion of uncollectible expenses" (Resolution R-20-133 p. 4) ■ Entergy and CenterPoint Energy have full revenue decoupling mechanism
Maine	TBD Later	TBD Later	TBD Later	TBD Later	Allowed Recovery through RDM	■ Maine commission opened a Notice of Inquiry (Docket No. 2020-00136) to examine the financial impacts of the coronavirus pandemic on utilities but there have been no decisions about treatment of incremental costs ■ Commission revised Central Maine Power's full revenue decoupling mechanism to allow recovery of COVID-related load impacts stating that "the effects of the pandemic will cause the RDM adjustment to act in an aberrational way, for the first time allowing a large and prolonged burden on C&I customers and a large reduction to residential customers" (Docket No. 2020-00159, Order p. 19) ■ Commission added that "Based on our determinations that (a) the separation of the RDM classes into two serves no obvious purpose and (b) the inequities caused by the coronavirus pandemic can and should be mitigated, the Commission further simplifies CMP's RDM by ordering that its two RDM classes be combined into a single RDM class" (Docket No. 2020-00159, Order p. 22)

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Source: Alternative Rate Mechanisms S&P Global, Regulatory Research Associates as of Oct. 5, 2020

Research Notes (Cont'd)

	Allowance for Tracking / Deferral of Expenses					
State	**Direct Costs**	**Bad Debts**	**Savings / Offsets**	**Lost Rev. (Waived Fees)**	**Lost Rev. (Lost Load)**	**Notes**
Maryland	Allowed Recovery	Allowed Recovery	Allowed Recovery	Allowed Recovery	No Decision on Issue w/ RDM	■ "Commission grants authority to BGE to establish a regulatory asset for the recovery of actual incremental COVID-19 costs, net of savings and any financial benefits or assistance provided by any level of government related to COVID-19 relief, over a five-year period beginning in 2023" (Order No. 89678 p. 20) ■ Baltimore Gas and Electric's "regulatory asset include lost revenue for late payment fees and service application/reconnect fees, certain incremental operating and maintenance costs" and the Commission approved "BGE's methodology for calculating incremental write-offs" (Id., p. 18-20) ■ Exelon utilities have full revenue decoupling mechanisms and NiSource has a uncollectibles recovery mechanism
Massachusetts	TBD Later	TBD Later	Allowed Deferral or Tracking	Allowed Deferral or Tracking	Allowed Deferral or Tracking w/ RDM	■ On December 31, the Commission conditionally accepted terms of an agreement from a stakeholder working group to track lost revenue and COVID cost reductions (DPI 20-58-D, p. 23) ■ Commission initiated a new proceeding (DPU 20-91) to deal with contested issues including (1) bad debt, (2) COVID direct costs, and (3) potential cost sharing between shareholders and customers (Id., p. 9) ■ All utilities (other than Berkshire Gas) have full revenue decoupling mechanisms
Michigan	TBD Later	Allowed Deferral or Tracking	TBD Later	TBD Later	TBD Later	■ "Commission authorizes all electric, natural gas, and steam utilities under its jurisdiction to defer uncollectible, or bad debt, expense incurred beginning March 24, 2020…that are in excess of the amount used to set current rates." (Case No. U-20757, April 15 Order p. 15) ■ "Commission declines to explicitly define what constitutes extraordinary costs and declines to direct utilities to track or defer any specific category of expenses related to their COVID-19 response beyond the Commission's previous authorization set forth in the April 15 order to track and defer uncollectible expenses" (July 23 Order p. 29-30) ■ "the Commission also declines, at this time, to direct utilities to track any specific categories of potential savings" (Id., p. 34)

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Source: Alternative Rate Mechanisms S&P Global, Regulatory Research Associates as of Oct. 5, 2020

Research Notes (Cont'd)

	Allowance for Tracking / Deferral of Expenses					
State	Direct Costs	Bad Debts	Savings / Offsets	Lost Rev. (Waived Fees)	Lost Rev. (Lost Load)	Notes
Minnesota	Allowed Deferral or Tracking	Allowed Deferral or Tracking	Allowed Deferral or Tracking	Allowed Deferral or Tracking	Allowed Deferral or Tracking	■ Commission "order requires utilities to track costs, and revenues or grants incurred or received as a result of the COVID-19 pandemic" (Docket No. E,G-999/ CI-20-427 May 22 Order p. 2) ■ June 10 Proposals from Minnesota Energy and Dakota Electric were approved and included direct costs, uncollectible accounts, saving offsets, and revenue impacts due waived fees and lost load (Attachment A of Utility filed Comments)
Mississippi	Allowed Deferral or Tracking	Allowed Deferral or Tracking	Allowed Deferral or Tracking	Allowed Deferral or Tracking	No Decision on Issue	■ Commission has "allowed to defer to a regulatory asset account, all necessary and reasonable incremental costs or expenses to plan, prepare, stage, or react to protect and keep safe its employees and customers, and to reliably operate its utility system... Additionally, utilities shall defer any costs, including any incremental bad debt expenses and all associated credit and collection costs, related to connections, reconnections, or disconnections for all customers classes. This deferral authorization includes, but is not limited to customer-paid fees associated with on-line and telephonic bill payment, as well as bad debt expense, credit and collection costs, and other related costs associated with suspension of both disconnections and customer convenience fees…It is further ordered that should the utilities receive financial relief from other sources at the federal or state level to offset the costs described above, such revenues should be deferred to a regulatory liability..." (Docket No. 2018-AD-141, April 14 Order p. 3)
Missouri	Allowed Deferral or Tracking	Allowed Deferral or Tracking	Allowed Deferral or Tracking	Allowed Deferral or Tracking	No Decision on Issue	■ Commission opened a general docket (AW-2020-0356) and various utility specific cases ■ Commission accepted Stipulation Agreement in GU-2020-0376 that allows "Spire to track and defer into a regulatory asset…(a) New or incremental operating and maintenance expense…(b) Increased bad debt…(e) Lost revenues up to the amount included in rates related to waived late payment fees, reconnection charges, and disconnection charges. The Stipulation also addresses how Spire should treat…savings to be deferred" (Oct. 21 Order p. 2-3)

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Research Notes (Cont'd)

	Allowance for Tracking / Deferral of Expenses					
State	Direct Costs	Bad Debts	Savings / Offsets	Lost Rev. (Waived Fees)	Lost Rev. (Lost Load)	Notes
Montana	No Decision on Issue	Allowed Deferral or Tracking	Allowed Deferral or Tracking	No Decision on Issue	No Decision on Issue	■ Commission stated that "NorthWestern may track the incremental increase in bad debt expense for so long as the pandemic impact is obvious and quantifiable…NorthWestern may seek recovery of the tracked bad expenses in a future rate case, even if the expenses do not occur within the test year of the rate case. Such expenses are offset by any obvious and quantifiable savings related to the COVID-19 pandemic, which should be tracked as they occur" (Docket No. 2020-05-066, Order No. 7759 p. 11)
Nebraska	Allowed Deferral or Tracking	Allowed Deferral or Tracking	Allowed Deferral or Tracking	Allowed Deferral or Tracking	Allowed Deferral or Tracking	■ Commission authorized "Black Hills Nebraska Gas to establish a regulatory asset to record and preserve costs related to the Covid-19 Pandemic" (Application No. NG-107, Aug. 25 Order p. 6) ■ List of items allowed to be tracked in the regulatory asset included: direct protective equipment and materials, IT expenses, bad debt expense, lost revenues, and all cost savings and COVID-19 related funding (Id., p. 5-6) ■ "Lost revenues" interpreted as waived fees and lost load. Additional information not easily accessible
Nevada	No Decision on Issue	Allowed Deferral or Tracking	No Decision on Issue	Allowed Deferral or Tracking	No Decision on Issue w/ RDM	■ "Commission directs all of the rate-regulated public utilities within its jurisdiction, including providers of electric, natural gas, water, wastewater, and telecommunications services, to begin recording, as of March 12, 2020, in regulatory asset accounts, amounts that reflect the costs of maintaining service to customers affected by COVID-19 whose service would have been terminated, discontinued, and/or disconnected under normally-applicable terms of service." (Docket No. 20-03021, March 27 Order p. 2) ■ NV Energy August filing shows waived late fees and arrears being tracked ■ Southwest Gas has full revenue decoupling mechanism
New Hampshire	TBD Later	TBD Later	TBD Later	TBD Later	TBD Later	■ In open state-wide proceeding (IR 20-089), no decision has been made ■ Liberty Utilities have full revenue decoupling mechanisms (electric begins July 2021)

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Research Notes (Cont'd)

State	Allowance for Tracking / Deferral of Expenses: Direct Costs	Bad Debts	Savings / Offsets	Lost Rev. (Waived Fees)	Lost Rev. (Lost Load)	Notes
New Jersey	Allowed Deferral or Tracking	Allowed Deferral or Tracking w/ URM	Allowed Deferral or Tracking	Allowed Deferral or Tracking	Allowed Deferral or Tracking w/ RDM	■ Board authorized "utilities to create a COVID-19-related regulatory asset by deferring on their books and records the prudently incurred incremental costs" (Docket No. AO20060471, July 2 Order p. 3-4) ■ October quarterly reports from Atlantic City Electric, Public Service Enterprise Group (PSEG), and Rockland Electric include direct costs, uncollectibles, savings / offsets, and waived fees ■ Lost Revenues due to load decrease tracked by PSEG ■ 2 of 3 gas utilities have full revenue decoupling mechanisms, all electric utilities have uncollectibles recovery mechanisms
New Mexico	Allowed Deferral or Tracking	Allowed Deferral or Tracking	Allowed Deferral or Tracking	No Decision on Issue	Allowed Deferral or Tracking	■ "All public utilities regulated by the Commission are authorized to create regulatory assets for the accounting deferral of COVID-19 related uncollectible arrearages and other expenses incurred" (Case No. 20-00069-UT, June 24 Order p. 14) ■ October quarterly filings from New Mexico Gas and Public Service Company of New Mexico (PNM) include demand shifts, bad debt, direct costs, and savings
New York	TBD Later	TBD Later	TBD Later	TBD Later	TBD Later	■ State-wide proceeding (Case No. 20-M-0266) was initiated in June to investigate financial impacts of COVID, Commission has received comments and utility data but made no determinations ■ All state utilities have full revenue decoupling mechanisms
North Carolina	TBD Later	TBD Later	TBD Later	TBD Later	TBD Later	■ Duke Energy Carolinas and Duke Energy Progress requested deferral of waived customer fees, bad debt/charge-offs, employee stipends, employee safety related costs, costs for remote work, but Application noted "Although the Companies have been adversely impacted by reduced revenues due to loss of demand, DEC and DEP seek deferral authority for only the increased costs and not the lost revenues caused by reduced demand. (Docket Nos. E-7, Sub.1241 and E-2, Sub.1258, Aug. 7 Application p.8-10) ■ No decision has been made in the proceeding ■ Gas utilities have full revenue decoupling mechanisms

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Research Notes (Cont'd)

	Allowance for Tracking / Deferral of Expenses					
State	Direct Costs	Bad Debts	Savings / Offsets	Lost Rev. (Waived Fees)	Lost Rev. (Lost Load)	Notes
North Dakota	TBD Later	TBD Later	TBD Later	TBD Later	TBD Later	■ Xcel Energy filed "seeking Commission authorization…to track incremental expenses incurred as a result of COVID-19, defer such expenses, and record those expenses into a regulatory asset" (Case No. PU-20-192, 220) ■ Northern States Power's August Filing provided bad debt expense data ■ Commission requested information in July 23 Informal Hearing, but no decision appears to have been made
Ohio	Allowed Deferral or Tracking	Allowed Deferral or Tracking w/ URM	Allowed Deferral or Tracking	Allowed Deferral or Tracking	No Decision on Issue	■ Commission approved Dayton Power and Light's (DP&L) proposal stipulated that "the Company will work with customers to establish reasonable payment plans relating to past due balances, and defer as a regulatory assets uncollected charges, late fees, and credit card fees." (Case No.20-650-EL-AAM, et.al., May 20 Order p. 8) ■ "DP&L states that it will track and defer any incremental operational costs incurred to protect the health and safety of its employees and customers with regard to COVID-19" (Id., p. 11) ■ Commission directed "DP&L to separately track and defer the uncollectible expenses associated with its default service generation such that expenses can potentially be recovered or reconciled through a bypassable mechanism, subject to the Commission's review in future proceedings. The Commission also directs DP&L to track any costs that it avoids." (Id., p. 15) ■ All utilities have uncollectibles recovery mechanism
Oklahoma	Allowed Deferral or Tracking	Allowed Deferral or Tracking	Allowed Deferral or Tracking	Allowed Deferral or Tracking	No Decision on Issue	■ "Each utility is authorized to record as a regulatory asset increased bad debt expenses, including bad debts associated with factoring of accounts receivable, costs associated with expanded payment plans, waived fees, and incremental expenses that are directly related to the suspension of or delay in disconnection of service (or reconnection of service)" (Cause No. PUD 202000050, Order No. 711412 p. 4) ■ Public Utility Director (PUD) Director May 4 testimony advocated for inclusion of waived fees, incremental bad debt, direct operational costs, and savings/offsets

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Research Notes (Cont'd)

	Allowance for Tracking / Deferral of Expenses					
State	**Direct Costs**	**Bad Debts**	**Savings / Offsets**	**Lost Rev. (Waived Fees)**	**Lost Rev. (Lost Load)**	**Notes**
Oregon	Allowed Deferral or Tracking	Allowed Deferral or Tracking	Allowed Deferral or Tracking	Allowed Deferral or Tracking	No Decision on Issue w/ RDM	■ Commission adopted Stipulated Agreement on Effects of COVID-19 that identified "Direct costs for reasonable measures taken by the Utility in response to the COVID-19 pandemic…net of credits, payments, direct cost savings, or other benefits received by the Utility" (Docket No. UM 2114, Order No. 20-401, Appendix A p. 19) ■ Agreement outlined basis for deferral of "late fees not assessed" that "shall not exceed the amount of late payment fees included in the Commission's final order from the utility's last general rate case" and incremental bad debt expense above baseline determined in last rate case (Id., p. 20) ■ Avista has full revenue decoupling mechanism
Pennsylvania	Allowed Deferral or Tracking	Allowed Deferral or Tracking w/ URM	Allowed Deferral or Tracking	No Decision on Issue	No Decision on Issue	■ "Commission authorizes electric, natural gas…utilities to create a regulatory asset for any incremental uncollectible expenses incurred above those embedded in rates since the issuance of the *Emergency Order.* In order to be eligible for inclusion in a utility's COVID-19 designated regulatory asset, the utility must maintain detailed records of the incremental extraordinary, nonrecurring expenses incurred as a result of compliance with the *Emergency Order*" (Docket No. M-2020-3019775, May 13 Secretarial Letter p. 2) ■ Commission ordered UGI to report "its efforts to maximize its utilization of and track any government benefits, whether direct grant, tax credits, or other, to minimize costs to be deferred" (R-2019-3015162, Oct 8 Order p.6) ■ FirstEnergy and NiSource have uncollectibles recovery mechanisms
Rhode Island	No Decision on Issue	No Decision on Issue w/ URM	No Decision on Issue	Allowed Deferral or Tracking	No Decision on Issue w/ RDM	■ Commission stated, "Each utility that ordinarily charges late fees, interest charges, or passes through credit card, debit card, or ACH fees to the customer should continue to track all such expenses not collected and those absorbed by the utility that are not included in the utility's revenue requirement" (Docket No. 5022, July 15 Order p. 7-8) ■ Narragansett Electric has a full revenue decoupling mechanism, and a uncollectibles recovery mechanism

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Research Notes (Cont'd)

	Allowance for Tracking / Deferral of Expenses					
State	Direct Costs	Bad Debts	Savings / Offsets	Lost Rev. (Waived Fees)	Lost Rev. (Lost Load)	Notes
South Carolina	Allowed Deferral or Tracking	Allowed Deferral or Tracking	Allowed Deferral or Tracking	Allowed Deferral or Tracking	Allowed Deferral or Tracking	■ Commission accepted Staff's motion to Solicit Comments from Utilities on May 14 and moved to "require utilities to track revenue impacts, incremental costs and savings related to COVID-19" (Docket No. 2020-106-A, Order No. 2020-372) ■ Duke Energy's October compliance filing (pursuant to Order No. 2020-372) included lost load revenue impacts, incremental direct costs and savings, waived customer fees, bad debt/customer charge-offs, and other incremental labor costs ■ Duke Energy Carolinas and Progress also filed an application for Approval of Accounting Order to Defer Incremental COVID-19 Expenses, in which the Commission delayed decision until January 20, 2021 (Docket No. 2020-195-E, Order No. 2020-716)
South Dakota	Allowed Deferral or Tracking	Allowed Deferral or Tracking	Allowed Deferral or Tracking	Allowed Deferral or Tracking	No Decision on Issue	■ Utilities "are allowed to use deferred accounting for costs incurred as a result of the COVID-19 pandemic" and… where a Petitioner intends to include COVID-related cost increases in addition to incremental bad debt in its regulatory asset, it must also include… all COVID-related cost decreases and… all benefits received" (GE20-002, Aug. 19 Order p. 1-2) ■ Utilities are required to file quarterly reports on regulatory asset amounts and Montana-Dakota Utilities' December 4 filing includes direct costs, waived late fees, savings, and bad debt expenses ■ Staff's Memo said that "the Commission will need to assess each request on an individual basis" adding that "Utilities must be able to clearly identify which expenses are COVID-related." (August 12 Memo p. 3-6)
Tennessee	TBD Later	Allowed Deferral or Tracking	TBD Later	TBD Later	TBD Later	■ "The hearing panel found that all issues concerning potential recovery of COVID-19 related expenses and lost revenues shall be reserved and addressed within appropriate individual company dockets, either upon request of the company or order of the Commission." (Docket No. 20-00047, Sept. 16 Order p. 10) ■ Commission has requested monthly status reports on customers which include "amount of customer accounts written off to bad debt expense, or allowance for bad debt, by customer class." (Id., p. 11)

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Research Notes (Cont'd)

	Allowance for Tracking / Deferral of Expenses					
State	Direct Costs	Bad Debts	Savings / Offsets	Lost Rev. (Waived Fees)	Lost Rev. (Lost Load)	Notes
Texas	Allowed Deferral or Tracking	Allowed Recovery	No Decision on Issue	No Decision on Issue	No Decision on Issue	■ "Commission authorizes each electric, water, and sewer utility to record as a regulatory asset expenses resulting from the effects of COVID-19, including but not limited to non-payment of qualified customer bills" (Project No. 50664, March 26 Order p. 1) ■ Commission "implemented a rider to facilitate the COVID-19 Electricity Relief Program for customers within the customer choice areas of the Electric Reliability Council of Texas (ERCOT). The rider collects funds utilized to reimburse TDUs [transmission and distribution utilities] and REPs [retail energy providers] for unpaid bills from qualified customers experiencing unemployment due to the impacts of COVID-19 and to ensure continuity of electric service for those residential customers." (Project No. 50664, August 27 Fourth Order p. 8) ■ 2 of 3 gas utilities have uncollectibles recovery mechanisms
Utah	No Decision on Issue	Allowed Deferral or Tracking	Allowed Deferral or Tracking	Denied	No Decision on Issue w/ RDM	■ Commission approved Rocky Mountain Power's application for deferred accounting treatment for incremental bad debt net of cost savings, while concluding that "OCS's [Office of Consumer Services] proposal to exclude incremental late fees…from the deferral account is consistent with applicable law, reasonable, and in the public interest" (Docket No. 20-035-17, Sept. 15 Order p. 4-7) ■ Questar has full revenue decoupling mechanism
Vermont	No Decision on Issue	No Decision on Issue	No Decision on Issue	No Decision on Issue	No Decision on Issue w/ RDM	■ Commission granted deferral accounting to Burlington Electric Department (BED). "BED evaluated its budgeted capitalized labor expenses to identify which capital projects have been delayed specifically due to the COVID-19 pandemic for FY 2020. In order to prevent these delays from negatively affecting its credit rating, BED proposes to capitalize these costs into FERC account 182.3 (Other Regulatory Assets) instead of showing these expenses on its income statement for FY 2020. BED proposes to defer and amortize labor costs and associated overheads…for FY 2020…for a period of five years" (Case No. 20-2103-ACCT, Sept. 17 Order) ■ Green Mountain Power has full revenue decoupling mechanism

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Research Notes (Cont'd)

	Allowance for Tracking / Deferral of Expenses					
State	Direct Costs	Bad Debts	Savings / Offsets	Lost Rev. (Waived Fees)	Lost Rev. (Lost Load)	Notes
Virginia	Allowed Deferral or Tracking	Allowed Deferral or Tracking w/ URM	No Decision on Issue	Allowed Deferral or Tracking	No Decision on Issue	■ Commission accepted utilities request to "create a regulatory asset… to record: 1) the incremental uncollectible expense incurred, 2) late payment fees suspended, 3) reconnection costs… suspended, 4) carrying costs, and 5) other incremental prudently incurred costs associated with the COVID-19 pandemic." (Case No. PUR-2020-00074, April 29 Order p. 2) ■ Two gas utilities have uncollectibles recovery mechanisms
Washington	TBD Later	TBD Later	TBD Later	TBD Later	TBD Later	■ Commission declined to adopt principles proposed by intervenors that "utilities should approach cost recovery requests with the spirit of shared sacrifice" and that "recovery of deferred COVID-19 costs in rates should be subject to an earnings test" (Docket U-200281, Order 01 p. 6) ■ Commission noted that "The Revised Term Sheet characterizes its discussion of the types of costs for deferral treatment as Staff's position, not a Commission determination…Ultimately, the Commission will consider each petition on its merits" (Id. p. 6) ■ Commission accepted data reporting laid out in Staff's Proposed COVID-19 Response Term Sheet (Sept. 17, 2020) that includes reporting on number of customers, retail load by customer class, fees charged, arrearages, bad debt, etc. ■ All utilities (other than NWN) have full revenue decoupling mechanism
Washington (District of Columbia)	Allowed Deferral or Tracking	Allowed Deferral or Tracking w/ URM	Allowed Deferral or Tracking	Allowed Deferral or Tracking	No Decision on Issue	■ Commission "authorizes the Potomac Electric Power Company ("Pepco") and Washington Gas Light Company ("WGL") to create a regulatory asset account to record the incremental costs related to COVID-19" (GD2020-01, Order No. 20329 April 15 p. 1) ■ Commission added that "The Utility's regulatory asset accounting shall include all offsets to COVID-19-related expenses and losses, including but not limited to any income received pursuant to the U.S. Department of Treasury's administration of S.3548, The Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act")" (Id., p. 2 fn. 4) ■ PEPCO's August compliance filing reported incremental costs from (1) bad debt, (2) lost fee revenue, and (3) direct O&M expenses ■ WGL has an uncollectibles recovery mechanism

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Research Notes (Cont'd)

State	Allowance for Tracking / Deferral of Expenses: Direct Costs	Bad Debts	Savings / Offsets	Lost Rev. (Waived Fees)	Lost Rev. (Lost Load)	Notes
West Virginia	Allowed Deferral or Tracking	Allowed Deferral or Tracking	No Decision on Issue	No Decision on Issue	No Decision on Issue	■ "Utilities subject to regulation by the Commission may record a deferral of additional, extraordinary costs…including impacts on uncollectible expense and cash flow related to temporary discontinuance of 'service terminations' (General Order No. 264.4 p. 2)
Wisconsin	Allowed Deferral or Tracking	Allowed Deferral or Tracking	Allowed Deferral or Tracking	Allowed Deferral or Tracking	Denied	■ "Commission finds it reasonable for the deferral authorization to include COVID-19 related incremental increases in bad debt or uncollectible expense" (Docket 5-AF-105, PSC REF#389500 p. 3) ■ "Commission finds it reasonable to conclude that any forgone revenue associated with temporary waivers be included in the deferral authorization in this docket. However, because of insufficient information regarding the effect of the COVID-19 pandemic on sales revenue, the Commission declines to include declining sales revenue" (Id., p. 4) ■ "Commission finds it reasonable for utilities to record COVID-19 expenditures to a variety of Federal Energy Regulatory Commission (FERC) or Uniform System of Accounts (USOA) accounts, including those related to customer accounts, sales expense, and administrative and general expenses…Additionally, the Commission finds that tracking should include any federal or state reimbursements provided to utilities" (Id., p.4-5)
Wyoming	Allowed Deferral or Tracking	Allowed Deferral or Tracking	Allowed Deferral or Tracking	Allowed Deferral or Tracking	Allowed Deferral or Tracking	■ Commission granted "authority to establish a deferred regulatory account to record and preserve expenses and any benefits received related to the COVID-19 pandemic" (Docket No. 20003-192-EA-20, Record No. 15492 p. 3) ■ Black Hills Oct. 1 Status Update included Financial Impacts due to lost margin, late payment fee revenue, bad debt, additional equipment/ supplies, IT costs, cost savings, and relief funds

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Research Notes (Cont'd)

State	Allowance for Tracking / Deferral of Expenses: Direct Costs	Bad Debts	Savings / Offsets	Lost Rev. (Waived Fees)	Lost Rev. (Lost Load)	Notes
Alberta	TBD Later	TBD Later	TBD Later	TBD Later	TBD Later	■ Commission noted "A COVID-19 deferral account would be used to track incremental expenses and revenues" (Proceeding 25767, Aug. 8 p. 4) ■ Commission gave guidelines for utility applications for deferral accounts. (Proceeding 25767, Aug. 8 p. 4) No information available whether such an account has been approved for any utility (as of Dec. 31, 2020)
British Columbia	Allowed Deferral or Tracking	Allowed Deferral or Tracking	Allowed Deferral or Tracking	No Decision on Issue	Allowed Deferral or Tracking	■ Commission approved Creative Energy to "Establish a new COVID-19 deferral account for the Core system, bearing interest monthly at Creative Energy's WACD, and to record to this account: (a) Any incremental, unplanned expenses and cost savings related to the COVID-19 pandemic…(b) Any unrecoverable revenues (bad debt) resulting from customers that do not pay their bills due to the impacts of COVID-19…(3) Any direct revenue loss resulting from the loss of load from customers due to the impacts of COVID-19" (Order No. G-214-20)
Manitoba	N/A	N/A	N/A	N/A	N/A	■ Reviewed all 2020 Manitoba Public Utilities Board decisions - no proceeding or decision found on COVID-19 related utility costs
New Brunswick	N/A	N/A	N/A	N/A	N/A	■ Reviewed all 2020 New Brunswick Energy and Utilities Board decisions - no proceeding or decision found on COVID-19 related utility costs.
Newfoundland & Labrador	N/A	N/A	N/A	N/A	N/A	■ Reviewed all 2020 Board of Commissioners of Public Utilities - Newfoundland and Labrador decisions - no proceeding or decision found on COVID-19 related utility costs.
Nova Scotia	N/A	N/A	N/A	N/A	N/A	■ Reviewed all 2020 Nova Scotia Utility and Review Board decisions - no proceeding or decision found on COVID-19 related utility costs

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State	**Direct Costs**	**Bad Debts**	**Savings / Offsets**	**Lost Rev. (Waived Fees)**	**Lost Rev. (Lost Load)**	**Notes**
Prince Edward Island	No Decision on Issue	Allowed Deferral or Tracking	No Decision on Issue	No Decision on Issue	No Decision on Issue	■ "Maritime Electric is authorized to establish a COVID-19 Customer Support Receivable Account (the "Account") to record and track, by rate class: i) Bill payment deferrals provided to eligible customers for energy consumed between March 1, 2020 and August 31, 2020; ii) Subsequent repayments of the deferred amounts by eligible customers enrolled in the Program; and; iii) Unrecovered billings by customers enrolled in the Program for energy consumed between March 1, 2020 and August 31, 2020. b) The Account shall not be a regulatory deferral account for account purposes and shall not be included as a regulatory asset for the purposes of determining the Company's rate base." (Docket UE21224, Order UE20-03 p. 3-4)
Quebec	N/A	N/A	N/A	N/A	N/A	■ Reviewed all 2020 Quebec Commission decisions - no proceeding or decision found on COVID-19 related utility costs
Saskatchewan	N/A	N/A	N/A	N/A	N/A	■ No rate applications have been submitted by Saskatchewan Electric Utilities during the pandemic. Additionally, no Provincial Government guidance on cost recovery was found.
SM Analysis	**31 (52%)**	**40 (67%)**	**28 (47%)**	**30 (50%)**	**11 (18%)**	**Jurisdictions with allowance for recovery, deferral, or tracking**

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