January 25, 2021

Ontario Energy Board
Attn: Ms. C. Long, OEB Registrar
P.O. Box 2319
27th Floor, 2300 Yonge Street
Toronto ON M4P 1E4

RE: EB-2020-0133 COVID Deferral Accounts – FRPO Submissions

BACKGROUND

One day after the Province issued an emergency order in response to the pandemic, the Board acted quickly to establish a new electric deferral accounts (1509/179 for natural gas) to allow utilities to track incremental costs and lost revenue as a result of the emerging pandemic[1]. We appreciate that this proactive step was helpful in ensuring proper accounting would be available while there was great uncertainty on what those costs may be, their materiality and appropriate disposition which was not stipulated nor assured.

While subsequent communication in the next couple of months provided clarification on the use of the accounts and temporary reporting requirements, the first discussion amongst Board staff, the utilities and ratepayer representatives occurred in late May. It was clear that there was a diversity of opinion in the Stakeholder session as evidenced by the submissions of parties in mid-June. We commend the Board and its staff for taking a step back to assess the broader economic impacts and to survey other regulatory jurisdictions to consider the issue holistically through engagement of a consultant. The resulting reports and staff Proposal provide an excellent foundation to generate informed discourse on these matters.

The following are the submissions of the Federation of Rental-housing Providers of Ontario (FRPO) on Board staff's Proposal focused on eligibility for recovery. We have benefitted from extensive communication and collaboration with our ratepayer representative colleagues and we will leave detailed feedback on mechanisms to them.

SUMMARY

The OEB has responsibility to set just and reasonable rates to protect the customer and promote a financially viable industry[2]. The performance of this balancing act is more challenging when there is no precedent from which to learn. In this case, we believe decisions ought to be guided by principles as opposed to precedent.

[1] Accounting Order for the Establishment of Deferral Accounts to Record Impacts Arising from the COVID-19 Emergency
[2] ONTARIO ENERGY BOARD ACT, 1998, S.O. 1998, C. 15, SCHED. B, PART 1, OBJECTIVES

While we respect that the establishment of the accounts was wise and foresighted, we believe that, given the economic impact of the pandemic, the recovery of these accounts should be premised on the principle of necessity with necessity being defined by the utility's financial viability[3]. We firmly believe that the financial viability of utility does not hinge on a convenient, consistent quantifiable factor such as 300 basis points below Board-approved ROE but consistent with how regulatory bodies and courts have viewed the ability of the utility to attract capital at reasonable rates to provide its monopoly public service in a safe and prudent manner.

Principle of Necessity = Financial Viability

Given the novel nature of this pandemic, we advocate that past precedent or practice are not necessarily appropriate sources of policy for these times. In our view, fundamental regulatory principles yield more robust foundations from which to build constructs that address the needs of utilities and its customers. We were encouraged by the addition of the principle of necessity in the Staff proposal.

Utilities are provided exclusive franchise rights to distribute essential services and receive a reasonable opportunity to receive a fair return on the ownership's equity in the business. Given the regulatory construct, their ability to attract capital at a reasonable rate commensurate with the expected risk of the business is a benefit not only for the owners but, also, customers. This longstanding principle is best articulated from the original source[4]:

> *"The return should be reasonably sufficient to assure confidence in the financial soundness of the utility, and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time and become too high or too low by changes affecting opportunities for investment, the money market, and business conditions generally."*

In our view, the first sentence of this articulation of the principle provides the definition of financial viability. The criteria of reasonably sufficient clearly is specific to each utility given its circumstances. As such, after establishing the deferral accounts, Board staff provided a number of communications on the expectations of the Board around implementation, tracking and reporting of the measures including liquidity and deferral accounts for which recovery was not certain. The Board committed to monitoring the liquidity of utilities reinforcing the utilities' need to provide continuous service for the benefit of customers. As far as we understand from the January 14th stakeholder day, the extreme circumstance of liquidity concerns has not arisen.

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[3] COVID Staff Proposal, December 16, 2020, page 11

[4] Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 59 1, at 603 (1944)

Clearly the second sentence of the articulation recognizes the cycles of the economy that are expected to vary over time. In the years between rebasing periods, economic conditions can change markedly. As such, regulators establish constructs which reinforce the opportunity to receive the return and, in some cases, guardrails around that return to ensure that the constructs are working. For Ontario utilities, the Board has provided guardrails of plus or minus 300 basis points from Board-approved ROE.

However, in our respectful submission, the 300 basis point criterion was developed to stabilize rates and to allow the utility to implement strategic initiatives to adapt to the challenges of variability in economic conditions prior to needing Board intervention. While we acknowledge the efficacy of this approach, in our view, the lower threshold of this band does not necessarily place the utility in jeopardy of financial viability. We, therefore, would respectfully recommend that the definition of necessity and financial viability <u>not be tied</u> to a convenient, quantifiable criteria like 300 basis points under Board-approved ROE.

Pandemic Impacts not Equally Distributed

The current pandemic has wrought significant damage on the health of the citizens of Ontario and around the world. In acting to stem the pandemic, government actions have impacted all aspects of the economy. Successive financial quarters are now evidencing the scale and scope of these impacts across all sectors of the economy. As essential services, LDC's must develop novel approaches to maintaining service in a safe and prudent manner. However, in many sectors of the economy, businesses are closed or constrained by government action or market forces and, as a result, citizens are working less and some not at all. While some government programs have strived to lessen the pain, that pain is being felt across most customers of the LDC's. Comparatively, utilities have done very well as shown in the figure below.

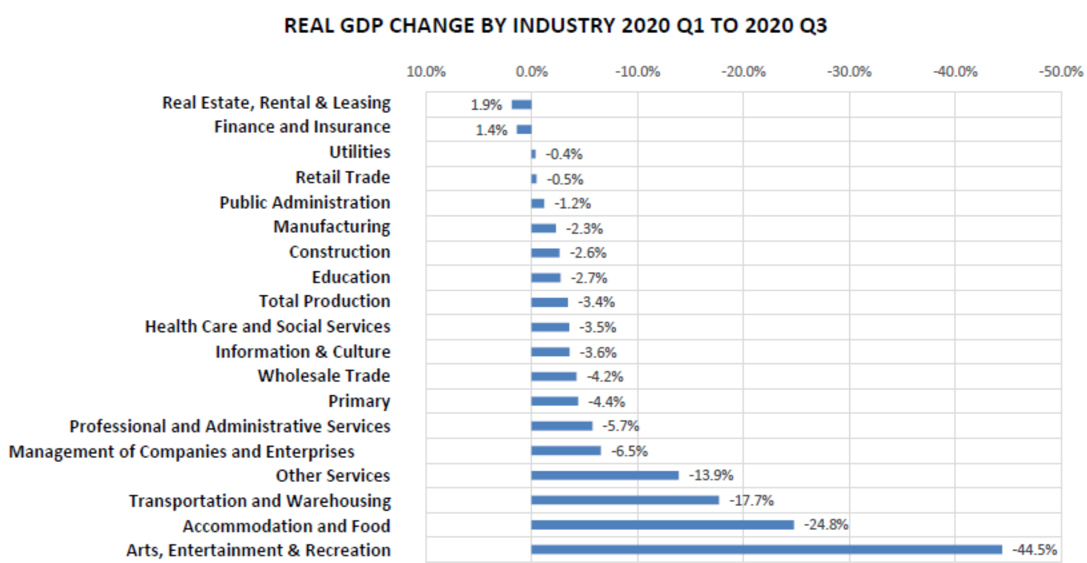

Figure provided by LPMA. Original Source: Ontario Ministry of Finance, Ontario Economic Accounts Tables, Table 15 - Ontario Production by Industry at 2007 Prices, seasonally adjusted data at annual rates, millions of chained (2012) dollars.

With utilities faring considerably better than most of their customers, for those same customers to have to pay for the utility to recover more desired profit (not loss) does not appear to be fair nor equitable. The utilities would be seeking recovery from some customers who do not have a job (Ontario unemployment increased from 5.6% in 2019 to 9.6% in 2020[5]), who are under-employed due to cutbacks and business owners who have had to re-finance their business or worse are out of business. Not withstanding a few private utilities, most of the utilities would be going to the owners of their utilities to seek recovery. While respect that some LDC Board of Directors will understand this point and not seek potential recovery from the customers and owners, we urge the Board to not accept the criteria of 300 basis points.

<u>Do Utilities Need Recovery?</u>

While under normal business conditions, utilities expect to operate inside the 300 basis point prescribed band, but that performance is not guaranteed. With cycles in the economy, there is an expected variation in performance which is a risk to be managed. We cannot say it better than the Board's consultant whose experience in these matters is respected[6]:

> *LEI's findings suggest that utilities in Ontario appear to be fairly compensated for their risks based on current parameters ...*
>
> *Conversely, it is difficult to justify granting utilities increased compensation for risk. Recognition of an allowed return on equity acknowledges that utilities are not risk free; utilities cannot expect to both earn an equity return and have the financial consequences of risk eliminated.*

In our view, this experienced opinion ought to be heeded. We add the caveat that in the rare case where a utility can demonstrate that it is not be financially viable, then recovery ought to be considered for the good of the utility and its customers. At that juncture, we would expect that the Board would consider providing the appropriate measures for recovery and that proposed 50/50 allocation between the utility and ratepayers would not be meaningful. In a severe case, the takeover of that utility by a party with the financial wherewithal to continue service ought to be considered.

[5] https://www.statista.com/statistics/569353/unemployment-rate-ontario-canada/

[6] LEI, *A Report on the OEB's Cost of Capital Parameters and the Impacts of COVID-19*, December 15, 2020, page 10

Customer Communication is Essential to Any Proposed Recovery

As described above, FRPO does not see any merit in restoring profitability of utility to a standard of 300 basis points less than Board-approved ROE. However, if the Board determines that it would allow LDC's to seek that recovery, we would urge the Board to direct those utilities to develop a communication strategy to its customers ahead of applying to the Board for proposed recovery mechanisms. The purpose of the communication strategy would be to ensure that its customers have opportunity to be informed of the nature of the costs being recovered (e.g., bad debt, lost revenue from closed businesses, PPE, etc.) and provide feedback to the utility and ultimately Board on their respective views of the proposed recovery.

Clearly, our proposed strategy would go well beyond an ad in the local paper to give legal notice. Instead, bill messages and social media campaigns designed to ensure a minimum level of participation by customers becoming informed and providing feedback. This feedback ought to be quantifiable for the purposes of demonstrating that the utility reached a certain minimum percentage of customers while ensuring diversity in the type (residential, commercial, institutional, industrial) and rate class of customers. The results of the survey would then be filed with the Board as part of its application for approval of the requested recovery.

CONCLUSION

We appreciate the Board providing the process of consultation informed by the engagement of the consultant. FRPO respectfully submits that those utilities in need of recovery of COVID driven costs for the purposes of financial viability be given opportunity to notify the Board. Then, through a process of communication with its customers, the utility could file its request for recoveries to sustain its operations for the benefit of the customers and the communities they serve.

ALL OF WHICH IS RESPECTFULLY SUBMITTED ON BEHALF OF FRPO,

Dwayne Q

Digitally signed by R. Dwayne Quinn
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Date: 2021.01.25 18:27:43 -05'00'

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c. T. Irwin, A. Allen – FRPO
Parties EB-2020-0133