

ONTARIO ENERGY BOARD

**All Rate Regulated Electricity Distributors
All Rate Regulated Natural Gas Utilities
All Rate Regulated Electricity Transmitters
Ontario Power Generation Inc.**

**Consultation on the Deferral Account – Impacts Arising
from the COVID-19 Emergency**

**SUBMISSIONS OF
CANADIAN MANUFACTURERS & EXPORTERS (“CME”)**

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1.0 INTRODUCTION

1. These submissions are made on behalf of Canadian Manufacturers & Exporters (“**CME**”).
2. CME’s members, which include over 400 Ontario based companies, operate energy intensive businesses. As further described below, the COVID-19 pandemic has significantly impacted many of CME’s members. Given that many members heavily rely on electricity and/or natural gas as inputs into their business, the recovery of amounts recorded in the accounts related to Covid-19 have the potential to increase costs at a time when manufacturers can scarcely afford it.

1.1 The Impacts of Covid-19 on CME’s Members

3. Covid-19 has impacted CME’s members significantly, as it has with most sectors and people in Ontario. In its 2020 Management Issues Survey Report, CME canvassed its membership to get a sense of how manufacturers in Ontario were coping. Findings from CME’s survey included:
 - (a) Over a quarter of the respondents believed their businesses would not recover until at least 2022, with 5% responding that their businesses would never recover from the pandemic;¹
 - (b) 42% of the respondents determined that their production was lower at the time of the survey than it had been one year earlier;² and
 - (c) Over 42% of respondents indicated that they were experiencing or anticipating liquidity and cash flow issues, including 10% that indicated they were experiencing significant cash flow and liquidity issues.³
4. The impact of Covid-19 on CME’s members aligns with the data provided by Board Staff in their report. According to the data provided at Figure 10, manufacturing in Ontario

¹ Canadian Manufacturers and Exporters, 2020 Management issues Survey, https://cme-mec.ca/wp-content/uploads/2020/12/CME-MEC_MIS-Survey-Report-2020.pdf. Accessed online on January 25, 2021, p. 18.

² Canadian Manufacturers and Exporters, 2020 Management issues Survey, https://cme-mec.ca/wp-content/uploads/2020/12/CME-MEC_MIS-Survey-Report-2020.pdf. Accessed online on January 25, 2021, p. 10.

³ Canadian Manufacturers and Exporters, 2020 Management issues Survey, https://cme-mec.ca/wp-content/uploads/2020/12/CME-MEC_MIS-Survey-Report-2020.pdf. Accessed online on January 25, 2021, p. 11.

suffered a real GDP loss of over 20% in Q2.⁴ Similarly, total production dropped by 12.4%. In contrast, utilities only suffered a 1.3% GDP loss in Q2.⁵

5. CME submits that the Board should determine its policy regarding the Covid-19 accounts in the context of the broader impacts that Covid-19 has had on all Ontarians. Covid-19 has negatively impacted most sectors in Canada, and most rate classes and types of ratepayer. In many cases, ratepayer impacts are much more severe than the impacts visited upon utilities. As a result, CME submits that any policy respecting the Covid-19 accounts should recognize this imbalance, and strive to address it.

2.0 THE CONSULTATION

6. On March 25, 2020, one week after the Government of Ontario declared a state of emergency regarding COVID-19, the Ontario Energy Board (the “**OEB**” or the “**Board**”) published an accounting order. The March 25, 2020 order outlined the creation of a COVID-19 account, as well as three sub-accounts for electricity distributors to track any incremental costs and lost revenues attributable to the COVID-19 emergency (the “**Covid Accounts**”).
7. The OEB subsequently provided for the Covid Accounts to extend to natural gas distributors, and confirmed that two of the sub-accounts were applicable to Ontario Power Generation.
8. On May 14, 2020, the OEB commenced a consultation process for stakeholder to provide their views on the proper application and functioning of the Covid Accounts.
9. The consultation included the following steps:
 - (a) A staff proposal, supplemented by reports by London Economics International (“LEI”) which were sent to stakeholders on December 16, 2020;

⁴ While it is likely that manufacturing, as well as other sectors in the economy experienced real GDP growth in Q3 of 2020, given the increase in cases and lockdown measures since Q3, it is likely that manufacturing has lost much of that recovered GDP.

⁵ Ontario Energy Board, Re: Consultation on the Deferral Account – Impacts Arising from the COVID-19 Emergency (2020-0133), December 16, 2020 at p. 7, Figure 10.

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- (b) A stakeholder conference held by webinar on January 14, 2021;
 - (c) Stakeholder comments on Staff's proposal due on January 25, 2021;⁶ and
 - (d) Stakeholder reply comments addressing other parties' comments due on February 4, 2021.⁷
10. Pursuant to the consultation schedule dated May 14, 2020, please find below CME's comments on Board Staff's proposal.

3.0 Board Staff's Proposal

11. Board Staff outlined in their proposal that the purpose of their approach was to set a unique approach to potential recovery of amounts related to the Covid Accounts, which articulated a "fair balance between utility and ratepayer interests".⁸
12. Board Staff proposed the following methodology for utilities to potential recover amounts recorded in the Covid Accounts:
- (a) Amounts recorded in the Covid Accounts should meet the criteria for causation, prudence and materiality. In this respect, amounts recorded should have been caused only by the Covid-19 pandemic,⁹ the utility should be able to demonstrate that it minimized the cost impact and fully exploited all possible cost savings and reductions,¹⁰ and the amount recorded should have a material impact on the utility's operations.¹¹

⁶ Ontario Energy Board, Re: Consultation on the Deferral Account – Impacts Arising from the COVID-19 Emergency (2020-0133), December 16, 2020 at p. 2.

⁷ Ontario Energy Board, Re: Consultation on the Deferral Account – Impacts Arising from the COVID-19 Emergency (2020-0133), December 16, 2020 at p. 2.

⁸ OEB Staff Proposal, Consultation on the Deferral Account – Impacts Arising from the COVID-19 Emergency, EB-2020-0133, December 16, 2020 at p. 10.

⁹ OEB Staff Proposal, Consultation on the Deferral Account – Impacts Arising from the COVID-19 Emergency, EB-2020-0133, December 16, 2020 at p. 16.

¹⁰ OEB Staff Proposal, Consultation on the Deferral Account – Impacts Arising from the COVID-19 Emergency, EB-2020-0133, December 16, 2020 at pp.15-16.

¹¹ OEB Staff Proposal, Consultation on the Deferral Account – Impacts Arising from the COVID-19 Emergency, EB-2020-0133, December 16, 2020 at p. 16.

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- (b) The incrementality of the costs tracked in the Covid Accounts would be measured against a baseline that is equal to the greater of the amount embedded in base rates, or the highest actual amounts over the past five years.¹²
 - (c) Similarly, the incrementality of the savings tracked in the Covid Accounts would be measured against a baseline that is equal to the lesser of the amount embedded in base rates, or the lowest actual amount recorded over the past five years.¹³
 - (d) In order to recover amounts recorded in the Covid Accounts, a utility would need to pass a means test, demonstrating that it was earning a return on equity (“ROE”) which was 300 basis points less than its approved ROE.¹⁴
 - (e) If a utility passed the means test, it would be eligible to recover 50% of the amounts recorded in the Covid Accounts. Recovery would be limited to amounts which brought a utility within 300 basis points of its approved ROE.¹⁵
 - (f) There are two exceptions to the means test and recovery proposal. Staff proposes that costs attributable to compliance with government or OEB actions to assist ratepayers should be fully recoverable (100%) as long as the utility is not earning more than 300 basis points above its allowed ROE, and if a utility’s financial viability is threatened if it only recovers 50% of the proposed outstanding amounts.¹⁶

4.0 The Threshold Test for Recovery Should be the Utility’s Financial Viability

13. CME submits that the starting point for the Board’s policy towards the Covid Accounts should be to address potential issues with utilities’ financial viability. For instance, in the

¹² OEB Staff Proposal, Consultation on the Deferral Account – Impacts Arising from the COVID-19 Emergency, EB-2020-0133, December 16, 2020 at p. 17.

¹³ OEB Staff Proposal, Consultation on the Deferral Account – Impacts Arising from the COVID-19 Emergency, EB-2020-0133, December 16, 2020 at p. 17.

¹⁴ OEB Staff Proposal, Consultation on the Deferral Account – Impacts Arising from the COVID-19 Emergency, EB-2020-0133, December 16, 2020 at p. 23.

¹⁵ OEB Staff Proposal, Consultation on the Deferral Account – Impacts Arising from the COVID-19 Emergency, EB-2020-0133, December 16, 2020 at p. 23.

¹⁶ OEB Staff Proposal, Consultation on the Deferral Account – Impacts Arising from the COVID-19 Emergency, EB-2020-0133, December 16, 2020 at p. 4.

Board's letter of May 12, 2020, the Board outlined that the OEB wished to monitor utilities' financial situation to ensure that there were no impacts on reliability or continued service.¹⁷

14. Board Staff's proposal also explicitly recognizes the centrality of utility financial viability. In the proposal, Board Staff stated that the principle of 'necessity' which underpinned the Board's proposal could be described as:

"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."¹⁸

15. CME agrees that this should be the premise upon which the Board should craft its policy for recovery of the amounts recorded in the Covid Accounts.
16. Despite Board Staff's premise that recovery of any balances in the accounts should be necessary to maintain the financial viability of the utilities, CME submits that Board Staff's proposal, as currently constituted, departs from this principle in its application.
17. The means test proposed by Board Staff, namely that utilities are eligible to recover recorded amounts if they are earning below 300 basis points under the allowed ROE does not reflect the threshold by which utilities are no longer financially viable. Indeed, earning a return on equity at all is, by definition, earning a profit.
18. This misalignment between the Board's stated aim (for recovery of amounts to be tied to financial viability), and the practice of Board Staff's proposal is most evident in its treatment of utilities asking for a greater than 50% recovery:

"In cases where utilities pass the means test, but a net cost-sharing mechanism is expected to put their financial viability at risk, OEB staff is of the view that common financial ratios may be complementary and informative in assessing those exceptional circumstances."¹⁹

¹⁷ Ontario Energy Board, Re: Temporary Monthly Reporting Requirement Related to the Impact on Distributors Arising from the Covid-19 Emergency, May 12, 2020, p. 1.

¹⁸ OEB Staff Proposal, Consultation on the Deferral Account – Impacts Arising from the COVID-19 Emergency, EB-2020-0133, December 16, 2020 at p. 11.

¹⁹ OEB Staff Proposal, Consultation on the Deferral Account – Impacts Arising from the COVID-19 Emergency, EB-2020-0133, December 16, 2020 at p. 23.

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19. Despite being premised on the understanding that recovery of all amounts should be subject to demonstrating that recovery is necessary to maintain a utility's financial viability, Board Staff's proposal provides for a recovery mechanism (the recovery of 50% of amounts recorded) where the utility's financial viability is not in jeopardy.
 20. Many businesses and individuals in Ontario are struggling as the result of the pandemic. They are not earning a profit. Some are only breaking even, and some people are struggling to stay in business, or in their houses. Under the circumstances, CME submits that it is disproportionate and unfair to ask these ratepayers to shoulder the burden of ensuring that utilities earn a greater return.

4.1 Recovery of Amounts from the Covid-19 Accounts Should only be Permitted Where a Utility's Financial Viability is in Jeopardy

21. In order to assess whether a utility's financial viability is threatened, Board Staff suggested using financial ratios. CME agrees that using financial ratios, such as the current ratio and interest coverage ratio should be used to assess utility financial viability.
22. Accordingly, CME submits that utilities should be subject to a means test prior to being eligible to recover amounts recorded in the Covid Accounts. The means test would review whether a utility's financial ratios indicate that its financial viability is threatened. If so, the utility would be allowed to bring forward an application to the Board.
23. If a utility's financial viability is not threatened, then it should not be eligible to recover amounts recorded in the Covid Accounts.
24. If a utility passes the means test, the utility should be required, with cogent evidence, to substantiate the amount that it seeks to recover from ratepayers. If a utility can do that, then CME submits it should be entitled to recovery of amounts recorded in the Covid Accounts up to the point at which it has sufficient funding to be financially viable.

5.0 Board Staff's Proposal does Not Appropriately Balance Ratepayer and Utility Needs

25. As outlined above, CME submits that a stricter means test be applied to utilities before they are eligible to recover amounts recovered in the Covid Accounts. This approach would simplify much of the remainder of Board Staff's proposal. However, in the alternative, and to the extent that the Board determines that the financial viability of utilities should not be the organizing principle behind recovery of amounts in the Covid Accounts, CME submits that the application of the existing test, articulated by Board Staff in its proposal, should be altered to better align with Covid-19's broader impacts.

5.1 The Means Test Should be 300 Basis Points Below the Lesser of Allowed ROE and the 5-Year Average Achieved ROE

26. Currently, Board Staff proposes that utilities that fail to earn three hundred basis points below the Board's allowed ROE or higher should be eligible for recovery.

27. However, in CME's view, this approach fails to distinguish utilities that are under-earning as a result of the pandemic, and utilities that are under-earning for unrelated reasons. A number of distributors under-earn their allowed ROE's by three hundred basis points and have for many years prior to the onset of the pandemic.

28. Under Board Staff's proposal, these utilities would be eligible to receive Covid-19 related recovery, not as a result of Covid-19, but of their normal business challenges. CME submits that in order to screen utilities to ensure that they are only permitted to recover amounts if their financial performance is due to Covid-19, the means test should be altered. Specifically, the means test should only allow utilities who fail to earn three-hundred basis points below the lesser of the following two amounts:

- (a) The Board's allowed ROE; or
- (b) The average ROE achieved by the utility for the previous five years prior to the pandemic.

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29. Should a utility pass the means test, CME agrees with Board Staff's proposal that it should be eligible to recover 50% of the amounts recorded in the account up to a maximum that allows the utility to reach 300 basis points below the relevant baseline, subject to CME's submissions below.

5.2 Recovery of Amounts Should Not Differentiate Between Amounts Related to Government/OEB Mandates and Other Amounts

30. In Board Staff's proposal, amounts recorded in the Covid Accounts would have different recovery potential depending on whether the amount was occasioned as a result of government/OEB mandate to protect customers, as opposed to other recordable amounts. For amounts directly related to government or OEB mandates, Board Staff proposes that 100% of the recorded amounts be eligible for recovery, and subject to a less stringent means test.²⁰
31. CME disagrees with the differentiation between Covid-19 related amounts. Covid-19 was, as Board Staff states, a once in a century event.²¹ The pandemic impacted all aspects of Ontario's economy, and Ontarians lives. Accordingly, CME submits that there is no conceptual reason why government or OEB mandated costs should be treated any differently – a Covid-19 related cost is a Covid-19 related cost.
32. Ontarians are all trying to manage the pandemic. Whether the amounts in the Covid Accounts relate to mandated consumer protection measures, employee protection measures (such as the purchase of PPE, or remote working equipment) or lost revenues from lost load, they represent the impacts of the pandemic on all Ontarians.
33. Consequently, CME submits that amounts in the Covid Accounts should not be treated differently when determining the quantum of recovery, and should be subject to the same

²⁰ OEB Staff Proposal, Consultation on the Deferral Account – Impacts Arising from the COVID-19 Emergency, EB-2020-0133, December 16, 2020 at p. 4.

²¹ OEB Staff Proposal, Consultation on the Deferral Account – Impacts Arising from the COVID-19 Emergency, EB-2020-0133, December 16, 2020 at p. 7.

means test. Utilities should recover 50% of the value of the recorded amounts if, and only if, they pass the means test, regardless of what type of cost or lost revenue is at issue.

5.3 Any Net Gains in the Account Should be Brought Forward for Disposition

34. Board Staff has outlined that in its view, utilities are not required to bring forward net gains recorded in the Covid Accounts for disposition. CME disagrees with this proposition.²²
35. As outlined previously in these comments, sectors all over the Canadian economy, and individuals in Ontario are feeling the economic toll caused by Covid-19. Utilities, to the extent that Covid-19 has caused a net gain, rather than a net loss, should be required to bring forward those amounts for disposition. This disposition would provide much needed relief for ratepayers during this crisis.

6.0 COSTS

36. CME requests that it be awarded 100% of its reasonably incurred costs in connection with this matter.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 25th day of January, 2021.



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²² Ontario Energy Board, Re: Consultation on the Deferral Account – Impacts Arising from the COVID-19 Emergency (2020-0133), December 16, 2020 at p. 10.