ONTARIO ENERGY ASSOCIATION ON BEHALF OF CLD+

CONSULTATION ON THE DEFERRAL ACCOUNT – IMPACTS ARISING FROM THE COVID-19 EMERGENCY: Reply to Stakeholder Submissions EB-2020-0133

February 11, 2021

To shape our energy future for a stronger Ontario.

OEA

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Introduction

On January 25, 2021, stakeholders, including the Coalition of Large Distributors + ("CLD+")[1], submitted comments on OEB Staff's proposal regarding the Deferral Account - Impacts Arising from the COVID-19 Emergency ("Account"). While many parties made submissions in alignment with those of the CLD+, the CLD+ finds the submissions of some intervenor groups to demonstrate a disconnection from the foundational statutes and precedents underpinning energy regulation in Ontario. Some parties appear to have determined their desired end-state, namely denial of cost recovery for utilities, and are proposing means to that end without regard for established legal parameters or the ramifications of undermining the Ontario Energy Board's ("OEB" or "Board") regulatory framework. The CLD+'s reply submission responds to the most problematic submissions of other parties.

At the outset of this submission, the CLD+ notes the Board's efforts for regulatory efficiency in requesting that reply submissions be limited to 5 pages in length; the CLD+ requests the OEB's leniency in this regard. In taking the time to align and combine the views of the Province's largest distributors, rather than make 6 separate submissions, the CLD+ hopes to aid the Board's efficiency efforts and present a more consolidated and consensus-oriented perspective. In addition, the submissions of parties on January 25, 2021 were numerous and voluminous; hindering the CLD+'s ability to provide a thoughtful and thorough response within a 5 page submission.

A number of parties that seek to limit utility recovery of amounts recorded in the Account go to extraordinary lengths in their arguments about the basis for recovery. These extreme arguments give no regard to the legal and regulatory framework that governs and guides the OEB's exercise of its powers. Indeed, they stand in stark contradiction to the OEB's responsibility to fulfill its legal and regulatory mandate.

Energy Probe, for example, submits that, if any costs were incurred implementing government directives, they should be recovered from the government, and not from ratepayers.[2] On this theory, put forward by Energy Probe, the OEB would simply turn its back on its responsibility to consider appropriate treatment of costs incurred by utilities in compliance with government directives.

The extreme positions advanced by certain parties manifest themselves in a number of ways. Among the areas where this can be seen are the arguments by some parties about OEB Staff's necessity principle and about financial viability. As a modern regulator, the OEB is meant to be guided by the objective consideration of facts within its legal and regulatory framework. Not only is this method of operation a matter of law, it is also the most effective way to achieve outcomes that support the public

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

[2] Energy Probe, page 9

interest. Due process is incompatible with many of the extreme approaches offered by other stakeholders, which will be addressed in this reply submission.

Undoubtedly, it would often be popular in the short term for the OEB (and utilities for that matter) not to incur costs to construct, operate, maintain, and administer Ontario's energy systems, and would be similarly popular not to pass along those costs to the customers that benefit from those investments and services. This is especially true in light of the COVID-19 pandemic. However, what is popular is not always right, and the very reason for an independent, expert regulator is to make evidence-based decisions within the parameters of the legal and regulatory framework, recognizing that the public interest is not a function of popular opinion.

Through this reply submission, the CLD+ seeks to provide to the Board its rationale for its proposal, and outline reasoning for the Board to reject parties' positions and proposals, based on the following areas:

1. Financial Viability
2. An inappropriate, and untested new principle of Necessity
3. The Fair Return Standard
4. Comparisons of regulated entities to unregulated businesses
5. Redefining the tested definition of Prudence

The CLD+'s objective is not only to ensure the treatment of utilities is fair, but also to protect customers and the OEB from adverse outcomes that would result from the OEB heeding the submissions of certain parties. Regulatory decisions that run contrary to established legal precedents and undermine regulatory frameworks ultimately increase sector costs and reduce sector performance.

A New Necessity Principle is Inappropriate

While not all submissions agree with the adoption of OEB Staff's principle of necessity, some parties take hold of this principle to boost their extreme positions about the basis for recovery of amounts recorded in the Account. LPMA even proposes that OEB Staff's principle of necessity be turned into a principle of "non-necessity" which apparently would mean that recovery of prudently-incurred costs in excess of the "minimum amount" required to maintain a utility's financial viability "is not required and will not be permitted".[3]

The CLD+ strongly opposes the introduction of the new and untested principle of necessity, as articulated throughout its January 25, 2021 submission; a position shared by several other parties[4] participating in this consultation.

[3] LPMA, pages 4-5 and 17
[4] SUP, EDA, VECC, CLD+, Milton Hydro

VECC notes that they "disagree with Staff that a new and rather ill-defined principle, of "necessity" need to be invented on the fly. Rather the Board should, in our view, focus on how the principles and tools it already has at its disposal can be modified to address the current circumstances."[5]

This sentiment is consistent with the legal analysis completed by Aird & Berlis, which noted:

> "…the OEB can take guidance from a full range of existing regulatory principles and tools as it considers relevant to the Account… 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."[6]

The CLD+ submits that the OEB should not introduce novel regulatory principles into its guidance, particularly when the principle in question is so poorly supported.

The OEB is being asked to implement a new principle, the principle of necessity within the context of maintaining financial viability, that has not been tested or demonstrated in any other jurisdiction, nor is it supported by a strong evidentiary record. Adoption under these circumstances would be extremely problematic. As noted by the Society of United Professionals ("SUP"),

> "the proposals made by OEB Staff, and the final rules approved by the OEB, will have the potential to significantly affect the nature of cost of service and incentive rate regulation unless great care is taken…"[7]

The CLD+ submits that such care has clearly not been taken with respect to the principle of necessity. Given the significant alterations this principle would make to the regulatory framework, and the potential for it to be offside of the legal framework, it would be a high-risk decision for the OEB to adopt it, even in a seemingly narrow way in relation to this Account.

The Necessity Principle in Other Jurisdictions Means Something Else

As the OEB is aware, there are other concepts identified both by LEI and ScottMadden that appear more frequently than "necessity" in other jurisdictions. Among these concepts are 'just and reasonable', appearing in 61% of jurisdictions, and 'prudently incurred', appearing in 39% of jurisdictions.[8] SUP made compelling arguments with

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[5] VECC Submission, page 5
[6] CLD+ Submission, Appendix A, page 11
[7] Society of Unity Professionals, page 1
[8] Ibid.

respect to the poor case being made for a new regulatory concept, noting that only 22% of jurisdictions studied in the LEI report referenced necessity, and submitting that these findings were insufficient to support the elevation of a new regulatory principle above all other regulatory principles.[9] It is clear from the jurisdictional review performed by ScottMadden that no jurisdiction surveyed uses "necessity" specifically related to financial viability when considering recovery of COVID-related costs.

Of the 23 jurisdictions identified by ScottMadden that have authorized deferral of COVID-19 costs, none of them have made such deferral contingent on cost recovery being necessary to preserve a utility's financial viability.[10] Yet that is how some parties, including OEB Staff, are interpreting the concept of necessity in this consultation.

As outlined in the ScottMadden report, where jurisdictions used the term "necessary" in relation to COVID-19 expenditures, they used the term within the context of costs being "reasonable and necessary" to provide service to customers; not necessary to maintain a utility's financial viability.[11] The use of the term "necessity" in other jurisdictions relates to prudence and the establishment of just and reasonable rates or, said differently, rates that recover costs which were necessary to incur.

There is no jurisdiction that uses the term to limit cost recovery to that necessary for "maintenance of the utility's financial viability"[12], as a threshold test. As noted, this new principle is not needed for the Board to establish just and reasonable rates, and the principle of necessity as defined by OEB Staff should be rejected.

The Fair Return Standard Protects a Prudently Incurred Cost

The CLD+ notes that the submissions of some parties seek to misrepresent the terms of the Fair Return Standard in support of their positions, suggesting that allowing for recovery of COVID-19 related sums through the Account somehow amounts to protecting a utility's earnings at the expense of customers. Energy Probe writes that the "OEB has no responsibility to ensure that utility shareholders make a profit"[13], SEC suggests amounts in the Account are a subsidy from ratepayers[14], and VECC notes it is not the OEB's "role or duty to ensure that the companies earn the return".[15] The CLD+ submits these statements misconstrue the Fair Return Standard.

As noted in the Aird & Berlis legal review provided by the CLD+:

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[9] Society of United Professionals, page 10
[10] CLD+ Submission, Appendix B, page 24
[11] CLD+ Submission, Appendix B, page 10
[12] The words in quotation marks are part of the "principle of necessity", as framed by OEB staff.
[13] Energy Probe Submission, page 6
[14] SEC Submission, page 4
[15] VECC Submission, page 5

> "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."[16]

Contrary to the suggestions of parties, utilities are not asking the OEB to "subsidize" earnings at the expense of customers. In order to provide an essential service to customers during the COVID-19 pandemic, as well as implement mandatory government policies and directives, Ontario's utilities prudently incurred costs and deferred revenues. In the years to come, based on legally enshrined principles such as the Fair Return Standard, utilities will seek the OEB's approval for recovery of prudently incurred costs based on evidence provided to the Board. To expressly deny utilities even the opportunity to present such evidence and apply for the recovery of prudently incurred costs is entirely contradictory to the Fair Return Standard. The CLD+ notes again that, in the Cost of Capital Report, the OEB itself stated that meeting the Fair Return Standard is not optional; it is a legal requirement.[17]

Some parties have argued that pre-emptively denying applications for cost recovery is consistent with the Fair Return Standard. VECC, for example, suggests the Fair Return Standard should be put "in context", and appears to suggest that the OEB should weigh a utility's ROE against those of other sectors in the economy.[18] In fact, the OEB's process for calculating the approved ROE does exactly that.

The OEB's approach to ROE and the Fair Return Standard recognizes that capital (debt and equity) is required to finance utility investments and operations, and that there are regular, prudent costs associated with obtaining and maintaining that capital. The OEB sets the approved rate of return on equity based on an expertly and objectively derived methodology that uses independent benchmark variables. The result is funding for a real, and prudent cost: the cost of equity.

The OEB's ROE methodology, which is based on the Fair Return Standard, recognizes that as the economy changes over time, the cost of equity does too. The submissions of some parties imply that this regular, objective recalibration does not occur. This process does occur, and the CLD+ submits it is the appropriate way to assess ROE within the established regulatory framework, as opposed to endorsing ad hoc, reactionary alterations without sufficient evidence.

Retroactive Rulemaking and Ratemaking

[16] CLD+ Submission, Appendix A, page 10

17 Cost of Capital Report, page 18.

[18] VECC Submissions, page 5

In a high-performing energy sector the rules of the game cannot be fundamentally altered *after* prudent costs have been incurred. Retroactively altering fundamental aspects of the regulatory compact, such as the Fair Return Standard, on the basis of next to no evidence is not consistent with prudent policy-making and is patently unfair. Specifically, OEB guidance which expressly disallows recovery of prudently incurred costs, without even allowing utilities to bring forward evidence to substantiate prudent costs, would be entirely inconsistent with the fair, rules-based, high-performing sector the OEB seeks to foster. The Ontario Court of Appeal decision found the OEB is required to balance a number of "sometimes competing goals".[19] The OEB guidance in this proceeding should establish an eligibility framework that more appropriately balances the OEB's competing objectives and does not unfairly limit utilities from seeking recovery of prudently incurred costs. The CLD+ proposed such a framework for the OEB's consideration in its January 25th, 2021 submission.

A Fundamental Misrepresentation of Financial Viability by Many Parties

The Board in its review of many parties' submissions will read an exaggerated perspective and fundamental misrepresentation of the Board's longstanding principle of financial viability. These parties' submissions basically propose that the Board should now interpret financial viability as a threshold where utilities only recover COVID-19 costs or lost revenues when a utility does not make a profit or does not earn any income. This representation and use of financial viability is false and the OEB should reject it[20].

The CLD+ highlights that the statutory objective definition of financial viability for both electricity and gas is to "facilitate the maintenance of a financially viable [electricity or gas] industry".

In fact, and precedent, the OEB has set out that financial viability is not tied to a utility earning income or profit. The OEB's Cost of Capital Report has the following section where, in the context of the Fair Return Standard, the CLD stated that that it is not enough simply to provide for a return that allows utilities to avoid bankruptcy:

> "…the Board is of the view that the capital attraction standard, indeed the [Fair Return Standard] in totality, will be met if the cost of capital determined by the Board is sufficient to attract capital on a long-term sustainable basis given the opportunity costs of capital. As the Coalition of Large Distributors commented:
>
> [t]he fact that a utility continues to meet its regulatory obligations and is not driven to bankruptcy is not evidence that the capital attraction standard has been met. To the contrary, maintaining rates at a level that continues operation

19 Natural Resource Gas Ltd. v. Ontario Energy Board, 2006 CanLII 24440 (ON CA), paragraph 18.

20 SEC, page 3, FRPO, page 2, LPMA, page 3, Energy Probe, page 3, CCC, page 9

> but is inadequate to attract new capital investment can be considered confiscatory. The capital attraction standard is universally held to be higher than a rate that is merely non-confiscatory. As the United States Supreme Court put it, 'The mere fact that a rate is non-confiscatory does not indicate that it must be deemed just and reasonable'."[21]

The CLD+ submits that financial viability is a statutory objective to maintain financially viable electricity and gas industries, on a long-term sustainable basis, and the concept of maintaining a financially viable industry ties in directly with the Fair Return Standard.

Financial Viability is based on the Fair Return Standard, not Necessity

CME suggests that the OEB's consideration of financial viability is triggered only at the point where utilities are not earning a Return on Equity, or earning a profit.[22] Energy Probe, with no legal basis to back it up, argues that a utility with an ROE above 0% is "financially stable".[23] FRPO suggests that the OEB's consideration of financial viability should be taken even to the extreme of assessing whether there ought to be a takeover of a utility by a party with "financial wherewithal". [24]

In response to parties' assertions, and as noted earlier, the OEB Act establishes financial viability as a statutory objective for the OEB with respect to the electricity and natural gas industries[25]. The objective clearly sets out that it is the OEB's responsibility to maintain the industries' financial viability, and the Supreme Court of Canada has already stipulated that financial viability is based on the Fair Return Standard. It is *ultra vires* the OEB to depart from the Fair Return Standard.

Accordingly, the OEB can and indeed must disregard the submissions by parties arguing to redefine financial viability based on some notion of "necessity".

Comparisons of Regulated, Essential Utilities to Unregulated, Non-essential Businesses are Improper

Some parties base their submissions on comparing utilities to other unregulated, non-essential businesses. These comparisons are obviously flawed and are an unsound basis for policy-making.

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[21] EB-2009-0084 (December 11, 2009) Report on Cost of Capital, Page 20
[22] CME, paragraph 17, page 6.
[23] Energy Probe Submission, page 5
[24] FRPO, page 4.
25 OEB Act, Clause 1.2: "To promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry". OEB Act, Clause 5.1: "To facilitate the maintenance of a financially viable gas industry for the transmission, distribution and storage of gas."

The CLD+ members were all designated essential workplaces during the pandemic and, as a result of that Government directive as well as OEB licence requirements, these utilities continued to serve customers throughout the pandemic. As fully operational essential workplaces, utilities continued to do the work, incur costs, and provide customers with a vital service necessary to maintain life, public safety, and the fragile economy. There is no fair comparison to be made with airlines or other businesses that stopped operation. If anything, the fair comparison is with hospitals, schools, grocery stores, pharmacies, and other essential workplaces that had no choice but to continue to operate, incur costs, and meet the needs of society.[26]

It is also not appropriate to compare utilities to the market as a whole, or to prescribe that utilities should be forced to fall with the market in lean times, any more than it would be appropriate for utilities to be forced to rise with the market during boom times.

The Supreme Court of Canada is clear in how the OEB must approach cost recovery:

> *"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."*[27]

In pointing to the negative impacts of COVID-19 for various unregulated businesses or the market as a whole, OEB Staff and parties are asking the OEB to directly contravene this Supreme Court of Canada finding by supplanting the legal requirement of cost recovery with the ill-defined concept of "market proxy".

The ScottMadden review of sixty regulators shows that the majority of regulators have not incorporated the sorts of market proxy approaches being proposed by other parties in establishing recovery frameworks, nor have the six regulators that have approved utility recovery of costs. These regulators found their legislative mandate provided ample direction for their guidance.[28]

For the OEB, the legal and regulatory framework is the basis for the OEB to set its policy through this consultation, and as set out in the CLD+ submission, the OEB also already has the regulatory tools and processes to properly review utilities' applications for recovery of costs without introducing a new comparison methodology. In the event that the OEB does choose to implement a new market proxy/comparison-based cost recovery methodology, a significant amount of incremental analysis and evidence is

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[26] Schools, for example, incurred extraordinary incremental costs, including for protective personal equipment; costs that the Government determined were prudent and injected millions of dollars to fund.
27 ATCO, paragraph 61.
[28] CLD+ Submission January 25, 2021, Appendix B, Page 8

required, including with respect to compliance and alignment with the legal and regulatory framework.

COVID-19 Costs are Not Included within Expected Earnings Fluctuations

Some parties submitted that COVID-19 costs are included within the reasonably expected earnings fluctuations of utilities. This assertion is completely inconsistent with the fact (which multiple submissions reference) that COVID-19 and the circumstances surrounding it are without precedent in modern times. Others have suggested that in approving COVID-19 related costs the OEB is effectively stepping outside of its standard regulatory framework by allowing for cost-recovery during incentive regulation terms.[29] The CLD+ disagrees, as the OEB's regulatory framework has in place mechanisms to allow for unexpected circumstances outside of a utility's control.

This emergency is more akin to a Z-Factor than standard fluctuation by far, and no party (including OEB Staff) has put forward compelling evidence that dismiss the principles of a Z-Factor event. The CLD+ notes that the Z-Factor framework contemplates an extraordinary event that is time based to a 12 month period[30], and general consensus is that impacts from the COVID-19 pandemic are expected to carry on for several years. The CLD+ submits that there are core elements of the Z-Factor framework that can be applied to this proceeding. Similar to the Z-Factor test, the final guidance in this consultation should not be predicated on customer impact, as this would put the policy in conflict with the legal framework laid down by the Supreme Court of Canada.

The Z-Factor framework is robust and helpful to the OEB. It does not guarantee recovery, and it always falls on the OEB Panel hearing a Z-Factor application to balance the application for recovery with other OEB objectives, including case-specific rate impacts to customers. The principles underpinning Z-Factors have clear relevance to this exceptional circumstance and cannot be dismissed based upon the scant arguments presented to the OEB.

As noted earlier in this submission, the legal precedents established by the Ontario Court of Appeal and Supreme Court of Canada provide for the removal of ambiguity in determining recoverable amounts. Suggestions that COVID-19 impacts should be shown to vary utilities' ROE outside of "expected earnings fluctuations" is just that; an attempt to create legal ambiguity where there is none. To even argue this point, parties have to disregard their own submissions that the COVID-19 emergency is a once in a lifetime event, which should underpin the very definition of an unexpected earnings fluctuation.

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[29] IGUA and AMPCO Submission, page 4

[30] Report of the Board on 3rd Generation Incentive Regulation for Ontario's Electricity Distributors

Prudence being Inappropriately Redefined

In the Staff Proposal, OEB Staff recommend "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."[31] IGUA and AMPCO agree, going even further by suggesting that compensation for utility staff and shareholders indicates imprudence which should warrant the disallowance of cost recovery.[32]

The CLD+ takes great issue with the characterization of staff and shareholder compensation as imprudent. These are costs required to support any business' operations. The prudence of those utility costs has been reviewed many times over the past 15 years; those OEB determinations of prudence do not change because of the pandemic.

Proposals to change the concept of prudence in the manner suggested above would bring about a significant divergence from the regulatory compact. The regulatory compact is underpinned by cost recovery for services received. It would also be a departure from the Fair Return Standard, which as discussed previously, prohibits presumptively determining that incurred costs are imprudent by virtue of customers' economic challenges.

According to the legal framework, utilities must be permitted to bring forward applications and specific evidence to recover their costs: to make their case that costs are prudent. They cannot be presumptively prevented from making that case. Logically, this is particularly true of costs that have been consistently deemed prudent by the OEB, such as the costs of staff compensation and the costs of capital.

The OEB may find that, even where costs are prudently incurred, the OEB's balancing of interests warrants some sharing of these costs in the context of a specific application, to which the CLD+ is amenable. However, that balancing is not a matter of denying the prudence of a cost; it is a matter of striking an appropriate balance to ensure that the resulting rates are just and reasonable, as is required pursuant to the legal and regulatory framework.

Costs to Comply with Government and OEB Mandated and Endorsed Activities Warrant Separate Treatment

OEB Staff's proposal established a "2 Group" approach to recovery of COVID-related amounts, in which impacts necessary to comply with Government or OEB mandated

[31] Staff Proposal, page 15
[32] IGUA & AMPCO Submission, pages 5-6

actions would be 100% eligible for recovery.[33] Parties such as SEC, VECC, CCC and LPMA have argued against this proposal. The CLD+ submits that OEB Staff's proposed approach is principled and based on a well-established history of regulatory precedent.

There have been many examples of past instances where the OEB has established mechanisms for utilities to recover costs to comply with activities that have been mandated by the OEB or the government. Such mandated activities are designed to implement public policy imperatives and introduce obligations which are out of the control of a utility's management. The OEB has justifiably recognized the need to establish mechanisms to allow recovery of any associated costs so that the utility can deliver on the new requirements while continuing to have the resources necessary to meet all its existing and persisting obligations to provide safe and reliable service.

Examples of such mechanisms include, but are certainly not limited to:

- The establishment of a deferral account to track the costs associated with enabling the option for Regulated Price Plan (RPP) customers to opt-out of time-of-use pricing;
- The establishment of deferral accounts to allow recovery of costs associated with the implementation of smart meters;
- The establishment of deferral accounts, a regulatory framework and the implementation of Cap and Trade; and,
- The establishment of deferral accounts to allow recovery of costs associated with implementation of the Gas Distribution Access Rule.

The mandated and endorsed costs in this instance are related to implementing mandated measures to assist customers, and their treatment should not diverge from long-standing OEB precedent.

In its submission, LPMA states[34]:

> The government and the Board have mandated actions aimed at providing relief to ratepayers in response to the pandemic. Recovery of the costs associated with these actions is like giving money to ratepayers with one hand and taking it away with the other. It makes no sense to LPMA why the government and the Board would allow special treatment for these costs and allow the utilities to recover 100% of these costs and not be subject to a means test to demonstrate that their financial viability is at risk without recovery.

The CLD+ strongly disagrees and submits that OEB Staff's proposal to allow 100% recovery of Group A amounts is consistent with regulatory precedent.

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[33] OEB staff proposal, pg. 19.
[34] LPMA submission, pg. 17.

There are many customer rate relief measures currently in effect such as the Low-Income Energy Assistance Program (LEAP) and Rural or Remote Rate Protection (RRRP). In all instances funding for such programs is collected broadly from all customers, including those that receive the benefits. The CLD+ is aware of no existing example where the OEB or government expects utilities to absorb the costs of mandatory relief programs based on a means test.

On the one hand parties are telling the OEB to consider the customers that have been hit hardest by the pandemic and on the other they are making submissions which provide a financial disincentive to utilities to implement measures to assist those very customers. If the OEB denies 100% recovery of Group A costs it would be introducing a financial disincentive to provide relief to customers. This action would essentially put utilities in the position where they must choose and prioritize between supporting customers via implementation of Government and OEB mandates, and delivering on their obligations as an essential service. Such an outcome would be absolutely inappropriate given the circumstances.

All Incremental Bad Debt Should be 100% Recoverable

While some parties, such as VECC, have supported the inclusion of bad debt for recovery, many do not. LPMA noted that recovery of bad debt is not permitted in Z-factor applications and stated that "there is no reason to abandon this non-qualification of bad debt for recovery." Some parties have argued that utilities are already sufficiently compensated for incremental bad debt through their ROE. The CLD+ respectfully disagrees.

While the OEB has expected utilities to manage changes in bad debt, the amount of bad debt built into a utility's base rates is based on an assumption that the winter disconnection ban exists from November 15 to April 30 each year. The circumstances of this pandemic are unlike prior economic downturns that have been experienced by utilities because they have altered that assumption. This is important because one of the main tools utilities have to limit the amount of bad debt is the ability to disconnect customers that are in arrears. The ability to apply this tool was altered when the winter disconnection ban was extended through to July. As such, the OEB Staff proposal to allow 100% of the incremental bad debt incurred as a result of extension to the disconnection ban was appropriate. That said, the CLD+ submits that the OEB Staff proposal was not fully reflective of the OEB's communicated expectations of utilities.

In its March 19, 2020, Decision and Order the OEB stated:

> "**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 OEB communicated to utilities that they were expected to support their customers through the pandemic, not just during the extended disconnection ban, and did not limit that support to a subset of customers. Indeed, the widespread lockdowns have brought challenges to all classes of customers. As the CLD+ stated in its January 25, 2021 submission, utilities have implemented additional utility support programs to support their customers.[35] For example, some utilities, including CLD+ members, voluntarily extended the disconnection ban and did not immediately seek to disconnect all accounts in arrears in July, understanding that their customers were still in need. With the cyclical winter disconnection ban commencing again in November 2020, the next opportunity to disconnect certain customers will present itself in May 2021.

Utilities are making every effort to accommodate customers in arrears and get their payments back on track. However, the uncertain nature and length of the pandemic may mean that some customers will be unable to do so, and the provision of flexible payment arrangements could result in incremental bad debt. The CLD+ believes that utilities should continue to be encouraged to find ways to support their customers. This broader pool of support is consistent with the OEB's expectations and benefits the customers with the greatest need for assistance. In the CLD+'s view, subjecting the resulting incremental bad debt to OEB Staff's proposed 50% cost sharing criteria and means test creates a financial disincentive that is inconsistent with the expectations communicated by the OEB early in the pandemic, and will hurt the very customers that some parties are representing. As such, the CLD+ submits that the OEB should include all incremental bad debt in the Group A category as detailed on page 6 of the CLD+ submission.

Conclusion

As noted throughout this submission, many parties have made proposals which deviate from or fully violate established regulatory principles, place the OEB offside of its statutory obligations, and ultimately seek to establish eligibility criteria for the Account so extreme that few if any utilities would be able to make their case before an OEB panel to seek recovery. The CLD+ submits that the OEB should reject these proposals and rely on its well-established principles and statutory objectives.

In its January 25th submission, the CLD+ proposed a reasonable path forward for the Account. The CLD+ encourages the OEB to adopt its proposed approach, which:

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[35] Further examples provided on page 11 of the CLD+ submission.

1. Establishes eligibility criteria that ensure utilities continue to be incented and appropriately resourced to provide relief to their customers while continuing to provide safe and reliable service.
2. Is aligned with established regulatory principles and appropriately balances the OEB's statutory objectives.
3. Allows the Board to provide guidance that maintains a financially viable electricity and gas industry.

The CLD+ appreciates the opportunity to provide its comments in this important proceeding and looks forward to the opportunity to provide comments on any draft guidelines issued by the OEB.

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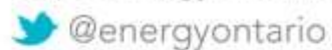

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