

ONTARIO ENERGY BOARD

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

DRAFT ISSUES LIST COMMENTS

OF

**ASSOCIATION OF MAJOR POWER CONSUMERS
IN ONTARIO (AMPCO)**

&

INDUSTRIAL GAS USERS ASSOCIATION (IGUA)

Introduction

1. These comments on Staff's draft issues list are filed on behalf of AMPCO and IGUA. As this consultation spans electricity and natural gas, and as AMPCO and IGUA represent Ontario's largest electricity and gas users, respectively, many of whom fall into both of those categories, AMPCO and IGUA have determined, and their respective Boards of Directors have endorsed, that they can effectively combine representation in this proceeding and thereby; i) better assist the Board; and ii) enhance regulatory efficiency.
2. These submissions are premised on the general view that an issues list should provide general indication of the scope intended for inquiry in the subject proceeding, but need not (and often cannot, in advance) be exhaustive. Within a general scope reflected in an issues list, areas of inquiry or consideration that a party can illustrate are relevant and probative should be entertained. Accordingly, we do not herein generally seek to parse particular words and phrases. Rather we take guidance from the general thrust of the draft issues list and of the Board's communications with parties regarding the purpose and intended scope of this consultation. These initial comments are thus limited to areas where AMPCO and IGUA have general concerns or which we suggest would benefit from clarification.

Issue #1a.: The Issue of Advance Policy Direction

3. AMPCO and IGUA commend the Board for convening an inclusive consultation on the general topic of the appropriate regulatory response to the COVID-19 emergency, which is as critical a topic to utility customers as it is to utilities. The importance of broad, open and informed consultation to the acceptability of regulatory outcomes, particularly in respect of a “zero sum” calculus in which burdens must be allocated to someone, cannot be overstated.
4. The corollary is also true; absent an imminent crisis, the Board cannot act in advance of receiving and considering the views of directly affected parties and then expect its’ actions to be broadly accepted.
5. Advance policy direction – that is direction prior to completion of this consultation and consideration by the Board of the entirety of the input thus received – should not be provided absent clear demonstration of an immediate and critical need of one or more of the regulated entities, and in that case only to the extent required to address, in the interim, such immediate need for the directly affected entities.
6. What circumstances might qualify as an immediate and critical need is not for AMPCO or IGUA to seek to define. That would be a task for the regulated entity claiming such circumstance.
7. Further, to the extent that a case is made out that the Board should act in advance of the proper conclusion of this process, the Board should seek to expedite some measure of consultation and input in respect of any such proposed advance action, even if the Board has to do so on an unusually constrained time line.
8. What the Board should not do is provide advance policy direction without some indication to those directly affected of what policy direction it proposes to take and some opportunity, however expedited, for directly affected parties, including customers who are impacted by the COVID-19 emergency as well and who ultimately may be asked to “pay the bills”, to provide input.
9. In particular, providing any advance policy direction at the time of establishing the final issues list, in order to “*provide greater certainty with respect to recovery*” of amounts in the deferral accounts under consideration, and thus effectively predetermining one or

more issues intended to be the subject of this consultation, would, with respect, be highly inappropriate.

10. During the preliminary stakeholder meeting held on May 28th the issue of interim recording by regulated entities of the COVID-19 VA balances was raised, and mention was made of the financial recording concept of a “regulatory asset”. It is our understanding that to record an amount as a “regulatory asset” requires, as a principle of accounting, a significant amount of certainty regarding recovery. For the reasons set out above, such recording, and issuing of any guidance in support of such recording along with the final issues list, without opportunity for substantive input by those potentially directly affected, would be premature, highly irregular and, with respect and as already stated, inappropriate.

Issue Series B: General Principles

11. Despite the “General Principles” heading of this second section of the draft issues list, the two enumerated draft issues (#s 2 and 3) both reference extant OEB principles or cost related directions as potential guidance for tracking and disposition related to the COVID-19 emergency variance accounts. This suggests the potential for interpreting the “general principles” topic as “previous OEB determined general principles”. If this is the case, then AMPCO and IGUA believe this is too narrow an approach.
12. We do note that several of the issues as drafted appear to indicate that OEB Staff has contemplated the appropriateness of considering “first principles” in this matter. The enumerated topics that appear to be on the table include;
 - (a) What types of costs should be eligible (or not) for recording in the variance accounts. (Issue 7)
 - (b) Whether loss of load related costs should be entertained for recovery (or not). (Issue 11)
 - (c) Whether rate class cross-subsidy should or should not be permitted. (Issue 11d)
 - (d) What role considerations of “causality” and “prudence” should play in assessing costs for recovery. (Issues 12 and 13)
 - (e) How materiality should be addressed. (Issue 14)

- (f) The appropriateness of a cost sharing model, and more generally how the Board should take into account the impact of the COVID-19 emergency on customers and the broader Ontario business environment. (Issue 16)
13. While these are helpful enumerations, AMPCO and IGUA strongly suggest that the “General Principles” issues include a clear statement that parties may provide input on general principles of economic regulation that provide guidance on how the Board should approach cost recording and cost recovery in this generational global crisis. AMPCO and IGUA will seek to address the basic issue of; ***what is the appropriate function of economic regulation in protecting the interests of regulated entities and customers in addressing the impacts on the regulated entities arising from this singular global crisis.***
14. Basic points of departure on this question range from keeping regulated entities whole on one end of the spectrum, to taking only those actions in respect of cost recovery absolutely necessary to maintain the financial viability of the regulated entity (and thus allow for the continuation of safe and reasonably reliable energy services for customers) on the other end of the spectrum. AMPCO and IGUA intend to address where on this spectrum the Board's policy direction should land, and we assume that the final issues list will permit this topic to be fully considered.

Additional Issues

15. There are three particular additional issues that are appropriate for consideration by the Board and should be included, expressly or by implication, in the final issues list:
- (a) ***If disposition of COVID-19 VA balances to ratepayers is approved, what conditions, if any, should attach to such disposition?***

For example, conditions which preclude corporate dividends, affiliate debt principle repayment and/or increases in executive compensation have been attached to corporate emergency support funding provided to other businesses in response to COVID-19. In addition in the utility context, enhanced sharing of earnings with ratepayers for some period of time to provide for return of funds recovered in rates might be appropriate.
 - (b) ***Should the Board consider the cumulative impacts on Ontario energy consumers of any proposed dispositions to customers of COVID-19 VA balances by gas distributors, electricity transmitters, OPG and/or electricity***

distributors, and if so how should such cumulative impacts be taken into account?

- (c) ***If disposition is approved, when should recovery commence and over what period of time should it be spread?***

For example, should balances be carried for some period of time prior to commencement of disposition? Are there metrics (for example, general economic indicators) that should be demonstrated prior to commencement of disposition?

Posting of Data

16. The Board has indicated that it intends to inform this consultation by providing data collected from the regulated entities about “*the initial quantum amount recorded in the Account*”. The Board has further indicated:

Specifically, the OEB will provide a total for each sub-account of the Account broken down by electricity distributor.

Steps will be taken to obtain and provide similar data from the remaining utilities (OPG, electricity transmitters, and natural gas distributors).

17. The Board has provided guidance regarding the use of this data to inform the instant consultation, including the following (our emphasis);

The intent of providing any initial data that may be available leading up to the July stakeholder forum, is to allow stakeholders the opportunity to understand the magnitude of the impacts. It is anticipated that this will allow stakeholders to have a fruitful discussion on the nature of the impacts, and the activities being undertaken by the utilities to respond to the emergency that give rise to incremental costs, savings, offsetting amounts, or lost revenue.

18. It will be important that the data presented, while necessarily preliminary, disaggregates “*savings*” and “*offsetting amounts*” from recorded costs. The Board should ensure that its directions to the regulated entities make that clear.

Conclusion

19. AMPCO and IGUA appreciate the opportunity to provide these comments on the appropriate scope for the Board’s consultation in this matter, on behalf of Ontario’s largest

energy consumers for whom energy costs are now, during this COVID-19 emergency, more important and impactful than ever.

ALL OF WHICH IS RESPECTFULLY SUBMITTED by:



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