

Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4
Attn: Ms. C. Long
Registrar and Board Secretary

June 18, 2020

Dear Ms. Long

Re: **EB-2020-0133**

These are the reply submissions of the Electricity Distributors Association (EDA) in the above-named matter. Our reply submissions on the Ontario Energy Board's (OEB) draft Issues List applicable to the COVID Deferral Account (CDA) recognize that economic regulation is complex, dynamic and cannot be simplified. These reply submissions deal with the following issues:

- Should local distribution companies (LDCs) be treated as though they are competitive firms
- Whether the CDA 'insulates' LDCs
- Whether the CDA ought to be declared a regulatory asset
- Timing

As well, we reply to London Property Management Association's (LPMA) proposal that the pandemic's estimated impact on revenues and loads be disclosed. Each of these issues is considered further below.

Should LDCs be treated as though they are competitive firms

We submit that it is inappropriate for the Issues List to reflect that LDCs are to be treated as though they are competitive firms.

LPMA, the Vulnerable Energy Consumers Coalition (VECC) and Schools Energy Coalition (SEC) were among the parties commenting that the draft Issues List did not treat LDCs like other competitive firms. LPMA commented that:

The draft issues list needs to reflect the uncertainty of the current world situation and its impact on all aspects of life. There should be no more or less certainty for utilities than for anyone else. The economic impacts are not unique to utilities. In fact, utilities have been more insulated than almost any other industry in the province. People still need natural gas to heat their houses and water and people still require electricity. Both of these industries are different from most other businesses in that customers do not have to come to the utility to buy their product, nor do the utilities require a physical presence of a person to deliver their product to the customer. (page 2)

VECC commented that it is not the OEB's duty to "... ensur(e) that utilities avoid the impacts of pandemic that all other sectors of the economy must face" (VECC p4). VECC inappropriately extended this when it observed:

It is not clear to us why unregulated businesses should be made to absorb their legislated pandemic costs while utilities ... are allowed to be made good on their losses (VECC p4)

SEC went further and stated that the OEB's role is "(a)s the market proxy, it is not ... to treat utilities any different from how they would fare in a competitive market." (SEC p2).

We submit that LDCs are distinctly different from competitive firms, who as VECC states "lack the luxury of monopoly protections" (VECC p8), in several ways including:

- LDCs provide safe, reliable service on an ongoing basis without requiring that the customer transact with the LDC each time they seek to service/supply and do so on a credit basis
- LDCs have an ongoing obligation to connect customers and are expected to continue to serve
- LDCs are subject to unusual conditions such as the moratorium on disconnections that was extended to July 31
- LDCs were not and are not eligible for federal government financial relief
- LDCs cannot set their own prices

In the context of the pandemic specifically, Ontario's LDCs were identified as essential workplaces, whereas many competitive firms were not. When many competitive businesses were shuttered, Ontario's LDCs safely and reliably continued to serve customers. They continue to do so as the economy reopens in phases, while some competitive businesses emerge from being shuttered and others remain shuttered. As noted by LPMA "... (utilities) are different from most other businesses ..." (LPMA, p2).

For these reasons, we submit that it is inappropriate for the Issues List to be modified to reflect that Ontario's LDCs should be treated in manner similar to that experienced by competitive firms.

Whether the CDA 'insulates' LDCs

We submit that the CDA does not insulate LDCs.

As many parties correctly recognized, among the regulator's legislative objectives is the duty to maintain a financially viable industry. In our June 11 submission we recognized that maintaining a financially viable industry is a key element of providing consumers with safe and reliable service on an ongoing basis.

It is inappropriate to suggest that the CDA 'insulates' LDCs from the financial consequences of the pandemic or that the LDC is guaranteed recovery (CME p2 para 9) or that the draft Issues List is biased in favour of disposition (LPMA p1) on the grounds that the Issues List uses language that appears to lack objectivity (VECC p3). Furthermore, whether the Issues List is silent on the OEB's duty to appropriately consider the impact to the rate payer cannot be elevated to conclude that the CDA 'insulates' the LDC. We submit that the OEB's draft Issues List should state the issues that the OEB needs to engage in, and not prejudge any issue. Accordingly, the OEB must reject any submission that the draft Issues List inappropriately protects the rate regulated entity.

In their joint submission, the Association of Major Power Consumers of Ontario and the Industrial Gas Users Association (AMPCO-IGUA) asserted that the OEB's Issues List should objectively state the issue using impartial language free from any implication that the OEB has predetermined the issue (AMPCO-IGUA p2 para 9). AMPCO-IGUA described the OEB's duty at p4 para 13 as:

... protecting the interests of regulated entities and customers in addressing the impacts on the regulated entities arising from this singular global crisis.

We submit that the draft Issues List is capable of supporting the OEB in achieving this outcome.

The CDA is the OEB's tracking mechanism that will, for example, support the OEB in assessing the financial impact(s) of the pandemic to the rate regulated entity. The information recorded in the CDA is expected to be among the input(s) to the various tools that the OEB can use to understand:

- the impact to customers
- whether an LDC's financial viability is at risk or has deteriorated
- if the LDC requires relief through rates.

It is inappropriate to rely on the CDA's construction or operation to form a conclusion of whether the CDA insulates the LDC.

Despite the Association of Power Producers of Ontario (APPRO) inappropriately likening the pandemic to Z-Factor events, one cannot conclude that this results in the CDA 'insulating' the LDC. We are well aware that the Z-Factor mechanism does not uniformly or consistently result in the disposition through rates of the recorded balances. We wish to point out that the analogy's inappropriateness can be demonstrated by comparing the CDA to past Z-Factor events that the OEB has adjudicated. Unlike most Z-Factor events, the impacts of the pandemic are wide ranging, markedly different (e.g., the effects of the pandemic were simultaneously manifested as foregone revenues, incremental short lived costs, incremental enduring costs, cost savings) and expected to continue for the foreseeable future.

Regardless of the entries to the account and the balances recorded, the range of potential dispositions is, as SEC stated at page 2 of its submissions, from 0 relief to full recovery of the balances recorded. We submit that the proposed Issues List does not fetter the OEB's discretion to decide that either end of the continuum, or any point along it, and is appropriate.

VECC explicitly referenced the OEB's duty to set just and reasonable rates (VECC p4). LDCs acknowledge that a financially viable regulated entity that is able to access capital on an ongoing basis at favourable terms and conditions is expected to be capable of functioning as a going concern that can provide safe, reliable service and continuity of supply to its customers. The OEB's Issues List supports the OEB in providing regulatory oversight capable of achieving this outcome without 'insulating' the LDC.

Whether the CDA ought to be declared a regulatory asset

We submit that the Issues List must include whether the CDA should be declared a regulatory asset as removing the issue effectively prejudices the issue.

AMPCO-IGUA commented at p3 para 10 that a regulatory asset has a higher expectation of recoverability. While this is true, it is an outcome and not sufficient justification to remove the draft issue. Continuing to include the issue will support the OEB in examining and considering whether to declare the CDA to be a regulatory asset, and support the OEB in considering the advantages and disadvantage of any consequential improvement in an LDC's 'bankability' and, hence, its ability to access capital on an ongoing basis at reasonable terms and conditions. We submit that without evidence it is premature to exclude this issue from the Issues List.

Timing

The OEB is readying itself to provide an appropriate level of economic regulation for the impact of the pandemic; its scoping of the issues being the first activity. Some parties advocate for a more expansive Issues List (LPMA p12-13; SEC p3-4). SEC asserted that, for reasons of procedural fairness, the OEB cannot permit itself to take procedural 'short cuts', whether rooted in a sense of urgency or not (SEC p5). We submit that the OEB's Issues List can be supported by an expedited measure of consultation as proposed by AMPCO-IGUA (p2 para 7). Consistent with AMPCO-IGUA's position, we submit that the OEB balance any expansion of the Issues List with appropriate heed of the time available to complete this stage of its preparations.

Estimated impact on revenues and loads

We submit that the OEB should decline to act on LPMA's suggestion that utilities disclose the estimated impact of the pandemic on their loads at the customer class level in time of the OEB's end of July stakeholdering activity.

We wish to point out that the OEB's accounting guidance is silent on the need to record revenue impacts at the customer class level. LDCs are required as a condition of licence to appropriately protect customer information. We caution that release of load impacts at the customer class level may, for some LDCs, result in them releasing information that should be treated as confidential.

As was noted in our June 11 submission, careful analysis will be required to correctly identify and quantify the impacts to loads attributable to the pandemic. We anticipate that more than one analytical methodology capable of identifying and quantifying the impacts is available. We submit that is unreasonable to suggest that the appropriately analyzed load data can be provided in the 6 weeks that are available.

We note that the OEB's June 4 letter describes that data is to be made available at either the account level or the sub-account level to assist parties in understanding the magnitude of impacts so that they can meaningfully engage in the OEB's development of accounting guidance. We cannot conclude that stakeholders require any further information to support their participation.

Conclusion

These submissions are made in the context of the unique conditions of the pandemic, and in an effort to contribute to the establishment of a workable Issues List. They are provided on a without prejudice basis.

LDCs continue to provide their customers with safe and reliable service and an appropriately secure supply of commodity while striving to both prudently incur costs and to appropriately mitigate the risks and financial consequences of the pandemic. LDCs and their customers look forward to the OEB authorizing an impartial, objective and workable Issues List that will support its adjudication of applications for relief through rates and that will create certainty as to which costs and quantum of costs are eligible to be disposed of.

Thank you for the opportunity to provide Reply submissions on the draft Issues List in this proceeding. We look forward to the OEB's expedient completion of this phase and the subsequent phases of this initiative. If you have any questions on these reply submissions please contact Kathi Farmer, the EDA's Senior Regulatory Affairs Advisor, at 416.659.1546 or at kfarmer@eda-on.ca.

Sincerely

Ted Wigdor
Vice President, Policy, Government & Corporate Affairs