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**VIA RESS FILING and EMAIL: registrar@oeb.ca**

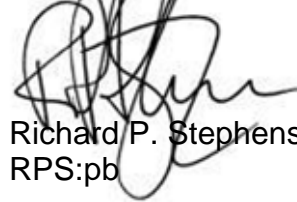
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Registrar  
Ontario Energy Board  
2300 Yonge Street  
27<sup>th</sup> Floor  
P.O. Box 2319  
Toronto, ON M4P 1E4

Dear Ms. Long,

**Re: Consultation on the Deferral Account – Impacts Arising from the  
COVID-19 Emergency (EB-2020-0133)**

Attached please find the Submissions of the Power Workers' Union in connection with the above-noted proceedings. An electronic copy has been filed through the Board's RESS filing system.

Yours very truly,  
**PALIARE ROLAND ROSENBERG ROTHSTEIN LLP**



Richard P. Stephenson  
RPS:pb

Attach.

Doc 3629039 v1

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

**Submissions of the Power Workers' Union (PWU) on OEB  
Staff Proposal**

**A. INTRODUCTION**

1. In March of 2020, the OEB established a deferral account (Account) in which electricity and natural gas distributors may record incremental costs arising from the ongoing COVID-19 emergency. In April 2020, the OEB expanded the applicability of the Account to all rate-regulated entities including electricity transmitters and Ontario Power Generation.
2. On May 14, 2020, the OEB commenced a consultation on the Account with the goal of establishing guidelines for the operation of the Account. In its letter issued on July 17, 2020, the OEB provided for a preliminary proposal to be prepared by OEB staff (Staff Proposal).
3. On December 16, 2020, OEB released the Staff Proposal<sup>1</sup> which aims to provide OEB staff's initial views on the scope of the Account and to facilitate and focus stakeholder comments.
4. The following are comments of the PWU on select elements of the Staff Proposal.

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<sup>1</sup> EB-2020-0133: OEB Staff Proposal, Consultation on the Deferral Account – Impacts Arising from the COVID-19 Emergency, December 16, 2020

## B. COMMENTS OF THE PWU

5. The PWU supports Board staff's recommendation<sup>2</sup> that any prudently incurred and material costs (or lost revenues) necessary to comply with government or OEB actions taken to assist ratepayers should be recoverable in full and the means test applicable to those amounts should be the upper end of the OEB's dead band of approved ROE. These incremental costs (or lost revenues) are a direct result of the orders or recommendations from the Ontario government or the OEB to implement programs aimed at supporting customers and therefore the approach that allows for their 100% recovery is appropriate.

6. For other amounts such as impacts arising from bad debt expenses and revenue losses and gains from changes in load or production, Board staff recommends that any material and prudently incurred incremental impacts, directly attributable to the pandemic, should be eligible for recovery at a rate of 50%.<sup>3</sup> According to Board staff, this proposed net-cost sharing approach recognizes:<sup>4</sup>

- The need to preserve the financial incentives to mitigate costs and maximize savings attributable to the pandemic, a principle consistent with incentive rate-making;
- The fact that ratepayers are experiencing economic hardship from the same events that are driving the incremental impacts to utilities, which is not typically the case with traditional Z-factor events;
- The striking of a balance between two potentially opposite positions expected to be taken by utilities and other stakeholders – i.e. the balance between full recovery and full disallowance`
- The need for regulation to serve as a proxy for competition., i.e., In the competitive environment, many businesses have incurred, and continue to incur, losses attributable to the pandemic. A recovery mechanism that fully insulates utilities from the pandemic's negative impacts would be misaligned with the regulator's role to mimic competitive forces.

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<sup>2</sup> OEB Staff Proposal, page 4

<sup>3</sup> Ibid., page 3

<sup>4</sup> Ibid.

7. The PWU submits that OEB staff's identified rationales used to justify the recommended net-cost sharing model are not grounded in the OEB's well-established regulatory principles. For example, the need to "strike a balance between two potentially opposite positions expected to be taken by utilities and other stakeholders" is not a principled approach to justify the recovery of only 50% of incremental impacts.

8. Similarly, the proposition that regulated utilities should not be fully insulated from the pandemic's negative impacts so as to keep them competitive with businesses outside the industry is questionable in many respects:

- a. First, utilities are regulated entities and, therefore, comparing them with businesses in other industries, many of which are not regulated, is not a like-to-like comparison;
- b. Secondly, such comparison of impacts on the regulated utilities with impacts of the pandemic on other businesses would require reliable and sufficient data. More importantly, utilities are already expected to record amounts in the Account based on the long-standing regulatory concepts for deferral and variance accounts (DVAs) of causation, prudence and materiality;
- c. Thirdly, OEB staff is recommending that the recovery of balances in the Account should be anchored to an ROE-based means test that is no greater than the lower end of the dead band of 300 bps from a utility's approved ROE; and
- d. Finally, in addition to these requirements, Board staff is then proposing that only 50% of incremental impacts should be eligible for recovery. This could be punitive to some utilities, especially to those these incremental costs may be more significant than those arising from government or OEB orders intended to help customers affected by the pandemic.

9. The PWU therefore supports an approach that allows for cost recoveries at a rate of greater than 50% on a case-by-case basis, when utilities can justify that their financial viability would be compromised if their pandemic-related recoveries are limited to 50% of the incremental impacts.
10. With respect to the period of the Account and timing and process for disposition requests, OEB staff recommends that amounts should be recorded in the Account until the utility's subsequent rebasing application, assuming that the utility is able to support costs in future years (post-2020) as directly attributable to the pandemic.<sup>5</sup> The PWU is concerned that there may be utilities to whom waiting until their next rebasing application for disposition requests is not a viable option. That will be the case, for example, with merged utilities that have been directed by the OEB to wait for up to ten years before they could file rebasing application. In this respect, the PWU supports OEB staff's suggestion that a stand-alone application may be filed, if utilities are of the view that waiting for a cost-based application is not a viable option, in terms of cash flow or other concerns. The PWU also supports a possibility for interim disposition of a partial amount of the Account balance on a case-by-case basis, for example, when a utility is facing financial viability concerns.

**All of which is submitted respectfully.**

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<sup>5</sup> Ibid., page 30