

February 11, 2021

Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Attn: Ms. C. Long
Registrar

Dear Ms. Long:

Re: **EB-2020-0133**

These are the Reply comments of the Electricity Distributors Association (EDA) on the Ontario Energy Board (OEB) staff proposals of the COVID Deferral Account (COVID DA). Our reply addresses the following aspects of other parties' comments that were filed on January 25:

- financial viability,
- whether to use the proposed necessity test,
- whether the pandemic is comparable to the 2008/09 financial crisis,
- the appropriate treatment of balances recorded in the Account (e.g., capital costs, lost revenues, savings),
- whether local distribution companies (LDCs) should 'share in the pain' and customers' ability to pay, and
- alternatives.

Our members are obligated to connect new customers and to provide safe and reliable service on an ongoing basis to existing customers. LDCs need appropriate resources to do so. These comments focus on how the COVID DA should be administered so that LDCs have access to resources so that they can serve existing and future customers.

Financial Viability

Several parties commented on financial viability. As set out in our January 25 comments, financial viability is assessed based on profitability and other aspects of financial performance, where each metric has a range of reasonability. We understand that the OEB's review of financial viability will be informed by a range of factors. The parties who commented that an LDC that is profitable – even if its profits are miniscule – is financially viable, do not:

- have evidence available in this initiative to support their conclusion,
- offer any evidence to support their conclusion, nor

- defend their conclusion in the context of the LDC's financial situation, challenges or need for resources so that it can continue to provide safe and reliable distribution service.

We wish to point out that profitable firms can experience financial distress in short order.

Another inappropriately simple perspective is to assess financial viability using past levels of achieved Return on Equity (ROE), particularly past levels that fell below the lower limit of the deadband. We must point out that this analysis inappropriately uses past experience to understand the present and the future and confers achievements from the non-pandemic period with the ability to demonstrate financial viability under pandemic conditions. Regardless of the differences between business-as-usual conditions and pandemic conditions, we are concerned over parties' willingness to use data without due regard for context.

Other parties commented that a similarly simple test of an LDC's financial viability is whether it is capable of paying dividends. Dividends compensate the providers of equity capital for the risks they incur and, in the long run, paying dividends is an important aspect of continuing to have access to capital at favourable terms and conditions. LDCs have dividend policies that, among other things, support the LDC in being able to access capital on an ongoing basis and at favourable terms and conditions. In other words, failure to abide by these dividend policies could negatively impact the LDC's ability to access capital at favourable rates.

Other parties commented that another simple test of an LDC's financial viability is whether it paid bonuses. We wish to remind all that whether a bonus can be withheld may depend on the terms of an employment contract – again, the context of the situation matters.

We appreciate that the OEB is responsible for maintaining a financially viable distribution sector and we recognize that fulfilling this objective will require sound judgement so that the interests of all stakeholders, including today's and future customers, can be appropriately balanced.

Whether to use the proposed necessity test

We emphasize our previous comments that the necessity test proposed by staff is inappropriate and unnecessary. The existing, well-established regulatory tests of causality, materiality and prudence are the appropriate tests to use when assessing the balance recorded in the COVID DA that is to be eligible for disposition through rates. We note that OEB staff have not identified any short coming of these tests that would motivate the need to consider an additional test, let alone the specific addition of the proposed necessity test. The necessity test is redundant with the OEB's objective to maintain a financially viable sector and we continue to oppose the proposition that an OEB objective should be reduced to one of four tests.

Is the pandemic comparable to the 2008/09 financial crisis?

Some parties expressed that the pandemic is comparable to the 2008/09 financial crisis. The data referenced in intervenors' comments shows that the quantified GDP under both events is

comparable. While the impact on GDP may have been similar, the intervenors' comments did not point out that the events are clearly distinct in the following respects:

- the government issued “stay home” public health orders during portions of the pandemic,
- the government provided the broadest range of financial support on record during the pandemic,
- the economic downturn resulted in sudden and significant increases in unemployment¹ in a matter of weeks, and
- incremental costs were incurred during the pandemic so that employees could work safely because they were an essential workplace, as is the case of Ontario's LDCs.

The appropriate treatment of balances recorded in the Account

Parties have taken issue with the appropriate treatment of some balances eligible to be recorded in the COVID DA including capital costs, lost revenues and savings.

We propose that the OEB examine whether few or several LDCs have recorded capital costs in the COVID DA. If few LDCs have recorded such costs, then the OEB may wish to consider whether to authorize disposition of the revenue requirement impact through rates on a case-by-case basis. Some parties proposed that Capital costs recorded in the COVID DA be disposed of at the next rebasing. We caution that this is a simplistic approach that, without context, may risk an inappropriate outcome (e.g., preventing the LDC from recovering through rates the interest expense to service the loans entered into). LDCs consider a wide range of factors when deciding whether and when to rebase, e.g., whether they have recently merged/amalgamated with another LDC, and it could be short sighted to require LDCs to carry these amounts until they next rebase.

Some parties commented that lost revenues are more appropriately a lost opportunity. To be clear, Bad Debt occurs when customers are unable or unwilling to pay their bills, while Lost Revenues occur when volumes decrease - revealing that the charge parameters used to set the authorized rates were under pandemic conditions inappropriately low – and volumetric revenues are reduced. The regulator's responsibilities are to:

- ensure that the LDC recovers its prudently incurred costs, and
- authorize the recovery of the prudently incurred costs from the customer(s) who caused the LDC to incur them so that undue cross-subsidization is avoided.

Some parties commented that net savings should be eligible for disposition through rates. We wish to highlight that the context of how the savings were generated matters and that it is inadequate to simply say that net savings must be returned. Savings that result from deferred spending are temporary and may be offset by higher spending in subsequent years. A more

¹ LEI COVID-19 Impact Study, p. 59-62

<https://www.rds.oeb.ca/CMWebDrawer/Record?q=casenummer:eb-2020-0133&sortBy=recRegisteredOn-&pageSize=400#form1>

appropriate treatment may be to require that the LDC preserve the amount in the COVID DA and offset it when the expenditure is made. Savings that result from the temporary suspension of business-as-usual practices, such as customer disconnections, are similarly temporary. We also propose that the OEB carefully analyze and consider the operation of previously agreed to or authorized earnings sharing mechanisms when considering how to treat savings recorded in the COVID DA.

LDCs will be expected to realize prudent savings. Consider the situation of the LDC analyzing whether to refinance debt. That LDC will take into consideration a range of factors beyond a simple review of the difference between the interest rate on the existing debt and newly available debt, such as:

- early termination costs,
- transaction costs (e.g., deregistering the old debt and registering the new debt),
- the remaining period of the old debt, and
- future implications (e.g., that early termination risks price increases for future debt issues).

Again, prudent decisions are taken in context, with careful attention to the facts, are not rushed, and are not made using simplistic data or analysis.

LDCs should 'share in the pain' and customers' ability to pay

The OEB has made three mechanisms available to LDCs to 'share the pain' of the pandemic with their customers:

- clarifying that certain Customer Service Charges were to be treated as range rates,
- providing LDCs with the discretion to elect a lower Inflation Rate, and
- providing LDCs with discretion of when to implement rate increases, specifically effective May 1 or to defer them by 6 months until November 1.

Our members have 'shared the pain' with their customers: they acted on these opportunities as was appropriate for their specific circumstances and provided additional relief to customer during the first wave of the pandemic. As well, we wish to point out that, at that time, our members were also operating under an extended winter disconnection moratorium.

Some parties have commented that one of the issues that the OEB will need to consider is the customer's ability to pay. The Supreme Court of Canada's decision in the ATCO² case clearly set out that **ability to pay does not inform the costs eligible for recovery through rates**. While the residential customer who pays a fixed monthly distribution charge no longer exposes the LDC to a weather risk, the LDC continues to be exposed to the risk that residential customers, as well as non-residential customers, may be unwilling or unable to pay. Under pandemic conditions, this risk of non-payment, delayed payment or partial payment is heightened. We look forward to engaging with the OEB when it authorizes the disposition through rates of the eligible balances recorded in the COVID DA for how the OEB will address the issue of the customer's

² <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15516/index.do>

ability to pay (e.g., when setting the duration of the recovery period, choice of charge parameter).

Alternatives

We would be pleased to work with parties to assess the appropriateness of the alternatives identified in our January 25 comments and all other alternatives. We recognize that it is key to quantify the parameters of an alternative so that the LDC's financial viability is maintained. As well, our members continue to seek innovative and practical ways to address the consequences of the pandemic so that customers are provided with safe and reliable service on an ongoing basis at rates that are just and reasonable.

In closing we restate and reinforce to all parties that LDCs have an obligation to connect and that, since March 2020, LDCs have been operating as essential workplaces and have continued to provide safe and reliable service and continue to expand service – despite the extended moratorium on disconnections for non-payment and despite the pandemic.

In order for LDCs to continue to serve customers, the OEB is to:

- maintain a financially viable sector,
- protect the interests of customers with respect to prices and the adequacy, reliability and quality of electricity service, and
- set just and reasonable rates.

It is necessary to proceed with due attention to how the interests are affected, and to take sound short term decisions that do not beget long term issues. We anticipate that the decisions on the COVID DA will provide LDCs with the resources they need to be financially viable, and hence, able to fulfill their responsibilities to existing and future customers.

The perspectives of other stakeholders on these critical issues is appreciated and they need to be analyzed in their full and proper context so that the OEB has full and complete information and can fulfill its mandate and objectives.

Thank you for the opportunity to make reply comments. If you have any questions on this submission, or require any further detail, please do not hesitate to contact Kathi Farmer, the EDA's Senior Regulatory Affairs Advisor, at kfarmer@eda-on.ca or at 416.659.1546.

Sincerely,



Teresa Sarkesian
President and Chief Executive Officer