

ONTARIO ENERGY BOARD

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

DRAFT ISSUES LIST REPLY COMMENTS

OF

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

&

INDUSTRIAL GAS USERS ASSOCIATION (IGUA)

1. In summary, the Draft Issues List Comments filed June 11th on behalf of AMPCO and IGUA;
 - (a) were premised on the interpretation of an issues list as providing general guidance, rather than absolute limits, on scope, and accordingly remaining subject to demonstrably relevant and probative comments or submissions;
 - (b) urged that the Board not pre-empt proper and appropriate consultation by issuing substantive policy direction prior to completion of the consultation and consideration by the Board of the entirety of the input received, subject to clear demonstration of an immediate and critical need by one or more of the regulated entities;
 - (c) advocated the ability of parties to address the basic issue of the appropriate function of economic regulation in addressing the impacts on the regulated entities, and their customers, arising from the COVID-19 emergency;
 - (d) suggested 3 additional issues in respect of any recoveries from ratepayers ultimately permitted; i) appropriate conditions; ii) consideration of cumulative impacts; and iii) timing; and
 - (e) asked that the data contemplated for publication prior to the substantive consultation disaggregate “*savings*” and “*offsetting amounts*” from recorded costs.

2. Nothing in the submissions from other parties has altered the AMPCO/IGUA views on these matters. Indeed, a number of the submissions have reinforced these views.

Importance of Consideration of Basic Regulatory Principles

3. Consideration of the round 1 draft issues list comments of other parties reinforces the AMPCO/IGUA view expressed in our June 11th submissions that determination of the basic regulatory principles appropriately applied to this generational circumstance is a precursor to, and an influencer of, determination of details regarding which types of costs should be recoverable, when and how.
4. The Society of United Professionals (SUP), for example, states in its draft issues list comments¹:

...SUP does not consider the recoverability of recorded amounts will be overly controversial given these are generic impacts across Ontario and given they will be supported and limited by final OEB guidance.

AMPCO and IGUA could not disagree more.

5. SUP proceeds to presume² that;

...financing authorities will ascribe the same weight to the probability of recovery as they would any other generic regulatory account, especially as the account has been created as an OEB initiative.

6. In our view, this sort of statement belies a lack of consideration of the singularity of the particular accounts in issue.
7. SEC's submissions suggest that³;

... the Board will need to decide what is properly its role as a rate regulator with a statutory mandate to protect customers...

¹ Page 3, 2nd paragraph.

² Page 3, 2nd last paragraph.

³ Page 3, 1st and 2nd full paragraphs.

and that consideration of many of the issues raised “are dependent on the Board’s determination of the broader principles”. AMPCO and IGUA agree.

8. OPG suggests that⁴ (our emphasis);

Given the unique circumstances that each utility faces in responding to COVID-19 ... it would not be practical or useful to approach this consultation with the aim of producing a discrete list of identifiable costs and savings that are eligible for inclusion in the Deferral Account. Rather than focus on types of items, OPG proposes that the issue should focus on a set of criteria utilities should use to assess whether cost impacts are eligible for inclusion in the account.

9. VECC’s June 11th submission also emphasizes consideration of basic regulatory principles and concepts of financial viability, perspectives echoed in the submissions of several others.
10. Consideration of all of these submissions suggests that the analysis to be engaged in should be a 2 step one, and underscores the importance which we (and others) noted in our June 11th submissions of expressly separating and acknowledging the fundamental issue in this matter; ***the appropriate function of economic regulation in addressing the impacts on the regulated entities, and their customers, arising from the COVID-19 emergency.***
11. We repeat the position set out in our June 11th submissions that the Board must first take input on and determine the regulatory principles that it will apply to considering COVID-19 driven costs, and then apply the principles so determined to provide direction on the recording and recovery details for the variance account. Indeed, there may be some efficiency to be gained by separating the matter into two phases (though AMPCO and IGUA also appreciate the desires of the regulated entities and the Board to complete this consultation and provide direction in a relatively expeditious fashion, in the circumstances).
12. We also note, with particular concern, the repeated assertion in the OEA’s June 11th submissions that the impacts of the COVID-19 emergency on Ontario’s regulated energy entities and their customers is somehow analogous to “public policy initiatives” such as smart meter implementation in Ontario, and that principles of cost recovery found

⁴ Page 4, last paragraph.

applicable to the latter should, as a starting point, apply to the former. The two circumstances are not at all similar.

13. AMPCO/IGUA acknowledge the legitimacy (though do not, at this stage, necessarily agree with) arguments to the effect that variances resulting from deferring approved rate increases or costs resulting from making required billing system changes in response to regulatory directions should be recoverable, on the basis that it is important to maintain regulatory structure in rate making. On the other hand, reduced volumes and revenues and increased bad debt expenses arising from the COVID-19 emergency engage issues of allocation of unprecedented risks faced by all economic actors, including customers, and have nothing to do with response to regulatory directions. These circumstances are wholly unlike anything any of us have seen before, and not at all like smart meter implementation or market opening preparations.
14. These submissions highlight the need to first consider the fundamental regulatory principles to be applied, as AMPCO/IGUA and others have submitted.

“Financial Viability”

15. In our June 11th submissions we identified “financial viability” as being at one end of the spectrum of positions on the appropriate function of economic regulation in addressing the impacts arising from the singular global crises presented by COVID-19. At this point this is the end of the spectrum where the views of AMPCO and IGUA fall.
16. LPMA in its submissions⁵ suggested a number of issues that deal with the financial integrity of utilities. AMPCO/IGUA assume that all of those issues are in scope for this consultation.
17. Indeed, concepts of “*financial viability*” were referenced in the submissions of many parties, often with reference to the Board’s statutory objectives. SEC has suggested⁶ that

⁵ Page 3, 2nd full paragraph.

⁶ Page 6, bottom.

Board Staff undertake work on initial proposals regarding “ways that the Board can measure a utility’s financial viability”.

18. A number of the submissions suggest that the Board should expressly add the issue of what “financial viability” means in relation to its regulatory mandate, and the relevance of that concept to the matters at hand.
19. AMPCO and IGUA are proceeding on the assumption that they will be able to address this issue as the consultation advances.

Advance Policy Direction

20. None of the regulated entities have clearly demonstrated, nor in fact even asserted, an immediate and critical need for advance policy direction. Accordingly, subject to the comments which follow, none should be provided.
21. The OEA submission on behalf of the province’s largest regulated distributors suggests advance policy direction to establish a sub-account for bad debt expenses.⁷ AMPCO/IGUA have no concerns about establishment of such a separate sub-account for the sake of recording and understanding COVID-19 related costs. However, as emphasized in our June 11th submissions, establishment of such a sub-account at this stage should not be provided in order to provide, or be taken as providing, any “greater certainty with respect to recoverability of amounts tracked”. For the reasons set out in our June 11th submissions AMPCO and IGUA continue to strongly object to any such pre-determinations.
22. The potential perils of advance policy direction can be demonstrated by consideration of the Wtaynikaneyap Power LP (WPLP) June 11th submission. As we understand it, WPLP requests advance direction that it can record COVID driven costs as expenses rather than CWIP. At first blush, this proposal seems reasonable as it precludes such costs ultimately being included in rate base (when CWIP is closed to rate base) and attracting a return. On the other hand, expenses are generally recovered in the year in which they are incurred, and significant COVID related expenses could result in upward transmission rate

⁷ Paragraph 21.

pressure for customers. While we do not impugn WPLP's motives, and while we acknowledge that in WPLP's particular case COVID related expenses to be included in transmission rates might not have a material impact on a province wide basis and so its accounting proposal might well ultimately be found to be appropriate, this example does underscore the advantage of having full information and context in evaluating proposals to be advanced in this matter prior to issuance of policy direction.

23. SEC has suggested⁸ that the Board provide one particular advance policy direction, albeit of a different kind than with respect to account recoverability, but rather focused on operational mitigation expectations. SEC suggests that;

Utilities should be proactively reducing the size of the problem through operating and capital cost reviews.

24. In the views of AMPCO and IGUA this goes without saying, and the utilities should now consider themselves on notice that customers certainly expect no less. We assume that the Board's expectations are the same.

Issue 16: Critical Social and Economic Context

25. The OEA submission proposes⁹ a recasting of draft issue 16(b) as follows (proposed changes tracked by us):

What factors in addition to those already outlined in the OEB guidelines for electricity distributors, transmitters and natural gas distributors, and any public policy imperatives, should the OEB take into consideration in considering any cost sharing, such as the impact of the COVID-19 emergency on the broader Ontario business environment.

26. The OEA proposes this recasting in order to address two of its stated concerns;
- (a) "first, it removes the reference to 'broader Ontario business environment' which is not defined and is ambiguous"; and
 - (b) second, to "connect[] the question of cost sharing back to already established OEB guidance, which is an important foundational consideration".

⁸ Page 6, 2nd and 3rd paragraphs.

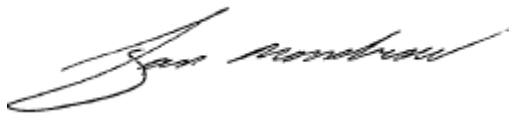
⁹ Paragraph 31.

27. AMPCO and IGUA strongly object to these proposed changes to issue 16b. First, the OEA's suggestion to remove reference to the broader Ontario business environment is contrary to the obligations of the Board to protect the interests of customers, as well as being completely tone deaf. Second, the views of AMPCO and IGUA, and views expressed by others in their submissions, are that historical OEB guidance cannot simply be assumed to be applicable to the current, generational social and economic crises.

Benchmarking

28. AMPCO/IGUA tend to agree with the comments by others that “benchmarking” in the traditional sense of the term would be of limited utility in the current circumstances, and perhaps not a worthwhile pursuit given the appropriate interest of all concerned in a reasonably expeditious process and policy determination.
29. However, to the extent that there is information available on how other regulators have, or are, approaching the issues under consideration, such information could assist the parties and the Board in working through these issues in Ontario.

ALL OF WHICH IS RESPECTFULLY SUBMITTED by:



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