Ontario Energy Board | Commission de l'énergie de l'Ontario

Report of the Ontario Energy Board

Regulatory Treatment of Impacts Arising from the COVID-19 Emergency

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1 Executive Summary

Shortly after the Ontario Government declared a state of emergency in March 2020 in response to the spread of COVID-19 in the province, the Ontario Energy Board (OEB) established a deferral account (Account) in which rate-regulated utilities could record incremental costs related to the pandemic, the severity and duration of which was uncertain at that time.[1]

Since May 2020, the OEB has been consulting with stakeholders (the Consultation), with the objective of determining the rules and operations for the Account. Following the issuance of a proposal prepared by OEB staff (Staff Proposal) in December 2020, along with a series of independent studies prepared by London Economics International LLC (LEI), stakeholders were invited to submit written comments on the Staff Proposal. Stakeholders submitted their comments, as well as comments on the submissions of other participants, in January and February 2021, respectively. This Report on the Regulatory Treatment of Impacts Arising from the COVID-19 Emergency (the Report), is the culmination of the Consultation.

1.1 Introduction and Impacts on the Sector

The COVID-19 pandemic has disrupted economies, businesses, and the lives of individuals worldwide. Nothing like it has ever confronted economic regulators. The OEB has undertaken this Consultation to determine whether such a crisis necessitates a change to the established rate-making regime in Ontario, and if so, what is the most effective and appropriate framework that can address this unprecedented set of circumstances, while maintaining alignment with the OEB’s statutory objectives.

The utilities that the OEB regulates are providers of essential services. They are required to maintain operations despite any challenges that they are presented with. The utilities in Ontario have responded swiftly and effectively and maintained service to their customers in the wake of the pandemic. At the same time, as essential service providers, natural gas and electric utilities have been spared from being faced with the most disruptive and severe types of economic constraints that many other non-essential industries and businesses have been burdened with.

[1] The OEB initially established the Account for electricity and natural gas distributors, and subsequently confirmed applicability to rate-regulated electricity transmitters. Rate-regulated electricity distributors and transmitters, as well as natural gas distributors, are collectively referred to as utilities in this document.

Accordingly, as explained by LEI in its *COVID-19 Impact Study*,[2] while utilities have been faced with economic pressures, the sector has generally fared well financially when compared to the vast majority of other industries across the broader economic landscape. The OEB's ongoing monitoring of the impact on the sector indicates that, to date, the pandemic has not caused acute financial distress for regulated utilities in Ontario. Furthermore, nothing has come to the OEB's attention to suggest that the impact of the pandemic on utilities in Ontario has changed significantly since the issuance of the LEI studies.

As noted in the Staff Proposal, in addition to being impacted by changes in customer circumstances (such as increases in bad debt, or lost revenues from changes in demand and consumption), utilities have also incurred costs to comply with health and safety protocols, enable a remote workforce where possible, and adapt to changes in business priorities and projects, among other impacts.

From a cost recovery perspective, regulators across North America continue to debate the appropriate regulatory responses to the pandemic. LEI's *Report on Regulatory Principles, Policies and Accounting Treatments Applied in Other Jurisdictions in Response to COVID-19* provides insights into various approaches that have been taken across jurisdictions. While there have been some commonalities identified, many continue to grapple with the issue.

Underlying this Report is the OEB's balancing of legislative objectives – how to continue to facilitate the maintenance of a financially viable energy sector while protecting the interest of consumers with respect to prices – in the context of the global pandemic.

1.2 Rules and Operations of the Account

A summary of the rules and operations of the Account is as follows:

- The OEB has determined that recovery of any balances recorded in the Account should be subject to evidence that the costs are not only reasonable, but also that recovery of the costs is necessary for the utility to maintain its opportunity to earn a fair return over the long run.
- The OEB will adopt a means test for recovery.
- The means test will be based on a utility's achieved regulatory return on equity (ROE) compared to its OEB-approved ROE less 300 basis points (bps).

[2] LEI, *COVID-19 Impact Study*, December 15, 2020, pages 1 & 7.

- Recovery will be anchored to this ROE-based means test (i.e., no greater than the lower end of the dead band of 300 bps from a utility's approved ROE).
- The net amounts recorded in the Account are subject to a 50% recovery rate.
- The OEB will apply a separate set of rules for the costs necessary to comply with government or OEB-initiated programs aimed at providing relief to customers which is referred to as the Exceptional Pool. Those costs are eligible for a 100% recovery rate and are subject to an approved ROE plus 300 bps means test.
- For those utilities that intend to submit claims for recovery, both costs and savings are to be recorded in the Account and presented on a net basis.
- Given the evidence to date, the OEB is expecting applications to be filed only on an exceptional basis for costs not related to mandated government or OEB-initiated programs; and utilities should generally have been able to manage pandemic-related impacts within existing budgets.

1.3 Deviations from the Staff Proposal

In general, the OEB is accepting many of the rules and mechanics for recovery recommended in the Staff Proposal. Notable areas of the Staff Proposal that the OEB is deviating from are as follows:

- Differences in load will be excluded from the Account.
- Differences in cost of debt will be excluded from the Account.
- Incremental bad debt arising from voluntary cessations of disconnections implemented by utilities may be included in the Exceptional Pool.
- Amounts approved for disposition will be allocated to all rate classes based on their proportion of utility revenues.

1.4 Overall Approach

In making these determinations, the OEB has assessed how its existing regulatory frameworks and mechanisms, as well as past practices, may apply to this Account, and whether it is necessary to adapt these approaches to accommodate the extraordinary circumstances of a global pandemic.

The purpose of this Report is to establish a set of rules for utilities to apply when seeking recovery of any amounts recorded in the Account. Predictability and consistency, in terms of how the Account will be administered in a proceeding, are important. However, the OEB also recognizes that its approach may evolve as utility applications for recovery are received and additional insights are gained. Accordingly, this Report should be viewed as a set of guidelines – a roadmap to aid utilities in understanding the OEB's expectations with respect to their potential requests for relief associated with this Account.

The OEB acknowledges the helpful input provided by stakeholders in this Consultation, in particular, the thorough comments on the Staff Proposal. This Consultation has raised novel and fundamental questions about ratemaking and the role of the regulator, and the OEB has benefited from the thoughtful submissions of stakeholders on these issues.

2 Consultation Background

Following the Government of Ontario's declaration of a state of emergency on March 17, 2020,[3] the OEB established the Account for utilities to record the impacts arising from the COVID-19 emergency. The severity and duration of the pandemic was highly uncertain at the time of establishing the Account. The OEB allowed utilities to track these impacts, with the nature, degree, and mechanism of any cost recoverability to be determined by the OEB in due course.

On May 14, 2020, the OEB commenced the Consultation to address the details surrounding the operation of the Account. Appendix A identifies the registered stakeholders in this Consultation. On July 17, 2020, the OEB determined that the Consultation would be assisted by the generation of a Staff Proposal.

On December 16, 2020, reports commissioned by the OEB from LEI were posted with the Staff Proposal on the webpage for this Consultation. LEI's studies served as informative, independent research in this Consultation. These reports include:

- A COVID-19 Impact Study
- A Report on Gains and Losses from Differences in Load and Production
- A Report on Regulatory Principles, Policies and Accounting Treatments Applied in Other Jurisdictions in Response to COVID-19
- A Report on the OEB's Cost of Capital Parameters and the Impacts of COVID-19

Stakeholder comments on the Staff Proposal were filed on January 25, 2021, and reply comments were filed on February 11, 2021.

On April 13, 2021, the OEB issued a letter explaining that the OEB's guidelines for this Account would not apply to Ontario Power Generation Inc. (OPG) or to "greenfield utilities", namely, Wataynikaneyap Power LP, NextBridge Infrastructure LP, and EPCOR Natural Gas LP in respect of its Southern Bruce operations.[4] The OEB determined that any ratemaking implications of the COVID-19 pandemic for these utilities will be determined in these utilities' respective rates/payment amounts proceedings, given their unique circumstances and the impacts of the pandemic on them.

[3] The Government of Ontario's declaration was made under the *Emergency Management and Civil Protection Act* to help fight the spread of COVID-19.
[4] Upper Canada Transmission, Inc. is operating as NextBridge Infrastructure LP.

3 The OEB's Approach

3.1 OEB's Role and Principles

As noted in the Staff Proposal, and further reiterated by several stakeholders, the OEB is mandated to set just and reasonable rates for the electricity and natural gas sectors. In accordance with the *Ontario Energy Board Act, 1998*, in carrying out its responsibilities, the OEB is guided by the objectives of protecting the interests of consumers with respect to prices, the maintenance of financially viable electricity and natural gas industries, as well as other objectives. The OEB agrees that, in the context of a global pandemic, it is necessary to develop guidelines in this Report that result in an appropriate balance of those legislative objectives.

Staff Proposal

OEB staff recommended that well-established regulatory principles should guide the scope and operation of the Account, including the basis for recovery of any balances in the Account. OEB staff stated that overarching principles such as appropriate allocation of risk, minimization of intergenerational inequity, and transparency had all informed its proposed approach. OEB staff further included the principle of "necessity" for stakeholder consideration, which it stated underpinned the Staff Proposal and served as justification for the proposed means test.

The principle of necessity was described as follows:

> *"Recovery of any balances recorded in the Account should be subject to evidence that the costs are not only reasonable, but also necessary to the maintenance of the utility's financial viability."*

Stakeholder Comments

Stakeholders' comments were polarized with respect to the proposed principle of necessity.

The concept was largely opposed by utility stakeholders, with some expressing the view that this is a novel and untested principle and that there were no shortcomings in the OEB's existing framework. Some stakeholders indicated concerns with the potential ramifications of extending the necessity principle to broader ratemaking considerations.

The OEA suggested that financial viability is not tied to a utility earning income or profit and, in the context of the Fair Return Standard, it is not enough simply to provide for a return that allows utilities to avoid bankruptcy.[5] The OEA was concerned that this principle would make significant alterations to the regulatory framework, as well as potentially being offside of the legal framework.[6]

The OEA and SUP each suggested that OEB staff had taken the term "necessary" out of context, when referring to the use of that term across other regulatory jurisdictions.[7]

The EDA questioned the validity of LEI's conclusions regarding utilities' realized returns and cost of capital, particularly citing the lack of data of firms with similar risk.[8]

The necessity principle was supported conceptually by many consumer group stakeholders, however, some suggested that the Staff Proposal fell short in executing on this principle. Others suggested that, in order to satisfy the necessity principle, there should be a requirement for utilities to file comprehensive evidence that financial viability is at risk.

AMPCO/IGUA and SEC explained that the issue before the OEB is not rate-setting in the usual context, but whether relief from the rates already established is required.[9]

SEC noted that the OEB's approved ROE is meant to represent the Fair Return Standard at the time rates are set, and as market conditions change generally, that will impact the standard.[10] VECC stated that the OEB should address how the pandemic affects the Fair Return Standard, noting that this standard is not eliminated during any economic downturn, even as severe as the pandemic, but the measure of "fair" is modified by the extreme circumstances.[11] Other consumer groups emphasized that a utility is entitled only to the opportunity to earn a fair return, and is not guaranteed any particular level of return.

[5] OEA Reply, February 11, 2021, page 7.
[6] OEA Reply, February 11, 2021, page 4.
[7] OEA Reply, February 11, 2021, page 5; SUP Reply, February 11, 2021, page 3 & 4.
In reaching its conclusions, the OEA relied on the following reports that it had commissioned and included with its January 25, 2021 written comments:

1. *"Report on Legal and Regulatory Principles"*, Aird & Berlis LLP
2. *"Regulatory Treatment of COVID-19 Related Costs: Research of U.S. and Canadian Regulatory Jurisdictions"* Report, ScottMadden, Inc.

[8] EDA, January 25, 2021, page 5.
[9] AMCO/IGUA, January 25, 2021, page 3; AMPO/IGUA Reply, February 11, 2021, page 6; SEC Reply, February 11, 2021, page 3.
[10] SEC Reply, February 11, 2021, page 4.
[11] VECC, January 25, 2021, page 2.

Several consumer groups noted, as per the Supreme Court of Canada's 2015 decision on an appeal by OPG, that a utility must be given the opportunity to recover its costs over the long run.[12] The OEA also referenced this OPG case by stating that "the majority [of the Supreme Court] observed that any disallowance of costs to which a utility has committed itself has an effect on equity investor returns and this effect must be carefully considered in light of the long-run necessity that utilities be able to attract investors and retain earnings in order to survive and operate efficiently and effectively, in accordance with the statutory objectives of the OEB."[13]

Some stakeholders voiced opinions about comparing the pandemic to other economic events. LPMA explained that the OEB should not view the pandemic as a once-in-a-lifetime event in terms of the impact on utilities, but instead as a regular recurring event, highlighting that the 2008-2009 recession was even more impactful than the current one.[14] SEC stated that the pandemic impact is of a fundamentally different character than other unexpected and extraordinary events that a utility may face, but also noted that the OEB has never insulated utilities from an economy-wide economic downturn, as this risk has always been assumed to be reflected in the approved ROE.[15]

VECC echoed SEC by noting that the OEB has not generally allowed utilities to seek special treatment during a period of normal or even severe economic fluctuations and economic changes are embodied in the risk principles of establishing a utility's approved ROE.[16] VECC further stated that "the actual economic impacts [of the pandemic] are borne out to be less conspicuous".[17]

The EDA took issue with some of this commentary, articulating a number of distinctions between the 2008-2009 recession and the pandemic, including the fact that utilities have had to incur incremental costs during the pandemic so that employees could work safely.[18]

[12] *Ontario (Energy Board) v. Ontario Power Generation Inc.*, 2015 SCC 44.
[13] OEA, January 25, 2021, Appendix A, *"Report on Legal and Regulatory Principles"*, Aird & Berlis LLP, page 10.
[14] LPMA, January 25, 2021, pages 6 & 19.
[15] SEC, January 25, 2021, pages 2 & 3.
[16] VECC, January 25, 2021, page 7.
[17] VECC, January 25, 2021, page 8.
[18] EDA Reply, February 11, 2021, pages 2 & 3.

The OEB's Policy and Rationale

The OEB has determined that recovery of any balances recorded in the Account should be subject to evidence that the costs are not only reasonable, but also that recovery of the costs is necessary for the utility to maintain its opportunity to earn a fair return over the long run.

The Staff Proposal recommended implementing a means test. The OEB views the means test proposed by OEB staff as an appropriate mechanism to gauge whether utilities, in general, have maintained their opportunity for a fair return despite the impacts of the pandemic. However, it does not agree with the implication in the Staff Proposal that falling below the 300 bps mark means that a utility's financial viability has been compromised.

The application of a means test underpinning requests for incremental rate adjustments does not introduce any novel or untested concepts and is a well-established approach that the OEB has relied upon for years. It is well-understood by utilities and has been applied in practice with respect to utilities' requests for funding under the OEB's advanced capital module (ACM), incremental capital module (ICM), and annual inflationary rate increases. Furthermore, the requirement that earnings must deviate from approved ROE by a certain threshold, as a precursor to recovering incremental costs from customers, is essentially an earnings sharing mechanism (ESM) – another well-established regulatory tool that the OEB and utilities have operated with in the past. To be clear, the OEB does not mean to suggest that earning less than 300 bps below the approved ROE in any given year necessarily means that the utility has lost its opportunity to earn a fair return, or that by extension its approved rates are no longer just and reasonable – as explained above, a fair return is assessed over the long term.[19] Nevertheless, as explained below in Section 4.1.2, the 300 bps threshold is a reasonable indicator of when a utility's ability to earn a fair return may be compromised, and one that is administratively straightforward to implement.

The OEB acknowledges stakeholder concerns about inferences that the term "necessary" implies that recovery is essential to address acute financial health concerns for utilities. The OEB is assessing this principle from the perspective of whether it is necessary for the OEB to grant incremental relief to utilities in order for them to manage their operations effectively, while maintaining their opportunity to earn a fair return. As

[19] See also the decision of the Federal Court of Appeal in *Transcanada Pipelines Ltd. v. National Energy Board*, 2004 FCA 149: "In the long run, unless a regulated enterprise is allowed to earn its cost of capital, both debt and equity, it will be unable to expand its operations or even maintain existing ones. Eventually, it will go out of business. This will harm not only its shareholders, but also the customers it will no longer be able to service."

noted by AMPCO/IGUA, the issue at hand for the OEB is “whether, and if so how, to grant relief to the utilities from the rates already set and the risk balance thereby already struck.”[20]

The OEB also agrees with the OEA that utilities should not have to demonstrate that they are on the brink of insolvency to be granted incremental relief. The OEB’s view is that recovery should consider the ability for utilities to maintain an opportunity to earn a fair return over the long run, echoing the comments from various stakeholders. The requirement to demonstrate that a utility’s returns have been substantially compromised prior to any recovery being approved – by way of the means test – is reasonably aligned with this view.

The OEB disagrees with LPMA that the pandemic should be viewed as a regular recurring event, given the uniqueness of the pandemic and its duration. The pandemic impact is of a fundamentally different character, with impacts on utility operations, costs and revenues, including incremental costs associated with maintaining the safety of their operations.

In any case, the OEB notes that it did take measures to respond to some of the negative impacts on utilities arising from the 2008-2009 recession, which were related to access, and the costs of, capital financing. The OEB updated its cost of capital policy, thereby remedying the impacts during that economic downturn and the subsequent recovery.[21] The OEB is similarly of the view that a unique ratemaking treatment is required to address the economic issues arising from the pandemic and associated socioeconomic restrictions.

3.2 Examination and Application of Current OEB Policy

3.2.1 Applicability of the Z-factor

The Z-factor is a cost recovery mechanism established to address incremental costs arising from events that are not within management’s control and outside the basis upon which rates are derived. A utility is expected to supply details of management’s plans for addressing these events in support of its request for special cost recovery. In past practice, the OEB has applied the Z-factor mechanism for utilities that seek recovery of extraordinary events, such as extreme weather events, in which they have incurred incremental costs. OEB staff and stakeholders in this Consultation have discussed

[20] AMCO/IGUA Reply, February 11, 2021, page 6.
[21] EB-2009-0084, *Report of the Board on the Cost of Capital for Ontario’s Regulated Utilities*, December 11, 2009.

whether the OEB should treat the pandemic's impacts no differently than any other Z-factor event that the OEB has addressed in past proceedings.

Staff Proposal

OEB staff noted that, while there are aspects of the Z-factor that should apply to this Account, there were notable differentiating circumstances of the pandemic from typical Z-factor events, including the impact the event has on customers, and the longer-term and continuing nature of it (the latter of which OEB staff suggested warrants consideration of preserving utility incentives through cost-sharing).[22]

Stakeholder Comments

Some stakeholders indicated that there are similarities between the circumstances resulting from the pandemic and those envisioned by the Z-factor mechanism. The OEA argued that this emergency is more akin to a Z-factor than standard fluctuations.[23]

SUP questioned whether the characteristics of the pandemic relied upon in the Staff Proposal as a differentiator from a Z-factor event were relevant.[24] SUP suggested that the proposed barriers to the recovery of prudently incurred costs have the potential to be misapplied in future Z-factor situations unless this treatment is ring fenced as pandemic-specific.

Several consumer groups suggested that the pandemic does not have the hallmarks of a Z-factor.

The OEB's Policy and Rationale

The OEB will not approach the COVID-19 pandemic as a traditional Z-factor event. Loss of revenue, or increases in uncollectible accounts from customers, are not what the Z-factor was designed to compensate utilities for. Given the broader impacts of the pandemic across the overall economic landscape, the OEB will not address the ratemaking considerations of the pandemic analogously with typical Z-factor events. In fact, having considered the regulatory impacts in relation to utilities' responses to the pandemic through this Consultation, the OEB will consider whether a means test should apply to Z-factor claims in future, similar to the OEB's policy on an ACM and ICM.

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[22] The Z-factor eligibility criteria are set out in the *Report of the Board on 3rd Generation Incentive Regulation for Ontario's Electricity Distributors*, Appendix: Filing Guidelines, Table 8, page V, July 14, 2008.
[23] OEA Reply, February 11, 2021, page 10.
[24] SUP, January 25, 2021, pages 1 & 7.

4 Rules and Operations of the Account

4.1 Application of a Means Test for Recoverability

4.1.1 Basis for a Means Test

Staff Proposal

OEB staff proposed that a means test should apply to utilities that seek to make claims for recovery of amounts recorded in the Account, suggesting that the Account should operate to ensure utilities do not face undue financial hardship as a consequence of the pandemic, and for the period that the pandemic persists and government-issued restrictions to control the pandemic are in force.

As the Account was established to recognize the exceptional nature of the pandemic, OEB staff recommended that utilities should only be able to make use of this new mechanism if they demonstrate a need for it, consistent with its proposed necessity principle. OEB staff explained that utilities operating within the dead band were effectively managing within a reasonable degree of earnings fluctuation and therefore have maintained their opportunity for fair compensation.

OEB staff cited LEI's observations that "utilities cannot expect to both earn an equity return and have the financial consequences of risk eliminated" and that "there is little evidence to date that utilities have suffered consequences of COVID-19 for which they are not already being compensated" as further justification for a means test.[25] OEB staff's proposal was that only in situations where extraordinary fluctuations exceed what a prudent utility could be expected to manage, or where the utility's financial viability is threatened, that customers should be required to fund the disposition of the Account.

The Staff Proposal also pointed to the OEB's ACM/ICM policy as an example of the OEB historically applying a means test to recovery. These capital funding mechanisms are exceptions to the general rule – integral to the concept of incentive regulation, which largely decouples rates from costs – that a utility must manage its business within its approved rates until its next rebasing. Similarly, OEB staff noted the OEB's application of a means test when utilities request inflationary rate increases.

[25] LEI, *A Report on the OEB's Cost of Capital Parameters and the Impacts of COVID-19*, December 15, 2020, page 10.

Stakeholder Comments

The OEA disagreed with OEB staff's reference to "reasonably expected" fluctuations in earnings.[26] The OEA suggested that the pandemic cannot be described as an outcome that could have been reasonably expected by utilities, nor is it an outcome that could have been reasonably expected when establishing ROE parameters.[27] The OEA stated that financial viability is based on the Fair Return Standard, not necessity, and not tied to a utility earning income or profit.[28] The EDA took issue with stakeholders that commented that a profitable utility is financially viable, even if its profits are miniscule.[29]

Consumer group stakeholder comments generally indicated that amounts recorded in the Account should only be recoverable in instances where utility financial viability is at risk, with some noting that an assessment should be adjudicated by the OEB, based on an assortment of utility-specific financial information.

The OEB's Policy and Rationale

The OEB agrees with OEB staff that utilities should be required to demonstrate that they require use of the Account by way of the means test provided herein. This is in keeping with the necessity principle articulated above.

The OEB has also determined that a standardized means test is appropriate. The OEB appreciates comments from stakeholders that there may be a multitude of different unique circumstances, and that a standard or systemic approach may not appropriately reflect those circumstances. The OEB reminds stakeholders that this Report is intended to serve as a general guide for utilities. In any specific proceeding, an OEB panel is free to consider any unique facts or circumstances in assessing utility requests for recovery. The OEB does not view a standardized means test, as established in this Report, as prohibitive in that regard. That said, the OEB further notes that the application of a standardized means test will align with the OEB's objective of generating more predictable outcomes and reduced regulatory complexity, and that any unique circumstances that may warrant a deviation from the parameters outlined in this Report must be accompanied by compelling evidence.

[26] OEA, January 25, 2021, page 15.
[27] OEA, January 25, 2021, page 15.
[28] OEA Reply, February 11, 2021, pages 7 & 8.
[29] EDA Reply, February 11, 2021, page 1.

4.1.2 The Nature and Design of the Means Test

Staff Proposal

OEB staff proposed that the recovery of balances in the Account should be permitted until such point that a utility's earnings reached the lower end of the OEB's dead band of 300 bps from its approved ROE.

As explained by OEB staff, the OEB uses a similar assessment for its annual monitoring of utility performance with respect to off-ramps. A regulatory review by the OEB may be triggered if a distributor's earnings fall outside of a dead band from the OEB-approved ROE. This review is performed to assess whether a utility's costs and its revenue stream require realignment. In OEB staff's view, the lower end of this dead band was an important indicator for putting the necessity principle into quantifiable terms and an appropriate mark for the OEB in determining at what point the utility's cost structure is substantially misaligned from its revenue stream.

OEB staff further suggested that limiting any recoveries up to the lower end of the dead band is an important element to avoid the potential that utilities that under-earn end up in a better financial position, after having their claims approved, than those operating within the dead band, all else equal.

When considering other types of financial measures that could have formed the basis of a means test, OEB staff proposed that ROE was the most appropriate metric to use, as it is consistent with the approach utilized by the OEB in other existing means tests. In cases where utilities were to pass the means test, but a net cost-sharing mechanism would be expected to put their financial viability at risk, OEB staff suggested that common financial ratios may be complementary and informative in assessing those exceptional circumstances.[30]

Stakeholder Comments

Utility stakeholders made various comments with respect to whether a means test was appropriate, and if so, what the appropriate test would be. The OEA indicated that "the 300 basis points proposed by Staff should be rejected as too penal, and not connected close enough to the OEB established benchmarks for cost sharing."[31] The EDA stated that "Staff's proposal that achieving the lower end of the ROE deadband is an

[30] These include common liquidity and solvency measures such as the current ratio and interest coverage ratio.
[31] OEA, January 25, 2021, page 8.

acceptable demonstration that the LDC is appropriately profitable, and by extension financially viable, is not supported by evidence."[32] The EDA further questioned whether achieving a level of profitability at the lower end of the dead band would satisfy financial viability tests or support utilities in accessing capital on an on-going basis and at favourable terms and conditions. AMPCO/IGUA noted that regulated utilities with financial viability regulatory support cannot fail, as opposed to other unregulated businesses, and asked, "where would you put your money right now?"[33]

Several stakeholders disagreed with the notion that the approved ROE less 300 bps was the mark that implied financial viability is at risk. Some noted that under-earnings happen periodically, sometimes multiple years in a row, without a regulatory review being triggered.

Several consumer groups were concerned that utilities that may already be under-earning would be inappropriately compensated.

Several stakeholders suggested adjustments and variations to the means test.

The OEB's Policy and Rationale

The OEB will apply a means test to recoveries in the Account based on achieved ROE compared to a utility's OEB-approved ROE less 300 bps. Recovery will be anchored to this ROE-based means test (i.e., no greater than the lower end of the dead band of 300 bps from a utility's approved ROE). This test applies to all costs recorded in the Account, other than the costs necessary to comply with government or OEB-initiated programs recorded in the Exceptional Pool (discussed in Section 4.2.2).

The dead band of +/- 300 bps is a well-established tool that the OEB has used for years and provides a strong indication of whether utilities are effectively managing the impacts of the pandemic. It is a predictable and strong indicator of performance, as well as one that is administratively straightforward to implement.

The OEB has determined that the ROE less 300 bps means test is a reasonable threshold to limit recovery in the Account, recognizing that reasonable earnings fluctuations do not necessitate relief.

[32] EDA, January 25, 2021, page 4.
[33] AMPCO/IGUA Reply, February 11, 2021, pages 5 & 6.

4.2 Net Cost-Sharing

4.2.1 Recovery Rate of Eligible Amounts

Staff Proposal

OEB staff proposed that up to 50% of incremental impacts recorded in the Account should be eligible for recovery, subject to the proposed means test.

The approach to cost sharing also acknowledged the OEB's responsibility to act as a proxy for competition, as OEB staff noted that a recovery mechanism that fully insulates utilities from the financial effects of the pandemic (irrespective of any means established) would be misaligned with the regulator's role to mirror the financial impacts utilities would face if they were not operating as monopolies. OEB staff also identified that customers, like utilities, are also facing financial hardships from the pandemic.

For customer-driven impacts (such as increases in bad debt and lost load), cost-sharing was further supported by OEB staff. OEB staff suggested that this approach represents an appropriate balance between fully disallowing amounts on the basis that they are likely covered by the utility's equity-risk premium, and 100% recovery, where the pandemic may be viewed as outside of reasonably expected risks not assumed in an approved ROE.

OEB staff further stated that a cost-sharing mechanism recognized the need to preserve the financial incentives to mitigate costs and maximize savings attributable to the pandemic, a principle consistent with incentive ratemaking.

OEB staff also recommended that a utility may propose a case for recovery of greater than 50%, after passing the proposed means test, in circumstances where cost-sharing would threaten financial viability.

Stakeholder Comments

Stakeholders took various positions with regard to comparing utilities to competitive businesses. LPMA suggested that utilities should not be insulated from the negative impacts of the pandemic, otherwise this would be misaligned with the OEB's role to mimic competitive forces.[34] Several consumer groups suggested that the impacts to the utility sector were less than those to the economy overall.

[34] LPMA, January 25, 2021, pages 30 & 33.

The OEA questioned the notion of preserving financial incentives during an emergency, while SUP identified that, as of the date of the Staff Proposal, most of the costs incurred are past expenses, while incentives are meant to be forward-looking.[35]

Milton Hydro suggested that the sharing mechanism should be dynamic (i.e., a sliding scale), which in its view, more closely links a distributor's financial need for recovery to the amounts ultimately permitted for recovery.[36]

The OEA stated that contrary to others' suggestions, utilities are not asking the OEB to subsidize earnings at the expense of customers.[37] Despite opposing it in principle, the OEA was agreeable to cost-sharing (subject to a threshold test of 100 bps below OEB-approved ROE) "in order to further assist customers", as it pertains to the recovery of amounts that do not fall into the Exceptional Pool.[38] The OEA suggested that there is a potential conflict between cost-sharing and the Fair Return Standard. The OEA also stated that "presumably, only prudently incurred costs would be approved by the OEB to be shared 50/50 between utilities and ratepayers under OEB Staff's proposal, which appears to create a circumstance in which utilities may be denied the opportunity to recover operating costs which have been deemed prudent by the Board."[39] The OEA also suggested that balancing is not a matter of denying the prudence of a cost; it is a matter of striking an appropriate balance to ensure that the resulting rates are just and reasonable.[40]

At the same time, several stakeholders, including those representing consumer groups, were opposed to any cost-sharing, with some suggesting that if the amounts necessary to maintain financial viability are ultimately approved for recovery, any cost-sharing mechanism would be of limited value. The EDA indicated that cost-sharing introduces a new risk to shareholders that few of them have previously incurred.[41]

The OEB's Policy and Rationale

The OEB will apply a 50% recovery rate to the amounts recorded in the Account.

The OEB has determined that the dynamic recovery rate (i.e., a sliding scale) proposed by Milton Hydro would introduce unnecessary and additional complexity.

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[35] OEA, January 25, 2021, pages 14-15; SUP, January 25, 2021, page 6.
[36] Milton Hydro, January 25, 2021, page 8.
[37] OEA Reply, February 11, 2021, page 6.
[38] OEA, January 25, 2021, page 7 & 8. The Exceptional Pool of impacts is described in Section 4.2.2.
[39] OEA, January 25, 2021, page 7.
[40] OEA Reply, February 11, 2021, page 11.
[41] EDA, January 25, 2021, page 10.

The OEB has determined the 50% recovery rate to be appropriate and reflective of its role to serve as a proxy for competition. It is unreasonable to suggest that even those who pass the OEB's means test would have been protected from bearing some portion of these impacts in the competitive landscape. The OEB further notes that this pandemic is not over, and accordingly, if customers are going to be potentially responsible for some amounts in the Account, it is appropriate to continue to maintain the incentive ratemaking elements for utilities, to ensure they continue to pursue cost-savings in all aspects of their operations in an effort minimize the net financial impacts of the pandemic.

4.2.2 Recovery Rate of Eligible Amounts – Exceptional Pool

Staff Proposal

OEB staff suggested an exception to the 50% recovery rate for the costs necessary to comply with government or OEB actions aimed at providing relief to customers in response to the pandemic, which should be eligible for up to 100% recovery. These included:

- Implementation costs of emergency time-of-use (TOU) rates[42] and deferred global adjustment charges for electricity distributors[43]
- Implementation and administration costs of CEAP and CEAP-SB[44]
- Increased LEAP EFA funding[45]
- Lost revenues from certain reduced/waived specific service charges[46]

[42] OEB's March 24, 2020 letter re: Immediate Changes to Time-of-Use Prices in Response to Coronavirus Emergency; OEB's December 22, 2020 letter re: Revised Regulated Price Plan Prices for January 1 to January 28, 2021; OEB's December 22, 2020 letter re: Changes to Regulated Price Plan Prices for January 1 to January 28, 2021; OEB's January 28, 2021 letter re: Extension of Fixed 8.5 cents/kWh Price for Regulated Price Plan Consumers until February 9, 2021; OEB's February 9, 2021 letter re: Extension of Fixed 8.5 cents/kWh Price for Regulated Price Plan Consumers until February 22, 2021; OEB's February 22, 2021 letter re: Fixed Pricing for Regulated Price Plan Consumers Ending on February 22, 2021.

[43] OEB's May 15, 2020 letter (Corrected on May 26, 2020) re: Guidance to Electricity Distributors on Implementing the Emergency Order Regarding the Deferral of a Portion of the Global Adjustment; OEB's December 23, 2020 letter re: Guidance to Electricity Distributors on Implementing the Recovery of Deferred Global Adjustment.

[44] CEAP stands for COVID-19 Emergency Assistance Program; EB-2020-0162. CEAP-SB stands for COVID-19 Emergency Assistance Program – Small Business; EB-2020-0185.

[45] LEAP EFA stands for Low-Income Energy Assistance Program – Emergency Financial Assistance, as per the OEB's July 17, 2020 letter.

[46] These specific service charges include reconnection charges, late payment charges, non-sufficient funds charges, and notification charges not used for collection activities. See OEB letter, Guidance to Electricity and Natural Gas Distributors on Providing Relief to Customers During the COVID-19 Emergency, March 27, 2020.

- Incremental bad debt directly attributable to the extension of the winter disconnection ban[47]

For these types of costs, OEB staff recommended full cost recoverability, limited to an approved ROE plus 300 bps means test. OEB staff's view was that recoveries of these costs should not be subject to a test to demonstrate necessity. However, in the event that utilities exceed their approved ROE by more than 300 bps, OEB staff did not find it appropriate to further compensate utilities for these amounts. This approach is consistent with the OEB's assessments of utility claims for incremental capital, as well as their inflationary rate increases. OEB staff also suggested that these amounts should, in aggregate, be subject to a materiality test independent of the rest of the amounts in the Account, as well as the typical causation and prudence requirements.

These incremental costs (or lost revenues) are directly attributable to the response from utilities to orders or recommendations from the Ontario government or the OEB to implement programs aimed at supporting customers with access and affordability to an essential service. Subject to the over earnings test set out above, OEB staff did not support that utilities should be required to bear the financial impacts of those actions, irrespective of any demonstrated financial need or satisfaction of the necessity principle.

Stakeholder Comments

Utility groups generally advocated for expanding the types of costs that should be eligible for inclusion in the Exceptional Pool, including:

- All incremental bad debt[48]
- Administrative and program costs associated with utility-specific customer relief/support programs[49]
- Costs associated with complying with various government-mandated rules and protocols, including physical distancing and enhanced health protocols[50]

[47] EB-2020-0109, Decision and Order, Amending Electricity Distributor Licences to Prohibit the Disconnection of Low-volume Consumers and Related Matters in light of the COVID-19 Pandemic, March 19, 2020; EB-2021-0137, Decision and Order, Amending Electricity Distributor Licences to Prohibit the Issuance of Disconnection Notices for Non-Payment to Residential Consumers in Light of the COVID-19 Stay-at-Home Order, May 14, 2021.
[48] The OEA stated that all incremental bad debt includes amounts resulting from the extension of the disconnection ban, government mandated customer relief actions, or any utility specific relief actions. OEA, January 25, 2021, page 7; OEA Reply, February 11, 2021, page 14; Kitchener-Wilmot Hydro, January 25, 2021, page 2.
[49] OEA, January 25, 2021, page 6.
[50] Milton Hydro, January 25, 2021, page 6.

- Costs incurred as a result of the pandemic so that the utility provided safe and reliable service to its customers at all times[51]

Some other stakeholders also supported the idea of a distinct grouping for costs associated with implementing OEB and government-initiated customer relief programs.[52]

The OEA suggested that utilities have implemented additional utility support programs to support their customers, such as voluntarily extending the 2020 disconnection ban and not immediately seeking to disconnect all accounts in arrears in July.[53] The OEA also noted similarities between the proposed Exceptional Pool and deferral accounts established for utilities for other changes initiated by the OEB or the government.[54]

Many consumer groups opposed the idea of a separate grouping for these types of costs.

The OEB's Policy and Rationale

The OEB will allow recovery of the costs necessary to comply with government or OEB actions aimed at providing relief to customers in response to the pandemic. This Exceptional Pool of costs will be eligible for recoveries up to 100% provided they are prudently incurred and material, and subject to an ROE plus 300 bps limitation, as outlined in the Staff Proposal.

The OEB considers the nature of costs and lost revenues that were identified in the Staff Proposal to be appropriate for the purposes of this exemption. The OEB agrees with the OEA that the OEB has previously allowed for cost recovery for OEB or government-initiated programs that imposed material costs on utilities.[55] The OEB also recognizes that some of the costs or lost revenues incurred by utilities throughout the pandemic have resulted from their compliance with OEB and other government-mandated actions that support customers, and therefore, recognition of that driver is appropriate for this Account.

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[51] EDA, January 25, 2021, page 7 & 8.
[52] PWU, January 25, 2021, page 3; SUP, January 25, 2021, page 9.
[53] OEA, January 25, 2021, page 11; OEA Reply, February 11, 2021, page 14.
[54] OEA Reply, February 11, 2021, page 12 & 13.
[55] An example of an OEB-approved deferral account is the EB-2020-0152, Accounting Order for the Establishment of a Deferral Account to Record Impacts Arising from Implementing the Customer Choice Initiative, September 16, 2020.

The OEB will not expand the scope of this Exceptional Pool beyond the impacts suggested in the Staff Proposal. With regard to bad debt, the OEB notes that a portion of a utility's incremental bad debt may have been driven by the OEB's mandated extension of the winter disconnection ban, in addition to any voluntary extension of that ban initiated by individual utilities. That portion of bad debt, including the amounts associated with a utility's voluntary cessation of disconnections, will be eligible for the Exceptional Pool.

The OEB will not allow general increases in bad debt, resulting from overall recessionary economic conditions, to be granted the same exception. The OEB acknowledges that derivation of the attribution and measurement of incremental bad debt associated with the cessation of disconnections may be a challenge. Any utility that intends to record these impacts is expected to make best efforts to reasonably calculate this portion of incremental bad debt that it would not have incurred had it continued disconnecting its customers from service as part of its standard pre-pandemic operating practices.

4.3 Criteria for Recording Amounts

4.3.1 Approach

Staff Proposal

OEB staff contemplated the following two approaches in articulating what types of impacts may be recorded in the Account for utilities that expect to meet the means test:

- A prescriptive approach that specifies what kinds of incremental impacts may be recorded (particularly regarding utility operations)
- A flexible approach that allows the utility to record what it has deemed to be a discrete, incremental impact and directly attributable to the pandemic

Ultimately, based on the diversity in size, and range of impacts faced by utilities, OEB staff recommended a flexible approach, rather than prescribing a list of impacts, which may be too restrictive and lead to overlooking the unique impacts being experienced by different utilities. For those reasons, OEB staff suggested that the OEB provide utilities the latitude to record what they assess as incremental and attributable to the pandemic, given their own circumstances.

OEB staff recommended that the long-standing regulatory concepts for deferral and variance accounts (DVAs) of causation, prudence and materiality should continue to apply to the amounts recorded in the Account. As such, any material and prudently incurred incremental impacts, directly attributable to the pandemic, should be eligible for recording in the Account.

Stakeholder Comments

Several stakeholders agreed with the flexible approach put forth by OEB staff, although some voiced concerns that this may increase regulatory complexity and reduce predictability.

The OEB's Policy and Rationale

With the exception of the impacts from changes in load and changes in the cost of debt (as discussed subsequently in the Report, these impacts are precluded from the Account), the OEB will not prescribe the nature of impacts that may be recorded in the Account, given the diversity in size, operations, and customer bases in Ontario's utility landscape. In addition to what the OEB expects to be common impacts shared across the sector (such as incremental bad debt and increased costs associated with health and safety), the OEB will allow utilities the opportunity to justify in an application to the OEB that they have appropriately captured the incremental impacts (costs and savings) attributable to the pandemic.

4.3.2 Causation, Prudence, and Materiality Criteria

Staff Proposal

OEB staff provided its assessment in the Staff Proposal of how the OEB's long-standing criteria for DVAs may apply to this Account.

Causation

OEB staff recommended that the criteria for which amounts are eligible for recording in the Account should not be based on the nature of the impacts, but on the drivers. OEB staff suggested that the impacts recorded must be determined to have only been incurred as a result of the pandemic. A utility should demonstrate that when it records amounts in the Account, an appropriate baseline and incremental impact measurement can be established.

In OEB staff's opinion, this provided sufficient guidance as to what should and should not be recorded in the Account, without being too prescriptive regarding required rules of the Account.

Prudence

OEB staff recommended that amounts should be recorded in the Account when the utility can demonstrate that it has acted prudently to minimize those impacts and has fully exploited all available cost-reductions and savings, including those that have become available in light of the pandemic.

OEB staff further recommended that the demonstration of well-executed disaster recovery plans, appropriate planning processes, and pivots in business plans appropriately carried out is a key aspect of demonstrating prudence. Utilities should also quantify any savings that result from its mitigation actions taken and include those offsetting impacts in the Account.

Materiality

OEB staff recommended that the typical and well-established materiality thresholds that the OEB applies to DVAs should apply to this Account as well. The materiality thresholds for the Account should correspond to those articulated in the filing requirements for cost of service applications for each type of utility (i.e., electricity distributor, electricity transmitter, and natural gas distributor).[56]

OEB staff recommended that, given its suggestion to apply a means test and cost-sharing approach, there should be no adjustments to standard materiality thresholds in recognition of demonstrating need or sharing impacts with customers.

OEB staff further suggested that the materiality threshold should be applied to the Account on an aggregate basis, rather than by sub-account, inclusive of any offsetting savings. OEB staff indicated that the pandemic's impacts must be assessed on the whole of the entity's business, and with many offsetting or overlapping impacts, it is more insightful to assess materiality at the control account level.

[56] *Filing Requirements For Electricity Distribution Rate Applications - 2020 Edition for 2021 Rate Applications - Chapter 2 Cost of Service*, May 14, 2020, page 5*; Filing Requirements For Electricity Transmission Applications Chapter 2 Revenue Requirement Applications*, February 11, 2016, page 6; *Filing Requirements For Natural Gas Rate Applications*, February 16, 2017, page 38.

OEB staff proposed one exception to this rule for the amounts recorded in the Exceptional Pool, which should have materiality assessed on a separate basis from the rest of the Account, given the discrete drivers for these costs.

Stakeholder Comments

Several stakeholders focussed their comments on the approach the OEB should take with respect to prudence and materiality assessments.

Several consumer group stakeholders suggested that recoverability of the Account should be limited if a utility had paid dividends to its shareholder or bonuses to its staff during the pandemic. The OEA, and other utility stakeholders disagreed, arguing that dividends and bonuses may be prudent even during the pandemic.[57]

The EDA asked for clarity on how materiality would be assessed, in particular, whether the materiality criteria will be applied at the level of costs incurred or costs eligible for recovery.[58]

LPMA suggested that utilities should be required to show that they have taken all steps necessary to protect their financial viability to demonstrate prudence. However, LPMA disagreed with a standard materiality threshold, since utilities that qualify should recover the necessary amounts in order to remain financially viable, regardless of whether those amounts are above or below the materiality threshold.[59]

The OEB's Policy and Rationale

The OEB will apply the long-standing criteria of causality, prudence, and materiality to the amounts recorded in the Account.

With respect to prudence, the OEB will not consider dividend payouts or employee compensation as part of predetermined criteria upon which to assess utility claims. That said, these matters, along with any other aspects of utility operations that are subject to a prudence review, including the timing of any expenditures, may be considered as part of the evidentiary record in an OEB proceeding. The OEB expects that utilities will bear the onus of demonstrating that any net impact being sought for recovery resulted from prudent actions.

[57] OEA Reply, February 11, 2021, page 11.
[58] EDA, January 25, 2021, page 13.
[59] LPMA, January 25, 2021, page 12.

With respect to materiality, the OEB will apply the standard materiality threshold used in cost of service applications, or as determined by the OEB in a Custom Incentive Rate-setting framework approved by the OEB. The OEB acknowledges LPMA's argument, but also notes that amounts below a utility's threshold by definition means that the amounts should be managed by utilities.

Materiality will be calculated based on the annual total of the amounts recorded in the Account, net of any offsetting cost savings recorded, and exclusive of any amounts recorded in the Exceptional Pool. In other words, for each year, the standard materiality threshold will be compared to the total net impacts recorded in the Account, prior to any consideration for a 50% recovery rate.

The OEB will calculate materiality for the Exceptional Pool of costs, based on the amounts recorded in the Account that are eligible for recovery, disaggregated from the other impacts, given their discrete cost drivers.

4.3.3 Costs, Savings, and Netting Treatment

Staff Proposal

Consistent with the discussion on prudence in the Staff Proposal, OEB staff proposed that incremental amounts (both increases and decreases in costs and revenues) should be recorded in the Account where a utility makes a claim for recovery. OEB staff suggested that utilities should be expected to have made reasonable adjustments in their business operations and to have exploited all available savings to help offset the costs of the pandemic.

In the event that a utility received government-assisted relief to assist with the financial impacts of the pandemic, OEB staff recommended that the amounts that qualify as not repayable should be reflected as a credit in the Account.

OEB staff also explained that it had not approached the Account from the perspective that it requires utilities to return any net gains, in the event that savings exceed costs. In OEB staff's view, this Account was not established as an industry-wide variance for all pandemic-related impacts, but as a mechanism for utilities to track those impacts in the event that they qualify for relief.

Stakeholder Comments

OPG suggested that it is sufficient for utilities to bear the onus of demonstrating that the net impacts being sought for recovery resulted from prudent actions.[60]

The OEA submitted that it does not view the measurement of achieved savings as a necessity and the final guidance should not prescribe that evidence associated with savings be a condition of recovery.[61] However, some consumer group stakeholders indicated that a utility should be required to demonstrate that it took all reasonable actions to reduce its costs to mitigate the financial impact of increased costs and reduced revenue caused by the pandemic.

Several stakeholders sought clarity about how savings would be calculated (or imputed) and recorded as an offset to net against costs. OPG opposed certain stakeholder suggestions that theoretical cost savings should be recorded in the Account by the utility.[62] SUP was unclear whether the Staff Proposal advocated for an entity-wide requirement to calculate savings, or when those specifically related to the subject cost or impact are assessed.[63]

Some consumer group stakeholders argued that any net gains should be returned to customers. Some utility stakeholders were opposed to such suggestions.[64]

Some consumer group stakeholders advocated that some forms of government assistance received should be credited to the Account.

The OEB's Policy and Rationale

The OEB will require any utility that seeks recovery of costs to record incremental savings in the Account as an offsetting entry to the Account. The onus will be on the utility to demonstrate that these savings have been identified and that all reasonable avenues of cost reduction have been explored and prudently acted upon. The OEB does not consider it unreasonable that a utility would include its evaluation of its various business operations and the process it undertook to identify opportunities for cost reductions.

[60] OPG Reply, February 11, 2021, page 2.
[61] OEA, January 25, 2021, page 8.
[62] OPG Reply, February 11, 2021, page 2.
[63] SUP, January 25, 2021, page 5.
[64] OPG, January 25, 2021, page 1; OPG Reply, February 11, 2021, page 3; EDA Reply, February 11, 2021, page 3.

To the extent that utilities received non-repayable financial support through government assistance programs, it is expected that these amounts would also be included as a credit to the Account.

The OEB has also determined that the measurement approach for savings proposed by OEB staff may serve as a guideline, however utilities may propose alternative savings measurement approaches with appropriate justification and rationale.

The OEB will not require utilities to return any net gains, in the event that savings exceed costs. The OEB agrees with OEB staff, as well as certain stakeholders, that this Account was not established with the intent to capture industry-wide variances for all pandemic-related impacts. Accordingly, utilities that do not intend to submit claims are not required to record amounts in the Account.

4.3.4 Impacts of Changes in Load

Staff Proposal

With respect to assessing recoveries for revenues lost due to changes in load, the Staff Proposal noted that the OEB has previously disallowed Z-factor treatment related to the lost revenue associated with a significant reduction in electricity consumption by a business customer.

OEB staff acknowledged that, while the OEB has previously denied claims for the impacts of lost load, the potential magnitude arising from this pandemic may be a differentiating factor from previous cases. Accordingly, OEB staff reinforced its recommendation for a 50% recovery rate. OEB staff suggested that there was a rational argument to be made that the nature of the pandemic was so unique that its impacts (including load) could not have been assumed to be compensated for in a utility’s approved ROE.

OEB staff recommended that the impact of gains and losses from differences in load should be eligible for recovery, provided they are incremental and attributable to the pandemic. The Staff Proposal acknowledged that this approach may be perceived as a deviation from the one taken historically by the OEB, and the way other jurisdictions have generally approached recovery of lost load during the pandemic. However, in OEB staff’s view, given the proposal for a means test and the 50% recovery rate, it is appropriate to include all of the incremental, pandemic-related impacts as potentially eligible for recovery.

In its report titled *A Report on Gains and Losses from Differences in Load and Production*, LEI developed a methodology to measure the incremental revenue impacts associated with the pandemic.[65] The methodology primarily involved assessing historical standard deviations in weather-normalized load, adjusted for factors such as growth over time, and attributing revenue differences in excess of these deviations to the pandemic. LEI suggested that given uncertainties associated with the persistence of load changes, the approach should not attempt to differentiate between temporary or permanent impacts.

OEB staff generally supported LEI's approach. OEB staff also recommended that, where practical, load impacts should be tracked by customer class to mitigate cross-subsidization upon disposition.

Stakeholder Comments

Many utility stakeholders advocated that lost load should be eligible for recovery.

The EDA stated that while the financial consequences of loss of load and loss of customer are among the risks for which the OEB's allowed ROE compensates the utility, the quantum of the risk is not available.[66] However, several consumer stakeholders submitted that lost revenues due to load changes should not be eligible for recovery (with some noting unless there were exceptional circumstances), suggesting that utilities are compensated for load risk through the allowed ROE.

Regarding LEI's approach for estimating gains or losses in revenues due to these gains or losses in load, several consumer stakeholders noted the practical challenges in isolating and attributing the impact of lost load to the pandemic.

The OEB's Policy and Rationale

The OEB will not permit the impacts of differences in load to be recorded in the Account. The OEB has previously denied recoveries of this nature.[67] The OEB has also previously articulated that the impact of a loss of revenue associated with load is an example of the realization of an aspect of business risk that the approved ROE is designed to compensate for.[68] The OEB also notes the rarity in which lost load has

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[65] LEI, A *Report on Gains and Losses from Differences in Load and Production*, December 15, 2020, page 1.
[66] EDA, January 25, 2021, page 9 & 10.
[67] EB-2009-0332, Horizon Utilities Corporation, Decision, March 24, 2010, page 5 & 10.
[68] EB-2004-0527, Oakville Hydro Electricity Distribution Inc., Amended Reasons for Decision, May 11, 2005, page 3.

been permitted by regulatory agencies across North America in response to the pandemic.[69]

The OEB has identified no compelling reason to deviate from its past practices in this regard. Furthermore, the OEB agrees with stakeholders who have identified practical challenges in calculating lost load attributable to the pandemic – which could amount to an overall true-up of the utility's load forecast.

The OEB reminds stakeholders that, in rare circumstances where lost load adversely affects utilities in a material way (for example, the loss of a large customer upon which the utility has an economic dependence), a more fitting solution may be for a utility to request early rebasing.

4.3.5 Bad Debt

Staff Proposal

In the case of assessing recoveries for bad debt, OEB staff acknowledged that utilities, and namely electricity and natural gas distributors, have largely incurred these impacts because they have effectively been instructed to continue operations, irrespective of customer financial hardship, supporting the argument for recoverability. OEB staff recommended that incremental bad debt, including any pass-through amounts, should be eligible for recovery in the Account, subject to the same rules regarding the means test and the 50% recovery rate. OEB staff further acknowledged that a portion of bad debt that it was recommending for inclusion in the Account was attributable to the OEB's extension of the winter disconnection ban, and would be eligible for inclusion in the Exceptional Pool of costs outlined in the Staff Proposal.

With respect to the commodity portion of bad debt, OEB staff saw no compelling reason to differentiate those recoveries from the treatment of bad debt expenses in general. OEB staff took the position that inclusion of incremental bad debt, and any potential recovery through the Account, should be viewed on a total cost basis and not split into different components.

[69] LEI, *A Report on Regulatory Principles, Policies and Accounting Treatments Applied in Other Jurisdictions in Response to COVID-19*, December 15, 2020, page 29 & 30.

When the OEB established a separate sub-account for incremental bad debt, it also noted that this Consultation would consider the methodology for determining the amount of bad debt that is to be recorded in the Account. OEB staff recommended that its proposed approach to measuring incrementality should be applied to the measurement of incremental bad debt amounts as well.

The OEB's bad debt accounting order also referred to discrete bad debt which has arisen during the period of the pandemic, but due to reasons not relating to this pandemic. OEB staff recommended that such discrete bad debt not be recorded in the Account.

Stakeholder Comments

Some utility groups proposed that all incremental bad debt should be recoverable, disagreeing with the notion that bad debt is sufficiently compensated for by the risk premium in the approved ROE and hence factored into base rates.[70] Kitchener-Wilmot Hydro argued that bad debt is not a controllable cost, given its pass-through nature. The EDA likewise expressed concern with the proportion of billed amounts attributable to these pass-through amounts and also disagreed with the notion that bad debt is sufficiently compensated for in the risk premium in the allowed ROE for the abnormal business conditions during this pandemic.[71]

The OEA noted that subjecting incremental bad debt to a 50% recovery rate and means test creates a financial disincentive for utilities to provide assistance to their customers at a time where they need it most, and will hurt the very customers that some parties in this Consultation are representing.[72] The OEA further suggested that there should not be an attempt to distinguish between any of the various drivers for incremental bad debt, given the difficulty and the impracticality of utility systems being able to calculate the actions that originate bad debt.[73]

Some consumer groups disagreed with the OEA's view that all incremental bad debt should be recoverable.[74] SEC stated that the OEA's proposal for bad debt recovery "…appears to include all incremental bad debt, regardless of whether it arises

[70] OEA, January 25, 2021, page 7; OEA Reply, February 11, 2021, page 13; Kitchener-Wilmot Hydro, January 25, 2021, page 1 & 2.
[71] EDA, January 25, 2021, page 9 & 10.
[72] OEA, January 25, 2021, page 7; OEA Reply, February 11, 2021, page 13 & 14.
[73] OEA, January 25, 2021, page 7.
[74] SEC Reply, February 11, 2021, page 5; AMPCO/IGUA Reply, February 11, 2021, page 9 & 10.

due to a relief program. SEC assumes that a significant portion of incremental bad debt that utilities are incurring has nothing to do with relief programs (mandated or voluntary), but is simply caused by businesses unable to pay their bills..."[75]

Some consumer stakeholders opposed the recovery of bad debt entirely, however, LPMA suggested that such recovery may occur in instances of financial viability concerns.[76] VECC suggested that bad debt should be permitted for recovery in full, provided it remained subject to VECC's proposed means test.[77]

The OEB's Policy and Rationale

The OEB will allow the inclusion of incremental bad debt attributable to the pandemic in the Account, using the methodology outlined in Section 4.4. As discussed earlier in this Report, the OEB will further allow the incremental bad debt directly attributable to the OEB's extension of the winter disconnection ban, including amounts attributable to utilities' voluntary extensions beyond dates mandated by the OEB, to be recorded in the Exceptional Pool. Utilities that intend to record these impacts are expected to make best efforts to reasonably calculate this portion of incremental bad debt. Any other incremental bad debt will be subject to the standard means test and recovery rate established in this Report.

As the Staff Proposal suggested, unlike most other businesses, utilities were generally expected to continue providing service (or required to do so, in the case of the disconnection ban), even to those customers who as a result of the pandemic were unable to pay. Accordingly, at least some of the bad debt incurred was caused by the very measures put in place to provide relief to the customers who suffered financially from the pandemic. This differentiates it from the nature of bad debt that the OEB has denied for recovery in past proceedings, warranting its inclusion in the Account. The OEB further clarifies that it does not view bad debt and lost load interchangeably, as was presented at times in the Staff Proposal. Despite the fact that both impacts arise from changes in customer circumstances, the OEB views the revenue stream impacts to be distinguishable from the incremental costs of uncollectible accounts.

[75] SEC Reply, February 11, 2021, page 5.
[76] Energy Probe, January 25, 2021, page 11; LPMA, January 25, 2021, page 19 & 33.
[77] VECC, January 25, 2021, page 2 & 11 & 12.

The OEB disagrees with the notion that utilities should be entitled to recover all incremental bad debt in full. A 50% recovery acknowledges the fact that there is a base allowance of bad debt expense factored into a utility's revenue requirement, and that the risk premium incorporated into a utility's approved ROE compensates them for the risk of higher levels of bad debt expense, for reasons exogenous to the utility.

The OEB's expectation remains that utilities will continue to work with their customers, particularly during difficult economic circumstances, as they have thus far during the pandemic, and these efforts should not be conditional on the fact that any incremental bad debt would be entirely borne by its remaining customers. Furthermore, the OEB notes that it is in utilities' best interests to have customers connected and served, so that those customers may ultimately compensate utilities for those services.

The OEB further notes that bad debt expenses are often accrual-based estimates provided for at the end of each reporting period. Utilities are expected to include the effects of any material subsequent period recoveries. To the extent that the estimate of incremental bad debt remains highly uncertain at the time the Account is requested for disposition, the Account may remain open until greater certainty in those amounts can be ascertained and recorded as needed.

4.3.6 Cost of Debt

Staff Proposal

OEB staff recommended that interest expense related to incremental borrowing costs should be eligible for recovery. If additional financing was required to address short-term cash shortfalls attributable to the pandemic, OEB staff suggested that the onus should be on utilities to trace causality directly to the pandemic and not to either corporate debt/equity structure fluctuations or normal operating cash flow requirements. OEB staff further recommended that incrementality for financing impacts may be measured using the standardized approach outlined in the Staff Proposal for other costs.

OEB staff suggested that incremental financing charges recorded in the Account may include amounts related to financing pass-through costs. OEB staff noted that variances between revenues and costs that are captured in DVAs, including retail settlement variance accounts for pass-through costs, attract the prescribed interest rate. OEB staff did not see a reason to depart from the prescribed interest rates for this Account, irrespective of whether impacts are attributable to typical revenue shortfalls, or in the case of bad debts, cash receipts.

OEB staff further suggested that the benefits of lower interest rates, payment deferrals, or other gains to be made from strategic refinancing in the current economic landscape must be expected of utilities and should also be recorded in the Account as an offsetting entry, for those utilities intending on submitting a claim.

OEB staff's expectation was that utilities should adapt to the pandemic with strategic trade-offs resulting in cash inflows. Utilities should be expected to establish that incremental financing costs have been minimized and savings maximized, as a result of reprioritization of business activities.

OEB staff recommended that, provided the utility qualifies to file a claim and intends to do so, finance savings should be recorded in the Account, even if no incremental financing costs were incurred.

Stakeholder Comments

Some consumer stakeholders generally supported the notion that the savings from refinancing or from the reprioritization of business activities is to be expected and recorded as an offset against costs in the Account.[78] LPMA noted that interest expense related to both higher and lower borrowing costs beyond baseline levels should be eligible for recovery, with the onus on the utility to provide a direct link for these differences.[79]

Several stakeholders submitted that when calculating incremental borrowing costs, it is difficult to see how financing costs can be traced to specific financing need or to isolate the drivers. OPG noted that a requirement to reflect savings should be more narrowly, and more clearly, defined.[80]

The OEB's Policy and Rationale

The OEB has determined that changes associated with cost of debt resulting from the pandemic will not be recorded in the Account. The OEB agrees with stakeholders that attribution of these impacts to the pandemic would be an impracticable exercise, without truing up all interest from deemed to actual. Recognizing the difference between the deemed and realized cost of capital would also represent a substantial departure from the OEB's general ratemaking framework.

[78] LPMA, January 25, 2021, page 32; SEC, January 25, 2021, page 7.
[79] LPMA, January 25, 2021, page 27, 28, 32.
[80] OPG, January 25, 2021, page 3.

4.4 Measuring Incremental Impacts

Staff Proposal

To define and measure incremental impacts, OEB staff recommended that, for each discretely identifiable cost driver, the amounts recorded in the Account should be calculated using a baseline comparison to the greater of:

1. The amount embedded in base rates (adjusted for inflationary increases less productivity)
2. The highest actual annual amount over the past five years (2015 to 2019)

A greater-of baseline test was intended to ensure that utilities only record amounts that are both:

1. In excess of what is already provided for in rates (adjusted for inflationary increases less productivity), and
2. In excess of what the utility has experienced in the past during non-pandemic years (i.e. evidence that the cost increase is beyond that of a typical fluctuation, supporting its attribution to the pandemic)

For measuring discretely identifiable incremental savings, OEB staff suggested that the baseline be established as the lower of:

1. The amount embedded in base rates (adjusted for inflationary increases less productivity)
2. The lowest actual annual amount over the past five years (2015 to 2019)

OEB staff also considered the five-year average of historical actuals instead of a five-year high/low.

OEB staff recommended that any emergency-related funding already included in a utility’s revenue requirement should be factored into the calculation of incrementality, as a standalone entry to the Account, rather than apportioning those amounts as an offset to each discretely identified cost driver.

Finally, OEB staff acknowledged that in certain circumstances, there may be challenges in tracing amounts included in base rates (for example, settlement agreements between parties or OEB decisions, that ordered a change to a total cost envelope). In these cases, OEB staff suggested that utilities should identify these amounts in base rates on a best-efforts basis.[81]

Stakeholder Comments

A number of stakeholders directionally agreed with the methodology for measuring incremental impacts proposed by OEB staff but suggested modifications to certain aspects of it.

Some stakeholders suggested that a comparison of costs should only be required between actuals and the amount determined to be embedded in base rates, without the complexity of comparison to the preceding five years' highs and lows. Not everyone agreed on whether amounts embedded in base rates should be adjusted for inflation and/or for growth.

Some stakeholders were concerned that some of the suggestions put forth in the Staff Proposal resulted in unnecessary complexity and administrative burden.

OPG suggested that where a cost or savings impact can be readily and directly attributed to an activity resulting from the pandemic, it should be recorded in full in the Account.[82] To the extent the costs or savings cannot be readily attributed to the pandemic, OPG indicated that utilities should be allowed to develop and justify measurement methods against amounts in rates or propose a basis for determining the incremental impacts given that utility's circumstances.[83]

Several stakeholders agreed with the Staff Proposal with respect to how to treat any emergency-related funding.

The OEA stated that the OEB's review of both a utility's costs and savings should be done at a level of granularity no greater than what is currently provided during a rebasing application.[84] The EDA stated that the suitable level of granularity should be set in order to support the OEB in understanding how utilities have mitigated costs, as

[81] For example, a utility could apply the percentage reduction to the OM&A envelope approved by the OEB, or settled by parties, to the utility's requested amount in the same proceeding.
[82] OPG, January 25, 2021, page 2.
[83] *Ibid.*
[84] OEA, January 25, 2021, page 9.

well as supporting allocating costs or assigning responsibility for costs.[85] Several other stakeholders suggested that the level of granularity required for this Account should be at whatever level allows the OEB and other parties to measure and gauge its reasonableness.

The OEB's Policy and Rationale

The OEB accepts that the methodology outlined in the Staff Proposal regarding the measurement of incremental costs serves as a reasonable guide for utilities. The OEB agrees that this approach ensures that when amounts are recorded, they represent impacts that are in excess of what utilities are already compensated for, and in excess of pre-pandemic expenditure levels, establishing attribution.

The OEB acknowledges certain stakeholders' concerns that a growth factor should be applied to amounts embedded in base rates when calculating a baseline. However, the OEB concludes that considering a growth factor would be complex and not conducive to an efficient review of the Account balances.

The OEB also acknowledges that a standardized approach for measuring incrementality may not be required when there are clear and obvious signs that a causal relationship is established between certain incurred costs (or savings) and the pandemic. If an obvious causal relationship exists with the pandemic, where certain incremental costs and savings can be clearly measured without the need for the approach outlined in the Staff Proposal, utilities may present evidence that demonstrates those circumstances.

Regarding emergency-related funding already included in a utility's revenue requirement, the OEB agrees with OEB staff that any unutilized amounts should be included as offsetting savings recorded in the Account.

Consistent with the OEB's determination in Section 4.3.3, the OEB will allow flexibility with respect to utilities demonstrating that savings having been thoroughly identified and measured. While the approach in the Staff Proposal may serve as a useful guide, utilities may also propose justified alternative approaches to measuring savings in a manner that establishes a causal relationship to the pandemic.

[85] EDA, January 25, 2021, page 8.

The OEB agrees with the OEA that the review of the Account will be performed to the same level of granular detail as a utility may expect when presenting impacts in a cost-based rate proceeding. The OEB's expectation is that the level of granularity of the evidence provided by the utility will be sufficient to establish and measure incrementality, so that the causal relationship of the pandemic to the impact claimed can be made.

4.5 Other Considerations

4.5.1 Period of the Account

Staff Proposal

With respect to the Account (and associated sub-accounts), the Accounting Orders issued by the OEB in March, April and August 2020, indicated an effective date of March 24, 2020.[86] If a utility incurred material costs related to the pandemic prior to March 24, 2020, OEB staff suggested that it should record these costs in the Account, provided that they are separately identified, and the utility brings forward an argument for recovery when it seeks disposition.

OEB staff recommended 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. At the time of rebasing, utilities will have an opportunity to reflect their new operating "normal" provided that they can be reasonably expected to incorporate the effects of the pandemic into their forecasts.

Stakeholder Comments

The EDA proposed that the OEB eliminate the Account at a point in time when it is no longer expected to be needed.[87]

SEC was concerned that there may be retroactive ratemaking issues if amounts are allowed to be recorded in the Account prior to the effective date of March 24, 2020.[88]

[86] An exception is the OEB's August 6, 2020 Accounting Order for the Establishment of a Sub-account to Record Impacts Arising from the COVID-19 Emergency for Forgone Revenues from Postponing Rate Implementation. The effective date for this sub-account is the approved effective date of the new rates that are postponed for implementation due to the COVID-19 emergency.
[87] EDA, January 25, 2021, page 12.
[88] SEC, January 25, 2021, page 10.

Some stakeholders agreed that a utility should have the ability to record amounts in the Account until its rebasing application, with VECC noting that amounts should be recorded until pandemic-related restrictions are lifted (whichever comes first). However, SEC recommended that it should be the subsequent rebasing application after/or the year it expects to reach a new normal.[89]

LPMA stated that if the amount in the Account is significant, the OEB should consider requiring the utility to rebase earlier than scheduled and that the OEB should not allow utilities to defer rebasing applications if they are planning to recover amounts in the Account.[90] LPMA also stated alternatively the OEB should end the addition of amounts to the Account as of the beginning of the test year that was originally scheduled for rebasing.[91]

The OEB's Policy and Rationale

The OEB will maintain the effective date of March 24, 2020 indicated in the accounting orders establishing this Account. The OEB does not expect utilities to have incurred material, if any, incremental costs from the pandemic prior to this date.

The OEB confirms that the Account will remain in effect until the utility's subsequent rebasing application, when it is reasonable to presume that rates may be reset reflecting the revised operating conditions facing the utility.

The OEB will not alter a utility's rebasing schedule based solely on amounts recorded in the Account. The OEB already has in place an annual process to monitor utility performance for such matters.

4.5.2 Carrying Charges

Staff Proposal

OEB staff suggested that carrying charges should apply to the Account, given that the impacts under consideration for recovery in the Account result in changes to a utility's cash flows. The carrying charge rate to be applied to the Account should continue to be derived using the OEB's long-standing prescribed interest rate methodology.

[89] SEC, January 25, 2021, page 10 & 11.
[90] LPMA, January 25, 2021, page 35.
[91] *Ibid.*

OEB staff proposed that the prescribed interest rate methodology is also reasonable for the period during which the pandemic persists. While OEB staff saw no substantive reason to question the validity of this methodology at the time of issuance of the Staff Proposal, it noted that the prescribed interest rate methodology may be due for a review, given that it was last explored in 2006.[92] However, OEB staff also stated that if such a methodology review is conducted, this may be best carried out at a time when the economic effects of the pandemic have largely subsided.

Stakeholder Comments

Several stakeholders agreed with the Staff Proposal in this regard.

The OEB's Policy and Rationale

The OEB confirms that carrying charges will apply to the Account, using the OEB's prescribed interest rate methodology for DVAs.

4.5.3 Specific Sub-Accounts

To-date, the OEB has established the following sub-accounts, through various Accounting Orders:

1. Sub-account Costs Associated with Billing and System Changes
2. Sub-account Lost Revenues
3. Sub-account Other Costs
4. Sub-account Forgone Revenues from Postponing Rate Implementation[93]
5. Sub-account Bad Debt

[92] EB-2006-0117, Approval of Accounting Interest Rates Methodology for Regulatory Accounts, November 28, 2006.

[93] On August 6, 2020, the OEB issued an Accounting Order for the Establishment of a Sub-account to Record Impacts Arising from the COVID-19 Emergency for Forgone Revenues from Postponing Rate Implementation. This accounting order indicated that forgone revenues needed to be distinguished from other amounts recorded in the Lost Revenues sub-account, with these other amounts being subject to the Consultation. This sub-account is not part of the scope for this Consultation.

Staff Proposal

Sub-account for Impacts from Complying with Government/OEB-initiated Customer Relief Programs

As discussed earlier in this Report, as part of the Staff Proposal, OEB staff recommended exceptions to the rules of the Account for costs incurred (or revenues lost), resulting from compliance with government or OEB actions taken to assist customers (the Exceptional Pool).

OEB staff solicited stakeholder feedback with respect to whether a discrete sub-account for the amounts proposed to be recorded in the Exceptional Pool would be helpful, recognizing that those utilities who have been recording amounts in the Account to date have likely been utilizing various existing sub-accounts for these impacts. OEB staff also suggested, as an alternative, repurposing the first sub-account (Costs Associated with Billing and System Changes) to expand its use for all of the Exceptional Pool costs.

Sub-account for Capital-related Revenue Requirement Impacts

OEB staff also considered the potential benefits of increased transparency from separately tracking incremental capital costs (and savings) attributable to the pandemic, due to the distinct manner in which capital-related revenue requirement is recognized in DVAs.

OEB staff suggested that while any permanent impacts associated with capital expenditures should be eligible for inclusion in the Account, temporal shifts in the timing and execution of existing or planned capital projects should not be eligible.

OEB staff further questioned whether capital-related impacts attributable to the pandemic would be material enough to warrant the establishment of a separate sub-account. Irrespective of whether a sub-account was established, OEB staff suggested that any permanent capital-related incremental impacts attributable to the pandemic warranted inclusion in the Account.

With respect to establishing causation to the pandemic and measuring incrementality, OEB staff recognized the potential impracticality of applying the standardized measurement approach outlined in the Staff Proposal. OEB staff indicated that, while it may be informative to the OEB to assess the overall capital expenditures on an envelope basis, an individual project-level approach to incrementality may be more appropriate in certain circumstances.

OEB staff welcomed comments from stakeholders regarding whether, and why, they recommended a separate sub-account for permanent capital-related revenue requirement impacts associated with the pandemic would be beneficial.

Stakeholder Comments

Several stakeholders agreed with the notion of a sub-account to track the amounts recorded in the Exceptional Pool.

Several stakeholders also indicated that a new sub-account should be created for the revenue requirement impact of changes in capital, including return on cost of capital, depreciation, and income taxes. Others opposed this.[94]

Some stakeholders indicated that temporal shifts in the timing and execution of existing or planned capital projects should not be eligible for inclusion in the sub-account, with VECC noting that any significant deviations from the prior capital plan should be considered at the time of rebasing.[95] However, SEC disagreed with the differentiation and exclusion of temporal impacts, noting this as a primary source of potential capital savings.[96] The EDA explained that “savings that result from deferred spending are temporary and may be offset by higher spending in subsequent years.”[97]

The OEB’s Policy and Rationale

Throughout this Consultation, the sub-accounts have generally been categorized and established based on either a) facilitating the review of the various impacts of the pandemic of the sector as part of the OEB’s ongoing monitoring activities, or b) enabling utilities to file claims for their forgone revenues from postponing implementation of May 1, 2020 rates. The OEB’s view is that it may be helpful to stakeholders to outline the expected purpose of each sub-account moving forward, following the issuance of this Report.

[94] Energy Probe, January 25, 2021, page 11; SUP, January 25, 2021, page 12.
[95] LPMA, January 25, 2021, page 34; VECC, January 25, 2021, page 14.
[96] SEC, January 25, 2021, page 8.
[97] EDA Reply, February 11, 2021, page 3.

The OEB will:

1. Expand the former sub-account “Costs Associated with Billing and System Changes” to include all of the incremental impacts associated with compliance with government or OEB initiated actions taken to assist customers (i.e., the Exceptional Pool) related to the COVID-19 pandemic. This sub-account will be renamed “Impacts from Complying with Government/OEB-initiated Customer Relief Programs”.
2. Establish a new sub-account titled “Capital-related Revenue Requirement Impacts” to record the capital-related revenue requirement impacts (costs and savings) associated with the pandemic.

Given that the OEB has confirmed that the Exceptional Pool of costs will be administered differently than costs in the rest of the Account, this alone warrants the establishment of a separate sub-account for these impacts. As noted earlier, materiality thresholds are to be disaggregated for this sub-account and calculated independent from the rest of the Account.

The capital-related sub-account is warranted given the way in which a capital-related revenue requirement is recorded in a DVA, which includes depreciation, income tax, and return on capital components. The OEB will not differentiate between permanent and temporary capital-related impacts. The OEB agrees with the comments made by SEC that capital-related savings, even if only temporal, may be substantial based on the circumstances surrounding the pandemic. Furthermore, given the uncertainties with the persistence and ongoing impacts of the pandemic, it is in the OEB’s view, unlikely that all temporary capital-related savings will be offset by accelerated capital expenditures within a given utility’s remaining rate-setting term. As discussed in Section 4.3.3, the onus will be on the utility to demonstrate that these savings have been identified and that all reasonable avenues of cost reduction have been explored and prudently acted upon. Capital-related cost reductions will not be excluded from this consideration.

Following the issuance of this Report, the Account will be organized under the following sub-accounts for all utilities:[98]

1. Sub-account Impacts from Complying with Government/OEB-initiated Customer Relief Programs
2. Sub-account Bad Debt
3. Sub-account Capital-related Revenue Requirement Impacts
4. Sub-account Other Costs and Savings

The OEB previously established the "Lost Revenues" sub-account for any type of lost revenue associated with the pandemic. Any lost revenues recorded from certain reduced/waived specific service charges (i.e., eligible for the Exceptional Pool) that were recorded in other sub-accounts will be transferred to the "Impacts from Complying with Government/OEB-initiated Customer Relief Programs" sub-account. Any lost revenue associated with loss of load will be immediately reversed. Any forgone revenue associated with deferring implementation of May 1, 2020 rates should have already been transferred to the "Forgone Revenues from Postponing Rate Implementation" sub-account, which has already been separated out from this Consultation, and those amounts have had disposition administered by the OEB outside of this Consultation. The former "Lost Revenues" sub-account will be closed after the above-noted transfers are made (if applicable).

The OEB previously established the "Bad Debt" sub-account related to incremental bad debt resulting from the pandemic. Any incremental bad debt eligible for recognition in the Exceptional Pool that was originally recorded in the "Bad Debt" sub-account will be transferred to the "Impacts from Complying with Government/OEB-initiated Customer Relief Programs" sub-account.

Utilities are expected to appropriately transfer any other impacts previously recorded in various sub-accounts in accordance with the revised sub-accounts presented above, provided they have intentions of submitting claims for disposition.

The sub-account previously referred to as "Other Costs" will be renamed "Other Costs and Savings", to record all impacts eligible for inclusion in the Account that do not have a dedicated sub-account established.

[98] The Forgone Revenues from Postponing Rate Implementation sub-account remains active for many utilities, pending final disposition of any residual balances that remain after the Forgone Revenue rate rider has expired. However, for the purposes of discussing the sub-accounts that remain applicable in the context of this Consultation, that sub-account is being excluded.

4.5.4 Mechanics of Calculations

Stakeholder Comments

Several stakeholders requested more precise details with respect to the mechanics of the Account as contemplated in the Staff Proposal, including how the means test would be computed, the interaction of the various categories of amounts, the cap on recoveries, and the interaction between this Account and other existing generic or utility-specific customer protection mechanisms (e.g. ESM or Capital In-Service Variance Accounts) to ensure no double-counting.

Some utility groups submitted that a schematic or flow chart representation, as well as numerical examples, may be helpful.[99]

The OEB's Policy and Rationale

Given that this Report features several of the concepts contemplated in the Staff Proposal, the OEB has included a visual representation of the mechanics of the Account under Appendix B to this Report.

The means test is based on regulated ROE, calculated in the same manner as provided to the OEB through the *Electricity Reporting and Record-Keeping Requirements* (RRR) filing 2.1.5.6 Regulated ROE. However, unlike the 2.1.5.6 Regulated ROE figure, the achieved regulated ROE for the purposes of the means test is calculated prior to any entries made in the Account.

The Account is to be assessed on an annualized basis. Specifically, for any claims associated with the impacts in 2020, the means test will be calculated based on the 2020 achieved ROE calculated in the manner described above.

With respect to interactions between this Account and other existing generic or utility-specific accounts, utilities are to assess their own individual circumstances with respect to whether they already have DVAs or rate frameworks that would have included the effects of the pandemic, absent the OEB establishing this Account. If so, the onus is on utilities who intend on submitting claims through this Account to track the impacts of the pandemic in those other types of accounts to ensure no double-counting between multiple ratemaking mechanisms.

[99] EDA, January 25, 2021, page 13; OEA, January 25, 2021, page 4.

5 Disposition Considerations

5.1 General Disposition Considerations

5.1.1 Timing and Process for Disposition Requests

Staff Proposal

OEB staff recommended that an application for disposition may be made outside of a rebasing application. OEB staff indicated that it is preferable if a utility leverages a cost-based application for the review of the Account, which requires a prudence review. In particular, the Account also relates very closely to impacts that would be reflected in a future cost of service review for a utility operating under its new “normal”.

However, OEB staff also recognized that, under the approach taken in the Staff Proposal, utilities that file recovery claims have already demonstrated a financial need by passing the means test. Therefore, OEB staff suggested that utilities should be able to file a stand-alone application once audited financial statements are available. OEB staff suggested 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.

OEB staff noted that the earliest opportunity for the Account balance to be brought forward for disposition will be in summer 2021, after the utility’s December 31, 2020 audited results are available.

Stakeholder Comments

Several stakeholders agreed with the Staff Proposal that utilities should have the flexibility to choose the timing of their disposition application.

Energy Probe stated that no disposition should occur until the pandemic is over, the government lifts all restrictions on commercial activities, and schools are fully re-opened.[100]

[100] Energy Probe, January 25, 2021, page 12 & 13.

LPMA voiced concerns regarding the potential for a utility to recover amounts associated with the Account and then over earn in the years when it is recovering this amount.[101]

The OEB's Policy and Rationale

The OEB agrees with the Staff Proposal that ideally utilities would request disposition of any amounts in the Account in conjunction with their respective cost-based applications. The interaction between the Account and amounts being reflected in an updated cost forecast suggests that this would be a more efficient process as well. However, the OEB will not preclude utilities from bringing forth disposition requests in advance of their rebasing applications, as a stand-alone application, with supporting rationale for doing so.

5.1.2 Interim Disposition

Staff Proposal

OEB staff recommended that interim disposition of a partial amount of the Account balance should be considered on a case-by-case basis (e.g., if a utility is facing financial viability concerns). In the event a utility seeks interim disposition in the near term, any amounts recovered may be subject to a clawback, for example, in the event that the utility does not pass the means test.

Stakeholder Comments

Several stakeholders supported the notion of interim disposition of a partial amount of the Account balance on a case-by-case basis, with some noting that interim disposition should only occur if a utility is facing financial viability concerns.

The OEB's Policy and Rationale

The OEB will consider interim disposition requests on a case-by-case basis, with supporting justification. However, given that no utility has indicated a need yet for interim disposition, the OEB does not currently expect any requests for such interim relief.

[101] LPMA, January 25, 2021, page 39.

5.1.3 Audited Account Balances

Staff Proposal

OEB staff suggested that any interim disposition requests (which would be determined on a case-by-case basis) may be for either unaudited or audited Account balances. However, OEB staff recommended that final disposition requests should be for audited Account balances, following a utility's annual financial statement audit.

OEB staff noted that final disposition of audited balances is consistent with the OEB's historical practice for other DVA dispositions.

Stakeholder Comments

Several stakeholders agreed that final disposition requests should be for audited Account balances.

The OEB's Policy and Rationale

The OEB will maintain its past practice with respect to DVA dispositions and require that balances be brought forth for disposition following the audit of their financial statements. The OEB will consider interim disposition of unaudited balances on a case-by-case basis, with supporting justification. The OEB will not require any Account-specific assurances to be provided by an external audit firm.

5.2 Cost Allocation and Rate Design

Staff Proposal

OEB staff recommended that utilities should propose any disposition based on accepted approaches to matters such as rate rider construction (including billing determinants, allocation methodologies and recovery periods), and bill mitigation. OEB staff recommended that appropriate rationale for any deviations proposed from what had been previously approved for each utility should be provided. Where practicable, OEB staff suggested that utilities track incremental impacts based on their respective rate classes and rate zones, as applicable.

Stakeholder Comments

The EDA considered it inappropriate to reallocate cost responsibility after the costs have been incurred, without prior notice and without supporting evidence.[102] The EDA also raised the issue of whether and how to use the OEB's cost allocation model or whether to adjust rates using another mechanism (e.g., socialization).[103] The EDA further stated that utilities are best situated to propose an appropriate disposition period that reflects their knowledge of their customers' needs and their capacity to pay.[104]

AMPCO/IGUA and SEC suggested that it is not appropriate to allocate pandemic driven costs to those rate classes from which the costs arise.[105] Both of these stakeholders noted that in the case of financial viability concerns, recovery should instead be allocated to all customers, as all customers would benefit from the maintenance of a utility's financial viability.[106]

VECC stated that utilities should look to the cost allocation methodology underpinning their rates, but exceptions should be allowed in some cases.[107]

The OEB's Policy and Rationale

The OEB notes that the general practice used for past Z-factor proceedings for electricity distributors is to:

- Allocate amounts based on the distribution revenue by rate class approved by the OEB in the utility's last cost-based rate case
- Recover amounts based on a monthly fixed charge for electricity distributors, using a recent actual number of customers for each rate class

For electricity distributors, the OEB has determined that it is appropriate to use the general rate design used in past Z-factor proceedings. Amounts disposed will be allocated based on the distribution revenue by rate class approved by the OEB in the utility's last cost-based rate case, rather than based on which rate class contributed to these amounts. Amounts in the Account eligible for recovery will also be recovered

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[102] EDA, January 25, 2021, page 11.
[103] EDA, January 25, 2021, page 12.
[104] *Ibid.*
[105] AMPCO/IGUA, January 25, 2021, page 7; SEC, January 25, 2021, page 10; AMPCO/IGUA Reply, February 11, 2021, page 2 & 3 & 12.
[106] *Ibid.*
[107] VECC, January 25, 2021, page 18 & 19.

based on a monthly fixed charge, using the most recent calendar year-end actual number of customers for each rate class as the denominator.

The OEB's standard recovery period and bill mitigation practices will continue to apply.

The OEB will consider any electricity distributor's proposal for exceptions to the above-noted rate design on a case-by-case-basis, with appropriate rationale. Other utilities may propose an allocation and rate design methodology that they believe is appropriate in their circumstances.

Appendix A: List of Stakeholders

1. Alectra Utilities Corporation
2. Algoma Power Inc.
3. Association of Major Power Consumers in Ontario (AMPCO)
4. Association of Power Producers of Ontario
5. Bluewater Power Distribution Corporation
6. Brantford Power Inc.
7. Building Owners and Managers Association (BOMA)
8. Burlington Hydro Inc.
9. Canadian Manufacturers & Exporters (CME)
10. Canadian Niagara Power Inc.
11. Consumers Council of Canada (CCC)
12. Cornerstone Hydro Electric Concepts
13. E.L.K. Energy Inc.
14. Electricity Distributors Association (EDA)
15. Elexicon Energy Inc.
16. Enbridge Gas Inc.
17. Energy Probe Research Foundation (Energy Probe)
18. Energy+ Inc.
19. Entegrus Powerlines Inc.
20. ENWIN Utilities Ltd.
21. EPCOR Natural Gas Limited Partnership (EPCOR)
22. EPCOR Electricity Distribution Ontario Inc.
23. Essex Powerlines Corporation
24. Federation of Rental-housing Providers of Ontario (FRPO)
25. Hydro One Networks Inc.
26. Hydro Ottawa Limited
27. Industrial Gas Users Association (IGUA)
28. Kitchener-Wilmot Hydro Inc. (Kitchener-Wilmot Hydro)
29. Lakeland Power Distribution Ltd.
30. London Hydro Inc.
31. London Property Management Association (LPMA)
32. Milton Hydro Distribution Inc. (Milton Hydro)
33. Ministry of Energy, Northern Development & Mines
34. NextBridge Infrastructure, operating on behalf of Upper Canada Transmission, Inc.
35. Oakville Hydro Electricity Distribution Inc.

36. Ontario Energy Association (OEA)[108]
37. Ontario Power Generation Inc. (OPG)
38. Osler, Hoskin & Harcourt LLP
39. Pollution Probe
40. Power Workers' Union (PWU)
41. School Energy Coalition (SEC)
42. Society of United Professionals (SUP)
43. Sussex Strategy Group
44. Toronto Hydro-Electric System Limited
45. Vulnerable Energy Consumers Coalition (VECC)
46. Wataynikaneyap Power LP
47. Waterloo North Hydro Inc.

[108] The OEA provided written comments on behalf of the following organizations: Alectra Utilities Corporation, Elexicon Energy Inc, Enbridge Gas Inc., Hydro One Networks Inc., Hydro Ottawa Limited, and Toronto Hydro-Electric System Limited.

Appendix B: Flowchart of Mechanics of Account

Assumptions:

- A utility's approved ROE embedded in rates is 9.00%.
- Achieved ROE is calculated prior to any amounts recorded in the Account. Utilities are also expected to confirm the Regulated ROE, as per RRR 2.1.5.6.
- The utility intends to use this Account and submit a request for disposition.
- The "Exceptional Pool sub-account" refers to the "Impacts from Complying with Government/OEB-initiated Customer Relief Programs sub-account."