



May 10, 2023

From: Enbridge Gas, Hydro One, Alectra, Toronto Hydro, Elexicon, OEC, Hydro Ottawa, and the Ontario Energy Association.

To: Hon. Todd Smith, Minister of Energy  
Hon. Kaleed Rasheed, Minister of Public and Business Service Delivery

Cc: David Donovan, Chief of Staff to Minister of Energy  
Devin Nicol, Director of Policy to Minister of Energy  
Jason Fitzsimmons, Deputy Minister of Energy  
Michelle Stock, Chief of Staff to Minister of Public and Business Service Delivery  
Renu Kulendran, Deputy Minister of Public and Business Service Delivery  
Patrick Sackville, Chief of Staff to Premier of Ontario  
Kevin Lynch, Director of Policy to Premier of Ontario  
Jim Keech, Executive Director, Ontario One Call  
Susanna Zagar, Chief Executive Officer, Ontario Energy Board

Dear Ministers Smith and Rasheed,

**RE: Government action required to support industry investment in utility locate services**

We are a group of Ontario's energy sector leaders, writing to seek your support in our ongoing efforts to modernize the locates industry in Ontario. The urgency of our request results directly from the legislative and regulatory changes introduced through Bill 93 (*Getting Ontario Connected Act, 2022*). We have previously advised the Government of Ontario (Government) about our concerns in a letter sent to the Minister of Public and Business Service Delivery in December 2022 (copy attached).

Significant incremental investments are required to meet your legislated mandate to build capacity and improve the locate services industry. Accordingly, we have engaged the Ontario Energy Board (OEB) and requested a variance account for all electricity and natural gas distribution utilities to track and recover reasonable incremental investments in locates services. Through its existing authority, the OEB can ensure that our costs – on which we earn no profit – are recovered, and that those costs are borne by the appropriate parties.

These incremental investments to meet your legislated mandate will be significant, but there are opportunities for cost reductions. Many of these opportunities were highlighted in our previous submissions. Through detailed discussion, we are pursuing others too. **We request that the Government immediately pause the implementation of Administrative Monetary Penalties (AMPs) until December 2024**, replacing it in the interim with a performance improvement plan to balance improvements to locate delivery with cost implications of compliance.



While some opportunities for cost reduction require further review, others are obvious and ready for you to support.

First, we request Government action to **mandate the use of dedicated locators on non-residential excavation projects initiated by the province's top 25 infrastructure owners** (defined by locate volume) to optimize locate service delivery and free up capacity to serve general public locates. We recommend mandated language be determined through consultation with Ontario One Call and the province's top 25 infrastructure owners.

Second, we request the Government **amend the definition of a "standard locate request"** in the Act **to differentiate between locate requests for excavations taking place at a single address** (e.g. for an individual homeowner) **and those associated with infrastructure projects spanning multiple addresses** (e.g. for larger work such as priority broadband projects). This differentiation is critical to ensure the dedicated locator model can be applied

### **Implications of Meeting Compliance with the Act**

Our organizations continue to support Ontario's intent to modernize the locate industry and we remain committed to helping deliver capital investment in the province, including for priority broadband, transit and housing projects. As a result of legislative and regulatory changes impacting the Act, infrastructure owners are making significant incremental investments to fund operational improvements, including hiring and training more locators with the competitive wages required to attract new workers, procuring equipment and vehicles and improving IT infrastructure. Collectively, our organizations expect these improvements will have an annual impact in excess of \$100M in incremental investments – in some cases increasing costs by 100% or more.

These incremental investments are underway and needed now to build industry capacity and support priority investments in Ontario. Our December 2022 letter to the Minister of Public and Business Service Delivery expressed those concerns, highlighting that the Government's regulations (now adopted) would not achieve the intended objectives and would present challenges for safety, labour availability, and consumer affordability. The introduction of AMPs does not position the industry for success. Instead, these changes have led to the immediate need for utilities to incur significant incremental operational expenditures to avoid AMPs as well as new legal liabilities. While industry has begun taking action, these concerns remain and have become more urgent. We call on the Government to pause the implementation of AMPs until December 2024 and instead have utilities meet a performance improvement plan in lieu of AMPs for a period of time. This would demonstrate improvement on locate delivery timelines while also addressing the cost implications of meeting compliance with the Act.

All underground infrastructure owners, including utilities and municipalities, are required to comply with the Act and its regulations. In order to recover these compliance-related costs, some organizations have proposed to introduce new service fees for certain locate requestors. These plans have been met with significant resistance and as a result, underground infrastructure owners are seeking approval for an alternative cost recovery mechanism in the form of an OEB variance account. The OEB should establish a variance account as soon as possible for all rate regulated utilities to be able to track, and ultimately recover any reasonable incremental costs associated with complying with the legislative amendments effective on January 1, 2023, recognizing our ramp-up to come into legislatively mandated April 1, 2023

compliance. While a variance account does not mitigate the immediate cashflow impact to utilities, it does help to address the matter of cost recovery and obviates the need for alternative cost-recovery mechanisms such as user fees.

Importantly, the establishment of a variance account is being sought now as the summer construction season is underway and the volume of locate requests is expected to increase significantly. This would provide a clear message for industry and municipalities that costs associated with utilities' incremental investments will be tracked and considered for cost recovery (with particular focus on 2023 and until utilities can rebase their rates).

### **Driving Efficiencies and Cost Reductions**

We are recommending the Government mandate that the province's top 25 largest infrastructure owners use dedicated locators on all of their own dig projects, with the exception of single address projects, by April 2025. According to Ontario One Call (OOC), these infrastructure owners drive approximately 75-80% of all locates requests, and this mandate could drive significant efficiencies and cost savings for locate delivery, and improve integrated jobsite construction performance. As our organizations have shared in previous submissions, a dedicated locator is a single resource used to mark all underground infrastructure within a project area. Government support for the broader adoption of dedicated locators would enhance the efficiency of and, in fact, advance the locate process through more effective management of the overall volume of locates in the system.

Our organizations also stand ready to support the modernization of OOC to ensure it is best positioned to support the industry's transformation. As outlined in the December 2022 letter, our organizations are concerned that the Act and OOC currently do not distinguish locates by type (e.g. single homes have same 5-day timeline as projects that comprise an entire neighborhood), size and scope, complexity, or limits on the number of locates an excavator can request to ensure requests are appropriate and actionable. Delivering locates to the different classes of excavation projects have different resourcing and cost impacts, and the Act ought to reflect this by having unique criteria for each. Currently OOC can only use a timeframe(s) measurement for all requests when we know all requests are not equal. This proposal would require OOC to update its back-end locate intake and management systems accordingly. We recommend the Government work with OOC to implement this change to improve the efficacy of Ontario's locate delivery processes.

In summary, our organizations are collectively requesting that:


1. The OEB establish a variance account so that utilities may track and recover reasonable incremental investments made in 2023 and onwards until they can incorporate the costs of compliance into OEB-approved distribution rates through rebasing applications .
2. The Government pause implementation of AMPs until December 2024, and instead implement an interim performance improvement plan.
3. The Government pursue cost reduction opportunities by continuing to consult with industry to a) expand the use of the dedicated locator model to free up capacity to serve general public locates, and b) differentiate between single address and project tickets.



We appreciate your swift attention to this matter, and we remain committed to working together with your government and other partners to ensure a successful modernization process for the locate services industry.

Sincerely,

Brian Bentz  
President and CEO  
**ALECTRA**

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