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July 7, 2023

**RE: EB-2023-0143 – Generic Variance Account for Locates – Evidence Filing**

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On May 11, 2023, Toronto Hydro and several other large distributors (the “Large Utilities”) filed a letter with the OEB requesting a new, generic variance account available to all distributors to track the legislatively-driven, incremental costs related to locates, effective January 1, 2023.

On June 14, 2023, the OEB responded by letter. The letter set out five sets of incremental information that the OEB requested the Large Utilities prepare on a best efforts basis, and file as evidence with the OEB by July 7, 2023.

In support of the request by Toronto Hydro and the other Large Utilities, enclosed please find the evidence requested by the OEB.

Sincerely,

A handwritten signature in blue ink, appearing to read "Andrew J. Sasso", written in a cursive style.

Andrew J. Sasso

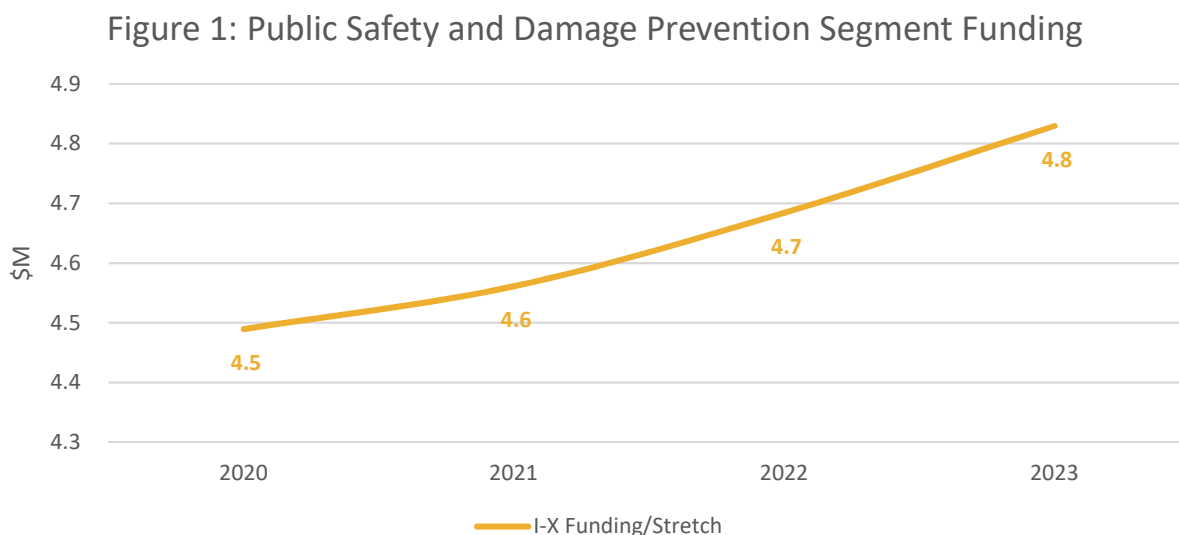
## Question 1

*Evidence on what costs related to locates are currently included in each of the Large Utilities' approved revenue requirement (and hence already included in base rates).*

At the time of the 2020-2024 Custom Incentive Rate Application ("2020 CIR"), the following costs constituted the planned expenditures for the Public Safety and Damage Prevention segment (within the Customer Driven Work Program - see **EB-2018-0165, Exhibit 4A, Tab 2, Schedule 8**):

- Service costs for locate requests pertaining to Toronto Hydro's service territory under the *Ontario Underground Infrastructure Notification System Act*;
- Costs for third party providers who process incoming requests and identify the location of Toronto Hydro's underground infrastructure; and,
- Toronto Hydro's operational costs to support the governance and oversight of the program.

The rebasing cost forecast was predicated on alignment with the OEB performance targets in section 7.4 of the Distribution System Code, which requires that appointments (including providing underground cable locates) are met 90% of the time on an annual basis. Figure 1 sets out the rebasing amount (2020), along with an extrapolation of associated rate-funded cost recovery according to the OEB-approved 5-year framework (2021-2023).



## Question 2

*Evidence on the number of locates that were conducted by each of the Large Utilities in the years 2017-2022*

The below table shows the annual locate volumes completed by Toronto Hydro, which is also reflected in RRR reporting. This includes emergency locates and standard locates. Annual volumes reflect the volume of locate requests completed each year.

Year	2017	2018	2019	2020	2021	2022
Locate Requests Completed	116,479	145,384	161,096	147,710	134,805	120,234

### Question 3

*Evidence on the incremental costs due to an increased volume of locates requests, and the incremental costs due to the need to meet the new requirements under Bill 93. Further, the utility should provide evidence on the materiality of these incremental locates costs, and a general description of how the utility plans to incur the incremental costs prudently.*

#### Introduction

In April 2022, *Bill 93, Getting Ontario Connected Act and Building Broadband Faster Act*, received royal assent. The legislation resulted in major changes to the *Ontario Underground Infrastructure Notification System Act* which governs how underground facilities are located in Ontario. The legislative changes anticipated Administrative Monetary Penalties (“AMPs”) coming into force on April 1, 2023. In 2022, utilities and other entities with underground facilities prudently began taking steps to prepare for compliance, based on the new legislative provisions.

On May 11, 2023, the Government issued guidance that the AMPs under O. Reg. 87/23 would not come into force until April 1, 2024.

Based on the new compliance date, the full cost of compliance remains uncertain. The new legislative framework represents significant changes, such as mandatory, penalty-backed, 100% compliance obligations to achieve unprecedented locates performance levels. The cost estimates filed in this evidence are based on best efforts using currently available information. It is expected that in addition to incremental costs incurred to date, further significant costs will be incurred to meet the new legislative provisions, as well as regulatory requirements issued by the Government or Ontario One Call related to the new legislative framework.

The three largest incremental cost categories are:

1. Field Locate Delivery Costs
2. Volumes of Locates
3. Process and System Enhancements

In addition to increased operational expenditures, Toronto Hydro expects incremental capital investments may be required to support the legislated 100% compliance targets (i.e. IT hardware and software systems for tracking and monitoring performance, work management, etc.).

## Summary of Costs

The three largest incremental cost categories, the estimated cost estimate, and the basis for the amount are set out in brief in the table below. Detailed explanations of those categories follow the table. Each of the incremental cost categories described are material for Toronto Hydro, as defined by the OEB's materiality thresholds.<sup>1</sup>

Incremental Cost Category		Estimate (\$M)	Basis for Incremental Cost Estimate
Field Locate Delivery Costs	Labour and Operational Cost Increases (began incurring in 2022-23 & ongoing)	3.1 / year	Cost Estimate = (cost/locate increase actual** - cost/locate increase planned*) x annual volume locates completed * Planned rate of increase 2021-2023 was 5.9% ** Actual rate of increase was 83%.
	Peak Volume Capacity (future anticipated)	1.5 / year	Operational costs to train, sustain and mobilize 20% standby capacity for peak volume days, high complexity tickets, weather 'catch-up', emergency events etc..
Volumes (future anticipated)	Increased Ticket Completions	0.8 / year	13,000 incremental locate requests completed at \$60/locate to achieved 100% compliance
	Increased Ticket Volumes (ticket request compliance)	2.3 / year	26,000 incremental locate requests = 20% of locates not submitted x 75% improvement in missed locate submissions over time x average locate requests/yr
System and Process Improvements (future anticipated)	1. Systems and process improvements to support compliance 2. Dedicated Locator	1.5 (one time)	Preliminary cost estimate based on order of magnitude review for this type of process/IT systems implementation and expected costs for dedicated locator implementation and sustainment

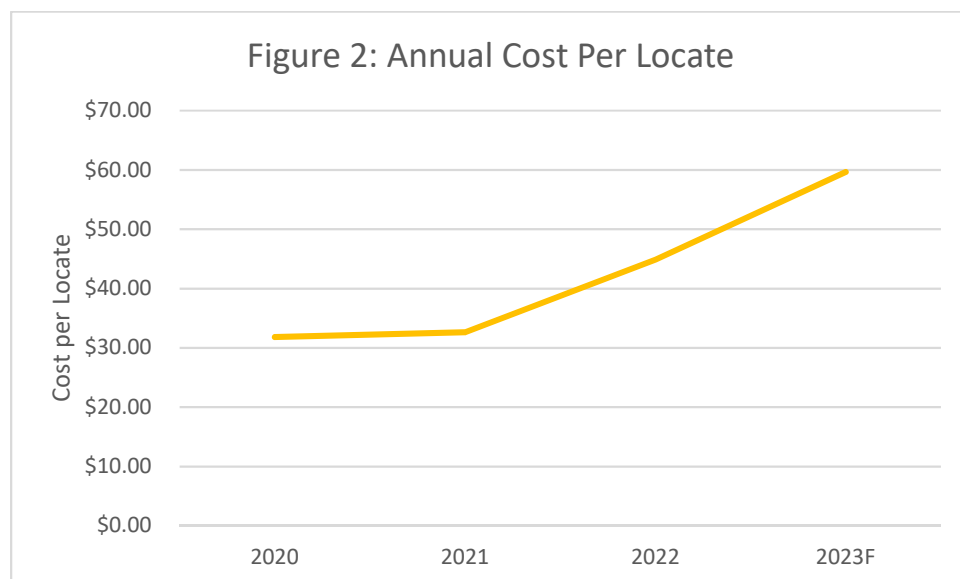
### Category One: Field Locate Delivery Costs

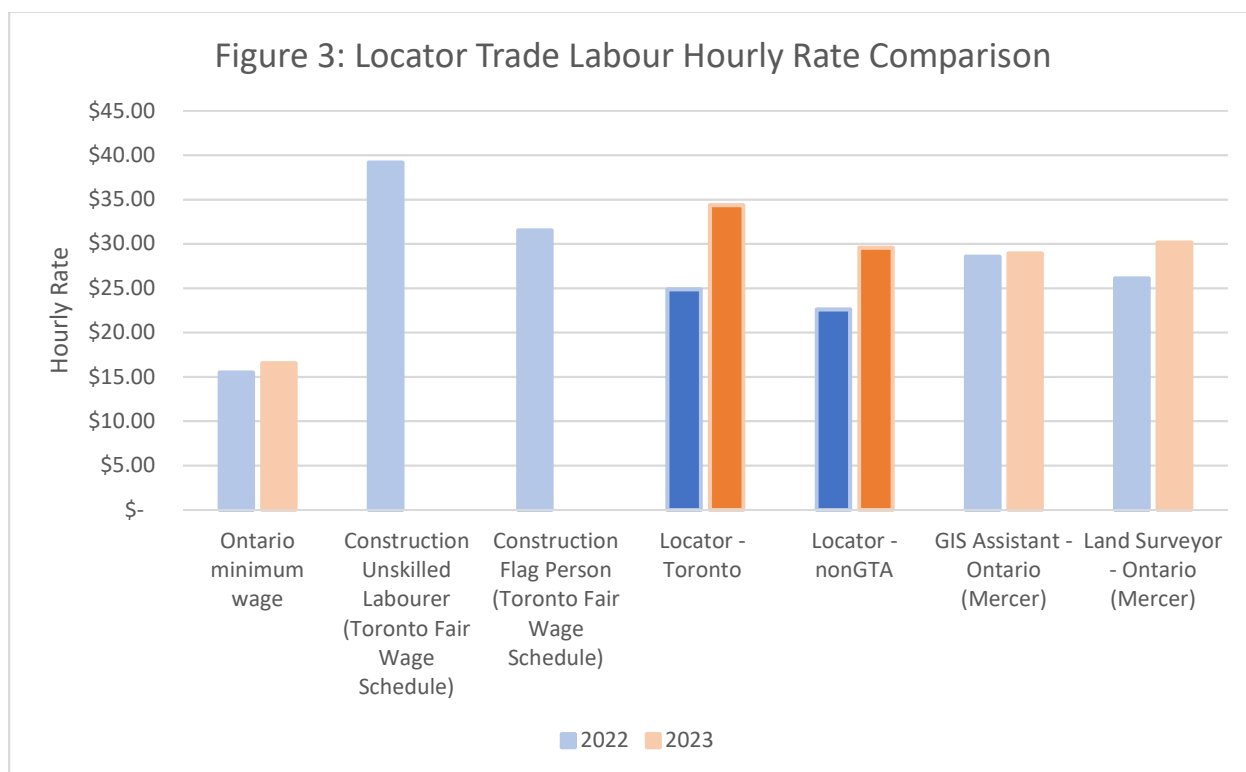
With the enactment of Bill 93, compliance targets effectively increased from 90% to 100%, as the amended legislation imposes absolute liability upon infrastructure owners for contravening requirements under the *Ontario Underground Infrastructure Notification System Act*. In addition, Bill 93 also removed the reference to infrastructure owners making “reasonable attempts” to complete locates within legislated timelines, meaning that every locate, no matter how large and complex, is considered non-compliant if completed beyond the currently prescribed standards. There is also no allowance in the amended legislation for factors that may affect infrastructure owners’ performance beyond their reasonable control, such as inclement weather (which impacts not only productivity but also the ability to perform the work at all), a major weather event (i.e. in the event of a major storm at the provincial level, it may be necessary to direct all available locators to support emergency infrastructure restoration) or

<sup>1</sup> [Filing Requirements for Electricity Distribution Applications](#), Chapter 2 – Cost of Service, section 2.0.8, page 6.

force majeure (i.e. natural disaster). Consequently, since Bill 93 was passed in April 2022, the cost to deliver a locate has significantly increased, as shown in the below figure. The main drivers of the cost increases are:

1. Increases in locate labour costs - Prior to 2022, locators in Toronto were paid, on average, less than \$25/hour, resulting in significant labour shortages. Since April 2022, locator costs have increased to support improvements in recruitment, retention and the higher skilled resources needed to achieve and sustain the 100% compliance targets and performance requirements required by the amended legislation. It should be noted that it takes up to a year to properly train a new locator and provide the sufficient level of supervised in-field experience, meaning that while cost increases have materialized in the short term, expected performance improvements may not occur until the medium term. As a comparison to other similar trades, a locator in Toronto in 2022 made less than unskilled construction trades like labourers and sign persons and also less than similar trades like a GIS Assistant or Land Surveyor. With the wage increases in 2022, the locator trade hourly rate in 2023 is now more competitive at the provincial level with increased wage rates within the City of Toronto.
2. Increased operational costs to comply with the stricter compliance targets for locate service providers (i.e. increased work management processes, incremental costs for extension of shifts/holidays/weekends and bringing in resources from other geographical areas to manage peak volumes, requirements for written appointment rescheduling, which previously could be done verbally).
3. Incremental resource costs to ensure resources are available to manage peak capacity requirements and contingencies. Locates are seasonal in alignment with overall construction activity and the locates submission process does not have any requirements for advance ticket submission regardless of complexity to allow for resource/work planning and optimization. There is also no allowance for inclement weather, emergency situations or force majeure so incremental capacity needs to be available to handle these situations or enable catch-up from delays within the required timelines to ensure 100% compliance.





Reference: City of Toronto Fair Wage Schedule

<https://www.toronto.ca/wpcontent/uploads/2023/03/8d36-2022-Utility-FW-Sched.pdf>

### Category Two: Volume of Locates

Volumes of locates completed significantly impacts the expenditures in this segment. Toronto Hydro expects an increase of approximately **39,000 locates per year or about a 33% increase** as a result of Bill 93 due to the following factors:

1. Locate volume request completion increases (**Approximately 13,000 additional locates per year**) - Increased costs arising from increasing volumes of locates completed to meet the 100% compliance target in the amended legislation.
2. Locate volume increases from increased excavator compliance due to penalties under the amended legislation - (**Approximately 26,000 additional locates per year**) - Toronto Hydro data from our asset damage investigation indicate that approximately 20% of excavations impacting our assets do not have valid locates. Toronto Hydro expects that the new penalty and compliance enforcement regime in the amended legislation will drive increased compliance by excavators to request locates and lead to an increase in locate requests.

### Category 3: Process and System Enhancements under Bill-93

Incremental changes to process and technology are necessary for Toronto Hydro and its locate service provider to appropriately manage the increased volume and compliance requirements due to the amended legislation. Toronto Hydro anticipates incremental costs to:

1. Invest in information technology systems and processes for:
  - a) Higher system/process redundancy to avoid downtime that impacts the ability to achieve 100% compliance targets
  - b) New and improved systems to support increased analytics and performance improvements and to support increased compliance requirements including new requirements in Bill-93 for written confirmation of all appointment scheduling changes (previously verbal appointment scheduling changes were permitted).
2. Incremental costs and accelerated timelines to meet specific requirements for supporting dedicated locators.

### **General description of how the utility plans to incur the incremental costs prudently**

After Bill 93 was passed, Toronto Hydro began taking incremental steps to prepare for the 100% compliance targets. One of Toronto Hydro's first priorities was to increase resourcing due to the long lag time to train new locators. Initially, there was a lack of clarity regarding Ontario One Call's compliance enforcement posture and the imposition of AMPs. During this period, Toronto Hydro deferred some actions in anticipation of further developments and continued working with the Government, Ontario One Call, and other utilities to identify potential concerns around costs to infrastructure owners and ratepayers, gain clarity on the legislative requirements and policy expectations, and make recommendations on a phased and paced implementation approach.

The incremental costs incurred to date by Toronto Hydro have been incurred prudently, in light of the ongoing uncertainty surrounding the compliance enforcement regime. However, given that the amended legislation already exposes infrastructure owners to financial liability by allowing excavators to seek damages for inaccurate, incomplete, or late locates<sup>2</sup>, Toronto Hydro could not wait for perfect clarity before taking steps to ensure it was prepared to meet the requirements of the amended legislation. In addition, while it was recently announced that AMPs under O. Reg. 87/23 won't come into force until April 1, 2024, this regulation, and the potential future penalties, remains a strong incentive for full compliance given the high volume of locates completed by Toronto Hydro, the penalties that may be levied for each late locate.

Going forward, Toronto Hydro plans to continue to incur costs in a measured and incremental manner to ensure that it is prepared to meet the stricter compliance targets, while also adapting to the inherent uncertainty in the industry due to the new legislative and regulatory framework.

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<sup>2</sup> Ontario Underground Infrastructure Notification System Act, 2012, SO 2012, c 4, s. 17(1).



#### **Question 4**

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*An explanation of why the generic variance account should be retroactive to January 1, 2023*

As a general principle, which the OEB has recognized on previous occasions, including with respect to changes in taxation law, is prudent for regulated entities to incur incremental costs necessary to comply with legislative changes. In the case of statutory changes with delayed coming into force dates, it is reasonable to interpret that period between royal assent and coming into force as the period of time that the government expects is necessary to take necessary actions – and incurring the related costs – to perform the externally-driven task. It would be imprudent for a utility be idle during that period, delaying preparations to come into compliance until the legislation comes into force.

Toronto Hydro began incurring incremental costs for field locate delivery, increased volumes, and process and system costs as early as April 2022 when Bill 93 received royal assent. Reasonably, Toronto Hydro and other distributors could reasonably request an effective date of April 2022. Toronto Hydro has instead requested that all incremental costs resulting from the legislation incurred on or after January 1, 2023 be eligible for the variance account.

#### **Question 5**

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*Draft accounting order for the requested locates services costs variance account.*

See attached.