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August 18, 2023

Nancy Marconi
Registrar
Ontario Energy Board
2300 Yonge Street, P.O. Box 2319
Toronto ON, M4P 1E4

Dear Ms. Marconi,

**RE: EB-2023-0143 Request for an Accounting Order to establish Generic Locates
Services Variance Accounts - Submissions of Energy Probe**

Attached are the submissions of Energy Probe Research Foundation (Energy Probe) in the EB-2023-0143 proceeding dealing with request for an accounting order to establish generic locates services variance accounts beginning January 1, 2023.

Respectfully submitted on behalf of Energy Probe.

Tom Ladanyi
TL Energy Regulatory Consultants Inc.

cc. Patricia Adams (Energy Probe Research Foundation)
Andrew Frank (OEB Staff)
Parties to the Proceeding

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EB-2023-0143

**Request for an Accounting Order to establish Generic Locates Services Variance Accounts
beginning January 1, 2023**

Energy Probe Research Foundation

Submissions

August 18, 2023

Executive Summary

Energy Probe submits that the OEB should not approve the creation of a variance account to record incremental locate costs because of Bill 93. The Utilities are already compensated in existing rates for the risk of unforeseen cost increases through the risk premium in the return on equity and in the equity thickness in the capital structure. Moreover, the creation of the variance account would reduce incentives for productivity improvements that are the basis of incentive regulation. However, if the OEB decides to approve the creation of the variance account, it should specify that the account include only incremental direct costs and not any allocations of overhead costs. The OEB should also direct each utility to provide clear evidence on the direct costs of locates that are recovered in current rates.

Regulatory Background

On May 11, 2023, a group of large Ontario natural gas and electricity local distribution companies (the Large Utilities) filed a letter with the Ontario Energy Board seeking the establishment of a generic, sector-wide variance account to track the incremental costs of locates in 2023 and future years arising from the implementation of recent Provincial legislation: Bill 93 (*Getting Ontario Connected Act, 2022*).

Large Utilities proposed an effective date of January 1, 2023, for the new account. According to the Large Utilities, Bill 93 will result in significant incremental locates costs that are not covered by their current rates. On May 15, 2023, the OEB received a letter requesting a similar account from the Electricity Distributors Association on behalf of its members (which include some of the Large Utilities).

On June 14, 2023, the OEB issued a letter requesting the Large Utilities file certain information supporting their request which some did. The Procedural Order identified the following utilities as Large Utilities: Alectra Utilities Corporation, Elexicon Energy Inc., Enbridge Gas Inc., Hydro One Networks Inc., Hydro Ottawa Limited, Oakville Hydro Electricity Distribution Inc., and Toronto Hydro-Electric System Limited

The OEB then determined that it would commence a proceeding on its own motion under sections 19(4), 36 and 78 of the *Ontario Energy Board Act, 1998* to consider the request for new variance accounts.

This proceeding will only consider whether variance accounts should be established to track the relevant costs. It will not consider the appropriate disposition or disposition methodology of any potential amounts that may be booked in such accounts in the event the OEB establishes the accounts. Therefore, the OEB intends to proceed by way of written argument based on the information filed by Large Utilities to date.

In Procedural Order No.1 and notice the OEB indicated that intervenors in the last cost of service proceeding for each of the Large Utilities are also granted intervenor status in this proceeding and those that qualified for cost award eligibility are granted 6 hours of cost eligibility for this new proceeding. Energy Probe Research Foundation (Energy Probe) was an intervenor in the last cost of service proceeding for each of the Large Utilities. The OEB ordered intervenors to file written submissions and serve them on Large Utilities by August 18, 2023.

Evidence requested by the OEB.

On June 14, 2023, the OEB issued a letter requesting the Large Utilities file the following information by July 7, 2023:

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).
2. Evidence on the number of locates that were conducted by each of the Large Utilities in the years 2017-2022.
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.
4. An explanation of why the generic variance account should be retroactive to January 1, 2023.
5. Draft accounting order for the requested locates services costs variance account.

All the utilities except Enbridge Gas organized their evidence according to the above list. Enbridge Gas did not specifically provide evidence in response to the OEB directive but left it to the Commissioners to find the evidence in the material copied from the record of the EB-2022-0200 proceeding. Toronto Hydro did not provide evidence on the total costs of locates that are included in base rates.

As this proceeding did not provide for a discovery process, it is not clear if the evidence provided by the utilities was strictly comparable. Energy Probe tried to compare the costs per locate submitted by the utilities and came up with the table below that shows the costs per locate. There appear to be wide variations in the cost per locate between utilities and in the percent increase due to new legislation. These reasons for the large differences should be a concern to the OEB.

Cost Per Locate	2022 Actual	2023 Estimate	% increase
Alectra Utilities Corporation	\$25.4	\$55.9	120.0%
Elexicon Energy Inc.	\$44.2	\$79.1	79.0%
Enbridge Gas Inc.	\$65	\$160	146.2%
Hydro One Networks Inc.	\$61.2	\$107.7	76.0%
Hydro Ottawa Limited	\$38.1	\$63.1	65.6%
Oakville Hydro Electricity Distribution Inc.	\$42.7	\$88.2	106.6%
Toronto Hydro-Electric System Limited	\$43	\$60	39.5%

The large differences indicate that the utilities do not have a consistent method of accounting for costs of locates. Some utilities may be allocating indirect overhead costs, which is probably the reason for the very high cost per locate of Enbridge Gas Inc. Should the OEB approve the requested variance account, it should clearly specify that only incremental direct costs should be recorded in the account. Energy Probe believes that there should be no allocation of indirect overheads to any costs recorded in the account. It should also specify the locate costs collected in base rates that each utility will use for the recording of incremental costs in its variance account.

Utilities are Already Compensated for Business Risk

Energy Probe submits that utilities are compensated for business risk caused by legislative change through equity thickness and the return on equity approved by the OEB. The utilities have requested approvals to set up variance accounts to record incremental costs of locates because of legislative change. They expect to be able to recover incremental costs from ratepayers in the future. If the OEB were to grant their requests, it would be reducing business risk of the utilities. This would overcompensate utilities for business risk, as ratepayers are already compensating utilities for this risk through base rates.

Deferral Account would Reduce Incentive for Productivity Improvements

All businesses operating in Ontario have always been exposed to the risk of legislative changes. Businesses in the competitive market deal with risks from legislative change in the normal course of business. If legislative changes cause costs to increase, businesses in the competitive market try to increase prices to maintain their profitability. Businesses that are more productive can absorb some of the cost increase from legislative change and do not raise prices as much as

less productive firms. This allows them to increase market share. That is their reward for productivity.

Utilities operate in a regulated monopoly market. They can not raise their rates in response to increased costs due to legislative change without the approval of the OEB. The utilities are all operating under some form of incentive regulation which is designed to emulate a competitive market. Utilities are expected to deal with cost pressures between rebasing by productivity improvements. Utilities that are more productive and can more than offset cost pressures can increase profits above the OEB allowed ROE. That is their reward for productivity. Removal of cost pressures with the requested variance account has the effect of reducing incentive for productivity improvements which is the main purpose of incentive regulation.

Variance Account Should be Fair.

Over that past five years, some of the utilities had lower actual costs than they recovered in rates. They did not request variance accounts to return the excess money to ratepayers. It is unfair to have ratepayers pay for cost increases but not benefit from cost decreases. Should the OEB decide to approve the variance account, it should be symmetrical. In its evidence Enbridge discusses a charge of \$200 per locate while its estimated cost is \$160 per locate. If the OEB approves the creation of the requested variance account for Enbridge, it seems that Enbridge could be returning money to ratepayers.

Respectfully submitted on behalf of Energy Probe by,

Tom Ladanyi
TL Energy Regulatory Consultants Inc.