

August 18, 2023

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

Dear Ms Marconi:

**EB-2023-0143 – Request to Establish a Generic Variance Account – Bill 93 – Locates**

Please find, attached, the Final Submissions of the Consumers Council of Canada in the above-referenced proceeding.

Yours truly,

**Julie E. Girvan**

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## **SUBMISSIONS OF THE CONSUMERS COUNCIL OF CANADA**

**RE: EB-2023-0143**

### **REQUEST FOR A GENERIC VARIANCE ACCOUNT**

#### **INTRODUCTION:**

On May 11, 2023, a group of large Ontario natural gas and electricity distributors (the Large Utilities) wrote to the Ontario Energy Board (OEB) seeking the establishment of a generic, sector-wide variance account to track the incremental costs of locates on 2023 and beyond arising from the implementation of Bill 93 (*Getting Ontario Connected Act, 2022*). The Large Utilities submitted that Bill 93 will result in significant incremental locates costs that are not covered under their current rates. The incremental costs are unknown, but are expected to be material.<sup>1</sup>

The OEB also received a letter from the Electricity Distributors Association (EDA) on May 15, 2023, requesting a similar account.

On June 14, 2023, the OEB sent a letter to the Large Distributors and the EDA requesting the Large Utilities file evidence regarding their locates costs included in rates, expected incremental costs and why the account should be retroactive to January 1, 2023. In addition, the OEB requested they provide draft accounting orders.

On August 1, 2023 the OEB issued its Notice of Hearing and Procedural Order No. 1. In that Notice and Procedural Order No 1, the OEB set out procedural steps for a written hearing. These are the submissions of the Consumers Council of Canada (Council) regarding the generic variance account request.

#### **SUBMISSIONS:**

The Council does not oppose approval of the variance account for the following reasons:

- The OEB has, in the past, approved applications for deferral and variance accounts when utilities establish causation, materiality and prudence;
- The OEB has, in the past, approved applications for Z-factor treatment of costs when utilities establish causation, materiality and prudence;
- The OEB has, in the past, established generic accounts to deal with events such as changes in legislation and the introduction of new legislation;
- Although the evidence has not been tested, the Large Utilities have presented evidence that the introduction of Bill 93 requires them to incur locates costs incremental to what

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<sup>1</sup> Letter dated May 11, 2023 from Enbridge Gas Inc., Hydro One Networks Inc., Toronto Hydro Electric System Inc., Ellexicon Energy Inc., Hydro Ottawa, Oakville Hydro to the OEB

they have embedded in their existing rates. The ultimate costs are unknown at this time, but on the basis of the evidence produced they appear to be material. The forecast expense is related to an event that was unforeseen at the time most of these utilities rebased their rates, the enactment of Bill 93 (with the exception of Enbridge Gas Inc. which is currently rebasing its rates).

Although the Council does not oppose the establishment of the variance account, there should not be an expectation on the part of the utilities that all or any of the costs recorded in the account will be recoverable from ratepayers at the time of disposition. The utilities will need to demonstrate to the OEB the following:

- The quantum of costs imbedded in base rates related to locates and how the variances have been calculated;
- That the amounts in the account are clearly incremental to the costs embedded in rates;
- That the amounts in the account are directly attributable to Bill 93 and the new requirements set out in Bill 93;
- That the amounts in the account are material based on the OEB's materiality thresholds;
- That the utility's return on equity (ROE) does not exceed 300 basis points above the allowed return embedded in rates; and
- That the costs were prudently incurred and represent the most cost-effective approach for ratepayers.

With respect to Enbridge Gas Inc. (EGI) it is not clear to what extent EGI has included the impacts of Bill 93 into its 2024 revenue requirement. EGI should clarify this in its submissions, as the account may not be required for EGI. This would also be applicable to other utilities rebasing in 2023 and 2024. EGI's access to the account should be based on the extent to which Bill 93 costs are included in EGI's base rates.

The Large Utilities are seeking approval of a January 1, 2023 effective date for the variance account. Bill 93 received Royal Assent on April 14, 2022. The Large Utilities had ample notice regarding Bill 93 and its requirements, but waited until May 1, 2023 to request the generic variance account. There is no evidence as to why they waited a full year before seeking approval for the account.

The Council does not believe that it would be fair to ratepayers to allow recovery of costs going back to January 1, 2023. There has been no notice to customers that the costs going back to January 1, 2023 would be recoverable. In addition, from the Council's perspective this would clearly constitute retroactive ratemaking. The Council proposes that the account be effective on the date of the OEB's approval.