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

BY EMAIL

August 18, 2023

Ms. Nancy Marconi
Registrar
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4
Registrar@oeb.ca

Dear Ms. Marconi:

Re: Ontario Energy Board (OEB) Staff Submission
Request for generic variance account
OEB File Number: EB-2023-0143

Please find attached OEB staff's submission in the above referenced proceeding, pursuant to Notice and Procedural Order No. 1.

Yours truly,

Andrew Frank

Digitally signed by Andrew Frank
Date: 2023.08.18 16:11:01 -04'00'

Andrew Frank
Sr. Advisor – Electricity Distribution: Major Rate Applications & Consolidations

Encl.

cc: All parties in EB-2023-0143

Ontario

ONTARIO ENERGY BOARD

OEB Staff Submission

Request for Generic Variance Account

EB-2023-0143

August 18, 2023

Background

The Getting Ontario Connected Act, 2022 (Bill 93) received Royal Assent April 14, 2022.[1] Among other things, it required tighter timelines for locates and established monetary penalties for non-compliance. The legislation, intended to reduce barriers and accelerate the deployment of high-speed internet in Ontario is expected to increase locates activity performed by utilities throughout the province. In addition to Bill 93, there have also been several other recent pieces of Provincial legislation that are expected to result in increased locates activity.

Enbridge Gas filed its application for 2024-2028 rates March 8, 2023, and included a request for a variance account to track variances in the cost of locates arising from Bill 93.[2]

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 generic, sector-wide variance accounts to track the incremental costs of locates in 2023 and future years arising from the implementation of the Provincial legislation. The 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. Enbridge Gas now supports the creation of generic variance accounts in favour of the account in initially applied for in its rates application.

On June 14, 2023, the OEB issued a letter requesting the Large Utilities file additional information, including information related to the funding for locates currently included in OEB approved distribution rates and the forecasted incremental costs due to Bill 93. The six electricity local distribution companies of the Large Utilities filed this information on July 7, 2023. Enbridge Gas Inc. filed this information on July 25, 2023.

The OEB initiated a proceeding on its own motion on August 1, 2023, to consider the request for new variance accounts.

OEB Staff Submission

Overview

OEB staff submits that the OEB should approve generic variance accounts for both the electricity and natural gas utilities related to incremental costs associated with locates arising from recent Provincial legislation.

The OEB employs a three-part test for the creation of a new deferral or variance account: causation, materiality, and prudence. For most (if not all) utilities, the requirement of causation is met as the relevant changes to legislation (including Bill 93) occurred after they re-based, and therefore the anticipated additional costs are outside the base upon which their rates were derived. OEB staff submits that the requirement of materiality is met. For all distributors, efforts will need to be taken to ensure that costs are incurred prudently, and that robust records are

[1] https://www.ontario.ca/laws/statute/s22009
[2] EB-2022-0200, Exhibit 9, Tab 1, Schedule 3, Page 1, March 8, 2023

kept so that prudence can be established at the time of disposition. OEB staff submits that it is appropriate to create the variance accounts generically due to the broad section of the industry that clearly meets the criteria.

OEB staff notes that distributors have long been expected to perform locates and have a budget embedded in their revenue requirements for doing so. The purpose of the generic variance account should be to track incremental costs caused by government legislation that drives an increase in locates costs, in particular Bill 93. In establishing the base budget in revenue requirement over which the incremental costs would be determined, most Large Utilities proposed approaches adjusting the locates budget from the last rebasing application to account for any envelope reductions and incentive rate making (IRM) adjustments from OEB decisions in the intervening years. OEB staff submits that an adjustment for growth in customer connections should also be included.

Analysis

The Filing Requirements for Electricity Distribution Rate Applications sets out a three-part test for the establishment of new deferral and variance accounts: Causation, Materiality, and Prudence. The analysis below outlines each of these in turn, and how, in OEB staff's view, these requirements are satisfied for the creating of new generic variance accounts.

Causation

The causation criteria requires that in order to establish an account, the forecasted expense must be clearly outside of the base upon which rates were derived. An additional consideration, in cases where a request for an account comes in the middle of an approved rate term, is whether the utility could have foreseen the expense at the time of its last rebasing. In a recent decision, the OEB denied a mid-term request by Ontario Power Generation Inc. (OPG) for a variance account to record costs related to a judicial decision striking down a provincial statute limiting compensation increases for the broader public sector, saying, "Where a cost or revenue can reasonably be foreseen (even if it is not certain), the best forum in which to address this is in the main rates case, and not through a later request for a deferral or variance account."[3]

Bill 93 received Royal Assent on April 14, 2022. Distributors are not expected to file rebasing applications more frequently than once every five years. Therefore, most distributors, including several of the Large Utilities, would not have been aware of Bill 93 or its potential at the time they last rebased.

While not included in Bill 93, other government legislation is expected to result in an increased demand for locates. This includes the More Homes Built Faster Act (Bill 23), which received Royal Assent November 28, 2022,[4] Building Transit Faster Act (Bill 171), which received Royal

[3] OPG has filed a motion to review and vary this decision: EB-2023-0209
[4] https://www.ontario.ca/laws/statute/s22021

Assent July 8, 2020,[5] and Building Broadband Faster Act (Bill 257), which received Royal Assent April 12, 2021.[6]

The Large Utilities have expressed difficulty in forecasting the incremental number of locates in 2023 and 2024 but expect the volumes to be increasing in 2023 and 2024 because of the above noted legislation.[7] [8]

For all utilities there remains material uncertainty over the exact quantum of the additional locates costs, which prevent an accurate forecast for use in establishment of a revenue requirement.

Enbridge stated at the time of its application for 2024-2028 rates, that the charges were still in development, and that the locate delivery service costs in the 2024 test year forecast may not reflect the actual costs. It also states that it expects the costs to materially increase beyond what is included in the 2024 test year forecast.[9]

OEB staff submits that anticipated increased locates costs driven by the relevant legislation (and in particular Bill 93) are outside the base upon which rates for most (if not all) utilities were set. Most utilities have not rebased since the enactment of Bill 93 and could not reasonably have foreseen the impacts of Bill 93, and the other noted legislation, would have on their budget for locates. Therefore, any associated costs could not have been included in their revenue requirement. OEB staff observes that the utilities that have rebased since Bill 93 was enacted may have anticipated some of these additional costs, and this may be reflected in their current revenue requirements. However, this proceeding is to consider the appropriateness of generic, electricity and natural gas wide variance accounts. It is not necessary or efficient at this stage to parse the individual situations of each utility. OEB staff submits that the appropriate time to consider any utility specific circumstances (such as the fact that they may have rebased since the enactment of Bill 93) should be considered at the time any amounts in the accounts are brought forward for disposition. OEB staff is mindful of the recent OPG decision.[10] While there may be some utilities that foresaw or could have foreseen the impact of the locates legislation, it would be administratively burdensome for both utilities (especially smaller ones) and the OEB to insist that each utility file a separate application for an accounting order, and to deal with them on a case-by-case basis. The balance of convenience favours approval of an account on a generic basis and dealing with utility-specific circumstances at the time of disposition.

OEB staff notes that changes in the economy resulting in changes to labour costs are normal business risk, for which the utility is compensated through its return on equity. Therefore, labour cost increases caused by economic factors should not, in OEB staff's view be eligible for true-up by a variance account. OEB staff notes the Large Utilities argued that changes in the broader labour market may be caused in part by government activity. OEB staff submits that while a variance account true-up for government action may be appropriate, the Large Utilities have not

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[5] https://www.ontario.ca/laws/statute/s20012
[6] https://www.ontario.ca/laws/statute/s21002
[7] Hydro One response Letter, page 3, July 7, 2023
[8] Alectra Utilities response Letter, pages 2-3, July 7, 2023
[9] EB-2022-0200, Exhibit 9, Tab 1, Schedule 3, Pages 9-10, March 8, 2023
[10] EB-2023-0098, Decision and Order, June 27, 2023.

proposed a method to isolate to what extent the labour market is affected by government activity.

Materiality

The OEB requires that, to establish an account, the forecasted amounts must exceed the OEB-defined materiality threshold. The OEB's letter of direction to the Large Utilities required evidence on the costs to meet the new requirements under Bill 93. The Large Utilities each provided an estimate of the incremental costs.

As noted above, Bill 93 established tighter deadlines, and monetary penalties for non-compliance. To address these requirements large utilities have indicated a need for increased internal resources as well as increased contracting to manage the need for locates.[11] [12]

Many Large Utilities have noted that due to changes in the labour market, it is no longer possible to hire and retain staff at the wages historically paid for locate work. The distributors have attributed this to a strong uptick in economic activity, brought on in part by government legislation.[13] [14]

The Large Utilities have all indicated forecasts costs that easily exceed their materiality thresholds. For example, Oakville Hydro has forecasted an increase of $720,625 over the amount included in rates, $901,181. [15] Its materiality threshold is $220,000. Alectra has a forecasted an increase of $5.5 million over the amount included in rates, $5 million. [16] Its materiality threshold is $1 million. OEB staff agrees that transitioning to a structure where a proportion of locates are completed outside of the time frames indicated by the legislation to one where all the locates are completed within the time frames necessitates the use of additional staff and resources. This is likely to be the case broadly across both the electricity and natural gas sectors. OEB staff is of the view that the costs can reasonably be expected to increase beyond the relevant materiality thresholds for many utilities, and that the materiality threshold is therefore met. Of course, some utilities may incur no additional costs or minimal costs; however, this proceeding is to consider the appropriateness of generic accounts and therefore the OEB need not be satisfied that every single utility will actually incur material costs - it is enough that a significant number of utilities will.

Prudence

Alectra notes that it plans to work with municipalities, excavators, and infrastructure owners, leverage GIS system data, and work with locate service providers to work towards more efficient locates. At the same time, it is working with 3rd parties to reduce the number of locates

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[11] Elexicon Energy Inc. response Letter, pages 5-6, July 7, 2023
[12] Toronto Hydro-Electric System Limited, response letter, page 6, July 7, 2023
[13] Oakville Hydro, response letter, page 2, July 7, 2023
[14] Hydro One response Letter, pages 3-4, July 7, 2023
[15] Oakville Hydro, response letter, page 2, July 7, 2023
[16] Alectra Utilities, response letter, pages 3-4, July 7, 2023

required.[17] OEB staff commends Alectra's efforts and notes that distributors should seek to control costs to the extent possible.

OEB staff submits that ultimately, the prudence of any costs recorded will need to be determined at the time of disposition. Distributors need to keep detailed records outlining how incremental costs were prudently incurred, and evidence that costs were contained to the extent possible.

Scope of the Accounts - Incrementality of Costs

The Large Utilities argued incremental dollars spent, above those included in the existing revenue requirement, should be tracked in the variance account. OEB staff submits that this is the correct approach, and that only incremental s costs related to government legislation should be eligible for the accounts.

Most distributors that rebased using a Cost-of-Service proceeding proposed to establish the base funding included in revenue requirement as follows; the budgeted locates expense in the applied-for revenue requirement would be reduced by the overall percentage reduction to OM&A directed in their rebasing decision. This amount would then be inflated by the compound effect of all IRM rate adjustments since the last rebasing.

Hydro One's inflation factor and a settlement reduction were established in its Custom IR proceeding.[18]

OEB staff submits that these approaches are a reasonable start. However, growth in customer connections and load would normally lead to both incremental revenue as well as incremental costs. The incremental revenue is understood to be sufficient to compensate the distributor for this normal source of incremental cost. OEB staff therefore submits that an adjustment should be made to the locates budget to account for the percentage change in rate revenue, instead of IRM adjustments to rates. When utilities bring the accounts forward for disposition it will be important that they are able to demonstrate that the amounts in the account are both incremental to the amounts in base rates and related to government legislation as described above.

Effective Date

The Large Utilities requested an effective date of January 1, 2023. Bill 93 came into force May 1, 2023, approximately one year after Bill 93 received royal ascent. The Large Utilities argued that lead time was necessary to prepare for the additional requirements, and that in preparing, additional expenses needed to be prudently incurred prior to May 1, 2023.

OEB staff notes that while incremental expenses may have been incurred prior to May 1, 2023, the requirement for a full ramp-up on locates service quality was not required until May 1, 2023. In addition, the request to the OEB for a variance account was not made until May 11, 2023, more than a year after Bill 93 received Royal Assent. OEB staff therefore submits that an

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17 Alectra Utilities, response letter, page 4, July 7, 2023
18 Hydro One response letter, page 1, July 7, 2023

effective date of May 1, 2023, which closely aligns with both the implementation date of Bill 93 and the initial request for the account by the Large Utilities is most appropriate.