



PUBLIC INTEREST ADVOCACY CENTRE
LE CENTRE POUR LA DÉFENSE DE L'INTÉRÊT PUBLIC

**Request for an Accounting Order to establish Generic
Locates Services Variance Accounts beginning January 1,
2023
EB-2023-0143**

Submission of the
Vulnerable Energy Consumers Coalition
(VECC)

August 18, 2023

Vulnerable Energy Consumers Coalition

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The Request

1. On May 11, 2023, a group of large Ontario natural gas and electricity local distribution companies (the Large Utilities)¹ 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). The Large Utilities proposed an effective date of January 1, 2023 for the new account.
2. On June 14, 2023 the Board wrote to the group of Large Utilities setting out five requests:
 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.

Summary of Submissions

3. An applicant must meet three tests for the establishment of a new deferral or variance account².
 - Causation: the forecasted expense must be clearly outside of the base upon which rates were derived.
 - Materiality: the forecasted amounts must exceed the OEB-defined materiality threshold and have a significant influence on the operation of the distributor,
 - Prudence: the nature of the costs and forecasted quantum must be based on a plan that sets out how the costs will be reasonably incurred, although the final

¹ Alectra Utilities Corporation, Enbridge Gas Inc., Hydro Ottawa Limited, Toronto Hydro-Electric Commission, Ellexicon Energy Inc., Hydro One Networks Inc., Oakville Hydro Electricity Distribution Inc.

² Filing Requirement for Electricity Distribution Rate Applications 2021 Edition. These are unchanged from those also provided for Electricity Transmitters and Natural Gas Distributors.

determination of prudence will be made at the time of disposition. In terms of the quantum, this means that the applicant must provide evidence demonstrating as to why the option selected represents a cost-effective option (not necessarily least initial cost) for ratepayers.

4. In our view the request for a variance account meets the causation requirement in that the changes are to legislation outside of the Utilities' control. The Large Utilities have also made a prima facie case for materiality.
5. With respect to prudence, we are concerned that the account may too broadly record costs that are not directly due to the instigating cause for the account, and may capture other costs which are the responsibility of management to minimize or avoid completely.
6. VECC also submits that while the account should be established for Enbridge Gas Inc. (Enbridge) the Board should require that the Utility provide evidence on adjusting its current operating costs for the incremental costs of the changes due to Bill 93. This might be best done in the latter phases of the ongoing proceeding EB-2022-0200.
7. Likewise, in our view, the Board should make known its expectations for upcoming cost of service rate filers, including Toronto Hydro as to the incorporation of incremental costs for these changes. We further submit the Board should generically establish a locate account for regulated utilities outside of the Large Utilities group.
8. In our submission the Board should not make the accounts retroactive to January 1, 2023 as requested by the Large Utilities. This would amount to retroactive rate making and therefore is generally not permissible.

Causation

9. The application for deferral accounts are due to changes introduced through Bill 93 – *Getting Ontario Connected Act, 2022*.
10. A number of the Large Utilities cite the shortage of labour and rising labour costs as challenging issues³. Neither change is specifically a result to the amendments to the *Ontario Underground Infrastructure Notification System Act, 2012*, but, it is argued, will exasperate existing problems. The Large Utilities also note the inclusion of enforcement penalties

³ See for example the submissions of Alectra Utilities and Hydro Ottawa.

11. We note that in their letter of December 8, 2022 the Large Utilities made several reasonable suggestions toward making the objectives of modernizing Ontario's One Call system. Further suggestions were made in a letter of May 10, 2023 after the introduction of Bill 93. Again, these show the Utilities acting in the interest of ratepayers to mitigate unintended consequences of the immediate introduction of the proposed locate changes.

Materiality

12. The Large Utilities put force estimated data which shows a material change in locate costs post legislative change. These are reproduced below

Alectra Utilities

	2017	2018	2019	2020	2021	2022	2023 Projected (Jan-May Actuals)
Number of Locates Requests	178,525	175,215	180,097	167,115	184,828	179,902	187,098
Cost of Locate Services in Base Rates	\$4,423,000	\$4,481,000	\$4,551,000	\$4,628,000	\$4,716,000	\$4,858,000	\$5,023,000
Actual Cost of Locate Services	\$5,504,000	\$4,897,000	\$4,675,000	\$4,571,000	\$4,894,000	\$4,574,000	\$10,450,000
Cost Delta (actual or projected)	\$1,081,000	\$416,000	\$124,000	-\$57,000	\$178,000	-\$284,000	\$5,427,000

Ottawa Hydro

	2017 Actual	2018 Actual	2019 Actual	2020 Actual	2021 Actual	2022 Actual	2023 Estimate
# of Locates (segments)	87,622	102,798	104,064	94,076	87,097	67,992	65,055
Cost included in base rates					\$3,114,336	\$3,114,336	\$3,114,336
Actual Costs of External Locate Delivery Services	\$2,198,940	\$2,756,996	\$2,919,011	\$2,691,177	\$2,354,260	\$2,591,069	\$4,105,529
Incremental Cost of External Locate Delivery Services	N/A	N/A	N/A	N/A	\$760,076	\$523,267	(\$991,193)
Cost per locate	\$25.10	\$26.82	\$28.05	\$28.61	\$27.03	\$38.11	\$63.11

Oakville Hydro

Oakville Hydro	2017 Actual	2018 Actual	2019 Actual	2020 Actual	2021 Actual	2022 Actual	2023 Estimate
Number of Locates Requests	18,240	18,296	18,946	19,165	19,012	17,117	18,463
Cost of Locate Delivery Services Included in Base	\$806,672	\$813,932	\$823,699	\$837,702	\$851,105	\$874,085	\$901,181
Actual Cost of External Locate Delivery Services	\$666,572	\$809,964	\$905,952	\$876,482	\$879,040	\$730,257	\$1,621,806
Incremental Cost of External Locate Delivery Services							\$(720,625)

Elexicon Energy

	Actuals						Forecast
	2017	2018	2019	2020	2021	2022	2023
Number of Locates Requests (source: RRR 2.1.4 - Appointments Scheduled)	27,676	28,551	30,389	25,455	28,175	28,153	
Cost of External Locate Delivery Services Included in Base Rates (source: Last Rebasing Application (applicable USoA))	1,334,223	1,345,505	1,360,921	1,383,319	1,408,855	1,450,361	1,499,673
Actual Cost of External Locate Delivery Services (source: corresponding USoAs)	1,279,587	1,219,329	1,388,088	1,230,934	1,107,117	1,244,584	2,227,000
Incremental Cost of External Locate Delivery Services	- 54,637	- 126,176	27,167	- 152,385	- 301,738	- 205,777	727,327

Hydro One

	2017	2018	2019	2020	2021	2022	2023E
Number of Locates	216,986	204,151	218,972	228,357	242,278	259,412	244,300
Cost per Locate (\$)	55.90	58.56	55.96	55.77	56.93	61.19	107.73
Estimated Locate Spend in 2023							26.3
Amount in Rates(\$M) ²							13.8
Estimated Incremental Cost (\$M)							12.5

13. Toronto Hydro did not provide detailed estimates of the increase in costs vis-à-vis what was currently recovered (notionally) in rates. However, the Utility did make detailed submissions with respect to the general increase in locate labour costs. We also note that Toronto Hydro may be expected to seek new rates for the 2025 rate year. Enbridge Gas Inc. (EGI) reintroduced the evidence it has provided as part of EB-2022-0200 seeking to establish a similar variance account. In that evidence EGI stated that: “*the amount included in rates will exceed the \$1 million materiality threshold for the establishment of new D&Vas.*”⁴ Our understanding of EGI’s rate proposal (the proceeding which is ongoing at the time of writing) is that a “locate DVA” would remain active during the time of any rate plan approved by the Board. That is, EGI is not seeking to incorporate in its current rate application a forecast of locate costs which include the impact of Bill 93.

⁴ EB-2022-0200, Exhibit 9, Tab 1, Schedule 3, page 11

14. VECC submits that the evidence provided by the Large Utilities, including their correspondence with the Ministry of Energy with respect to the proposed locate changes provides reasonable assurance as to the materiality of the issue.

Implementation date

15. While VECC supports the establishment of deferral and variance accounts to hold whole utilities for the changes wrought by Bill 93 we submit these accounts should be short term in nature. In our view regulated utilities are compensated for taking reasonable risk. Deferral and variance accounts by their nature reduce that risk with no compensating adjustment provided to ratepayers.
16. As noted by Hydro Ottawa, Bill 93 came into force April 2022⁵. The Large Utilities did not make their application until May 11, 2023. The Utilities did not seek and the Board did not grant interim rate status at that time. In our submission it is incumbent on the management of these utilities to seek the necessary relief in a timely manner. Ratepayers are a captured market and the Board's mandate is to protect them from activities which in the normal course would not be available to competitive market actors. As a rule, price adjustments are not made after one has left the store. We see no compelling reason to depart from the Board's past practice or indeed its *raison d'être*.

VECC submits that it has acted responsibly and efficiently during the course of this proceeding and requests that it be allowed to recover 100% of its reasonably incurred costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

⁵ Hydro Ottawa Limited, July 7, 2023