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VIA RESS and EMAIL

September 1, 2023

Nancy Marconi
Registrar
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, Ontario M4P 1E4

Dear Nancy Marconi:

Re: EB-2023-0143 – Ontario Energy Board (OEB)
Request for an Accounting Order to establish Generic Locates Services Variance Accounts
Enbridge Gas Reply Submission

In accordance with the OEB's Notice of Hearing and Procedural Order No. 1 issued on August 1, 2023, enclosed please find the Reply Submission of Enbridge Gas.

Should you have any questions on this matter please contact the undersigned.

Sincerely,

Lesley M Austin
Digitally signed by Lesley M Austin
Date: 2023.08.31 15:36:09 -04'00'

Lesley Austin
Specialist, Regulatory Applications

cc: David Stevens, Aird & Berlis LLP
All Interested Parties EB-2023-0143 (via email)

EB-2023-0143

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act*, 1998, S.O. 1998, c. 15, Schedule. B, as amended;

AND IN THE MATTER OF an application by Enbridge Gas Inc. and a group of large Ontario electricity local distribution companies for establishment of generic, sector-wide variance accounts to track incremental costs of locates in 2023 and future years arising from the implementation of the *Getting Ontario Connected Act, 2022* (Bill 93) and related provincial legislation

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REPLY SUBMISSION OF
ENBRIDGE GAS INC.

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INTRODUCTION

1. This is the reply submission of Enbridge Gas Inc. (**Enbridge Gas** or **the Company**) to the submissions made by the various parties in this proceeding.

2. This proceeding was initiated by a May 11, 2023 letter from Enbridge Gas and a group of large Ontario electricity local distribution companies (**Large Utilities**) requesting that the Ontario Energy Board (**OEB**) establish generic, sector-wide variance accounts to track the incremental costs of delivering or performing locates in 2023 and future years arising from the implementation of the *Getting Ontario Connected Act, 2022* (**Bill 93**) and related provincial legislation. Amongst other new obligations and liabilities, amendments to the *Underground Infrastructure Notification System Act, 2012* set out in Bill 93, that took effect April 22, 2022, require locates to be completed in 5 business days for standard locates with absolute liability and introduce compensatory causes of action for utilities and excavators through the Ontario Land Tribunal for losses suffered due to non-compliance with the legislation. Amendments also include an administrative penalty regime to be administered by Ontario One Call, originally scheduled to be effective April 1, 2023, but now deferred to April 1, 2024.[1] These are significant changes from the reasonable efforts standard for locates that existed previously.

3. Enbridge Gas and other local distribution companies (**LDCs**) are required by law to perform locates to ensure public safety. This is a particularly important safety

[1] Joint Ministers' May 11, 2023 letter, page 1.

activity for Enbridge Gas given its over 150,000 km of underground pipeline infrastructure carrying natural gas throughout Ontario.

4. As identified in the further evidence filed by the Large Utilities and acknowledged by OEB staff, the impacts of Bill 93 are closely related to other Government of Ontario (**Government**) legislation promoting activities that are expected to result in both an increased level of effort to support locate activities and an increased demand for locates over the next several years. This includes the *More Homes Built Faster Act, 2022* (**Bill 23**), *Building Transit Faster Act, 2020* (**Bill 171**) and *Building Broadband Faster Act, 2021* (**Bill 257**).

5. The Electricity Distributors Association also filed a letter with the OEB on May 15, 2023, requesting a similar account on behalf of its members (which include some of the Large Utilities). After receiving further information from the Large Utilities about more specific cost impacts they may be experiencing related to new requirements under Bill 93[2], the OEB commenced this proceeding on its own motion under sections 19(4), 36 and 78 of the *Ontario Energy Board Act, 1998* (**OEB Act**). The OEB explained in Procedural Order No. 1, issued August 1, 2023, that the scope of the proceeding is narrowly focused in the following manner:

> The proceeding will only consider whether 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.

[2] In accordance with the OEB's June 14, 2023 letter inviting the Large Utilities to file additional information, the OEB noted that the Large Utilities may benefit from the evidence that Enbridge Gas filed on this matter in its rebasing application (EB-2022-0200). Accordingly, Enbridge Gas filed a compendium of its rebasing evidence in this proceeding on July 25, 2023.

6. In accordance with the Procedural Order, the OEB received written submissions from OEB staff and six intervenors, namely: the Consumers Council of Canada (**CCC**), Energy Probe Research Foundation (**Energy Probe**), School Energy Coalition (**SEC**), Power Workers' Union (**PWU**), Quinte Manufacturers Association (**QMA**) and Vulnerable Energy Consumers Coalition (**VECC**).

SUBMISSIONS OF PARTIES

7. OEB staff and all intervenors, with the exception of Energy Probe, either support or do not oppose the establishment of the requested generic accounts, subject to certain caveats that Enbridge Gas will address below. This support or non-opposition, as the case may be, is premised on the fact that Enbridge Gas and the Large Utilities (collectively, **Applicants**) have made a *prima facie* case that appears to satisfy the OEB criteria for establishing a new deferral or variance account, as set out in the OEB's filing requirements, summarized as follows:[3]

    (a) Causation: the forecasted expense must be clearly outside of the base upon which rates were derived.

    (b) Materiality: the forecasted amounts must exceed the OEB-defined materiality threshold and have a significant influence on the operation of the distributor.

    (c) 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.

[3] For Enbridge Gas, these are the Filing Requirements for Natural Gas Rate Applications, dated February 16, 2017, page 38.

8. OEB staff provided its views on how the Applicants (and other utilities) have met these criteria in its Overview as follows:

> 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 kept so that prudence can be established at the time of disposition.[4]

9. Other intervenors generally agreed with these views and Enbridge Gas will not repeat the evidence summarizing how the Applicants meet the OEB criteria for establishment of a new variance account. Enbridge Gas will bring forward evidence to support any amounts recorded in the variance account and to demonstrate prudence at the time of disposition.

10. SEC uniquely noted that it does not oppose the creation of the proposed generic variance account, however submitted that the appropriate basis for the OEB doing so is as a Z-factor.[5] Enbridge Gas will respond below to SEC's Z-factor submission and the comments of OEB staff and other intervenors about the scope and timing of the proposed accounts.

RESPONSE OF ENBRIDGE GAS

Z-factor vs New Deferral or Variance Account Criteria

11. For Enbridge Gas, the Z-factor criteria that would apply for 2023 (if the OEB were to accept this proposition) were set out in the OEB's decision in EB-2017-

[4] OEB staff submissions, pages 1-2.
[5] SEC submissions, page 1.

0306/307, in which the OEB approved the amalgamation of the Enbridge Gas predecessors and the rate-setting mechanism for 2019-2023:[6]

> The criteria for the Z-factor will be as established by the OEB in Enbridge Gas' Custom IR decision as follows:
>
> (i) Causation: The cost increase or decrease, or a significant portion of it, must be demonstrably linked to an unexpected, non-routine event.
>
> (ii) Materiality: The cost at issue must be an increase or decrease from amounts included within the Allowed Revenue amounts upon which rates were derived. The cost increase or decrease must meet a materiality threshold, in that its effect on the gas utility's revenue requirement in a fiscal year must be equal to or greater than $5.5 million.
>
> (iii) Management Control: The cause of the cost increase or decrease must be: (a) not reasonably within the control of utility management; and (b) a cause that utility management could not reasonably control or prevent through the exercise of due diligence.
>
> (iv) Prudence: The cost subject to an increase or decrease must have been prudently incurred.

12. The new deferral or variance account criteria are essentially the same except for the Z-factor requirements that the cause of the cost increase must be outside of management control and the materiality threshold for Enbridge Gas is $5.5 million (compared to $1 million for establishment of a new variance account). SEC accepts that the enactment of Bill 93 could indeed meet the criteria for a Z-factor claim as it represents generally unforeseen events outside of management control, and the types of costs that satisfy the requirements of causation. Further, SEC accepts that these costs are likely to be material and would be considered prudent.[7]

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[6] OEB Decision and Order, EB-2017-0306/307, amended September 17, 2018, page 37.
[7] SEC submissions, pages 1-2.

13. While making a Z-factor claim may be one mechanism by which the Applicants may apply for rate relief to recover the incremental locate-related costs, Enbridge Gas does not agree that it is the only or most appropriate mechanism in these circumstances. The filing requirements for cost-of-service applications do not fetter the OEB's broad authority and discretion on applications under section 36 of the OEB Act to make orders approving or fixing just and reasonable rates, using any method or technique that it considers appropriate. The OEB has similarly broad authority under section 78 of the OEB Act.

14. In a case such as this, where Government actions through legislative change have a sweeping industry-wide effect that meet the criteria for establishment of a new deferral or variance account, it is appropriate for the OEB to proceed in the manner endorsed by OEB staff and the majority of intervenors, articulated by OEB staff as follows:

> 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…
>
> 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.[8]

15. The OEB has established deferral and variance accounts during incentive rate terms in many other cases, such as for the COVID-19 pandemic, OEB Cost Assessment Variance Account, Green Button Initiative Deferral Account and the Expansion of Natural Gas Distribution Systems Variance Account, some of which were occasioned by legislative change, as in this case. In some cases, the OEB

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[8] OEB staff submissions, pages 1-2.

may approve accounting changes and associated rate impacts on a retroactive or retrospective basis, such as in the case of its accounting direction regarding the change in tax rules for capital cost allowance (**CCA**) related to the federal *Budget Implementation Act, 2019, No. 1.*[9] It seems that the OEB is most concerned with the nature of the legislative change or other extraordinary circumstances and how and when the impacted utilities incurred material costs.

16. Also, the Z-factor mechanism is defined as being tied to an unforeseen event or events outside the control of management and the OEB has approved Z-factor claims related to emergency restoration activities following one-time severe weather events.[10] Incidentally, the OEB has often approved rate recovery for Z-factor events on a retrospective basis. However, it is not clear that legislative change of the nature underpinning this case, that will likely have impacts over an extended period of time, is appropriately characterized as a Z-factor event, because Bill 93 and the related legislation is multi-faceted with evolving impacts and effective dates that are not yet fully known or understood. A variance account tracking and rate recovery mechanism, as has been proposed, is a far more suitable regulatory tool for this purpose. Using a variance account to track costs is also more appropriate than including such potentially significant and variable costs in base rates, given the many forecast uncertainties at this time.

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[9] Letter - Accounting Direction Regarding Bill C-97 and Other Changes in Regulatory or Legislated Tax Rules for Capital Cost Allowance (oeb.ca).

[10] See, for example, OEB approvals of Z-factor claims related to storm restoration by Elexicon (EB-2022-0317), Canadian Niagara Power (EB-2022-0019), Veridian (EB-2014-0272), Burlington Hydro (EB-2014-0252), Halton Hills Hydro (EB-2014-0211), and Milton Hydro (EB-2014-0162).

17. Regulatory efficiency is an important objective of the OEB and in this case, it is best served by the OEB establishing a generic form of variance account for all gas and electric utilities on the same basis and addressing any individual utility materiality thresholds and other unique circumstances at the time of disposition. In any event, if the OEB were to determine that applying the Z-factor criteria would be appropriate for Enbridge Gas for 2023, it is clear from the evidence already on the record that Enbridge Gas has met that criteria in this case, given that incremental locate-related costs in 2023 are forecast to be at least $8.9 million more than 2022 actual costs.[11]

Nature of Enbridge Gas Evidence

18. Three parties commented about the nature of the Enbridge Gas evidence in this case: CCC, VECC and Energy Probe. CCC asked that Enbridge Gas clarify in its submissions to what extent Enbridge Gas has included the impacts of Bill 93 into its 2024 revenue requirement.

19. Enbridge Gas provided this information in its compendium of evidence (**Compendium**) from its 2024 rebasing application[12] (**Rebasing**) related to this matter, filed in this proceeding in response to the OEB's June 14 letter. To summarize, Enbridge Gas took a conservative approach to forecasting its 2023

[11] Enbridge Gas Compendium, Tab 3, Exhibit I.4.4-STAFF-122, page 2. These are forecast amounts from March 2023 and actual amounts are trending higher to date. Enbridge Gas will bring forward such actual amounts for the OEB's consideration at the time of disposition.
[12] EB-2022-0200.

and 2024 budget for locates-related costs and these budgets along with 2022 actuals are set out in the table below:[13]

Table 1
Locate Cost Forecasts

Line No.	Particulars ($ millions)	2022 Actuals	2023 Bridge Year	2024 Test Year (1)
		(a)	(b)	(c)
1	External Costs	39.9	48.2	51.1
2	Internal Costs	6.5	7.1	7.5
3	Total	46.4	55.3	58.6
4	Change from Prior Year	-	8.9	3.3

Note:
(1) Exhibit 4, Tab 4, Schedule 2, paragraph 85 and Exhibit 9, Tab 1, Schedule 3, paragraph 23, updated March 8, 2023.

20. As noted, the forecast takes into account inflation, cost pressures from various sources, and early estimates from 2022 of the impacts related to Bill 93. The method of deriving the costs is further detailed in the same interrogatory response.[14] The response clarifies that "A portion of the anticipated cost increase expected is included in this forecast with a significant level of cost uncertainty related to Bill 93 still remaining" and:

> Enbridge Gas expects external costs for locate services to materially increase from the forecast in response to increased locate delivery compliance requirements as a result of Bill 93 legislation. These costs are currently expected to increase by $20 million to $45 million but may vary based on evolving industry factors as well as any third-party charges that may be incurred should others choose to charge for locates as well. These new cost pressures as a direct result of Bill 93 compliance requirements are difficult to definitively quantify as they are subject to multiple external factors with high levels of variability.[15]

[13] Compendium, Tab 3, Exhibit I.4.4-STAFF-122.
[14] Ibid.
[15] Ibid., page 2.

21. Bill 93 had just received royal assent when Enbridge Gas was in the process of setting its budgets for Rebasing, which is why Enbridge Gas took a conservative approach and initially proposed a variance account for 2024 and to charge third party contractors and other utilities a $200 fee for conducting locates to assist with cost recovery for the 70-80% of locates requests attributable to this group.[16] Enbridge Gas had planned to commence charging this $200 fee to third parties effective May 1, 2023, and as explained in the May 11 letter from the Applicants initiating this proceeding, Enbridge Gas was not the only organization that was proposing to introduce new service fees for certain locate requestors. These plans were met with significant resistance and ultimately led to the joint request for a generic variance account.[17]

22. As Table 1 indicates, the large majority of the locates-related costs that Enbridge Gas incurs are external costs for fees paid to locator service providers (**LSPs**). Enbridge Gas is part of a multi-utility locate alliance consortium (**LAC**)[18] that coordinates hiring of LSPs and LAC typically renegotiates fees with these service providers on an annual basis. With the new compliance requirements of Bill 93, LSP costs have escalated substantially since early 2023 and LAC's relationship with LSPs is still evolving to ensure legislative requirements will be met. Because consequences for non-compliance are so significant, additional processes are being developed, including more frequent monitoring and analytics for potential

[16] Compendium, Tab 2, page 16.
[17] Compendium, Tab 9, May 11 letter from Applicants, page 2.
[18] Locate Alliance Consortium, "Members of LAC".

compliance issues to minimize disruption and costs[19], working with LSPs on new opportunities to deliver a more efficient process and technology to reduce time spent in the field performing locates, and improvements to geographical information systems and back-office processes to support field locates activities.[20]

23. As is very clear from the Applicants' evidence and their December 2022 and May 2023 letters to Government, the Applicants are working diligently with all industry stakeholders to optimize the locates delivery systems, increase efficiency and minimize unnecessary cost increases stemming from Bill 93 and the related legislation.

24. Energy Probe was critical of the fact that all of the utilities except Enbridge Gas organized their evidence according to the list set out by the OEB in its June 14 letter.[21] This is an unfair criticism as the Compendium is complete with all of the evidence the OEB requires to determine whether Enbridge Gas should be granted use of the proposed generic variance account for 2023 and beyond, as further explained through the above clarifications. Also, the OEB's invitation in its June 14 letter for updated evidence from Enbridge Gas was permissive rather than directive, stating:

> The OEB notes that Enbridge Gas initially provided supporting evidence regarding the incremental cost of locates in its rebasing application for natural gas rates beginning 2024.[22] This evidence has since been removed from Enbridge Gas's application, but the underlying detail in Enbridge Gas's evidence could be beneficial to the Large Utilities when submitting the requested information to the

[19] Ottawa Hydro July 7, 2023 evidence, page 5.
[20] Alectra Utilities July 7, 2023 evidence, page 4.
[21] Energy Probe submissions, page 2.
[22] EB-2022-0200.

OEB. Enbridge Gas may include the updated evidence with the Large Utility filing if it chooses to do so.

25. VECC submitted that while the account should be established for Enbridge Gas, the OEB should require Enbridge Gas to provide evidence on adjusting its current operating costs for the incremental costs of the changes due to Bill 93 and this might best be done in the latter phases of the Rebasing proceeding.[23] Enbridge Gas appreciates VECC support for Enbridge Gas establishing the proposed variance account, however, notes that operating costs for 2024 have been settled by the Rebasing parties and that settlement was approved by the OEB on August 17, 2023. Enbridge Gas therefore does not anticipate that there would be any adjustment to its operating costs as part of a latter phase of Rebasing.

26. Table 1 in paragraph 19 above sets out the Enbridge Gas operating and maintenance (**O&M**) cost forecast for locates related costs in 2023 and 2024. The OEB has approved the Phase 1 Settlement Proposal in the Rebasing case, which includes the resolution of 2024 O&M costs, but not capitalized overhead costs. The OEB's decision for Phase 1 of the Rebasing case is still pending and Enbridge Gas does not know whether the OEB decision may impact the approved O&M cost forecast in any way. Additionally, Enbridge Gas has not provided evidence as to what is the amount notionally included in 2023 rates for locates related costs. Enbridge Gas proposes that each time that the proposed deferral account is presented for clearance (noting that Enbridge Gas clears its deferral and variance accounts each year), the Company will present evidence to explain and detail: (a)

[23] VECC submissions, page 3.

the locates related costs included in rates for the subject year and not recoverable through the account; and (b) all amounts recorded in the account for the subject year.

Timing of Variance Account Establishment

27. The Applicants request that the OEB establish the generic variance accounts effective January 1, 2023. This is an appropriate date for establishment of the variance accounts because:

(a) Bill 93 received royal assent in April 2022 and has been in force since that date, except for certain regulatory requirements, including the administrative penalty (**AP**) regime that was originally scheduled to be in force on April 1, 2023 and is now delayed to April 2024.[24]

(b) The Applicants have been working diligently since the introduction of Bill 93 to implement service arrangements and systems to comply with the new requirements, in order to avoid the imposition of APs or other forms of legal liabilities while striving to meet the Government's objectives of delivering more timely locates for priority infrastructure projects. This is outlined clearly in the Applicants' May 10, 2023 letter to Ministers Smith and Rasheed, including how incurrence of additional costs and investments in excess of an estimated $100 million have been required in order to fund operational improvements, such as hiring and training more locators with the competitive wages required to attract new workers, procuring equipment and vehicles and improving IT infrastructure. The Applicants are also seeking early adoption of a robust dedicated locator model to support efficient construction for larger projects.

[24] Joint Ministers' May 11, 2023 letter, page 1.

(c) Given the ongoing consultation with the Government and Ontario One Call about Bill 93 and its wide-ranging implications and implementation details, it was not possible for the Applicants to coordinate filing of their May 11, 2023 letter with the OEB initiating this proceeding any sooner. The Applicants have come forward to the OEB with this request on a generic basis at the earliest possible opportunity recognizing the need for Government support and collaboration in order to have enough information to inform the OEB adequately about the need for the generic variance accounts.

(d) It is most common for the OEB to establish new deferral and variance accounts on a calendar year basis, as this aligns with rate-making and budget cycles for regulated utilities. It would be impractical and illogical to establish a mid-year or later effective date for the proposed variance accounts as the utilities do not incur the associated costs on a uniform basis throughout the year. Prorating costs would therefore not be reflective of cost incurrence patterns.

28. OEB staff submitted that the OEB should establish the requested accounts effective May 1, 2023, as this more closely aligns with the effective date of the relevant legislation. Enbridge Gas does not agree. As explained above, Bill 93 took effect in April 2022 upon royal assent, and implementation of the AP regime has been delayed until April 2024. In fact, the Applicants have been prudently incurring costs to comply with the legislative requirements at least since 2022. Establishing the accounts effective January 1, 2023 is a reasonable compromise and best aligns with rate-making practices.

29. Other intervenors submitted that the OEB should establish an effective date of April 2023 or the date of the OEB's decision, largely premised on the claim that

ratepayers did not have notice of the potential for the rate change and that the OEB is not permitted to order recovery of amounts from a prior period. In this case, the proposed variance account would not be disposed of until a future period and the proposed rate treatment would be in respect of the same year in which the application is brought.

30. SEC cited a former Union Gas Limited case to support the proposition that it would be impermissible retroactive rate-making for the OEB to establish an effective date of January 1, 2023.[25] Enbridge Gas submits that the OEB is not so constrained from establishing the proposed variance accounts effective January 1, 2023. This date is not only appropriate from a cost incurrence perspective, it is permissible by the OEB's broad authority to set rates in the manner it sees fit under the OEB Act. The case cited by SEC supports the principle that deferral and variance accounts are an exception to the concerns about retroactive rate-making because they are "'accepted regulatory tools' that 'enable a regulator to defer consideration of a particular item of expense or revenue that is incapable of being forecast with certainty for the test year'."[26] The case also supports the principle that section 36 of the OEB Act does not in any manner constrain the OEB from making orders respecting matters which arose in a previous year but had not been specifically dealt with as a discrete item in the rate setting process.[27]

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[25] SEC submissions, page 3.
[26] *Union Gas Limited v. Ontario Energy Board*, 2015 ONCA 453, paragraph 89, citing from *Bell Canada v. Bell Aliant Regional Communications*, 2009 SCC 40, [2009] 2 S.C.R. 764, paragraph 54.
[27] *Union Gas Limited v. Ontario Energy Board*, 2013 ONSC 7048, 316 O.A.C. 218, paragraph 30.

31. In fact, both the Ontario Divisional Court and the Ontario Court of Appeal upheld the OEB's decision that effectively had retroactive or retrospective rate-making impacts. Further, if the OEB were to treat the Bill 93 impacts as a Z-factor event in this case, it is implied in the Z-factor description that rates may be impacted on a retrospective basis because a utility has 6 months within which to notify the OEB of a Z-factor event in order to be eligible for rate recovery in respect of the event. Also, the OEB has approved retrospective recovery of costs related to Z-factor events in several cases.[28] Additionally, the OEB has approved new or amended variance accounts that relate to dates prior to the date of establishment, including reaching back to a prior calendar year in the case of the Tax Variance Deferral Account / PILs and Tax Variances – CCA Changes amendments to capture impacts of changes to accelerated CCA.

32. Enbridge Gas also reiterates that through its Rebasing evidence, it has been providing public notice of its intention to request a variance account for incremental locates related costs since October 2022. Additionally, it has been notifying third parties of its intention to issue a $200 charge for providing locates. Enbridge Gas has adjusted its original Rebasing proposal to be responsive to Government and industry feedback and should not now be denied the opportunity for cost recovery on the basis of lack of notice or early action on its part.

[28] Ibid., footnote 11.

33. Enbridge Gas explained in its May 24, 2023 letter in Rebasing that it may need to consider resurrecting its original request if the OEB declines to grant a generic variance account:

> In the event that the OEB declines to address the request for a locates cost variance account on a generic basis, or in a way that takes into account Enbridge Gas's circumstances (which include very significant underground infrastructure), then Enbridge Gas reserves the right to request that this item be re-introduced and determined in Phase 2 of this proceeding. Similarly, should circumstances change such that an approved service fee for locates requests becomes necessary for Enbridge Gas, then the Company may choose to pursue that request at a later date.[29]

34. Given the significant resistance from excavators, municipalities and other industry stakeholders to the originally proposed locates charges, and Enbridge Gas's own view that the charges may become somewhat circular and inefficient if industry stakeholders are charging each other for locates, the generic variance account remains as the most appropriate and comprehensive rate recovery mechanism in this case.

35. Some intervenors noted that if established, the accounts should only be in place for the short term, until the next rebasing for the utility. Enbridge Gas has no concerns with this given the timing of its current Rebasing proceeding and that its next rebasing is not anticipated to occur for another 5 years.

[29] Compendium, Tab 9, page 2.

Form of Accounting Order & Nature of Tracked Amounts

36. Enbridge Gas is proposing the draft form of accounting order set out in Attachment A to these submissions, that is similar to the draft forms proposed by the other Large Utilities.

37. Most intervenors commented that the OEB should require the Applicants to track Bill 93 related costs separate from all other locates-related costs or propose a method to do so. Enbridge Gas submits that this would be a difficult and impractical exercise for the Applicants because it is not possible to separately identify specific drivers for locates-related cost increases. Enbridge Gas contends that the majority of any increases, perhaps with the exception of modest inflationary increases, are attributable to Bill 93 and related legislation in any event. These factors are not tracked or identified separately in the contractual negotiations with LSPs.

38. Until the Bill 93 related legislative changes were introduced, Enbridge Gas experienced relatively predictable and stable locates-related volumes and costs.[30] This appears to be the case for the other Large Utilities as well. Enbridge Gas submits that even the tightening of the labour market for LSPs is tied to the introduction of Bill 93 and the related legislation, as these Government actions have increased the need for skilled labour and related systems for infrastructure projects in Ontario.

[30] Compendium, Tab 2, page 16.

Energy Probe Submissions on Business Risk

39. EP submits that the requested variance accounts should not be established because utilities are compensated for business risk caused by legislative change through equity thickness and the return on equity approved by the OEB, and if the OEB were to grant the requests, it would be reducing business risk of the utilities.[31]

40. Respectfully, this misses the point of the requested variance account because the legislative changes associated with Bill 93 and the related legislation actually increase the costs and cost recovery risk of the utilities and the variance account is proposed to assist with bringing this risk back to the level assumed in the rate-making constructs. That is, deferral and variance accounts are used to fairly compensate utilities for prudently incurred costs that are material and related to causes outside of the base upon which the rates were derived.

41. Just and reasonable rates permit a utility to recover its prudently incurred costs and earn a fair return on invested capital.[32] These are separate elements of the overall revenue requirement for a regulated utility and both are required. The proposed variance account is meant to enable the Applicants to recover their prudently incurred operating costs related to locates activities, while the concept of business risk is related to the return on equity to provide a fair return to investors for investing in the capital requirements of the utility.

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[31] Energy Probe submissions, page 3.
[32] *Union Gas Limited v. Ontario Energy Board*, 2015 ONCA 453, paragraph 25, citing *Power Workers' Union v. Ontario Energy Board*, 2013 ONCA 359, paragraph 13 and *Northwestern Utilities Ltd. V. Edmonton (City)*, [1929] S.C.R. 186, pages 192-3.

42. Following Energy Probe's rationale, utilities would never be permitted to establish a deferral or variance account or receive cost recovery for a Z-factor event, because their equity thickness and rate of return already compensate for such costs. Clearly, this is not the case given the OEB's common practice of utilizing deferral and variance accounts for various extraordinary costs. Energy Probe's submissions simply do not align with legal principles associated with just and reasonable rate setting or with the OEB's rate-making policies and process.

CONCLUSION & RELIEF SOUGHT

43. Enbridge Gas appreciates that the majority of parties support establishment of the proposed generic variance accounts, subject to the exceptions noted above. For the reasons outlined, Enbridge Gas urges the OEB to act quickly to implement the requested accounts on a generic basis, effective January 1, 2023, in order to provide for systematic cost tracking and potential cost recovery for Enbridge Gas and the Large Utilities (and other utilities, as the OEB determines) to carry out their important public safety obligations regarding locates. Such certainty is required as soon as possible to allow parties to build the required industry capacity for locates most efficiently and effectively, which in turn will support priority infrastructure projects throughout Ontario.

All of which is respectfully submitted September 1, 2023

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David Stevens, Aird & Berlis LLP
Counsel to Enbridge Gas Inc.

<u>ENBRIDGE GAS INC.</u>

Accounting Entries for
Locate Delivery Services Variance Account
<u>Account No. 179-324</u>

This account records the variance between the actual costs incurred for locate delivery services and the costs included in rates, including both the costs to provide locate delivery services to third parties and to receive locate delivery services for Enbridge Gas's own operations.

Simple interest is to be calculated on the opening monthly balance of this account using the OEB-approved EB-2006-0117 interest rate methodology. The balance of this account, together with carrying charges, will be disposed of in a manner designated by the OEB in a future rate application.

Account numbers are from the Uniform System of Accounts for Gas Utilities, Class A prescribed under the Ontario Energy Board Act, 1998.

Debit	-	Account No.179-324 Locate Delivery Services Variance Account
Credit	-	Account No. 728 General Expense

To record, as a debit/(credit) in the account, the variance between the actual costs to provide and/or receive locate delivery services and the costs included in rates to provide and/or receive locate delivery services.

Debit	-	Account No.179-324 Locate Delivery Services Variance Account
Credit	-	Account No. 323 Other Interest Expense

To record, as a debit/(credit) in the account, interest expense on the opening monthly balance.