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BY EMAIL AND RESS

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Ms. Nancy Marconi
Registrar
Ontario Energy Board
Suite 2700, 2300 Yonge Street
P.O. Box 2319
Toronto, ON M4P 1E4

Dear Ms. Marconi,

EB-2023-0143 – Request for Generic Variance Account to Collect Incremental Locate Costs

This letter is in response to 7 submissions made by a combination of OEB Staff and 6 intervenors. These submissions were made with respect to the request by a group of LDCs (electricity and natural gas) for a Generic Variance account to record the difference between the costs currently included in rates for Infrastructure locates and the actual incurred costs. This request was made necessarily by the dramatic increases in Locate costs, the details of which were described by Hydro One, and other LDCs, as part of their original submissions on or about July 7th, 2023.

Position

Hydro One has reviewed the intervenor submissions and the overwhelming consensus from participants is that the account should be approved. Most all of the participants agreed that the request meets the criteria of Causation, Materiality and Prudence. We trust that this type of unanimity on a subject will empower the Board to move quickly toward a positive conclusion with respect to the request.

That notwithstanding, there were certain statements made in the intervenor submissions to which Hydro One wishes to respond. The response is included below.

Effective Date

Hydro One and the LDCs have requested an effective date of January 1, 2023, for entries to the account. Material increases in Locate costs began prior to this date. In fact, PWU suggested that the effective date should be set earlier. However, the impact to utility operations has become more pronounced in 2023 and January 1, 2023, represents a reasonable compromise between the beginning of the material escalation of costs and the timing of when the industry became fully aware of the ramifications of the drivers of cost increases.

Schools Energy Coalition has suggested that an effective date of January 1, as requested, "*would constitute impermissible retroactive ratemaking*". First, the Board has complete latitude in the matter, so it is certainly permissible with the approval of the Board. Secondly, retroactive ratemaking insinuates that the collection of costs for potential recovery brings forward additional charges on current ratepayers for costs endured in a past period. The application of rates is reset on an annual, calendar basis. The costs foreseen to be sought as part of this request, are within the period in which they are being requested – after 2022. The potential impact on rates will relate to the appropriate period. Past rates are not affected. This is not retroactive ratemaking.

In arguing against the requested effective date, OEB Staff's response suggested that service quality requirements were not made effective until May 2023 so commensurate cost collection should not begin until that time. The reality is that the requirement for performing locates within 5 days has been in place for many years. The recent change has been the imposition of Administrative Penalties (AMPs) as part of Bill 93 to more tightly enforce the 5-day requirement. Those penalties were discussed in 2022. It became apparent that LDCs would be required to take steps and incur costs in response to the AMPs well before May 2023. Therefore, material cost increases began well before the statutory implementation of any service quality penalties. Further to the issue of timing, Hydro One raised the matter of a variance account with OEB staff at a meeting in March 2023 and information exchange on the topic began well in advance of that. Therefore, it's not accurate to imply that Hydro One was tardy in making the variance account request and that the recovery period should be shortened as a result.

Applicability of Request - Z-Factor

Certain intervenors suggested that while they support the request conceptually, the request would be more appropriate if submitted as a Z-Factor request under s. 3.2.8 of the Filing Requirements. If the Board deems that Z-factor is a more correct process in this situation, then Hydro One is prepared to refile as required. However, it would seem that a Variance Account is more appropriate for the following reasons:

- Z-Factor applications are traditionally associated with single events. In fact, the Filing requirements mandate that utilities are required to record Z-factor costs in "USoA Account 1572 – Extraordinary Events". Hydro One tried to demonstrate in its earlier submission that, while Bill 93 is an important driver of the material increase in costs, there were several factors that give rise to the current scenario. This request is not related to a single extraordinary event.

- A Z-factor application is typically filed after an event has taken place, such as a very large storm. Section 3.2.8 of the Filing Requirements discusses several characteristics of a Z-factor application including that the application must take place within 6 months of the event, and that the recovery period is limited to 12 months. The increases in material Locate costs not included in rates is an on-going matter and, for many LDCs including Hydro One, the deficit will naturally last longer than 12 months.

- Section 3.2.8 also states that the recovery of the approved costs from a Z-factor event must be completed via a rate rider to customers. In terms of recovery methods, Hydro One has stated that a broad rate rider impacting all customers may not be the appropriate collection method. However, a user charge on residential customers could be highly impactful on the propensity to request a locate and this could bring about catastrophic safety consequences. We feel strongly that the disposition method requires careful consideration. However, that careful consideration should not hold up the establishment of the account. Therefore, the requirement of the Z-factor for a rate rider may be incorrect. A variance account, as requested, would allow more latitude to make the right decision for customers in terms of recovery.

Proposed Restrictions on Certain Cost Entries

There is an obligation to spell out, in the Accounting Order, the general attributes of what costs should be included in a regulatory account. However, this document is left intentionally broad. The practical reason for this is so that the utility can take the necessary steps to efficiently perform the service in the best interest of customers without fixating on exactly what costs will garner approval. Moreover, seeming to follow the direction included in the Accounting Order is not a guarantee of automatic approval. With any account, the costs included therein are tested by the Board for prudency and if found to be inappropriate, recovery of the costs may be rejected.

There were suggestions by some intervenors, and Board Staff, that various restrictions or alterations be placed on what should be included. However, we must be careful not to be too prescriptive. Ontario One Call recently announced that fees paid by the LDCs would be going up 20%. For Hydro One, this translates to about $750 Thousand over 3 years. This would seem a reasonable cost to include in the proposed Variance account but if not included in the up-front description of costs, would this be disallowed?

Board Staff opined about a potential new alteration to the methodology for adjusting allowance for the Locate costs in base rates using percentage change in rate revenue rather than IRM. This is not the venue in which to launch discussions on new and untested rate calculation methodologies that go against past practice.

Hydro One and the other LDCs have mentioned that the long-term solution to escalating costs includes new processes and systems to make the work more efficient and reduce costs. This will necessitate certain prudent capital investments as well as other short-term expenses to ramp up volume. Creating an account whose inputs are so confined that such investments are likely to be rejected can work against the shared intent of the group and ultimately lead to higher costs for ratepayers.

We urge the Board to leave the finer points of cost inclusion to be tested, and adjusted where appropriate and necessary, at disposition.

Summary

The intervenor and OEB Staff submissions were nearly unanimous in agreeing that Hydro One and the LDCs have sufficiently demonstrated the standard for approval of a regulatory account. The eligibility criteria of Materiality, Causation and Prudence were all apparently met.

It is in the best interest of customers that Hydro One’s request for a Variance account be expediently approved as submitted.

We thank the Board for the opportunity to comment on the submissions. If there is a need for further information related to our request, we stand ready to support the Board in its deliberations.

Sincerely,

Jeffrey Smith