



By RESS

September 1, 2023


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

Dear Ms. Marconi:

Subject: Response to Notice of Hearing and Procedural Order No. 1 - Incremental Locates Costs (EB-2023-0143)

Pursuant to Notice of Hearing and Procedural Order No. 1 related to the above referenced proceeding, please find Hydro Ottawa Limited's reply submission attached.

Sincerely,

DocuSigned by:

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April Barrie

Director, Regulatory Affairs

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EB- 2023-0143 - Hydro Ottawa Limited Reply Submission

Background

On April 14, 2022, the *Getting Ontario Connected Act, 2022* (Bill 93) received Royal Assent, which requires tighter timelines and establishes monetary penalties for non-compliance with said timelines. As a result of Bill 93 and several other pieces of Provincial legislation that followed, it is expected that utility locates activity will increase. As a result, a group of large utilities (“the Large Utilities”)¹ filed a letter with the Ontario Energy Board (“OEB”) on May 11, 2023 requesting a generic, sector-wide variance account to track the incremental costs of locates in 2023 and future years with an effective date of January 1, 2023 for the new account.

On June 14, 2023, the OEB issued a letter requesting the Large Utilities to file the following information:

1. Evidence on what costs related to locates are currently 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.

Each of the electric Large Utilities filed the requested information on July 7, 2023. Enbridge Gas Inc. filed its response on July 25, 2023.

The OEB determined that it would commence a proceeding on its own motion to consider the request for new variance accounts, and accordingly issued a Notice and Procedural No. 1 on August 1, 2023.

On August 18, 2023, submissions were filed with the OEB by the following intervenors:

- Consumers Council of Canada (“CCC”)
- Energy Probe
- Ontario Energy Board Staff (“OEB Staff”)
- Power Workers’ Union (“PWU”)

¹ Consisting of: Alectra Utilities Corporation, Elexicon Energy Inc., Enbridge Gas Inc., Hydro One Networks Inc., Hydro Ottawa Limited, Oakville Hydro Electricity Distribution Inc., Toronto Hydro-Electric System Limited.



- Quinte Manufacturers Association (“QMA”)
- School Energy Coalition (“SEC”)
- Vulnerable Energy Consumers Coalition (“VECC”)

Issues for Consideration

In their submissions, CCC, OEB Staff, PWU, QMA and VECC generally agreed that the request for a variance account satisfies the required causation and materiality criteria as per the OEB’s Filing Requirements. They also generally agree that it will be necessary for utilities to establish prudence when disposition is sought.

Energy Probe was the only stakeholder that submitted that the OEB should not approve the creation of a variance account to record incremental locates costs because of Bill 93.

While there is general alignment and acceptance among intervenors of the Large Utilities’ request to establish a generic variance account, there are several issues raised by intervenors that are of varying opinion. These include:

- Whether the incremental costs should be captured in a Z-factor application or a variance account;
- The Effective Date of the proposed variance account; and
- Treatment of the incrementality of costs and revenue.

Hydro Ottawa addresses these issues herein.

Z-factor vs. Variance Account

While SEC did not oppose the creation of the generic variance account, they proposed that the appropriate basis for doing so is a Z-factor application, which is available to all local distribution companies (“LDCs”).

Hydro Ottawa submits that the appropriate mechanism to address incremental locates costs is through the establishment of a variance account rather than as a Z-factor.

While Hydro Ottawa agrees that the costs resulting from Bill 93 were unforeseen and outside of its control to manage, the timelines in which the various legislative changes were made would make it ineligible for Z-factor treatment. Although Bill 93 itself was given Royal Assent on April 14, 2022, it emerged as a result of an overarching policy shift in Ontario. Various other legislative changes were made over the course of 2022 that were related to Bill 93.² As such,

² Namely to the *Building Broadband Faster Act, 2021* and the *Ontario Underground Infrastructure Notification System Act, 2012* as a result of Bill 93.



Hydro Ottawa submits that Bill 93 cannot be construed as a single unforeseen “event” in the same way that, for instance, a single weather event would be considered.

In addition, under the Chapter 3 Filing Requirements, to file a Z-factor claim, a distributor must demonstrate that the costs were incurred **within a 12-month period** and are incremental to those already being recovered in rates as part of ongoing business risk.³

As indicated, Hydro Ottawa has provided evidence that costs related to Bill 93 are incremental, however they will not be contained to a 12 month period. Instead such incremental costs will be ongoing and outside rate recovery until Hydro Ottawa next rebases.

As such, Hydro Ottawa submits that the appropriate treatment for incremental locates costs is through the request for an establishment of a new variance account. As has been previously submitted by the Large Utilities and the majority of the intervenors, the three-part test requirement set out in the OEB’s Filing Requirements for Electricity Distribution Rate Applications has been satisfied.

Effective Date

In its letter dated May 11, 2023, the Large Utilities requested that the new variance account be effective starting on January 1, 2023. The intervenors are not aligned on this proposed effective date. Some submit that doing so would be retroactive ratemaking and thus against regulatory principles.⁴ Others propose alternative effective dates for the proposed variance account.⁵

As iterated in its July 7 submission, Hydro Ottawa continues to contend that this scenario warrants an effective date of January 1, 2023. In its submission, Hydro Ottawa cited two instances where the OEB has previously seen fit to provide retroactive cost relief through variance and deferral accounts, including where government policy resulted in increased costs or reduced revenue for utilities. One instance related to the change in the pole attachment rate as determined in O. Reg. 842/21, while the other related to the establishment of the deferral account related to the implementation of the Ultra-Low Overnight RPP rate option. In its August 18, 2023 submission, SEC argued that in both cases, previous notice was given that alluded to the potential for the creation of a variance account. SEC contends that this is unlike the current scenario. Hydro Ottawa submits that January 1, 2023 is a reasonable effective date and is not unlike the cited scenarios. When Bill 93 came into force, the associated costs and pending other legislative changes were unknown.

Furthermore, discussions around administrative monetary penalties were ongoing throughout 2022 and into 2023. The outcome of those discussions were not immediately known. Utilities

³ Ontario Energy Board, *Filing Requirements For Electricity Distribution Rate Applications - 2023 Edition for 2024 Rate Applications*, (June 15, 2023), page 23.

⁴ Namely, CCC, SEC and VECC.

⁵ OEB Staff proposed May 1, 2023; PWU proposed April 14, 2022; QMA supported January 1, 2023.



have since been able to better understand and prepare for the costs associated with Bill 93 and related legislative changes.

Consequently, Hydro Ottawa submits it would have been unreasonable and inefficient for notice of a potential variance account to have been given upon the passing of Bill 93. An effective date of January 1, 2023 aligns with the rate/calendar year after Bill 93 came into force and when utilities began to be impacted as a result (although many began incurring costs in 2022). Hydro Ottawa therefore submits that an effective date of January 1, 2023 would be appropriate and would not constitute retroactive ratemaking.

The Treatment of the Incrementality of Costs and Revenue

In their August 18, 2023 submission, OEB Staff submitted 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. Hydro Ottawa respectfully disagrees, as there is no correlation between locates cost and customer expansion or load growth.

Additionally, locates do not generate revenue.

Specifically for Hydro Ottawa, unlike a typical annual IRM rate adjustment application, Hydro Ottawa's annual rates incorporate customer and load growth, as Hydro Ottawa's Custom IR plan includes a 5 year load forecast for which rates are determined.

Lastly, some intervenors and OEB Staff have made comments on types of expenses and what should or should not be allowed as part of the proposed account. Hydro Ottawa suggests it is premature at this time to exclude certain costs. Such costs should be evaluated at the time of disposal when the utility has had the opportunity to provide full evidence of their incrementality. This aligns with the scope set out in Procedural Order No. 1 which states that "this 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."⁶

ALL OF WHICH IS RESPECTFULLY SUBMITTED

⁶ Ontario Energy Board, *Notice of Hearing and Procedural Order No. 1*, EB-2023-0143 (August 1, 2023), page 2.