

September 11, 2023

*Submitted electronically.*

Ontario Energy Board  
2300 Yonge Street, 27<sup>th</sup> Floor  
Toronto, ON  
M4P 1E4  
Attn: Nancy Marconi, Registrar

Dear Ms. Marconi:

Re: EDA Reply Submission – Generic Variance Account for Locates EB-2023-**Locates Services Deferral Variance Account (LSDVA)**

The Electricity Distributors Association (“EDA”) represents local electricity distribution companies (“LDCs”) in Ontario, the part of the electricity system that is closest to customers. Ontario’s local hydro utilities are on the front lines of power and work to keep our electricity system safe, reliable, and affordable for households, small businesses, farms, commercial, and industrial customers. Because LDCs are so close to our customers, we are essential partners in delivering on energy policy.

Electricity distributors remain highly committed to the safety and well-being of our customers while balancing the government’s priorities to build infrastructure within the province of Ontario faster. Understandably we recognize that fundamentals to this goal being achieved quickly is improving compliance for timely locates and cost-effective provision of underground infrastructure locates.

We have engaged our members of all sizes to consider the submissions on this application and the impacts across the province. Our conclusion is that LDCs will incur much higher costs to provide locate services to its customers as requested by the customers, third parties and potentially other utility services within the province, than had originally been forecasted and built into distribution rates. The cost uncertainty resulting from the changes in locates should not interfere with the safe and reliable delivery of services to our customers and their motivations to practice safe procedures.

**Background:**

On May 15, 2023, the EDA submitted a letter on behalf of its member distributors of all sizes seeking the establishment of a generic **sector-wide** variance account to track incremental costs of locates in 2023 and future years arising from the implementation of recent legislation which impacts the operations of LDCs across the province. These legislative changes are notably provincewide and will result in incremental locate costs which have not been considered in any

distributor's current rates. Distributors across Ontario **of all sizes** are experiencing significantly higher locate costs primarily due to labour shortages, be they internal utility staff or outsourced locate service providers, and a markedly increased demand for these services due to government priorities, e.g., transit, broadband, housing.

On June 14, 2023, the OEB issued a letter to six large electricity distributors and 1 large gas distributor requesting each to file cost information and further detailed explanation of the incremental work anticipated, as well as draft accounting orders. Following the filing of this data, the OEB determined that it would commence a proceeding on its own motion to consider the request for a new variance account and accordingly issued a notice and procedural order no. 1 on August 1, 2023. On August 18, 2023, submissions were filed with the OEB by 6 intervening groups and OEB board staff also filed a submission.

Following the EDA's review of the intervenor submissions, we were pleased to note the consensus of positions amongst parties that the generic variance account for locates should be approved by the OEB. Most of the intervening groups agree with our original submission on May 15, 2023, that the establishment of a new variance account met the three tests of causation, materiality, and prudence. Below are our positions on the three items identified in those submissions:

#### **Z-Factor:**

Two intervening groups that notably were not opposed to the establishment of a variance account submitted that the variance account should be approved as a Z-factor mechanism. EDA members collectively oppose the recommendation to use Z-factor as we note that precedence has already been set on record by the OEB to create deferral and variance accounts for providing relief of legislative policy changes (ULO, Monthly Billing, RPP Customer Choice, Green Button, etc.). Furthermore, Z-factor applications as described by the OEB in its Report dated June 17, 2021 *'Impacts arising from the COVID-19 Emergency - EB-2020-0133'* are "a cost recovery mechanism established to address incremental costs arising from events that are not within **management's control** and outside the basis upon which rates are derived." The OEB continues to clarify to industry that, in past practice, "the OEB has applied the Z-Factor mechanism for utilities that seek recovery of **extraordinary** events, **such as extreme weather events**, in which they have incurred incremental costs." This is repeatedly referenced by the OEB as a claim for a Z-factor **event**. Additionally, examples of previous Z-factor applications include storm recovery, and once approved, utilities are to record in Account 1572, Extraordinary Events Costs, and recovery of the amounts recorded must then be disposed of in specific applications.

We submit that there are notable differentiating circumstances between the unpredictable nature of legislative changes, and the typical Z-factor event dealt with in applications. We suggest that the OEB should follow its precedence and approve the variances account much like it did in accordance with past practice. As the OEB did not approach the COVID-19 pandemic as

a traditional Z-factor event, we expect the OEB to not address the ratemaking considerations of the locate changing with typical Z-factor events of the past.

### **Treatment of the Incrementality of Cost and Revenues:**

We do not support the OEB staff's proposal that the variance account should include a cost recovery offset based on the unrelated metric of distribution growth in customer connections. We suggest that the OEB staff has overstated the relationship of locates to customer growth in its proposal. Locate charges are driven by projects and the needs of many customer subsets and infrastructure. Much like System Access is described for investments in the OEB's Filing Requirements for *'Electricity Distribution Rate Applications – 2023 Edition for 2024 Rate Applications Chapter 5 – Distribution System Plan, issued December 15 2022'*, locates are like investment modifications because they include a number of reasons for performing the work which are customer driven, e.g., asset relocation, new connections, modifications to existing infrastructure, expansions for development, relocation of assets, and road widening, which can impact an LDC's distribution system.

Additionally, complexity of this consideration is that LDCs' customers and businesses that request locates could request multiple locates driven by their plans, and alterations to their plans. **Distributors are obligated to perform System Access and locate work** and provide their customers and their businesses with access to electricity services via the distribution system. Distributors must provide access to customers and consider it the highest priority to ensure locates are performed in a professional, timely and safe manner. EDA members emphasize greatly that the growth of the distribution network by customer connection **is not** directly correlated with the amount of locates for the many reasons shared above, nor does this proposal align with the establishment of revenue streams of locates.

Given the acceptance of all but one stakeholder in this consultation to establish a variance account for locates, and the complexity noted above which is not consistent with the proposal, we respectfully encourage the OEB to approve the variance account, based on the previously established practices.

### **Effective Date:**

EDA members submit unanimously that it is unreasonable for the effective date to not align with when the changes have come into force and are outside of the control of LDC management and the OEB. We support our members that an effective date of January 1, 2023, as the most appropriate date for this generic variance account. The approval of this date **does not constitute retroactive ratemaking**, because of the operations aspect and the uncontrollable nature impact on LDCs. Legislative changes were proposed in 2022, and operationally LDCs began incurring costs as early as 2022 to become compliant with new legislative changes and prepare for the outcome of decisions which were out of their control.

## **Conclusion:**

We support the submissions of the large distributors and respectfully remind board staff that this issue extends across the province and impacts all our distributors' operations as originally submitted to you on May 15<sup>th</sup>, 2023. All but one stakeholder in this proceeding supports the creation of the proposed deferral account, and all stakeholders understand that these changes were outside of the utilities' control, yet directly impact the operations in a material way.

We submit that the OEB should approve the proposed account, effective January 1, 2023, to track the incremental cost of providing locate services until a utility's next rebasing. Approval of the variance account will better equip utilities with added resources to address cost uncertainties resulting from the government legislative changes outside of the control of LDCs.

In making its determinations, we expect the OEB to assess how its existing regulatory framework and mechanisms, as well as past practices may apply to this account. We anticipate that the decisions on the LSDVA will provide LDCs with the resources they need to be financially viable, promote customer safety, and hence, be able to fulfill their existing and future responsibilities to our customers. The perspectives of other stakeholders on these critical issues and applications are appreciated; however, we recognize there is a consistent need to be addressed which should be analyzed for full and proper context so that the OEB has full and complete information and can fulfill its mandate and objectives.

Thank you for considering our request. Please do not hesitate to contact Brittany Ashby, Senior Regulatory Affairs Advisor at 416.886.4420 or at [bashby@eda-on.ca](mailto:bashby@eda-on.ca) if you require anything further in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Teresa Sarkesian".

Teresa Sarkesian  
President & CEO