



Ontario
Energy
Board

Commission
de l'énergie
de l'Ontario

Ontario

DECISION AND ORDER

EB-2023-0143

ONTARIO ENERGY BOARD

Getting Ontario Connected Act Variance Account

BEFORE: Pankaj Sardana
Presiding Commissioner

Fred Cass
Commissioner

Patrick Moran
Commissioner

October 31, 2023



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1 OVERVIEW

The Ontario Energy Board (OEB) will establish a generic, sector-wide variance account, the Getting Ontario Connected Act (GOCA) variance account, to specifically track incremental costs of locates in 2023 and future years arising from the implementation of recent provincial legislation: Bill 93 (the *Getting Ontario Connected Act*, 2022).

2 CONTEXT AND PROCESS

Bill 93 received Royal Assent on April 14, 2022. It included amendments to the *Ontario Underground Notification System Act, 2012* imposing a five-business-day deadline for completing standard locate requests and introducing administrative penalties for failing to comply. The implementation of the administrative penalty regime has been postponed to April 1, 2024.¹

On May 11, 2023, a group of large Ontario natural gas and electricity distribution companies (the Large Utilities) filed a letter with the OEB 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 Bill 93 (the *Getting Ontario Connected Act, 2022*). The Large Utilities proposed an effective date of January 1, 2023 for the new account.

According to the Large Utilities, Bill 93 will result in significant incremental locates costs that are not covered by their current rates. As they explained in their May 11 letter, the stricter legislated timelines have required them to invest in “operational improvements including hiring and training more locators..., procuring equipment and vehicles, and improving IT infrastructure. Our preliminary estimates indicate that annual locates costs are likely to increase significantly and by 100% or more, in some cases.”

The Large Utilities are:

- 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

On May 15, 2023, the OEB received a letter requesting a similar account from the Electricity Distributors Association on behalf of its members (which include some of the Large Utilities).

Pursuant to a letter from the OEB, the Large Utilities filed evidence on costs related to locates on July 7, 2023. The OEB initiated a proceeding on its own motion on August 1,

¹ In a joint letter to stakeholders dated May 11, 2023, the Minister of Public and Business Service Delivery and the Minister of Energy explained that the delay was to accommodate further consultation, including “on potential options that could prohibit fees being charged by members of Ontario One Call for underground infrastructure locates.”

2023 to hear the issue by way of a written hearing. The Large Utilities and all intervenors in their most recent rebasing proceedings were accepted as intervenors in this proceeding. The following intervenors made written submissions on August 18, 2023:

- Consumers Council of Canada (CCC)
- Energy Probe
- Power Workers' Union (PWU)
- Quinte Manufacturers Association (QMA)
- School Energy Coalition (SEC)
- Vulnerable Energy Consumers Coalition (VECC)

Reply submissions were filed by the Large Utilities on September 1, 2023.

3 DECISION ON THE ISSUES

3.1 Appropriateness of a Variance Account or a Z-factor

OEB staff and all intervenors, except for Energy Probe, generally supported the approval of a generic variance account.

Energy Probe submitted that utilities are compensated for business risk caused by legislative change through equity thickness and the rate of return on equity² and therefore a variance account is not required.

School Energy Coalition (SEC) proposed that the appropriate basis for the OEB to grant recovery is through a Z-factor. It reasoned that there is no process for utilities to request a deferral and variance account, except through a cost of cost of service or a Custom IR application.³ It argued that the passage of Bill 93 likely reflects a Z-factor event.

The Large Utilities maintained that a variance account is the correct approach. Alectra noted that for a Z-factor, the Chapter 3 filing requirements state that utilities must demonstrate that costs were incurred within a 12-month period, while the incremental costs associated with Bill 93 are ongoing.⁴

The Electricity Distributors Association also noted that the OEB has approved generic variance accounts for similar industry-wide changes, including the Ultra Low Overnight price plan, Monthly Billing, and Regulated Price Plan Customer Choice, and that a generic variance account is appropriate in this instance too.⁵

Findings

The OEB finds it appropriate to establish an industry-wide generic variance account, to allow all electricity and gas distributors to record incremental costs of locates resulting from the implementation of Bill 93. Further details on the recording of costs are set out in Section 3.3 below. The OEB does not find it appropriate to classify these costs as a Z-factor event as this would require individual applications from each utility on an annual basis. In this regard, the OEB notes that the incremental costs of locates activity anticipated to be triggered by Bill 93 will not be limited to a 12-month period as is typically associated with a Z-factor event and as set out in the OEB's Chapter 3 Filing Guidelines.⁶ The account will be in place for each utility until their next rebasing

² Submission of Energy Probe, August 18, 2023, page 3.

³ Submission of SEC, August 18, 2023, page 1.

⁴ Submission of Alectra Utilities, September 1, pages 3-4.

⁵ Submission of Electricity Distributors Association, September 11, 2023, page 2.

⁶ Chapter 3 Filing Requirements, section 3.2.9, June 15, 2023.

application, to be reviewed for disposition as part of that application, unless large balances have accrued that may require disposition in an IRM year.

3.2 Effective Date

The intervenors had mixed views on the appropriate implementation date. Several intervenors including SEC and VECC indicated that the January 1, 2023 date, if approved, would constitute retroactive rate making. VECC, CCC and OEB staff noted that the Large Utilities did not request relief until May 11, 2023. OEB staff indicated that the implementation date of Bill 93 would be most appropriate.

Other intervenors opted for earlier implementation dates. The QMA supported the January 1, 2023 implementation date proposed by the Large Utilities.⁷ The PWU proposed an effective date of April 14, 2022, the date Bill 93 was enacted.⁸

The Large Utilities submitted that January 1, 2023 is appropriate. Toronto Hydro identified that in several instances, the OEB approved a retroactive date. It argued that it was reasonable to use the time between April 2022 and April 1, 2023 to make changes and prudently incur costs.⁹

Findings

The OEB will set an effective date of April 1, 2023 for the establishment of the variance account. The OEB acknowledges that electricity and gas distributors may have incurred some incremental costs associated with Bill 93-related locates activities before April 1, 2023, but the OEB is of the view that these would have been at a scale that can be managed within existing rates.

3.3 Incrementality of Costs

Several intervenors, including SEC, submitted that only expenses related to Bill 93 should be included in the variance account.¹⁰ Alectra noted that while other relevant legislation¹¹ had been in effect earlier, it was only with the introduction of new compliance requirements that utilities recognized a material shift in costs.¹² Hydro Ottawa recommended that it is premature to exclude certain costs, and suggested that

⁷ Submission of Quinte Manufacturers Association, August 18, 2023.

⁸ Submission of Power Workers Union, August 18, 2023, page 3.

⁹ Submission of Toronto Hydro, September 1, 2023, page 6.

¹⁰ Submission of SEC, August 18, 2023, page 2.

¹¹ *More Homes Built Faster Act, 2022* (Bill 23), *Building Transit Faster Act, 2020* (Bill 171), and *Building Broadband Faster Act, 2021* (Bill 257).

¹² Submission of Alectra Utilities, September 1, 2023, page 5.

costs should be evaluated at the time of disposition when it is possible to produce evidence regarding incrementality.¹³

Most Large Utilities proposed that the base amount included in rates should reflect the budget established in the last rebasing, as adjusted for the compound effect of IRM rate adjustments in the following year. OEB staff argued that growth in customer connections and load would lead to incremental revenue and incremental costs, and that the incremental revenue is understood to be sufficient to compensate for this normal source of incremental costs. It submitted that the basis for the revenue available to fund locates in rates should therefore include full adjustments for revenue.¹⁴

The Large Utilities disagreed with OEB staff, stating that locate costs are not tied to customer growth or load, and that these costs are driven by external parties coming into proximity with utility assets.^{15 16}

Findings

Currently approved base rates include recovery of OM&A expense related to the cost incurred to provide the locates service. For simplicity, the OEB is of the view that this amount should be recorded as revenue in the GOCA variance account. Recognizing for many utilities the base amount included in rates was not explicitly determined by the OEB, utilities should be guided by the decisions in their respective cases in determining the appropriate amount to include as “revenue”, which will be one of the components examined at disposition of amounts in this account.

For each year the account remains in place prior to the utility's next rebasing application, this revenue amount shall be adjusted in accordance with the applicable IRM formula. The OEB is not of the view that it is necessary to adjust this revenue amount by the rate of growth in revenue instead of the rate of growth in rates as suggested by OEB staff. In the OEB's view, while distributors can anticipate increased revenues due to new customer connections, this will be accompanied by associated increases in connection-related costs. However, incremental costs from locates activity associated with Bill 93 may be incurred impacting both new customer connections and existing infrastructure for existing customers without any associated increase in revenues.

¹³ Submission of Hydro Ottawa, September 1, 2023, page 5.

¹⁴ Submission of OEB staff, August 18, 2023, page 7.

¹⁵ Submission of Elexicon, September 1, 2023, page 3.

¹⁶ Submission of Alectra Utilities, September 1, 2023, page 4.

Actual costs to provide the locates service will also be recorded in this account and will effectively be offset by the revenue amount.

The disposition of any balance in this account will be subject to a prudence review and a requirement to establish that any cost incurred over and above what is provided for in initial and IRM adjusted base rates is an incremental cost resulting from Bill 93. The OEB expects utilities to seek approval for disposition of balances in the account at rebasing unless unmanageable balances have accrued that may require disposition in an IRM year.

The OEB agrees with OEB staff on the necessity for utilities to demonstrate that recorded amounts in their accounts are both incremental to the base rates and are a direct result of Bill 93.

3.4 Eligibility of Labour Costs Caused by Economic Factors

OEB staff submitted that changes in the economy resulting in changes to labour costs are a normal business risk, which the utility is compensated for through its return on equity.¹⁷ SEC noted that the Large Utilities have observed increasing contractor labour costs, as well as rising costs from broader government policies, but submitted that only costs directly attributable to Bill 93 should be covered.¹⁸

The Large Utilities argued that because of government action, the increased demands for locate service providers have resulted in a tightening labour market, and higher costs.¹⁹

Findings

The OEB makes no determination on whether labour cost increases caused by economic factors should be eligible for recording in the GOCA variance account. The OEB reminds all electricity and gas distributors that, when the accounts are brought forward for disposition, it will be important for them to demonstrate not only that any amounts proposed for disposition were incremental to amounts in base rates and were prudently incurred, but also that the amounts proposed for disposition arose specifically from the implementation of Bill 93.

¹⁷ Submission of OEB staff, August 18, 2023, Page 5.

¹⁸ Submission of SEC, August 18, 2023, Page 2.

¹⁹ Submission of Enbridge Gas, September 1, 2023, Page 18.

3.5 Causation, Materiality and Prudence

OEB staff and intervenors, except for Energy Probe, as noted above, generally agreed that Causation and Materiality were established.

Intervenors asserted that prudence would need to be assessed at disposition. OEB staff submitted all distributors would need to ensure that costs are incurred prudently, and that robust records be kept to establish prudence at the time of disposition.²⁰ CCC argued that distributors must detail that costs were prudently incurred and represent the most cost-effective approach for ratepayers.²¹ The Large Utilities agreed with intervenors and OEB staff that prudence will need to be established at disposition.²² Oakville Hydro stated that it is premature to define what types of costs should be allowed, and that this should be evaluated at disposition.²³

Findings

The OEB finds that the evidence provided meets the three-part test (causation, materiality and prudence) that is typically required for the establishment of a new deferral or variance account. Specifically with respect to prudence, the OEB reminds all electricity and gas distributors that the onus of establishing the prudence of incremental costs associated with locates activity arising from Bill 93 (or indeed with any application for cost recovery) lies with them. The evidence filed by the Large Utilities about the implications of Bill 93 has satisfied the test for approval to create the account, in that that there is a sufficient reason for affected utilities to track and record prudently incurred incremental costs of locates arising from the implemental of Bill 93, along with the locates OM&A expense currently in base rates as set out in Section 3.3. Nevertheless, the determination of whether the costs recorded in the account were prudently incurred will be a matter to be determined when the OEB comes to consider the disposition of account balances.

3.6 Accounting Orders

As part of the information request on June 14, 2023, the Large Utilities were requested to file draft Accounting Orders. Pursuant to this request, each of the Large Utilities filed a draft Accounting Order.

Findings

²⁰ Submission of OEB staff, August 18, 2023, Page 3.

²¹ Submission of Consumers Council of Canada, August 18, 2023, Page 3.

²² Submission of Enbridge Gas Distribution, September 1, 2023, Page 4.

²³ Submission of Oakville Hydro, September 1, 2023, Page 2.

The OEB finds that the draft forms of accounting orders were broadly similar, but given the manner in which the OEB has determined costs will be recorded in the GOCA variance account (as set out in Section 3.3), accounting orders intended to guide electric and gas utilities to record incremental costs of locates arising from Bill 93 as well as ongoing costs of locates for affected distributors are set out in Schedules A and B, below.

The OEB notes that the GOCA variance account will only be available to a utility until the end of its current IRM period. The account is not available for utilities that have reflected Bill 93 in their most recent rebasing applications.

4 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. The attached accounting orders are approved.
2. The OEB finds that CCC, Energy Probe, PWU, QMA, SEC, and VECC are eligible to apply for an award of costs under the OEB's Practice of Direction on Cost Awards.
3. Eligible intervenors shall submit their cost claims no later than November 16, 2023.
4. Costs will be recovered from all electricity and gas distributors based on number of customers.
5. Licensed electricity and natural gas distributors will have until November 23, 2023, to object to any aspect of the costs claimed. The objection must be filed with the OEB, and one copy must be served on the intervenor against whose claim the objection is being made.
6. The intervenor whose cost claim was objected to will have until November 30, 2023, to file a reply submission with the OEB as to why its cost claim should be allowed. One copy of the reply submission is to be served on the objecting party.

DATED at Toronto October 31, 2023

ONTARIO ENERGY BOARD

Nancy Marconi
Registrar

SCHEDULE A
ELECTRICITY ACCOUNTING ORDER
ONTARIO ENERGY BOARD
EB-2023-0143
OCTOBER 31, 2023

**ELECTRICITY DISTRIBUTOR ACCOUNTING ORDER (002-2023)
ACCOUNT 1508 – OTHER REGULATORY ASSETS, SUB-ACCOUNT
GETTING ONTARIO CONNECTED ACT (GOCA) VARIANCE ACCOUNT**

Licensed, rate-regulated electricity distributors may establish a new Account 1508 – Other Regulatory Assets, Sub-Account Getting Ontario Connected Act Variance Account to record the variance between locate costs resulting from Bill 93 and the approved cost included in base rates.

This account includes costs incurred to enable the locate activities. Distributors are expected to track costs at a sufficiently detailed level to assist in a prudence review of the costs incurred, materiality, and causation related to Bill 93 at the time of disposition. Specifically, utilities, in the rebasing application or IRM applications if applicable, are to demonstrate that recorded amounts in their accounts are both incremental to the base rates and are a direct result of Bill 93.

The following accounts are established to record the amounts described above incurred on or after April 1, 2023:

- Account 1508 - Other Regulatory Assets, Sub-Account GOCA Variance Account
- Account 1508 - Other Regulatory Assets, Sub-Account GOCA Variance Account Carrying Charges

Distributors will record interest on the balance in the sub-account using the prescribed interest rates set by the OEB. Simple interest will be calculated on the opening monthly balance of the account until the balance is fully disposed.

The following outlines the proposed accounting entries for this variance account.

Entry #1

<u>USofA #</u>	<u>Account Description</u>
DR 1508	Other Regulatory Assets, Sub-Account GOCA Variance Account
CR XXXX	Account(s) associated with actual locate costs due to Bill 93, as applicable

To record actual locate costs associated with Bill 93.

Entry #2

<u>USofA #</u>	<u>Account Description</u>
DR 1508	Other Regulatory Assets, Sub-Account GOCA Variance Account
CR XXXX	Account(s) associated with actual ongoing locate costs, as applicable

To record actual ongoing locate costs that are not associated with Bill 93.

Please note that the costs recorded in Entry #1 and Entry #2 would be equal to 100% actual locate costs incurred by the utility for the period.

Entry #3

<u>USofA #</u>	<u>Account Description</u>
DR 4305	Regulatory Debits
CR 1508	Other Regulatory Assets, Sub-Account GOCA Variance Account

To record the locate “revenue” amount representing the OM&A expense related to the locate cost that was approved in base rates, escalated accordingly by the annual rate adjustments in the distributor’s IRM decision(s) and order(s) or the locate “revenue” amount representing the approved OM&A amount related to the locates in the distributor’s custom IR decision and order.

Entry #4

<u>USofA #</u>	<u>Account Description</u>
DR 1508	Other Regulatory Assets Sub-Account GOCA Variance Account, Carrying Charges
CR 6035	Other Interest Expense

To record carrying charges on the opening principal balance of the GOCA Variance Account, using the OEB’s prescribed interest rates.

SCHEDULE B
GAS ACCOUNTING ORDER
ONTARIO ENERGY BOARD
EB-2023-0143
OCTOBER 31, 2023

GAS UTILITY ACCOUNTING ORDER
ACCOUNT 179 – OTHER DEFERRED CHARGES, GETTING ONTARIO
CONNECTED ACT (GOCA) VARIANCE ACCOUNT

Gas utilities may establish a new Account 179 – Other Deferred Charges, Getting Ontario Connected Account Variance Account to record the variance between locate costs resulting from Bill 93 and the approved cost included in base rates.

This account includes costs incurred to enable the locate activities. Utilities are expected to track costs at a sufficiently detailed level to assist in a prudence review of the costs incurred, materiality, and causation related to Bill 93 at the time of disposition. Specifically, utilities are to demonstrate that recorded amounts in their accounts are both incremental to the base rates and are a direct result of Bill 93

The following accounts are established to record the amounts described above incurred on or after April 1, 2023:

- Account 179, GOCA Variance Account
- Account 179, GOCA Variance Account Carrying Charges

Gas utilities will record interest on the balance in the sub-account using the prescribed interest rates set by the OEB. Simple interest will be calculated on the opening monthly balance of the account until the balance is fully disposed.

The following outlines the proposed accounting entries for this variance account.

Entry #1

<u>USofA #</u>	<u>Account Description</u>
DR 179	GOCA Variance Account
CR 728	General Expense

To record actual locate costs associated with Bill 93

Entry #2

<u>USofA #</u>	<u>Account Description</u>
DR 179	GOCA Variance Account
CR 728	General Expense

To record actual ongoing locate costs that are not associated with Bill 93.

Please note that the costs recorded in Entry #1 and Entry #2 would be equal to 100% actual locate costs incurred by the utility for the period.

Entry #3

<u>USofA #</u>	<u>Account Description</u>
DR 319	Other Income
CR 179	GOCA Variance Account

To record the locate "revenue" amount representing the OM&A expense related to the locate services that were approved in base rates, escalated accordingly by the annual rate adjustments in the distributor's IRM decision(s) and order(s) or the locate "revenue" amount representing the approved OM&A amount related to the locates in the distributor's custom IR decision and order.

Entry #4

<u>UsofA #</u>	<u>Account Description</u>
DR 179	GOCA Variance Account, Carrying Charges
CR 323	Other Interest Expense

To record carrying charges on the opening principal balance of the GOCA Variance Account, using the OEB's prescribed interest rates.