

May 24, 2023

BY EMAIL AND FILED VIA RESS

Nancy Marconi
Registrar
Ontario Energy Board
2300 Yonge Street
Suite 2700
Toronto, ON M4P 1E4

Dear Ms. Marconi:

**Re: Enbridge Gas Inc. (“Enbridge Gas”)
EB-2022-0200 – 2024 Rates Application
Withdrawal of Requests for Locate Delivery Charge & Locate Delivery Services VA**

We represent Enbridge Gas.

We write to advise the Ontario Energy Board (OEB) and parties that Enbridge Gas is withdrawing its requests for approval of a Locate Delivery Charge¹ and a Locate Delivery Service Variance Account (LDSVA)² from the 2024 Rates Application. Instead, the creation of a new locates cost variance account is being pursued on a generic basis, through a joint request with several other large Ontario local distribution companies (LDCs). In the event that the OEB declines to grant the requested relief through that generic process, then Enbridge Gas reserves the right to request that these items be re-introduced and determined in Phase 2 of this proceeding.

In prefiled evidence in this case, Enbridge Gas explained the implications of Bill 93 (*Getting Ontario Connected Act, 2022*), the pertinent provisions of which came into force on April 1, 2023. Among other things, Bill 93 included amendments to the *Ontario Underground Infrastructure Notification System Act, 2012* (the Act) requiring underground infrastructure owners like LDCs to complete locate requests within five days, failing which the LDC is subject to administrative monetary penalties (AMPs) under the Act. This absolute time limit and the penalties for failure to perform at that standard without exception are new legislative requirements.

The cost implications of the new requirements from Bill 93 will impact most or all LDCs in Ontario. These costs are new, and are not included in the base rates / revenue requirement for LDCs. On May 11, 2023, Enbridge Gas and a group of other large LDCs³ wrote to the OEB to request that the OEB establish generic, sector-wide variance accounts for LDCs to track the incremental costs of locates in 2023 and future years arising from the implementation Bill 93. The LDCs have requested that all incremental costs resulting from the legislation incurred on or after January 1, 2023 be eligible for the variance account. A copy of the May 11, 2023 letter is attached.

¹ Exhibit 8, Tab 3, Schedule 1, starting at page 13.

² Exhibit 9, Tab 1, Schedule 3, starting at page 8.

³ Enbridge Gas, Alectra Utilities, Elexicon Energy, Hydro One, Hydro Ottawa, Oakville Hydro and Toronto Hydro.

We understand that the OEB will be considering the request set out in the May 11, 2023 letter, and may do so on a generic sector-wide basis. As a result, Enbridge Gas is withdrawing its request for the LDSVA in this 2024 rates proceeding.

Enbridge Gas's plans to introduce new service fees for locates requests have met significant resistance. Enbridge Gas has determined that it will not charge third parties for locates requests at this time. Therefore, Enbridge Gas is also withdrawing its request for approval of a new Locate Delivery Charge in the 2024 rates proceeding.

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.

Please let us know if you have questions about this letter.

Yours truly,

AIRD & BERLIS LLP



David Stevens

DS/

c: All parties registered in EB-2022-0200



May 11, 2023

BY EMAIL

Nancy Marconi
Registrar
Ontario Energy Board
2300 Yonge Street
Suite 2700
Toronto, ON M4P 1E4

Dear Ms. Marconi:

**Re: Bill 93 (Getting Ontario Connected Act, 2022)
Request for Variance Account for Incremental Costs for Locates**

We are a group comprised of many of Ontario's large local distribution companies (LDCs).

We write to request that the Ontario Energy Board (OEB) establish generic, sector-wide variance accounts for LDCs to track the incremental costs of locates in 2023 and future years arising from the implementation of recent Provincial legislation: Bill 93 (*Getting Ontario Connected Act, 2022*). The pertinent provisions of the legislation came into force on April 1, 2023. Some LDCs began incurring significant incremental costs in advance of April 1, 2023 in order to meet the new performance standard. Accordingly, we request that all incremental costs resulting from the legislation incurred on or after January 1, 2023 be eligible for the variance account.

This new legislation impacts all of our organizations, and indeed all LDCs in Ontario. Accordingly, and in the interest of regulatory efficiency, our group is making this request through a single letter rather than a series of very similar, individual requests.

Further details regarding this request are provided below.

Bill 93, *Getting Ontario Connected Act, 2022* received Royal Assent on April 14, 2022. Among other things, Bill 93 included amendments to the *Ontario Underground Infrastructure Notification System Act, 2012* (the Act) that are intended to improve the processes and requirements related to determining the location of underground infrastructure, enabling construction activities in the province to be completed faster and more efficiently, without compromising safety.

The amendments to the Act arising from Bill 93 require LDCs to complete locate requests within five days, failing which the LDC is subject to administrative monetary penalties (AMPs) under the Act. This absolute time limit and the penalties for failure to perform at that standard without exception are new legislative requirements. While our organizations continue to support Ontario's intent to modernize the locate industry and remain committed to helping deliver capital investment in the province, including for priority broadband, transit and housing projects, the new expectations will lead to substantial incremental costs.

As a result of legislative and regulatory changes impacting the Act, infrastructure owners, including our organizations, are now making significant incremental investments to fund operational improvements, including hiring and training more locators with the competitive wages required to attract new workers, 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. While some LDCs have more underground infrastructure than others, the new locates requirements are common to all of us. The costs of these new requirements are not included in our approved rates (or base revenue requirement) because the requirements did not exist and were not contemplated when rates were set on a cost of service basis. The incremental costs are unknown, but are expected to be material (expressed in terms of the OEB's materiality thresholds).

All underground infrastructure owners, including utilities, are required to comply with the Act and its regulations. In order to recover these compliance-related costs, some organizations have proposed to introduce new service fees for certain locate requestors. These plans have been met with significant resistance. Through this letter, our organizations are requesting a variance account, which, subject to the discretion of the OEB, would maintain the status quo of ratepayer cost responsibility for locates costs.

The OEB's Filing Requirements for gas and electricity distributors include similar expectations where a new variance account is requested.¹ Where an applicant seeks an accounting order to establish a new variance account, the request must be accompanied by evidence of how the following eligibility criteria will be met:

- Causation – The forecasted expense must be clearly outside of the base upon which rates were derived.
- Materiality – The forecasted amounts must exceed the OEB-defined materiality threshold and have a significant influence on the operation of the distributor, otherwise they must be expensed in the normal course and addressed through organizational productivity improvements.
- Prudence – The nature of the costs and forecasted quantum must be reasonably incurred although the final determination of prudence will be made at the time of disposition.

Each of these criteria are met here.

- Causation – No LDC's current rates (or the base upon which those rates are set) include the Bill 93 related locates costs. The costs related to locates recovered through each LDC's existing rates reflect the previous, less costly, legal framework.
- Materiality – Preliminary estimates of the variance between the actual costs for locate delivery services, and the amount included in rates will exceed the materiality threshold for the establishment of new deferral and variance accounts.²
- Prudence – The costs to provide legislatively mandated locate services according to a legislated standard are reasonably incurred.

¹ See [Filing Requirements Natural Gas Rate Applications](#), section 2.9.2, page 38; and [Filing Requirements for Electricity Distribution Applications](#), section 2.9.2, page 66.

² For the organizations making this request, the materiality threshold is as follows: 0.5% of revenue requirement for a utility with a revenue requirement greater than \$10 million and less than or equal to \$200 million; and \$1 million for a utility with a revenue requirement of more than \$200 million.



Draft accounting orders for the requested locates delivery services costs variance account for electricity LDCs and for Enbridge Gas can be provided as required. Each LDC will provide detailed support for the account balance as part of their appropriate deferral account disposition proceeding where clearance is requested.

For electricity LDCs, we request that the new variance account be effective starting on January 1, 2023, and continue until electricity LDCs rebase, at which point future incremental locates costs will be incorporated into revenue requirement. We request that LDCs be eligible to seek disposition of the variance account in according with standard OEB rules.

The context for the request by Enbridge Gas is slightly different, because Enbridge Gas has already made a request for a locates charge and a deferral account for 2024 to track the difference between actual costs and the revenue collected through the proposed locate charge within its ongoing 2024 Rates/Rebasing Application (EB-2022-0200).³ As set out in this letter application, Enbridge Gas is now seeking the establishment of a variance account starting January 1, 2023 for incremental locates services costs. Enbridge Gas intends to make a request in its rebasing case, asking that the OEB remove its proposal for a locates charge and the locates deferral account from the current phase 1 of the rebasing proceeding.

Should you have any questions, please contact Mark Kitchen at 416-495-5499 or via email at EGIRegulatoryProceedings@enbridge.com.

Sincerely,

Christine Long
Vice President, Regulatory
Affairs & Privacy Office
ALECTRA

Stephen Vetsis
Vice President
Regulatory Affairs and
Stakeholder Relations
ELEXICON ENERGY

Mark Kitchen
Director,
Regulatory Affairs
ENBRIDGE GAS

Frank D'Andrea
Vice President,
Regulatory Affairs
HYDRO ONE

April Barrie
Director,
Regulatory Affairs
HYDRO OTTAWA

Scott Mudie
EVP, Chief Energy
Transformation Officer
OAKVILLE HYDRO

Andrew Sasso
Director,
Energy Policy & Government
Relations
TORONTO HYDRO

³ The Enbridge Gas request for a Locate Delivery Service Variance Account is set out at Exhibit 9, Tab 1, Schedule 3, page 8 of the EB-2022-0200 filing.