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## **DECISION AND ORDER (PHASE 2)**

**EB-2022-0184**

### **EPCOR NATURAL GAS LIMITED PARTNERSHIP (SOUTH BRUCE)**

**Application for Rates to be Effective January 1, 2023**

**BEFORE: Emad Elsayed**  
Presiding Commissioner

**Allison Duff**  
Commissioner

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**April 6, 2023**

## 1 OVERVIEW

EPCOR Natural Gas Limited Partnership (EPCOR) applied to the Ontario Energy Board (OEB) for changes to its natural gas distribution rates effective January 1, 2023 for its South Bruce service area (Application).

In the Application, EPCOR requested the following approvals:

- I. To adjust distribution rates for South Bruce effective January 1, 2023 in accordance with the OEB-approved settlement agreement (Settlement Decision)<sup>1</sup> in EPCOR South Bruce's 2019-2028 Custom IR proceeding
- II. To dispose of certain deferral and variance account balances
- III. To establish a Customer Volume Variance Account (CVVA)

The OEB bifurcated the proceeding into two phases. The OEB issued a Phase 1 Decision and Order with respect to the proposed price cap adjustment and the request for deferral and variance account disposition on November 3, 2022.<sup>2</sup> This Decision and Order reflects the OEB's findings on EPCOR's request to establish the CVVA (Phase 2).

The OEB approves the establishment of a CVVA, effective January 1, 2023 until December 31, 2028. The approved CVVA is modified compared to the account proposed by EPCOR. Any accumulated balance will be shared on a 50/50 basis between EPCOR's shareholders and its customers. In addition, EPCOR shall only be eligible for the recovery of 50% of the annual balance from its customers in the CVVA until such point that EPCOR's actual earnings reach 300 basis points below its approved ROE. Further, the variance account will apply only to the South Bruce distribution system within the scope of EPCOR's approved 2019-2028 Custom IR framework.<sup>3</sup>

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<sup>1</sup> EB-2018-0264, Decision and Order, October 3, 2019

<sup>2</sup> EB-2022-0184, Decision and Order, November 3, 2022

<sup>3</sup> EB-2018-0264

## 2 THE PROCESS

EPCOR filed the Application on July 18, 2022 under section 36(1) of the *Ontario Energy Board Act, 1998* (OEB Act). On August 5, 2022, the OEB issued a Notice of Hearing. The intervention period ended on August 24, 2022. No persons applied for intervenor status.

Procedural Order No. 1 was issued on August 26, 2022. OEB staff filed written interrogatories on September 7, 2022. EPCOR filed responses to interrogatories on September 19, 2022.

On September 27, 2022, the OEB issued Procedural Order No. 2, which bifurcated the application into two phases: Phase 1 would address the proposed price cap adjustment and request for deferral and variance account disposition and Phase 2 would address the CVVA issue. The OEB also granted intervenor status to all approved intervenors in EPCOR South Bruce's 2019-2028 Custom IR proceeding.<sup>4</sup> The School Energy Coalition (SEC) and Vulnerable Energy Consumers Coalition (VECC) filed letters advising that they intend to participate in Phase 2 of the proceeding. The OEB also provided for interrogatories and a settlement conference. On October 28, 2022, EPCOR filed a letter, supported by intervenors, stating that no settlement was reached.

On November 3, 2022, the OEB issued a Decision and Order with respect to the Phase 1 issues.

On November 7, 2022, the OEB issued Procedural Order No. 3, which provided for additional evidence regarding the CVVA to be filed by EPCOR, interrogatories on the new evidence, a tentative technical conference, argument-in-chief, submissions and reply submission.

OEB staff and intervenors filed written interrogatories, and EPCOR filed interrogatory responses in accordance with Procedural Order No. 3.

On December 8, 2022, the OEB issued Procedural No. 4 cancelling the technical conference due to the lack of sufficient questions to justify a full technical conference.

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<sup>4</sup> EB-2018-0264

Instead, the OEB required EPCOR to respond to follow-up questions from OEB staff and intervenors. EPCOR filed responses to OEB staff and intervenor follow-up questions on December 15, 2022.

On January 9, 2023, EPCOR filed its argument-in-chief. OEB staff and intervenors filed submissions on January 27, 2023. On February 13, 2023, EPCOR filed its reply submission.

### 3 DECISION ON THE ISSUES

#### 3.1 Appropriateness of Establishing the CVVA

EPCOR requested that the CVVA be established to track the variance in revenue resulting from the difference between the average customer volume forecast based on the common assumptions set out in the common infrastructure plan<sup>5</sup> (CIP) and the actual average customer volume from January 1, 2021, until December 31, 2028. EPCOR stated that, for Rate 1 customers, there is a 32% variance between consumption based on the CIP assumptions and actual consumption. EPCOR forecasted that the total balance in the CVVA for the 2021-2028 period to be \$7.85 million. EPCOR stated that the CVVA is designed to record only variances associated with volume variances for Rate 1 and Rate 6 customers actually connected to the South Bruce system and EPCOR retains the risk related to customer attachments, as that was a CIP competitive parameter.

In 2018, the OEB selected EPCOR as the successful proponent for the South Bruce community expansion project. The process was competitive and the selection was made on the basis of a cumulative revenue requirement, forecasted attachments and a total volume throughput for a 10-year rate stability period.<sup>6</sup>

EPCOR stated that the CIP submissions detailed the proponents' revenue requirements to serve specific South Bruce communities and consisted of two general parameters: (i) common assumptions; and (ii) competitive parameters. EPCOR submitted that the average customer consumption volumes for Rate 1 and 6 customers were common assumptions in the CIP for which the risk should be borne by ratepayers.

EPCOR further submitted that if Enbridge Gas had been the successful proponent, consistent with the principle of not taking the risk on common assumptions regarding customer consumption, its existing normalized average consumption (NAC) account would have captured variances in actual consumption volume relative to those approved in rates.

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<sup>5</sup> EB-2016-0137

<sup>6</sup> EB-2018-0264 Custom IR decision, November 28, 2019, page 1.

OEB staff submitted that the OEB should approve the establishment of the CVVA, with certain modifications. OEB staff agreed with EPCOR that the forecast Rate 1 and Rate 6 customer volumes are common assumptions in the CIP. OEB staff also agreed that had Enbridge Gas been the successful proponent its existing NAC account would have likely captured the same type of volume variances that EPCOR intends to record in the CVVA.

The modifications that OEB staff recommended related to the effective date of the CVVA and risk sharing of the CVVA balance, both of which are discussed later in the decision.

SEC submitted that the OEB should deny the request for the proposed establishment of the CVVA. SEC stated that EPCOR's Custom IR framework with a rate stability period (2019-2028) did not include any adjustments for variances in customers' normalized average consumption.

SEC argued that EPCOR's request is unfair as it undermines the integrity of the partial settlement achieved in its Custom IR proceeding and EPCOR's arguments about under-recovery without the CVVA need to be considered in the proper context. SEC lists three points to consider:

1. The statutory requirements of the OEB Act, in setting just and reasonable rates, only require that over the long-run EPCOR is given an opportunity to earn a fair return on its investment.<sup>7</sup>
2. EPCOR did not file any evidence to support its argument that absent the CVVA it will not be able to expand its distribution system.
3. In the approved partial settlement agreement in the Custom IR proceeding, the parties agreed that EPCOR would not be eligible for the generic +/- 300 basis earnings off-ramp. This is an indication, as part of the package settlement, that EPCOR's financial viability would not be at risk if its ROE was below that level, and so did not require the ability to seek extraordinary relief from the OEB in such a circumstance.

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<sup>7</sup> Ontario Energy Board v. Ontario Power Generation Inc., 2015 SCC 44, paras 16-17

VECC also submitted that the OEB should not grant the CVVA. VECC argued that granting the CVVA would violate the terms of the 10-year plan approved by the OEB and effectively change the committed rate from \$0.2209/m<sup>3</sup> to \$0.2960/m<sup>3</sup> in 2022.

VECC claimed that EPCOR did not do its due diligence in realizing this “obvious risk” when it accepted the CIP consumption assumptions. VECC submitted that only a cursory understanding of Ontario’s gas market was needed to understand the challenges of load building in a greenfield environment. VECC referred to initiatives to convert residential customers to natural gas water heater in the early 2000s.

VECC also disagreed with EPCOR’s claim that the proposed CVVA was similar to Union Gas Limited’s (Union Gas) existing NAC account. VECC submitted that Union Gas’s variance account normalizes for weather, not CIP consumption estimates. Further, the financial risk of consumption variances in South Bruce to EPCOR was unique as a small standalone utility compared to the “de minimis effect” for a large utility like Enbridge Gas (formerly Union Gas).

VECC criticized both EPCOR and OEB staff for presuming the idea of normalizing consumption is an aspect of gas utility regulation. According to VECC, there is no evidence in this case that this practice is applied in any jurisdiction other than Ontario.

In its reply submission, EPCOR stated that the proposed CVVA will (a) restore and fully implement the utility-customer risk allocation framework which was previously approved by the OEB during the competitive process; and (b) enable EPCOR to earn a reasonable return on its investment, consistent with its approved revenue requirement and thereby avoid a scenario of chronic under-earning and ultimately a negative cumulative ROE.

As discussed later in the decision, EPCOR also provided detailed argument with respect to the appropriate effective date for the CVVA, risk sharing and the applicability of the CVVA to any community expansions of the South Bruce utility during the rate stability period in its reply submission.

With respect to VECC’s argument that granting the CVVA will change the rate of \$0.2209/m<sup>3</sup> to \$0.2960/m<sup>3</sup> in 2022, EPCOR stated that a change to the committed rate would not change the approved revenue requirement for the ten-year term.

## Findings

The OEB approves the establishment of the CVVA, which is modified relative to the variance account proposed by EPCOR. The OEB finds that the modified CVVA is consistent with its statutory requirements in setting just and reasonable rates to enable EPCOR to earn a fair return on its capital investments. In its first years as a regulated utility, EPCOR has consistently reported negative ROEs. Its most recently reported ROE in 2021 was negative 14.0%.<sup>8</sup> Table 1 provides EPCOR's forecast returns for the remainder of its 10-year term with and without its proposed CVVA.

**Table 1: Forecast Return on Equity<sup>9</sup>**

Return on Equity	2022	2023	2024	2025	2026	2027	2028
<b>No CVVA</b>	-9.1%	-2.4%	1.9%	3.2%	3.5%	3.8%	3.4%
<b>Proposed CVVA (i.e. 100% recovery)</b>	-7.2%	1.1%	6.5%	8.3%	8.8%	9.2%	9.0%

EPCOR's forecast ROEs with no CVVA recovery are substantially below the ROE of 8.78% that underpins EPCOR's rates established in the 2019-2028 Custom IR proceeding.<sup>10</sup> The OEB finds it prudent to establish a modified CVVA to provide EPCOR the opportunity to earn a fair rate of return on its investments. To be clear, there is no guarantee for any utility of earning the OEB's approved ROE.

The OEB is not approving the modified CVVA to change the approved 10-year Custom IR framework. The OEB is not persuaded by EPCOR's characterization of the 10-year rate stability period as a regulatory compact that somehow needs to be fixed after the fact to restore and fully implement a prior OEB decision. The OEB finds merit in VECC's suggestion that EPCOR ought to have considered the potential risk of average use variances relative to the CIP volumes as part of EPCOR's due diligence. The OEB notes that EPCOR did not file a motion to review or an appeal of the Custom IR

<sup>8</sup> EPCOR IRR Phase 2, Dec. 5, 2022, Response to SEC 8

<sup>9</sup> EPCOR IRR Phase 2, Dec. 5, 2022, Response to SEC 8

<sup>10</sup> EB-2018-0264, Exhibit 5, Tab 1, p. 1



decision. As a result, the Custom IR decision and the approved partial settlement agreement stand unaltered.<sup>11</sup>

The OEB regards the forecast ROEs with no CVVA recovery in Table 1 as quantifying the challenge for EPCOR for the duration of its Custom IR term.

The OEB finds that the CVVA, as approved by the OEB, will provide EPCOR with the incentives necessary to improve asset utilization and the resulting ROE forecasts from 2023-2028. The proposed CVVA provided little incentive for EPCOR to manage its risks as customers were expected to bear 100% of the revenue risk of average consumption variances.

The modified CVVA compared to the proposed CVVA is explained in detail in the Effective Date, Applicability of the CVVA and Risk Sharing sections of this decision.

### 3.2 Effective Date

EPCOR amended the originally requested effective date of January 1, 2020 to January 1, 2021, as prior to the revised effective date there was insufficient data to calculate the weather-normalized volumes.<sup>12</sup>

OEB staff, SEC and VECC argued that the approval of an effective date of January 1, 2021 would amount to impermissible retroactive ratemaking.

OEB staff submitted that the CVVA should have an effective date of January 1, 2023, which is the same effective date as the distribution rates requested in the Application. Any effective date prior to this would offend the rule against retroactive ratemaking.

SEC submitted that, should the request for a CVVA be approved, it should have an effective date that is aligned with the OEB's release of its final decision as any earlier date would be impermissible retroactive ratemaking.

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<sup>11</sup> EB-2018-0264

<sup>12</sup> EPCOR Interrogatory response, December 5, 2022, OEB Staff Question 4

SEC stated that there are two general exceptions to the rule against retroactive ratemaking. These exceptions are interim rates or the existence of a deferral (or variance) account. SEC stated that neither exception is applicable here.

SEC referred to Halton Hills Hydro Inc.'s (Halton Hills Hydro) 2018 Incentive Rate-setting application.<sup>13</sup> In this application, Halton Hills Hydro requested approval to establish a new deferral account to record an adjustment to its revenue requirement related to an error that it made in its 2016 rebasing application regarding its depreciation expense, effective beginning in 2016.<sup>14</sup> The OEB denied approval of the proposed effective date, noting that the rule against rate retroactivity is not discretionary other than for a narrow set of exceptions. VECC made similar arguments to OEB staff and SEC.

EPCOR submitted that its proposed effective date of January 1, 2021, for the CVVA is both permissible and appropriate when considering retroactive ratemaking principles.

EPCOR stated that the Alberta Court of Appeal noted that “the reason there is no blanket prohibition against retroactive ratemaking is that there are decades of public utility board and judicial decisions variously applying the rule or declining to apply the rule depending on circumstances.”<sup>15</sup> The Alberta Court of Appeal further stated that “no court or public utilities board will ever be able to define precisely the circumstances in which retroactive ratemaking is permissible. Nor is it desirable that they should do so. And, presumably, it has been deemed even less desirable to enact a blanket prohibition.”<sup>16</sup>

EPCOR submitted that the OEB Act gives the OEB a mandate to “make orders approving or fixing just and reasonable rates”<sup>17</sup> and “adopt any method or technique that it considers appropriate.”<sup>18</sup> EPCOR further submitted that Ontario courts have confirmed that “just and reasonable rates” are rates that permit a utility to recover its prudently incurred costs and earn a fair return on invested capital. The Alberta Court of

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<sup>13</sup> EB-2017-0045

<sup>14</sup> Halton Hills Hydro Inc., EB-2017-0045, Decision and Order, April 26, 2018

<sup>15</sup> Capital Power Corp. v. Alberta Utilities Commission 2018 ABCA 437 at para 64.

<sup>16</sup> Capital Power Corp. v. Alberta Utilities Commission 2018 ABCA 437 at para 64.

<sup>17</sup> Ontario Energy Board Act, SO 1998, c 15, s 36(2).

<sup>18</sup> Ontario Energy Board Act, SO 1998, c 15, s 36(3).

Appeal decision suggests that regulators should consider whether retroactive ratemaking is in the public interest.<sup>19</sup>

EPCOR argued that the unique circumstances associated with the provision of gas distribution services in South Bruce favour an effective date of January 1, 2021. EPCOR stated that facilitating the maintenance of a financially viable gas industry is a statutory objective of the OEB, and the public interest in EPCOR's ability to realize a fair and reasonable return on its investment and continue to provide safe, reliable utility services should outweigh any assumed presumption of prospective rate making. EPCOR submitted that an OEB finding to the contrary would discourage investment in essential utility services being provided to consumers.

In response to OEB staff, SEC and VECC's reference to the two exceptions to the rule against retroactive adjustments to rates (i.e., interim rates and deferral and variance accounts), EPCOR stated that several decisions have been critical of an overreliance on the interim rates and deferral and variance account exceptions. EPCOR noted that the Alberta Court of Appeal in *Atco Gas and Pipelines Ltd. v. Alberta (Utilities Commission)* stated that it is not interim rates that are important per se, but the regulators mandate to ensure rates and tariffs are just and reasonable.<sup>20</sup>

EPCOR also submitted that its request for the establishment of the CVVA is distinguishable from the OEB's decision in Halton Hills Hydro's 2018 Incentive Rate-setting application.<sup>21</sup> EPCOR stated that in the Halton Hills Hydro decision, the utility requested approval to establish a deferral account to annually record an adjustment to its revenue requirement. The annual amount was related to an error the utility identified in the calculation of depreciation expense in its last cost of service application. The deferral account was unanimously opposed by OEB staff, SEC and VECC on the basis of several concerns, including: (a) Halton Hills Hydro's control over its own process and the accuracy of information it files; (b) there was no regulatory basis for the request under the OEB's rate setting policies given its rates were set through a cost of service

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<sup>19</sup> Capital Power Corp. v. Alberta Utilities Commission 2018 ABCA 437 at para 66-67.

<sup>20</sup> Atco Gas and Pipelines Ltd. v. Alberta (Utilities Commission), 2014 ABCA 28, 566 A.R. 323 at para 58.

<sup>21</sup> Halton Hills Hydro Inc., EB-2017-0045, Decision and Order, April 26, 2018

application with annual mechanistic adjustments; and (c) Halton Hills Hydro had not demonstrated that its financial viability was at risk.

EPCOR submitted that, in contrast, (a) the CVVA amounts are not the result of any utility error or mistake on the part of the utility (but rather the variance between assumed average customer volumes established in the OEB's competitive process and actual customer volumes to date); (b) there is a clear regulatory basis for EPCOR's request (i.e., the generic proceeding which determined customer annual average volume would be a non-competitive element); (c) EPCOR has established important and significant financial impairment; and (d) EPCOR is not requesting an increase to its approved revenue requirement.

EPCOR concluded that the OEB has authority to approve an effective date of January 1, 2021 for the CVVA, and that a refusal of the request would result in significant financial impairment and prevent EPCOR from earning a fair return on its invested capital.

## **Findings**

The OEB finds that January 1, 2023 is the appropriate effective date for the CVVA. The January 1, 2023 date is the same effective date for the IRM rate increase approved in Phase 1 of the current proceeding. An earlier date would amount to retroactive ratemaking which cannot be justified given the circumstances specific to this case. Exceptional circumstances under which retroactive ratemaking can be considered (i.e., interim rates or a deferral and variance account) do not apply in this case.

The rule against retroactive ratemaking exists to provide customers with rate certainty and to avoid intergenerational inequity, among other objectives. The rule does not exist to reduce utility risk of financial impairment or to enable higher rates of return on invested capital as implied by EPCOR in its reply submission, and the OEB finds that an effective date prior to January 1, 2023 is not appropriate.

### 3.3 Applicability of the CVVA

EPCOR noted that it was awarded a grant for the Brockton community expansion by the Ontario Government.<sup>22</sup> EPCOR requested that the CVVA be applicable to all Rate 1 and 6 customers who are subject to EPCOR's South Bruce rates. EPCOR stated that it intends to use the South Bruce rate structure for future expansions in order to achieve operational and regulatory efficiencies.<sup>23</sup>

OEB staff, SEC and VECC submitted that the applicability of the CVVA should be limited to the current South Bruce distribution system that underpinned EPCOR's 2019-2028 Custom IR application. OEB staff noted that the rates established for EPCOR's South Bruce distribution system are based on the OEB-approved revenue requirement for only that distribution system.

OEB staff further stated that it is not taking the position that applying the South Bruce rate structure, including the availability of the CVVA to record revenue variances, is necessarily inappropriate. However, OEB staff submitted there is insufficient evidence before the OEB with respect to the appropriateness of applying the South Bruce rate structure to other community expansions, including Brockton.

EPCOR opposed a geographically restricted CVVA. EPCOR submitted that in the context of a typical system expansion, a variance account such as the proposed CVVA applies across the utility. EPCOR also stated that the Ontario government grant for the Brockton community expansion was applied for on the basis of South Bruce rates. EPCOR stated that it was required to use a common assumption for annual customer consumption of 2,200m<sup>3</sup> and without access to the CVVA, this community expansion would become uneconomic.

Finally, EPCOR submitted that the Brockton expansion has a forecasted in-service date of Q3 2024 and all prospective customers for this project would connect to the system well after the establishment of the CVVA. Therefore, EPCOR stated that it should be

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<sup>22</sup> EPCOR Interrogatory response, September 19, 2022, OEB Staff Question 3k

<sup>23</sup> Argument-in-chief, pg. 5.

permitted to recover 100% of amounts recorded in the CVVA for all prospective Brockton customers.

## Findings

The OEB finds that the CVVA is applicable only to the South Bruce distribution system, and not to any future expansion projects. The South Bruce distribution system was the basis for EPCOR's 2019-2028 Custom IR framework and there is insufficient evidence at this time to apply the South Bruce rate structure to other community expansions.

For future community expansions, EPCOR can seek the necessary rate approvals at the time that it seeks leave to construct approval for the community expansion.

### 3.4 Risk Sharing

OEB staff submitted that the OEB should approve recovery of 47% of the eventual balance in the CVVA for the 2023-2028 period and no recovery during the 2021-2022 period. The 47% sharing was calculated using the percentage of mass market customers actually connected at the year-end of 2022 relative to the total number of mass market customers that are expected to be connected to EPCOR's South Bruce system at the end of the 10-year Custom IR term (2028). OEB staff stated that using the year-end 2022 customer count as part of this risk sharing calculation is appropriate as these are the customers that did not have all the information necessary to make a fully informed decision regarding taking natural gas service from EPCOR.<sup>24</sup>

SEC submitted that a potential approach for risk sharing would be to apply the OEB's policy regarding recovery of the impacts arising from COVID-19.<sup>25</sup> Applying this approach, the OEB would require a 50/50 split between customers and the utility, for revenue variances below the dead band amounts (300 basis points). There would be no

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<sup>24</sup> In its reply argument, EPCOR provided updated calculations of OEB staff's risk sharing proposal based on 3,412 Rate 1 and 6 customers actually connected by 2022 and a total of 6,051 customers forecasted to be connected by the end of 2028. This results in a recovery allocation to EPCOR of 41% compared with 47% set out in OEB staff's submission.

<sup>25</sup> Report of the Ontario Energy Board: Regulatory Treatment of Impacts Arising from the COVID-19 Emergency (EB-2020-0133), June 17, 2021, pg.17

recovery of the amounts related to the difference in average use that fall within the dead band, only the amounts that contribute to earnings variance below (or above) 300 basis points.<sup>26</sup>

VECC submitted that a ROE linked sharing mechanism should reflect a floor of 300-500 basis points, meaning EPCOR would not receive any amounts until the ROE has fallen below the floor level. VECC also submitted that 10-20% of EPCOR's recoverable portion of the CVVA should be spent on building load to mitigate the need for the CVVA. VECC also recommended that EPCOR undertake a study to determine the reasons for its low residential volumes and, with its own resources, build load growth in the franchise including facilitating and subsidizing water tanks.

EPCOR submitted that any sharing of the average annual customer volume risk undermines the entire CIP process and the basis upon which EPCOR bid for and undertook the construction of the South Bruce utility. EPCOR stated that it expected that the forecasted average customer volumes established through the CIP were reliable, but the reality was that there was no existing gas utility servicing the South Bruce area and Enbridge Gas's normalized average was deemed an appropriate forecast. Furthermore, there was insufficient data incorporating a 12-month usage cycle to identify the impact of variances between actual and forecasted customer volumes.

EPCOR stated that even if 100% of the balance in the CVVA is approved for recovery, EPCOR would earn an average ROE of 0.9% over the ten-year period, which is only marginally higher than the -2.5% ROE that results if the status quo persists (i.e., no CVVA).<sup>27</sup> EPCOR stated that the recovery of 100% of the balance in the CVVA would still result in EPCOR receiving a near zero rate of return.

EPCOR noted that OEB staff's risk sharing proposal is based on the notion that EPCOR has deprived Rate 1 and 6 customers who connected during the 2019-2022 period of a comprehensive understanding of the changes to the rates that they may experience during the ten-year rate stability period. However, in EPCOR's view OEB staff's rationale regarding customer notice is difficult to reconcile with the reality of customer conversion decision-making. EPCOR stated that OEB staff's risk sharing proposal

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<sup>26</sup> Ibid, pg.15

<sup>27</sup> Reply Argument, February 13, 2023, pg. 12

results in a 59% reduction in revenue risk for any customer who connects to the system, regardless of when they connect during the ten-year term.

EPCOR submitted that SEC and VECC have each proposed risk sharing mechanisms that are impractical or lack a principled basis for approval.

EPCOR objected to the concept of risk sharing in respect of average customer volumes as it contradicts the ten-year regulatory compact it signed on to. EPCOR submitted that approval of a risk sharing approach would amount to a review and variance of a prior OEB decision, resulting in a material change to the general parameters. It would also adversely impact EPCOR's financial position, limit its ability to earn a fair return on its investment, and result in an unfair/inequitable outcome. EPCOR stated that South Bruce ratepayers have benefited from the competitive aspects of the OEB's competitive process, and it is only fair for EPCOR to receive the benefit of common assumptions and obtain a result where ratepayers assume the full responsibility of risk associated with annual average consumption.

While EPCOR fundamentally objected to the concept of risk sharing, EPCOR provided an alternative risk sharing proposal in the event that the OEB decides that risk sharing is necessary. EPCOR submitted that the risk sharing mechanism should adequately reflect: (a) recognition that the utility is not at fault for the variances between forecasted and actual average customer volumes; and (b) a fairer compromise that more reasonably reflects the OEB's prior decision on risk allocation for average customer volume.

EPCOR submitted that the starting point for determining the proportion of the risk borne by EPCOR should be to identify the number of customers consuming gas by the end of August 2022, which is the month after the OEB hearing notification was sent out regarding the Application. The apportionment of risk as between EPCOR and those customers who connected to South Bruce from 2019 (when customers first connected to EPCOR's South Bruce distribution system) to August 31, 2022 would be shared on a 50/50 split for the duration of the rate term (i.e. until December 31, 2028), consistent with the OEB policy that is used to share the impacts of changes in tax legislation in



between filing periods.<sup>28</sup> EPCOR stated that risk sharing would not apply to customers who connected after September 1, 2022. Customers who connect from September 1, 2022-December 31, 2028 would accept 100% of the risk associated with average customer volumes for the remainder of the rate term.

EPCOR stated that under its alternative model, EPCOR would recover 79% of amounts recordable in the CVVA throughout the rate stability period, resulting in an average ROE of 0.2% as opposed to 0.9% if the CVVA is 100% recoverable.

## Findings

The OEB finds that a 50/50 sharing mechanism should be applied to the CVVA. The OEB also finds that EPCOR shall only be eligible for the recovery of the annual balance in the CVVA until such point that EPCOR's actual earnings reach 300 basis points below the ROE that underpinned EPCOR's rates established in the 2019-2028 Custom IR proceeding (i.e.  $5.78\% = 8.78\%^{29} - 3.00\%$ ).<sup>30</sup> The balance in the CVVA will be assessed annually as the balance will not be assessed on a cumulative basis. The OEB approves these modifications to the proposed CVVA to incent EPCOR to act to improve capital asset utilization and EPCOR's resulting ROE forecasts from 2023 to 2028.

The OEB finds that 50/50 sharing is appropriate as it balances the risk of consumption variances equally between shareholders and customers as neither should be entirely responsible. The OEB finds that CIP volume risk was not a live issue in the Custom IR proceeding and was not directly addressed in the Custom IR decision.

The OEB does not accept EPCOR's proposal that customers bear 100% of the cost of the CVVA balance as the utility was "not at fault" for the unanticipated variance. If the

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<sup>28</sup> EPCOR noted that, although the present circumstances are not the outcome of a change in legislation, this 50/50 split approach accounts for an unanticipated variance for which no party is at fault and therefore splits the impacts evenly as between the utility and ratepayer.

<sup>29</sup> EB-2018-0264, Exhibit 5, Tab 1, p. 1

<sup>30</sup> The OEB invites EPCOR, in the draft accounting order process as established later in this decision, to advise whether it believes that the 8.78% ROE figure is the appropriate figure to include in the CVVA accounting order as the starting point for determining the ROE percentage that is 300 basis points below the ROE underpinning rates. As an illustrative example, using the ROE of 5.78%, which is 300 basis points below the 8.78% ROE figure, if the recovery of 50% of the CVVA balance results in a recalculated achieved ROE of 6.00% in any given year, the revenues in the CVVA associated with the 0.22% above the 5.78% ROE would not be recoverable.

OEB were to accept that premise, are customers at fault? The OEB finds that a 50/50 split is appropriate to share the net impact evenly between the shareholder and customer in a case where no party bears all of the fault. While OEB staff suggested a 47/53 sharing based on current and projected customer numbers, the OEB is not convinced that forecast customer numbers is the appropriate basis for sharing revenue variances due to average consumption volumes.

The OEB finds that limiting recovery of CVVA balances to the point that EPCOR's actual earnings reach 300 basis points below the ROE that underpinned EPCOR's rates established in the 2019-2028 Custom IR proceeding is also appropriate. The OEB notes that 300 basis points is used as a means test in the OEB's policy regarding the recovery of the impacts arising from COVID-19.<sup>31</sup> A 300 basis point dead band is also applied as a means test as part of the OEB's ICM/ACM policy<sup>32</sup> and as a criterion for considering the appropriateness of applying IRM increases.<sup>33</sup> The OEB finds that 300 basis points below the approved ROE is a reasonable threshold to limit recovery of balances in the modified CVVA, which should provide EPCOR the opportunity to earn a fair rate of return.

### 3.5 Bill Impacts

OEB staff submitted that a rate smoothing proposal, as necessary, should be filed in the relevant application if the total annual bill impact, including the recovery of CVVA balances, is greater than 10%. OEB staff noted that the disposition of the balance in the CVVA will likely have material impacts on Rate 1 customers.<sup>34</sup>

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<sup>31</sup> Report of the Ontario Energy Board: Regulatory Treatment of Impacts Arising from the COVID-19 Emergency (EB-2020-0133), June 17, 2021, pg.15. Note that the above-noted means test of less than 300 basis points applies to all costs recorded in the COVID-19 Account, other than the costs necessary to comply with government or OEB-initiated programs recorded in the Exceptional Pool.

<sup>32</sup> EB-2014-0219, Report of the Board - New Policy Options for the Funding of Capital Investments: The Advanced Capital Module, issued September 18, 2014

<sup>33</sup> Filing Requirements for Electricity Distribution Rate Applications – Chapter 3, May 24, 2022, p. 23.

<sup>34</sup> OEB staff submission (Phase 2), January 26, 2023, Pg. 10-11

EPCOR supported OEB staff's request that it file a rate smoothing proposal where the total annual bill impacts are greater than 10%.

## Findings

As discussed in more detail later in the decision, the OEB finds that EPCOR shall file a rate class allocation and disposition proposal for the CVVA in its first application seeking disposition of CVVA balances. As part of that proposal, if the total annual bill impact for any rate class, inclusive of the recovery of the CVVA balance, is greater than 10%, EPCOR shall include a rate smoothing proposal.

### 3.6 Customer Communication

OEB staff submitted that future customers should have comprehensive cost information (including the impact of the CVVA) when deciding whether to connect to EPCOR's South Bruce distribution system. EPCOR is expecting approximately 2,700 additional customers to connect to the South Bruce distribution system in the 2023-2025 period and they should be aware of the total cost impact.

SEC stated that, if the CVVA is approved, existing and potential new customers should be made aware of the implication on their costs during the remainder of the rate stability period. Since the impact is through a deferral account disposition as opposed to being included in base rates, those customers cannot accurately take the impact into account when making real-time consumption decisions. SEC requested the OEB require EPCOR to:

1. Notify any existing customers and any potential customers with updated information, and revised bill forecasts, including express notice that past impact information is no longer valid or reliable; and
2. Update all marketing material and other information to explicitly include the impacts of forecast CVVA disposition.

EPCOR agreed with OEB staff that future customers should be provided with the necessary cost information, including impacts of the CVVA.

## Findings

EPCOR did not seek approval of the CVVA as part of the 2019-2028 Custom IR proceeding, and therefore its Rate 1 and Rate 6 customers that connected during the 2019-2022 period were not aware of the changes to their rates that may result from disposition of the CVVA.

Similarly, potential customers may rely upon existing rate schedules and bill impact information that do not include the impacts of the approved CVVA.

The OEB directs EPCOR to communicate to existing and potential customers in its South Bruce service area a forecast of bill impacts and delivery costs inclusive of the impact of the CVVA during the remainder of the rate stability period.

### **3.7 Methodology for Calculating the Balance in the CVVA and the Draft Accounting Order**

EPCOR provided additional evidence on November 14, 2022, that set out the methodology that it proposed to apply to calculate the balance in the CVVA.

EPCOR stated that deriving the appropriate volume involves calculating the actual monthly consumption per customer, adjusting it to remove the impact of the Energy Content Variance Account (ECVA), and applying the weather normalization methodology to determine the monthly NAC. The monthly NAC, and approved rate schedules (including volumetric charges, monthly fixed charges and the delay in revenue rate rider) are then used to generate an average customer's monthly revenue. The average customer's monthly revenue is multiplied by the number of actual billable customers in that rate class to calculate the total monthly NAC revenue of that rate class. The total CIP revenue for each month is calculated using the assumed monthly CIP consumption with the approved rate schedule multiplied by the actual billable customers in that rate class. The difference between the total monthly NAC revenue and the total monthly CIP revenue for the corresponding months is calculated and recorded in the CVVA each month.

OEB staff stated that it has no concerns with EPCOR's proposed CVVA calculation methodology. OEB staff noted that the calculation process ensures there is no double counting of the ECVA, by removing the impact of the energy content, and properly incorporates the proposed weather normalization methodology. OEB staff submitted that the CVVA balance recoverable from ratepayers would be lower if a rate sharing mechanism is applied.

VECC noted that EPCOR's proposal is to calculate and dispose of the CVVA balances on a rate class basis (i.e., separate calculations for Rate 1 and Rate 6 classes). VECC stated that accepting EPCOR's proposal would lead to the outcome of having Rate 1 customers pay for both their failure to meet some expected load and provide a benefit to Rate 6 customers because that class exceeded it.

VECC submitted that the balance in the account should be calculated on an all class net basis and that the net balance should be allocated to both of the rate classes (Rate 1 and Rate 6). In this way, any benefits derived from better than expected performance from Rate 6 can be used to mitigate the harm to Rate 1 customers.

SEC submitted that, if the OEB approves the CVVA, it does not oppose the calculation and disposition methodology for the CVVA as detailed in EPCOR's November 14, 2022 additional evidence subject to its submissions on the effective date, risk sharing and applicability of the account. SEC disagreed with VECC's rate class allocation proposal and stated that EPCOR's proposed approach is the more appropriate methodology. SEC submitted that if the intent of the CVVA is to capture and dispose of the variance in weather-normalized average customer use compared to what was included the CIP then the disposition methodology should reflect "what would have happened if the actual weather normalized average consumption" was the basis for rate-setting in the first place.

In its reply submission, EPCOR submitted that the proposed CVVA should be approved, including the proposed allocation and disposition methodologies.

OEB staff submitted that the draft accounting order will need to be updated based on the OEB's findings. OEB staff stated that the OEB should establish a process to address the finalization of the accounting order in its Decision and Order. This process should include the filing of an updated draft accounting order based on the OEB's

findings, an opportunity for comment by OEB staff and intervenors, and reply comments from EPCOR.

## Findings

The OEB finds that EPCOR's methodology for calculating the balance in the CVVA is generally appropriate. The OEB approves the proposed methodology for calculating revenue variances to be recorded in the CVVA. As a result, the CVVA will start to track the revenue impact of average volume variances for Rate 1 and Rate 6 customers compared to the CIP assumptions, excluding the energy content variance, effective January 1, 2023.

The modified CVVA will include carrying charges that are calculated using the OEB's prescribed interest rate methodology for deferral and variance accounts. Both the CVVA balance and the associated carrying charges will be subject to 50/50 sharing between EPCOR's shareholders and customers.

The OEB acknowledges the concerns raised regarding the proposed rate class allocation and disposition methodologies for the recovery of the annual CVVA balances and the relative billing impact between Rate 1 and 6 customers. The OEB finds that EPCOR's proposed rate class allocation and disposition proposal requires further consideration. Allocation and disposition options among rate classes of an approved CVVA balance should be considered by a future panel based on actual data when EPCOR applies for CVVA disposition.

With the approved establishment of the CVVA as modified by the OEB, EPCOR's proposed CVVA draft accounting order is required to be updated. The updated draft accounting order shall reflect the findings in this Decision and Order. In addition, the OEB invites EPCOR to advise whether it believes that the 8.78% ROE figure is the appropriate figure to use as the starting point for determining the ROE percentage that is 300 basis points below the ROE underpinning rates. The OEB directs EPCOR to file an updated draft accounting order for review by the OEB.

## 4 ORDER

### THE ONTARIO ENERGY BOARD ORDERS THAT:

1. EPCOR Natural Gas Limited Partnership shall file with the OEB and forward to OEB staff and intervenors a draft accounting order in accordance with the findings in this decision for the establishment of the Customer Volume Variance Account by **April 20, 2023**.
2. OEB staff and intervenors may file any comments on the draft accounting order with the OEB and forward to EPCOR Natural Gas Limited Partnership by **April 27, 2023**.
3. EPCOR Natural Gas Limited Partnership shall file with the OEB and forward to intervenors responses to any comments on its draft accounting order by **May 4, 2023**.

Parties are responsible for ensuring that any documents they file with the OEB, such as applicant and intervenor evidence, interrogatories and responses to interrogatories or any other type of document, **do not include personal information** (as that phrase is defined in the *Freedom of Information and Protection of Privacy Act*), unless filed in accordance with rule 9A of the OEB's [Rules of Practice and Procedure](#).

Please quote file number, EB-2022-0184 for all materials filed and submit them in searchable/unrestricted PDF format with a digital signature through the [OEB's online filing portal](#).

- Filings should clearly state the sender's name, postal address, telephone number and e-mail address.
- Please use the document naming conventions and document submission standards outlined in the [Regulatory Electronic Submission System \(RESS\) Document Guidelines](#) found at the [File documents online page](#) on the OEB's website.

- Parties are encouraged to use RESS. Those who have not yet [set up an account](#), or require assistance using the online filing portal can contact [registrar@oeb.ca](mailto:registrar@oeb.ca) for assistance.
- Cost claims are filed through the OEB's online filing portal. Please visit the [File documents online page](#) of the OEB's website for more information. All participants shall download a copy of their submitted cost claim and serve it on all required parties as per the [Practice Direction on Cost Awards](#).

All communications should be directed to the attention of the Registrar and be received by end of business, 4:45 p.m., on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Arturo Lau [Arturo.Lau@oeb.ca](mailto:Arturo.Lau@oeb.ca) and OEB Counsel Michael Millar at [Michael.Millar@oeb.ca](mailto:Michael.Millar@oeb.ca).

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**DATED** at Toronto April 6, 2023

**ONTARIO ENERGY BOARD**

Nancy Marconi  
Registrar