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BY EMAIL

December 10, 2021

Ms. Christine E. Long  
Registrar  
Ontario Energy Board  
2300 Yonge Street, 27<sup>th</sup> Floor  
Toronto, ON M4P 1E4  
[Registrar@oeb.ca](mailto:Registrar@oeb.ca)

Dear Ms. Long:

**Re: Ontario Energy Board (OEB) Staff Submission  
EPCOR Natural Gas Limited Partnership  
South Bruce 2022 Rate Application Phase 2  
OEB File Number: EB-2021-0216**

Please find attached OEB staff's submission on the Municipal Tax Variance Account (MTVA) in the above referenced proceeding, pursuant to Procedural Order No. 3.

EPCOR Natural Gas Limited Partnership is reminded that its reply argument on the MTVA issue is due by December 17, 2021.

Yours truly,

*Original Signed By*

Arturo Lau  
Advisor, Natural Gas

Encl.

cc: All parties in EB-2021-0216



# **ONTARIO ENERGY BOARD**

## **OEB Staff Submission**

**EPCOR Natural Gas Limited Partnership**

**South Bruce 2022 Rate Application Phase 2**

**EB-2021-0216**

**December 10, 2021**

## Application Summary and Process

On September 27, 2021, EPCOR Natural Gas Limited Partnership (EPCOR) applied to the Ontario Energy Board (OEB) under section 36(1) of the *Ontario Energy Board Act, 1998* for changes to its natural gas distribution rates in South Bruce to be effective January 1, 2022 (Application).

Procedural Order No. 1 was issued on November 3, 2021 which provided for interrogatories, submissions and a reply submission. OEB staff filed a submission on November 19, 2021. EPCOR filed a partial reply submission on November 29, 2021. In a letter dated November 29, 2021, EPCOR requested an extension to the date for the filing of its reply submission on the Municipal Tax Variance Account (MTVA) from November 29, 2021 to December 1, 2021. In Procedural Order No. 2, issued November 30, 2021, the OEB granted EPCOR's request for an extension to file a complete reply submission by December 1, 2021.

On December 1, 2021, EPCOR filed a complete reply submission, in which it proposed new language for the MTVA accounting order to address concerns raised by OEB staff in its submission. On December 3, 2021, Procedural Order No. 3 was issued which bifurcated the Application into two phases. Phase 1 includes all of the issues of the Application with the exception of the MTVA issue and Phase 2 includes the MTVA issue. On December 7, 2021, EPCOR further updated its reply submission.

## Background

The establishment of the MTVA was approved by the OEB in EPCOR's custom incentive rate-setting (Custom IR) application for 2019 to 2028 rates. However, EPCOR requested modifications to the MTVA in the current proceeding. These modifications are discussed in more detail below, including OEB staff's previously filed submission and EPCOR reply submissions on this matter.

### *Approved MTVA Accounting Order – January 9, 2020*

The approved MTVA Accounting Order in the Custom IR application described the purpose of the account as follows:

The Municipal Tax Variance Account ("MTVA") is to record the difference between the actual annual municipal taxes paid, net of municipal contributions related to municipal taxes, and the net municipal taxes included in the annual revenue requirement for EPCOR's South Bruce operations as approved in EB-2018-0264 for each year of the rate stability period. The effective date of this account is January 1, 2019.<sup>1</sup>

### *EPCOR Request to Modify the MTVA Accounting Order – September 27, 2021*

In the pre-filed evidence in the current proceeding, EPCOR requested approval to revise the approved Accounting Order as follows:

The purpose of the MTVA is to record any impacts to ENGLP resulting from changes in municipal tax rates or levies, or the introduction of any new municipal tax or levies that occur during the period covered by this application.<sup>2</sup>

In response to OEB staff interrogatories, EPCOR stated that due to variances between actual and Common Infrastructure Plan (CIP) forecasted connections and capital infrastructure installation, the current design of the MTVA creates a variance payable to existing customers. EPCOR indicated that in addition to assuming the risk of customer connection (overall project risk), there would be a secondary impact through the MTVA as a result.<sup>3</sup>

### *OEB Staff Submission Regarding the MTVA – November 19, 2021*

In its submission, OEB staff noted that in the Decision and Order on the Unsettled Issues issued on November 28, 2019, the OEB approved the establishment of the

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<sup>1</sup> EB-2018-0264, Rate Order, January 9, 2020, Schedule B, pg. 16

<sup>2</sup> EPCOR Application, pg. 21

<sup>3</sup> EPCOR Response to OEB Staff IRs, November 12, 2021, OEB Staff-6, pg. 9-10

MTVA as follows:

The OEB approves the establishment of the MTVA. Given that EPCOR Southern Bruce is a greenfield utility, the actual municipal tax assessment is still unknown. The costs can therefore be higher or lower than forecast. On this basis, the OEB agrees it is appropriate to record the difference between the forecast and the actual costs in a variance account for future disposition.<sup>4</sup>

In its November 19 submission, OEB staff was of “the opinion that the intent of the MTVA as approved by the OEB was to ensure that the utility is kept whole and is not liable for municipal taxes that were not known at that time. At the same time, the MTVA ensures that ratepayers are responsible for the actual municipal taxes.” OEB staff further submitted that EPCOR’s proposed revised wording, aims to reduce the scope of the MTVA and that symmetrical treatment of the account is appropriate. Ratepayers should receive the appropriate benefit for any excess tax amounts that are currently recovered through rates.

*EPCOR Reply Submissions Regarding the MTVA – December 1, 2021 and December 7, 2021*

In its reply submissions filed on December 1, 2021 and December 7, 2021, EPCOR requested approval to further revise the Accounting Order that was approved as part of its Custom IR application, as follows:

The Municipal Tax Variance Account (“MTVA”) is to record the difference between the actual annual municipal taxes paid, net of municipal contributions related to municipal taxes, and the net municipal taxes billed to customers by ENGLP. The effective date of this account is January 1, 2019.

Net municipal taxes billed to customers by ENGLP is calculated by multiplying the annual distribution revenues billed to customers and accrued for the year by the proportion of annual municipal taxes included in the annual revenue requirement for EPCOR’s Southern Bruce operations as approved in EB-2018-0264 for each year of the rate stability period.<sup>5</sup>

In its reply submission, EPCOR agreed with OEB staff that the objective of the MTVA as approved is intended to keep all parties, the ratepayers and utility, whole.<sup>6</sup> However, EPCOR noted that this outcome will not be achieved by calculating the variance using the exact wording in the approved Accounting Order. EPCOR stated that should the language of the approved Accounting Order remain, EPCOR will be required to return to ratepayers revenue that it never received, which was never the intended result when the

<sup>4</sup> EB-2018-0264, Decision and Order, November 28, 2019, pg. 19-20

<sup>5</sup> Reply Submission, December 1, 2021, page 9; Reply Submission, December 7, 2021, page 2.

<sup>6</sup> Reply Submission, December 1, 2021, page 2

MTVA was approved.

EPCOR further noted that Southern Bruce is a greenfield utility that has not achieved full build out and has experienced delayed placement of the assessment base along with delayed connections resulting in the utility not yet recovering the full approved revenue requirement.<sup>7</sup> EPCOR stated that its distribution assets have not maintained the same installation schedule (and tax assessment) as projected in the CIP.<sup>8</sup> EPCOR also noted that there is a permanent shortfall in the billing of the revenue requirement, of which the taxes were a part of.<sup>9</sup> Although EPCOR is not paying the forecast amount of taxes, it is also not collecting revenue from customers associated with the forecast amount of taxes.

EPCOR stated that the utility is taking on a risk that was not contemplated in the CIP process, through requiring the utility to pay to ratepayers the variance between the municipal taxes calculated based on full assessment base and the actual taxes paid.<sup>10</sup> In EPCOR's view, this does not align with the objective of keeping the utility and rate payers whole.

In the revised MTVA Accounting Order submitted on December 7, 2021, EPCOR proposed, for each year of its CIP, to calculate the ratio of its municipal taxes in the CIP revenue requirement to the total CIP revenue requirement. EPCOR then proposed to apply this ratio to actual distribution revenue billed to customers and accrued for the year to calculate the estimated portion of net municipal taxes that was billed to its ratepayers (Estimated Billed Municipal Taxes). EPCOR further suggested that the MTVA record the difference between the Estimated Billed Municipal Taxes and the actual municipal taxes paid.

EPCOR also requested that the disposition of the December 31, 2021 MTVA balance be postponed until its next application for 2023 rates.<sup>11</sup>

## **OEB Staff Submission**

OEB staff submits that EPCOR's revised MTVA Accounting Order, filed on December 7, 2021, is consistent with the intent of the OEB's findings when the OEB established the MTVA and that the proposed Accounting Order should be approved.

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<sup>7</sup> Reply Submission, December 1, 2021, page 3

<sup>8</sup> Reply Submission, December 1, 2021, page 4

<sup>9</sup> Reply Submission, December 1, 2021, page 5

<sup>10</sup> Reply Submission, December 1, 2021, page 3

<sup>11</sup> Reply Submission, December 1, 2021, page 3 & 7

OEB staff has reviewed the proposed Accounting Order filed December 7, 2021. OEB staff compared the total CIP revenue requirement and CIP municipal taxes in the CIP revenue requirement included in this Accounting Order to EPCOR's evidence in its Custom IR application.<sup>12</sup> OEB staff submits that the numbers provided by EPCOR in its proposed Accounting Order, to calculate the ratio used to determine the Estimated Billed Municipal Taxes, are consistent with what was filed in EPCOR's Custom IR application.

OEB staff notes that normally utilities (e.g., electricity distributors) bear the risk of any load forecast deviations or any differences between actual and forecast costs, throughout the term of their rate plans, unless a mechanism is in place to "true-up" some of these variances. However, OEB staff submits that an exception to this general principle is appropriate in this case because EPCOR is a greenfield utility. OEB staff submits that it would be unduly punitive to require that EPCOR pays to ratepayers the variance between the municipal taxes calculated based on a full assessment base and the actual municipal taxes paid. OEB staff acknowledges that the utility has experienced delayed placement of its assessment base, along with delayed connections, resulting in the utility not yet recovering the full approved revenue requirement. OEB staff agrees with EPCOR's proposed methodology that reflects adjustments to account for the amount of municipal taxes collected from ratepayers. The new proposed wording in the Accounting Order will ensure that both the utility and the ratepayer are kept whole, which in OEB staff's view is in keeping with the intent of the original CIP decision.

OEB staff is of the view that EPCOR's methodology set out in its proposed Accounting Order should not be applied to most other utilities, especially those that have a stable rate base and number of customer connections, such that the OEB approved revenue requirement and its components may more closely align with the "actual" revenue requirement (i.e., billed distribution revenue). In other words, EPCOR's methodology should not be viewed as a precedent to apply to the cases of most other utilities that the OEB regulates.

In its proposed MTVA Accounting Order, EPCOR included the effective date of January 1, 2019. OEB staff is of the opinion that the proposed revision to the MTVA is intended to reflect the previous findings of the OEB and clarify the MTVA Accounting Order to ensure that it is consistent with the intent of the approved Custom IR application. OEB staff therefore submits that the effective date of January 1, 2019 is appropriate.

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<sup>12</sup> For CIP Revenue Requirement: EB-2018-0264, Updated: 2019/04/11, Exhibit 8, Tab 1, Sch 4, Ten Year Revenue Forecast, Row 1. For CIP Municipal Taxes: EB-2018-0264, Filed: 2019/07/05 EPCOR response to OEB Staff.36, Table 9

OEB staff also agrees with EPCOR that the disposition of the December 31, 2021 MTVA balance should be postponed until EPCOR's next application for 2023 rates.

~All of which is respectfully submitted~