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DECISION AND ORDER (PHASE 1 AND PHASE 2)

EB-2021-0216

EPCOR NATURAL GAS LIMITED PARTNERSHIP (SOUTH BRUCE)

Application for Rates to be Effective January 1, 2022

BEFORE: Emad Elsayed
Presiding Commissioner

David Sword
Commissioner

February 17, 2022

1 OVERVIEW

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 to be effective January 1, 2022 (Application).

On December 3, 2021, the OEB bifurcated the Application into two phases. Phase 1 included all of the issues of the Application with the exception of the Municipal Tax Variance Account (MTVA) issue. Phase 2 included the MTVA issue.

This Decision and Order (Decision) sets out the OEB's findings on the Other Revenues Deferral Account (ORDA) accounting order which arose from the OEB's decision on Phase 1 (Phase 1 Decision), and the MTVA accounting order which was the subject of Phase 2 of this proceeding.

2 CONTEXT AND PROCESS

EPCOR filed the Application on September 27, 2021 under section 36(1) of the *Ontario Energy Board Act, 1998*. On October 12, 2021, the OEB issued a Notice of Hearing. The intervention period ended on November 2, 2021. No persons applied for intervenor status.

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 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. EPCOR recognized that OEB staff would want time to review this proposed language, and therefore suggested that this issue be separated from the rest of the proceeding, and that the OEB make provision for additional procedural steps, as required, on the MTVA issue. On December 7, 2021, EPCOR further updated its reply submission related to the MTVA issue.

On December 3, 2021, Procedural Order No. 3 was issued which bifurcated the Application into two phases. Phase 1 included all of the issues of the Application with the exception of the MTVA issue. Phase 2 included the MTVA issue. The OEB also provided for an additional OEB staff submission and EPCOR reply submission to be filed by December 10, 2021 and December 17, 2021, respectively.

Phase 1

The Phase 1 Decision was issued on December 9, 2021. Amongst other items, the Phase 1 Decision provided for the filing of a draft accounting order for the ORDA, an OEB staff submission, and a reply submission. The OEB ordered EPCOR to prepare and file a draft accounting order for the ORDA by January 12, 2022. EPCOR filed the draft accounting order for the ORDA on January 13, 2022. On January 19, 2022, OEB staff filed its submission and EPCOR filed its reply submission.

Phase 2

EPCOR requested modifications to the MTVA Accounting Order previously approved by the OEB in another proceeding. The OEB provided for additional procedural steps on the MTVA issue in Procedural Order No. 3. As per Procedural Order No. 3, OEB staff filed its submission on the MTVA issue on December 10, 2021, and EPCOR filed its reply submission on December 13, 2021.

This Decision sets out the OEB's findings on the ORDA accounting order which arose from the OEB's Phase 1 Decision, and the MTVA accounting order which was the subject of Phase 2 of this proceeding.

3 DECISION

3.1 Accounting Order – Other Revenues Deferral Account (Phase 1)

Other revenues relate to revenues from other activities or work performed, such as bill reprint and returned cheque/payments charges.¹

In the decision and order on the unsettled issues with respect to EPCOR's custom incentive rate-setting (Custom IR) application, the OEB set other revenues at zero for ratemaking purposes for the years 2019 to 2021.² The OEB stated that the determination as to whether a deferral account to capture other revenues should be established starting in 2022 should take place in the 2022 rates proceeding (i.e., the current proceeding).

In the Phase 1 Decision, the OEB approved the establishment of the ORDA.³ The OEB also deferred consideration of disposition of the balance in the ORDA to EPCOR's application for 2023 rates. The OEB directed EPCOR to file a draft accounting order regarding the ORDA, for the OEB's approval, and provided for an OEB staff submission, as well as a reply submission from EPCOR, on this matter.

On January 13, 2022, EPCOR filed its draft accounting order for the ORDA.

On January 19, 2022, OEB staff proposed modifications to clarify the intended use of the account.⁴ OEB staff also requested confirmation that EPCOR will seek to incorporate other revenues into base rates upon its first rate filing after the 10-year rate stability period.

On January 19, 2022, EPCOR filed its reply submission. EPCOR did not object to OEB staff's proposed modifications to the ORDA draft accounting order. EPCOR also confirmed that it will seek to incorporate other revenues into base rates after its 10-year rate stability period. EPCOR included a revised accounting order for the ORDA which addressed OEB staff's proposed modifications.

¹ EB-2018-0264, Decision and Order, November 28, 2019, pg. 9

² Ibid.

³ Phase 1 Decision, December 9, 2021, pg. 4

⁴ OEB Staff Submission, January 19, 2022, pg. 2 & 3

Findings

The ORDA is to record specific customer service charge revenue amounts billed to customers, such as late penalty payments and interest. In the decision and order on the unsettled issues with respect to EPCOR's Custom IR, the OEB set other revenues at zero for ratemaking purposes from the years 2019 to 2021.

The OEB finds the ORDA as structured is in keeping with the Phase 1 Decision. The OEB approves the ORDA as filed.

The effective date of this account is January 1, 2022 and is to remain in place for the full balance of EPCOR's 10-year rate period, currently scheduled to January 1, 2029, and as per the terms in the attached accounting order, Schedule A.

3.2 Accounting Order – Municipal Tax Variance Account (Phase 2)

The establishment of the MTVA was approved by the OEB in EPCOR's Custom IR application for 2019 to 2028 rates. However, in this Application, EPCOR requested modifications to the MTVA. These modifications are discussed in more detail below.

Approved MTVA Accounting Order

The MTVA Accounting Order, approved by the OEB on January 9, 2020, as part of EPCOR's 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, 2019.⁵

EPCOR's Request to Modify the MTVA Accounting Order

As part of the Application filed on September 27, 2021, EPCOR requested modifications to the MTVA Accounting Order. EPCOR proposed that the MTVA record any impacts

⁵ EB-2018-0264, Rate Order, January 9, 2020, Schedule B, pg. 16

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 the Application.⁶

OEB Staff Submission Regarding the MTVA

In its submission filed on November 19, 2021, OEB staff stated its view 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.⁷ OEB staff further submitted that EPCOR's proposed revised wording, had the effect of reducing the scope of the MTVA.

EPCOR Reply Submissions Regarding the MTVA

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.⁸

EPCOR agreed with OEB staff that the objective of the MTVA as approved is intended to keep both the ratepayers and the utility whole.⁹ 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

⁶ Application, September 27, 2021, pg. 21

⁷ OEB Staff Submission, November 19, 2021, page 10

⁸ Reply Submission, December 1, 2021, page 9; Reply Submission, December 7, 2021, page 2.

⁹ Reply Submission, December 1, 2021, page 2

Accounting Order remain, EPCOR will be required to return to ratepayers revenue that it never received, which was never the intended result when the MTVA was approved.

EPCOR further noted that Southern Bruce is a greenfield utility that has not achieved full build out and had experienced delayed placement of the assessment base along with delayed connections resulting in the utility not yet recovering the full approved revenue requirement.¹⁰ EPCOR stated that its distribution assets have not maintained the same installation schedule (and tax assessment) as projected in the Common Infrastructure Plan (CIP).¹¹ EPCOR also noted that there is a permanent shortfall in the billing of the revenue requirement, of which the taxes were a part.¹² 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.¹³ In EPCOR's view, this does not align with the objective of keeping the utility and ratepayers whole.

In the revised MTVA Accounting Order submitted on December 7, 2021, EPCOR provided an updated example which sets out the proposed calculation of the amounts to be recorded in the MTVA.¹⁴

EPCOR also requested that the disposition of the December 31, 2021 MTVA balance be postponed until its next application for 2023 rates.¹⁵

OEB Staff Additional Submission Regarding the MTVA and EPCOR Reply

On December 10, 2021, OEB staff submitted that EPCOR's revised MTVA Accounting Order, filed on December 7, 2021, is consistent with the intent of the OEB's findings

¹⁰ Reply Submission, December 1, 2021, page 3

¹¹ Reply Submission, December 1, 2021, page 4

¹² Reply Submission, December 1, 2021, page 5

¹³ Reply Submission, December 1, 2021, page 3

¹⁴ Reply Submission, December 7, 2021, page 2

¹⁵ Reply Submission, December 1, 2021, page 3 & 7

when the OEB established the MTVA and that the proposed Accounting Order should be approved.¹⁶

OEB staff submitted that it would be unduly punitive to require EPCOR to pay ratepayers the variance between the municipal taxes calculated based on a full assessment base and the actual municipal taxes paid.¹⁷ OEB staff acknowledged 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 agreed with EPCOR's proposed methodology that reflects adjustments to account for the amount of municipal taxes collected from ratepayers.

However, OEB staff further noted that EPCOR's proposed methodology should not be viewed as a precedent to apply to the cases of most other utilities that the OEB regulates.¹⁸ OEB staff also submitted that the disposition of the December 31, 2021 MTVA balance should be postponed until EPCOR's 2023 rate application.

EPCOR stated that it would not be submitting any additional commentary in response to OEB staff's submission.

Findings

As a natural gas utility operating in Ontario, EPCOR pays municipal property taxes on its system of pipes and other assets that help deliver natural gas services to homes and businesses. This is known as its assessment base. In forecasting the costs of natural gas expansion in South Bruce, municipal property taxes were also forecasted.

To date, EPCOR in South Bruce as a greenfield expansion, has not achieved the anticipated build out and has experienced delays in its expected customer connections.

However, the specific wording in EPCOR's approved Accounting Order would have had EPCOR pay to ratepayers the difference between the municipal taxes calculated based upon a full assessment and the actual municipal taxes paid, thus having EPCOR returning revenue to customers that it never billed to them.

¹⁶ OEB Staff Submission, December 10, 2021, pg. 4

¹⁷ OEB Staff Submission, December 10, 2021, pg. 5

¹⁸ Ibid.

This was not the intent when the Accounting Order was created. Applying the Accounting Order wording in South Bruce assumes EPCOR had assets in the ground to capture payment of the municipal property taxes. This was not the case given the delays in expansion. The objective of the MTVA is to ensure fairness between the ratepayers and the natural gas utility.

The OEB finds that it would be unfair to require that EPCOR pay to ratepayers the variance between the municipal taxes calculated based on a full assessment base and the actual municipal taxes paid.

The OEB acknowledges that EPCOR in South Bruce has experienced delays in its expansion and build out of its assessment base, along with delayed connections, resulting in the utility not yet recovering the full approved revenue requirement.

EPCOR proposed wording in the Accounting Order ensures that both the utility and the ratepayers are kept whole. The OEB finds this revision to be in keeping with the intent of the original CIP decision and approves this clarification in EPCOR's revised MTVA Accounting Order, as set forth in Schedule A.

The OEB confirms the effective date of the MTVA of January 1, 2019. The OEB also approves that the disposition of the December 31, 2021 MTVA balance shall be postponed until EPCOR's next application for its 2023 rates.

The OEB notes that EPCOR's MTVA methodology is to be viewed as an exception, and not as a precedent to apply to other utilities that the OEB regulates.

4 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. EPCOR Natural Gas Limited Partnership shall establish the Municipal Tax Variance Account and Other Revenues Deferral Account as set forth in Schedule A.
2. EPCOR Natural Gas Limited Partnership shall pay the OEB's costs incidental to this proceeding upon receipt of the OEB's invoice.

DATED at Toronto February 17, 2022

ONTARIO ENERGY BOARD

Nancy Marconi
Acting Registrar

SCHEDULE A – ACCOUNTING ORDERS
DECISION AND ORDER (PHASE 1 AND PHASE 2)
EPCOR NATURAL GAS LP
EB-2021-0216
FEBRUARY 17, 2022

EPCOR NATURAL GAS LIMITED PARTNERSHIP (“EPCOR”)

Accounting Order

Other Revenues Deferral Account (“ORDA”)

The ORDA is to record customer service charge revenue amounts (as per the schedule of Miscellaneous and Service Charges on the Distributors approved rate order). As part of its 10-year rate stability period, EPCOR was approved to collect specific service charges as part of the Settlement Proposal. The OEB approved \$0 in Other Revenues for ratemaking purposes for the periods of 2019-2021 and the establishment of a deferral account to track actual other revenues for the remaining years of the rate stability period.

The effective date of this account is January 1, 2022 and is expected to be in effect until the effective date of EPCOR’s first rate filing for rates after the 10-year stability period (currently scheduled to be January 1, 2029).

Simple interest is to be calculated monthly on the opening balance in the ORDA in accordance with the methodology approved by the Board in EB-2006-0117.

The audited balance of this account, together with carrying charges, will be brought forward for approval for disposition an annual basis, unless otherwise directed by the Board. The manner in which the account will be disposed of will be proposed at the time the account is brought forward for disposition.

Accounting Entries

i. To record EPCOR’s customer service charge revenues billed to customers:

Debit/Credit	ORDA	(Account 179.94)
Credit/Debit:	Late Payment Penalties/Miscellaneous Operating Revenue	(Account 560/579)

To record simple interest on the opening monthly balance of the ORDA:

Debit/Credit:	Interest on ORDA	(Account 179.95)
Credit/Debit:	Interest expense	(Account 323)

EPCOR NATURAL GAS LIMITED PARTNERSHIP
ACCOUNTING ORDER
MUNICIPAL TAX VARIANCE ACCOUNT (“MTVA”)

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.

CIP Municipal Taxes as a Percentage of CIP Revenue Requirement (\$000’s)

Description	Col. 1 2019	Col. 2 2020	Col. 3 2021	Col. 4 2022	Col. 5 2023	Col. 6 2024	Col. 7 2025	Col. 8 2026	Col. 9 2027	Col. 10 2028	Col. 11 Total
CIP Revenue Requirement ⁽¹⁾	589	3,050	4,621	5,818	6,646	7,190	7,455	7,594	7,727	7,846	58,535
CIP Municipal Taxes	(214)	(377)	(547)	(565)	(582)	(590)	(624)	(626)	(629)	(630)	(5,383)
% of Revenue Requirement	36%	12%	12%	10%	9%	8%	8%	8%	8%	8%	9%

(1) EB-2018-0264 Decision and Order November 28, 2019, pg. 6

For example, if in 2021 ENGLP bills \$1,950 of distribution revenues to customers and pays \$339 in municipal taxes, the net municipal taxes billed to customer would be calculated as:

$$\text{Net municipal taxes billed to customers} = \text{Billed Distribution Revenues} \times \frac{\text{CIP Municipal Taxes}}{\text{CIP Revenue Requirement}}$$

$$\text{Net municipal taxes billed to customers} = \$1,950 \times \frac{\$547}{\$4,621} = \$231$$

The amount recorded in the MTVA for 2021 would be the variance between the calculated net municipal taxes of \$231 and the actual municipal taxes paid of \$339, for an amount owing to EPCOR of \$108.

The audited balance in this account, together with carrying charges, will be brought forward for approval for disposition on an annual basis. The manner in which the account will be disposed of will be proposed at the time the account is brought forward for disposition.

Simple interest is to be calculated monthly on the opening balance of this account in accordance with the methodology approved by the Board in EB-2006-0117.

Accounting Entries

- i. To record the difference between actual annual net municipal taxes paid and net municipal taxes billed to customers by ENGLP:

Debit/Credit Account No. 179.15 Municipal Tax Variance Account ("MTVA")

Credit/Debit Account No. 305 Municipal Tax

- ii. To record simple interest on the opening monthly balance of the MTVA:

Debit/Credit Account No. 179.16 Interest on Municipal Tax Variance Account

Credit/Debit Account No. 323 Other Interest Expense