Shepherd Rubenstein

BY EMAIL and RESS

Mark Rubenstein
mark@shepherdrubenstein.com
Dir. 647-483-0113

April 27, 2023
Our File: EB20220184

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
M4P 1E4

Attn: Nancy Marconi, Registrar

Dear Ms. Marconi:

Re: EB-2022-0184 – EPCOR Natural Gas LP Phase 2 – Draft Accounting Order

We are counsel to the School Energy Coalition ("SEC"). SEC has had an opportunity to review the Draft Accounting Order ("DAO") for the approved Customer Volume Variance Account ("CVVA") filed by EPCOR Natural Gas LP ("EPCOR"), and objects to the proposed 9.36% ROE figure. The appropriate ROE to be used as the comparison or starting point is the 8.78% referenced in the OEB's Decision and Order (the "Decision") and that underpins EPCOR's approved rates.

As part of the Decision, the OEB invited EPCOR to comment on "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 the rates."[1] In response, EPCOR proposes that the current OEB deemed rate of the ROE of 9.36% be used as it "does not have an approved deemed ROE on which its rates are designed."[2]

SEC submits that the appropriate ROE to use as the starting point for the CVVA calculation is the ROE that underpins EPCOR's rates. It is that ROE that EPCOR's rates are designed to achieve, if all its forecast were perfectly correct. Using any other ROE figure besides 8.78% would be inappropriate, especially considering the unique competitive nature of the competitive Common Infrastructure Plan ("CIP") process in which EPCOR was the successful proponent. As part of the CIP process, while the capital structure was a common parameter, the cost of debt and ROE "were

[1] *Decision and Order* (EB-2022-0184), April 6, 2023, p.16, ft 30
[2] EPCOR Draft Accounting Order, p.1

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considered competitive".[3] As the company told the OEB in its Custom IR application, its proposed ROE of 8.78% was "consistent with EPCOR's CIP submission".[4]

Additionally, using the ROE that underpins EPCOR's rates is entirely consistent with calculations used by the OEB in similar circumstances. The OEB's policy regarding recovery of the impacts arising from COVID-19, which was referred to in the Decision as an example of a similar mechanism[5], measures 300-basis points from the utility's OEB-approved ROE, not the deemed ROE released by the OEB in that year.[6] Similarly, the means test in an ACM/ICM, also referenced in the Decision[7], compares the utility's ROE against that "embedded in the distributor's rates".[8] The same comparison is made for eligibility for a Z-Factor.[9]

Yours very truly,
Shepherd Rubenstein P.C.

Mark Rubenstein 2023.04.27 09:09:46-04'00'

Mark Rubenstein

cc: Brian McKay, SEC (by email)
Applicant and intervenors (by email)

[3] *Decision and Order* (EB-2016-0137/138/139), April 12, 2018, p.9

[4] EB-2028-0265, Exhibit 5, Tab 1, Schedule 1, p.2. The ROE which was part of the proposed revenue requirement was approved by the OEB (see *Decision on Settlement Proposal and Procedural Order No.6* (EB-2018-0264), October 3, 2019).

[5] *Decision and Order* (EB-2022-0184), April 6, 2023, p.17

[6] *Report of the Ontario Energy Board: Regulatory Treatment of Impacts Arising from the COVID-19 Emergency (EB2020-0133)*, June 17, 2021 p.17

[7] Filing Requirements For Electricity Distribution Rate Applications - 2022 Edition for 2023 Rate Applications, Chapter 3, Incentive Rate-Setting Applications, p.21

[8] *Report of the Board: New Policy Options for the Funding of Capital Investments: The Advanced Capital Module* (EB-2014-0219), September 18, 2014, p.25

[9] *Decision and Order* (EB-2022-0184), April 6, 2023, p.17