ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B);

AND IN THE MATTER OF an application by EPCOR Natural Gas Limited Partnership for approval to change gas distribution rates and other charges effective January 1, 2023.

AFFIDAVIT OF SUSANNAH ROBINSON (SWORN MAY 9, 2022)

I, Susannah Robinson, residing in the Province of Ontario, Canada, make OATH AND SAY:

1. I am the Vice President, Ontario Region of EPCOR Ontario Utilities Inc. (**"EOUI"**) and have been employed in this capacity since February 2018. EOUI is the general partner of EPCOR Natural Gas Limited Partnership (**"ENGLP"**). As such, I have knowledge of the matters described in this Affidavit. Where my knowledge is based on information, I have identified the source of that information and I believe that such information is true.

2. I swear this Affidavit in support of the Notice of Motion (the **"Motion to Review")** by ENGLP for: (a) an Order pursuant to Rules 40, 42 and 43 of the Ontario Energy Board's (the **"Board"**) *Rules of Practice and Procedure*, to review and vary the Board's Decision and Order dated April 6, 2023, in proceeding EB-2022-0184, regarding the disallowance of ENGLP's eligibility to fully recover amounts recordable in the approved Customer Volume Variance Account (the **"Decision"**) and (b) an Order to stay the resulting accounting order and customer communication requirements set out in the Decision, pending the determination of the Motion.

3. ENGLP is an Ontario corporation that carries on the business of owning and operating natural gas distribution facilities in southwestern Ontario.

4. On July 18, 2022, ENGLP filed its Custom Incentive Rate Application for the Southern Bruce territory for rates effective January 1, 2023, in proceeding EB-2022-0184 (the **"Application"**). The Application included a request to establish a new variance account, the Customer Volume Variance Account (the **"CVVA"**), which would be made effective January 1, 2021 on a retroactive basis and apply to all new expansion projects where the Southern Bruce rates apply.

5. The CVVA is intended to record utility revenue shortfalls due to the variance between forecasted customer volumes and actual customer volumes for Rates 1 and 6 customers in ENGLP's Southern Bruce operations.

6. On September 27, 2022, the Board 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.

7. In the Decision, the Board approved the establishment of a CVVA albeit modified from the applied for account. In particular, the Board determined that any accumulated balance in the CVVA would be shared on a 50/50 basis between ENGLP's shareholders and its customers (the **"Risk Sharing Disallowance"**) and further limited recovery until such point that ENGLP's actual earnings reach 300 basis points below its ROE (the **"Deadband"**).

8. The Board's ruling to disallow full recovery of accumulated balances in the CVVA is an astonishing and significant departure from the regulatory framework that ENGLP's shareholder relied upon when making the decision to build and operate the Southern Bruce gas distribution system and will cause material harm to the utility for the duration of the ten-year rate stability period.

Background Regarding the Southern Bruce Expansion Competitive Process

9. As Vice President, Ontario Region, I am a key management employee for ENGLP and have been involved in crucial decision-making for the utility.

10. When I commenced my employment, ENGLP had just been awarded a Certificate of Public Convenience and Necessity (CPCN) for the Southern Bruce municipalities.

11. I am informed that this outcome was the result of a competitive process, which involved the development of common infrastructure plan applications (CIPs) by the two proponents seeking to expand natural gas service in the Southern Bruce municipalities. The CIPs detailed the proponents' revenue requirements to serve this area.

12. I am informed that in order to appropriately compare the CIPs of the two competing proponents, the Board had previously determined that the CIPs would be comprised of two types of parameters: (a) **competitive parameters,** over which the competing utility assumed full financial risk; and (b) **non-competitive, common assumptions** (i.e., common to both CIPs), for which ratepayers would assume the risk. I am also informed that this risk-sharing framework for CIP submissions was ultimately endorsed by the Board.

13. I am informed that forecasted customer volumes for Rate 1 and 6 customers was a common assumption, and was based on industry averages. ENGLP management understood that the successful proponent would not accept the risk of achieving any common assumption, including the risk associated with forecasted volumes consumed by Rates 1 and 6 customers.

14. I regard the CIP as a regulatory deal that, much like a commercial agreement, binds the utility and ratepayers for the next ten years and should be upheld by the Board in related future proceedings.

15. In light of the enduring impacts of the deal set out in the CIP, it was a pressing priority of mine to ensure that the utility fully understood all financial risks and developed

ways to effectively manage those risks in order to ensure the success of this greenfield utility.

16. Accordingly, I thoroughly reviewed the CIP in order to fully understand the investor risks as they related to the Southern Bruce project and to ensure that the utility had developed the execution plans required to mitigate these risks. To that end, the risks associated with forecasted volumes consumed by Rates 1 and 6 customers were not factored into the utility's risk management plans as it was clear from the outset that this parameter was not a risk assumed by the utility in the CIP, nor was it factored into the bid price for the project.

17. Despite ENGLP's best efforts to mitigate the risks arising from competitive parameters - inclusive of infrastructure specifications, customer attachments, capital structure and customer consumption - it has nonetheless incurred capital overages of approximately $13 million (unaudited) for infrastructure included as part of the CIP. ENGLP has not sought to offload these expenditures on ratepayers because it continues to uphold its end of the bargain by retaining 100% of the risk for all competitive parameters, regardless of the adverse financial impacts associated with doing so.

18. In the Application, ENGLP requested the potential to recover all accumulated balances in the CVVA on the basis that doing so is consistent with and fully reflects the regulatory deal as defined by the CIP – i.e., that the common assumption regarding Rate 1 and 6 customer volumes is not a utility risk.

19. ENGLP cannot control the volume of gas consumed by these customers. However, I note that ENGLP expects to meet the Rate 1 customer capital connect targets set out in the CIP by August 2023 and that these customers will have converted their heating systems and be generating revenue by April 2024. What has become clear since January 1, 2021, is that customers who have connected to the system are consuming much less gas than what was forecast as a common assumption. This shortfall is estimated at 32% per year.

20. The Board's approved modified CVVA, which is materially different from the applied for account, has changed the regulatory deal that ENGLP signed on to when it was awarded the CPCN for the Southern Bruce municipalities. It is concerning that the timing of the Decision comes after the utility has already gone through the expense of building the distribution system and connecting customers.

21. If the Board's Decision is upheld, ENGLP will have to share equally with ratepayers in the risk of customer consumption volumes for Rates 1 and 6 customers, when the utility was not previously expected to assume any portion of this risk, nor did it plan for this risk sharing outcome when building the system and connecting customers. Over and above this Risk Sharing Disallowance, ENGLP's recovery of accumulated balances is limited to below 300 basis points below its ROE, which introduces a means test that is in misalignment with the regulatory framework approved through the competitive process.

22. The only way ENGLP would have proceeded with building the Southern Bruce utility had it known that it would be partially responsible for the risk of customer consumption, is if it had priced that risk into the ten-year regulatory deal.

23. The Decision's introduction of a Risk Sharing Disallowance and Deadband has materially impacted the financial position of the utility and has eroded investor confidence in pursuing future community expansion opportunities.

The Material Impacts of the Decision

(a) Financial Impacts

24. If upheld, the Decision will result in an approximate $4.2 million disallowance of projected accumulated balances in the CVVA over the course of the ten-year rate stability period. This outcome not only represents a substantial disallowance for this small greenfield utility but it will have a material impact on ENGLP's average ROE and therefore prevent the utility from earning a reasonable and fair return on its investment.

25. ENGLP would have earned an ROE of -0.2% had the Board granted the possibility of full recovery of accumulated balances in the CVVA; this would have been three hundred basis points below the expected ROE of 2.9%. What these numbers demonstrate is that by honouring the regulatory compact and therefore the financial risk associated with competitive parameters, ENGLP has already assumed significant financial losses that cannot be recovered.

26. While ENGLP is already earning below the typical earning threshold of a comparable utility, the Board's modified CVVA has further diminished the utility's financial position by capping the average ROE to -1.8%, which is well below an acceptable rate of return by any standards. A chart outlining the financial impacts of the modified CVVA is attached to the Affidavit as Exhibit "**A**".

27. Of note, Exhibit "A" demonstrates that the total financial losses arising from the Board's Risk Sharing Disallowance and ENGLP maintaining the fallout of risk from the competitive parameters is so great that the Deadband itself will result in no further disallowances.

28. Ultimately, the Board's disallowance means that ENGLP's management team has been placed in the untenable position of having to find a way to manage a new risk that was never anticipated and over which the utility has no control.

29. ENGLP has already made extensive efforts to incent its customers to consume natural gas in the Southern Bruce service area by establishing partnerships with local HVAC providers to facilitate the installation of natural gas appliances in homes and by offering promotional contests that incentivize the installation of multiple natural gas appliances in customers' homes. Ultimately, there is only so much a utility can do to incentivize customers to incur the personal expense of installing natural gas appliances in their homes or consume more gas.

30. Furthermore, ENGLP is always incented to improve its capital asset utilization. From the outset, ENGLP has been diligent in this respect as the utility went through a competitive process that has essentially wrung out all possible efficiencies. At the

present time, there is not much more to do as construction is essentially complete and what remains is the organic growth of the utility.

(b) Loss of Investor Confidence Limiting or Ceasing Future Expansions

31. The Decision has the potential to deter future capital investment in natural gas by ENGLP in Ontario, as it has undermined investor confidence in future competitive processes for community expansion projects. This outcome would stagnate the growth of the Southern Bruce utility.

32. Investor confidence, in particular as relates to the prospective Brockton Project, is at an all time low and the filing of a Leave to Construct application for the project is now uncertain.

33. The loss of investor confidence stems from the concern that the regulatory deal and commitments established at the outset of a community expansion proceeding may be changed by the regulator, after significant investments have been made and there is no turning back.

AFFIRMED BEFORE ME at Toronto, Ontario, this 9th day of May, 2023.	
Commissioner for Oaths in and for the Province of Ontario	Signature
	Susannah Robinson
Richard J. King, Barrister & Solicitor Print Name – LSO # 38297H	

EXHIBIT "A"

	2019A	2020A	2021A	2022A	2023	2024	2025	2026	2027	2028	Total
Full CVVA Recovery	**$ -**	**$ -**	**$ 120,988**	**$ 419,028**	**$ 814,896**	**$1,134,301**	**$ 1,295,601**	**$ 1,323,783**	**$ 1,355,106**	**$ 1,383,197**	**$ 7,846,900**
2023 Effective Date	$ -	$ -	$ (120,988)	$ (419,028)	$ -	$ -	$ -	$ -	$ -	$ -	$ (540,016)
50/50 Risk Sharing	$ -	$ -	$ -	$ -	$ (407,448)	$ (567,150)	$ (647,801)	$ (661,892)	$ (677,553)	$ (691,598)	$ (3,653,442)
ROE Deadband	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total CVVA Disallowance	**$ -**	**$ -**	**$ (120,988)**	**$ (419,028)**	**$ (407,448)**	**$ (567,150)**	**$ (647,801)**	**$ (661,892)**	**$ (677,553)**	**$ (691,598)**	**$ (4,193,458)**
Adjusted CVVA Recovery	**$ -**	**$ -**	**$ -**	**$ -**	**$ 407,448**	**$ 567,150**	**$ 647,801**	**$ 661,892**	**$ 677,553**	**$ 691,598**	**$ 3,653,442**
% of CVVA Total Recovered	*N/A*	*N/A*	*0%*	*0%*	*50%*	*50%*	*50%*	*50%*	*50%*	*50%*	*47%*
ROE - Adjusted CVVA	*-1401.7%*	*-23.4%*	*-15.0%*	*-10.2%*	*-1.6%*	*2.5%*	*3.8%*	*4.2%*	*4.4%*	*4.1%*	*-2.0%*
ROE - Full CVVA	*-1401.7%*	*-23.4%*	*-14.5%*	*-8.8%*	*-0.1%*	*4.4%*	*6.0%*	*6.4%*	*6.7%*	*6.6%*	*-0.2%*
ROE - Variance	*0.0%*	*0.0%*	*-0.5%*	*-1.4%*	*-1.5%*	*-2.0%*	*-2.2%*	*-2.3%*	*-2.3%*	*-2.4%*	*-1.8%*

ROE - No CVVA	*-1401.7%*	*-23.4%*	*-15.0%*	*-10.2%*	*-3.1%*	*0.5%*	*1.6%*	*1.9%*	*2.1%*	*1.7%*	*-3.5%*
ROE - Rate Application	*-5.1%*	*-6.0%*	*-3.2%*	*1.3%*	*4.4%*	*6.0%*	*7.1%*	*7.9%*	*8.6%*	*8.0%*	*2.9%*