



EPCOR Natural Gas Limited Partnership (South Bruce)

Application for rates and other charges to be effective January 1, 2023

Motion to review and vary EB-2022-0184 Decision and Order (Phase 2) relating to Customer Volume Variance Account, and a request for stay of the implementation of certain aspects of the Decision

**NOTICE OF HEARING, PROCEDURAL ORDER NO. 1, AND DECISION
ON THRESHOLD QUESTION AND REQUEST FOR STAY
June 7, 2023**

Background

EPCOR Natural Gas Limited Partnership (EPCOR) filed an incentive rate-setting mechanism (IRM) application with the Ontario Energy Board (OEB) on July 18, 2022, under section 36 (1) of the *Ontario Energy Board Act, 1998 (Act)* seeking approval for changes to its natural gas distribution rates to be effective January 1, 2023, for its South Bruce service area. The OEB assigned file number EB-2022-0184 to the proceeding.

The OEB issued a Phase 2 Decision and Order (Decision) on April 6, 2023, on the Customer Volume Variance Account (CVVA), which included orders to implement the OEB's findings by way of an Accounting Order process and communications to existing and potential customers on the bill impacts of the CVVA. The Accounting Order process required EPCOR to file a draft accounting order, allowed for submissions by intervenors and OEB staff, and allowed for a final reply submission by EPCOR. EPCOR filed a final reply submission on May 4, 2023, thus completing the record. The next step of the Accounting Order process is the Decision on the Accounting Order issued by the OEB.

On May 10, 2023, EPCOR filed a notice of motion to review and vary the Decision (Motion).

The Motion

EPCOR's Motion seeks an Order that the motion satisfies the threshold test set out in Rule 43.01 of the [OEB's Rules of Practice and Procedure](#).

In the Decision, the OEB approved EPCOR's request to establish the CVVA, which tracks the variance in revenue resulting from the difference between the average customer (Rate 1 and Rate 6 customers) volume forecast based on the common assumptions set out in the Common Infrastructure Plan (CIP) and the actual average customer volume. However, the OEB modified EPCOR's proposed CVVA in the following ways:

- a. EPCOR proposed an effective date of January 1, 2021. The OEB approved an effective date of January 1, 2023.
- b. EPCOR proposed that the CVVA be applicable to all Rate 1 and Rate 6 customers who are subject to EPCOR's South Bruce rates, including future community expansions. The OEB determined that the CVVA should be applicable only to the South Bruce distribution system and not any future community expansions. However, for future community expansions, EPCOR can seek rate approvals to be applied at the time it seeks leave to construct approval.
- c. EPCOR proposed full recovery of the CVVA. The OEB applied a 50/50 risk-sharing mechanism until such point that EPCOR's actual earnings reach 300 basis points below the return on equity (ROE) that underpinned EPCOR's rates established in the 2019-2028 Custom Incentive Rate-setting proceeding.¹

The Motion requests that the Decision be varied as follows:

- a. Set aside the 50/50 risk-sharing mechanism until the point where EPCOR South Bruce's actual earnings reach 300 basis points below its ROE.
- b. Make EPCOR eligible to recover the full balance in the CVVA from January 1, 2021 until December 31, 2028.

EPCOR's Motion also included a request for an order staying the implementation of the Decision as it relates to the OEB's direction concerning communication to customers and the Accounting Order process, pending the final determination on the Motion. A request for stays related to a motion to review is permitted under Rule 40.04 of the [OEB's Rules of Practice and Procedure](#).

Findings

Pursuant to EPCOR's relief requested in its Motion, the OEB finds that the threshold question set out in Rule 43.01 has been satisfied, in that the Motion alleges issues material enough to warrant a review of the OEB's Decision. These issues concern

¹ EB-2018-0264

alleged errors which, if proven, could be expected to result in a material change to that Decision.

The OEB finds, in accordance with Rule 40.06 of the OEB's *Rules of Practice and Procedure* that it is appropriate to stay the Customer Communication Requirement as set out in paragraph 1(d) of the Motion, pending the final determination of the Motion.

The OEB also finds, in accordance with Rule 40.06 of the OEB's *Rules of Practice and Procedure*, that it is appropriate to stay the issuance of the OEB's Accounting Order in proceeding EB-2022-0184 pending a final determination of the Motion.

Service of Notice, Requests for Intervenor Status and Submissions

By the issuance of this Notice of Hearing and Procedural Order No. 1, the OEB is convening a hearing to consider the motion and is setting out the necessary procedural steps. The OEB is not seeking preliminary submissions on the "threshold" issue described in Rule 43 of the OEB's *Rules of Practice and Procedure*.

To access EPCOR's motion application and the record of the proceeding which gives rise to the Motion, please select the file numbers **EB-2022-0184** and **EB-2023-0140** from the list on the OEB website: www.oeb.ca/applications/applications-oeb. You can also phone our Consumer Relations Centre at 1-877-632-2727 with any questions.

The Notice of Hearing and Procedural Order in EB-2023-0140 is being served on all parties from EPCOR's 2023 IRM (Phase 2).² Intervenors in this proceeding are approved as intervenors on this motion proceeding, to the extent they wish to participate and file a submission. Intervenors that were eligible to apply for an award of costs in this proceeding are also eligible to apply for an award of costs in this motion proceeding. Being eligible to apply for recovery of costs is not a guarantee of recovery of any costs claimed. Cost awards are made by way of OEB order at the end of this proceeding.

At this time, the OEB is establishing a process for the filing of an argument-in-chief by EPCOR, the filing of submissions from OEB staff and intervenors, and the filing of a reply submission by EPCOR.

Without limiting the scope of EPCOR's argument, the OEB expects that EPCOR will, at a minimum, provide the following in its argument-in-chief.

- 1) References from the CIP Proceeding, and any additional precedents or argument bearing on this point, to support EPCOR's statements in its Motion that the CIP Proceeding determined that the risk for variances from average consumption for

² EB-2022-0184

Rate 1 and 6 customers lies entirely with ratepayers, and that the OEB was bound by this risk allocation for the 10-year initial rate term.³

- 2) Advise the OEB if the grounds for the relief requested by EPCOR in this proceeding are based solely on a finding that the EB-2022-0184 Decision failed to give effect to the terms of the regulatory deal or compact that EPCOR alleges was formed in the CIP Proceeding. If any grounds for the relief requested by EPCOR stand independently of a finding that there was a regulatory deal or compact to which the EB-2022-0184 Decision failed to give effect, set out the basis for any claim for relief made by EPCOR that stands even if there was no regulatory deal or compact.

After the OEB has received EPCOR's reply submission, the OEB will consider whether it has additional questions for EPCOR, the intervenors, or OEB staff. For planning purposes, the OEB has tentatively scheduled August 9, 2023 for a virtual hearing to allow the OEB to ask its questions. The OEB will formally schedule this event in a future procedural order, if needed.

It is necessary to make provision for the following matters related to this proceeding. Further procedural orders may be issued by the OEB.

IT IS THEREFORE ORDERED THAT:

1. The Accounting Order process and customer communications direction as set out in the Phase 2 Decision and Order in EB-2022-0184 are stayed pending the outcome of the hearing of the Motion.
2. The EB-2022-0184 proceeding is put into abeyance in accordance with the OEB's [Protocol for Adjusting Adjudicative Timelines](#) until a determination of EPCOR Natural Gas Limited Partnership's Notice of Motion is issued.
3. EPCOR shall file its argument-in-chief with the OEB and serve it on all parties by **June 22, 2023**.
4. Any written submission by intervenors and OEB staff shall be filed with the OEB and served on EPCOR Natural Gas Limited Partnership and all other parties by **July 13, 2023**.
5. Any reply submission by EPCOR Natural Gas Limited Partnership shall be filed with the OEB by **July 27, 2022**.

³ EB-2023-0140, Notice of Motion, paras. 14, 24, 25, 28.

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-2023-0140** 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 [Filing Systems 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 for assistance

All communications should be directed to the attention of the Registrar at the address below 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 at Arturo.Lau@oeb.ca and OEB Counsel, Michael Millar at Michael.Millar@oeb.ca.

Email: registrar@oeb.ca

Tel: 1-877-632-2727 (Toll free)

DATED at Toronto, **June 7, 2023**

ONTARIO ENERGY BOARD

Nancy Marconi
Registrar