ONTARIO ENERGY BOARD

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

AND IN THE MATTER OF the Motion to review and vary EB-2022-0184 Decision and Order (Phase 2) related to the Customer Volume and Variance Account.

EPCOR NATURAL GAS LIMITED PARTNERSHIP

REPLY ARGUMENT

REVIEW OF CUSTOMER VOLUME VARIANCE ACCOUNT

A. INTRODUCTION

1. In accordance with Procedural Order No. 3 and the Arguments filed by OEB Staff (**OEB**), the Vulnerable Energy Consumers Coalition (**VECC**), and the School Energy Coalition (**SEC**), EPCOR makes the following reply Argument in support of its R&V Motion.

2. EPCOR relies fully on its Argument-in-Chief and will not repeat its arguments herein. However, silence in respect of addressing any single point of the OEB Staff or Intervener Arguments should not be taken as agreement therewith. Unless otherwise noted herein capitalized terms shall have the same meaning as in EPCOR's Argument-in-Chief.

3. At the outset, EPCOR emphasizes that it has met the threshold under section 43.01 of the OEB Rules for a hearing on the merits. In EB-2023-0140 PO #1, the Board determined that EPCOR has satisfied the threshold test set out in Rule 43.01 and that the issues raised in its R&V Motion are material enough to warrant a review of Decision EB-2022-0184. Therefore, the purpose of this hearing is to decide the merits of EPCOR's motion and the reviewing panel must decide whether to confirm, cancel, suspend or vary Decision EB-2022-0184.

B. THE CVVA RISK SHARING MECHANISM SHOULD BE SET ASIDE

4. The fundamental question for this rehearing panel is whether the Risk Sharing Mechanism for the CVVA is <u>consistent</u> with the CIP Proceeding and the resulting CIR, which decisions

establish the framework for the rates to expand natural gas distribution service to the South Bruce Municipalities. As the Board is aware, the expansion of this service was the result of a competitive process. EPCOR submits that the manner in which EPCOR was awarded the expansion right is unique in Ontario, and therefore, the Board's jurisdiction to set just and reasonable rates must be exercised within this framework. Whether this review panel frames the issues before it as adhering to the regulatory compact for the South Bruce Municipalities or setting just and reasonable rates, in EPCOR's submission the result is the same. The Decision to impose the Risk Sharing Mechanism was in error and must be rescinded.

5. Both SEC and Board Staff make submissions that EPCOR merely disagrees with how the hearing panel exercised its discretion, which is not an identifiable error of fact, law or jurisdiction.[1] As identified in EPCOR's R&V Motion and Argument-in-Chief, the hearing panel's errors in implementing the Risk Sharing Mechanism clearly go beyond a disagreement with how the OEB exercised its discretion.

6. In EPCOR's view Decision EB-2022-0184 is not consistent with the regulatory compact as evidenced by the CIP Proceeding and the CIR. Even if reviewed on a "reasonableness" standard, as advocated by SEC,[2] the hearing panel's Decision fails to meet this threshold. The hearing panel's reasons in Decision EB-2022-0184 do not grapple with the import of the CIP Proceeding in setting the framework for the Southern Bruce expansion rates; rather, Decision EB-2022-0184 simply states:

> The OEB is not approving the modified CVVA to change the approved 10-year Custom IR framework. The OEB is not persuaded by EPCOR's characterization of the 10-year rate stability period as a regulatory compact that somehow needs to be fixed after the fact to restore and fully implement a prior OEB decision.[3]

7. The reasoning of the hearing panel must be "justified, intelligible and transparent."[4] Indeed, an administrative decision-maker must "meaningfully grapple with key issues or central arguments raised by the parties."[5] The hearing panel did not do so in Decision EB-2022-0184. Although both the SEC[6] and OEB Staff[7] argue that the hearing panel appropriately exercised its discretion in setting just and reasonable rates, Decision EB-2022-0184 fails to explain its rationale

[1] EB-2023-0140, SEC Argument (July 27, 2023) at paras. 15-16 and OEB Staff Argument (July 27, 20230) pages 3-4.
[2] EB-2023-0140, SEC Argument (July 27, 2023) at paras. 31-32
[3] Decision EB-2022-0184, page 7.
[4] *Canada (Minister of Citizenship and Immigration) v. Vavilov,* 2019 SCC 65 ("***Vavilov***") at para. 95.
[5] *Vavilov,* at para. 128.
[6] SEC Argument (July 27, 2023) at paras. 31-32.
[7] OEB Staff Argument (July 27, 2023) pages 3-4.

for rejecting EPCOR's position as to the binding nature of the risk framework established in the CIP Proceeding and simply states that the hearing panel was "not persuaded by EPCOR's characterization".

8. In a similar vein, VECC argues that EPCOR does not address how a decision in one proceeding can bind a panel in another and states that EPCOR's arguments regarding the regulatory compact were heard and "addressed by [the Board] in its Decision."[8] Decision EB-2022-0184 clearly does not provide justified and intelligible reasons in this regard. EPCOR's Argument-in-Chief lays out in great detail why the CIP Proceeding is relevant to and governs EPCOR's subsequent rates for the Southern Bruce distribution system. The VECC Argument simply chooses to ignore these detailed submissions.

9. Indeed, OEB Staff's and Interveners' Arguments do not point to any reasoning of the hearing panel found in Decision EB-2022-0184 to justify how the Board's imposition of the Risk Sharing Mechanism is consistent with or does not run afoul of the CIP Proceeding framework. Rather, each advances its own differing analysis, which in EPCOR's submission clearly demonstrates that the reasoning in Decision EB-2022-0184 on this key issue is lacking. For instance, OEB Staff asserts that the CIP Proceeding "was not a rates case"[9] completely leaving details to the rate-making framework to be decided at in the CIR proceeding,[10] while SEC concedes that the CIP Proceeding "determined the 'rules' regarding the scope of the rate application that EPCOR would have to file."[11] Each of the OEB Staff and Interveners' advance their own analysis as to why there is no regulatory compact and why it is permissible to ignore or disregard the CIP Proceeding in implementing the Risk Sharing Mechanism. However, none of these arguments were articulated by the hearing panel in Decision EB-2022-0184. In fact, the parties are left guessing as to why the hearing panel reached its conclusion – all of which renders the hearing panel's decision unreasonable. Regardless, even if Decision EB-2022-184 did follow the OEB Staff or Intervener analysis, there are fundamental flaws in the arguments advanced, as EPCOR addresses below.

[8] VECC Argument (July 27, 2023) at paras. 9-10.
[9] OEB Staff Argument (July 27, 2023) page 9.
[10] OEB Staff Argument (July 27, 2023) page 8. VECC makes a similar argument without elaboration. VECC Argument (July 27, 2023) at para. 18.
[11] SEC Argument (July 27, 2023) at para. 19.

10. The OEB Staff Argument is based on an incomplete recitation of the facts and is an unreasonably narrow interpretation of the OEB decisions at issue. First, the OEB Staff Argument repeatedly states that the OEB never expressly stated in the CIP Proceeding that mass customer volumes were a customer risk.[12] However, the OEB Staff Argument does not address the context of the CIP Proceeding and presents an unreasonably narrow interpretation. For instance, in addressing the following excerpt from the CIP Proceeding, OEB Staff states that "nothing in the paragraph mentions risk at all:"[13]

> *Customer Consumption*
>
> Proponents agreed to use the same value for the average annual usage of mass market consumers. Proponents agreed to work together to develop common consumption levels for each mass market segment, including residential, small/medium commercial, small/medium industrial, hospitals, schools and other municipal or institutional consumers.
>
> Proponents agreed that consumption levels forecast for any large commercial or industrial customers should not be set in common, but rather left to competition in each proponent's proposal.

11. OEB Staff's argument mischaracterizes the intent and outcomes of the CIP Proceeding. All parties clearly understood that those parameters left to competition were at the utility risk. No party disputes this point. However, if one accepts the OEB Staff Argument – because the foregoing passage does not mention the word "risk" – the matter of utility risk is not addressed. Following the OEB Staff logic, in its CIR application, EPCOR would have been at liberty to recoup variances in large commercial and industrial customer consumptions from ratepayers notwithstanding that this was a competitive parameter because the word "risk" is not mentioned. That was plainly not the intent of the CIP Process, and the parameters in the CIP Process were plainly and expressly stated to address risk.[14] OEB Staff cannot have it both ways – it is unreasonable on the one hand to accept that competitive assumptions were intended to allocate risk to the utility while at the same time argue that common assumption (those *not* left to competition) left the issue of utility/customer risk unaddressed. The OEB Staff's Argument does not explain how this is logical and consistent with the CIP Process and therefore, its position must be rejected.

[12] OEB Staff Argument (July 27, 2023) pages 7
[13] OEB Staff Argument (July 27, 2023) page 7.
[14] See for instance EPCOR Argument-in-Chief (July 6, 2023) at para. 22.

12. It is simply artificial to conclude that for matters *not* subject to competition – those common assumptions – that the matter was undecided, and the issue was not addressed at all.[15]

13. The foregoing demonstrates that OEB Staff's argument that EPCOR has conflated the concept of common assumptions,[16] is also without merit. Rather, it is OEB Staff that is attempting to redefine what all parties understood to be the import of the competitive and common assumptions arising out of the CIP Proceeding. OEB Staff argues that the common assumptions were nothing more than a means to facilitate a comparison of Union and EPCOR's proposals.[17] OEB Staff then takes this argument further and surprisingly alleges that the CIP Proceeding was "not a rates case" and that the future rate-making framework would be exclusively addressed in the forthcoming CIR application. VECC makes a similar argument, differentiating the CIP process from the Board's rate setting processes.[18] SEC appears to make a similar argument – although acknowledging that the CIP Process set the "rules" regarding the scope of the EPCOR's rate application, the SEC Argument also states that the CIP process only granted approval to bring forward a rate application.[19]

14. What the OEB Staff and Interveners do not address is the OEB's direction that EPCOR's rates application be "consistent with its CIP proposal."[20] It is abundantly clear therefore that EPCOR's subsequent rate proceedings were not a blank slate – EPCOR was required to bring forward a rate application **consistent** with parameters developed in and its proposal submitted in the CIP Proceeding. Indeed, the SEC Argument mischaracterizes EPCOR's Argument in this regard. The SEC Argument states that EPCOR's position is that the OEB had to rely solely on the CIP Proceeding and that this would somehow be procedurally unfair[21]; however, the SEC Argument does not address the Board's direction that EPCOR's rates application be "consistent" with its CIP proposal. Therefore, there is no procedural unfairness arising from applying the parameters developed in the CIP Proceeding to EPCOR's rate applications – including its request for the CVVA. All parties were on notice that the CIP parameters would apply to subsequent rate setting proceedings.

[15] OEB Staff Argument (July 27, 2023) page 8.
[16] OEB Staff Argument (July 27, 2023) page 7.
[17] OEB Staff Argument (July 27, 2023) page 8.
[18] VECC Argument (July 27, 2023) para. 18.
[19] SEC Argument (July 27, 2023) paras. 19, 21.
[20] See EPCOR Argument-in-Chief (July 6, 2023) at paras. 31-36.
[21] SEC Argument (July 27, 2023) paras. 23.

15. SEC appears to further take the position that while the CIP Process governs the CIR application, it did not govern EPCOR's subsequent application for the CVVA.[22] EPCOR submits that this is illogical – if the CIP Proceeding set the rules[23] for the 10-year rate proceeding, those rules should not be disregarded during its term. While VECC disagrees with EPCOR's use of the term bargain,[24] the reality is that in submitting its competitive CIP proposal, EPCOR was making commitments and taking risks and in effect bidding on an RFP. In EPCOR's respectful submission, the CIP process and CIP proposals are unique elements of the Southern Bruce rate framework that introduce competitive elements and as such, its use of the term "bargain" was apt. Further, even if this review panel concludes that there is no "regulatory compact" arising from the CIP Proceeding which allocated risk regarding mass customer consumption volumes, the Commission's jurisdiction in setting just and reasonable rates must equally be exercised in light of the rules established in the CIP Proceeding.

16. Both OEB Staff and SEC argue that the timing of applying for the CVVA is somehow relevant to whether the Risk Sharing Mechanism is appropriate. OEB Staff argue that EPCOR could have brought forward a request for the CVVA at the time of its CIR application.[25] EPCOR submits that the timing of applying for the CVVA, whether in EB-2022-0184 or at the time of the CIR application, is irrelevant as to whether the Risk Sharing Mechanism is inconsistent with the parameters of the CIP Proceeding. EPCOR has explained why the CVVA was not proposed at the time of the CIR application[26] and applying for the CVVA later, as it did in EB-2022-0184, does not provide any justification as to why the Risk Sharing Mechanism is reasonable and consistent with the applicable regulatory framework. Based on the information available to EPCOR at the time of the CVVA, it did not identify that the account was needed – however, that is a completely different matter from whether EPCOR accepted risk on mass customer volumes as part of the CIP Proceeding. As EPCOR's Argument demonstrates, it did not.

17. Finally, SEC makes unsupported arguments regarding information and assumptions available to customers when making decisions to switch to gas service. SEC argues that prospective customers had a right to rely on delivery rates and approvals granted at the CIR proceeding when making their decision to convert to natural gas and implies that information

[22] SEC Argument (July 27, 2023) paras. 31.
[23] SEC Argument (July 27, 2023) paras. 17.
[24] VECC Argument (July 27, 2023) paras 22.
[25] OEB Staff Argument (July 27, 2023) page 9-10.
[26] See EPCOR Argument-in-Chief (July 6, 2023) at paras. 37.

regarding the CVVA might have influenced customer choice.[27] This not only mischaracterizes the financial information available to prospective customers at the CIR stage but it overstates the implications of EPCOR not applying for the CVVA at that the CIR proceeding.

18. At the CIR stage, EPCOR reasonably expected that forecasted volumes based on Union's normalized average consumption volumes for an adjacent service area were comparable to the Southern Bruce utility, and in any event, there was no historical data to identify what impact if any there would be from a variance between actual and forecasted consumption volumes.[28] Therefore, had EPCOR applied for and been approved for the CVVA at the CIR stage, it would have forecasted a CVVA balance of $0 at that time. Clearly, this information would not have materially influenced customers' connection decisions. A customer was far more likely to have focused their analysis on factors like commodity cost projections and the cost of making the required equipment modifications or appliance replacement costs to convert.[29]

19. Furthermore, no customers would reasonably have expected absolute certainty regarding their average billings nor would they have had an expectation of a rate freeze. Ultimately, customers were told they could expect relative rate stability based on the premise that EPCOR's revenues relative to its controllable costs would be capped at a proposed level. However, the rate stability period included an allowance for externally driven, unforeseen events and annual financial allowance updates.

20. An informed customer completing a conversion analysis would have accepted the reality of variance in their bills based on factors such as: (a) quarterly updates to commodity-based charges that are adjusted following QRAM approvals, (b) the annual inflation rate, and (c) government policies such as the imposition of a Federal carbon charge. Another basis for rate variability is that the Southern Bruce rate framework requires consistency with the approved CIP.

21. Finally, assuming that an average customer made their gas conversion decision based on annual billings, the customer's billing expectations at the CIR stage will not be materially different if EPCOR is granted the opportunity to recover 100% of balances in the CVVA.

[27] SEC Argument (July 27, 2023), paras. 24 and 26.
[28] EB-2022-0184 (Phase 2), EPCOR Reply Submission at para. 37.
[29] EPCOR Reply Argument, EB-2022-0184 (Phase 2), at para. 42.

22. To illustrate (and to clarify the record in light of the SEC Argument, using existing data from the record of EB-2022-0184 and prior proceedings), it is important to understand that when the Board approved EPCOR's CIR, a residential customer was expected to consume 2,149m^3 of natural gas resulting in an estimated average annual billing of $1,338.[30] *Under the approved CIR's original assumptions, the average annual billings for a residential customer in 2023 would have been expected to be* ***$1,694*** and the distribution revenue would be ***$932***.

23. In reality, the average residential customer consumption is 1,453m^3 and based on this usage, the average annual billings at 2023 rates is $1,252.[31] Therefore, a residential customer is paying less today than what they would have expected to pay based on the approved CIR. *Adjusting for a scenario where full recovery of CVVA balances are permitted (completed by increasing the variable distribution revenue as if a full 2,149m^3 was consumed), the average annual billing for a residential customer in 2023 would be* ***$1,451***, which is $243 less than the $1,694 that a customer would have expected to pay under the original CIR assumptions when considering their conversion to natural gas, and the distribution revenue would also be the same as original assumptions at ***$932***.

24. Attached as **Appendix 1** to this Reply Argument is a document which illustrates the above-noted points in paragraphs 22 and 23 and which is in direct response to SEC's Argument that the financial implications of conversion costs assessed by customers at the CIR stage should be preserved.

C. JUST AND REASONABLE RATES

25. OEB Staff and VECC repeatedly cite the discretion of the Board to set just and reasonable rates to justify the Risk Sharing Mechanism. In effect, OEB Staff and VECC argue that the Board can ignore the framework established for the Southern Bruce expansion and its decision to impose the Risk Sharing Mechanism was therefore unfettered. In EPCOR's view, this is not correct - it is not just and reasonable to in effect after-the-fact change the risk profile for the EPCOR's rates. As explained in EPCOR's Argument,[32] introducing a new parameter for which

[30] EB-2022-0184, EPCOR Application, page 31.
[31] EB-2022-0184, EPCOR Application, page 31.
[32] EPCOR Argument-in-Chief (July 6, 2023) at paras. 51-58.

the utility is at risk (or shares the risk with customers) is not consistent with the risk profile established in the CIP Proceeding and upon which EPCOR's CIP proposal was based.

26. Regardless, even if one considers whether the Risk Sharing Mechanism is consistent with the Board's discretion to set just and reasonable rates, Decision EB-2022-0184 improperly concluded that the Risk Sharing Mechanism can "incent" EPCOR to "improve its asset utilization and the resulting ROE forecasts from 2023-2028" and this renders the decision unreasonable.

27. In regards to the 50/50 risk sharing, SEC's Argument reiterates the hearing panel's conclusion that the sharing in the risk of consumption variance is appropriate because "no party bears all the fault."[33] This argument is flawed because it centers on who bears fault for less-than-expected consumption as a means of justifying a 50/50 sharing of risk, as opposed to what is just and reasonable taking into account prior approvals of similar accounts.

28. Although VECC disagrees,[34] EPCOR has demonstrated through detailed evidence that Union's (now Enbridge's) NAC and EPCOR's CVVA are similar, including:

(a) A summary table describing how the NAC operates to true-up consumption variances for the Union Rate Zones and also highlighted similarities in the operation of those accounts to EPCOR's proposed CVVA.[35]

(b) A step-by-step explanation of the mathematical formula used in calculating amounts recoverable under the CVVA, demonstrating that it was only capturing variances in forecasted versus actual customer consumption volumes which the NAC does as well.[36]

(c) Further details on how the CVVA would be calculated.[37]

29. VECC fundamentally misunderstands the above-noted evidence. First, VECC asserts that Enbridge's NAC relies on rolling historical data, whereas EPCOR as a greenfield utility has no such data and therefore cannot make a similar calculation as the NAC.[38] However, a review of

[33] SEC Argument (July 27, 2023) at para. 32.
[34] VECC Argument (July 27, 2023) at para.13.
[35] EB-2022-0184 (Phase 2), EPCOR IRs to OEB Staff (September 19, 2022), pp.8-9
[36] EB-2022-0184 (Phase 2), EPCOR Additional Evidence, Appendix A – CVVA Process Document (November 14, 2022)
[37] EB-2022-0184 (Phase 2), EPCOR Supplementary IRs (December 5, 2022).
[38] VECC Argument (July 27, 2023), at paras. 13 and 15.

EPCOR's CVVA calculation methodology shows that it is in fact using historical data in calculating amounts recoverable in the CVVA. EPCOR is using 12 month cycles regressed against the Heading Degree Days for any given month.[39] In fact, the need for EPCOR to use historical data in its CVVA calculation directly impacted the timing of when the utility requested the account, as EPCOR required a necessary sample of customers with at least 12 months of usage history to utilize in calculating forecasted versus actual variances. Neither SEC nor OEB Staff, both of whom had the opportunity to challenge the CVVA methodology, expressed any concerns with EPCOR's CVVA methodology.

30. Second, VECC asserts that the CVVA is not designed to achieve a similar function as Enbridge's NAC because, "NAC accounts are designed as part of weather normalization schemes and to otherwise integrate long-run changes in customer consumption as a result of long run gas consumption changes."[40] These assertions are unsubstantiated and incorrect.

31. A review of EPCOR's methodology shows that it uses a weather normalization formula to remove the weather variance in consumption and then compares the resulting consumption values against the CIP forecasted monthly volumes to arrive at a value that is recorded in the CVVA. [41] Therefore, the CVVA achieves a similar function as the NAC by weather normalizing customer consumption.

32. Furthermore, EPCOR's weather normalization process will also capture changes in customer consumption patterns. EPCOR's CVVA process captures this change, on an annual basis, by assessing the average of the customers' average monthly consumption, breaking it down into weather sensitive and non-weather sensitive elements, and conducts the regression analysis annually. If the average customer changes their gas consumption volume and/or pattern from year to year, the regression analysis will pick up the changes in the consumption pattern and will weather normalize the consumption based on these patterns. For example, if more residential customers add water heaters in 2024 compared to 2023, the 2024 regression model will reflect these changes (higher base usage, less weather sensitive). All else equal, on a per-customer basis it will lead to a smaller balance in the CVVA in 2024 vs 2023 (higher usage).[42]

[39] EB-2022-0184 (Phase 2). EPCOR Supplementary IRs (December 5, 2022), at page 1.
[40] VECC Argument (July 27, 2023), at para.14.
[41] EB-2022-0184 (Phase 2), EPCOR IRs to OEB Staff (September 19, 2022), at pages 8-9.
[42] See Footnotes 35-37

33. In terms of impacts, contrary to VECC's assertion, Enbridge's NAC and the CVVA would have similar impacts to Southern Bruce customers since both would be standalone accounts, based on the same forecasted volumes and applicable only to new customers within this service area. Furthermore, EPCOR has accurately highlighted that OEB Staff came to the logical conclusion that had Enbridge Gas been the successful proponent, its existing NAC account would have likely captured the same type of volume variances that EPCOR intends to record in the CVVA.[43]

34. Even though both the NAC and CVVA capture variances between forecasted and actual customer consumption and operate in a similar manner, Enbridge has been approved to recover 100% of balances in the NAC whereas EPCOR can only recover 50% of balances in the CVVA. This stark difference in the Board's treatment of two utilities with respect to a similar account was not accounted for by Decision EB-2022-0184 and therefore, demonstrates that the imposition of the Risk Sharing Mechanism is not just and reasonable.

35. Enbridge, like EPCOR, has little control over lower-than-expected customer consumption, and yet EPCOR alone has been materially limited in its recovery. Ultimately, the hearing panel's assessment that the Risk Sharing Mechanism balances the interests of ratepayers and the utility is inconsistent with how the Board has historically treated variances in approved forecasted customer consumption volumes and therefore cannot be characterized as just and reasonable.

36. Turning to the 300 basis points deadband, SEC argued that the hearing panel merely referenced the ICM, Z-Factor and Covid-19 recovery policy, to demonstrate that this deadband is widely used across a wide-range of OEB regulatory recovery mechanisms[44] and likewise a reasonable threshold to limit recovery of CVVA balances.[45] Whether widely used or not, none of the cited circumstances where it stated a -300 basis point parameter is used are applicable to EPCOR's service to the South Bruce Municipalities; the fact that a recovery mechanism has been used in other non-applicable scenarios does not justify the deadband as just and reasonable in its application to EPCOR's CVVA. Ultimately, the deadband fails to meet the just and reasonableness standard because there is no logical connection between this recovery mechanism and the utility's performance and operational costs.

[43] EB-2022-0184 (Phase 2), OEB Staff Submission, at page 5.
[44] SEC Argument (July 27, 2023), at para. 33.
[45] EB-2022-0184 (Phase 2), Board Decision and Order, at page 17.

37. If the deadband is meant to incent EPCOR to improve its performance with respect to lower-than-expected customer consumption, the reality is that EPCOR has little control over behind-the-meter consumption and a customer's personal choices. In this regard, VECC makes baseless allegations that the utility is unable or has resisted to innovate and address lower-than-expected consumption, and that it has shown no interest in understanding the underlying cause.[46] This is false. There is simply no evidence that EPCOR is failing to seek and apply efficiencies, and therefore, no justification to impose the -300 basis point threshold on this basis.

38. EPCOR has been proactive in doing what it can to address lower-than-expected consumption. The actual evidence to date is that EPCOR has undertaken the following:

(a) A number of customer engagement activities including email campaigns and reminders, a March 2021 study and a 2022 email survey campaign to assess the cause for lower-than-expected consumption.[47]

(b) Determined that a material factor for lower-than-expected consumption is that only 13% of customers have converted to gas heaters (estimated to use an average of 400-500m^3 annually).[48]

(c) Assessed that customer consumption may increase as customers with stronger consumption profiles connect to the system and as more customers transition from electric to gas water heaters and purchase other gas appliances for their homes.[49]

(d) Made efforts to incent customers to consume more natural gas by facilitating customer conversion to natural gas appliances through partnerships with HVAC providers.[50]

(e) Offered promotional contests to incentivize the installation of multiple appliances.[51]

39. If the deadband is meant to incent EPCOR to find efficiencies in its operations, then as explained in the Affidavit of Susannah Robinson, such an expectation is unreasonable given

[46] VECC Argument (July 27, 2023), at para. 21.
[47] EB-2022-0184- EPCOR IRs (October 20, 2022), at page 16.
[48] EB-2022-0184, ENGLP IRM Application, at page 31.
[49] EB-2022-0184, ENGLP IRs (October 20, 2022), at pages 12-13.
[50] EB-2023-0140, Affidavit of Susannah Robinson (May 10, 2023), at para. 28.
[51] EB-2023-0140, Affidavit of Susannah Robinson (May 10, 2023), at para. 28.

EPCOR's existing Southern Bruce rate framework which has already embedded maximum efficiencies through competition in the CIP Proceeding and the CIR Proceeding.

40. Furthermore, SEC attempts to downplay the financial impacts to EPCOR from the Risk Sharing Mechanism by arguing that it would not harm EPCOR's long-term ability to earn a fair return and pointing out that EPCOR's parent company will not be harmed. SEC further suggests that EPCOR misunderstands what the law requires in terms setting just and reasonable rates, as no utility is guaranteed a fair return.[52]

41. By any standard, EPCOR's under-earning over a ten-year rate stability period is properly characterized as a long-term impact. The financial impact from the Risk Sharing Mechanism alone will downgrade EPCOR's forecasted ROE from -0.2% to -1.8%, which is equivalent to a loss of $4.2M in revenue and well below an acceptable return by utility standards. EPCOR's parent company will not shoulder these financial impacts. EPCOR is a standalone entity and the financial impacts from the RSM will be borne entirely by the utility.

42. Furthermore, EPCOR is not asking for a guaranteed return. All it has asked for is the opportunity to fully recover balances in the CVVA so that it can have the opportunity to earn a near zero (-0.2%) ROE, which is nowhere near the utility's approved 8.78% ROE. Put a different way, EPCOR is only asking for the ability to fully recover amounts recorded in the CVVA, just as Enbridge now is able to fully recover consumption variances through the NAC.

43. Finally, SEC has mischaracterized the CIR partial settlement proposal in regards to the +/- 300 basis points earnings off-ramp.[53] The parties determined that EPCOR would not be eligible for this off-ramp because it was inconsistent with the parameters set by the CIP framework, not (as SEC has argued) because EPCOR realized that its financial viability would not be at risk if it failed to earn a fair return during the deferred rebasing period.

44. For these reasons, even if the proper regulatory framework for establishing the CVVA was the Board's general standard of setting just and reasonable rates, the hearing panel's flawed reasoning for imposing the Risk Sharing Mechanism does not withstand scrutiny.

[52] SEC Argument, (July 27, 2023), at paras. 34-35.
[53] SEC Argument, (July 27, 2023), at para. 35.

D. THE EFFECTIVE DATE OF THE CVVA

45. As set out in EPCOR's Argument, the hearing panel erred in fact and law by incorrectly finding that an effective date for the CVVA of January 1, 2021, would amount to impermissible retroactive ratemaking. Specifically, the hearing panel took a narrow analysis, which failed to consider years of other relevant precedent regarding the broader circumstances in which retroactive ratemaking is permissible and failing to correctly apply that law to EPCOR's unique circumstances. Neither Board Staff, nor VECC, make any compelling arguments that refute the Board's flawed analysis. SEC goes so far as to state that the OEB is "prohibited" from recovering amounts from prior periods unless a known exception to the rule against retroactive ratemaking exists.[54] However, the cases cited by the OEB do not support such an interpretation.

46. The SEC Argument also refers to the hypothetical customer and expectations they would have had based on the CIR application.[55] SEC's argument appears to be that customers would not have any knowledge or expectation of rate changes during the 10-year rate stability term. As addressed above, SEC provides no evidence to support its supposition as to customer expectations, and the evidence demonstrates that the CVVA would not have factored materially into customer expectations based on the information available.

47. Therefore, contrary to the SEC Arguments, EPCOR submits that nothing in the circumstances militate against its request for an effective date of January 1, 2021.

E. CONCLUSION

48. For the reasons set out in its Argument in Chief and herein, EPCOR respectfully requests that in disposing of this this review application, the Board varying the Decision EB-2022-0184 as follows:

(a) set aside the Board's decision to limit EPCOR's recovery of the CVVA to 50% of the accumulated annual balance, until the point where EPCOR's actual earnings reach 300 basis points below its ROE; and

[54] SEC Argument (July 27, 2023) paras. 39.
[55] SEC Argument (July 27, 2023) paras. 42.

(b) approve the CVVA as applied-for by EPCOR, allowing it to fully track and recover annual balances in the CVVA resulting from the revenue difference between: (A) the average customer volume forecast based on the common assumptions set out in the common infrastructure plan; and (B) the actual average customer volume from January 1, 2021 until December 31, 2028.

All of which is respectfully submitted this 10th day of August, 2023.

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