
OEB issues decision on EPCOR Natural Gas Limited Partnership's (South Bruce) Motion to Review and Vary the Phase 2 EB-2022-0184 Decision and Order

DECISION

On October 12, 2023, the Ontario Energy Board (OEB) issued its [Decision](#) on EPCOR Natural Gas Limited Partnership's (EPCOR) motion to review and vary (Motion) the OEB's Decision and Order¹ in the Phase 2 proceeding on EPCOR's South Bruce 2023 incentive rate-setting mechanism application (IRM Decision). In the IRM Decision, the OEB approved a modified version of the Customer Volume Variance Account (CVVA) proposed by EPCOR, specifically with respect to the effective date and the sharing of risk between EPCOR and ratepayers.

In its Motion, EPCOR asserted that the OEB made errors of fact and/or law in the IRM Decision with respect to the modified CCVA. The OEB found that the IRM Decision did not contain such errors and dismissed the Motion.

EPCOR's central argument was that, over the course of several regulatory proceedings, the OEB determined that EPCOR would not bear any risk in respect of volume variances for its mass market customers. As such, EPCOR argued that the OEB erred by approving a CVVA that split that risk between EPCOR and ratepayers and that essentially set a new Return on Equity for EPCOR.

On the issue of the effective date, EPCOR argued that the OEB erred by failing to consider relevant precedents regarding the broader circumstances in which retroactive ratemaking is permissible and failing to correctly apply that law to EPCOR's unique circumstances.

KEY FINDINGS

Regulatory Framework (pp. 9-13)

The OEB determined that the history of the regulatory treatment of the cumulative volume comparison criterion provides no support for EPCOR's argument that the risk of volume variance for mass market customers must be attributed entirely to ratepayers.

Given the economic consequences to EPCOR of past proceedings, the IRM Decision sought to balance the interests of ratepayers and the utility. In doing so, the IRM Decision advanced the OEB's statutory objective of ensuring just and reasonable rates and was in fulfillment of the OEB's regulatory responsibilities. There was no error of law or fact that arises as result of such balancing by the OEB.

¹ [EB-2022-0184, Phase 2 Decision and Order, April 6, 2023](#)

Return on Equity (p. 13)

The OEB also found that the 300-basis point limitation on EPCOR's financial relief is consistent with the use of a 300-basis point dead band as a threshold in a range of OEB regulatory mechanisms. The establishment of the 300-basis point limitation is in keeping with the OEB's balancing of interests to set just and reasonable rates.

Effective Date (pp. 13-14)

The OEB found that the IRM Decision gave proper consideration to the effective date for the CVVA and made a determination that is consistent with the OEB's statutory obligations and regulatory practice. While retroactive rate orders are legally permitted, there is no legal requirement for the OEB to make rate orders retroactive and retroactive rate orders are the exception. As stated in the IRM Decision, an effective date earlier than January 1, 2023 cannot be justified given the circumstances specific to this case. Further, a retroactive order was not appropriate because of considerations that include the requirement for rate certainty and intergenerational equity.

REGULATORY TERMS

The following is a list of some of the commonly used regulatory terms that appear in this background, along with a plain language description for each one.

Deferral and variance accounts (DVAs) are commonly used regulatory tools that allow a utility an opportunity to address costs that were unknown or uncertain when its rates were set.

A deferral account tracks the cost of a project or program which the utility could not forecast when its current rates were set. When the costs are known, the utility can request OEB approval to recover the costs in future rates.

A variance account tracks the difference between the forecast cost of a project or program, which has been included in rates, and the actual cost. If the actual cost is lower or higher, then the utility can request OEB approval to return the difference to customers as a credit or to recover the difference through rates.

Incentive regulation (also referred to as an Incentive Regulation Mechanism or "IRM") is a method of setting rates that encourages utilities to become more efficient in ways that will benefit their customers through better service and lower rate increases. The shareholders of the utilities also have the opportunity to benefit from higher earnings through efficiency improvements.

In each year between cost-based applications, the utility's rates are typically adjusted through a pre-approved mechanism.

Return on Equity (ROE) is the return that shareholders earn on their equity investment (shares and retained earnings) in a utility.

Annually, the OEB sets the return on equity based on a formula that includes an updating of certain parameters to reflect capital market conditions. Depending on its performance, a utility could earn a higher or lower return on equity. However, the OEB may undertake a review if a utility is earning significantly more or less than the approved return on equity.

About the OEB

The OEB is the independent regulator of Ontario’s electricity and natural gas sectors. It protects the interests of consumers and supports the collective advancement of the people of Ontario. Its goal is to deliver public value through prudent regulation and independent adjudicative decision-making which contributes to Ontario’s economic, social and environmental development.

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Ce document est aussi disponible en français.

This Backgrounder was prepared by OEB staff to inform Ontario’s energy consumers about the OEB’s decision and is not for use in legal or regulatory proceedings. It is not part of the OEB’s reasons for decision; those may be found in the Decision issued October 12, 2023, which is the official OEB document.