

ONTARIO ENERGY BOARD

IN THE MATTER OF the Ontario Energy Board Act, 1998, being Schedule B to the Energy Competition Act, 1998,

S.O. 1998, c. 15;

AND IN THE MATTER OF an Application by Elexicon Energy Inc. to the Ontario Energy Board for an Order or Orders approving or fixing just and reasonable rates and other service charges for the distribution of electricity for Elexicon Energy Inc. as of January 1, 2022;

Mississaugas of Scugog Island First Nation (MSIFN) Reply to Ontario Energy Board's

PROCEDURAL ORDER NO. 1 - October 6, 2021

October 13, 2021

1. OEB Procedural Order No. 1 – October 6, 2021 – in this matter notes:
 - a. The OEB is satisfied that the Mississaugas of Scugog Island (MSIFN) has a “substantial interest” in this proceeding within the meaning of Rule 22.02 of the OEB’s *Rules of Practice and Procedure*.
 - b. The OEB requires that MSIFN file additional information articulating its interest in the issues before the OEB in this application and for which the OEB Panel has the authority to make a determination.
 - c. Specifically, the OEB requires additional details on MSIFN’s issue of interest related to Elexicon’s “approach to consulting MSIFN with respect to this application and future applications for Crown approvals”.
 - d. The OEB notes that incentive rate-setting mechanism (IRM) proceedings are narrowly scoped proceedings and the additional information from MSIFN will allow the OEB to establish the scope of this proceeding.
 - e. The OEB Panel hearing this application will make a decision on whether all the issues raised by MSIFN will be addressed in this proceeding
 - f. MSIFN is eligible to apply for cost awards under the OEB’s *Practice Direction on Cost Awards* but only in relation to Elexicon’s proposal for incremental capital funding.
 - g. MSIFN shall file the additional information with the OEB and serve it on all parties by October 13, 2021.
2. MSIFN has reviewed the Filing Requirements for Transmission and Distribution Applications which sets out the standards for transmitters and distributors to follow when filing for rate adjustments, leave to construct approvals, and conservation funding.
3. With regard to MSIFN’s issue of interest related to Elexicon’s “approach to consulting MSIFN with respect to this application and future applications for Crown approvals”, MSIFN will review Elexicon’s proposal for incremental capital funding, including, but not limited to:

- a. Costs related to Elexicon fulfilling the procedural aspects of the duty to consult First Nations, and where applicable, accommodate.
 - b. Costs related to Elexicon's engagement of First Nations with respect to archaeological and cultural heritage matters, including built heritage and cultural heritage landscapes, natural heritage and costs for accommodations where applicable.
 - c. Costs related to Elexicon's engagement of First Nations with respect to federal, provincial and municipal Crown permits and approvals, and accommodations where applicable.
4. MSIFN notes that the costs associated with OEB regulated entities fulfilling the duty to consult and accommodate rights-holding First Nations are increasingly recognized as costs that are transferred to ratepayers through OEB decisions.
 5. Local distribution companies (LDCs) such as Elexicon, and their municipal government shareholders, have evolving relationships with First Nations, and in this application specifically, with Williams Treaties First Nations inclusive of MSIFN. These evolving relationships extend to assets through which municipalities have ownership relationships and fiduciary responsibilities, and include recognition of some of the following:
 - a. First Nations have been located in what are now Canadian municipalities from time immemorial.
 - b. Municipalities (and by extension the LDC assets through which municipalities have ownership relationships and fiduciary responsibilities) and First Nations are involved in efforts to develop their relationships, including reviewing, clarifying and deepening those relationships in light of Indigenous laws, rights and responsibilities.
 - c. Recommendations from the 1996 Report on the Royal Commission on Aboriginal Peoples address the Indigenous-municipal relationship.
 - d. The 2007 United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP).
 - e. On June 21, 2021, the United Nations Declaration on the Rights of Indigenous Peoples Act received Royal Assent and immediately came into force. This legislation advances the implementation of the Declaration as a key step in renewing the Government of Canada's relationship with Indigenous peoples, and creating new commitments with respect to all federal legislation which may impact Elexicon projects, and projects of its municipal owners.
 - f. The 2014 Calls to Action by the Truth and Reconciliation Commission (TRC) which apply to municipalities (and by extension the assets through which municipalities have ownership relationships and fiduciary responsibilities) (See for example Association of Municipalities of Ontario (2021), Resources on the Truth and Reconciliation Commission (TRC) Calls to Action <https://www.amo.on.ca/sites/default/files/assets/DOCUMENTS/Reports/2021/MunicipalResourceTruthReconciliation20210823.pdf>)
 - g. Municipalities such as Durham Region are taking new steps to work towards reconciliation by realizing the TRC Calls to Action, including on June 21, 2021, providing a permanent home for the Mississaugas of Scugog Island First Nation flag at Regional Headquarters.
 - h. The statements in the *Provincial Policy Statement (2020)* under Ontario's *Planning Act*:

- i. “Ontario recognizes the unique role Indigenous communities have in land use planning and development, and the contribution of Indigenous communities’ perspectives and traditional knowledge to land use planning decisions. The Province recognizes the importance of consulting with Aboriginal communities on planning matters that may affect their section 35 Aboriginal or treaty rights. Planning authorities are encouraged to build constructive, cooperative relationships through meaningful engagement with Indigenous communities to facilitate knowledge-sharing in land use planning processes and inform decision-making.”(p. 5)
 - ii. “Planning authorities shall engage with Indigenous communities and coordinate on land use planning matters.” (p. 13)
 - iii. “Planning authorities shall engage with Indigenous communities and consider their interests when identifying, protecting and managing cultural heritage and archaeological resources.” (p. 31)
 - iv. “Significant built heritage resources and significant cultural heritage landscapes shall be conserved.” (p. 31) Where cultural heritage landscapes “means a defined geographical area that may have been modified by human activity and is identified as having cultural heritage value or interest by a community, including an Indigenous community.” And built heritage “means a building, structure, monument, installation or any manufactured or constructed part or remnant that contributes to a property’s cultural heritage value or interest as identified by a community, including an Indigenous community.”
- i. Costs associated with the duty to consult and accommodate within ICM applications, and the above factors, are not likely to be considered as minor expenditures and
 - i. will be unique to the specific ICMs and the resulting rate-setting plans,
 - ii. will need to be justified as amounts being sought directly related to the capital projects, and
 - iii. will need to be offset by revenues.

Respectfully submitted on behalf of the Mississaugas of Scugog Island, October 13th, 2021..



Don Richardson, Ph.D., Energy Regulatory Advisor to Scugog Island First Nation