

Elexicon Energy Inc.

**Application for electricity distribution rates beginning
January 1, 2022**

**DECISION ON CONFIDENTIALITY AND PROCEDURAL ORDER NO. 3
November 15, 2021**

Elexicon Energy Inc. (Elexicon) filed an incentive rate-setting mechanism application with the Ontario Energy Board (OEB) on August 18, 2021 under section 78 of the *Ontario Energy Board Act, 1998* seeking approval for changes to its electricity distribution rates to be effective January 1, 2022.

On November 8, 2021, Elexicon filed its interrogatory responses and requested confidential treatment, pursuant to the OEB's *Practice Direction on Confidential Filings* (Practice Direction) and the OEB's *Rules of Practice and Procedure*, for certain information attached to its response to SEC-1, which asked for "a copy of all material provided to the Applicant's Board of Directors regarding the proposed ICM projects". The information in question relates to the tendering process to select a contractor to perform work on the proposed Incremental Capital Module projects.¹ Elexicon argued that the information was commercially sensitive, and its disclosure could prejudice the construction firms.

In addition, Elexicon explained that some of the information included in the materials for the Board of Directors attached to SEC-1 is not relevant to the current proceeding as it does not relate to the ICM projects at issue.² Accordingly, the confidential version of those Board materials that Elexicon proposes to make available to anyone who signs a Declaration and Undertaking in accordance with the Practice Direction would still include redactions of the parts that Elexicon claims are irrelevant.

In response to SEC-2, Elexicon provided the Business Case for the Seaton Transformer Station, one of the ICM projects. Elexicon explained that it had redacted certain parts of the Business Case (and the appended memo from its law firm) on the grounds that they are protected by solicitor-client privilege.³ These redactions would remain in the confidential version provided to anyone who signs the Declaration and Undertaking.

¹ SEC-1, pp. 118, 188, 246, 256, 322.

² SEC-1, pp. 232-235; 237; 259-260; 284-286; 307-310; 330-333; 354-357; 360-372; 375-386; 436-437; 442; 463-466; 483-485; 487-489.

³ Interrogatory Response SEC-2, pp. 16-17, Appendix 4, pp. 107-124

Findings

SEC-1: Third Party Information

The OEB finds that Elexicon's proposed redactions concerning the project tender information in SEC-1 are appropriate. Disclosure of such information could prejudice the commercial and financial interests of the third-party construction firms and is clearly to be avoided under the Practice Direction (Appendix A) and section 17(1) of the *Freedom of Information and Protection of Privacy Act*. Because the potential third-party prejudice in this case is so apparent, the OEB does not consider it necessary to ask whether any other party to this proceeding objects. Elexicon will provide the unredacted information to anyone who executes the OEB's form of Declaration and Undertaking, subject to Elexicon's right to object to the Declaration and Undertaking from any person.

SEC-1 and SEC-2: Irrelevant or Privileged Information

The OEB has considered the redactions to SEC-1 and SEC-2 which Elexicon has made on the basis that the information is not relevant to the proceeding or is privileged.

Regarding the redaction of legal advice in SEC-2, the OEB finds the rationale provided by Elexicon in its cover letter of November 8, 2021 to be sufficient. The OEB agrees that it is appropriate to redact information from the Business Case that is protected by solicitor-client privilege and Elexicon is not required to disclose it to the OEB or the intervenors.

Regarding the redactions in SEC-1, the OEB directs Elexicon to provide an unredacted version of SEC-1 for the panel's review only to verify the information is irrelevant.

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Elexicon shall provide individuals that have signed and filed a Declaration and Undertaking with the non-redacted, confidential versions of interrogatory responses to SEC-1 for which confidential treatment has been granted, in accordance with the findings.
2. Elexicon shall file a completely unredacted version of SEC-1 for the panel's review only by **November 17, 2021**.

How to File Materials

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-2021-0015**, for all materials filed and submit them in searchable/unrestricted PDF format with a digital signature through the OEB's web portal at <https://p-pes.ontarioenergyboard.ca/PivotalUX/>.

- Filings should clearly state the sender's name, postal address, telephone number, fax 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 www.oeb.ca/industry.
- Parties are encouraged to use RESS. Those who have not yet [set up an account](#), or require assistance using the web 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, 4:45pm 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, Birgit Armstrong at birgit.armstrong@oeb.ca and OEB Counsel, Ian Richler at ian.richler@oeb.ca.

Email: registrar@oeb.ca

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

DATED at Toronto, November 15, 2021

ONTARIO ENERGY BOARD

Original signed by

Christine E. Long
Registrar