



BY EMAIL and RESS

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November 19, 2021
Our File: EB20210015

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
M4P 1E4

Attn: Christine Long, Registrar

Dear Ms. Long:

Re: EB-2021-0015 – Elexicon 2022 Rates – SEC Submissions

We are counsel to the School Energy Coalition (“SEC”). Pursuant to Procedural Order #2 in this proceeding, this letter constitutes SEC’s submissions on the ICM claim and the proposed ESM.

SEC does not have any submissions on the other aspects of the Application.

Overview

SEC submits that the Board should:

- a. Approve the ICM for the Seaton TS, but with a 2023 in-service date.
- b. Investigate the different treatment of distributor-owned vs. transmitter-owned transmission stations in the context of the ICM rules, but apply the existing standard in this proceeding.
- c. Deny approval of the BRT road relocation ICM claim.
- d. Defer approval of the ESM and consider it in the next proceeding, when proper notice can be given.

ICM – General

SEC notes that the capital spending of the Applicant used for the purpose of the threshold test includes capital projects related to the merger¹. Since ratepayers are not responsible for merger-

¹ SEC 4(b).

related capital, SEC submits that they should not be part of the capital budget for ICM calculation purposes. In this case, they do not appear to be material, but in other cases they may well make a difference.

SEC also notes that the Applicant has ramped up capital spending in the post merger years, particularly on system renewal, well above historical averages. The Applicant's explanations of the rationale for the ramp up (for example, it was a different management team back then²) are not really helpful to the Board. The lack of reliable benchmarking to support that increase is troubling.

Despite this concern, SEC notes that even if system renewal were at more reasonable levels, at the very least Seaton TS would still be above the threshold, and perhaps both projects. We are therefore only flagging this concern because in future applications this may become more important.

With those caveats, SEC accepts the calculations by the Applicant related to the ICM claim.

SEC has no submissions with respect to need or prudence regarding either of the two ICM projects.

ICM – Seaton TS

SEC has two concerns to raise about the Seaton TS.

On the first concern, it appears clear that the Seaton TS is not yet needed³, and the Applicant has known this for some time⁴.

In one sense, this is not unusual. There is no evidence currently on the record that the load forecast supporting the construction of Seaton TS was poorly done, or anything like that. As sometimes happens, load has not materialized as expected, so new facilities will be underutilized for a period of time until that load shows up. Given the area, it will eventually.

However, we do note that the current plan is to bring this station into service in November 2022⁵, after the 2022 peak, and when there will be literally no need for this station at all. At best, it will start to be useful in 2023, in the leadup to the summer peak in that year⁶.

The Applicant argues that there are costs associated with delaying the in-service date from 2022 to 2023. SEC submits that, in fact, if the Applicant had acted appropriately when it realized load was not materializing, the in-service date would already have been moved from 2022 to 2023 or even later. Having already moved it from 2021 to 2022⁷, and additional year should not have been an issue.

² Staff 6, p. 2.

³ Staff 4 and many other references.

⁴ Staff 4, p. 2, and SEC 10.

⁵ Staff 5(d).

⁶ Staff 4.

⁷ Staff 5(b).

The Applicant claims that the Seaton TS should not be delayed because there will be some amount (under \$1 million) in additional costs in that case⁸. Given that the utility is seeking more than \$3 million from customers in 2022 for ICM payments in order to have a station for two months of the year that they don't need until a subsequent year, it is SEC's submission that the ratepayers would be better off with the delay.

SEC therefore submits that the Seaton TS should be approved as an ICM for 2023 in-service rather than 2022. The Applicant will still collect the full revenue requirement associated with the station from customers, but will only start doing so when the station is actually needed to serve those customers.

The second concern is more general in nature. The Applicant made a decision to build and operate this TS itself, and treat it as a distribution asset, rather than ask Hydro One to provide those transformation services, presumably with a similar station built and owned by Hydro One. This is common practice, and in the normal course it may well be in the long term interests of the customers for the distributor to own the TS.

To the best of our knowledge, the Board has never looked at whether the amounts paid by customers for transformation services provided by the distributor vs. the transmitter are the same in the context of an ICM. The Board and others have in the past looked at whether, on a cost of service basis, distributor-owned transmission stations are fair to the customers. However, the ICM policy does not address this aspect.

It would appear to SEC that there are a number of ways in which customers may be worse off if they pay ICM riders to a distributor vs. transformation charges to the transmitter. The most obvious, of course, is the fixed and variable split of ICM riders, which means different billing determinants and potentially different amounts charged to each customer class or customers within a class. The bigger impact, on the other hand, may be that transmitter-owned facilities attract a capital contribution from the distributor, but that is net of discounted cash flow. Even if the transmitter is also immediately including the capital cost of the station in rates, the overall cost borne by the local customer may be different under the ICM.

SEC is aware that this comparison is a complicated one, and we are not able to estimate whether there is a material problem here or not.

We also acknowledge that the Applicant has followed normal Board policy here, both in choosing to build its own station, and including it in an ICM claim. None of our comments on this should be interpreted as suggesting that this issue should be applied to the Applicant in this case.

Having said that, SEC believes that the Board should investigate whether the choice by a distributor to build a transformer station results, in the context of an ICM, in the customers bearing a similar overall cost for transformation services, either initially or over time. Such an investigation, which appears to us to be largely a mathematical exercise, could then inform the Board, utilities, and customers in future applications of this type.

⁸ SEC 7.

Subject to our comment on the in-service date, SEC therefore submits that the Seaton TS ICM claim should be approved.

ICM – BRT Project

The BRT Project is a relocation project to respond to a road widening. The gross cost is \$5.3 million, but \$1.9 million will be contributed by the road authority⁹, and \$1.3 million is the NBV of retirements of existing rate base¹⁰. The actual incremental cost of the project (increase in rate base) is therefore under \$2.1 million.

To put this in context, the NBV of PP&E for Elexicon as of the end of 2020 was \$532.7 million¹¹, which means that in 2022 the rate base impact of the BRT project will be just under one-third of one percent of total PP&E.

We also note that the Applicant regularly spends substantial amounts on road relocation projects each year¹², and this year the net cost will be similar to most past (pre-covid) years.

OEB Staff asked the Applicant why this project should be treated as incremental, and the Applicant explained by comparing 2022 to 2021¹³. We note that prior years may be more reflective. However, even that comparison shows that, even with the Metrolinx electrification project delayed from 2021 to 2022, the net cost of third party infrastructure development projects in 2022 is similar to 2021¹⁴, and that doesn't even take account of rate base reductions from retirements.

SEC therefore submits that the BRT road relocation project is not sufficiently large or out of the ordinary to qualify for ICM treatment. This is one of a series of annual third party infrastructure projects that utilities like the Applicant regularly fund out of existing budgets.

Earnings Sharing Mechanism

SEC wishes to express two concerns with respect to the proposed ESM.

First, the Applicant did not include in their Notice, or their original Application, a request for approval of this mechanism. That request was only added later¹⁵, apparently as a result of reviewing the information requested in interrogatories¹⁶.

SEC therefore believes that it is inappropriate to provide the approval of the ESM as requested. Anyone looking at the Notice of the proceeding, and looking at the original Application, could not have known that a proposal would be made to approve a mechanism for future years that could have material implications on rates. Whether any particular potential intervenor failed to

⁹ App. B, p. 6.

¹⁰ SEC 8.

¹¹ 2020 Electricity Distributors Yearbook.

¹² SEC 4.

¹³ Staff 11.

¹⁴ Staff 11, Table 2.

¹⁵ By letter dated November 8, 2021.

¹⁶ See the reference in SEC 11.

intervene as a result cannot be known, but the whole point of ensuring proper public notice is so that the Board never makes a decision that the public could not have known was coming.

Thankfully, it appears to SEC that an approval is not necessary at this time. As OEB Staff correctly points out¹⁷, there are no rate implications until 2026.

The Applicant will, we assume, argue that they were required by Board order to file this proposal by December 31, 2021¹⁸, and therefore that this panel of Commissioners should consider it. In SEC's view, the Applicant has complied with the direction to file a proposal in a timely manner. The Board is in a position to determine whether to approve it, with or without modifications, at any time up to the beginning of the 2024 rate year, when it would come into effect.

It is therefore the prudent regulatory course of action, in light of the defective Notice, to defer consideration of this proposal to a subsequent proceeding, when proper notice can be given.

Our second comment relates to the details of the proposal. In two interrogatories¹⁹, SEC asked questions about calculation methodologies that could materially impact the amount of earnings that would be subject to sharing. In both cases, the Applicant declined to answer, citing the Alectra ESM decision²⁰, which implies that issues of this sort should be dealt with after the first year the ESM would be in effect.

SEC submits that the ESM, and its calculation, including all material aspects, should be dealt with by the Board at the same time, so that both the Applicant and its customers have certainty as to the rate implications that will be coming during the earnings sharing period.

Again, in this case the Board is early enough in the process that, with a delay in approval of the mechanism itself, the Board can also deal with the methodological issues at that time.

SEC therefore submits that the Board should order the Applicant to re-submit its ESM proposal, with all methodological proposals associated with it, in its next rate proceeding prior to the beginning of the 2024 rate year. In that way, proper notice can be given, and customers can review the full scope of what the utility is proposing.

Conclusion

SEC therefore submits:

- a. The Seaton TS ICM claim should be approved for in-service in 2023.
- b. The Board should review the interaction of the ICM policy with the ability of distributors to build transformation facilities or buy the services from the transmitter, for potential application to future ICM claims of this type.
- c. The BRT road relocation ICM claim should not be approved.
- d. The Board should defer consideration of the ECM proposal until the next rate proceeding of the Applicant.

¹⁷ OEB Staff Submissions, p. 11.

¹⁸ EB-2018-0236.

¹⁹ SEC 11 and SEC 12.

²⁰ EB-2019-0018.



All of which is respectfully submitted.

Yours very truly,

Shepherd Rubenstein Professional Corporation

A handwritten signature in black ink, appearing to read "Jay Shepherd", written over a light gray rectangular background.

Jay Shepherd

cc: Ted Doherty, SEC (by email)
Interested Parties (by email)