

IN THE MATTER OF an Application by Elexicon Energy Inc. Corporation 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

Submission of the Mississaugas of Scugog Island First Nation (MSIFN)

November 18, 2021

1) INCREMENTAL CAPITAL MODULES (“ICM”)

- a) MSIFN has no objections to Elexicon Energy’s (Elexicon) request for approval for incremental capital funding (ICF). Elexicon has demonstrated that the Seaton Transformer Station (Seaton TS) is necessary to meet expected electricity load growth in the rapidly growing Pickering area. The evidence put forward by Elexicon in Appendix B-2: Seaton TS DSP Business Case demonstrates the need for ICF for this project at this time. Elexicon has conducted reasonable due diligence to benchmark the costs for the project and engage in a competitive bidding process to ensure reasonable costs. Furthermore, Elexicon conducted an Environmental Assessment under the Class Environmental Assessment for Minor Transmission Facilities (Class EA: Ontario Hydro, 1992) process that was in place when Notice of Commencement was provided.
- b) MSIFN has no objections to Elexicon’s request for approval for ICF for the BRT Highway 2 project. Based on Elexicon’s submission MSIFN understands that Elexicon must complete the BRT Highway 2 project to meet its binding obligations under the Public Services Works on Highways Act. Elexicon has chosen a prudent course of action to relocate overhead and underground assets based on the current configuration vs. the more expensive option of locating all of the assets underground or the impractical option of locating all assets overhead given clearance requirements.

2) MSIFN’S THREE COST ISSUES

In Procedural Order No. 2, October 2021, the Ontario Energy Board (the Board) identified three issues cited by MSIFN as being within the scope of this proceeding:

- I. Costs related to Elexicon fulfilling the procedural aspects of the duty to consult First Nations in relation to the two projects

- II. Costs related to Elexicon's engagement of First Nations with respect to archaeological and cultural heritage matters arising from the two projects and
- III. Costs related to Elexicon's engagement of First Nations with respect to federal, provincial and municipal Crown permits and approvals required by the two projects.

- a) Elexicon's Approach to Consultation: MSIFN appreciates the time and consideration afforded by Elexicon in providing its responses to MSIFN's Interrogatories for its 2022 IRM Rate Application.

MSIFN welcomes dialogue with Elexicon with regard to its future Indigenous-related policies as noted in Elexicon's response to MSIFN IR 5 a). As other energy proponents in MSIFN's treaty lands including Ontario Power Generation (OPG), have noted, building and improving relationships with Indigenous rights-holders is good business, and ultimately good for the ratepayers of Ontario.

Respecting Indigenous rights and interests and establishing pathways for developing and maintaining mutually beneficial relationships and partnerships with Indigenous rights-holders, inclusive of capacity building support and employment and business contracting opportunities provides opportunities for cost efficiencies directly related to the costs of fulfilling the procedural aspects of the duty to consult First Nations, the costs of engaging First Nations with respect to archaeological and cultural heritage matters, and the costs of engaging First Nations with respect to federal, provincial and municipal Crown permits and approvals.

- b) Costs of Consultation and the Ratepayers of Ontario: The filings for the Seaton TS and the BRT Highway 2 project do not provide sufficient evidence to benchmark MSIFN's three cost issues to determine if Elexicon and its predecessor entities had adopted Indigenous-related policies earlier, such policies would result in cost efficiencies for these two specific projects. However, the experience of Board regulated entities such as OPG, Hydro One Networks Inc., and Enbridge Gas, which have spent several years developing Indigenous related policies, indicates that such policies provide significant value to the ratepayers of Ontario in terms of long-term cost efficiencies for fulfilling the duty to consult, archaeological and cultural matters, and advancing Crown approvals with respect to multiple Board approval processes. Indeed, OPG and Hydro One have significant experience in working with Indigenous rights-holders as equity partners in projects brought before the Board for approval, given the alignment of interests and improved project planning that can result from such equity partnerships, yielding significant benefits to the ratepayers of Ontario and advancing economic reconciliation.
- c) MSIFN is encouraged that Elexicon seeks to develop Indigenous related policies given the significant existing Elexicon assets within MSIFN's treaty lands, and future capital assets that will come with growth in the region.

MSIFN encourages Elexicon to consider future policies that that require engaging in community relations and outreach with Indigenous rights-holders, and paths to providing capacity building support, including employment and business contracting opportunities which may provide further benefits to the ratepayers of Ontario, including Indigenous ratepayers within Elexicon's distribution system.

- d) **Consideration of Cumulative Effects:** MSIFN acknowledges that the consideration of cumulative effects is not required within the approval requirements for these two projects. The current Class Environmental Assessment for Minor Transmission Facilities November 16, 2016 does, however, require consideration of cumulative effects. All proponents are required to consider cumulative effects when planning projects, and the assessment should include the proposed undertaking and any other proposed undertakings in the immediate project area where documentation is available. In the rapidly growing regions serviced by Elexicon within MSIFN's treaty lands, consideration of cumulative effects is of considerable importance to all parties. MSIFN's treaty lands have been, and will continue to be disrupted, fragmented and impacted by a range of industrial, commercial and residential developments. MSIFN would be pleased to discuss approaches to considering cumulative effects for future Elexicon projects.

- e) **Costs and Logistics for Supporting Indigenous Archaeological Monitors:** MSIFN has corresponded with Elexicon in response to requests to field First Nation archaeological monitors at the Seaton TS site. MSIFN appreciates Elexicon's request, and has responded that MSIFN does not currently have the internal structure and capacity to support this request along with the dozens of other requests MSIFN receives for the attendance of archaeological monitors from proponents across its treaty lands. MSIFN is pleased that Elexicon indicates in its Project Risk Assessment and Mitigation Matrix (September 21, 2021) that it plans to meet with MSIFN to better understand needs to accommodate MSIFN in this respect.

- f) **Broader BRT Project:** Elexicon notes that the broader BRT project may require the applicable road/transportation authorities to obtain an environmental assessment for the project, however this is entirely outside of Elexicon's scope of work. MSIFN would appreciate Elexicon sharing MSIFN's submission to the Board to these authorities.

- g) **Costs Relating to Cultural Heritage Matters:** MSIFN strongly encourages the Elexicon and the Board to reference the Provincial Policy Statyment (2020) (PPS) with regard to the assessment of future applications to the Board., including guidance on assessing Cultural Heritage Landscapes. Both the Class EA process undertaken by Elexicon for this proceeding and the current Class EA process are weak in providing guidance on the assessment of Cultural Heritage Landscapes. MSIFN encourages the Board and Elexicon to reference the PPS in future project assessments.

The PPS says "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."

The PPS defines a Cultural Heritage Landscape as follows: "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. The area may include features such as buildings, structures, spaces, views, archaeological sites or natural elements

that are valued together for their interrelationship, meaning or association. Cultural heritage landscapes may be properties that have been determined to have cultural heritage value or interest under the Ontario Heritage Act; or have been included in on federal and/or international registers, and/or protected through official plan, zoning by-law, or other land use planning mechanisms”.

- All of which is respectfully submitted -