November 30, 2021

Delivered by Email & RESS

Ms. Christine Long, Registrar
Ontario Energy Board
2300 Yonge Street
27th Floor, P.O. Box 2319
Toronto, ON M4P 1E4

Dear Ms. Long:

Re: EB-2021-0015 – Elexicon Energy Inc. ("Elexicon") IRM and ICM Application (the "Application")
Elexicon's Reply Submission

Pursuant to Procedural Order No. 2 dated October 19, 2021, please find enclosed Elexicon's Reply Submission regarding the above noted matter.

The Reply Submission has been filed on RESS, and a copy has been emailed to the Registrar and served on each party in the proceeding.

Sincerely,

Steve Zebrowski
Manager, Regulatory Policy
Elexicon Energy Inc.

cc: Mr. Jerry Wang (OEB)
Mississaugas of Scugog Island First Nation
Power Workers' Union
School Energy Coalition
Consumers Council of Canada
Vulnerable Energy Consumers Coalition

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, (Schedule B);

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 distribution rates and other service charges to be effective January 1, 2022.

REPLY SUBMISSION

ELEXICON ENERGY INC.

EB-2021-0015

NOVEMBER 30, 2021

A. INTRODUCTION

1. Elexicon Energy Inc. ("Elexicon") filed an Incentive Rate-setting Mechanism ("IRM") application with the Ontario Energy Board ("OEB" or "Board") 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 (the "Application") for its Veridian Rate Zone ("VRZ") and Whitby Rate Zone ("WRZ"). The OEB approved Consumers Council of Canada ("CCC"), Mississaugas of Scugog Island First Nation ("MSIFN"), Power Workers' Union ("PWU"), School Energy Coalition ("SEC"), and Vulnerable Energy Consumers Coalition ("VECC") as intervenors (the "Intervenors").

2. In accordance with the OEB's Procedural Order No. 2 dated October 19, 2021 (Revised November 17, 2021), parties were required to submit written submissions by November 19, 2021 with Elexicon's Reply Submission due November 30, 2021. Elexicon received written submissions from OEB Staff and all Intervenors on November 19, 2021.

3. OEB Staff and the Intervenors made submissions on Elexicon's Incremental Capital Module ("ICM") funding request[1] and the Earning Sharing Mechanism ("ESM") proposal.[2] Only OEB Staff made submissions on the IRM aspects of the Application.

4. Elexicon makes reply submissions on the following:

    (a) IRM

    (b) ICM

    (c) ESM

[1] OEB Staff, CCC, MSIFN, PWU, SEC, and VECC made submissions on the ICM.
[2] OEB Staff, PWU and SEC made submissions on the ESM.

B. ELEXICON'S REPLY SUBMISSIONS – IRM APPLICATION

(a) Annual Adjustment Mechanism

5. OEB Staff supports Elexicon's request for price cap adjustment for 2022 rates based on the Price Cap IR methodology for the VRZ and the Annual IR Index methodology for the WRZ.[3]

6. In its submissions, OEB Staff identified that Elexicon should confirm the accuracy of the annual adjustment of the updated rate generators in its Reply Submission.[4]

WRZ

7. Elexicon advises that the WRZ IRM model submitted with the OEB Staff Reply Submission (*EE_WRZ_2022_IRM-Rate-Generator Model_20211119*) is not the most up-to-date version of the model. This version includes the accurate annual adjustment and the current OER %. However, this version does not include the updates as per OEB Staff – 25: "*OEB staff has identified that the Non-RPP Retailer Average Price and Average IESO Wholesale Market Price used at the above reference were incorrectly entered as $0.2689. OEB staff has updated the pricing to reflect the correct amount of $0.1060.*

VRZ

8. Elexicon confirms that accuracy of the annual adjustment of the updated VRZ rate generator model.

(b) Retail Transmission Service Rates ("RTSRs")

9. OEB Staff submits that it will make the appropriate updates to Elexicon's 2022 RTSRs in each rate zone if the OEB approves 2022 Uniform Transmission Rates ("UTRs") or Elexicon's host distributor's RTSRs, effective January 1, 2022, after the close of record and before the OEB issues a decision in this proceeding. OEB Staff also submits that if the OEB does not approve 2022 UTRs and/or host distributor's RTSRs prior to the issuance of a

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[3] OEB Staff Submission dated November 19, 2021 ("**OEB Staff Submission**") at page 2.
[4] Ibid.

decision and order in this proceeding, then Accounts 1584 – Retail Transmission Network Charge and Account 1586 – Retail Transmission Connection Charge will capture these differences.[5]

10. Elexicon submits that the RTSRs should be approved as filed if the 2022 UTRs and sub-transmission rates are not available prior to the OEB issuing a decision in this proceeding.

(c) Tax Sharing Mechanism

11. OEB Staff supports Elexicon's approach and calculations for each rate zone.[6]

12. Elexicon submits that the Tax Sharing Mechanism should be approved as filed.

(d) Group 1 Deferral and Variance Accounts ("DVAs")

13. OEB Staff supports Elexicon's request to dispose of its December 31, 2020 Group 1 DVA balances on an interim basis for the VRZ.[7]

14. In its submissions, OEB Staff noted that Elexicon should confirm that the 2018 principal adjustments are similar to the 2019 principal adjustment amounts in that they are not expected to be materially affected by the unaccounted for energy ("UFE") matter[8] and its impact on the VRZ settlements and accounting.[9]

15. Elexicon confirms that the identified issue related to UFE[10] will not materially affect the 2018 principal adjustments. Elexicon advises that the UFE issue occurred subsequent to a system modification that took effect in December 2019. The modification, that was designed to automate certain portions of the meter data extraction process used for settlement, has since been updated to correct the identified issue. Revised settlement information related to 2020 has been included in the Group 1 DVA balances requested for interim disposition.

[5] Ibid.
[6] OEB Staff Submission at page 3.
[7] OEB Staff Submission at pages 3 and 4.
[8] OEB Staff 18 (c) and (d) Response
[9] OEB Staff Submission at page 6.
[10] OEB Staff 18 (c) and (d) Response

16. Elexicon submits that the request for interim disposition of Group 1 balances for the VRZ be approved.

17. With respect to the WRZ, OEB Staff submits that the balances in Elexicon's 2020 Group 1 DVAs are reasonable and appropriately calculated to be under the OEB's disposition threshold.[11]

18. Elexicon has requested an extension for the WRZ with respect to implementing the OEB's *Accounting Guidance Related to Commodity Pass-Through Accounts 1588 & 1589* issued February 21, 2019 (the "Accounting Guidance"). OEB Staff did not object to the OEB granting an extension to June 2022 with respect to the implementation of the OEB's Accounting Guidance.[12]

19. In response to OEB Staff-19 Elexicon confirmed that an extension would not have a material impact on the WRZ's Group 1 DVA balances (2020 and beyond) and that no further adjustments are expected to result from the new integrated CIS system.

20. Elexicon submits that the extension be approved as requested.

(e) Lost Revenue Adjustment Mechanism Variance Account ("LRAMVA")

21. OEB Staff submits that Elexicon's LRAMVA balance has been calculated in accordance with the OEB's *Guidelines for Electricity Distributor Conservation and Demand Management* and updated LRAMVA policy.[13] OEB Staff supports the LRAMVA balance requested for disposition.[14]

22. Elexicon submits that the LRAMVA should be approved as filed.

[11] OEB Staff Submission at page 6.
[12] Ibid.
[13] Ibid at page 7.
[14] Ibid at page 8.

C. ELEXICON'S REPLY SUBMISSIONS – ICM APPLICATION

23. With respect to the Seaton Transformer Station (the "Seaton TS"), OEB Staff,[15] PWU,[16] CCC,[17] SEC[18] and VECC[19] support the approval for Elexicon's ICM funding request.

24. With respect to the Bus Rapid Transit Highway 2 ("BRT") ICM funding request, both OEB Staff[20] and PWU[21] support the approval of this request, whereas VECC,[22] CCC[23], and SEC[24] do not support the approval.

25. MSIFN has no objections to Elexicon's request for approval for incremental capital funding for both projects.[25]

26. Elexicon makes detailed reply submissions below.

(a) Materiality

(i) Updating the Materiality Calculation

27. OEB Staff proposed updating Elexicon's ICM model to reflect the OEB-approved 2022 inflation factor and the price cap index of 3.0%, and notes that this update did not have a material impact on Elexicon's ICM request (including its materiality threshold or maximum eligible incremental capital amount). After making these updates, OEB Staff confirmed Elexicon's total requested ICM funding of $44,141,300 remains within the maximum eligible incremental capital amount.[26]

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[15] OEB Staff Submission at page 12.
[16] PWU Submission dated November 19, 2021 ("**PWU Submission**") at pages 2 to 4.
[17] CCC Submission dated November 19, 2021 ("**CCC Submission**") at page 1.
[18] SEC Submission dated November 19, 2021 ("**SEC Submission**") at page 1.
[19] VECC Submission dated November 19, 2021 revised November 22, 2021 ("**VECC Submission**") at pages 2 to 4.
[20] Supra note 15.
[21] Supra note 16.
[22] VECC Submission at page 3.
[23] CCC Submission at page 3.
[24] SEC Submission at page 1.
[25] MSIFN Submission dated November 19, 2021 ("**MSIFN Submission**") at page 1.
[26] OEB Staff Submission at pages 13 to 14.

28. Elexicon has reviewed the ICM model filed accompanying OEB Staff submissions. Elexicon agrees that the adjustments (to use the 2022 inflation factor and to update the price cap index to 3.0%) were done appropriately. Elexicon agrees with OEB Staff's conclusion that Elexicon's total ICM funding request of $44,141,300 remains within the recalculated maximum eligible incremental capital amount of $57,669,283.

(ii) Seaton TS

29. OEB Staff, PWU, CCC and VECC submits that the Seaton TS project meets the OEB's ICM criteria of materiality.[27] No party disagreed.

30. Elexicon agrees that the Seaton TS project costs of $40,762,000 are material and represents a significant influence on Elexicon's operations, as further evidence in Appendix B, Section 2.1.2 of the Application.

(iii) BRT Project

31. Each of CCC,[28] SEC,[29] and VECC[30] argues that Elexicon regularly spends substantial amounts on road relocation projects each year and as a consequence the BRT Highway 2 project funding should be incorporated into Elexicon's 2022 capital budget and as a consequence the ICM funding request should be denied.

32. Elexicon does not agree.

33. OEB Staff correctly notes in their submissions that the OEB had approved similar sized road relocation ICM projects in Alectra Utilities' 2021 rate proceedings and found those projects to be material. Compared to Alectra Utilities, OEB Staff submits that the BRT project accounts for an even larger percentage of its total capital budget and should therefore also meet the project-specific materiality threshold.[31] OEB Staff further submits that if the cost of

[27] Supra notes 15, 16, 17, 19.
[28] CCC Submission at page 3.
[29] SEC Submission at page 4.
[30] VECC Submission at page 3.
[31] OEB Staff Submission at page 14.

the Seaton TS is removed, the BRT project represents 8.4% of Elexicon's total 2022 capital spending, which demonstrates that this project is material to Elexicon.[32]

34. Elexicon agrees with OEB Staff in this regard. In Table 1 below Elexicon shows three different projects that have been approved by the OEB as eligible for ICM funding, having met the project specific materiality threshold, that are similar in nature to Elexicon's BRT project. If the cost of the Seaton TS is removed, the BRT project represents 8.4% of Elexicon's total 2022 capital expenditures. Even with Seaton TS included, the BRT project represents 3.98% of Elexicon's total 2022 capital expenditures – which is significantly larger than the 2021 approvals and is equivalent to the 2018 approval identified in Table 1 below.

Table 1 – Examples of Similar OEB-Approved ICM Projects

LDC	ICM Project	ICM Project Description	ICM Cost	Overall Capital Budget	ICM vs. Overall
Alectra Utilities Corporation	PowerStream RZ - York Region Rapid Transit VIVA Bus Rapid Transit Y2 and H2 Projects [EB-2017-0024][1]	This project involves the relocation of overhead and underground distribution assets as required to accommodate York Region Rapid Transit Corporation's Bus Rapid Transit developments.	$11.24M in 2018	2018 capital budget across all RZs is $267.7M	The ICM cost is 4.2% of overall RZ budget
Alectra Utilities Corporation	Brampton RZ - Goreway Drive Widening from Cottrelle Blvd to Countryside Drive [EB-2020-0002][2]	This project addresses the mandatory relocation of electrical distribution assets on Goreway Drive, as requested by the City of Brampton under the Public Service Works on Highways Act.	$2.09M in 2021	2021 capital budget across all RZs is $250.3M	The ICM cost is 0.8% of overall RZ budget
Alectra Utilities Corporation	PowerStream RZ - Rutherford Road from Bathurst Street to Peter Rupert Avenue Project Road Widening Project [EB-2020-0002][3]	This project addresses the mandatory relocation of electrical distribution assets on Rutherford Road, as requested by the Regional Municipality of York as a Road Authority under the Public Service Works on Highways Act.	$2.89M in 2021	2021 capital budget across all RZs is $250.3M	The ICM cost is 1.2% of overall RZ budget

35. In addition, and as noted by PWU, the BRT project is materially larger than other relocations - it is the largest road relocation project undertaken by Elexicon since 2014.[33]

36. Elexicon agrees. The size, scale and complexity of the project makes it a strong candidate for ICM funding.

[32] Ibid.
[33] PWU Submission at page 4.

37. In addition, as further explained in response to OEB Staff-11, Elexicon has already absorbed a major incremental project, the Belleville operations centre, into its existing capital plan. It is not sustainable for Elexicon to continue absorbing material incremental costs into base rates without negatively impacting Elexicon and its customers.

38. PWU further submits that, net of contributions, the $3.38 million budget for this project is nearly half of VRZ's 5-year historic average annual system access budget and Elexicon cannot simply fit the BRT project in its total capital budget without making material reductions to spending in other areas.[34]

39. Elexicon agrees.

40. In this context, each of VECC, [35] SEC[36] and CCC[37] argue that when assessing the materiality of the BRT Project, the OEB should arbitrarily reduce the 2022 net capital expenditures of $3.6 million by $1.335 million. They argue that these reductions are necessary because, as set out in SEC-8, $1.335 million in retirements will result from the BRT Project. As a result, the net additions to rate base in 2022 would be $2.265 million. Based on these adjustments, each of SEC, VECC and CCC argue that the BRT Project does not pass the project-specific materiality test.

41. Elexicon does not agree for the following reasons.

42. First, the net value of assets being retired are not a relevant factor in an ICM materiality test. The stated purpose of the Board's ICM policy is to assist distributors in managing material <u>capital expenditures</u> in years between cost of service applications. The focus on capital expenditures was clear in the first formulation of the ICM policy in 2008,[38] the subsequent

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[34] Ibid.
[35] VECC Submission at page 3 to 4.
[36] SEC Submission at page 4.
[37] CCC Submission at page 3.
[38] *Report of the Board: on 3rd Generation Incentive Regulation for Ontario's Electricity Distributors* issued July 14, 2008 which at page 32 provides: "For <u>**incremental capital expenditures**</u> to be considered for recovery prior to rebasing, amounts must satisfy the eligibility criteria set out in Table 5."

formulation in the OEB's *Renewed Regulatory Framework* ("RRF") in 2012,[39] the evolution of the ICM and the Advanced Capital Module ("ACM") policy in 2014,[40] and it remains clear in the Chapter 3 Filing Requirements applicable to this Application.[41] This is also why the OEB's ICM Model calculates the eligible incremental capital amounts based on capital expenditures and why the relevant ACM/ICM Account 1508 – Other Regulatory Assets sub-accounts explicitly record amounts related to incremental capital expenditures. In this context, it is misleading to suggest that the relevant measure for the ICM materiality test is net additions to rate base rather than net capital expenditures.

43. Second, none of the three different parties have cited a single authority to suggest that the OEB has applied a net additions to rate base approach to the ICM materiality calculations in the past. This is because no such authority exists. In Elexicon's extensive review of other ICM or ACM decisions on the public record[42], the materiality test was assessed as against capital expenditures – not net additions to rate base after arbitrarily reducing the capital expenditures by the value of removals. This includes the three analogous relocation projects cited in Table 1 above.

44. To be clear, the $1.335 million of removals identified in SEC-8 <u>are not</u> included in the forecasted BRT Project costs of $3.38 million. This can be seen in the detailed breakdown of the forecasted net capital additions for the BRT Project included in Table 1, filed in Elexicon's response to Staff-10. The need for ICM funding is to support the net capital

[39] *Report of the Board: Renewed Regulatory Framework for Electricity Distributors: A Performance-Based Approach* issued October 18, 2012 at page 18 which provides: "The ICM is intended to address **<u>incremental capital investment needs</u>** that may arise during the IR term."
[40] *Report of the Board: New Policy Options for the Funding of Capital Investments: The Advanced Capital Module* issued September 18, 2014 which at page 11 provides "In light of the Board's expectations, as signalled in the RRFE Report and associated documents, the Board is establishing the following mechanism to assist distributors in aligning **<u>capital expenditure</u>** timing and prioritization with rate predictability and smoothing: […]"
[41] *Filing Requirements For Electricity Distribution Rate Applications - 2021 Edition for 2022 Rate Applications Chapter 3 – Incentive Rate-Setting Applications* issued June 24, 2021 which at page 26 provides: "The ICM is intended to address the treatment of **<u>capital investment needs</u>** that arise during the rate-setting plan which are incremental to the materiality threshold defined below."
[42] Elexicon reviewed the following cases EB-2008-0187; EB-2010-0104; EB-2010-0130; EB-2011-0160; EB-2011-0173; EB-2011-0178; EB-2011-0203; EB-2011-0207; EB-2012-0124; EB-2013-0127; EB-2014-0086; EB-2014-0097; EB-2015-0065; EB-2018-0021; EB-2018-0028; EB-2018-0063; EB-2018-0328; EB-2019-0019; EB-2019-0022/ EB-2019-0031; EB-2019-0023; EB-2019-0059; EB-2020-0002; EB-2020-0041; EB-2020-0249/EB-2018-0219; and EB-2020-0024

expenditures that Elexicon will incur in 2022, which is $3.38 million. And as described above, this amount clearly meets the OEB's materiality test.

45. Finally, SEC argues that that the net book value ("NBV") of PP&E for Elexicon as of the end of 2020 was $532.7 million, which means that in 2022 the rate base impact of the BRT project will be just under one-third of a percent of total PP&E.[43]

46. Elexicon submits that this is not a relevant consideration in assessing a request for ICM funding. The OEB has already accounted for rate base, growth, and a 10% deadband in the materiality threshold formula which must be met to qualify for ICM funding in accordance with the January 22, 2016 Report of the OEB (EB-2014-0219) *New Policy Options for Funding of Capital Investments: Supplemental Report*. The evidence is clear that Elexicon has passed this threshold test, as updated by OEB Staff in their submissions (see above). It would not be appropriate for the OEB to adopt an arbitrary and entirely new ICM threshold test as part of this Application, as is suggested by SEC.

(b) Need

(i) Means Test

47. OEB Staff,[44] PWU[45] and VECC[46] all agree that Elexicon meets the means test as set in the *Report of the Board – New Policy Options for the Funding of Capital Investments: The Advanced Capital Module* (EB-2014-0219) dated September 18, 2014 and the *Report of the Board – New Policy Options for the Funding of Capital Investments: Supplemental Report* (EB-2014-0219) dated January 22, 2016 (the "ACM Reports").

48. Elexicon agrees.

49. No party argued that Elexicon failed to meet the means test.

[43] SEC Submission at page 4.
[44] Ibid.
[45] PWU Submission at page 4.
[46] VECC Submission at page 4.

50. Elexicon's 2020 achieved return on equity ("ROE") was 263 basis points below its deemed ROE, which was calculated based on the weighted average of the deemed ROE for each of the predecessor utilities.[47] As noted in response to CCC-2, for scorecard purposes the OEB has determined a methodology to calculate a deemed ROE for a merged distributor. The methodology used by Elexicon is consistent with the OEB's scorecard methodology.

51. Elexicon submits that the evidence clearly demonstrates that the means test has been met.

(ii) Need – Seaton TS

52. OEB Staff agrees with Elexicon that Seaton TS is discrete and directly related to the claimed driver. Specifically, OEB Staff agreed that the Seaton TS is not a typical annual capital program and is outside of Elexicon's existing rate base.[48]

53. Both CCC[49] and VECC[50] agreed that Elexicon has produced sufficient evidence to support the need of the Seaton TS, stating that a key outcome of the Regional Planning Process for the GTA East planning region was the construction of a new transmission station, Seaton TS, to resolve capacity issues at Whitby TS which arose due to the development of the new Seaton subdivision. VECC further agreed with Elexicon's evidence that the Seaton TS project is a discrete capital project that exceeds the materiality level for the VRZ and is unrelated to any recurring annual capital projects.[51]

54. However, both CCC[52] and VECC[53] go on to argue that the ICM rate riders should not be applied until 2023 given the Whitby TS will exceed its limited 10-day rating in 2023 and therefore applying rate riders in 2022 is premature.

[47] Section 2.2.1 of Appendix B of the Application.
[48] Ibid.
[49] CCC Submission at page 2.
[50] VECC Submission at page 4.
[51] VECC Submission at pages 4 to 5.
[52] CCC Submission at pages 2 and 3.
[53] VECC Submission at page 6.

55. SEC similarly argues that Seaton TS is "not yet needed", that load has not materialized as expected and as a consequence the new facilities will be underutilized for a period of time until that load shows up.[54] SEC argues that the Seaton TS project should be approved for 2023 in-service rather than 2022.[55]

56. Elexicon does not agree.

57. The OEB previously considered a somewhat similar situation in the context of an ICM application made by Burlington Hydro Inc. in EB-2018-0021 related to acquiring two additional breaker positions at the Tremaine TS. In that case, based on revised load forecasts, Burlington Hydro would have sufficient capacity at Tremaine TS **until 2027** without the two additional breakers. In this context, the OEB approved $2.000 million ICM funding in 2019 for these two additional breaker positions, explaining:

> "*The OEB approves $2.000 million in ICM funding for this project. Burlington Hydro must make capital decisions based on the best information available including weighting the risks of deferring a decision. The OEB is satisfied that the two additional breakers will address future need and that the expenditure is congruent with utility long-term planning.*"[56]

58. Similarly, Elexicon must make capital decisions based on the best information available including weighting the risks of deferring a decision. The Seaton TS will address both immediate and future needs, and the planned in-service date in 2022 is congruent with both utility short-term and long-term planning.

59. The evidence clearly demonstrates the need for the Seaton TS, as more fully described in the GTA East 2019-2024 cycle of Regional Infrastructure Planning report dated February 29, 2020.[57] The evidence is also clear that based on the most up-to-date and best available

[54] SEC Submission at page 2.
[55] SEC Submission at page 3.
[56] Decision and Rate Order in EB-2018-0021 issued March 28, 2019 at page 19.
[57] DSP at Appendix C.

information, Elexicon expects to exceed the limited 10-day rating (LTR) of the Whitby TS 27.6 kV system in 2023.[58]

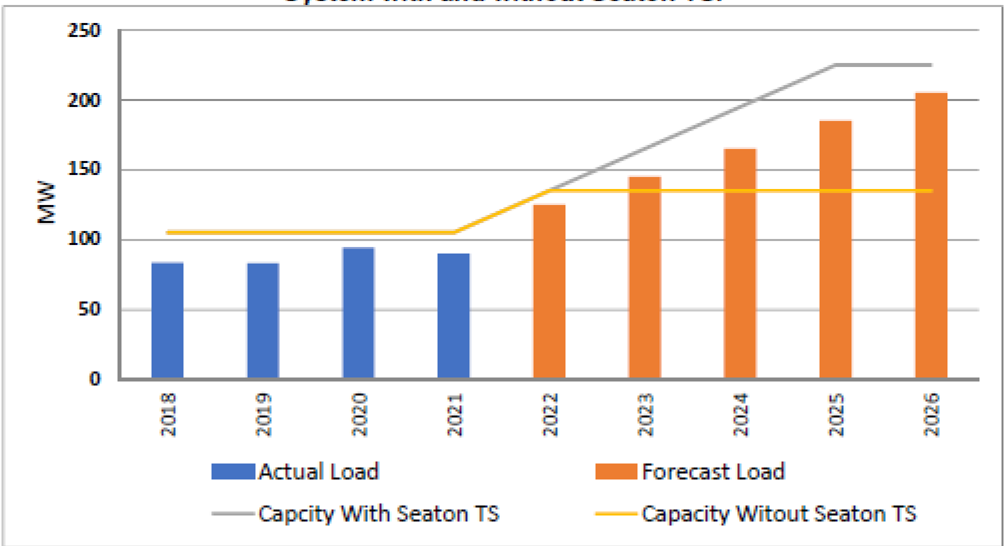
60. What does the possibility of exceeding the LTR of the Whitby TS in 2023 mean in reality? It means that in the ensuing period, the transformers installed at the Whitby TS are being placed at a high risk of catastrophic failure.

61. Rather than running the risk of damaging such an expensive and sensitive piece of equipment, when the LTR is going to be breached, the system operator will typically take other actions to try to avoid that outcome. The most frequently used action would be to curtail load. When Elexicon identifies that the LTR of the Whitby TS is at risk of being exceeded – it means that there is a high risk of load curtailment (commonly referred to as brown outs).

62. In addition, the evidence shows that the Seaton TS will: contribute to meeting the demand on Elexicon's overall 27.6 kV system; increase much needed redundancy; and increase system reliability. As shown in the figure below (taken from OEB Staff-4), absent the Seaton TS, Elexicon's 27.6 kV system will reach its maximum capacity in 2023.

[58] OEB Staff-4.

OEB Staff-4 Figure 1 – Loading vs Maximum Capacity for Ajax Pickering 27.6 kV System with and without Seaton TS.



63. In addition, to the extent Seaton TS creates a new source of supply closer to local loads, the Seaton TS will reduce those customers' line losses.

64. Increased flexibility and redundancy on the local 27.6 kV system are two immediate benefits of completing the Seaton TS sooner rather than later. Currently, the Elexicon distribution system experiences unexpected outages caused by a range of situations including unexpected maintenance on the Whitby TS, adverse weather and other causes. If, for example, more than 2 of the 4 feeders at the Whitby TS experience an unexpected outage - Elexicon will not have sufficient flexibility and redundancy on its 27.6 kV system to continue to supply power to many of its customers for the duration of the outage. Once the Seaton TS is built in November 2022, it will add much needed flexibility and redundancy, allowing Elexicon to minimize the consequence of unexpected outages by routing to an alternative source of supply and in so doing increasing the reliability of the local 27.6 kV system.

65. Regardless of the consideration of local brown outs due to exceeding the Whitby TS LTR, or prolonged customer outages caused by lack of flexibility and redundancy on the local 27.6 kV system – these are all reliability related issues and fundamentally public safety issues during the cold winter months.

66. Elexicon takes its legal obligation to maintain its distribution system in accordance with good utility practice and performance standards and to ensure reliability and quality of electricity service seriously, on both a short-term and long-term basis.

67. It would not be prudent for Elexicon to delay construction of the Seaton TS until 2023.

68. It would basically involve "rolling the dice" and hoping. That is neither a prudent nor a responsible approach to distribution system planning. A prudent engineer solves a problem before it triggers a catastrophic situation. One does not wait until the catastrophe is already upon them. This would not be protecting the interests of consumers with respect to the adequacy, reliability and quality of electricity service.

69. Elexicon does not believe that delaying construction of the Seaton TS to 2023 is consistent with its obligation to act prudently and conservatively in managing its distribution system to ensure capacity is available for customers when needed. By putting the Seaton TS into service in 2022, Elexicon is ensuring there is no jeopardy in the ability to service customers throughout 2023. By comparison, in EB-2018-0021 Burlington Hydro acquired two new breaker positions in 2019 even though the evidence demonstrated that they would not be needed until 2027.

70. In addition, and as explained in response to SEC-7(b), delaying the Seaton TS in-service date to 2023 would involve: halting construction that is already in progress; amending existing contractual agreements; and creating new forecastable incremental costs of approximately $1.0 million. There may be other incremental costs caused by the delay that Elexicon is not yet aware of that it has not accounted for in this preliminary estimate that would further increase the costs of the project.

71. Both CCC[59] and SEC[60] acknowledge that Seaton TS is planned go into service in November 2022.

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[59] CCC Submission at page 2.
[60] SEC Submission at page 2.

72. The Seaton TS will be both used and useful immediately upon going into service. It will immediately contribute to alleviating congestion on the Whitby TS and on Elexicon's overall 27.6 kV system increasing system reliability.

73. In this context, Elexicon submits that it is not appropriate to defer ICM rate recovery for assets that will be in-service, used and useful in 2022 until an arbitrary time in the future when it is expected that the Whitby TS would otherwise be overloaded. This is not consistent with how rates have been set in Ontario, which originates in a statutory requirements from before market opening which required the OEB to establish rate base for gas utilities based on "*a reasonable allowance for the cost of the property that is used or useful in serving the public*".[61]

74. The Handbook for Utility Rate Applications (the "**Handbook**")[62] still defines capital expenditures as (***emphasis*** added):[63]

> "*amounts spent by a utility to acquire or enhance fixed assets, such as land, buildings, and major equipment. When the asset is ready to be* ***used****, the expenditure is added to rate base as a capital addition. The expenditure is then recovered through rates over the life of the asset.*"

75. In addition, the Handbook defines rate base as (***emphasis*** added):[64]

> "*the total dollar value of all the assets* ***used*** *by a utility to provide energy service: wires, poles, meters, IT equipment, etc.*"

76. It is also not consistent with prior ICM decisions on exactly this issue, which have consistently used the "in-service" approach. For example, the OEB's Partial Decision and Order in EB-2012-0064 states at pages 13-14 that:

[61] *Ontario Energy Board Act*, R.S.O. 1990, c. O.13, subsection 19(3), paragraph (a).
[62] OEB Handbook to Utility Rate Applications, dated October 13, 2016.
[63] Handbook at p. i.
[64] Handbook at p. vi.

"*The Board notes that in putting forward the "in-service" approach, the parties refer to capital additions as qualifying under the "used and useful" rule.* ***The Board agrees with THESL that the traditional and long established test in Ontario has been the "used or useful" rule. Therefore, the "in-service" approach should more properly be described as the "used or useful" approach.*** *The Board does not anticipate that there will be any material difference for most of the projects, as they are likely to come into service at the same time as they become "useful". However, in some cases, it may be that THESL's work has been completed on a project but it is not yet "in service" as work which is the responsibility of other parties has not been completed. In these circumstances, the Board finds that THESL may consider the work to be completed and hence "useful", even if it is not yet being "used". References to "in-service" should be read to mean that the necessary work has been completed for it to be put into service.*"

77. It is also not consistent with the ACM Reports, which provide at Section 7.5 that:

"*The distributor will record eligible ACM/ICM amounts in Account 1508 – Other Regulatory Assets, Sub-account Incremental Capital Expenditures,* ***subject to the assets being used or useful (i.e. in service)****. For incremental capital assets under construction, the normal accounting treatment will continue as construction work in progress ("CWIP") prior to these assets going into service and hence being eligible for recording in the 1508 sub-account listed below.*"

78. Finally, it is also not consistent with any recent ICM approvals – all of which established a rate rider effective date in the same year the project went into service, and aligned with their rate year. This includes:

- EB-2020-0024 – Greater Sudbury Hydro Inc. – In-service date December 31, 2021. Rate riders effective May 1, 2021.
- EB-2020-0249/EB-2018-0219 – PUC Distribution Inc. – In-service date of December 31, 2022. Rate riders effective May 1, 2022.

- EB-2018-0328 – Halton Hills Hydro Inc. – Required in-service date of 2019. Rate riders effective May 1, 2019.

- EB-2018-0063 – Ottawa River Power Corporation – In-service date June 2019. Rate riders effective May 1, 2019.

79. Finally, SEC argues that "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."[65]

80. Elexicon does not agree. If there are significant variances between revenue requirement based on actuals and the revenues collected through ICM rate riders, these amounts will be trued-up at the time of Elexicon's next rebasing. Thus, ratepayers already have a mechanism to protect them should Elexicon actual costs not equate to the revenues collected through ICM rate riders.

(iii) Need – BRT Project

81. OEB Staff[66] and PWU[67] noted that the BRT project is non-discretionary and must be completed to fulfill Elexicon's obligations under the *Public Service Works on Highways Act.* OEB Staff argues that the BRT project has a clearly defined scope and is outside of Elexicon's existing rate base. In addition, OEB Staff noted that the OEB has in the past approved ICM funding for similar road widening type projects.[68]

82. No party suggests that the BRT Project is not needed. The evidence of need as set out in the Application supports the mandatory nature of the BRT Project.[69]

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[65] SEC Submissions at page 3.
[66] Ibid.
[67] PWU Submission at page 5.
[68] Ibid.
[69] Schedule B, Section 2.2 of the Application.

(c) Prudence

83. Both OEB Staff[70] and PWU[71] agreed that both projects meet the prudence eligibility criteria. In addition, CCC[72] and VECC[73] agreed that Elexicon has demonstrated prudence for the Seaton TS project, however neither CCC nor VECC addressed the prudence for the BRT project. SEC did not make submissions with respect to prudence for either of the projects.

84. No party argued that Elexicon failed to meet the prudence test with regards to either the Seaton TS or the BRT Project.

85. Elexicon submits that the OEB should rule that both the Seaton TS and the BRT Project meet the prudence eligibility criteria.

86. In this regard, Elexicon takes particular note of the submissions as follows.

87. With respect to the Seaton TS, OEB Staff agreed that Elexicon had done its due diligence in ensuring that costs are competitive and reasonable and taken steps to mitigate the risk of cost overruns.[74] In addition, OEB Staff believes that Elexicon has evaluated a reasonable range of options to address the capacity issue and chosen the option that represents the most cost-effective solution to customers.[75]

88. CCC[76] and VECC[77] noted that Elexicon's predecessor developed the Seaton Transformer Station Supply Options Study and identified that the best alternative was to build the Seaton TS. VECC noted that Elexicon elected to proceed with the most cost-effective option.[78] CCC[79] and VECC[80] noted that Elexicon used a competitive procurement processes for all

[70] OEB Staff Submission at pages 17 and 18.
[71] PWU Submission at page 2.
[72] CCC Submission at page 2.
[73] VECC Submission at page 5.
[74] OEB Staff Submission at page 17.
[75] Ibid.
[76] CCC Submission at page 2.
[77] VECC Submission at page 5.
[78] Ibid.
[79] CCC Submission at page 2.
[80] VECC Submission at page 5.

major purchases on the Seaton TS project and worked with another LDC in contracting with major equipment suppliers. Both CCC[81] and VECC[82] further noted that Elexicon completed benchmarking analyses on the costs for Seaton TS and CCC noted that Elexicon employed a stipulated price contract with the General Contractor where the Contractor is responsible for cost overruns.[83]

89. OEB Staff further noted that Elexicon considered three different options and to ensure that costs are reasonable, Elexicon compared the cost against other comparable past projects involving overhead relocations. For the underground portion of the work, Elexicon compared the unit costs of major assets as it did not have comparable past projects.[84]

90. PWU argued that if the Board were to deny Elexicon's requests for ICM funding, Elexicon would be forced to redeploy its capital spending from other priorities in order to complete these non-discretionary projects. This would result in the reduction of capital investments contemplated in Elexicon's DSP, which would increase the risk of Elexicon being unable to meet the service quality and reliability expectations of its customers in the years ahead.[85] PWU also argues that the acceleration of system work requirements will increase pressure on Elexicon to reallocate available funds from system renewal and system service, which will limit Elexicon's ability to address other necessary asset investments and replacements. PWU argues that the appropriate method to address system access capital requirements for major transit and road work projects that are expected is through the ICM and therefore the Board should approve Elexicon's request.[86]

(i) Other Submissions on the ICM Projects

(1) Distributor Building a TS

[81] CCC Submission at page 2.
[82] VECC Submission at page 5.
[83] CCC Submission at page 2.
[84] OEB Submission at pages 17 and 18.
[85] PWU Submission at page 4.
[86] Ibid.

91. SEC includes some musings in its submissions that are not directly relevant to the matters at issue in this Application, and, if anything, would be more appropriate to consider as part of a broader public policy consultation.

92. Specifically, SEC muses 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.[87]

93. Elexicon submits that there is no evidence to suggest that this is an issue in this case. SEC rightly concedes that that Elexicon has followed normal Board policy in choosing to build its own TS and including it in an ICM. In addition, and as shown in the evidence, the costs for Elexicon to build the TS are much less than the costs if Hydro One were to build the TS.

(2) *MSIFN Cost Issues*

94. MSIFN encourages Elexicon to consider future policies 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.[88]

95. MSIFN notes that it has corresponded with Elexicon in response to request to field First Nation archeological monitors at the Seaton TS site. MSIFN further notes that it is pleased that Elexicon indicates that it plans to meet with MSIFN to better understand needs to accommodate MSIFN in this respect. [89]

96. Elexicon thanks MSIFN for its comments in the Reply Submission. It is Elexicon’s intent to work directly with MSIFN to address concerns presented in its comments.

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[87] Ibid.
[88] Ibid.
[89] MSIFN Submission at page 3.

(d) Clarifications

97. In its submissions, OEB Staff noted a discrepancy in the cost of the Seaton TS project in the latest version of the ICM model filed by Elexicon.[90]

98. Elexicon has reviewed the ICM model and acknowledges that there was a minor error related to Seaton TS in the updated version of the model that was filed in response to OEB Staff-9 on November 8th, 2021. Elexicon has corrected the ICM Model and refiled it along with its Reply Submission ("*Elexicon_ICM_Model_OEB_staff_submisson_revised_20211130*") and notes that there is no change to the proposed rate riders. The cost differences between the original ICM model that was filed with Elexicon's 2022 Rate Application on August 18, 2021 and the revised version filed with this Reply Submission on November 30, 2021 are shown in the table below:

Table 2 – Summary of Revisions to Seaton TS ICM Model

Seaton TS Component	As Filed *18-Aug-21*	Revised *30-Nov-21*	Difference
Land	$1,400,000	$1,186,000	($214,000)
Transformer	$23,388,885	$19,652,885	($3,736,000)
Switchgear	$1,811,302	$1,811,302	$0
Station Equipment	$5,411,988	$5,411,988	$0
Station Building	$8,749,825	$8,749,825	$0
Poles, Towers & Fixture	$0	$550,000	$550,000
Overhead Conductor and Devices	$0	$400,000	$400,000
Underground Conduit	$0	$250,000	$250,000
Underground Conductor and Devices	$0	$250,000	$250,000
SCADA	$0	$2,500,000	$2,500,000
TOTAL	**$40,762,000**	**$40,762,000**	**$0**

99. Elexicon also observes that the amortization period for the Seaton TS Station Building was changed from 25 years to 50 years in response to OEB Staff-9. This change is also

[90] OEB Staff Submission at pages 12 to 13.

incorporated in the revised version of the model that is being filed with this Reply Submission. These revisions lead to a decrease in total revenue requirement for both ICM projects as shown in the table below:

Table 3 – ICM Revenue Requirement

Seaton TS and Hwy 2 BRT	As Filed *18-Aug-21*	Revised *30-Nov-21*	Difference
Revenue Requirement	$3,769,644	$3,683,537	($86,107)

(e) ESM

100. PWU submits that Elexicon's ESM proposal is aligned with OEB policies and should be approved.[91]

101. OEB Staff submits that it has reviewed Elexicon's ESM proposal and does not believe that it deviates in substance from the OEB's Mergers, Amalgamations, Acquisitions and Divestitures ("MAADs") policy or from the ESM framework approved for other consolidated distributors.[92]

102. OEB Staff submits that Elexicon has complied with the OEB's order as per the MAADs Decision.[93] Further, OEB Staff is supportive if Elexicon is seeking OEB approval of the general framework for the ESM it has proposed in this proceeding, while deferring the details surrounding the calculation of any ESM amounts, given that there are no rate implications until the 2026 rates proceeding.[94] Specifically, OEB Staff supports the approval of the following aspects of Elexicon's ESM proposal:

    a. The ESM is in effect for years six through ten of the deferred rebasing period.

[91] PWU Submission at page 6.
[92] OEB Staff Submission at page 10.
[93] OEB Staff Submission at page 10 to 11.
[94] OEB Staff Submission at page 11.

b. Achieved earnings in any given year that exceed 300 basis points above the OEB-approved ROE will be shared on a 50:50 basis with ratepayers.

c. Earnings in each year in which the ESM is in effect would be reported, after audited results are available, and as part of the subsequent rates application. The amounts be shared with ratepayers would be credited to a newly established variance account.

d. Any over-earnings to be shared would be distributed to ratepayers via a one-year rate rider.

e. Regulatory net income will be calculated in the same manner as regulatory net income for the purposes of the RRR filings and in accordance with the RRR 2.1.5.6 as it currently exists. Revenues and expenses not otherwise included for regulatory purposes shall be excluded from the calculation.[95]

103. Elexicon agrees with OEB Staff. It is appropriate to approve the general ESM framework set out in the Application, with such general approval being the approvals as set out in paragraphs (a) through (e) above. This approach is consistent with the Alectra Decision in EB-2019-0018.

104. However, consistent with the responses filed to SEC-11 and SEC-12, as well as the Alectra Decision, the underlying details on the calculation of any ESM amounts should be deferred until the first rate application following the completion of Elexicon's 2024 fiscal year (the first year for which the ESM would be in effect). OEB Staff agrees with Elexicon that the underlying details of the ESM proposal, such as how deemed ROE should be calculated on a consolidated basis, should be deferred to the first rate application for when the ESM would be in effect.[96]

[95] Ibid.
[96] Ibid.

105. OEB Staff notes that Elexicon's request for approval of the ESM was not part of its original application and as such OEB Staff did not test the details of the evidence based on the initial request.[97]

106. SEC goes a step further, however, arguing that, in light of the defective Notice, it is prudent regulatory course of action to defer consideration of this proposal to a subsequent proceeding when proper notice can be given.[98] SEC argues that it is not appropriate to provide the approval of the ESM as requested because those reviewing the Notice of Proceeding could not have known that a proposal would be made to approve a mechanism for future years that could have material implication on rates. SEC further submits that it is unknown whether or not any potential intervenor failed to intervene as a result. SEC states that the point of ensuring proper public notice is so that the Board never makes a decision that the public could not have known was coming.[99]

107. This argument must fail for two reasons. First, the Notice of Proceeding in EB-2019-0018 did not include any mention of the ESM.[100] There is simply no basis to suggest that there was a defective notice to any party in this proceeding for a failure to mention ESM. Second, any party reviewing the Application could clearly see that Elexicon was obligated to, and did, file the details of its proposed ESM in this Application. It was clear to all parties that ESM was a live issue in this proceeding. So clear, in fact, that SEC itself asked two of their twelve total interrogatories seeking to test the evidence on the proposed ESM.

108. SEC goes on to argue that an approval is not necessary at this time.[101] Elexicon does not agree. The evidence was filed in this Application and is clearly consistent with the OEB's MAADs Policy. There is no reason to drag out approval of the ESM framework to a future year. Such an approach is inconsistent with regulatory efficiency and contrary to the priorities

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[97] Ibid.
[98] Ibid.
[99] SEC Submission at pages 4 to 5.
[100] Available online : https://www.rds.oeb.ca/CMWebDrawer/Record/645178/File/document
[101] Ibid at page 5.

that were identified in the November 15, 2021, Mandate Letter that was issued by the Minster of Energy to the Chair of the OEB.

109. In this context, SEC concedes that Elexicon has complied with the direction to file its ESM proposal in a timely manner and 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.[102] In Elexicon's submissions – the right time to approve the ESM framework is now.

110. Finally, SEC submits that the ESM and its calculation should be dealt with by the Board at the same time so at Elexicon and its customers have certainty as to the rate implications that will be coming during the earnings sharing period. Therefore, SEC 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.[103]

111. Elexicon does not agree. The OEB has established a precedent in the Alectra Decision (EB-2019-0018) that an ESM that is compliant with the MAADs Policy would be approved once filed. Elexicon is very concerned that SEC is attempting to defer the requested approval until a later date so that it can once again seek to reopen the OEB's MAADs Policy or framework governing ESMs. Elexicon submits that this is not appropriate or in line with regulatory efficiency.

D. CONCLUSIONS

112. For the reasons set out above, Elexicon submits that its electricity distribution rates should be approved as filed in the Application and subsequently revised through the interrogatory responses and these reply submissions.

113. As originally set out in the Application,[104] in the event the OEB is not able to issue a final Decision and Rate Order in respect of this Application with sufficient time for the

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[102] Ibid.
[103] Ibid.
[104] Application at pages 5-6.

implementation of the proposed rates and charges as of January 1, 2022, Elexicon requests that existing rates be made interim commencing January 1, 2022 and that it be permitted to recover the incremental foregone revenue from the effective date to the implementation date if these dates are not aligned. For clarity the request for interim rates includes both base EDR rates and ICM rate rider.

- All of which is respectfully submitted -