

John Vellone
T: 416-367-6730
jvellone@blg.com

Colm Boyle
T: 416-367-7273
cboyle@blg.com

Borden Ladner Gervais LLP
Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto ON M5H 4E3
Canada
T 416-367-6000
F 416-367-6749
blg.com



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BY RESS & EMAIL
registrar@oeb.ca

Ms. Nancy Marconi
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, Ontario M4P 1E4

Dear Ms. Marconi:

Re: Elexicon Energy Inc. (“Elexicon”) Application for 2023 Distribution Rates and Incremental Capital Module (“ICM”) funding (“Application”) Ontario Energy Board (“OEB”) File Number: EB-2022-0024

We are counsel to Elexicon in the above noted matter.

On December 22, 2022, the OEB issued Procedural Order No. 3 requesting that Elexicon, OEB staff and all intervenors file a submission on the type of hearing (written/oral) for each of the three ICM requests in the Application. These are Elexicon’s submissions on which of the three (3) ICM requests included within the Application should be dealt with by way of written versus oral hearing.

This proceeding has included a number of opportunities for the filing of evidence and for both written and oral discovery, including:

- Elexicon filed comprehensive interrogatory responses on October 13, 2022, together with various corrections filed January 12, 2023.
- The Brooklin Landowners Group filed supplemental interrogatory responses on January 9, 2023.
- An oral transcribed technical conference was held on January 17, 2023 and January 18, 2023, with both Elexicon and the Brooklin Landowners Group responding to questioning.
- Written responses to numerous undertakings were filed by both Elexicon and the Brooklin Landowners Group on January 24, 2023.

In light of the narrow scope of this proceeding, and the various opportunities that were provided to file evidence, pose interrogatories and ask questions in the technical conference, Elexicon submits that this proceeding should proceed entirely in writing.

While some may argue that the innovative nature of the ICM proposals on their own necessitates an oral hearing, Elexicon respectfully disagrees. Rather, holding an oral hearing at this stage in the process is contrary to the OEB’s objective of promoting regulatory efficiency and facilitating innovation.

Elexicon notes that while the Application includes a request for an exemption to Section 3.2 of the DSC, OEB staff have granted guidance on requirements under OEB codes, rules and licenses without holding a hearing at all (written or oral), specifically as part of the Innovation Sandbox process.¹ It makes no sense to hold an oral hearing due to the exemption request, when the alternative approach (e.g. a sandbox application) would require no hearing at all.

Credibility is not at issue in this proceeding and no party has suggested that it is.

The evidentiary record is sufficiently complete to allow the OEB to determine the materiality, need and prudence of each of the three ICM requests following written submissions. In Elexicon's submissions, there is no need for cross-examination of witnesses or acquiring additional factual evidence. Indeed, providing an additional opportunity for cross-examination would be of insufficient probative value to warrant its conduct.

A written hearing is the most efficient process to address the three ICM requests. Convening a written hearing will not violate the rules of natural justice or prevent the OEB from reaching a fair and just outcome. All parties will have an opportunity to have their say in the written hearing process.

In addition, the completion of the proceeding through a written process would be consistent with the approach taken by the OEB in respect of prior ICM requests (including in respect of Elexicon's 2022 ICM requests in EB-2021-0015 as well as Alectra's ICM requests in EB-2017-0024, EB-2018-0016, EB-2020-0002 and EB-2022-0013).

Some parties may argue that the OEB should pursue an oral hearing because of the magnitude of the ICM ask. Elexicon does not agree that this is an appropriate standard for determining which type of hearing to pursue. Rather, is it the completeness of the record which should determine whether additional discovery is required. As noted above, the evidentiary record of this proceeding is sufficiently complete.

A written hearing in these circumstances facilitates the Government of Ontario's recent enactment of Bill 23, the *More Homes Built Faster Act, 2022*, to address the supply and affordability housing crisis in the Province. As noted by the Brooklin Landowners, the ability to bring electricity to the Community of North Brooklin has truly become, a gating item. Further delays in the OEB process will delay the development of the Community of North Brooklin.²

Yours truly,



John Vellone

JV/CB

cc: Parties in EB-2022-0024

¹For example, within the Innovation Sandbox "*The OEB may grant temporary exemptions from its own regulatory requirements, but typically cannot grant exemptions to requirements in legislation or regulations*).

² See Brooklin Landowner IRs, January 9, 2023, STAFF-12(a)