



April 27, 2023
via RESS
Ms. Nancy Marconi
Registrar
Ontario Energy Board
2300 Yonge Street
P.O. Box 2319
Suite 2700
Toronto, ON M4P 1E4
Email: Boardsec@oeb.ca

Dear Ms. Marconi:

**Re: EB-2022-0317 – Elexicon Energy Inc. (“Elexicon”) Z-Factor
Application (the “Application”): Reply Submission**

Pursuant to Procedural Order No. 1 dated February 15, 2023 please find enclosed Elexicon's Reply Submission. Elexicon is filing its Reply Submission in response to submissions issued by OEB Staff, Power Workers Union (“PWU”) and Vulnerable Energy Consumers Coalition (“VECC”) received on April 6, 2023.

This Reply Submission will be filed through the OEB's web portal (“RESS”) and served on intervenors approved for this proceeding.

A handwritten signature in blue ink, appearing to read "Stephen Vetsis", is written over a light blue rectangular stamp.

Stephen Vetsis
Vice President, Regulatory Affairs and Stakeholder Relations
Elexicon Energy Inc.

cc: John Vellone



EB-2022-0317

Z-Factor Application

Reply Submission
of
Elexicon Energy Inc.

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1. Introduction

On May 21, 2022, Elexicon Energy Inc. ("Elexicon") experienced a Z-Factor event as a result of a *derecho* storm affecting large portions of Elexicon's service territory. This widespread and fast-moving storm caused extensive damage to Elexicon's infrastructure, leading to prolonged power outages for the majority of Elexicon's customers.¹ The *derecho* storm included the touching down of an EF-2 tornado directly in Elexicon's urban service territory in the Town of Uxbridge,² resulting in the need to completely rebuild the Uxbridge TS.³ The *derecho* storm was outside Elexicon's control, significantly impacted operations, and directly resulted in Elexicon incurring material, prudently incurred costs.

On September 6, 2022, Elexicon filed a Notice of Intent to file a Z-Factor Application with the Ontario Energy Board ("OEB" or "Board"); notifying the Board of its intention to file a Z-Factor Application relating to the May 2022 *derecho* storm, and explaining that the timing of the storm prevented Elexicon from including its Z-Factor claim in its 2023 Incentive Rate-setting Mechanism ("IRM") application, in light of the July filing date of the IRM application.

On December 9, 2022, Elexicon filed its Z-Factor Application in accordance with the Z-Factor Filing Guidelines contained within the *Report of the Board on 3rd Generation Incentive Regulation* for Ontario's Electricity Distributors issued July 14, 2008 ("Z-Factor Filing Guidelines"), as well as the *Chapter 3 Filing Requirements for Electricity Distributor Rate Applications* issued May 24, 2022. Subsequent to an update issued March 22, 2023, the financial components of Elexicon's Z-Factor Claim are as follows:

Table 1 Revised– Total Z Factor Event Costs

Category	Operating \$	Capital \$	Total \$
Incremental Labour/Material/Vehicle Costs	\$ 149,626	\$ 2,350,964	\$ 2,500,590
3rd Party Contractors	\$ 73,559	\$ 2,028,639	\$ 2,102,198
Total	\$ 223,186	\$ 4,379,603	\$ 4,602,788

¹ Z-Factor Application, page 3

² Ibid., page 4

³ Response to Interrogatory Staff-11



Table 2 Revised – Allocation of Z Factor Event Costs by Rate Zones

Category	Operating \$	Capital \$	Total \$
Veridian Rate Zone ("VRZ")	\$ 181,277	\$ 3,557,220	\$ 3,738,496
Whitby Rate Zone ("WRZ")	\$ 41,909	\$ 822,383	\$ 864,292
Total	\$ 223,186	\$ 4,379,603	\$ 4,602,788

Table 3 Revised – Relief Requested Veridian Rate Zone ("VRZ")

Category	Recovery Period	Amount \$
Operating Costs	1 Year	\$ 181,277
Capital Expenditures (Revenue Requirement)	Until Re-basing	\$ 304,984

Table 4 Revised – Relief Requested Whitby Rate Zone ("WRZ")

Category	Recovery Period	Amount \$
Operating Costs	1 Year	\$ 41,909
Capital Expenditures (Revenue Requirement)	Until Re-basing	\$ 73,766

On March 22, 2023 Elexicon responded to the interrogatories of OEB Staff and Vulnerable Energy Consumers Coalition ("VECC").

On April 6, 2023 OEB Staff, VECC and Power Workers Union ("PWU") made submissions with respect to Elexicon's Z-Factor Application. Subject to some modifications to Elexicon's request recommended by OEB Staff and VECC, all three parties submitted that Elexicon's Z-Factor request met the criteria of causation, materiality and prudence set out in the OEB policies noted above.



Elexicon is seeking recovery of a total of \$ 4.602MM in expenditures associated with the restoration of electricity service to its customers and proposes to recover this amount from rate payers via two rate riders effective July 1, 2023.

2. Causation

While OEB Staff submitted that Elexicon's Z-Factor claim "largely" satisfied the causation criteria for cost recovery, OEB Staff went on to suggest that a portion of the poles replaced as part of storm restoration efforts should be disallowed on the basis that they were in Poor or Fair-Poor condition. OEB Staff submitted that these costs "should have been accounted for in Elexicon's pole renewal program."⁴ Including a pro-ration of the replaced poles for which no condition records were available, OEB Staff asserts an adjustment is warranted to reduce the capital-related portion of Elexicon's Z-Factor claim by 18.5% of the wood pole costs incurred; or \$495.447K. ⁵ Elexicon does not agree. OEB Staff's submissions on this matter are misguided, and do not reflect an accurate representation of the evidence in this proceeding or an understanding of how system renewal is conducted.

The evidence in this case is clear. None of the poles replaced as a result of the *derecho* storm were on the list of poles to be replaced as part of the pole replacement program.⁶

To accept OEB Staff's submission on this matter would be to ignore the facts and instead assume that all poles for all distributors which are assessed to be in "Poor or Fair-Poor" or similar condition should be replaced immediately, as OEB Staff are effectively claiming that the poles in question would indeed have been replaced, if not in 2022, then imminently thereafter.

Clearly any asset renewal program, including pole replacement, is not planned or executed in this manner. Distributors are charged with knowing their assets and their systems, and prioritizing available program funds to where they are needed most. As provided in evidence, Elexicon's testing and inspection program identifies all poles that require immediate replacement and provide a list of such poles to Distribution Lines staff on an annual basis.

⁴ OEB Staff Submission, page 8

⁵ Ibid.

⁶ Staff-09 c)



Elexicon's practice is to replace poles with Poor or Fair-Poor classification within 1 to 2 years of identification. Therefore, it is reasonable to assume that some or all of the costs to replace Poor or Fair-Poor poles would not have been included in the 2022 pole renewal program budget. A pole being defined in Poor or Fair-Poor condition does not guarantee that the pole will be replaced immediately, as suggested by OEB staff.

OEB Staff further asserted that "Elexicon has not substantiated that all pole replacement costs are incremental to its regular pole renewal program"⁷.

However, this assertion is difficult to reconcile, not only with the stated reality that none of the downed poles were scheduled for replacement, but also with the evidence that Elexicon's actual pole replacement expenditure in 2022 was \$3.84MM relative to an original budget of \$2.12MM. Elexicon has stated that this increase in expenditure was related not only to increases in material and labour costs, but also to an increase in the number of poles replaced.⁸

In summary, none of the poles replaced as part of storm recovery efforts would otherwise have been replaced under Elexicon's pole replacement program, the total number of poles replaced under the program has increased relative to plan and expenditures on the pole replacement program increased over 80% relative to budget in 2022. Clearly the poles replaced in the wake of the May 2022 *derecho* storm and EF-2 tornado were incremental to Elexicon's pole replacement program and submissions to the contrary are without merit.

VECC made submissions suggesting revisions to Elexicon's Z-Factor claim. First, VECC pointed out that, relative to budget, Elexicon underspent its 2022 Storm Restoration and Emergency Response envelope by \$13.02K and recommended a reduction to the OM&A portion of Elexicon's claim on this basis.⁹

Elexicon asserts that this adjustment to its request for relief is inappropriate. The OEB test is that costs should be outside of the base upon which rates are based¹⁰. Additionally, the OEB has set out that in its review of utility rate applications it is the utility's responsibility to manage its funding envelopes on an **overall**

⁷ OEB Staff Submission, page 8

⁸ Staff-09 e)

⁹ VECC Submission p.3

¹⁰ Electricity Distributor Filing Requirements, Chapter 3 page 23



1 **basis** [emphasis added].¹¹ To this end, VECC is cherry picking 2 categories of spending in an overall
2 envelope of roughly \$47MM, without consideration of other cost pressures that Elexicon had to manage.
3 Finally, Elexicon's Table 1 in response to OEB Staff 1 b) demonstrates Elexicon's OM&A Z-Factor request
4 was intended to capture expenditures that were over and above budgeted amounts in rates for emergency
5 response; VECC's recommendation is inconsistent with this intention.

6 VECC also recommended that the portion of Elexicon's Z-Factor claim related to poles and overhead
7 conductors be reduced by 23.4%, as a reflection of Elexicon's average underspending on vegetation
8 management from 2019 to 2022.¹² VECC opines on Elexicon's actual vegetation management spending
9 that "had Elexicon spent its allocated vegetation management budget and done more tree trimming and
10 other vegetation management work in the preceding years, it's almost certain that there would be less
11 damage and less costs resulting from the 2022 storm and some of the storm costs could have been avoided
12 in the first place."¹³ Again, Elexicon disagrees. VECC's conclusion in this regard is inconsistent with the
13 evidentiary record in this proceeding.

14 VECC's assertion appears to rest on the premise that less vegetation management was completed than
15 was necessary or optimal based solely on the fact that actual expenditures for vegetation management
16 were less than budgeted amounts; directly equating dollars spent with outcomes. The supposition that
17 expenditures inherently equal outcomes is inconsistent with the OEB's *Renewed Regulatory Framework*
18 under which Ontario utilities have operated for over a decade, which is founded on "a comprehensive
19 performance-based approach to regulation that is based on the achievement of outcomes that ensure that
20 Ontario's electricity system provides value for money for customers", and further notes that "emphasizing
21 results rather than activities, will better respond to customer preferences, enhance distributor productivity
22 and promote innovation."¹⁴

23 Elexicon's vegetation management program operates on a 3-year cycle in which 1/3 of Elexicon's service
24 territory is maintained each year.¹⁵ As articulated in evidence by Elexicon, despite underspending on

¹¹ Handbook for Utility Rate Applications, October 13 2016 page 9: "It is the utility's responsibility to operate its system, and undertake the projects and programs it needs to meet performance requirements, within the funding provided through rates. This provides the utility with the responsibility and flexibility to meet its obligations in ways which benefit customers and the utility."

¹² VECC Submission p.4

¹³ Ibid.

¹⁴ *Renewed Regulatory Framework for Electricity*, October 2012, page 2

¹⁵ VECC-06 a)



1 vegetation management from 2019 through 2022, there was no planned work left incomplete during this 4-
2 year period.¹⁶

3 Given Elexicon's 3-year cycle, this means Elexicon delivered on the full extent of planned vegetation
4 management covering its entire service territory during this time and managed to do so under budget. The
5 explicit purpose of Incentive Regulation¹⁷ is to encourage the delivery of full and optimal results cost-
6 effectively, and Elexicon's ability to do so from 2019 to 2022 with respect to vegetation management is
7 evidence of sound utility management; not a failure to complete required work.

8 It is possible that VECC's argument does not rest on an assertion that planned work was uncompleted, but
9 instead a belief that unspent vegetation management funds should have been redeployed to still more
10 vegetation management; exceeding the frequency of 3-year cycles, or the industry-standard 3m clearance
11 and similar provisions¹⁸ that underpin Elexicon's vegetation management program. Elexicon submits it
12 would be incorrect to suggest an incremental increase beyond industry standard would have averted the
13 material damages experienced as a result of the May 2022 *derecho* storm. Wind speeds during this storm
14 reached as high as 195km/hr¹⁹, while the EF-2 tornado which traversed directly across Elexicon's service
15 territory in Uxbridge tore the roofs off personal residences and multi-residential buildings as depicted in
16 Figure 1, below²⁰:

¹⁶ VECC-06 c) & d)

¹⁷ A.k.a. Performance-Based Regulation

¹⁸ VECC-06 a)

¹⁹ Appendix A – 1a Elexicon May 2022 Derecho Storm Summary, page 3 of 12

²⁰ Ibid., page 7 of 12



1 **Figure 1: Derecho EF-2 Storm Damage in Uxbridge**



2
3 Elexicon submits that incremental extension of its vegetation management program beyond its planned
4 work would not have impacted the cost of storm recovery in this instance in any material manner, and
5 certainly not by a margin of \$729.2K, as proposed by VECC based solely on budgetary variances.

6 Elexicon does note as a point of reference that VECC made similar arguments with respect to Burlington
7 Hydro Inc.'s ("Burlington Hydro") Z-Factor application in EB-2022-0018; relating to the same *derecho* storm
8 in May 2022 in a region far less severely impacted than Elexicon's service territory in Durham Region. In
9 that case, unlike Elexicon's, there were documented instances of vegetation management plans that
10 remained incomplete preceding the storm. None-the-less the OEB found in it's Decision that, "the OEB is
11 not convinced that any lack of tree trimming in 2018 and 2021 in Zones 2 and 6 would have significantly
12 averted the damage caused by the storm and restoration costs incurred."²¹

²¹ EB-2022-0018 Decision and Order, page 18



Elexicon submits that similarly, VECC has not demonstrated that any lack of incremental spending on tree trimming would have significantly averted the damage caused by the storm and the restoration costs incurred. The evidence is that all planned tree trimming was completed.

PWU supported the approval of Elexicon's Z-Factor claim as filed, and submitted that "the evidence clearly demonstrates that the Z-Factor application meets the causation threshold."²² In reaching this conclusion, PWU identified evidence that Elexicon had demonstrated that: the amounts sought were outside of budgets included for emergency response in rates;²³ Elexicon had in the past expended smaller amounts of capital for emergency response despite having no specific capital budget for such expenditures;²⁴ and that system renewal capital expenditures since amalgamation have exceeded budgets by over \$5 million.²⁵

3. Materiality

All parties that made submissions in this proceeding concluded that Elexicon's Z-Factor claim exceeds the appropriate materiality threshold. However, OEB Staff's submission took the unusual step of calculating a new materiality threshold which is not specified in the OEB's Z-Factor Filing Guidelines or Section 3.2.8 of the OEB's Chapter 3 Filing Guidelines for Electricity Rate Applications as it relates to Z-Factor claims. Elexicon submits that OEB staff's proposal is wholly inappropriate, inconsistent with OEB policy, and inconsistent with precedents in OEB decisions in other Z-factor proceedings.

Calculation of the materiality threshold applicable to Z-Factor claims can be found in the Z-Factor Filing Guidelines, and is as follows:

"The Board has determined that the following materiality thresholds will apply:

- \$50 thousand for distributors with a distribution revenue requirement less than or equal to \$10 million;
- 0.5% of distribution revenue requirement for distributors with a revenue requirement greater than \$10 million and less than or equal to \$200 million; and

²² PWU Submission, page 4

²³ Ibid., page 2

²⁴ Ibid., page 3

²⁵ Ibid.



- \$1 million for distributors with a distribution revenue requirement of more than \$200 million.”²⁶

In accordance with the OEB’s guidance, Exlexicon calculated a materiality threshold of \$346,352 based on 0.5% of the combined most-recently approved revenue requirements of its predecessor utilities, Whitby Hydro Electric Corporation (“Whitby Hydro”) and Veridian Connections Inc. (“Veridian”), totalling \$69.126MM.²⁷ Exlexicon’s Z-Factor claim of \$601.9K²⁸ clearly exceeds this amount and thus satisfies the materiality threshold test.

In the course of this proceeding, OEB Staff “posed an approach, based on the OEB’s Capital Funding Options policy, to adjust the revenue requirements based on Whitby Hydro’s 2011 approved revenue requirement and Veridian Connections’ 2014 approved revenue requirement to derive the implicit revenue requirements recovered in the two rate zones in 2022.”²⁹ In short, OEB Staff suggest that the approved revenue requirements of Exlexicon’s predecessor utilities should be pro-rated upward to account for inflationary increases and customer growth up to the year in question. OEB Staff’s submission goes on to state that “its proposed approach is preferred to **Exlexicon Energy’s proposed approach**, given Exlexicon Energy’s circumstances. [emphasis added]”³⁰

Exlexicon Energy has not “proposed” any approach in this proceeding; it has followed clear and consistently applied OEB policy. The OEB’s Z-Factor Filing Guidelines are clear that the materiality threshold is to be established on the basis of revenue requirement; not “implicit revenue requirement”. Though Exlexicon acknowledges that pro-rations such as those proposed by OEB Staff are used in the application of the OEB’s Incremental Capital Module (“ICM”) policy, this is not an ICM application and these pro-rated figures are not a revenue requirement; particularly given that revenues and costs are purposefully decoupled during an incentive regulation (or deferred rebasing) period. Exlexicon is not aware of any Z Factor application in which the applicant has been expected to explore alternative approaches to calculation of the materiality threshold. Exlexicon submits that OEB Staff’s assertion that this circumstance warrants differential treatment because Exlexicon does not “adhere to the normal five-year approach”³¹ seems largely inconsistent with the OEB’s Mergers, Amalgamations, Acquisitions and Divestiture (“MAADs”) policies and numerous rebasing

²⁶ Renewed Regulatory Framework for Electricity, Appendix: Filing Guidelines, page 5

²⁷ Exlexicon Z-Factor Application, page 10

²⁸ Staff-02

²⁹ OEB Staff Submission, page 10

³⁰ Ibid.

³¹ Ibid.



1 deferral approvals of recent years. In addition, the OEB has approved the calculation of the materiality
2 threshold in the manner utilized by Elexicon in prior proceedings such as Burlington Hydro and Canadian
3 Niagara Power Inc. (“CNPI”).³²

4 OEB Staff’s proposed approach represents a material departure from the OEB’s policy on materiality as it
5 relates to Z-Factor applications. OEB Staff’s proposed approach will also have the effect of materially
6 prejudicing merged distributors that are currently in an extended rebasing period, like Elexicon, by
7 significantly increasing the Z-factor recovery threshold for those utilities without any public consultation,
8 debate, or consideration of the significant disincentive such a major change in risk allocation would create
9 for future electricity distributor consolidations.

10 For the purpose of the relief sought in this application the point is moot, as both OEB Staff and VECC (which
11 supported OEB Staff’s proposal) acknowledge that Elexicon’s Z-Factor claim exceeds both the established
12 materiality threshold and OEB Staff’s proposed calculation. However, for the purpose of future regulatory
13 certainty and efficiency Elexicon submits that the OEB should reject OEB Staff’s alternative proposal to the
14 calculation of the Z-Factor materiality threshold. Whether or not there is merit to OEB Staff’s proposal is yet
15 to be determined. However, the merit cannot be properly assessed absent a comprehensive consultative
16 approach that allows a broader group of affected stakeholders to bring forward their views in order to assist
17 the OEB in balancing such a change against existing regulatory frameworks. An isolated application with
18 only a handful of parties is a poor substitute for established consultative approaches to revising long-held
19 OEB policy, particularly in an application in which the outcome of assessing this proposal will have no
20 bearing on the relief requested.

21 Contrary to OEB Staff and VECC, PWU agreed with Elexicon that “using the OEB-approved methodology
22 for calculating the Z-Factor materiality threshold is appropriate and consistent.”

23 **4. Prudence**

24 None of the submitting parties in this proceeding argued against the overall prudence of Elexicon in
25 responding to the aftermath of the May 2022 *derecho* storm and incurring the costs necessary to restore
26 power. While OEB Staff provided additional recommendations regarding capitalization of costs as
27 discussed below, VECC made no specific submissions with respect to prudence, and PWU submitted that

³² EB-2020-0008; EB-2022-0019



“Elexicon management should be commended for enacting a Readiness Alert to the Core Power Restoration Team to stand-by in the Virtual Incident Command Centre prior to Environment Canada issuing a Severe Thunderstorm Warning on May 21, 2022 and also for restoring service to approximately 90% of customers by May 23, 2022.”³³

OEB Staff’s recommendations relate specifically to the capitalization of costs associated with the replacement of the membrane component of the oil containment system in the rebuilt Uxbridge TS,³⁴ which was the most notable single asset requiring replacement as a result of the Derecho storm. The total cost of the Uxbridge TS rebuild was \$395,889,³⁵ and Elexicon summarized the work completed as follows:

- 44kV metal lattice tower, including power fuses, was brought down by the storm.
- In the process of the tower coming down, a portion of one of the fuse mounts came down and pierced a radiator on the transformer in operation there.
- Due to the low height of the hole in the radiator, nearly all the oil drained out of the transformer. We estimate approximately 4,000 litres of oil was discharged.
- Uxbridge West DS was equipped with an oil containment system that captured all the oil. The oil containment utilized a water permeable/ transformer oil nonpermeable membrane to block passage of oil through it. This membrane had to be replaced as its exposure to oil had chemically changed it and it would no longer allow water to drain through it.
- **Vac-trucks were used to remove the oil held by the oil containment system.**
- The 44kV metal lattice tower was replaced with a wood pole with a power fuse holder.
- 44kV conductors were attached to the replacement pole and from the fuses to the switchgear.
- 4.16kV switchgear onsite did not require repair.
- Station fencing had to be repaired in the area of the 44kV tower as it had been damaged [emphasis added].³⁶

OEB Staff submitted that “While OEB staff consider the costs claimed for the Uxbridge TS rebuild to be reasonable, despite the age of the assets, OEB staff submits that the costs for the disposal of the oil and contaminated water (e.g., vacuum truck, associated labour) should be expensed rather than capitalized.”³⁷

³³ PWU Submission, page 5

³⁴ A.k.a. Uxbridge West DS

³⁵ Staff-11 b)

³⁶ Staff-11 a)

³⁷ OEB Staff Submission, page 13



OEB Staff noted that it was unable to determine the quantum of these costs and requested Elexicon provide clarity in its Reply Submission. Elexicon confirms the cost to be \$42.7K.

In asserting that Elexicon should not capitalize the costs noted, OEB Staff point to Article 410 of the Accounting Procedures Handbook which states that:

“Under the recognition principle in paragraph 7, an entity does not recognise in the carrying amount of an item of property, plant and equipment the costs of the day-to-day servicing of the item. Rather, these costs are recognised in profit or loss as incurred. Costs of day-to-day servicing are primarily the costs of labour and consumables and may include the cost of small parts. The purpose of these expenditures is often described as for the 'repairs and maintenance' of the item of property, plant and equipment.”³⁸

Elexicon disagrees with OEB Staff's interpretation of this matter on two fronts. First, the quoted reference relied on by OEB Staff explicitly contextualizes the guidance provided as relating to “day-to-day” servicing of items. The event in question in this proceeding was a storm described in evidence as “worse than the [1998] ice storm”³⁹ and “the most destructive storm in recent memory.”⁴⁰ There was nothing “day-to-day” about the cause or context of the work in question, particularly given the work was completed in Uxbridge and was highly proximate to the path of the rare EF-2 tornado which touched down in that hard hit community.

Second, OEB Staff rely on the logic that “remediation of the site is really for the purpose of bringing it back to pre-storm conditions”, and was similar to repair costs not warranting capitalization.⁴¹ However, in OEB Staff's own submission⁴², consistent with Elexicon's evidence,⁴³ OEB Staff acknowledge that the membrane of the oil containment system (i.e., an asset) had to be replaced as part of the Uxbridge TS rebuild. It is unclear to Elexicon how a membrane asset that had been saturated with oil could be replaced without the safe and environmentally sound removal of the oil which saturated it. The work completed was a necessary

³⁸ Page 11, Article 410, Accounting Procedures Handbook, effective January 1, 2012

³⁹ Appendix A – 1b CityNews news report from May 24, 2022, quote from Indrani Butany-DeSouza of Elexicon Energy, page 2

⁴⁰ Appendix A – 1c DurhamRegion.com's report from May 25, 2022, quote from Jason Fitzsimmons of Hydro One, page 2

⁴¹ OEB Staff Submission, page 15

⁴² Ibid.

⁴³ Staff-11 a)



component of completing the capital project of rebuilding the Uxbridge TS and should be capitalized accordingly. Of note, Elexicon's financial auditor reviewed the costs incurred rebuilding the Uxbridge TS and did not alter management's capitalization of the costs noted by OEB Staff, despite recommending revisions to the accounting treatment of other costs with respect to capitalization.⁴⁴

5. Regulatory Return on Equity

None of the three submitting parties in this proceeding contested that Elexicon had exceeded 300bps above OEB-approved ROE and would thus be ineligible for approval of a Z-Factor Claim. While OEB Staff and VECC made no specific submissions with respect to this requirement, PWU submitted that Elexicon's application meets the OEB's 2023 Incentive Rate-setting Applications Filing Requirements that state:

"To be eligible for a Z-factor claim, a distributor must demonstrate that its achieved regulatory return on equity ("ROE"), during its most recently completed fiscal year, does not exceed 300 basis points above its deemed ROE embedded in its base rates."⁴⁵

As confirmed in evidence Elexicon's most recent final regulatory ROE for 2021 was 6.97% (well below the OEB-approved ROE for Elexicon of 9.43%),⁴⁶ and forecast ROE for 2022 (as submitted on a confidential basis) is similarly expected to be below OEB-approved ROE,⁴⁷ and thus will not exceed 300bps above OEB-approved ROE.

Contrary to the submissions of OEB Staff and VECC, which suggest that Elexicon is underspending relative to the amounts funded by existing rates, the ROE evidence on the record in this case demonstrates empirically that the opposite is true.

6. Allocation and Rate Design

None of the three submitting parties in this proceeding opposed Elexicon's proposed cost allocation and rate design to facilitate recovery of Z-Factor claim costs. In light of the significant capital expenditures incurred as a result of the *derecho* storm, Elexicon proposed treatment of capital costs such that the annual

⁴⁴ Staff-02

⁴⁵ Chapter 3 Incentive Rate-Setting Applications May 24, 2022, Page 21

⁴⁶ Z-Factor Application, page 7

⁴⁷ Staff-07



revenue requirement associated with these costs would persist until its next rebasing, while OM&A costs would be recovered over a 12-month period.⁴⁸ OEB Staff submitted that “spreading out the recovery of the capital-related revenue requirement of the Z-factor claim over a longer period reduces the monthly bill impact”⁴⁹. Neither VECC nor PWU made specific submissions with respect to cost allocation and rate design.

7. Provision of Information

In its submission, OEB Staff made note of “challenges in analyzing the record of this proceeding, beginning with the availability and quality of information filed.”⁵⁰ In particular, OEB Staff pointed to two concerns to which Elexicon feels compelled to provide a response.

First, OEB Staff suggest that “details typically seen in similar applications” had to be requested via interrogatories, and cited Z-Factor applications recently made by Burlington Hydro⁵¹ and CNPI⁵² as examples.

In order to be responsive to the concerns of OEB Staff, Elexicon has reviewed the pre-filed evidence of the applications noted and cannot identify material differences in the amount of information or detail provided relative to Elexicon’s pre-filed evidence in this proceeding, with only minor differences in information⁵³ (as opposed to quantities of information) noted. Indeed, Elexicon closely referenced the Z-Factor application of Burlington Hydro in the preparation of its own Application and submits that the amount and type of information provided is highly comparable. Elexicon welcomes pro-active guidance that facilitates regulatory certainty and efficiency in the form of revised OEB guidelines and similar communications to ensure applicants understand the expectations associated with their applications, such that these expectations can reasonably be met. In this particular case, Elexicon followed all known OEB guidelines and similar communications to prepare the Application currently before the OEB. Elexicon received a

⁴⁸ Z-Factor Application, page 14

⁴⁹ OEB Staff Submission, page 17

⁵⁰ Ibid., page 17

⁵¹ EB-2022-0018

⁵² EB-2020-0008; EB-2022-0019

⁵³ e.g. The pre-filed evidence of CNPI in EB-2020-0008 and EB-2022-0019 broke out Regular Labour Costs from Overtime Labour costs, which Elexicon did not, while CNPI did not break out internal costs from third party costs, as Elexicon did.



Completeness Letter from OEB Staff on January 13, 2023, and had no reason to doubt that in OEB Staff's assessment the application was indeed complete.

Some of the deficiencies noted by OEB Staff in its submissions were of Staff's own making. For example, OEB Staff note that "[i]t is not clear what components (in the above table) of the Uxbridge TS were damaged and repaired, and the GBV, NBV or depreciation expense component were not provided." The reason this information was not provided was because OEB Staff did not ask for it in their interrogatory question. The question was answered exactly as asked.

Second, OEB Staff took issue with Elexicon's provision of data only back to the establishment of Elexicon as an amalgamated entity, as opposed to providing comparable data specific to Whitby Hydro and Veridian. Elexicon submits that 4 full years of historical data, that showed such data on a consolidated basis consistent with Elexicon's amalgamated state, was sufficient for all parties to have assessed relevant trends to inform their submissions on causation, materiality, and prudence as they relate to Elexicon's application.

The purpose of the Z-factor claim is to seek recovery of costs for an event that occurred in 2022. It is unclear to Elexicon how the historical information dating back 9-13 years for entities that no longer exist as a separate basis would be of assistance in determining whether the costs incurred in 2022 by Elexicon met the criteria of causation, materiality and prudence.

Requesting more than a decade of historical information because "it would have been helpful" is not sufficient justification to merit such a fishing expedition. The evidence in this case is that the burden and costs necessary to obtain the requested information greatly outweighed any potential probative value of the information requested, especially when Elexicon was able to produce the most recent 4 years of historical information.

8. Conclusion

As submitted in evidence, the *derecho* storm which affected Elexicon's service territory in May of 2022 was a significant weather event outside of the control of Elexicon management. This event required Elexicon to incur costs which were directly caused by the *derecho* storm, material in size, and prudently incurred. No party submitting in this proceeding concluded that the majority of costs incurred were not causally derived from the Derecho storm, nor that they were imprudently incurred. Variances in the eligibility or treatment of Z-Factor costs proposed by OEB Staff and VECC are not supported by the evidentiary record in this



1 proceeding, and Elexicon submits they should be rejected. No party submitted that Elexicon's Z-Factor
2 claim had failed to pass the materiality threshold test, no party submitted that Elexicon had failed to pass
3 the OEB's regulatory ROE test, and no party objected to the cost allocation and rate design proposals of
4 Elexicon.

5 Elexicon requests the OEB approve its application as filed.

6 -All of which is respectfully submitted-

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