Coalition of Concerned Manufacturers & Businesses CANADA
Bravely Safeguarding Canadian Jobs

May 4, 2023

Nancy Marconi
Registrar
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street
Toronto ON
M4P 1E4

Dear Ms. Marconi,

**RE: EB-2022-0024 Elexicon Energy Inc. 2023 Distribution Rate Application
CCMBC Argument Submissions**

Attached are the argument submissions of the Coalition of Concerned Manufacturers and Businesses of Canada (CCMBC) in the EB-2022-0024 proceeding, the application by Elexicon Energy Inc. for 2023 Rates and Charges.

Respectfully submitted on behalf of CCMBC,

Tom Ladanyi
Digitally signed by Tom Ladanyi
Date: 2023.05.04 09:00:59 -04'00'

Tom Ladanyi
Consultant representing CCMBC

cc. Jocelyn Bamford (CCMBC)
Stephen Vetsis (Elexicon Energy)
Parties to the Proceeding

EB-2022-0024

IN THE MATTER OF the Ontario Energy Board Act, 1998, being Schedule B to the Energy Competition Act, 1998, S.O. 1998, c.15;

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 rates and other service charges for the distribution of electricity for Elexicon Energy Inc. as of January 1, 2023.

Coalition of Concerned Manufacturers and Businesses of Canada

Argument Submissions

May 4, 2023

Executive Summary

Elexicon Energy Inc., applied for $69.8 million funding from ratepayers for its proposed Sustainable Brooklin and Whitby Smart Grid projects under the OEB's Incremental Capital Module (ICM) policy. The funding application if approved, would result in a 26% distribution rate increase for commercial and small industrial customers and a 32% increase for residential customers. CCMBC submits that Elexicon has not demonstrated the need for ratepayer funding of either project. Moreover, to approve the Sustainable Brooklin Project ICM funding, the OEB would have to compromise its ICM policy and weaken ratepayer protection in its Distribution System Code. CCMBC submits that the OEB should not approve Elexicon's requests for ICM funding.

Regulatory Background

In the Decision and Order in Elexicon Energy Inc.'s Mergers, Acquisitions, Amalgamations and Divestitures ("MAADs") Application (EB-2018-0236), dated December 20, 2018, the Ontario Energy Board granted approval for Whitby Hydro Electric Corporation and Veridian Connections Inc. to amalgamate and continue operations as a single electricity distribution company.

The merger was effective April 1, 2019. The amended licence ED-2019-0128 was issued 1 April 2, 2019. As described in that application, Elexicon Energy Inc. ("Elexicon") was granted a 10-year deferred rebasing period. This will be accomplished by maintaining two separate rate zones, Elexicon Energy Inc. – Whitby Rate Zone (“WRZ”) and Elexicon Energy Inc. – Veridian Rate Zone (“VRZ”) until rates are rebased.

Elexicon Energy inc. filed an incentive rate-setting mechanism application and request for incremental capital funding with the Ontario Energy Board on July 28, 2022, seeking approval for changes to its electricity distribution rates in the Veridian and Whitby rate zones, effective January 1, 2023. The Coalition of Concerned Manufacturers and Businesses of Canada (CCMB) intervened in the application and applied for cost eligibility which were approved by the OEB in Procedural Order No.1 issued on September 12, 2022.

In Procedural Order No.2 issued on November 1, 2022, the OEB found it appropriate to deal with the application in two phases: Phase 1 dealing with the Incentive Rate Making Mechanism (IRM), and Phase 2 dealing with the three ICM applications. The proceeding consisted of the interrogatory process which was completed in November 2022, a technical conference in January 2023, and an oral hearing in late March and early April 2023.

The three ICM funding applications are as follows[1]:

1. ICM funding in 2025 of $36.739 million for the Whitby Smart Grid Project, including a proportionate share of Advanced Distribution Management System and Supervisory Control and Data Acquisition costs, in the Whitby Rate Zone (“WRZ”);

2. ICM funding in 2025 of $6.432 million for a proportionate share of the ADMS and SCADA costs of the WSG, in the Veridian Rate Zone (“VRZ”); and

3. ICM funding in 2025 of $26.657 million for the Sustainable Brooklin Project in the WRZ together with an exemption for the Brooklin Line from Section 3.2 of the Distribution System Code (“DSC”) (the “DSC Exemption”), which would otherwise require Elexicon to collect a capital contribution from the local developers towards the cost of constructing and operating the Brooklin Line.

The total requested is $69.828 million. To obtain funding from ratepayers, Elexicon is requesting interim approval of its illustrative 2025 ICM rate riders[2].

ICM Policy

To understand this application, it is necessary to review the OEB’s policy for ICM applications requesting incremental funding for capital projects. The OEB summarized its ICM policy in a prior decision[3].

[1] AIC, page 3
[2] AIC, page 14
[3] EB-2022-0013 Decision, November 17, 2022, page 2

The OEB's ICM policy and ACM policy were established in the New Policy Options for the Funding of Capital Investments: The Advanced Capital Module (the ACM Report). The ICM policy was established to address the treatment of a distributor's capital investment needs that arise during a Price Cap IR rate-setting plan, and which are incremental to a calculated materiality threshold.

An ICM is a means by which a distributor can collect additional revenue from customers to fund capital expenditures in the years between cost of service applications. The ICM is available for discretionary or non-discretionary projects and is not limited to extraordinary or unanticipated investments. However, ICM funding is not available for projects that do not have a significant influence on the operations of the distributor.

Similar to the ICM, the ACM was established to address a distributor's capital needs during the Price Cap IR years. According to the ACM Report, an ACM is planned during the rebasing year as part of the cost of service application. The purpose of the ACM is to assist in creating regulatory efficiencies. In order to qualify for ICM funding, a distributor must satisfy the eligibility criteria of materiality, need and prudence.

In February 2022, the OEB released a letter, titled Incremental Capital Modules During Extended Deferred Rebasing Periods (February 2022 ICM Update). The February 2022 ICM Update provides additional flexibility for electricity distributors to apply for incremental capital funding for an annual capital program during years six to ten of an extended rebasing period where it also meets a set of additional criteria.

Unlike the ICM, ACM approval is completed in advance of the project's in-service year and involves only the approval of the need and prudence of the project. The materiality of the project is recalculated during the associated Price Cap IR year.

The ICM addresses the question of materiality in two steps. The first step involves applying the ICM "materiality threshold formula", which serves to define the level of capital expenditures that a distributor should be able to manage within current rates. This step provides that any incremental capital amounts approved for recovery must fit within the total eligible incremental capital amount and must clearly have a significant influence on the operation of the distributor. A second, project-specific, materiality test provides that minor expenditures, in comparison to the overall capital budget, should be considered ineligible for ICM treatment. Moreover, a certain degree of project expenditure over and above the OEB-defined threshold calculation is expected to be absorbed within the total capital budget.

With regard to the need criterion, as outlined in the ACM Report, any incremental capital amount being requested shall be (i) based on one or more discrete project(s), (ii) directly related to the claimed driver, and (iii) clearly outside of the base upon which the distributor's rates were derived. A distributor must also pass the "means test."

Under the means test, if a distributor's most recently available regulated return on equity (ROE) exceeds 300 basis points above the deemed ROE embedded in the distributor's rates, then funding for any incremental capital project would not be allowed.

Additionally, a distributor needs to establish that the incremental capital amount it proposes to incur is prudent. To satisfy the "prudence test", a distributor must demonstrate that its decision to incur the incremental capital represents the most cost-effective option for its customers (though, not necessarily the least initial cost option).[4]

Commissioners asked that parties to the proceeding address the following issues.

- **Is the requested timeline for approval appropriate for the Whitby Smart Grid project/Sustainable Brooklin project?**
- **Should the OEB allow an exception to the ICM policy?**
- **Are proposed illustrative rate riders on an interim basis appropriate?**

CCMBC submits that the requested timelines for approval of both the Whitby Smart Grid ICM project and the Sustainable Brooklin ICM are not appropriate. Elexicon is requesting approval of illustrative rate riders, not for 2023 which is the year that the rates are being set in this application, but for 2025, a future year. The OEB's ICM policy clearly states applications for future years, called Advanced Capital Module (ACM) are only available to distributors in the re-basing year. Elexicon has not filed a re-basing application. Moreover, there is no provision in the in the OEB's ICM policy for interim approval of illustrative ICM riders that Elexicon is seeking.

Commissioners asked the parties to address several other issues. CCMBC will deal with some issues on a project specific basis.

<u>Sustainable Brooklin Project</u>

- **Is there a Need for ICM Funding from Ratepayers?**
- **Is the evidence sufficient to approve ICM funding for 2023?**

On July 27, 2022, Elexicon Energy Inc. applied to the OEB for $26.6 million incremental capital funding for the construction of two 27.6 kilovolt feeders and associated equipment, which will connect a new development in North Brooklin to the Whitby Transformer Station. Elexicon Energy Inc. states that the feeders, which it refers to as the Brooklin Line since they are on a single pole line, are needed to accommodate forecasted demand within North Brooklin, in the Whitby Rate Zone.

The request is part of the first phase of the Sustainable Brooklin Project, where Elexicon Energy Inc. is working with a group of 30 property developers, who call themselves the Brooklin Landowners Group ("the BLG"), interested in building new homes in North Brooklin. The BLG

[4] *Ibid.*, pages 4 and 5

developers made an unwritten agreement with Elexicon to build rough-ins for solar panels, and electric vehicle charging in homes in North Brooklin if Elexicon will not require them to pay a contribution-in-aid of construction for the Brooklin Line as they would be required to pay according to the OEB's Distribution System Code. Elexicon has applied for an exemption from section 3.2 of the Ontario Energy Board's Distribution System Code, which if approved, will exempt the BLG from contributing towards the cost of constructing the Brooklin Line.

To understand this application, it is necessary to look at how it came about. The existence of the proposed development in North Brooklin was known to Elexicon management and the management of its predecessor, Whitby Hydro, since at least 2018[5] as can be seen in this quote from a letter from BLG developers to Elexicon.[6]

Following the approval of BCSP in 2018, BLG began discussions with Elexicon Energy ("Elexicon", previously Whitby Hydro) in 2019 (following initial discussion with Whitby Hydro in 2018) with the intent to arrange the design and delivery of electricity infrastructure to the Brooklin community in order to meet the development schedule of first home construction and energization in 2020. During those initial discussions with Elexicon, BLG was told that there has been no short and/or long-term planning for delivery of electricity service by Elexicon. This is despite the significant amount of anticipated growth expected in this area, growth which has been approved and anticipated since 2013.

The correspondence between the BLG developers and Elexicon indicates that Elexicon wanted the BLG developers to pay for all of the costs of electricity infrastructure for the new development in North Brooklin[7]. Although the BLG developers were willing to pay some of the costs, the $26.6 million amount was more than they were willing to pay.

It is not clear how many homes will be built in North Brooklin. Elexicon said that between 10,000 and 12,000 will be built[8], while the BLG developers' witness said that the number was14,000.[9] The estimate by the BLG developers is probably more accurate. Approximately 700 homes are expected to be built per year which means that 3,500 homes will be built in the first five years.[10] Under Elexicon's proposal the revenues from these 3,500 customers will go to Elexicon's shareholder,[11] as will the revenues of any additional homes, schools and businesses built prior to rebasing in 2029.

The 14,000 homes to be built over 14 years will have natural gas space and water heating which will be supplied by Enbridge. According to the evidence[12], Enbridge is not asking for any contributions from BLG developers and will install the gas infrastructure at its own expense. The BLG developers were surprised when Elexicon was refusing to do the same. [13]

---

[5] Oral Hearing Tr. Vol 1, page 21
[6] Letter from Matthew Cory to Norm Fraser, June 9, 2021, Supplementary Response of BLG to CCMBC-20
[7] Supplementary Response to CCMBC-20
[8] CCMBC-2
[9] Hearing Tr., Vol. 1, page 47
[10] TC Tr., Vol 1, page 45
[11] TC Tr., Vol.1, page 55-56
[12] TC Tr., Vol 2, page 135
[13] Hearing Tr. Vol 1, page 47-48

"MR. LADANYI: All right. So were you surprised when Elexicon, or I guess it was Whitby before, asked for a contribution to supply electricity service to this development?

MR. CORY: Yes. We expected power to be available as a linear extension, as it is in, I think, every other instance I have worked on where there are subdivision approvals or additional development that is contiguous or extending the urban boundary that already exists."

Yet, the developers have paid and are paying contributions to Elexicon[14] for other developments in Elexicon's service area so it is not clear why they expected not to pay any contributions for North Brooklin.

The BLG developers expressed *"inconsistency between the Distribution System Code (DSC) and the Transmission System Code CTSC)" in their discussions with Elexicon.* [15] It is not clear why the developers expected the DSC and the TSC to be consistent. CCMBC submits that each code serves a different purpose and need not be consistent.

In a letter of September 9, 2021, to Elexicon, BLG offered several alternative solutions to the problem including extending the revenues for connections from 5 years to 20 years[16] which is allowed by the DSC in Footnote 1 of Appendix B, *Methodology and Assumptions for an Economic Evaluation*.[17]

"The connection period for the system within BCSP area be extended to 20 years.
Based on the scale of the system necessary for the 20-30 year build out of the north BCSP area, we will not be able to realize the necessary revenue requirements within the prescribed 5 year connection period. We request that Elexicon agree to and seek approval of the Ontario Energy Board to include revenues from connections for a 20 year period. A 20 year connection horizon would allow for a more appropriate opportunity to revenue capture and offset the capital costs associated with this large undertaking."

This was rejected by Elexicon in its response of November 8, 2021.

"Point #2 of the Sept 9 Letter requests that "the connection period for the system within the BCSP area be extended to 20 years", and further requests that Elexicon seek approval of the Ontario Energy Board to include revenues from connections for a 20 year period. Elexicon does not view these requests as appropriate in these circumstances. As you know, the feeder/backbone will be built in phases to accommodate the growth pattern of the development, and these phases will be built as separate projects, making the 5-year connection period an appropriate length of time for this particular phase of the overall project. For this reason, we see no exceptional

[14] CCMBC-3(g)
[15] TC Tr. Vol 1, pages 93-96
[16] Supplementary Response of BLG, CCMBC-20, Letter from Matthew Cory to Norm Fraser, September 9, 2021
[17] KT1.1, Appendix B, page 4, footnote 1, "*For customer connection periods of greater than 5 years an explanation of the extension of the period will be provided to the Board."*

circumstances that would justify extending the connection period be yond the 5-year customer connection horizon specified by the DSC.[18]"

There appeared to be a standoff with neither party willing to pay for the cost of the Brooklin Line required to connect North Brooklin to the electricity distribution system in Whitby. Then, in the spring of 2022, Elexicon held a series of meetings with the OEB Sandbox, a group of OEB Staff responsible for innovation. The meetings were held on April 12, 2022, May 12, 2022, and June 10, 2022.[19]The meetings were confidential. It is not known if exemption from sections of the DSC was discussed, but it is likely that it was. What emerged is the current proposal before the OEB which requests the exemption.

In this proposal, the project was renamed the Sustainable Brooklin Project. It consisted of the same 14,000 homes with gas furnaces and gas water heaters[20]. However, the BLG developers promised to install rough-ins for rooftop solar and EV charging in each home if they were exempted from paying a contribution to build the Brooklin Line. Rough-ins are conduits between the electrical panel in each home and likely locations of EV charger and rooftop solar panels. The rough-ins do not include any wiring. The electricity distribution system which was designed prior to this agreement was not redesigned to accommodate up to 14,000 electric vehicle chargers nor a similar number of rooftop solar units.

The total cost of these rough-ins for all of the homes is approximately the same as the $26.6 million cost of the infrastructure needed to connect North Brooklin to the existing Elexicon distribution system in Whitby. In return for this promise Elexicon will drop its requirement that the developers pay the $26.6 million contribution. There is no written agreement of this *quid pro quo* promise. It was strictly verbal[21]. CCMBC submits that the OEB should also not be bound any contract and certainly not by an unwritten agreement.

The $2,260 cost estimate of the rough-in per home was given to Elexicon by the BLG developers. No breakdown of this cost estimate was provided. There was no document to support it and there are no calculations. Elexicon did not review it for reasonableness.[22].

Elexicon did not do an economic analysis that would support the $26.6 million amount of the contribution and it refuses to do a final economic evaluation.[23] It also did not produce a detailed cost estimate of the Brooklin Line.

There is no benefit from this project for Whitby ratepayers,[24] but Elexicon wants them to fund it with the proposed ICM rate rider. The cost of a retrofit rough-in for an existing home in Whitby

---

[18] Supplementary Responses of BLG to CCMBC-20, Letter from Indy J. Butany-DeSouza to Matthew Cory, November 8, 2021
[19] CCMBC-10(d)
[20] Hearing Tr. Vol 1, page 47
[21] TC Tr., January 17, 2023, pages 46-47.
[22] *Ibid.*, pages 68-69
[23] *Ibid.*, pages 48-50, and CCMBC-3
[24] Hearing Tr. Vol. 2, pages 32-33

is $6,780[25]. Yet Whitby ratepayers are being asked to pay an ICM rider so that customers in North Whitby can have the rough-in for nothing. CCMBC submits that this is unfair.

Elexicon is contemplating a DER enabling program where it will own DER assets on customer premises behind the meter. The decision on the scope and the timing of the DER enabling program will depend on the outcome of the decision in this case.[26]

CCMBC submits that there are a number of troubling inconsistencies with Elexicon's proposal.

- The rough-ins are behind the meter and are therefore part of the competitive market. The OEB Act does not allow the OEB to extend its jurisdiction behind the meter.
- Elexicon divided this project into phases so that the first phase, building the Brooklin Line, would have no revenues.[27]
- Elexicon relies on Section 3.2 of the DSC to force the developers to pay a contribution and then asks for an exemption from Section 3.2.
- In a letter to another developer regarding a different project,[28] Board staff insisted that Section 3.2 must be met, but then, based on OEB Sandbox meeting, may have agreed that it does not if there is an exemption.

To approve this ICM the OEB must agree to exemptions, not from one section of the DSC, but from twenty sections of the DSC that mostly deal with ratepayer protection, as is discussed later in the submission. Then it must agree to an unwritten quid pro quo agreement between the BLG developers and Elexicon, and then it must extend its jurisdiction to the unregulated business behind the meter. And for what, a large subdivision of 14,000 homes, no different than most other subdivisions in the Greater Toronto Area, with gas furnaces and gas water heaters that may at some future time have rooftop solar panels and EV chargers. CCMBC submits that the OEB should not agree to any of this.

In addition, Elexicon wants the OEB to issue an order that would be binding on developers that are not part of the BLG and are not parties in this proceeding.[29]

"MR. MANDYAM: Mr. Ladanyi, so should the Board approve the sustainable Brooklin ICM project as filed, the order would stipulate a -- that all contracts signed -- offers to connect with developers in the Brooklin area, whether they be part of the Brooklin group or not, would either build, construct the homes which are DER-enabled as per the documentation on the record; or they would pay a capital contribution per home of 2,260 dollars. So that would be an order. That would be an order to Elexicon. Elexicon would include that in the contract, the offer to

[25] JT1.8
[26] TC Tr, January 17,2023. pages 81-82
[27] *Ibid.*, page 55
[28] Elexicon Evidence Update cover letter, March 27, 2023, Attachment B
[29] TC Tr., January 17, 2023, pages 62-63

connect. And if an unforecasted or sorry a developer came in year ten that was not part of the Brooklin Landowner Group, that would be the offer that would be made to them. They would have a choice.

MR. LADANYI: But wouldn't there be inflation between now and year ten? So the $2260 wouldn't mean the same in 10 years from now as it would now. Would there be some kind of an escalation? Are you proposing this escalate by the inflation rate?

MR. MANDYAM: In our request we have not asked for that. We did not ask for that in our request. Should the Board decide that is the appropriate, that indexing to inflation is the appropriate method, then Elexicon will follow the Board's order."

There is no plan to inflate the $2,260 over time. Over time, due to inflation, the $2,260 will probably be less than the cost of the rough-ins for EV charger and rooftop solar, so the developers in future years will probably opt to pay it.

It is likely that the Ontario building code will within the next 20 years require that all new homes have an EV charger. Then the value of the $2,260 of the benefit would have to be reduced.[30]

Elexicon plans to inspect the construction of all new homes in North Brooklin over a 20-year period and report to the OEB each year on how many homes have rough-ins for rooftop solar and EV chargers[31]. This will require OEB staff to receive these reports and do something with them. This plan seems complicated and costly. CCMBC submits that this plan is probably unworkable.

However, if all of the homes have Level 2 EV fast chargers[32] and all are attempting to charge their EV's at the same time, there is no evidence that the design of the distribution system will be adequate because Elexicon did not model that scenario. Its consultant, METSCO, even confirmed that "*EV charging loads were not modeled".*[33] The witness for the BLG developers also confirmed that peak loads were not modeled.[34]

Therefore, the peak load scenario, where customers in 14,000 homes try to charge their EV's at the same time was not modelled, nor was the scenario where all 14,000 homes have rooftop solar panels and are trying to export excess power into the Whitby grid.[35] So the OEB does not know if what is being planned will actually work but is being asked to approve it. The risk that it will not work will be borne by the Whitby ratepayers who will have to pay the costs of any modifications.

CCMBC submits that what Elexicon is asking of the OEB is a step too far. If the OEB were to approve this ICM it would compromise its principles and damage its authority. The OEB should deny this application for ICM.

---

[30] *Ibid.,* page 78
[31] *Ibid.,* pages 63-68
[32] TC Undertakings JT2.9 and JT 2.10
[33] CCMBC-219c, vi
[34] Hearing Tr., Vol.1, page 56
[35] Hearing Tr. Vol. 2, pages 15-22

The BLG developers and Elexicon are claiming higher moral ground because they are building and serving new housing and other business are not. The Commissioners should not be influenced by the pressure from the BLG developers.[36] The BGL developers are in the business of building homes to make a profit[37]. They are not a charity. Businesses and manufacturers are also in business to make a profit. CCMBC submits that they should not be forced to pay a surcharge in the form of ICM riders to subsidize the North Brooklin developers while the landowners in North Brooklin are unwilling to share in the payment of the contribution.[38]

"MR. LADANYI: Why can't the members of your group have an agreement to share costs? Obviously those six early movers must not be happy with us. They must be -- why couldn't they make an agreement? In fact, you know you have mentioned that there are a total of 90 landowners in north Brooklin. I can't understand why there cannot be an agreement amongst all the landowners to share the cost of the contribution.

MR. CORY: Mr. Ladanyi, quite simply, that is akin to herding a rabid pack of cats. There are 90 landowners, some of which who are not even part of our group. We have no control over what they do unless they join our group. There certainly is a cost-sharing agreement amongst the owners to bear and share the costs, but those costs have to be fair in their own account."

Why should manufacturers and businesses in Whitby be forced to pay for funding of a project that neither Elexicon nor the BLG developers are willing to fund? Like the BLG developers, manufacturers and businesses are in business to make a profit. Why should money be forcibly taken away from them to ensure profits of the BLG developers and the shareholders of Elexicon? There is an underlying unfairness in what Elexicon is proposing.

Need for ICM funding should not be conflated with the need for a project. CCMBC submits that there is a clear need for the project to build a line to provide electricity service to North Brooklin. That does not mean that there is a need for an "illustrative" 2025 ICM rider to be approved in 2023 to fund it. It is hard to believe that a subdivision of 14,000 homes would not generate sufficient revenues to pay for the electricity infrastructure to serve it if a customer attachment period longer than five years was used for economic evaluation as allowed by the DSC Appendix B, Footnote 1. Even Elexicon agrees that Appendix B of the DSC allows the OEB to extend the customer connection period beyond five years.[39]

CCMBC submits that with a longer customer attachment horizon either no contribution is required, or the contribution could be reduced so that developers and Elexicon would share the cost. CCMBC submits that the OEB in its decision could suggest that the BLG developers and Elexicon negotiate a cost sharing agreement based on a longer customer attachment horizon.

CCMBC submits that the evidence is not sufficient to approve ICM funding for 2023 and there is no need for the proposed ICM funding from ratepayers for the Sustainable Brooklin Project.

[36] K1.1 and Hearing Tr. Vol. 1, pages 35-37
[37] Hearing Tr. Vol. 1, page 38
[38] Hearing Tr. Vol. 1, pages 41-42
[39] Hearing Tr. Vol. 2, page 8

Is the requested exemption to the Distribution System Code

- **appropriate,**
- **in the best interest of ratepayers,**
- **in the public interest?**

OEB's codes such as the Distribution System Code, the Transmission System Code, the Affiliate Relationships Code were developed over time to protect the interests of consumers. The DSC has gone through several reviews, consultations, and revisions. Distributors like Elexicon, have had many opportunities to propose revisions. Had Elexicon proposed revisions, such proposals would have been considered by the OEB after input from many interested parties, including parties representing ratepayers. There is no evidence that Elexicon proposed any revisions to the DSC.

In its original application and its pre-filed evidence Elexicon requested exemption from Section 3.2 of the Distribution System Code.[40] During the Technical Conference[41] it became clear the Elexicon was not requesting an exemption from the entire Section 3.2 but only certain clauses. It was not clear what Elexicon actually wanted until Elexicon filed its response to a Technical Conference undertaking.[42] In that undertaking CCMBC asked Elexicon to provide its proposed draft rate order that it wanted the OEB to issue. Under item 3 in its proposed draft rate order Elexicon listed the specific Sections from which it was seeking exemption.

3. The Ontario Energy Board approves an exemption for the Brooklin Line from Sections 3.2.1, 3.2.2, 3.2.3, 3.2.4, 3.2.6, 3.2.7, 3.2.8, 3.2.12, 3.2.14, 3.2.16, 3.2.18, 3.2.20, 3.2.21, 3.2.22, 3.2.23, 3.2.24, 3.2.25, 3.2.26, 3.2.27 and 3.2.30 of the DSC, which would require Elexicon to collect a capital contribution from the developers towards the cost of constructing and operating the Brooklin Line.

As can be seen from the above list, Elexicon is seeking exemption from many sections of the DSC. What Elexicon does like, and what it does not like about various sections of DSC is on the record in response to an interrogatory[43].

Elexicon's seems to have a "buffet cafeteria" approach to the DSC. It does not want to comply with twenty sections of the DSC, but it does want to comply with others. CCMBC submits that the DSC is not a buffet cafeteria where distributors only select DSC sections they like, similar to cafeteria diners selecting the foods they like to eat and leaving others.

The first section Elexicon is asking for exemption from is 3.2.1.

3.2.1 If a distributor must construct new facilities to its main distribution system or increase the capacity of existing distribution system facilities in order to be able to connect a specific customer or group of customers, the distributor shall perform an initial economic evaluation

[40] EB-2022-0024 Elexicon 2023 Incentive Ratemaking Application, Page 8
[41] TC Tr., January 17, 2023, pages 48-53
[42] TC Undertaking JT1.13
[43] CCMBC-3, Attachment 1

based on estimated costs and forecasted revenues, as described in Appendix B, of the expansion project to determine if the future revenue from the customer(s) will pay for the capital cost and on-going maintenance costs of the expansion project.

Elexicon does not want to perform an initial economic evaluation of the proposed facilities as described in Appendix B. This was also confirmed during the Technical Conference.[44] However, Elexicon is relying on specific parts of Appendix B to justify the customer attachment horizon and the revenue horizon [45]. This is a glaring inconsistency.

Section 3.2.2 is the next section that Elexicon wants to be exempted from.

3.2.2 If the distributor's offer was an estimate, the distributor shall carry out a final economic evaluation once the facilities are energized. The final economic evaluation shall be based on forecasted revenues, actual costs incurred (including, but not limited to, the costs for the work that was not eligible for alternative bid, and any transfer price paid by the distributor to the customer) and the methodology described in Appendix B.

Why would Elexicon not want to carry out a final economic evaluation once the facilities are energized and actual costs are known? Does it not matter what the actual costs of the facilities are? Customers would expect that prudent utility managers would be very interested in how actual costs compare to their estimates. Section 3.2.2 refers to the methodology described in Appendix B and Elexicon is seeking an exemption from it here. However, Elexicon is relying on that very same Appendix B methodology to justify the customer attachment horizon and the revenue horizon.[46]

Section 3.2.3 is the next section that Elexicon wants to be exempted from

3.2.3 If the distributor's offer was a firm offer, and if the alternative bid option was chosen and the facilities are transferred to the distributor, the distributor shall carry out a final economic evaluation once the facilities are energized. The final economic evaluation shall be based on the amounts used in the firm offer for costs and forecasted revenues, any transfer price paid by the distributor to the customer, and the methodology described in Appendix B.

It is not clear why Elexicon claims that it needs an exemption from 3.2.3. There is no indication on the record that alternative bids are being contemplated. It is possible that Elexicon wants the OEB from exempting it from doing any economic evaluation for any reason using the methodology described in Appendix B.

Section 3.2.4 is the next section for which Elexicon is seeking an exemption.

3.2.4 The capital contribution that a distributor shall charge an embedded distributor or a customer other than a generator to construct an expansion shall be equal to that customer's share of the difference between the present value of the projected capital costs and on-going

[44] TC Tr., January 17, 2023, pages 48-49
[45] Elexicon Evidence Update cover letter, March 27, 2023
[46] *Ibid.*

maintenance costs for the facilities and the present value of the projected revenue for distribution services provided by those facilities. The methodology and inputs that a distributor shall use to calculate this amount are described in Appendix B.

This is the section that requires a distributor to charge a contribution from a customer using the methodology described in Appendix B. According to the evidence, Elexicon has decided that it does not want to charge a contribution from any customers served by the Brooklin Line. The Brooklin Line is not defined in the legal application nor is the term of this proposed exemption.

Another section that Elexicon is seeking exemption from is 3.2.27.

3.2.27 Unforecasted customers that connect to the distribution system during the five year customer connection horizon will benefit from the earlier expansion and should contribute their share. In such an event, the initial contributors shall be entitled to a rebate from the distributor. A distributor shall collect from the unforecasted customers an amount equal to the rebate the distributor shall pay to the initial contributors. The amount of the rebate shall be determined as follows:

(a) for a period of up to five years, the initial contributor shall be entitled to a rebate without interest, based on apportioned benefit for the remaining period; and

(b) the apportioned benefit shall be determined by considering such factors as the relative nameplate rated capacity of the generator customers, the relative non-coincident peak demand of the load customers and the relative line length in proportion to the line length being shared by the customers, as applicable.

This clause is intended to deal with the need for fair treatment of the initial customers and the unforecasted customers. It is not clear why Elexicon would be opposed to this now. Interestingly, in its letter to developers Elexicon relies on this very section to explain why it wants the developers to pay a contribution.[47]

It should also be noted that Sections 3.2.1, 3.2.2, 3.2.3, and 3.2.4 are the only sections of 3.2 of the DSC that refer to Appendix B.

CCMBC submits that the sections that refer to Appendix B and the Appendix B itself are in place to prevent undue cross-subsidy of new customers by current customers. Exemption from them will result in undue cross-subsidy and is not in the interest of ratepayers and therefore it is not in the public interest. Applications for exemptions from sections of OEB codes are unusual. CCMBC is not aware of any previous application for code exemption. What Elexicon is requesting is unprecedented. Should the OEB grant the exemption it will likely set a precedent for other code exemption applications, possibly for sections of the Affiliate Relationships Code, the Transmission System Code, and also the DSC. Why have any codes if exemptions are possible?

[47] Supplementary Response of BLG to CCMBC-20, Letter from Indy J. Butany-DeSouza to Matthew Cory, November 8, 2021

CCMBC submits that in principle there should be no exemptions from the DSC and the OEB should not approve this exemption application.

Whitby Smart Grid Project

- **Is there a Need for ICM Funding from Ratepayers?**
- **Is the evidence sufficient to approve ICM funding for 2023?**

Elexicon Energy Inc. has applied for $43.2 million incremental funding for the installation of smart grid technologies as part of the Whitby Smart Grid Project. The Whitby Smart Grid Project is expected to be in service in 2025 and Elexicon Energy Inc. has applied for pre-approval for funding to deploy a combination of smart grid technologies, including an Advanced Distribution Management System and a Supervisory Control and Data Acquisition system, in the Whitby and Veridian rate zones.

Elexicon Energy Inc. states that it is applying for pre-approval because of the long lead times for construction of the project and to have certainty that it will be authorized to recover the cost of the project from its customers.

In this application, Elexicon Energy Inc. has proposed illustrative rate riders to recover the cost of the project, which if approved, will be updated in a future rate application, and applied to customer bills beginning January 1, 2025. Since WSG project covers two rate zones, Elexicon has applied for approval of two ICM riders, one for the VRZ and one for the WRZ.

The total cost of the Advanced Distribution Management System (ADMS) is $8.081 million and the Federal Government through Natural Resources Canada (NRCan) is providing 50% of the cost or $4.041 million.[48] Elexicon applied for funding from NRCan in April of 2021 and the agreement with NRCan was signed in August of 2022.[49] Under the agreement, to get the money from NRCan, Elexicon needs to have ADMS in place by March 31, 2025.[50]

The remainder of the WSG consists of Voltage Var Optimization (VVO) and Fault Location and Isolation Systems (FLISR) hardware costing $39.130 million[51]. Elexicon updated the numbers later.[52] NRCan did not provide and funding for VV O or FLISR because they are conventional technologies.[53] Other distributors in Ontario are installing VVO and FLISR without the need for ICM.[54]

[48] VECC-10
[49] SEC-22, Hearing Tr. Vol 1, page 134
[50] Hearing Tr. Vol. 1, page 169
[51] Appendix B-1 - Whitby Smart Grid Business Case P12
[52] Hearing Undertaking J1.1
[53] Hearing Tr., Vol. 1, page 169
[54] TC Undertaking JT2.3

According to Elexicon "*the modernization of the distribution grid, through the implementation of the Advanced Distribution Management System ("ADMS"), VVO, and FLISR, are proven technologies that lead to energy savings and improved reliability. They are necessary to enable the broad deployment of DERs"*.[55]

This is confirmed by Elexicon's consultant, METSCO. [56]

"While DER can be used to offset peak demand and defer investments into new stations and feeders, high DER penetration creates numerous challenges for operating the distribution. system. Methods such as VVM, DA, AMI must be used to facilitate the DER."

CCMBC submits that the need to proceed with ADMS now is the time sensitive availability of NRCan funding for ADMS. The other components, VVO and FLISR, will be needed when there is broad deployment of DERs and can be delayed until that occurs as there is no evidence that it is occurring now. Elexicon has not produced a study of the penetration of DERs and does not plan to do one until 2029.[57]

Approximately $2 million of the cost of ADMS is computer software and should qualify for Class 50 with 55% CCA rate. However, Elexicon initially treated it as Class 47 and then changed it to Class 46 with a 30% CCA rate.[58]. CCMBC believes that Elexicon has not claimed the maximum tax deduction which would have reduced its ICM request for the WSG.

Although full implementation of VVO and FLISR should improve reliability, CCMBC submits that the small reliability improvement does not warrant the $39.130 million cost. The improvement in reliability should not be a "cost is no object" quest.

It seems to CCMBC that the WSG project was put together by Elexicon so that it would not have to pay for its 50% share of the ADMS which is $4.041 million. Elexicon is in a 10-year deferred rebasing period until 2029. Unless it gets OEB approval for additional funding from ratepayers, its shareholder would have to fund the $4.041 million cost. But $4.041 million was too small an amount to qualify for ICM funding so Elexicon needed to make it larger by including it in a project with other components, specifically VVO and FLISR.

The VVO and FLISR components are required to deal with problems that can occur with increasing penetration of DER's. There is no indication that this is an urgent problem at this time. Elexicon can apply for ICM funding of these components as a project in years 6 to 10 of its deferred rebasing period starting in 2025.

In summary, Elexicon has not proven that there is an urgent need to proceed with WSG. Although the WSG project has worthwhile benefits, there is no urgent need to warrant its $43 million expenditure now.

[55] CCMBC-13
[56] Appendix B-4, METSCO Report, page 28
[57] Hearing Tr., Vol. 1, pages 153-154
[58] Staff 51c, J2.2

There is also no urgent need for ADMS now. The only urgency for ADMS is the limited availability of Federal funding. After federal funding, depreciation and CCA are considered, the ADMS likely does not meet the materiality criteria for ICM funding from ratepayers.

Elexicon had a vision to build the "grid of the future".[59] But that grid would cost a lot of money which Elexicon's shareholder does not want to pay. Elexicon's vision is far beyond its means.

CCMBC submits that there is no need for the ICM funding from ratepayers for WSG if the expenditures are spread out over time.

- **Are the three ICM projects proposed mutually exclusive? If not, how should the OEB consider common/overlapping elements?**

In summary, the three ICM funding applications are as follows:

1. ICM funding for the Whitby Smart Grid Project, including a proportionate share of the Advanced Distribution Management System ("ADMS") costs in the WRZ;

2. ICM funding for a proportionate share of the ADMS costs in the VRZ; and

3. ICM funding for the Sustainable Brooklin Project in the WRZ, together with an exemption for the Brooklin Line from Section 3.2 of the Distribution System Code.

The first and second request deal with funding for ADMS and are therefore not mutually exclusive. The third request is not related to ADMS as Elexicon is not requesting that any part of the funding for ADMS be recovered through the rate rider for funding the Sustainable Brooklin Project. The North Brooklin community is in the WRZ so it is expected that the ADMS will provide service there. Ratepayers in the WRZ will all be charged the ICM rate rider for the Whitby Smart Grid and the Sustainable Brooklin Project. Ratepayers in VRZ will only be charged their portion of the Whitby Smart Grid ICM rate rider.

- **Has the Customer Engagement for these projects been appropriate?**

The Customer Engagement has not been appropriate. There is no evidence on the record that customers in the WRZ or the VRZ nor their elected representatives on the Whitby Town Council representing the WRZ or the Ajax City Council and the Pickering Town Council representing the VRZ were informed of the size of the rate riders or their impact on ratepayers. The only presentation was to the Whitby Town Council, and it attempts to minimize the size of the

[59] Hearing Tr., Vol 1, page 133

increase by hiding in the bill impacts.[60] It is clear that they were not made aware that the cumulative impact of the proposals by Elexicon was a 31.63% distribution rate increase for a typical residential customer[61]. For the General Service customers over 50 kW class, which includes many manufacturers and businesses, the increase is 26%.[62]

While Elexicon proposes to increase distribution rates by 26% for commercial and small industrial customers, there is no evidence that Elexicon engaged with these customers to discuss the size of the increase with them.[63]

Conclusion

Sustainable Brooklin Project and the Whitby Smart Grid Project are ordinary projects that Elexicon has greenwashed. Elexicon seems to believe that to get OEB approval, all one has to do is say the magic words, *housing, innovation, smart grid and sustainable*, invoke the name of the Minister of Energy[64] and as the British say "*Bob's your uncle*". The OEB should disabuse it of that belief.

WRZ rate base is about $75 million[65] and the current ICM applications, if approved, would increase it by $63.4 million. CCMBC submits that the OEB never intended that ICM applications would be used to almost double rate base.

Elexicon has big plans to spend money. Based on its 2025 WRZ revenues and operating costs it can only afford to spend $11.6 million but it wants to spend $74.4 million[66]. In the VRZ it can only afford to spend $24.3 million but wants to spend $40.6 million. Instead of trying to control its spending, it wants the OEB to force ratepayers to give it more money to feed its high spending desires. The OEB should not feed Elexicon's overspending addiction.

Elexicon's ROE's have been poor since amalgamation[67]. There have been problems with its billing system as evidenced by large billing errors[68]. Elexicon is not taking advantage of tax deductions available to it for software purchases[69]. Elexicon has been dithering with the provision of electricity service to North Brooklin for five years. It seems that there are problems

---

[60] SEC-11, Attachment 1
[61] TC Undertaking JT2.6
[62] Hearing Tr. Vol. 1, pages 182-184
[63] *Ibid.*
[64] *Ibid.*, page 114
[65] TC Tr., January 17, 2023, page 128
[66] AIC page 16
[67] Elexicon Application, page 7
[68] EB-2022-0278 Assurance of Voluntary Compliance
[69] Staff 51c, J2.2

with its record keeping.[70] [71] [72] All of these are indications of poor management as is this poorly thought-out application. The OEB should not reward poor performance by giving Elexicon more ratepayers' money.

Elexicon has not demonstrated the need for additional ICM funding from ratepayers for the Sustainable Brooklin Project or the Whitby Smart Grid Project. Moreover, to approve the Sustainable Brooklin Project ICM funding, the OEB would have to compromise its ICM policy and weaken ratepayer protection in its Distribution System Code. CCMBC submits that the OEB should not approve Elexicon's requests for ICM funding.

All of which is respectfully submitted on the 4th day of May 2023, on behalf of the Coalition of Concerned Manufacturers and Businesses of Canada by its consultant,

Tom Ladanyi
TL Energy Regulatory Consultants Inc.

---

[70] When asked to file all correspondence file copies of all correspondence including e-mails between Elexicon and the Developers that resulted in the creation of the Sustainable Brooklin Project, Elexicon could not find any that did not contain "sensitive customer information". However, the BLG developers found several letters that did not contain such information and filed them.

[71] CCMBC-10

[72] Supplementary Response to CCMBC-20